# IMPACT OF MEDIATION IN FAMILY LAWS

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## INTRODUCTION

The roaring growth of technology has seen the glorious developments in almost all the sectors and Judiciary is not an exemption. A comparative study of inflow of cases in the Family Courts prior to the year 2000 and after the year 2000 would draw the attention of stakeholders. As how the growth of technology is unpredictable, the reasons for approaching the Family Courts seeking remedy for various reliefs has also gone unpredictable. Those unpredictable approach would be for various reasons such as the family background, financial instability, deviation from the basic traditions, incompatibility on the habits, temperament, likes and dislikes etc. Whatsoever be the reason, the dissatisfied spouse knocks the doors of Court of Law.

The mindset of the spouse would be in a fixed static status without room for any other thought other than to prove that he/she is correct and that the other spouse is wrong. Such a fixed state of mind is the real challenge to the Judge who handles the case, and thereafter the mediator. When the other spouse appears, he/she, having suffered humiliation and separation would be almost in the same mindset to prove the charge against the other spouse. Such is the challenge brought forward before the mediator. The reasons may or may not sound strong. But the perception of the spouse is so. A circumstance projected in a particular case may seem trivial for someone who suffered a serious matrimonial trauma. At any event, the analysis of circumstances and the identification of core issue is the real challenge. Thus the referral to mediation becomes an inevitable process by the Courts for which it certainly takes sometime for the Presiding Officer to convince

the spouses and to make them understand the importance of mediation and thereafter refer them to Mediation. This has been emphasized by Honourable High Court of Madras in R.O.C. No.101-B/2022/TNMCC/Hct.Ms dated 07.03.2023 by directing all the presiding officers to address the parties before referring them to anyone of the process under the ADR.

**IMPACT OF MEDIATION IN MATRIMONIAL DISPUTES:**

The objective of the Family Courts act 1984 could be understood from it's preamble which runs 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 Family Courts Act 1984 aims the promotion of conciliation. In specific, the provisions of section 9 and 10 of the Family Courts Act 1984 would give much liberty to the Courts to attempt for settlement for which the Presiding Officer enjoys the privilege by laying down his/her own procedures in arriving at a settlement.

In respect of the petitions for divorce by mutual consent under the Hindu Marriage Act 1955, the provisions of section 13B(1) lays down that the estranged spouses could file the petition for divorce by mutual consent after being separated for more than a year. The provisions of section 13B(2) lays down that the second motion could be made after six months from the date of first motion. In this regard the ***Honourable Supreme Court of India*** *in* ***Amardeep Singh Vs Harveen Kaur reported in 2017 (8) SCC 746*** has laid the law as follows;

***"18. Applying the above to the present situation, we are of the view that where the Court dealing with a matter is satisfied that a case is made out to waive the***

***statutory period under Section 13B(2), it can do so after considering the following :***

***i) the statutory period of six months specified in Section 13B(2), in addition to the statutory period of one year under Section 13B(1) of separation of parties is already over before the first motion itself;***

***ii) all efforts for mediation/conciliation including efforts in terms of Order XXXIIA Rule 3 CPC/Section 23(2) of the Act/Section 9 of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;***

***iii) the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties;***

***iv) the waiting period will only prolong their agony.***

***19. The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver.***

***20. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the concerned Court."***

The specific directions laid in para 18(ii) as above would emphasize the importance of mediation and conciliation. Thus the parties who seek relief under section 13B(1), if opt to seek waiver of 6 months mandatory period as laid under section 13B(2), shall have to undergo mediation so as to satisfy the above direction. This is a check laid down to the spouses to revisit their decision. When such an attempt of mediation is made at this stage, there are possibilities for the spouses to have a second thought over their decision and there had been many such instances of reunion, which are not reported. However the ultimate result would be that the mediation on the estranged spouses, even at the last phase, might

give them a second life so as to begin their matrimonial life afresh. The application of the above decision is restricted only to the petitions for divorce by mutual consent . If the above ratio of mandatory reference to mediation has it's applicability in all other matrimonial cases laid under various grounds, then it would be a boon and would pave way for settlement of more matrimonial disputes.

The provisions of section 23(2) of the Hindu Marriage Act 1955 (in short the HMA) envisages the promotion of reconciliation between the parties. But the rider clause is that this provision would not be applicable to the relief(s) sought under section 13(1) (ii) to (vii). This specific bar in the HMA has been brought by virtue of the amendment made in the year 1976. However the Family Courts Act 1984 has the overriding effect without any specific bar for conciliation. Thus the restriction under section 23(2) of the HMA has been taken away by the overriding effect of the Family Courts Act 1984.

The provisions of section 23(3) of HMA grants powers to the Court to adjourn the matter not exceeding 15 days for referring the matter to any person nominated by the Court to attempt for a settlement. By the time when the HMA was enacted in the year 1955, there was no provision made for mediation. After the enactment of Family Courts Act, the time limit laid down under section 23(3) of the HMA gets redundant owing to the undaunted powers granted under section 9 and 10 of the Family Courts Act 1984.

The provisions of section 18 of the Mediation Act 2023 specifies 120 days for completion of mediation which commences from the date of first appearance before the mediator. This is extended to a further period not exceeding 60 days. Thus the total duration for mediation could be 180 days as per the Mediation Act 2023.

The provisions of section 55 of the Mediation Act 2023 describes that the conduct of mediation and conciliation under certain Acts described in schedule II of the Mediation Act 2023 would remain unfettered. The second schedule lists down 9 Acts including the Family Courts Act 1984. Thus the manner of approaching a dispute by the Family Courts by application of any one of the alternate disputes resolution method prevails over the Mediation Act 2023. Therefore the application of mediation at Family Courts could not be time bound as laid down under the Mediation Act 2023 and thus the Family Courts would enjoy no limit in respect of time frame to complete the process of mediation. Thus the provisions of sections 9 and 10 of the Family Courts Act 1984 overrides the provisions of section 23(2) as well as section 23(3) of the HMA and also the Mediation Act 2023.

**CONCLUSION:**

The applicability of the Family Courts Act 1984 would be limited to the Family Courts alone and not to the other Courts such as Subordinate Judge's Courts at Taluk levels where the Family Courts Act 1984 has no application and rather the HMA alone has it's application as such. Thus an inconsistency could be felt very well under one umbrella of judicial parlance.

The necessity to amend the provisions of sections 23(2) and 23(3) of the HMA arises by incorporating the salient features laid down under sections 9 and 10 of the Family Courts Act 1984 would be the need of the hour. It would be worth to quote the words of **Joseph Grynbaum, *"An ounce of mediation is worth a pound of arbitration and a ton of litigation".*** There cannot be any second thought for considering the application of mediation in family disputes. The awareness on the impact of mediation to the stakeholders including the Judicial Officers, Advocates, Mediators, and more particularly the litigants would result in settlement of more matrimonial disputes which would reduce the huge pendency of cases at Courts.

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