

**Inaugural Session of the
"State Consultation on Sensitisation of Family Court Matters"
Organized by the Tamil Nadu State Judicial Academy
Chennai - 02.12.2017**

**- Hon'ble Mrs. Justice R. Banumathi
Judge, Supreme Court of India**

Esteemed Brother Justice Kurian Joseph, Chief Justice of Madras High Court, Justice Mani Kumar, Brother and Sister Judges, Registrar General, participant Judicial Officers, Counsellors/Mediators, Media and Press, I am very happy to participate in this programme on "Sensitization on Family Court Matters".

2. In the past, families were held together because the women were ready to adjust with the in-laws and put up with any unfair treatment. Now, when education and employment opportunities for women are widely available, there is radical change in the relations of the husband and wife and relation of the family members to each other. Spouses are not in a position to adjust even normal wear and tear. While the family members of the husband expect more from the wife, she finds it difficult to make innumerable adjustments expected of her. Resultantly, the rate of divorce is on increase; this is more so in cities like Chennai,

Hyderabad, Delhi and other industrialized cities. Even the marriages firmly established are exposed to the danger of misunderstanding. The number of litigations relating to matrimonial disputes, child custody, maintenance, domestic violence has been on the rise in courts all over India.

3. The object of the family courts is to provide speedy disposal of matrimonial cases like divorce, maintenance, child custody, child abuse, domestic violence etc. and emphasis is laid on the conciliation. The preamble of the Act reads that "*this Act provides for establishment of the Family Court with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters concerned therewith*". As per Section 9 of the Family Courts Act, family court shall endeavour to assist and persuade the parties in arriving at the settlement in respect of subject matter of the dispute. The mandatory duty of the courts to effect settlement in matrimonial cases is also stipulated under Section 23(2) of the Hindu Marriage Act.

4. In the transfer petition filed before the Supreme Court in *Krishna Veni Nagam v. Harish Nagam* (2017) 4 SCC 150, the two

Judges bench held that the parties before the family courts are free to avail the video conferencing facility. As effective conciliation and settlement may not be possible with video conferencing, we have referred the matter to larger bench. In *Santhini v. Vijaya Venketesh* 2017 (12) SCALE 359, the three Judges bench reiterated the need for conciliation in matrimonial disputes and overruled *Krishna Veni case*.

5. The Family Court has the powers of a District Court, in addition, has been conferred with the jurisdiction of a First Class Magistrate bringing civil and criminal jurisdiction under one roof and to bring all litigations concerning women and children in one court. The first step in the Family Court is the reference of the dispute to the counsellors/mediators whose aim is to bring about conciliation and amicable settlement of issues without the need for prolonged litigation. Only if the dispute is not resolved even after conciliation, the matter is taken up for trial. It is the duty of the counsellors and mediators to talk to the parties and try to settle the issues. The counsellor must help the parties with their wise guidance to make personal adjustments.

6. It is the duty of the conciliators to make the parties understand that counselling is a positive effort to save the marital life by personal adjustments. The parties must be made to understand that the entire conciliation/mediation proceedings are confidential and the discussion in the conciliation proceedings will not be placed before the court, if the conciliation fails. Parties should also be impressed that the conciliation process will have no effect upon the dispute between the parties, in case the conciliation does not fructify. During the conciliation, if necessary, counsellors/mediators should talk to the parties separately and also together. The parties must be made to listen to each other points of view without interruption by either one of them or their family members. The counsellors first identify the areas of differences and then their area of agreement; advise the parties to respect each other and to keep in view the welfare of the children. The counsellors should use their expertise to make suggestions and facilitate the parties to arrive at a settlement. Final decision is, of course, that of the parties. Here I wish to emphasize that the Family Court Judges and the counsellors and mediators must be committed to the need to protect and preserve

the institution of marriage and promote the welfare of the children.

7. There are certain practical difficulties in the conciliation; I wish to highlight few of them. Family Court rules framed by various High Courts only direct the counsellors to help parties in arriving at reconciliation. Almost all the rules provide a simple directive to the effect that the counsellor shall "*assist and advise*" the parties regarding the settlement of the subject matter of dispute and shall endeavour to help the parties in arriving at conciliation. The difficulty is, there are no set of guidelines on how the settlement efforts are to be conducted; how the counsellor is expected to achieve the settlement between the parties. There are wide disparities in the counselling technique adopted by the individual counsellors. There are also many challenges to the conciliation and mediation - inadequate number of counsellors. Another major problem is frequent changes of the counsellors, lack of uniformity in rules and procedure, lack of infrastructure etc.

8. To make the conciliation and mediation more effective, I would like to make few suggestions. There should be periodic

training for counsellors, accreditation, licensing of marriage and family counsellors, paying good honorarium making the counselling, systematization of procedures, processes in the court during the development of manuals and guidelines and organizing interactive programmes to identify the areas of difficulties in the process of conciliation and mediation.

9. The Family Court Judges and the Counsellors must be passionate for settling the disputes. I have seen many Judges grumbling over the posting in Family Courts. Being a Judge of a Family Court is an honour. In fact, District Judges who have passion for being compassionate are chosen by the High Court to preside over Family Courts. I wish to emphasize that posting in a Family Court is an opportunity to bring the families together and for doing service to the institution of marriage and the welfare of the children.

10. I wish and hope that this programme organized by the State Judicial Academy would go a long way in sensitizing the family court Judges and the counsellors/mediators in amicably settling the matrimonial disputes.
