Chapter - IV

THE ROLE OF THE FAMILY COURTS IN INDIA
History of the Family Courts:

Although the ancestor of family court was really child or juvenile court, the framers of family court probably could not have understood it. It had become a tribunal for every family related dispute as it exists today.¹

The concept actually arose in the late nineteenth century. The first separate juvenile court was established in Chicago, Massachusetts, Rhode Island and Indiana were under the auspices of the “common law doctrine” to try for children. Since this time the seeds of parent’s patria, or protection for children against themselves or their parents began. With the common law system, the law is made not by legislators but by the courts and the judges. It is often referred to as the “unwritten law”. In substance, common law lies in the published court decisions. This offered judges within this system wide discretion to shape the family law.²

Justice Potter Stewart stated in the case of Parham v. J.R. (1979)³, “issues involving the family are the most difficult that the courts have to face”. Hence, it is no surprise that family law cases are some of the most disputable

¹. History of Family Court, by Effie Belou, downloaded from the website of www.parentsination.action.et/english/familycourt/Hinstory of Family Court.htm, page-1, dt.2-8-2013.
². History of Family Court, by Effie Belou, downloaded from the website of www.parentsination.action.et/english/familycourt/Hinstory of Family Court.htm, page-1, dt.2-8-2013.
³. Article History of Family Court by Effie Belou, downloaded from the website of www.parentsination.action.et/english/familycourt/Hinstory of Family Court.htm, page-1.
and the cases actually places State and federal regulations against disputes brought by father, mother, husbands, wives and children. Consequently, some intricate legal doctrines have arisen trying to define the responsibilities of the family. Under nineteenth century federalism, the States had primary responsibility for family laws, including marriage, divorce, childrearing and inheritance. In *Maynard v. Hill*⁴ the Supreme Court stated that State had jurisdiction over the family endorsing State regulation of the family.

In *Myer v. Nebraska*⁵, the first federal judicial involvement began under the guise of parent’s rights, which affirmed the right of parents to choose a curriculum. This was further affirmed in the case of *Pierce v. Society of Sister*⁶. The Supreme Court upheld the right of parent to direct his or her child’s education endorsing parental authority as absolute and constitutionally protected in choosing which school was appropriated for their child. In *Prince v. Mass*⁷, the court broadened this ruling by declaring that family life could not be disturbed by intervention of the State without substantial justification.

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⁵ 262 US. 390, (1923). Ibid.
⁶ 268 US. 510, (1925). Ibid.
⁷ 321 US. 158, (1944)
In *Stachokus v. Meyers*, Ms. Meyers was ten weeks pregnant at the time of end of their relationship and she wished to terminate it. Mr. Stachokus who did not want the pregnancy terminated was granted a temporary injunction against Ms. Meyers. The injunction was quickly withdrawn and Ms. Meyers was granted relief to obtain an abortion. Increasing divorce, women entering the workforce, the fright to use birth control and abortion was influencing decisions. Further, alternative family arrangements through homosexuality, surrogacy and foster homes further complicated family courts. Subsequently the family fell under more courts scrutiny and spurred the creation of more extensive family law.

The superior Family Court has undergone a number of necessary changes in order to meet the unique and pressing needs of families in need and children in crisis.

Family courts were established several decades ago in the Countries like Britain, Japan, Australia, China etc.

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8. It was referred in the article of History of Family Court, by Effie Belou, downloaded from the website of [www.parentsinaction.et/english/familycourt/Hinstory of Family Court.htm](http://www.parentsinaction.et/english/familycourt/Hinstory of Family Court.htm), page-1, dt.2-8-2013

9. History of Family Court, by Effie Belou, downloaded from the website of [www.parentsinaction.et/english/familycourt/Hinstory of Family Court.htm](http://www.parentsinaction.et/english/familycourt/Hinstory of Family Court.htm), page-2, dt.2-8-2013.

10. Superior Court of Justice, Family Court History, downloaded from [www.ontariocourts.ca/scj/3n/famct/history.htm](http://www.ontariocourts.ca/scj/3n/famct/history.htm), dt.2.8.2013.
Origin to establish the Family Courts in India:

The need to establish the family courts was first emphasized in India by the late Smt. Durgabai Deshmukh, after a tour of China in 1953, where she had an occasion to study the working of family courts. She discussed the subject with certain judges and legal experts and then made a proposal to set up family courts in India to Prime Minister Jawaharlal Nehru.\(^\text{11}\)

Another reason for setting up of family courts was the mounting pressures from several women’s associations, welfare organizations and individuals for establishment of such courts with a view to provide a forum for speedy settlement of family related disputes. Importance was laid on a non-adversarial method of resolving family disputes and promoting conciliation and securing speedy settlement of disputes relating to marriage and family affairs.

The matrimonial litigation is a traumatic experience in the lives of parents and their children. Apart from emotional problems, it creates many legal, social and practical complications. It is unfortunate; however, that generally the only way available to parties to obtain “relief” from an unhappy

\(^{11}\) Article of Family Courts in India: An Overview, downloaded from the website of http://www.legalserviceindia.com/article/1356.
and intolerable relationship is by subjecting themselves and their spouses to the hazards of ordinary court procedures.\textsuperscript{12}

In India the Hindu Marriage Act, 1955 was passed, till date, several amendments have been made to liberalize the grounds for divorce; coupled with that, the Courts have also so construed and applied the provisions as to provide maximum relief with least hardship to any of the parties. The same is true in regard to other personal law statutes governing \textit{Christians, Parsis} and \textit{Muslims} as well\textsuperscript{13}.

Thereafter, the Law Commission, in its report, as early as 1973 (Fifty Fourth Report on the Code of Civil Procedure), strongly recommended the need for special handling of matters pertaining to divorce.\textsuperscript{14}

Subsequently several associations of women, other organizations and individuals have urged, from time to time, that the family courts be set up for the settlement of family disputes, where emphasis should be laid on conciliation and achieving socially desirable results and adherence to rigid rules of procedure and evidence should be eliminated. The Law Commission

\textsuperscript{12} Report on Working of Family Courts and Model Family Courts, held on 20.3.2002 by National Commission for women, New Delhi, downloaded from the website of ncw.nic.in/… dt.8.2.2013.
\textsuperscript{13} Ibid, page No.2.
\textsuperscript{14} Marriage Laws & Family Courts Act, by E.L. Bhagiratha Rao’s, 10\textsuperscript{th} edn., 2013, Asian Law House, Hyderabad.
in its 59th report in 1974 had also stressed that in dealing with disputes concerning the family the court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts for settlement before the commencement of trial.\(^{15}\)

Consequent to these recommendations, Order XXXII-A\(^{16}\) was incorporated in the Code of Civil Procedure in the year, 1976. This order “seeks to highlight the need for adopting a different approach where matters concerning the family are at issue, including the need for efforts to bring about an amicable settlement. The Code of Civil Procedure was amended to provide for a special procedure to be adopted in suits or proceedings relating to matters concerning the family. The need was, therefore, felt, in the public interest, to establish family courts for speedy settlement of family disputes.\(^{17}\)

After a lot of debate and discussion, the Family Courts Act came into force on 14.9.1984. The whole idea behind the Act is to ensure speedy and inexpensive relief with least formality and technicalities.\(^{18}\)

\(^{15}\) Report on Working of Family Courts and Model Family Courts, held on 20.3.2002 by National Commission for women, New Delhi, downloaded from the website of ncw.nic.in/… dt.8.2.2013.

\(^{16}\) Suits relating to matters concerning the family.


\(^{18}\) Report on Working of Family Courts and Model Family Courts, held on 20.3.2002 by National Commission for women, New Delhi, downloaded from the website of ncw.nic.in/… dt.8.2.2013.
In India first and foremost the family court was established in the State of *Rajasthan* on 19.11.1985. In *Andhra Pradesh* the family court started it functions on 15.2.1995.

The Parliamentary Committee on empowerment of women has recommended that the family courts may be set up in every district. All the State Governments have been requested to set up family courts in all districts. However there are only 212 family courts across the country.

The Family Courts Act, 1984 however does not define ‘family’. Matters of serious economic consequences, which effect the family, like testamentary matters are not within the purview of the family courts. Only matters concerning women and children, divorce, maintenance, adoption etc., are within the purview of the family courts.

The words “disputes relating to marriage and family affairs and for matters connected therewith” must be given a broad construction. To read the

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words “a suit or proceedings between the parties to a marriage” to mean “parties to a subsisting marriage” would lead to miscarriage of justice\textsuperscript{23}.

The object for establishment of family courts is to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith\textsuperscript{24}.

In \textit{Abdul Jaleel v. Shahida},\textsuperscript{25} the Supreme Court held that the Family Courts Act, 1984 was enacted to provide for the establishments of family courts with a view to promote conciliation in and secure speedy settlement of dispute relating to marriage and family affairs and for matters connected therewith by adopting an approach radically different from that adopted in ordinary civil proceedings.

Matters relating to maintenance allowance to wives, children and parents are provided under Sec.125 of the Code of Criminal Procedure, 1973. After enactment of the Family Courts Act, 1984, a proceeding for maintenance falls within the jurisdiction of the family courts at the places where such courts have been established. At other places, the magistrate of the area exercises the jurisdiction in such matters.

\textsuperscript{23} Abdul Jaleel v. Shahida, AIR 2003 SC 2525.
\textsuperscript{24} Family Courts Act, 1984 by Saibaba Itapu,\textsuperscript{1}st edn, 2009, P-99, Published by Sharma Law House, Hyderabad.
\textsuperscript{25} AIR 2003 SC 2525 = 2003 (4) SCC 166.
The family courts are specialized as civil courts, which deal exclusively with dissolution of marriage; declaration of the matrimonial status of any person; declaration of ownership of properties of the parties concerned; interim order of injunction arising out of marital relationships; declaration of legitimacy of any person, or guardianship of a person, or the custody or access of any minor and suits for maintenance.

The Family Courts Act, 1984 was part of the trends of legal reforms concerning women. The Act was expected to facilitate satisfactory resolution of disputes concerning the family through a forum expected to work expeditiously in a just manner and with an approach ensuring maximum welfare of society and dignity of women. Prevalence of gender biased laws and oppressive social practices over centuries have denied justice and basic human rights to Indian women.\(^{26}\)

The State Government after consultation with the High Court and by notification establishes family court for every area in the State comprising a

city or town whose population exceeds one million\(^{27}\) and may establish family courts for such other areas in the State as it may deem necessary\(^{28}\).

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\(^{29}\).

The place of the family court need not be permanent. It can be shifted from one place to yet another place within the area\(^{30}\).

The State Government may, with the concurrence of the High Court, appoint one or more persons to be the judge or judges of a family court\(^{31}\).

When a family court consists of more than one judge, each of the judges may exercise all or any of the powers conferred on the court by this Act for the time being in force\(^{32}\). The State Government may with the concurrence of the High Court appoint any of the judges to be the principal

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\(^{27}\) Section 3 (1) (a) of Family Courts Act, 1984.
\(^{28}\) Section 3 (1) (b) of the Family Courts Act, 1984.
\(^{29}\) Section 3 (2) of the Family Courts Act, 1984.
\(^{31}\) Section 4 (1) of the Family Courts Act, 1984.
\(^{32}\) Section 4 (2) (a) of the Family Courts Act, 1984.
judge and any other judge to be the additional Principal Judge\textsuperscript{33}. The principal judge may, from time to time, make arrangements as he may deem fit for the distribution of the business of the court among the various judges\textsuperscript{34}. The additional principal judge may exercise the powers of the principal judge in the event of any vacancy in the office of principal judge or the principal judge goes on leave\textsuperscript{35}.

For appointment as judges, the persons should have seven years experience in judicial office or the office of a member of a tribunal or any post under the Union or a State requiring special knowledge of law\textsuperscript{36}, or persons should have seven years experience as an advocate of a High Court or of two or more such courts in succession\textsuperscript{37}.

The Central Government with the concurrence of the Chief Justice of India may prescribe some other qualifications\textsuperscript{38} and also made rules for other qualifications for appointment of a judge of the family court\textsuperscript{39}.

\textsuperscript{33} Section 4 (2) (b) of the Family Courts Act, 1984.
\textsuperscript{34} Section 4 (2) (c) of the Family Courts Act, 1984.
\textsuperscript{35} Section 4 (2) (d) of the Family Courts Act, 1984.
\textsuperscript{36} Section 4 (3) (a) of the Family Courts Act, 1984.
\textsuperscript{37} Section 4 (3) (b) of the Family Courts Act, 1984.
\textsuperscript{38} Section 4 (3) (c) of the Family Courts Act, 1984.
\textsuperscript{39} Rule 2 of Family Courts (Other qualifications for appointment of judges) Rules, 1984.
As per Rule 2 of Family Courts (Other qualifications for appointment of judges) Rules, 1984, “Other qualifications for appointment of family court judges” are prescribed. They are:

i) A person shall have possessed a Post-graduate in Law with specialization in Personal Laws; or a Post-graduate degree in Social Sciences such as Master of Social Welfare, Sociology, Psychology or Philosophy with a degree in Law;\textsuperscript{40} and

ii) A person shall have at least seven years experience in field work, research or of teaching in a Government or in a College/University or a comparable academic institute, with special reference to problems of women and children; or a person shall have seven years experience in the examination and/or application of Central/State Laws relating to marriage, divorce, maintenance, guardianship, adoption and other family disputes\textsuperscript{41}.

In India some High Courts are exercising their powers for appointment of judges to the family courts as per Rule 2 of the Family Courts Rules, 1984, but the other High Courts are not following the same. It is a draw back to the family courts for disposing the cases properly and quickly by way of proper conciliation.

\textsuperscript{40} Rule 2 (i) of Family Courts (other qualifications for appointment of judges) Rules, 1984.
\textsuperscript{41} Rule 2 (ii) of Family Courts (other qualifications for appointment of judges) Rules, 1984.
The judges who are appointed to the family courts should be committed to achieve the object of the Act. They have to protect and preserve the institution of marriage and to promote the settlement of disputes by conciliation and counseling\textsuperscript{42}.

Sub-section (4) of Section (4) of the Act specially says that women shall be appointed as a judge. But still March, 2009 out of 84 judges, in all the 84 courts there were only 18 women were appointed as judges.

Except prescribing the qualifications of judges the Central Government has no role to play in the administration of justice. Different States have different procedure. So there is need to have uniform set of rules in all over India to achieve the object of the Act.

Though the Act laid down broad guidelines, it was left to the State Government to frame the rules of procedure. Still there are some states not yet established courts nor rules.

\textsuperscript{42} Section 4 (4) (a) of the Family Courts Act, 1984.
A person shall be continued in service as a judge of a family court until he attains the age of sixty-two years\(^{43}\) and their salary or honorarium and other allowances from time to time payable and the other terms and conditions of family court judge are prescribed by the State Government in consultation with the High Court\(^{44}\).

The State Government may in consultation with the High Court provide rules for the association of social welfare agencies etc., in such manner and for such purposes some conditions specified in the rules, with a family court of:

(i) institutions or organizations engaged in Social Welfare or the representatives thereof\(^{45}\);

(ii) persons professionally engaged in promoting the welfare of the family\(^{46}\);

(iii) persons working in the field of social welfare\(^{47}\); and

(iv) any other person whose association with a family court would enable it to exercise its jurisdiction more effectively in accordance with the purposes of this Act\(^{48}\).

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\(^{43}\) Section 4 (5) of the Family Courts Act, 1984.

\(^{44}\) Section 4 (6) of the Family Courts Act, 1984.

\(^{45}\) Section 5 (a) of the Family Courts Act, 1984.

\(^{46}\) Section 5 (b) of the Family Courts Act, 1984.

\(^{47}\) Section 5 (c) of the Family Courts Act, 1984.

\(^{48}\) Section 5 (d) of the Family Courts Act, 1984.
The State Government in consultation with the High Court:

(1) determine the number and categories of counselors, officers and other employees required to assist a family court in discharge of its functions and provide them to assist the family courts\(^49\) and

(2) make rules regarding the terms and conditions of association of the counselors and the terms and conditions of service of the officers and other employees\(^50\).

Role of the counselors in the family courts is very important. Fifty percent of the cases can be solved by way of proper counseling. The process of selection of the counselors is significant for delivery of justice. So far as the judges are concerned, they can also participate in counseling at the second stage. At the first stage the cases are sent to the counselors for counseling. In many cases where at the initial stage the counseling has failed, proactive role of the judge has helped in resolving the dispute\(^51\).

Counseling and conciliation are the two pillars on which the whole structure of family courts is built. Counseling, in fact, is the foundation on which the philosophy of conciliated settlement rests. The role of the

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\(^49\) Section 6 (1) of the Family Courts Act, 1984.

\(^50\) Section 6 (2) of the Family Courts Act, 1984.

\(^51\) Report of the Workshop held on 20.3.2002 by National Commission for women, downloaded from the website of www.ncw.nic.in/.....
counselors is not limited to counseling but extends to reconciliation and mutual settlement wherever deemed feasible. Most of the cases filed before the family courts can be resolved by way of proper counseling.\textsuperscript{52}

The Counselor shall fix time and date of appointment and inform the same to the parties for their appearance. If either of the parties fails to attend on that date the counselor may fix another date and communicate the same to the concerned by registered post. In case of default by either of the parties on the adjourned date, the counselor shall submit a report to the court and then the court will take action against the defaulting parties. On appearance of parties the counselor made efforts to settle the dispute by way of conciliation. The counselor may in discharge of his duties visit the home of either of the parties and interview the relatives, friends and acquaintances of either of the parties.\textsuperscript{53}

The counselor may take the assistance of any organization, institution or agency in discharge of his duties. The counselor shall submit his report to the Court as and when called for to assist the court in deciding the case on hand. The report of the counselor all points about living environment of the

\textsuperscript{52} Article written by Namita Singh Jamwal on the topic of family dispute conciliation, dt.12.7.2009, downloaded from the website of [www.mainstreamweekly.net/article 1205.html](http://www.mainstreamweekly.net/article 1205.html), p-1.

\textsuperscript{53} Rule 18 H.C. of A.P. Family Courts Rules, 2005.
parties concerned, personalities, relationship, income and standard of living, educational status of the parties, status in society and counselor’s finding\textsuperscript{54}.

The marriage counselor shall be used the powers against the women in the interest of the family since it is imbibed into the minds of such counselors and their primary commitment is to preserve the institution of marriage. The report of the marriage counselor is kept confidential, and not made a subject of cross-examination\textsuperscript{55}.

\textit{Jurisdiction:}

All family courts shall have the power and jurisdiction exercisable by any District Court or any subordinate civil court in suits and proceedings of the nature dealt with explanation to Section 7 (1) of the Act.

Following are the matters which can be filed in the Family Courts:-

1. Decree for nullity of marriage.

2. Restitution of conjugal rights.


4. Dissolution of marriage.

5. Declaration of matrimonial status of any person.


\textsuperscript{54} Rule 18 H.C. of A.P. Family Courts (Court) Rules, 2005.

\textsuperscript{55} Rule 20 HC., of A.P. Family Courts (Court) Rules, 2005.
7. Claim of maintenance.
8. Guardianship.
10. Access of children.
11. Application for injunction in matrimonial matters.

Thus the family court entertain the applications for grant of decree of divorce under the various Acts like Dissolution of Muslim Marriage Act, 1939, Muslim Women (Protection of Rights on Divorce) Act, 1986, the Parsi Marriage and Divorce Act, 1936, the Divorce Act, 1869, the Special Marriage Act, 1954, Foreign Marriage Act, 1969 etc.\textsuperscript{56}


\textsuperscript{56} Rule 5 (d) of H.C. of A.P. Family Courts (Court) Rules, 2005.
\textsuperscript{57} Ibid.
If any dispute to a marriage between the parties arises irrespective of their caste or creed and validity of a marriage the family court has got jurisdiction\textsuperscript{58}.

The property dispute between the parties to a marriage the family court can entertain the petition\textsuperscript{59}.

The family court entertain suit for partition of the property between parties to a marriage\textsuperscript{60}.

A suit filed by wife for return of gold ornaments, cash etc., given at the time of marriage even after death of husband being one arising out of marital relationship though not between parties to marriage\textsuperscript{61}.

The family court can also pass orders or injunctions in circumstances arising out of a marital relationship\textsuperscript{62}.

The family court has got jurisdiction to declare of any person as to the legitimacy\textsuperscript{63}.

\textsuperscript{58} Reddy Ananda Rao vs. Ms. Totavani Sujatha, AIR 2003, NOC 258 AP.
\textsuperscript{59} Explanation (c) in Section 7 (1) of the Family Courts Act., 1984.
\textsuperscript{60} Mrs. Mariamma Ninan v. K.K. Ninan, I (1997) DMC (AP) 570.
\textsuperscript{61} Suprabha v. Sivaraman, AIR 2006 Ker. 187.
\textsuperscript{62} Explanation (d) in Section 7 (1) of the Family Courts Act, 1984.
\textsuperscript{63} Explanation (e) in Section 7 (1) of the Family Courts Act, 1984.
A declaratory suit regarding legitimacy of a person would fall within the jurisdiction of Family Court\textsuperscript{64}.

The family court has also entertains the application for granting maintenance under the Hindu Adoptions and Maintenance Act, 1956\textsuperscript{65}.

The family court has jurisdiction to give the custody of the child to a proper person and also to appoint a proper person as guardian to the minor children.\textsuperscript{66}

The family court has power to entertain the application under the Guardian and Wards Act, 1890 and the Hindu Minority and Guardianship Act, 1956\textsuperscript{67}.

In addition to that, the family court shall have jurisdiction exercisable by a First Class Magistrate under Chapter IX of the Criminal Procedure Code i.e., relating to order for maintenance of wife, children or parents, has also been conferred on the family courts\textsuperscript{68}. There is also an enabling provision that the family courts may exercise such other jurisdiction as may be conferred on

\textsuperscript{64} Renubala Moharana v. Mina Mohanty, AIR 2004 SC 3500.
\textsuperscript{65} Rule 5 (d) of H.C. of A.P. Family Courts (Court) Rules, 2005.
\textsuperscript{66} Explanation (g) in Section 7 (1) of the Family Courts Act, 1984.
\textsuperscript{67} Rule 5 (d) of H.C. of A.P. Family Courts (Court) Rules, 2005.
\textsuperscript{68} Section 7 (2) (a) of the Family Courts Act 1984.
them by any other enactment\textsuperscript{69}. In this connection the family court exercises its power to grant maintenance under Sec.125 of Criminal procedure Code\textsuperscript{70}.

The Family Court has no jurisdiction to entertain the applications in certain circumstances. The following cases are some examples.

1. A suit for declaration regarding the illegitimacy of the child cannot be entertained\textsuperscript{71}.

2. In \textit{Ranjeet Chobra v. Savita Chobra}\textsuperscript{72}, it was held that a dispute relating to appointment of Guardian of minor’s property has come under the jurisdiction of the Civil Court.

3. The family court cannot entertain the suit of a minor’s property.\textsuperscript{73}

4. The proceedings under Muslim Women (Protection of Rights on Divorce) Act, 1986, a Muslim woman can apply under Sections 3 and 4 of the said Act for maintenance only to Magistrate of the First Class\textsuperscript{74}.

5. The suit involving a dispute between the brothers, sisters, mothers, fathers etc. concerning property.\textsuperscript{75}

6. The suit for declaration that the father should provide necessary funds for his daughter’s marriage.\textsuperscript{76}

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\textsuperscript{69} Section 7 (2) (b) of the Family Courts Act 1984.
\textsuperscript{70} Rule 5 (d) of H.C. of A.P. Family Courts (Court) Rules, 2005.
\textsuperscript{71} Renubala Maharana vs. Mina Mohanty, AIR 2004, SC.3500.
\textsuperscript{72} 1991 (2) Civil L.J. 483.
\textsuperscript{73} Kamal V.M. Allauddin v. Raja Shaik AIR 1990 Bom. 299.
\textsuperscript{74} Karim Abdul Rehman Shaikh v. Shehnaz Karim Shaikh, 2001 (1) ALD (Crl.) 145 (Bom) (FB).
\textsuperscript{75} P. Srihari v. P. Sukunda, II (2001) DMC (AP) 135.
7. Prior to the establishment of the family court, if there was an order already passed by the Civil Court under Hindu Marriage Act, 1955 and any further alteration in that regard is intended it must be made by the Civil Court itself.\textsuperscript{77}

8. The ambit and scope of the proceedings of a suit for partition and allotment of shares was completely outside jurisdiction of Family Court\textsuperscript{78}.

9. The suit relating to joint family property in which the parties other than the spouses are sharers cannot be taken as a suit arising out of matrimonial relationship\textsuperscript{79}.

Provision has also made to exclude the jurisdiction of other courts in respect of matters for which the Family Court has been conferred jurisdiction.

According to Section 8, after the establishment of the family court, the District Court or any sub-ordinate Civil Court have no jurisdiction to entertain any civil or criminal matters.

Similarly if the Family Court established in any area, the magistrate in that area has no jurisdiction or power to entertain maintenance proceedings under section 125 of the Criminal Procedure Code, 1973. If any cases are

\textsuperscript{76} 1995 AIHC 617 (Ker).
\textsuperscript{77} P. Madhavan Nair v. K. Ravindran Unni, AIR 1993 Karn. 203.
\textsuperscript{78} Mohammed Isaq v. Meharunnisa, I (1998) DMC (Kant.) 20.
\textsuperscript{79} Manita Khurana v. Indra Khurana, AIR 2010 Del. 69.
pending before the Magistrate Court, all such cases shall be transferred to family court immediately after establishment of family court in that area\textsuperscript{80}.

Except Family Court, no Court shall have jurisdiction to entertain both civil and criminal proceedings with regard to maintenance\textsuperscript{81}.

Chapter IV of the Family Courts Act deals with the procedure of the family courts in deciding cases before it\textsuperscript{82}.

A duty has been imposed on the family courts to see that the parties are assisted and persuaded to come to settlement and for this purpose they have been authorized to follow the procedure specified by the High Court by means of rules to be made by it\textsuperscript{83}.

The role of family courts in settling the matters between the parties speedily by following the rules made by High Courts in India.

Under the provisions, different High Courts have different rules of procedure for the determination and settlement of disputes by the family courts.

\textsuperscript{80} Section 8 (c) (i) and (ii) of the Family Courts Act, 1984
\textsuperscript{81} Abdul Rashid Khan v. Musta Firan Bibi, AIR 2006 Ori. 186.
\textsuperscript{82} Section 9 of the Family Courts Act, 1984.
\textsuperscript{83} Section 9 (1) of the Family Courts Act, 1984.
In the proceedings at any stage, there is a reasonable possibility of settlement between the parties; the family court has empowered to adjourn the proceedings until the settlement is reached.\footnote{Section 9 (2) of the Family Courts Act, 1984.}

In *Gurubachan Kaur vs. Preetam Singh*,\footnote{AIR 1998, All. 140.} the Division Bench of Allahabad High Court held that “a duty has been imposed under Sec.9 of the Family Courts Act to make all possible endeavour which is at para material with Order XXXIII\footnote{Suit may be instituted by indigent persons.} of CPC. The Court must express its concern that the Family Courts should work in a spirit of dedication to settle the matter by negotiation and all possible methods of persuasion so that the marriage may be preserved. The Court expresses its concern that it should not turn into an ordinary Civil Court as seen by while sitting in this jurisdiction and dispose of the matter as expeditiously as possible and adjournments should be restricted.

While applying the provisions of the Code of Civil Procedure, 1908 in a suit or proceeding before the family court, the family court shall be deemed to be a civil court and shall have the powers of such court.\footnote{Section 10 (1) of the Family Courts Act, 1984.} While applying
the provisions of the Code of Criminal Procedure, 1973, it shall apply to the proceedings under Chapter IX of that Code before a family court.\(^{88}\)

Moreover, the family court laying down its own procedure with a view to arrive at a settlement in respect of subject matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.\(^{89}\)

The Family Court while dealing with the petition preferred under S.125 of the Criminal Procedure Code is bound to follow the procedure prescribed in Section 126 thereof.\(^{90}\)

The Court’s duty is even to put questions to elicit truth and should show dynamic approach towards the achievement of the ends of justice.\(^{91}\)

Matters to be disposed of expeditiously and adjournments be restricted.\(^{92}\)

The proceedings may be held in camera if the family court so desires and shall be so held if either party so desires.\(^{93}\)

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\(^{88}\) Section 10 (2) of the Family Courts Act, 1984.

\(^{89}\) Section 10 (3) of the Family Courts Act, 1984.

\(^{90}\) Gayithri v. Ramesh, II (1993) DMC (Raj.) 121.

\(^{91}\) Velpat Grama Panchayat vs. Asst. Marketing Director, Guntur, AIR 1998, All. 148 at p.144.

\(^{92}\) D.S.N.V. Prasad Babu vs. Union of India, AIR 1998, All 140 at P.144.

\(^{93}\) Section 11 of the Family Courts Act, 1984.
At the time of recording evidence usually a suffered wife cannot say the real story in the presence of other litigants and legal practitioners at the court-hall due to humiliation and fear as it is her private family matter. In those circumstances, on the request of parties, the judge of the Family Court shall record the evidence after closing the doors of the court-hall by sending out the advocates and other litigants.

The family court has power to secure the services of a medical expert or such person (preferably a woman where available), whether related to the parties or not including a person professionally engaged in promoting the welfare of the family, for the purpose of assisting the family court in discharging the functions imposed by this Act.94.

The Family Court also has power to summon the medical experts to record their evidence relating to the subject matter of the cases.

To exercise inherent powers may direct medical examination of a party to a matrimonial proceeding in appropriate cases.95.

Section 13 of the Act provides that the party in a suit or proceedings before a family court has no right to engage an advocate to represent on his

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behalf. However, the court can seek help or assistance of legal expert as *amicus curiae* (a friend of the court).

The Act and rules excluded the participation of lawyers without making any alternative rules. Litigants are left to the mercy of court clerks to help them. It appears the litigants of their constitutional rights by not allowing the party to engage lawyer of his/her choice.

However, the court shall allow a legal practitioner on either side to appear only as *amicus curiae*, if it finds necessary in the interest of justice. Thus the court has a discretionary power to allow advocate or not to represent on behalf of a party.

To grant permission to a party to be represented by a legal practitioner the court shall maintain a panel of legal experts as *amicus curiae* consisting five members out of legal experts and also from the retired judges of local area, who have expertise in the field. The *amicus curiae* shall be paid a fee by the State Governments in a case which may be determined by the court not exceeding Rs.500/- per day\(^\text{96}\).

\(^{96}\) Rule 16 explanation (2) H.C. of A.P. Family Courts (Court) Rules, 2005.
Where a party has no means to engage an advocate shall be entitled to free legal aid and advice from the State Legal Services Authority in accordance with the rules made there under by the State\(^{97}\).

For that Family Court shall maintain a panel of lawyers willing to render free legal aid and advice and the Court select any of the lawyers from the said panel to the poor persons to attend their cases\(^{98}\).

In every court a legal practitioner has a right to appear on behalf of his client, the said right cannot be claimed before the family court, it is totally left to the discretion of the Family Court to allow any Counsel on behalf of the client and give necessary legal assistance. So, if any of the parties before the Family Court filed a memo or petition seeking permission of the Court for him or her to engage a counsel and have legal assistance, the Family Court, may or may not allow the petition. When so allowed, the Counsel of a party could file the *Vakalat* and do all that is necessary for the client in conduction the case\(^{99}\).

\(^{97}\) Rule 16 explanation (3) H.C. of A.P. Family Courts (Court) Rules, 2005.

\(^{98}\) Rule 16 explanation (4) H.C. of A.P. Family Courts (Court) Rules, 2005.

\(^{99}\) S. Venkataraman v. L. Vijayasarathan (1997) 1 DMC 507 (Mad).
If one side has been permitted to be represented by a legal practitioner, the Family Court should not refuse permission to the other side to be represented by a legal practitioner\textsuperscript{100}.

In *Gurubachan Kaur Vs. Preetam Singh*\textsuperscript{101}, the Division Bench of Allahabad High Court held that “Family Courts if grant opportunity to the parties to be presented by lawyers and it comes to the conclusion that some obstruction is being caused by non-availability of lawyers or otherwise. If some problems come to its notice, the Family Courts can immediately cancel the “Vakalatnama”, and obey the mandate of legislature rather than prolonging the agony and waiting period of matrimonial disputes. The time spent cannot be regained or recalled and youth cannot be restored. So the Court should also keep in mind also the settlement of the parties by negotiation”.

Like other courts, the family court may receive as evidence any report, statement, documents, information or matter for its opinion and assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872\textsuperscript{102}.

\begin{footnotesize}
\textsuperscript{100} Komal S. Padukone v. Principal Judge, Family Court, Bangalore, AIR 1999 Kant. 427.
\textsuperscript{101} AIR 1998, All. 140.
\textsuperscript{102} Section 14 of the Family Courts Act, 1984.
\end{footnotesize}
In *Manohar Lal Agrawal v. Santosh & Ors.*\(^{103}\), the High Court held that it is open to the Judge of a Family Court to call a witness, including grown up children to understand the nature of the dispute and to reconcile the parties. It is not proper for the Judge of the Family Court to leave every filing in the hands of the parties who are not conversant with the procedure of the Court.

In *Narayana Roy v. Jamuna Dey (Roy)*\(^{104}\), it was held that the rigor of the evidence Act is not applicable in reception of evidence by family court.

There is no necessity to record the evidence of witnesses at length in the family court but the judge shall record the evidence of witnesses concisely only subject matter of the proceedings and it shall be signed by the witness and the judge\(^{105}\).

Like civil courts, in the family court the evidence of any person may be accepted by way of affidavit\(^{106}\). On the application of any of the parties to the suit or proceeding, the family court has power to summon and examine any person as to the facts contained in his affidavit\(^{107}\).

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104. AIR 2010 Gau. 75.
106. Section 16 (1) of the Family Courts Act, 1984.
107. Section 16 (2) of the Family Courts Act, 1984.
The judgment of the family court shall contain a concise statement of the case, the point for determination, the decision thereon and the reasons for such decision\textsuperscript{108}.

Usually the legal practitioners filed applications, counters, affidavits and written arguments before the family courts with unnecessary contents, in that circumstances, the judge of the family court shall prepare orders or judgment concisely with important points, which are directly relating to the case facts and section of law under which the application is filed.

The Act also brought civil and criminal jurisdiction under one roof. The family court passed orders under the civil procedure shall be executed the same manner as is prescribed by the Code of Civil procedure\textsuperscript{109}. If the family court passed orders under Chapter IX of the Code of Criminal procedure, shall be executed in the manner prescribed for execution of such order by that code\textsuperscript{110}.

A decree or order may be executed either by the family court which passed it or by the other family court or ordinary civil court to which it is sent for execution\textsuperscript{111}.

\textsuperscript{108} Section 17 of the Family Courts Act, 1984.
\textsuperscript{109} Section 18 (1) of the Family Courts Act, 1984.
\textsuperscript{110} Section 18 (2) of the Family Courts Act, 1984.
\textsuperscript{111} Section 18 (3) of the Family Courts Act, 1984.
The Code of Civil Procedure, 1908 or in the Code of Criminal Procedure, 1973 or in any other law, an appeal shall lie from every judgment or order of a family court to the High Court both on facts and on law, except interlocutory orders\textsuperscript{112}.

The family court passed a decree or order with the consent of the parties is not applicable for an appeal\textsuperscript{113}.

If any appeal is preferred under this Act, it shall be within a period of thirty days from the date of the judgment or order of a family court\textsuperscript{114}.

The High Court on its own motion call for the record for examination of any proceeding in which the family court situated within its jurisdiction and pass an order under Chapter IX of the Code of the Criminal Procedure, 1973 for the purpose of satisfying itself as to the correctness, legality or propriety of the order\textsuperscript{115}. Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a family court\textsuperscript{116}. An appeal preferred

\textsuperscript{112} Section 19 (1) of the Family Courts Act, 1984.
\textsuperscript{113} Section 19 (2) of the Family Courts Act, 1984.
\textsuperscript{114} Section 19 (3) of the Family Courts Act, 1984.
\textsuperscript{115} Section 19 (4) of the Family Courts Act, 1984.
\textsuperscript{116} Section 19 (5) of the Family Courts Act, 1984.
under sub-section (1) shall be heard by a Bench consisting of two or more judges\textsuperscript{117}.

An appeal was filed against the order of the Family Court under the Dissolution of Muslim Marriage Act, it was held that “Learned Family Judge who had occasion to see the witness and record her statement where the wife has alleged assault and humiliation for not bringing enough dowry against her husband, accepted the same to be correct. No infirmity in her evidence has been brought to light. In such circumstance the appeal filed by the husband was dismissed\textsuperscript{118}.

Where all the presumptions are in favour of the wife, the Order of Family Court rejecting her application for maintenance was set aside and the respondent was directed to pay Rs.300/- per month as maintenance to her\textsuperscript{119}.

The Family Court Act shall have effect anything inconsistent contained in any other law for the time being in force by virtue of any law other than this Act\textsuperscript{120}.

\textsuperscript{117} Section 19 (6) of the Family Courts Act, 1984.
\textsuperscript{118} Sirajuddin Ansari v. Bilquees Khatoon, 1995 AIHC 2901 All.
\textsuperscript{119} Prem Singh v. Smt. Madhu Bala, 1995 AIHC 6149 Raj.
\textsuperscript{120} Section 20 of the Family Courts Act, 1984.
By notification in the Official Gazette, the High Court makes rules as it may deem necessary for carrying out the purposes of this Act\textsuperscript{121}.

In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters:

i) normal working hours of family courts and holding of sittings of family courts on holidays and outside normal working hours\textsuperscript{122};

ii) holding of sittings of family courts at places other than their ordinary places of sitting\textsuperscript{123};

iii) made efforts to follow the procedure by a family court for assisting and persuading parties to arrive at a settlement\textsuperscript{124}.

By notification, the Central Government with the concurrence of the Chief Justice of India makes rules prescribing the other qualifications for appointment of judges to the family courts\textsuperscript{125}.

Every rule made under this Act by the Central Government shall be laid, and produce before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session on in two or

\textsuperscript{121} Section 21 (1) of the Family Courts Act, 1984.
\textsuperscript{122} Section 21 (2) (a) of the Family Courts Act, 1984.
\textsuperscript{123} Section 21 (2) (b) of the Family Courts Act, 1984.
\textsuperscript{124} Section 21 (2) (c) of the Family Courts Act, 1984.
\textsuperscript{125} Section 22 (1) of the Family Courts Act, 1984.
more successive sessions, and if, before the expiry of the session immediately following the session or the successive session aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.\textsuperscript{126}

With the consultation of High Court, the State Government makes rules.

i) for carrying out the purposes of this Act\textsuperscript{127}.

ii) about the salary or honorarium and other allowance of judges;\textsuperscript{128}

iii) about the terms and conditions of association of counselors and terms and conditions of service of the officers and other staff of the family court.\textsuperscript{129}

iv) for payment of fees and expenses (including traveling expenses) of medical and other experts\textsuperscript{130};

v) for payment of fees and expenses to legal practitioners appointed.\textsuperscript{131}

vi) for any other matter which is required\textsuperscript{132}.

\textsuperscript{126} Section 22 (2) of the Family Courts Act, 1984.
\textsuperscript{127} Section 23 (1) of the Family Courts Act, 1984.
\textsuperscript{128} Section 23 (2) (a) of the Family Courts Act, 1984.
\textsuperscript{129} Section 23 (2) (b) of the Family Courts Act, 1984.
\textsuperscript{130} Section 23 (2) (c) of the Family Courts Act, 1984.
\textsuperscript{131} Section 23 (2) (d) of the Family Courts Act, 1984.
Any rule made by a State Government under this Act shall be produced before the State Legislature\textsuperscript{133}.

A copy or application shall be filed before the family court along with two copies signed by the parties, which are to be sent to the respondent and the family counselor\textsuperscript{134}.

The family court shall furnish certified copy of judgment to the concerned parties in every case at free of cost\textsuperscript{135}.

There is no court fee for the appeal before the High Court against the decree or orders passed by the family court under the civil proceedings\textsuperscript{136}.

It is evident that the setting up of these Family Courts was a dynamic step so far as reducing the backlog and disposing off cases while ensuring that there is an effective delivery of justice goes. 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 with.

\textsuperscript{132} Section 23 (2) (e) of the Family Courts Act, 1984.
\textsuperscript{133} Section 23 (3) of the Family Courts Act, 1984.
\textsuperscript{134} Rule 6 of H.C. of A.P. Family Courts (Court) Rules, 2005.
\textsuperscript{135} Rule 29 of H.C. of A.P. Family Courts (Court) Rules, 2005.
\textsuperscript{136} Rule 30 of H.C. of A.P. Family Courts (Court) Rules, 2005.
The Act was expected to facilitate satisfactory resolution of disputes concerning the family through a forum, and this forum was expected to work expeditiously, in a just manner and with an approach ensuring maximum welfare of the society and dignity of women. But still some Family Courts are not reached the goal perfectly since most of the judges are not following the procedure and rules of the Act.

Still in some states permanent counseling centers are not established and failed to fulfill the provisions under Section 6 of the Family Courts Act, 1984.

In some family courts the counselors were appointed as family counselors at free of cost, due to which they are not concentrating perfectly for conciliation to the parties so that the rate of result is not reducing through conciliation in the Family Courts.

Fifty percent of the cases can be solved by way of proper counseling and there is a provision to appoint permanent counselors for conciliation to the Family Courts. But the State Governments and High Courts failed to appoint the permanent family counselors to the Family Courts till now. The
temporary counselors are not concentrating on the cases in the Family Courts as like permanent counselor as they have to earn money for their livelihood.

As per the family court rules the family court judge shall maintain the panel of legal experts as amicus curiae but the judges are not following the rules properly till now.

The judges appointed to the family courts have not any special experience in dealing with the family matters or training in settling the disputes through conciliation.

Some State Governments and High Courts also failed to give preference for appointing women as family judges.

The personal enquiry of the Researcher and as per the report on working of family courts held by National Commission for Women, it was revealed that the family courts are entrusted with other cases like civil suits, motor vehicle accident cases etc. by the Principal District Judges, due to which the object of the family courts have not fulfilled and the cases relating to marriage have taken much time for disposal. In this connection the maintenance cases before the family courts taking time months together without granting maintenance, due to which number of deserted women and
their minor children are suffering for their livelihood and causing hindrance in the studies of innocent children. Moreover, huge time may be taken for disposal of divorce cases. If the said method is prevented before the family courts, the matrimonial cases will be disposed speedily.