CHAPTER X

RECONCILIATION AND FAMILY COURTS

Marriage Reconciliation and Counselling Services

Need for a Family Court
Whatever theory of divorce, and much more in the case of irretrievable breakdown of marriage as the basis of divorce, the law should have a provision for reconciliation between the parties.

Reconciliation is a therapeutic but not in the interferic form which becomes inevitable in cases of broken marriages reconciliation endeavours to save the marriage from being dissolved or can lead the marriage to be retrieved.

It may be preventive reconciliation, court-reconciliation and post divorce reconciliation. Here it may be stated that some people think that there lies difference between reconciliation and counselling.\(^1\) Griew draws such distinction between reconciliation and counselling.\(^2\) According to him the aim of promoting marital stability can be best achieved by the milder form of marriage guidance counselling than by bolder weapon of mediation.\(^3\) Marylyn M. Mayo is of opinion that counselling is a better word than reconciliation for the reason that the former is a sort of informed discussion as to whether or not a divorce will be the best solution in the given circumstances and is thus more mental and does not have the only aim of reuniting the estranged spouses.\(^4\) Reconciliation which is mediation "consists of influencing

\(^2\) See Ibid at p. 419 where Griew is quoted in this regard.
\(^3\) Ibid.
\(^4\) Ibid.
the parties to come to an agreement by appealing to their own interests." Marylyn is again of this firm belief that the degree of persuasiveness and pressure wherein a mediator is often called to use to resolve conflict is inappropriate to matrimonial cases. It is in his view an inherent threat to the parties' rights of privacy and integrity of personality. It is submitted that reconciliation and counselling should be regarded as complementary to each other. Howard H. Irving has used "conciliation counselling" although he has also distinguished between 'Marriage counselling and Divorce Counselling' in terms of conciliation counselling which means and includes both i.e. marriage and divorce counselling. Marriage Counselling aims at reconciliation and divorce counselling aims at ending a marriage in a responsible and decent manner. The modern divorce law, it is submitted, includes both conciliation and counselling.

For reconciliatory measures or versions to be adopted in the Hindu Law it seems to be necessary first to see and evaluate the reconciliatory provisions in different countries. They are therefore discussed hereunder.

Russia

The trial courts are directed to attempt reconciliation in every case before granting the decree of divorce. When they fail then only the courts are authorised to dissolve the marriage which would an idicia of complete and permanent breakdown of marriage. For this purpose the courts take into

5 Ibid.
6 Ibid.
7 "Conciliation counselling in Divorce Litigation," (1975) 16 RFL 257 also at p. 261.
8 Ibid.
9 See Putting Asunder (1966) and Field of Choice (1966).
They also prescribe a three month waiting period between the filing of a divorce petition and the passing of the decree. Meanwhile the spouse considers the seriousness of their action and is obliged to seek conciliation. The success of the conciliation system is taken as being "primarily the result of the Russian social system." The twenty five per cent of all the conciliation efforts is regarded successful. 11

China

There are conciliation units consisting of three to five neighbours from the immediate community. They visit the disturbed families to help them restore peace. They have no judicial power but they merely claim a communal concern for the family welfare. Such is the informal technique. If they fail, the parties are to go to formal reconciliation before a divorce suit is permitted. If even at this moment the reconciliation is not reached, the parties should appear before the Municipal People's Court to request for a divorce. 12

This approach persuades the parties to lay their marital problem in a community based conciliation framework before the divorce proceedings are initiated. The success of reconciliation is attributable party to such community based programme in which there is a willingness to detect and deal with the marital problems.

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with the marital rift at an early stage.

Japan

In Japan, a conciliation committee is constituted by a judge and two conciliators. The committee tries to develop an open and trusting atmosphere. The parties are informed that the dialogues, evidence and testimony shall be secret and not admissible in any litigation. If the reconciliation fails, divorce becomes the only alternative, and then the committee is disposed to take up and encourage the settlement of the other related matters. Viz., custody and property division. Approximately 13 per cent of all cases handled by the committee result in reconciliation. It points out that the reconciliation process plays an important role in maintaining the stability of the Japanese family. 13

Poland

They have got a conciliatory session at the very inception of each divorce trial; and the courts may take further efforts during the whole course of the trial in order to reconcile the litigant spouses as and when possible. Since a divorce trial is not the best form and time to employ the therapy the marriage counselling centres at an earlier stage of marital rift have also started their activities though not properly developed. Moreover, the people - both divorced and reconciled spouses - have stressed on the need for competent and friendly advice to avoid the harmful effects if the friendly advice is not rendered. In absence of this the courts are the only agency whose duty it is to attempt reconciliation. It is, therefore, a growing view that

13 Shimaza "Some Characteristics of Divorce in Japan"; 18 Conciliation CT S Rev 31(1980) referred to by Morris H. Wolff, Supra note 11, p. 221.
conciliatory session which is the main vehicle of conciliatory proceedings is not the perfect tool and rather diminishes the chances of reconciliation even in cases where the possibility existed. The reason inter alia are that the judges are not selected nor are they trained for rendering the marriage counselling and nor are they in fact competent. Shortage of time is another relevant factor for the deficiency of the conciliatory session system. Conciliatory efforts at the conciliation session vary ranging from the lack of any serious efforts to a greater one i.e. depending on the attitudes of the judges although it cannot be overruled that the judge paying little attention in terms of time is always and necessarily not an effective judge in diagnosing the conflicts and to choose proper conciliatory arguments. 14

Canada

Section 7(1) of the Divorce Act, 1968 requires it as a duty from every legal adviser except where the circumstances of the case are such it would be clearly not possible to do so. Otherwise it is the duty of the lawyer to draw attention of his client to the reconciliatory and other provisions of the Act which may help to bring about reconciliation. He will also inform the client about the availability of the marriage counselling or guidance facilities known to him; and will discuss with his client of reconciliation possibilities. Under Section 7(2) every petition shall be endorsed by the certificate of compliance of Section 7. Section 8 requires from the court to direct as such enquiries to the parties as deemed fit by the court in the circumstances of the case. If it seems some possibilities of reconciliation the divorce proceedings shall be adjourned and the court may

nominate at the instance of the parties or **suo motu**, a person of sufficient experience and/or training in marriage counselling/guidance or may also nominate some other person for assisting the parties in resolving their conflicts. After 14 days of the adjournment spouse may apply to the court to resume the proceedings. A person so appointed shall not be competent nor compellable to disclose any admission or communication made to him by the party/parties in conciliatory process in his capacity as the court's nominee. Evidence of such admissions/communications if adduced is however not admissible. Moreover, the Department of National Health and Welfare is charged the task of marriage counselling. There is also the Family Service Association as one of the largest private agencies of Canada. Conciliation Counselling is a therapeutic process in which the marriage counsellor provides a cordial atmosphere where couples are free to scrutinise their problems, pains and disappointments.

It also reveals that the results of the investigations indicate that the reconciliation provisions of the **Divorce Act 1968** have led to a very few meaningful attempts at reconciliation. The failure of the reconciliation provision in Canada is attributable to a variety of reasons. Firstly, the Act contains a mixed and dual system of divorce predominated by the matrimonial offence grounds. Breakdown is not the sole ground of divorce. The offence structure of divorce including the breakdown ground is coupled with the adversarial system. This pits a marital couple against each other in marital tangles. The adversary system provides solely the knife to

15 Section 21(1).
severe the marital knot and deepen the wounds and creating difficulty for reconciliation. Secondly, only a few cases have been, in fact, referred to by lawyers to the counselling units. Thirdly, the assumption by the Judges and lawyers that it is not their business to try for reconciliation.

MARRIAGE CONCILIATION IN THE UNITED STATES

New York

They had got the court-connected marriage counselling which is provided by the Conciliation Bureau established in 1966 but abolished in 1973. For the sake of novelty it is being discussed. All petitioners were required to give a notice of commencement of proceedings of divorce with the Conciliation Bureau. Since the Bureau procedure was said to be costly, cumbersome and unworkable and based on the model of the Wisconsin Family Court Act, it was discontinued on July 1, 1973. Now they have got court-connected marriage counselling which is provided by the Conciliation Staff.

Los Angeles County

There is a Conciliation Court, set up in 1954, and whose services are purely voluntary and counselling starts from the

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19 As said by Finlay—quoted in "Conciliation Counselling" by Howard H. Irvind in (1975) 16 RFL 257 at pp 259-60.


moment the petition for divorce is filed. Counselling is imparted by the well trained and experienced court counsellors. One of the marriage counsellors conducts the hearing of the case and meets the parties both briefly as well as individually at length. The parties are required to sign the agreement papers if the reconciliation takes place; and violation of the same attracts the provisions of the contempt of Court. It is also a plus point that the judge has although the over-all supervision and responsibility he rarely participates in the Conciliation Conferences. The Conciliation Court provides marriage counselling by professional staff to any spouse even if no divorce has been sought for. This is a preventive counselling to encourage the spouses to find help from them early as and when needed. No doubt the Conciliation Courts are so well impressively organised that they really deserve high praise, but the general impact of counselling is not clearly visible upon the divorce rate and thus the overall effect is almost negligible. But one thing is certain that the state has shown its full sincerity and concern over the stability of marriage by employing the best possible means of reconciliation to make the unhappy marriages the happy and stable ones. Once they find that the marriage has broken down despite all efforts for reconciliation, they least hesitate in dissolving the marriage.

Arizona, California and Connecticut also have got court-connected conciliation systems.

It may also be stated that a few states have made pre-marriage counselling a statutory requirement when one of the candidates for marriage is under 18 even if the consent of the parents has been obtained. But the system seems to

21a Suora note 20, pp. 415-416.
22 See Morris H. Wolff, Suora note 11, p. 222.
23 Ibid.
be perfunctory because of the fact that judges seldom refuse permission to marry. Although the Supreme Court in *Loving v. Virginia*, has said that the right to marry is fundamental, the decision does not exclude the reasonable state laws which envisages marriage counselling and conciliation as an educational programme logically related to the legitimate state objective, viz., the development and preservation of healthy marriages.

Australia

Since the Australian *Family Law Act*, 1975 has totally thrown away the matrimonial offence theory and substituted by the sole and all-embracing ground, that, is the *irretrievable* breakdown of marriage, the Act has introduced a number of strengthened provisions for reconciliation which include court-counselling facilities. Counsellors are with the court to work under the guidance of the principal director of the court counselling. They render advice to the parties referred to them by the Court for reconciliation by deferring the proceedings or otherwise. The hearing must start after one adjournment if either party requests to do so. The parties are free to seek advice even if the divorce proceedings have not been instituted. There are welfare officers, besides the counsellors, in respect of the custody matters relating to children and they may be requested to hold the compulsory seminars and conferences. The court counsellors may also be

23b 388 US 1, 12 (1967).
24 Section 14(4) and (5) of the *Act*.
required to report on matters of court proceedings but the
evidence what has taken place during counselling on compul-
sory conferences is not admissible in any court. There is
further no contempt of court if the parties violate the
directive of the court to go and consult the marriage
counsellor. The only mandatory is the provision under
"reconciliation" which relates to the application of divorce
whether the spouses have married for less than two years.
It is submitted that this is a more beneficial approach to
early marital breakdown as compared to the English provision
that the petition for divorce cannot be filed within the
first three years of marriage. In order to foster more /
full confidence and trust in the Australian Family Law Act,
1975 says that admissions made to a marriage counsellor are
privileged. Marriage Counselling is although voluntary
in matters of divorce only between spouses but it is rightly
mandatory when the children are involved.

Marylyn M. Mayo has, it is submitted, rightly suggested
that the conciliation provisions can be further strengthened
if the parties had been required to file a notice of intention
to seek divorce at the commencement of separation period so
that information about these facilities be sent to the
person filing the notice of intention.

When the irretrievable breakdown of marriage became sole

ground of divorce the main accent of the legislature remained

28 Section 3, the MCA, 1973.
29 Section 18.
30 Supra note 20, at p. 418.
on the reconciliation of the estranged spouses. It is revealed from the fact that the preamble of the Divorce Reforms Act, 1969 lays down,

An Act to amend the grounds for divorce and judicial separation; to facilitate reconciliation in matrimonial causes; and for purposes connected with the matters aforesaid. (Emphasis author's)

The Divorce Reform Act, 1969, had devoted inter alia separate Section 3 entitled "provisions designed to encourage reconciliation." The remedy of judicial separation was already and still available. (Section 8 of the Divorce Reform Act, 1969 and Section 17 of the Matrimonial Causes Act, 1973). The lawyers frightened that an attempt for reconciliation might be a bar of condonation and therefore restrained their client spouse to have any dealing with the other. Now the Divorce Reform Act, 1969 and the Matrimonial Causes Act 1969 have more or less institutionalised the reconciliations. There are in the main four provisions on reconciliation.

(i) **No petition of divorce within 3 years**

No party to the marriage can file a petition for divorce within the first three years of marriage except where there is an exceptional hardship to the petitioner or exceptional depravity on the part of the respondent. It is also correct that the courts are quite reluctant to find the exceptional hardship / depravity and the fair trial given full effect to.

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31 Now Section 2(1)(2)(3)(5); Section 6(1)(2) of Matrimonial Causes Act 1973.
32 Field of Choice, para 29.
33 Section 2, the MCA, 1973.
Here it may also be noted that the Matrimonial and Family Proceedings Bill has been introduced to the English Parliament and which inter alia includes provisions to allow petition after 'one year', instead of three years as at present.  

(ii) Resumption of Cohabitation not a bar

The Matrimonial Causes Act, 1973 provides that in order to enable the parties to resume cohabitation for a period or periods up to six months will not prejudice their right of divorce on the facts of adultery, unreasonable behaviour, desertion or living apart.

(iii) Certification by solicitor

There is also provision for the discussion by the solicitor with his client petitioner. The solicitor has to file a certificate that he has discussed the matter with the petitioner as regards the possibility of reconciliation and furnished him with the names and addresses of the persons qualified for help to this effect. The objective of the Section is to ensure that the parties should know as to where they can seek guidance if they are having a sincere desire for effecting reconciliation; and it is also important that the requirement of referring to a marriage counsellor or probation officer should not be regarded as a formal one

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36 Section 2(1)-(3), (5).
37 Ibid.
38 Section 6(1), the MCA 1973; Rule 12(3) and Form 3 of the Matrimonial Causes Rules, 1973. It may be noted that such a measure has been influenced by the Australian matrimonial law (Field of Choice, Para 3.1.)
39 Details are available in Practice Direction (Divorce: Legislation) No. 2 (1972) 1 MLR 1309; See also, Griew, "Marital Reconciliation Contexts and Meanings," (1972A) CLJ 294 referred to in Bromley's Family Law, 5th Ed., p. 256.
which must be taken in all cases for which it is immaterial
whether there is any prospect of reconciliation or not. If
the matter has not been discussed by the solicitor with
the petitioner the court may adjourn the proceedings to
explore the possibility of reconciliation except where the
evidence shows that reconciliation is beyond question. 40

(iv) Reconciliation Machinery

The case may be referred to Welfare Officer. 41 In London
a department of nine full-time welfare officers attached to
the Royal Courts of Justice, and in the provinces the
Principal Probation Officer also takes charge of the divorce
court welfare officer along with his other functions. 42 The
Welfare Officer then explores and determines the likelihood
of reconciliation or that conciliation may assist the spouses
in resolving their conflicts. If yes, then he may either
deal himself with the case or refer the case to the
probation officer / a fully qualified marriage guidance
counsellor recommended by the unit of appropriate organisa-
tion concerned with marriage guidance and welfare / some
other persons or body with full special circumstances of the
case. It is submitted that all this shows the avowed aim of
the law to achieve a high degree of stability of marriage.
But it has been said that in real practice these reconciliatory
measures had done "little or nothing" and this has been support-
ed by a Committee of Law Society too. 44 Reconciliation in the

40 Goodrich v. Goodrich, (1971) 2 All ER 1340. See also
Section 6(2) of the MCA, 1973. It is again inspired by
the Australian Matrimonial Law. See the Field of Choice,
Para 32).
41 Bromley, Family Law, 5th Ed., p. 256.
42 Jean Graham Hall, "The Future of Divorce Court Welfare
Service (1977) 7 Fam Law 101 referred to by Cretney in
his Principles of Family Law, 3rd Ed., p. 155, footnote 43.
43 Finer Report para 4.294. J. Jackson a Prominent lawyer
characterises these provisions a "dead letter" (1973)
89 LQR at p. 424.
44 "A Better Way Out"(1979) cited in Cretney's Family Law,
sense of 'reuniting the estranged spouses', according to evidence, has a blurring chance of success once the divorce proceedings have been instituted. 45 It is, however, submitted that the success or utility of the reconciliation provisions should not be necessarily linked with the successfulness of the estranged spouses to resume cohabitation. The emphasis should remain, it is submitted, on providing the facilities for conciliation in the best possible manner and in every case before, during or after the divorce trial. Reconciliation contains those activities which are to persuade the estranged spouses, when their marriage is about to breakdown or has in fact broken down, to resume their normal marital life. 46 Marriage counselling includes those activities which are directed towards helping the estranged spouses in order to make them understand their problems, their sources and to handle them in a rational manner especially where there matrimonial problems have their neurotic sources in neurotic traits. 47 The marriage counsellor may employ therapy to persuade the client to seek guidance of a psychotherapist. 48 Therefore these measures that England has adopted seem to be satisfactory combining both conciliation with counselling in fact and in law. Cretney rightly says: "Expert may not save the marriage, but it may help the parties to a marriage to resolve issues relating to finance and child custody with minimum possible anxiety to themselves or their children. Even if it fails to do this, a Welfare Officer may be able to 'identity' the issues on which the parties remain seriously at variance." 49

46 Rex Reheinstein, Marriage Stability, Divorce and the Law, p. 429.
47 Ibid.
48 Ibid.
It is submitted that the failure of such reconciliation measures may, mainly attributable to the mixed version of the breakdown theory on which is predominated by the traditional offence - now facts grounds in their divorce.

IN INDIA, the reconciliation provisions are very nominal and scanty though improved in law after the amendment by the Marriage Law (Amendment) Act, 68 of 1976 into Hindu Marriage Act, 1955 and Special Marriage Act 1954.

Reconciliation provisions under Section 34(2) of the Special Marriage Act are as under:

Before proceeding to grant any relief under this Act it shall be duty of the court of 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:

Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any grounds specified in Clause (c), Clause (e), Clause (f), Clause (g) and Clause (h) of Sub-Section (1) of Section 27.

It is submitted that the scope of the Section 34 (2) is a limited one as it excludes from its even nominal ambit the cases of divorces sought on respondent's undergoing a sentence of seven years or more, insanity, venereal disease, leprosy, or where a respondent has been missing for seven years.

Sub-Section (3) was added in order to make sub-Section (2) more effective into Section 34 of the Act 1954 which reads thus:-

For the purpose of aiding the court to 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 proceeding 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 the court as to
whether reconciliation can be and has been
effected and the court shall in disposing
of the proceeding have due regard to report. 50

Under the Hindu Marriag6 Act, 1955 the reconciliation
provisions are the same under Section 23(2) and (3) as
contained in Section 34(2)(3) as reproduced above. These
Sub-Sections 23(2)(3) also exclude from their sphere of
reconciliation the cases where divorce has been sought on
the grounds of respondent's conversion, insanity, leprosy,
renunciation of word, and missing for seven years.

It is submitted that the reconciliation provisions are
a total failure firstly in their scope and secondly by the
unsuitable agency which is supposed to make every endeavour
to bring about reconciliation. 51 Being adversary system of
litigation and factual court practice the spouses particularly
Hindu do not reposes any confidence / faith / trust in the
presently structured divorce courts. 52 Moreover, once the
spouses reach the court reconciliation does not seem to be
possible and the further bounden duty of the court howsoever
nominal and restricted imposed "to make every endeavour to
bring about a reconciliation between the parties" in fact
failed in this endeavour. 53 B.P. Lobi observes that: "the

50 Similar provisions are not available in the matrimonial
laws, the Christians', the Parsis' in India.
51 Paras Diwan, 'The Problem of Patrilccally Resident And
the Adversary Litigation System' The Law Rev. Vol. XXX,
p. 27 at p. 35 (1978).
52 Ibid.
53 Ibid.
result often is either lip service is paid to this provision, or clumsy attempts at reconciliation are made by inept hands which sometime prove to be counter productive and almost clausealelay."53a

It is a peculiar feature of the Hindu social system that the estranged spouses may be better reconciled through the local panchayat or caste panchayat or their family or neighbourly elders whereby the recalcitrante spouse is "persuaded, coaxed, goaded, pressurised and at times forced to live with the spouse."54 Vice versa is also true. In the urban set up, the couples consult the lawyers and go to courts only when their marriage has miserably failed to fault(s) of the other spouse. These difficulties when coupled with the intervention of the unsuitable district judge magnify more and more in the way of reconciliation to be effected. Mr 3.P. Beri, a retired chief justice of the Rajasthan High Court clearly observes that "A judge overburdened with work has hardly enough leisure, so essential for the appreciation of opposite points of view, and for the exercise of his powers of persuasion.55 He further casts a reasonable doubt that the judge of a divorce court in India possesses requisite knowledge of human psychology so peculiar to marital discordance.56 The courts instead of playing an active role as a bounden duty to attempt the reconciliation deem it more than sufficient if they issue oral admonition or an ideal sermon on living together.57

Furthermore there are such cases which reflect the judicial difficulties in appreciating the real spirit of

54 Ibid.
56 Ibid.
the reconciliation provision. In *Ravanna v. Ravanna* the court observed that the efforts for reconciliation need not be made in a petition for the restitution of conjugal rights. It is submitted that this does not seem to be the correct observation of the court. The further difficulty lay in the meaning and spirit of the words "first instance" employed in Section 23(2) for they give an impression from apparent reading that the duty to bring about reconciliation is placed on the court of first instance and not on the appellate court. But it seems that the even the appellate courts do also have powers to attempt at reconciliation between the parties. It is submitted that the reconciliation clause should be exercised in view of the fact that the overall objective of reconciliation is to protect the marriage, as far as possible, from being wrecked; and therefore the powers to try for reconciliation are exercisable throughout the stages of litigation until finally adjudicated by the last court. It is further submitted that the words "first instance" need to be made clear by legislative amendment. Although the Sub-Section (2) of Section 23 uses the words "before proceeding to grant any relief," it is also not clear unambiguous, as whether reconciliation step can be taken only before the start of the trial or in the end. The Rajasth-

58 AIR 1966 AP 73.
61 Paras Diwan rightly says that the words "first instance" to mean "earliest opportunity." Suora note 59, p. 254.
62 See also *Trilok v. Savitri*, AIR 1972 All. 52.
an High Court says that the reconciliation may be attempted at any stage right from start of the case and to the end. The Punjab and Haryana High Court also takes the same view. The Jammu and Kashmir High Court observes that the reconciliation can be attempted outright before the respondent is asked to file the written statement. In Bejoy v. Aloke, the Court correctly says that reconciliation should be attempted even in cases in which no reconciliation is eventually possible.

Though the Court in every case has a duty to attempt for reconciliation, the violation of the rule is not fatal and does not adversely affect the jurisdiction of the court. It is submitted that such a view is hardly tenable in the light of the observation and the fact that reconciliation provisions are mandatory. It has also been said that the courts have no power to make attempt for reconciliation if they are not granting relief. It is another drawback of the extant reconciliation clause. Therefore, S.V. Gupte seems to be right when he says that it is "a Solemn recommendation to the judge, not a mandatory procedural direction."

64 Sakari v. Chhanwarlal AIR 1975 Raj. 134; See also Raghu­
neti Prasad v. Urmila Devi, AIR 1973 All 203.
66a AIR 1969 Cal 477.
68 Leelawati v. Sewak AIR 1979 All 285 — a decree would be illegal.
69 Suryakantam v. Ranga Rao (1973) 1 Andh WR 158. See also Anupaama v. Bhagaban, AIR 1973 Or. 163.
70 Trilok Singh v. SavitriDevi AIR 1972 All 52, 55.
The Sub-Section (3) of Section 23 of the Hindu Marriage Act, 1955, of course, rightly provides a private agency, though by the order of court, for reconciliation but it is hardly compatible within the formal-court-proceedings for reconciliation involves an informal - and frank - atmosphere and that does not seem feasible in 'formal-adversary-court proceedings.'

Further, although it is open to the court under Sub-Section 3 of Section 23 to have due regard to the reconciliation proceedings and conduct of the parties therein, the Order 32-A Rule 1(4) of the Code of Civil Procedure is not applicable to the reconciliation proceedings in view of the Order 32-A(1)(3) for securing assistance of a person professionally engaged in promoting the welfare of the family. It is, however, submitted that a provision like this to employ and solicit the services of the third or to adjourn the Court proceedings as the court may deem fit though a bit step the same way as in England, Australia and Canada for promoting the reconciliation between the discordant spouses. But it is also submitted that it is only one aspect of the whole matter. The lawyers also do hardly make sincere efforts and take active role in persuading their client spouses to make an attempt for reconciliation with his / her spouse nor law imposes such a legal duty on the lawyers.

IN VIEW of the above, it is submitted that in India marriage counselling services are totally absent. Reconciliation in the present form is also inconsistent and deficient. And the ritual of reconciliation is almost meaningless. 

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72 Paras Diwan, Supra note 59, p. 256.
73 Chander Dev v. Rani Bala, 1980 HLR 70, 76.
The still present offence-and-consent based divorce structure is again pernicious to the even remaining possibility of reconciliation. The adversary judicial system too is constantly marring the reconciliation provisions to work more effectively. What is needed most is the thorough restructurisation of the divorce structure so as to be based on the 'irretrievable breakdown theory' which by its nature most inherently requires reconciliation to be inevitably attempted. A therapeutic approach is essential to be given to the marital problems caused by some wrong or maladjustability of the spouses due to their personal, social, moral, economic, or political reasons / habits / mores / manners. Judges, jurists, lawyers, law teachers and anybody else connected with the judicial process should assume a new responsibility,74 in terms of the problems arising out of the familial or interpersonal relations. They should join hands with social scientists, psychiatrists and common folk destined to fight and help in diagnosis and resolving the marital problems leading to the breakdown of marriage. There is, thus, a need of thorough reorientation of the traditional pre-divorce agencies of reconciliation and providing suitable agencies also. The reconciliation provisions should be so framed that lawyers should cease to play the role of partisan but work as impartial umpires and marital counsellors. The lawyers, judges, sociologists, social workers, psychiatrists, psychologists whosoever are dedicated to the familial problems for their eradicating need to be properly trained in social therapy to help the

74 Virendra Kumar, Supra note 57, p. 46. See also Sukhjit Singh v. Olca Usha, 1980 HLR 290 where the court has observed that it is fundamental that reconciliation of a broken marriage is the first essay of the Judge and Counsel who owe a duty to the society to strain to the utmost to repair the snapped relation between the parties; the task becomes mere relevant and incumbent when an innocent child of the wedding struggle is in between the litigant parties.
spouses and court diagnose and resolve the matrimonial malady. Professor Krishna Bahadur is of firm opinion that most of the marital problems are sometimes vague and flimsy with no substance but the misunderstanding; and such marriages may be saved if therapeutic approach is given to them.\footnote{75} He feels the need of establishment of the Marriage Bureau under guidance of Social Welfare Department in order to render advice to the estranged spouses. Marriage Bureau should comprise probation officers, social welfare officers, doctors, social workers and lawyers for making all humanely efforts of reconciliation between the discorded spouses. The should also draw up a document of divorce signed by parties, witnesses and authorities of the Bureau.\footnote{76} An integrated broadbase service to the troubled families is to become part of the court system,\footnote{77} when it recommended irretrievable breakdown of marriage though as an additional ground of divorce in Hindu Law without recommending for developing and setting up of the marital reconciliation and counselling services and their machinery to implement them.

It is submitted that the court-attached-reconciliation and counselling services be set up to work before, during, and even after the trial in the most friendly and sympathetic manner. Marriage Guidance and Welfare Councils may be set up to work under the administration of the court. Conciliation counselling courts may also be constituted for the help and in conjunction with the courts hearing the divorce or other like proceedings. Or so indigenous court or council should be constituted of the persons that may work as the marriage / divorce counsellors as well as presiding officers of the court so that they may make every endeavour to bring

\footnote{75}{The Hindu Law of Marriage and Divorce, JLU Vol V, (1965) p. 111 at p. 141.}
\footnote{76}{Ibid.}
\footnote{77}{54th Report of the Law Commission, Chapter 32 A. (\textit{The Hindu Law of Marriage and Divorce}, JLU Vol V, 1965).}
about reconciliation and if that is not possible then to help the estranged spouses come to the decision whether divorce would be a proper solution or not. If the decision comes in the affirmative the fate of children should be analysed and solved by such court in frank and friendly consultation with the spouses seeking divorce. No communications, admissions, and the like between the marriage counsellors and the spouse(s) should be admissible in evidence as being privileged. Social Welfare units can also be set up. Panchayats may be more developed in the rural set up for reconciliation purposes. The estranged spouses should also be asked to give a notice to the concerning court as and when rift has entered and they by reason of that separated from each other so that conciliation/counselling services be rushed to them.

(ii) Need of Family Court

The matrimonial suits are litigated in India in the same courts which are mainly marred and destined to entertain and adjudicate upon the civil and criminal proceedings. The litigation process is essentially based on the adversary system for the administration of justice. The law has, not rightly, put the human problems and property problems on the same line to be heard and adjudicated upon by the same courts by administering the same procedural law. The lawyers and judges are therefore concerned mainly or rather only with winning and defeating of the cases for they are well acquainted with the adversary litigation system. The period of time which a divorce suit takes is generally

three-four years for its final determination, and some cases have pulled on even for more than six to seven years. 79 This is because of the various reasons: the courts are overburdened with the cases-civil, criminal and matrimonial etc., and they have had hardly enough time to administer provisions of the family particularly matrimonial law in their truer spirit. This is the experience of a retired Chief Justice. 80 Moreover the judges are not qualified enough nor are they suitably placed for dealing with the matrimonial problems, 81 leading the break-up and breakdown of marriages posing a pernicious threat to the stability of marriage. The present judicial institution of the district judge to act as a matrimonial judge is wholly undesirable. Seri also observes, 82

While the aim of saving marriages from collapsing is properly desirable, the law has however not provided a proper machinery for attaining this purpose.

The humane approach from the courts is also not exclusively expectable to handle the problems of the discordant spouses in the real perspective of saving the marriages from being finished. This notorious fact has drawn the notice of the Law Commission too a long before. 83 The Law Commission had stressed that in dealing with the family disputes the court ought to adopt a human approach which should be radically different from that adopted in ordinary civil proceedings. 84 Again the same was recognised by the Law

79 Ibid.
81 Ibid.
82 Ibid.
83 54th Report, Chapter 32A.
84 Ibid.
Commission in its subsequent report. 85 It reiterated that the human approach was essential to be adopted by the courts dealing with the matrimonial disputes. 86 Besides, the fact is that the matrimonial discord needs a therapeutic treatment for proper thinking and resolution whether to result in divorce or not. The estranged couples need to be helped in understanding and sorting out their problems which have put their marriage on the brink of the breakdown of marriage in fact broken down. This aspect is further strengthened when the children are involved. Children are the first victims of the marital breakdown due to maladjustability and discordant attitudes of the spouses for which either or both or none of the spouses are responsible. 86 Divorce and welfare of children are inter-related and should be pathologically treated and handled, 87 by the same court having exclusive jurisdiction on family matters in a therapeutic way. The persons specialised, familiar and sympathetic in respect of the family and persons of special knowledge and understanding of problems of a child and gripped with a sincere desire to protect him are utmost needed as being most suitable to remain in the court meant for. 88 The collapse of the marriages does not affect the spouses, children if any but also the community and the nation as a whole. This renders a paramount concern of the state. 89 The state should try its best to preserve the

86 a Ibid.  
88 Ibid at p. 853.  
89 Charles Chute, Supra note 86, p. 49.
marriages / families from being unstable and broken. The marital problems need socio-legal diagnosis which, if properly ensured by providing suitable machinery may go a long way in preventing the marriages from being either broken down or if already broken down then possible mending may be brought about. Even then if the marriage can not be saved then the social, individual and state interests demand that such legal-empty-injurious-shell be legally dissolved. The machinery for proper diagnosis and treatment of the marital rifts should be manned and / or to be assisted by psychiatrists, welfare officers, sociologists, social workers, psychologists, doctors and psycho analysts etc. whosoever are best bit for the purpose. 90 The ordinary courts manned by persons concerned with legal problems only and unexpert in human relations leading to matrimonial problems are therefore redundant. 91 The authors of the paper observed thus, 92 -

Professor Krishna Bahadur has also viewed that the matrimonial disputes require the court to use wide discretionary jurisdiction which involves time, labour and patience for which the courts have not obtained any specific training. 93

92 Id at 1-2.
The new emphasis puts a different and responsible role on the judges, jurists, lawyers and law teachers, everybody else connected with the judicial process. They should process the familial problems.

All this necessitated for the evolution and setting up of such courts which should have not only exclusive jurisdiction to deal with the family matters but also be manned by the judges having special understanding and training of human behaviour, family matters and law and to be associated by the psychiatrists, doctors, sociologists, social workers, and welfare officers etc. to make and help the estranged spouses understand and resolve their problems responsible for the disrupting of the marriage and family. Professor Paras Diwan has very ardently advocated for establishing such courts suitably named as Family Courts immediately. Professor Krishna Bahadur had also pleaded for the establishment of the exclusive matrimonial courts to be named as 'Family Courts'. Besides, Professor Virendra Kumar also feels justified in setting up of the Family Court as an institution in India especially in view of the 71st Report of the Law Commission which recommends for the induction of the irretrievable breakdown of marriage in the divorce structure of the Hindu Marriage Act, 1955 and Special Marriage Act, 1954. Other family law scholars or teachers like M. Ganga-devi, Vijay Singh, M.D. Chaturvedi, U.C. Sankhla, K.V. Sankaran and K.S. Sharma have also pointed out the emergent need and establishment of Family Court to cope with the disaster


95 Supra note 93, p. 140.

96 Supra note 57, p. 47.
of the marital problems which have been seriously damaging the institution of marriage.\textsuperscript{97} The Law Commission of India analysed the necessary factors and realised the necessity of establishing the courts with exclusive jurisdiction over family matters in view of the following valuable suggestions made by it,\textsuperscript{98}

(i) An integrated broad based service to families in trouble should become part of court system,

(ii) Existing Court structure should be so organised that one single court should deal with problems pertaining to families,

(iii) The conventional procedure dominated by the adversary litigation system is not appropriate for disputes concerning the family.

These are, it is submitted, really very significant observations and recommendations of the Law Commission in the history of the Indian matrimonial laws.

It may also be noted that the Union Ministry of Law has now fully accepted and decided though in principle to establish the Family Courts in the country.\textsuperscript{99} The Family Court institution is already in function in some of the countries. We would discuss the structural set up and working of the family courts in those countries hereunder:

\textsuperscript{97} M. Gangadevi, "Family Court Concept - Desideration - Structure,"; Vijay Singh, "The Structural Basis of Family Court,"; U.C. Sankhla, "Family Court in India - A Need of the Hour." These papers presented to the All India Seminar on "Towards Stability of Marriage" held from Jan 15-16 and 17, 1982 at the Department of Laws, P.U., Chandigarh; K.V. Sankaran, "Intra-Familv Violence and the Law"; K.S. Sharma, "Desirability of Setting up Exclusive Children's Courts in India" papers presented at the Conference on the Reform of the Indian Legal System, IIL 1983.

\textsuperscript{98} The 54th Report, Chapter 32A.

There are functioning both Family Courts and Conciliation Courts. According to the Twenty-four years of the Family Courts of Japan (Growth and activities in Retrospect) issued from the General Secretariat of the Supreme Court of Japan in 1974, Derret puts the position of family courts as under:

Since in Japan divorce can be accomplished merely by a simple registration of an agreement between the spouses, only a portion of divorces reach the Family Court. Most of the divorce cases appearing before the Family Court are disposed of by it and on a very small number go to the district court's judicial divorce procedure. Though many of the divorce actions in the Family Court attain their aim (i.e. the petitioner obtains a decree of divorce), a considerable number and in reconciliation and rehabilitation of the matrimonial relationship. If a divorce is effected, such matters as compensation, support, division of matrimonial property, and custody of children are also determined by the conciliation proceedings.

The picture also reveals that the conciliation proceedings in family affairs are informal and quite distinguished from the 'adjudgment' or determination procedure. Probation officers and other like officers which deal with juvenile work do also cooperate with the court. The Family Court judge is associated with two conciliation Commissioners one of whom is generally a lady. The advocates are not allowed and the proceedings are conducted in camera. The judge may

1 Guide to the Family Court of Japan referred to by Derret in Death of a Marriage Law, p. 200 (1978).
2 Ibid.
3 Ibid.
may request the medical and psychiatric staff known as 'medical chamber' for help. Moreover, the members of the organisation, probation officers and clerks of the Family Court are supposed to work as part-time counsellors. It may also be noted that the Family Court works there much like a social welfare organisation the members of which impart proper counselling for the marital problems as and when sought by the troubled spouses.

The United States of America

(a) Ohio

During 1917 and 1929 six other large counties of Ohio established family courts called as the Domestic Relations Courts. They had the special judges and jurisdiction over almost all juvenile and family matters except adoption and non-support where there were no children involved. Special investigators and probation officers actively participate in social investigation of divorce cases. Reports are made to the court on "character, family relations, past conduct, earning ability, and financial worth of both the spouses." Well trained and experienced family counsellors are appointed on the probation staff. They meet the spouses and other persons to adjust rifts in order to prevent divorce. The parties may either come suo-motu or be referred to by attorneys, court staff, social organisations or agencies, relatives.

4 Guide 20, Twenty four years, 1974, 12 referred to by Derret in Supra note 1.
5 Derret, Supra note 1.
6 The first Family Court was established in Cincinnati as early as 1914 with Judge Charles Hoffman as its Judge who had pioneered in establishing the first family court. Charles L. Chute, Supra note 86, p. 53.
7 Ibid.
8 Ibid.
Settlements reach through inquisition and conferences held by a member of the court staff. All this helps the judges, a lot, and reduces the ills of divorce due to protection of the interests of the discord spouses and children.

(b) St Louis, Omaha, Des Moines, and Portland

The court of Domestic Relations was set up, in 1921, as a branch of the Circuit Court of St. Louis with a juvenile and divorce division. The divorce court possesses the investigators for making social investigations especially where children are involved. Omaha established in 1921 a division of the district court for juvenile and divorce matters. Apart from a fulltime judge the court was assigned probation officers to act as investigators in divorce cases. Des Moines Iowa also established in 1924 the same suit. A Domestic Relations Court came to be established in 1929 in Portland, Oregon. 10

(c) The Milwaukee Family Court

It was established in 1934 in the circuit court of Milwaukee country. There are different judges for hearing contested and uncontested cases of divorce. A Department of Domestic Conciliation has also been attached to this family court for investigation, counselling and reconciliation. The department is equipped from the start with well-trained, full time staff under the guidance and control of a competent and experienced social worker, as director. 11 Besides him, there are social workers and

10  Id at 56.
11  Id at 56.
stenographers. They are imparted full training. It is a social service department for the divorce court, that is the Family Court.

(d) Family Court in Washington

The Family Court has been functioning since 1949 in Washington for entertaining, hearing and reconciliation in matrimonial problems. In the large counties the superior court may appoint the family court commissioner with investigators, stenographers and clerks in such number as it deems fit.  

(e) Texas

The law of 1949 created juvenile courts in the larger counties which were, in effect, family courts in divorce matters also if there were children involved. The court possesses investigation and divorce counsellor to help the court.

THE FAMILY COURTS proved so successful that in 1950 the State Government Organisation of Connecticut recommended for the establishment a state-wide family court with six full-time judges to sit in districts with sufficient staff. The other states and cities like New York and California have also established the Family Courts. The striking and fascinating fact is that either spouse may, before filing for

12 Ibid.
13 Id at 59.
14 Ibid.
15 Id at 60.
divorce, file an application for an informal hearing before the judge. 16 The proceedings are held in camera. If both parties desire the help of doctors, psychiatrists, clergymen, and others might be sought. To apply for reconciliation is a mandatory before the divorce action. 17 Conciliation officers and Probation officers are also provided there for effective investigation, holding conferences, recommendation and supervision. 18 The staff is supposed to be possessing professional competence in the art of social investigation, counselling, reconciliation and case work for the evaluative study.

The 1954-Report of the Special Committee of the Association of Bar of the city of New York 19 has evaluated the utility and function of the Family Court thus,

That it may tend to conserve and not to disserve the family life; that it may be constructive and not destructive of marriage; that it may be helpful, not harmful to the individual partners and their children; and that it may be preservative rather than punitive of marriage and family.

Australian Family Court

With the introduction of irretrievable breakdown of marriage as an all embracing ground for divorce in the Family Law Act 1975 introduced a number of novel concepts especially the family courts and court counselling facilities in Australia. The family courts are supposed to ensure (i)

16 Id at p. 61.
17 Ibid.
18 Ibid.
19 Cited by Paras Diwan, Supra note 90, Introductory part.
jurisdiction over family and other disputes relating to the family breakdown, (ii) court procedure to be adaptable to the special needs of the people who appear before the court; (iii) avoidance of undue formality and dispensing with the use of adversary system if it does not safeguard the interests of the parties especially children; and (iv) sufficient resources for resolving complex and delicate inter-personal disputes.

20 "With maximum fairness and minimum bitterness, distress and humiliation." According to the Section 22(2)(b) of the Act 1975 the judges should be suitable "by reason of training experience and personality to deal with matters of family law and to seek help of the services of the persons trained in other disciplines than laws. The people experiencing family difficulties should find available the services meant for assisting them for resolving or adjusting to those difficulties / problems either through court or an attached agency. The Family Court is a federal court bestowed with the jurisdiction to hear matrimonial matters and causes arising under the Part IV of the Family Law Act, 1975. There is a 'Director' of court counselling under and with whom several counsellors are working for advising and helping the parties referred to by the court for reconciliation. The court proceedings are informal i.e. robes are not to be put on, proceedings to be in camera, in undefended divorce proceedings evidence may be adduced on affidavit, and the attendance of the parties may not be required.

England

The divorce cases were originally heard only in London until 1920. Gradually the divorces cases came to be allowed

21 Field of Choice, Cmdn. 3123 (1966) para 15.
to be heard in Assize towns where the county court judges sitting as Special Commissioners of Divorce could hear them.\textsuperscript{23} The Matrimonial Causes Act, 1967\textsuperscript{24} provided that all matrimonial causes should be initiated in a divorce county court to be designated so by the Lord Chancellor.\textsuperscript{25} And the defended cases are required to be transferred to and heard by the High Court.\textsuperscript{26} In the High Court these cases i.e. defended cases are required to be heard either in its Family Division in London or in the provinces at a court centre which is allotted civil business.\textsuperscript{27}

Here it may be noted that the Family Division of the High Court is not the same as the Family Court but only a division of the High Court to which most of the family work is assigned.\textsuperscript{28} The judges are further professionally qualified for the judicial post by practice at the bar or by experience as a Recorder.\textsuperscript{29} They are, therefore, not necessary to have been specialist in family practice as a barrister. Similarly the judges sitting in the County court are not necessary to have had specialisation in family law as a barrister. A substantial work is carried out by Registrars and District Registrars of the High Court and Registrars of the divorce county courts, all of whom have been generally practising solicitors.\textsuperscript{30} Under the "Special Procedure" in undefended divorce cases the Registrar takes and scrutinises the evidence and issues certificates so as to enable the judge to pass the decree of divorce. The judge's work in this way

\begin{itemize}
  \item \textsuperscript{23} Cretney, \textit{Principles of Family Law}, 3rd Ed., p. 156.
  \item \textsuperscript{24} Section 1(3).
  \item \textsuperscript{25} Section (1)(1).
  \item \textsuperscript{26} The MCA, 1967, Section 1(3) and Matrimonial Causes Rules 1973, Rule 32.
  \item \textsuperscript{27} Courts Act 1971, Section 2.
  \item \textsuperscript{28} Cretney, \textit{Suota} note 23, p. 157.
  \item \textsuperscript{29} See the \textit{Courts Act}, 1971, Section 16(3).
  \item \textsuperscript{30} Ibid.
\end{itemize}
is 'formal and ritualistic'. The proceedings are heard in open court for passing the decree of divorce.

There also the idea of setting up a system of family courts for dealing with the whole of business of family law has been increasingly gaining ground. The discontent with the present legal system led to the setting up of a Law Commission Working Party in August 1971 for reviewing of the structure, composition and jurisdiction of courts below the High Court level which deal with the family matters; but this task had been taken over by the publication of the Finer Report. The main proposals of the Finer Report are:

(a) The family court should be set up as judicial institution with a comprehensive code of legal principles in family cases.

(b) The business of the work should be so organised which may provide best possible facilities for conciliation. The professionally trained staff should be made available to help the parties and the court as well.

(c) The court should frame its procedure, sittings, and ministrative services and arrangements with an object to achieve the trust and confidence of the people appearing before it. It should also maximise the convenience of those people.

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31 Ibid.
35 Para 4.283.
36 Para 4.283.
In Germany, the Section 23 as amended by the New Marriage Family Law of 1976 contains a provision for the establishment of the family courts which will be the special divisions of the Amtsgerichts, the lowest courts in existence.

AT HOME the Parsi matrimonial disputes are to be heard by only specially constituted courts known as "Parsi Chief Matrimonial Courts and Parsi District Matrimonial Courts" under Part III of the Parsi Marriage and Divorce Act, 1936. The Parsi Chief Matrimonial Courts are meant for Presidency Towns. The Chief Justice of the respective High Court or any other Judge of the same High Court if appointed by the Chief Justice shall be the Judge of such matrimonial court to work in aid with seven delegates. The Parsi District matrimonial courts are meant for other places than the Presidency Towns. The judge of the principal court of original civil jurisdiction at such place shall be the Judge of such matrimonial court and shall be aided by seven delegates. The delegates shall be appointed by the Government after giving the local Parsi an opportunity of expressing his opinion. All the persons so appointed would be Parsis, for a span of ten years in the first instance and removable however in certain cases. They are to be deemed public servants within the meaning of the Indian Penal Code. Lawyers may appear in such courts. It is submitted that these courts are not exactly the family courts but courts with jury.

THE ABOVE STUDY shows that generally the Family Courts wherever established do have duly associated with enough staff.

37 Section 19 of the Act 1936.
38 Section 20 of the Act 1936.
39 Section 24.
40 Section 25.
41 Section 28.
of doctors, psychiatrists, known as medical chamber, probation officers, conciliation officers, social investigators, social workers of sufficient standing and experience and others well trained in human psychology, relations and social behaviour for giving therapeutic approach and apply social therapy for proper diagnosis and treatment of the marital problems for any reason whatsoever. The judges sitting in the Family Courts are also full timers possessing the high skill and experience in family law and matters and exclusively destined to hear and deal with the family matters especially divorce ones more especially when children are involved. Some countries as seen above do have conciliation courts well equipped with psychiatrists, probation officers, marriage counsellors, social workers well experienced and trained in family matters to help and work under or in association with the Family Courts. The structural basis of the Family courts is generally city-wide, country-wide and state-wide Family Courts - in view of the workload.

In India several views for the modus operandi and infrastructure of the Family Courts have come to the fore. One view is that the family court should possess the status of the District Court as the Chief Family Judge as well as two additional family judges depending on the workload. These courts should sit in circuits of various tehsils in order to be easily accessible. There should be one family court of appeal. All family and para family matters be with jurisdiction of the family court. The judges of the family court should be from streams, (i) legal profession that is legal practitioner of 10 years standing at the bar preferably on the family law side and (ii) teaching profession i.e.

teacher with Master's degree in Family Law and 7 years teaching and research experience in family law. (iii) There should be proper training to the family judges, supporting staff and family lawyers. There should be permanent research bodies like family law councils at the state level and an institution of family law at the national level. The Family Court should not follow traditional adversary litigation system and be less formal and more inquisitional in procedure i.e. simple and without technicalities of the adversary system. There should be auxiliary services which may include: (i) Family counselling and Conciliation services, (ii) Investigative services, (iii) Local aid services, and (iv) Enforcement services. The other view is that there should be a family centre where counsellors, psychologists, psychiatrists, and doctors and religious priests could use their skill and attempt to save the marriage. The third view is that all family courts should be collegiate courts. A court of the first instance should consist of three judges, and the appellate court should be of five judges. There should be Family Division in the High Court as per English Pattern. The Family division should be of five judges out of whom there should be two lady judges. The court of the first instance should have the status of a District court. Out of three judges in the district family court one should be professional and two from among the social workers or persons trained or have had experience in matters of law. The judges of the family division should go on circuit to various parts of the State. The services of doctors, and psychiatrists as also of the spiritual counsellors may be


obtained in family council or division - as and when necessary. The authors of the working paper on Family Courts are of the view that the family court should comprise of a single judge to be assisted by persons of knowledge in human psychology and social welfare. There should be an office of Director of Counselling in each state who will keep a panel of such counsellors who are willing to be available to the family courts wherever necessary. The counsellors will be paid honorarium for they will not be regular staff of the court. The status of the judge of the family court should be that of a district judge and to be possessed with qualifications and experience in law and preferably additional qualifications in human psychology and social welfare. The three judge-court system could not gain favour of the authors as it will involve a lot of state-exchequer. Family Courts should be under the administrative control of the High Court. The procedure should be informal, flexible and inexpensive enough that the parties may present their cases either themselves or by any of their friends or relations who are not lawyers though lawyers may also be permitted by discretion of the court. The Indian Evidence Act should not apply to such proceedings. Pre-trial counselling services be made available by the Family court or in the cases where matrimonial proceedings have not been instituted. Family matters should be the jurisdiction of the court except in dowry deaths, wills, succession and adoption which require an adversarial system. The judges of the appellate court should be qualified to be appointed as District Judges who should also possess experience in handling family disputes. Proceedings should be in camera.

45 For the Conference on the Reform on the Indian Legal System held by the Indian Law Institute, New Delhi in January 1983 at pp. 1-9 of the booklet thereon.
HENCE the suggestions are in view of the above, made as follows:

1 The Family Courts should be established.

2 The Family Court should be constituted for each and every state to be known as "State Family Court." It should comprise three or more judges to be appointed by the President of India from amongst the persons who have served as district judge or have practised as an advocate in any high court effectively in family matters for not less than ten years; or from amongst the law teachers who have had teaching experience in family law for not less than ten years having sufficient number of publications in family law at his credit. This court should be the court of record.

3 The State should be divided into family divisions like sessions divisions in any number as prescribed by the Chief Judge of the State Family Court in view of the workload. A division may consist of one or more districts that will entitle the Family Court as "Division Family Court" or "District Family Court," as the case may be, and to be presided over by a single judge to be appointed by the State concerned in consultation with the Chief Judge of the Family Court of that State. The judges to be appointed should be from (i) the judges / judicial officers dealing with family matters, or (ii) advocates who have practiced for not less than five years in Family Law or (iii) the academic lawyers / teachers who have teaching experience for not less than five years and have some publications in family law. This court would be the court of original jurisdiction for administration of family law.
The appeal from the district/division family court should lie to the state family court and be heard by a full court of not less than three judges. The constitutional and supervisory jurisdiction of the Supreme Court will however remain under Article 136 of the Constitution.

Each and every district or divisional family court should be equipped by a bunch of regular staff comprising a Welfare Officer, Marriage Counsellor, Psychiatrist and social work preferably lady of good deal of experience in family matters and social behaviour. They should be appointed by the State Family Court. They will be transferable by the State Family Court. There should social/family investigators also who may visit village to village and door to door in the city for collecting information regarding family disputes especially matrimonial breakdown. They will also be responsible for maintaining family-wise record.

There should be proper arrangement of regular intense training for which the every state should have a Family Training Centre with adequate staff from the discipline of medical, psychology, psychiatry, social science and family law.

The family courts should contain a non-adversarial procedure.

There should be two research bodies for assessing and evaluating the working of the family courts and detect the new dimensions and techniques of conciliation and administration of matrimonial and family justice.
Those bodies should be (i) The Indian Family Law Council comprising some judges, lawyers and social workers to annually meet at the invitation of the Director, Indian Institute of Family Law for evaluation of the working of the family courts and (ii) The Indian Institute of Family Law with a Director as its head to be assisted by suitable research staff. These bodies will send their reports to the State and Central Governments. They should open refresher and diploma or other specialised courses in family law.