

# The Family Courts Act, 1984

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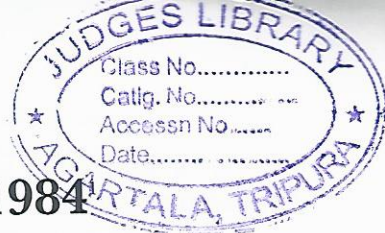
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Book No.....

Page No.....**The**  
**Family Courts Act, 1984**

[Act 66 of 1984]



[14th September, 1984]

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

Be it enacted by Parliament in the Thirty-fifth Year of the Republic of India as follows:—

**Statement of Objects and Reasons.**—Several associations of women, other organisations and individuals have urged, from time to time, that 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 in its 59th report (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 at settlement before the commencement of the trial. The Code of Civil Procedure was amended in 1976 to provide for a special procedure to be adopted in suits or proceedings relating to matters concerning the family. However, not much use has been made by the courts in adopting this conciliatory procedure and the courts continue to deal with family disputes in the same manner as other civil matters and the same adversary approach prevails. The need was, therefore, felt, in the public interest, to establish Family Courts for speedy settlement of family disputes.

2. The Bill *inter alia*, seeks to:—

- (a) provide for establishment of Family Courts by the State Governments;
- (b) make it obligatory on the State Governments to set up a Family Court in every city or town with a population exceeding one million;
- (c) enable the State Governments to set up, such courts in areas other than those specified in (b) above;
- (d) exclusively provide within the jurisdiction of the family Courts the matters relating to:—
  - (i) matrimonial relief, including nullity of marriage, judicial separation, divorce, restitution of conjugal rights, or declaration as to the validity of a marriage or as to the matrimonial status of any person;
  - (ii) the property of the spouses or of either of them;
  - (iii) declaration as to the legitimacy of any person;
  - (iv) guardianship of a person or the custody of any minor;
  - (v) maintenance, including proceedings under Chapter IX of the Code of Criminal Procedure;
- (e) make it obligatory on the part of the Family Court to endeavour, in the first instance to effect a reconciliation or a settlement between the parties to a family dispute. During this stage, the proceedings will be informal and the rigid rules of procedure shall not apply;
- (f) provide for the association of social welfare agencies, counsellors, etc., during conciliation stage and also to secure the services of medical and welfare experts;

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1. Received the assent of the President of Sept 14, 1984 and published in the Gazette of India, Extra., Part II, Section 1, dt. 14th September, 1984, pp. 1-8 [C][P].



- (g) provide that the parties to a dispute before a Family Court shall not be entitled, as of right, to be represented by legal practitioner. However, the Court may, in the interest of justice, seek assistance of a legal expert as *amicus curiae*;
- (h) simplify the rules of evidence and procedure so as to enable a Family Court to deal effectually with a dispute;
- (i) provide for only one right of appeal which shall lie to the High Court.

3. The Bill seeks to achieve the above objects.

**Statement of Objects and Reasons of Amending Act 59 of 1991.**—Matters relating to maintenance allowance to wives, children and parents are heard under Section 125 of the Code of Criminal Procedure, 1973. After the 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, Magistrate of the area exercises the jurisdiction in such matters. There is provision for appeal under the Family Courts Act, 1984 against order made by a Family Court but, when the maintenance order is passed by a Magistrate, a revision lies under the Code of Criminal Procedure, 1973.

2. The Conference of Chief Justices held in December, 1989 has recommended that the provision existing in the Family Courts Act, 1984 regarding appeal against order made by a Family Court under Section 125 of the Code of Criminal Procedure, 1973 may be deleted and, in its place, revision may be provided for in the said Act.

3. Clause 2 of the Bill, therefore, seeks to amend Section 19 of the Family Courts Act, 1984. It, however, intends to save the pending appeals and also the right to appeal from the orders passed before the commencement of the amending Act.

4. The Bill seeks to achieve the above objects.

**CASE LAW ► Object.**—The primary object and duty of the Family Court Judges is to endeavour and persuade the parties in arriving at a settlement in respect of the suit or proceedings, in which it may follow such procedure, as it may deem fit, *S.D. Joshi v. High Court of Bombay*, (2011) 1 SCC 252, See also *Sabah Sami Khan v. Adnan Sami Khan*, 2010 SCC OnLine Bom 1629.

**► Scope and Applicability of Family Courts Act.**—Objects and reasons behind enactment of Family Courts Act would suggest that reason for constitution of Family Courts is for settlement of family disputes, if possible, by pre-litigation proceedings., *R. Kasthuri v. M. Kasthuri*, (2018) 5 SCC 353.

**► Family Court.**—Every court may be a tribunal but every tribunal necessarily may not be a court. A court in the strict sense is a tribunal which is a part of the ordinary hierarchy of courts of civil judicature maintained by the State under its Constitution to exercise the judicial power of the State. These courts perform all the judicial functions of the State except those that are excluded by law from their jurisdiction. The Family Court constituted under Section 3 of the Act has all the trappings of a court and, thus, is a court, *S.D. Joshi v. High Court of Bombay*, (2011) 1 SCC 252.

**► Speedy settlement of disputes.**—Court should adopt a balanced approach avoiding procrastination as well as undue haste and be sensitive to the cause and schematic purpose, *Santhini v. Vijaya Venketesh*, (2018) 1 SCC 1.

## CHAPTER I

### PRELIMINARY

**1. Short title, extent and commencement.**—(1) This Act may be called the Family Courts Act, 1984.

(2) It extends to the whole of India <sup>2</sup>[\* \* \*].

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States:

<sup>3</sup>[Provided that it shall be deemed to have come into force in the State of Himachal Pradesh with effect from the 15th February, 2019 and in the State of Nagaland with effect from the 12th September, 2008.]

#### STATE AMENDMENTS

**Union Territory of Jammu and Kashmir.**—In its application to the Union Territory of Jammu and Kashmir, in sub-section (2), *omit* “except the State of Jammu and Kashmir”. [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

**Union Territory of Ladakh.**—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

#### DATES OF ENFORCEMENT

Name of State	Date of enforcement	Vide Noti. No.
Andhra Pradesh	15-2-1995	S.O. 92(E), dt. February 6, 1995
Assam	2-10-1991	72/2/86-Jus., dt. September 30, 1991
Bihar	10-12-1991	S.O. 838(E), dt. December 6, 1991
Daman and Diu	10-10-2003	S.O. 1161(E), dt. October 1, 2003
Delhi	19-11-1986	S.O. 863(E), dt. November 18, 1986
Goa	16-4-1990	S.O. 328(E), dt. April 12, 1990
Gujarat	1-1-2000	S.O. 1287(E), dt. December 20, 1999
Haryana	2-11-1992	S.O. 784(E), dt. October 23, 1992
Karnataka	25-5-1987	G.S.R. 685(E), dt. May 15, 1987
Madhya Pradesh	19-11-1986	79/6/86-Jus., dt. November 14, 1986
Maharashtra	1-12-1986	79/18/85-Jus., dt. September 18, 1986
Manipur	3-2-1992	S.O. 91(E), dt. January 30, 1992
Mizoram	30-3-2009	S.O. 2196(E), dated August 27, 2009
Orissa	1-5-1989	S.O. 321(E), dt. April 27, 1989
Pondicherry	1-5-1987	G.S.R. 459(E), dt. April 29, 1987
Punjab	1-1-2013	S.O. 3022(E), dt. December 19, 2012
Rajasthan	19-11-1985	79/17/85-Jus., dt. November 18, 1985
Sikkim	2-10-1987	79/20/86-Jus., dt. September 14, 1987
Tamil Nadu	2-10-1986	79/18/85-Jus., dt. September 18, 1986

2. The words “except the State of Jammu and Kashmir” *omitted* by Act 34 of 2019, Ss. 95, 96 & Sch. V (w.e.f. 31-10-2019).

3. *Ins.* by Act 16 of 2022, S. 2 (w.e.f. the date to be notified).





Tripura	27-6-2012	S.O. 1428(E), dt. June 26, 2012
Uttar Pradesh	2-10-1986	79/11/86-Jus., dt. September 4, 1986
Union Territory of Chandigarh	16-2-2015	S.O. 495(E), dt. February 12, 2015
West Bengal	1-11-1991	72/12/86-Jus., dt. November 1, 1991

**2. Definitions.**—In this Act, unless the context otherwise requires,—

- (a) “Judge” means the Judge or, as the case may be, the Principal Judge, Additional Principal Judge or other Judge of a Family Court;
- (b) “notification” means a notification published in the Official Gazette;
- (c) “prescribed” means prescribed by rules made under this Act;
- (d) “Family Court” means a Family Court established under Section 3;
- (e) all other words and expressions used but not defined in this Act and defined in the Code of Civil Procedure, 1908 (5 of 1908) shall have the meanings respectively assigned to them in that Code.

**CASE LAW ► Family Court.**—Matrimonial jurisdiction of Family Courts is covered by the definition of a District Court in Section 2(4) of the Civil Procedure Code, 1908. Jurisdiction of District Court stands excluded after establishment of Family Court, *Kamal V.M. Allaudin v. Raja Shaikh*, 1990 SCC OnLine Bom 54.

► **Judge.**—District Judge would not only be an officer who has been specified in clause (a) of Article 236 but would also be such officer who would otherwise be within the control of the High Court in terms of Article 235 of the Constitution, *M.P. Gangadharan v. State of Kerala*, (2006) 6 SCC 162.

“Judge” is a generic term and other terms like, umpire, arbiter and arbitrator are only species of this term. A Judge, primarily, determines all matters of disputes and pronounces what is law now, as well as what will be the law for the future and acts under the appointment of the Government. The Presiding Officer, that is, the Judge of the Family Court performs judicial and determinative factors and, as such, is a “Judge” though of limited jurisdiction, *S.D. Joshi v. High Court of Bombay*, (2011) 1 SCC 252.

## CHAPTER II

### FAMILY COURTS

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

- (a) shall, as soon as may be after the commencement of this Act, establish for every area in the State comprising a city or town whose population exceeds one million, a Family Court;
- (b) may establish Family Courts for such other areas in the State as it may deem necessary.

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

**CASE LAW ► Object.**—Section 3 of the Family Courts Act, 1984 does not create any classification as such and the provision is consistent with the preamble of the Act which is to promote conciliation in and secure speedy settlement of disputes relating to family and marriage affairs. There being reasonable nexus with the

aims and objects of the Act, Section 3 of the Family Courts Act is not discriminatory and violative of Article 14 of the Constitution, *Lata v. Union of India*, 1993 SCC OnLine Bom 7.

► **Scope.**—Clauses (a) and (b) of sub-section (1) of Section 3 of the Family Courts Act operate in two different fields. Whereas in terms of clause (a) it is imperative on the part of the State to establish a Family Court for every area comprising a city or town whose population exceeds one million, over areas which are not covered by clause (a), the State has a discretion to establish or not to establish a Family Court. In the case of the former, the State may not have any power to shift the Family Court from the city or town whose population exceeds one million; but there is no reason why a Family Court established at a place having jurisdiction over an area including more than one town or village cannot be shifted from one place to another within that area, *M.P. Gangadharan v. State of Kerala*, (2006) 6 SCC 162.

<sup>4</sup>[**3-A. Validation of certain actions.**—(1) The establishment of Family Courts in the State of Himachal Pradesh with effect from the 15th February, 2019 and in the State of Nagaland with effect from the 12th September, 2008 shall be deemed to be valid and always to have been valid as if the notification for appointing the date for bringing this Act in force in the States of Himachal Pradesh and Nagaland, as required under sub-section (3) of Section 1, had been issued by the Central Government with effect from such dates.

(2) Anything done, any action taken, any appointment made, any duty performed, any rules made, any notification issued or purported to have been done, taken, performed, made or issued under this Act in the States of Himachal Pradesh and Nagaland prior to the commencement of the Family Courts (Amendment) Act, 2022 shall be deemed to have been validly done, taken, performed, made or issued, as the case may be, under the provisions of this Act.

(3) Every order of appointment of a person as a Judge of a Family Court and every order of posting, promotion or transfer, as the case may be, made under this Act in the States of Himachal Pradesh and Nagaland prior to the commencement of the Family Courts (Amendment) Act, 2022 shall be deemed to be validly made under the provisions of this Act.

(4) Every power exercised and function performed, every matter dealt with, every proceeding undertaken, every order, judgment, decree or sentence passed and every other act done by the Family Courts in the States of Himachal Pradesh and Nagaland prior to the commencement of the Family Courts (Amendment) Act, 2022 shall be deemed to be validly exercised, performed, dealt with, undertaken, passed or done under the provisions of this Act.]

**4. Appointment of Judges.**—(1) 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.

(2) When a Family Court consists of more than one Judge,—

(a) each of the Judges may exercise all or any of the powers conferred on the Court by this Act or any other law for the time being in force;

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4. Ins. by Act 16 of 2022, S. 3 (w.e.f. the date to be notified).



- (b) the State Government may, with the concurrence of the High Court, appoint any of the Judges to be the Principal Judge and any other Judge to be the Additional Principal Judge;
  - (c) the Principal Judge may, from time to time, make such arrangements as he may deem fit for the distribution of the business of the Court among the various Judges thereof;
  - (d) the Additional Principal Judge may exercise the powers of the Principal Judge in the event of any vacancy in the office of the Principal Judge or when the Principal Judge is unable to discharge his functions owing to absence, illness or any other cause.
- (3) A person shall not be qualified for appointment as a Judge unless he—
- (a) has for at least seven years held a judicial office in India or the office of a member of a Tribunal or any post under the Union or a State requiring special knowledge of law; or
  - (b) has for at least seven years been an advocate of a High Court or of two or more such courts in succession; or
  - (c) possesses such other qualifications as the Central Government may, with the concurrence of the Chief Justice of India, prescribe.
- (4) In selecting persons for appointment as Judges,—
- (a) every endeavour shall be made to ensure that persons committed to the need to protect and preserve the institution of marriage and to promote the welfare of children and qualified by reason of their experience and expertise to promote the settlement of disputes by conciliation and counselling are selected; and
  - (b) preference shall be given to women.
- (5) No person shall be appointed as, or hold the office of, a Judge of a Family Court after he has attained the age of sixty-two years.
- (6) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of, a Judge shall be such as the State Government may, in consultation with the High Court, prescribe.

**5. Association of social welfare agencies, etc.**—The State Government may, in consultation with the High Court, provide, by rules, for the association, in such manner and for such purposes and subject to such conditions as may be specified in the rules, with a Family Court of—

- (a) institutions or organisations engaged in social welfare or the representatives thereof;
- (b) persons professionally engaged in promoting the welfare of the family;
- (c) persons working in the field of social welfare; and
- (d) any other person whose association with a Family Court would enable it to exercise its jurisdiction more effectively in accordance with the purpose of this Act.



**6. Counsellors, officers and other employees of Family Courts.**—(1) The State Government shall, in consultation with the High Court, determine the number and categories of counsellors, officers and other employees required to assist a Family Court in the discharge of its functions and provide the Family Court with such counsellors, officers and other employees as it may think fit.

(2) The terms and conditions of association of the counsellors and the terms and conditions of service of the officers and other employees, referred to in sub-section (1), shall be such as may be specified by rules made by the State Government.

**CASE LAW ▶ Appointment of Mediators and Conciliators.**—Technicalities do not come in way of their appointment, if there was fruitful outcome. Where their appointment was made with express order of court and parties had knowledge of such appointment, their appointment cannot be questioned, *Perry Kansagra v. Smriti Madan Kansagra*, (2019) 20 SCC 753.

### CHAPTER III JURISDICTION

**7. Jurisdiction.**—(1) Subject to the other provisions of this Act, a Family Court shall—

- (a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the *Explanation*; and
- (b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

*Explanation.*—The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:—

- (a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;
- (b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;
- (c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;
- (d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;
- (e) a suit or proceeding for a declaration as to the legitimacy of any person;
- (f) a suit or proceeding for maintenance;
- (g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise—

- (a) the Jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and
- (b) such other jurisdiction as may be conferred on it by any other enactment.

**CASE LAW ► Right to get maintenance : Nature.**—Section does not confer an absolute right on a neglected wife to get an order of maintenance against the husband nor does it impose an absolute liability on the husband to support her in all circumstances. The use of the word 'may' indicates that the power conferred on the Magistrate is discretionary. The Magistrate has to exercise this discretion in a judicial manner consistently with the language of the statute with due regard to other relevant circumstances of the case. (1975) 2 SCC 386 : 1975 SCC (Cri) 563.

► **Hindu Adoption and Maintenance Act.**—Section 488 of the Code of Criminal Procedure, 1898 (Section 125 of new Code) is not inconsistent with the provisions of Section 23 of the Hindu Adoption and Maintenance Act, 1956. (1975) 2 SCC 386 : 1975 SCC (Cri) 563.

► **Maintenance fixed by Civil Court : Relevancy.**—Maintenance fixed by the Civil Court under Section 24, Hindu Marriage Act, pending divorce proceedings by wife has no relevance for fixation by the magistrate of maintenance under Section 125 CrPC. (1975) 2 SCC 386 : 1975 SCC (Cri) 563.

► **Jurisdiction of Family Court.**—A suit or proceeding as to declaration as to validity of both marriage and matrimonial status of a person is within the exclusive jurisdiction of Family Court in view of the provisions contained in Sections 7(1) Expln. (b), 8 and 20 of the Family Courts Act, *Balram Yadav v. Fulmaniya Yadav*, (2016) 13 SCC 308.

Jurisdiction of Family Court in respect of suits and proceedings in relation to properties of spouses includes divorced parties. The expression "disputes relating to marriage and family affairs and for matters connected therewith" must be given a broad construction, *K.A. Abdul Jaleel v. T.A. Shahida*, (2003) 4 SCC 166 : 2003 SCC (Cri) 810.

Family Court vested with jurisdiction excisable by Magistrate 1st Class under Ch. IX of the Civil Procedure Code, 1908, *A. Sreedevi v. Vicharapu Ramakrishna Gowd*, 2005 SCC OnLine Mad 775.

Should an issue arise before the matrimonial court concerning the paternity of the child, obviously that court will be competent to pass an appropriate order at the relevant time in accordance with law. DNA test in a matter relating to paternity of a child should not be directed by the court as a matter of course or in a routine manner, whenever such a request is made, *Bhabani Prasad Jena v. Orissa State Commission for Women*, (2010) 8 SCC 633 : (2010) 3 SCC (Cri) 1053.

► **Exercise of power by Family Court.**—Family Court is obliged to inquire into matter as per procedure prescribed by law. It does not have plenary powers to do away with mandatory procedural requirements, in particular which guarantee fairness and transparency in process to be followed and for adjudication of claims of both sides. Nature of inquiry before Family Court is, indeed, adjudicatory. It is obliged to resolve rival claims of parties and while doing so, it must adhere to norms prescribed by statute in that regard and also foundational principles of fairness of procedure and natural justice, *Aman Lohia v. Kiran Lohia*, (2021) 5 SCC 489.

► **Civil court's jurisdiction.**—Civil court's jurisdiction under Section 34 of Specific Relief Act in respect of suits or proceedings between parties which are not filed under Hindu Marriage Act or Special Marriage



Act, not barred under Section 8. In absence of express bar, exclusion of civil court's jurisdiction should not be readily inferred, *Samar Kumar Roy v. Jharna Bera*, (2017) 9 SCC 591.

► **Jurisdiction of High Court.**—The High Court in its original jurisdiction can grant relief of dissolution of a Christian marriage under the Divorce Act, 1869 where the parties are citizens of India and domiciled in India but the marriage had been solemnised in a foreign country. Family Court has no jurisdiction to entertain such suit, *Vincent Joseph Konath v. Jacintha Angela Vincent Konath*, 1993 SCC OnLine Bom 366.

► **Grant of maintenance.**—Adjournments in routine manner should not be granted. Family Court should strike a balance by avoiding procrastination of proceedings but without showing undue haste being conscious about dealing with sensitive issues relating to marriage and ancillary matters, *Bhuwan Mohan Singh v. Meena*, (2015) 6 SCC 353 : (2015) 4 SCC (Cri) 200 : (2015) 3 SCC (Civ) 321.

► **Maintenance.**—Family Court can grant maintenance allowance to divorced Muslim woman under Section 125 CrPC, *Shamima Farooqui v. Shahid Khan*, (2015) 5 SCC 705 : (2015) 2 SCC (Cri) 785 : (2015) 3 SCC (Civ) 274.

**8. Exclusion of jurisdiction and pending proceedings.**—Where a Family Court has been established for any area,—

- (a) no district court or any subordinate civil court referred to in sub-section (1) of Section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the *Explanation* to that sub-section;
- (b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);
- (c) every suit or proceeding of the nature referred to in the *Explanation* to sub-section (1) of Section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974),—
  - (i) which is pending immediately before the establishment of such Family Court before any district court or subordinate court referred to in that sub-section or, as the case may be, before any magistrate under the said Code; and
  - (ii) which would have been required to be instituted or taken before or by such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established,

shall stand transferred to such Family Court on the date on which it is established.

#### CHAPTER IV PROCEDURE

**CASE LAW ► Constitutional validity.**—Procedure prescribed under Chapter IV of the Family Courts Act to arrive at a settlement in respect of subject-matter of proceedings is similar to the provisions contained in Order 32-A of the Civil Procedure Code, 1908 which has been introduced with a view to simplify procedure laying emphasis on conciliation in matrimonial matters. Procedure prescribed under the Family Courts Act





and the Family Courts (Court) Rules, 1988 is not arbitrary or violative of Article 14 of the Constitution of India, *Lata v. Union of India*, 1993 SCC OnLine Bom 7.

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

(2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-section (2) shall be in addition to, and not in derogation of, any other power of the Family Court to adjourn the proceedings.

**CASE LAW ► Judicial Intervention.**—It is the Duty Cast on Family Court to involve itself in process of conciliation and mediation to persuade parties to arrive at settlement. Jurisdiction of Family Court extends not only to decide disputes but also involving itself in process of mediation/conciliation. Such steps would assist in settlement of existing dispute and prevent sporadic litigation between parties, *Anu Bhandari v. Pradip Bhandari*, (2018) 6 SCC 389.

► **Mediation.**—“Mediation” is an effective method of alternative dispute resolution in matrimonial matters. There is need for quashing criminal cases filed by parties against each other for possibility of amicable settlement. Directions issued to courts dealing with matrimonial cases to strive for amicable settlement, *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226 : (2013) 2 SCC (Cri) 963 : (2013) 2 SCC (Civ) 775.

**10. Procedure generally.**—(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings (other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973) (2 of 1974), before a Family Court and for the purposes of the said provisions of the Code, Family Court shall be deemed to be a civil court and shall have all the powers of such court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

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

**11. Proceedings to be held in camera.**—In every suit or proceedings to which this Act applies, the proceedings may be held in camera if the Family Court so desires and shall be so held if either party so desires.

**CASE LAW ▶ Demand of in camera proceeding.**—Proceedings under the Hindu Marriage Act, 1955 to be in camera and not to be published except with previous permission of the Court. Provision to said effect contained in Section 22 of the Hindu Marriage Act which is not superceded by Sections 11 and 20 of the Family Courts Act. Under Section 11 of the Family Courts Act, a party (belonging to any religion) can demand proceedings to be held in camera, *R. Sridhar v. R. Sukanya*, 2004 SCC OnLine Mad 714.

▶ **Video conferencing.**—Conduct of proceedings under Family Courts Act, 1984 through videoconferencing upon request of only one party, impermissible. However, only after settlement fails, either upon consent and application of both parties, or, if Family Court finds it appropriate, direction for videoconferencing may be made by Family Court only. Direction for videoconferencing cannot be passed in transfer proceedings, *Santhini v. Vijaya Venketesh*, (2018) 1 SCC 1.

▶ **In-camera proceedings.**—If one of the parties desires in-camera proceedings under 1984 Act Court would be obliged to initiate the same. Court also has discretion to suo motu order initiation of the same. This provision is gender neutral, *Santhini v. Vijaya Venketesh*, (2018) 1 SCC 1.

**12. Assistance of medical and welfare experts.**—In every suit or proceedings, it shall be open to a Family Court 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 as the Court may think fit, for the purposes of assisting the Family Court in discharging the functions imposed by this Act.

**13. Right to legal representation.**—Notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner:

Provided that if the Family Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as *amicus curiae*.

**CASE LAW ▶ Application for legal assistance.**—Though the Family Courts are not required to pass elaborate order on application for legal assistance, having regard to the unfortunate situations wherein specific prejudice is not only pleaded but is demonstrated, the family courts should follow the some broad norms in such situations. Norms to be followed by Family Courts in such cases, explained, *Kishorilal Govindram Bihani v. Dwarkabai Kishorilal Bihani*, 1992 SCC OnLine Bom 131.

▶ **Representation.**—Section 13 of the Family Courts Act does not completely prohibit a party to be represented by a legal practitioner and is not violative of Article 19(1)(a) or 21 of the Constitution. Party desiring to be represented by a lawyer can have recourse to Rule 37 of the Family Courts (Court) Rules, 1988, *Lata v. Union of India*, 1993 SCC OnLine Bom 7.

A party can represent her/his case before the Family Court but right given to the party to appear is not extended to constituted attorney of that party, *Neelam Dadasaheb Shewale v. Dadasaheb Bandu Shewale*, 2010 SCC OnLine Bom 249.

▶ **Petition on behalf of deaf and dumb husband.**—When petition for divorce is filed on behalf of deaf and dumb husband through his father as his “next friend” then even when the husband has annexed certain certificates and documents showing his disablement, the Family Court is required to conduct an inquiry with a view to record its satisfaction and a finding about the extent of the disablement, before proceeding with the trial of the case, *Alka v. Akash*, 2010 SCC OnLine MP 30.



**14. Application of Indian Evidence Act, 1872.**—A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, 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 (1 of 1872).

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

**CASE LAW ► Evidence.**—Sections 15 and 16 clearly disclose the intention of the legislature that the evidence of formal character alone can be permitted to be given on affidavit and not other oral evidence. Separate provision for giving of evidence of formal character on affidavit leads to the conclusion that giving of oral evidence on affidavit is excluded in view of Section 15 of the Act, *Anil Kumar Lal (Dr.) v. Additional Principal Judge, Family Court, Lucknow*, 2008 SCC OnLine All 915.

**16. Evidence of formal character on affidavit.**—(1) The evidence of any person where such evidence is of a formal character, may be given by affidavit and may, subject to all just exceptions, be read in evidence in any suit or proceeding before a Family Court.

(2) The Family Court may, if it thinks fit, and shall, on the application of any of the parties to the suit or proceeding summon and examine any such person as to the facts contained in his affidavit.

**17. Judgment.**—Judgment of a Family Court shall contain a concise statement of the case, the point for determination, the decision thereon and the reasons for such decision.

**CASE LAW ► Procedural requirement.**—Non-compliance with the procedural requirement in the matter of signing of the judgement is an irregularity which can be cured. The failure of the Judge in not appending his signature to the judgement at the time it was pronounced because of the judgement having not till then been transcribed is a procedural irregularity which would not vitiate the conviction of the accused. (1975) 3 SCC 140 : 1974 SCC (Cri) 764.

**18. Execution of decrees and orders.**—(1) A decree or an order (other than an order under Chapter IX of the Code of Criminal Procedure, 1973) (2 of 1974), passed by a Family Court shall have the same force and effect as a decree or order of a civil court and shall be executed in the same manner as is prescribed by the Code of Civil Procedure, 1908 (5 of 1908), for the execution of decrees and orders.

(2) An order passed by a Family Court under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) shall be executed in the manner prescribed for the execution of such order by that Code.

(3) A decree or order maybe 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.



**CASE LAW ▶ Role after passing of decree.**—After passing of decree in terms of compromise, the Family Court does not become *functus officio*, but continues to exercise jurisdiction in monitoring the welfare of the child, *Dr. Nithya Vidyaprakash v. B. Suresh Babu*, 2010 SCC OnLine Mad 2588.

## CHAPTER V

### [APPEALS AND REVISIONS]<sup>5</sup>

**19. Appeal.**—(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law, an appeal shall lie from every judgement or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties <sup>6</sup>[or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991].

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgement or order of a Family Court.

<sup>7</sup>[(4) The High Court may, of its own motion or otherwise, call for an examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and as to the regularity of such proceeding.]

<sup>8</sup>[(5)] Except as aforesaid, no appeal or revision shall lie to any court from any judgement, order or decree of a Family Court.

<sup>9</sup>[(6)] An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges.

### STATE AMENDMENTS

**Union Territory of Jammu and Kashmir.**—In its application to the Union Territory of Jammu and Kashmir, *omit* sub-section (6). [*Vide* S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

**Union Territory of Ladakh.**—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [*Vide* S.O. 3774(E), dated 23-10-2020].

**CASE LAW ▶ Maintainability of appeal.**—No appeal shall lie from an order passed under Chapter IX of the Criminal Procedure Code, 1973 in view of amendment to Section 19(2) of the Family Courts Act, 1984

5. Subs. for "Appeals" by Act 59 of 1991, S. 2(a) (w.e.f. 28-12-1991).

6. Ins. by Act 59 of 1991, S. 2(b)(i) (w.e.f. 28-12-1991).

7. Ins. by Act 59 of 1991, S. 2(b)(ii) (w.e.f. 28-12-1991).

8. Sub-section (4) *renumbered* by Act 59 of 1991, S. 2(b)(ii) (w.e.f. 28-12-1991).

9. Sub-section (5) *renumbered* by Act 59 of 1991, S. 2(b)(ii) (w.e.f. 28-12-1991).

and therefore appeal against order and decretal order granting maintenance is not maintainable in law, *N.M. Subramaniam v. Nagamani*, 2006 SCC OnLine Mad 1148.

The connotation 'interlocutory order' used under sub-section (1) of Section 19 of the Family Courts Act means if Family Courts in exercising its power passed an order in a way allowing further action to continue in a suit or proceeding before it then such order would be termed as 'interlocutory order' but on the other hand if by an order passed by Family Court the lis between the parties is finally stood disposed of and nothing is left to be decided further such orders would be termed as 'final order' and would be appealable under sub-sec. (1) of Section 19 of said Act, *Boby Devi v. Kiran Pal Singh*, 2002 SCC OnLine All 399.

Procedure of decree nisi and confirmation by the High Court as provided in the Divorce Act, 1869 has to give way to the procedure provided in the Family Courts Act, 1984. Decree for dissolution of marriage passed by the Family Court needs no confirmation under Section 17 of the Divorce Act, 1869 as it stood prior to the amendment of the Act in 2001 but is subject to the appellate jurisdiction of the High Court under Section 19 of the Family Courts Act, 1984, *Asis Ubaldo Rodrigues v. Maria Asis Rodrigues*, 2006 SCC OnLine Bom 42.

Appeal against the order of interim maintenance passed in proceeding under Section 125 CrPC after amendment in Section 19(2) of the Family Courts Act is not maintainable, *N.M. Subramaniam v. Nagamani*, 2006 SCC OnLine Mad 1148.

► **Scope of judicial review.**—The scope of judicial review of the order passed by the Family Court by the High Court is limited to the extent that only correctness, legality or propriety of the order which is not an interlocutory order as to the regularity of such proceeding can only be challenged before this court in terms of language appearing under sub-section (4) of Section 19 of the Act, *Vinod Kumar Lodha v. Reena Lodha (Nee Jain)*, 2009 SCC OnLine Cal 298.

## CHAPTER VI

### MISCELLANEOUS

**20. Act to have overriding effect.**—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

**CASE LAW ► Scope.**—After coming into force of the Family Courts Act, 1984 and establishment of the Family Court for Mumbai Area, the High Court would completely lose its jurisdiction by virtue of the provisions of Sections 7 and 8 read with Section 20 of the Family Courts Act, 1984. By virtue of clause (c) of Section 8, all the matrimonial matters pending before the High Court on the original side shall stand transferred to the Family Court for hearing and disposal in accordance with the provisions of the said Act, *Romila Jaidev Shroff v. Jaidev Rajnikant Shroff*, 2000 SCC OnLine Bom 300.

The law laid down by the Full Bench in *Romila's case* must be deemed to be prospective, *Maria Sera Pinto v. Milton Dias*, 2000 SCC OnLine Bom 568.

**21. Power of High Court to make rules.**—(1) The High Court may, by notification in the Official Gazette, make such rules as it may deem necessary for carrying out the purposes of this Act.

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



- (a) normal working hours of Family Courts and holding of sittings of Family Courts on holidays and outside normal working hours;
- (b) holding of sittings of Family Courts at places other than their ordinary places of sitting;
- (c) efforts which may be made by, and the procedure which may be followed by, a Family Court for assisting and persuading parties to arrive at a settlement.

**22. Power of the Central Government to make rules.**—(1) The Central Government may, with the concurrence of the Chief Justice of India, by notification, make rules prescribing the other qualifications for appointment of a Judge referred to in clause (c) of sub-section (3) of Section 4.

(2) Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions 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.

**23. Power of the State Government to make rules.**—(1) The State Government may, after consultation with the High Court, by notification, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), such rules may provide for all or any of the following matters, namely:—

- (a) the salary or honorarium and other allowances payable to, and the other terms and conditions of Judges under sub-section (6) of Section 4;
- (b) the terms and conditions of association of counsellors and the terms and conditions of service of the officers and other employees referred to in Section 6;
- (c) payment of fees and expenses (including travelling expenses) of medical and other experts and other persons referred to in Section 12 out of the revenues of the State Government and the scales of such fees and expenses;
- (d) payment of fees and expenses to legal practitioners appointed under Section 13 as *amicus curiae* out of the revenues of the State Government and the scales of such fees and expenses;
- (e) any other matter which is required to be, or may be, prescribed or provided for by rules.

(3) Every rule made by a State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

