

# [Family the focus is now on how to](https://assignbuster.com/family-the-focus-is-now-on-how-to/)

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Family is one of themost important institutions in the society. The growing trend shows a constantbreakdown of this institution. It is not just an emotionally traumaticexperience but also results in financial, social and psychologicalrepercussions. Hence when these matters come to court, the court has alwaystried to bring about reconciliation in the marriage even if they are appealcases. This has lead toliberalization in the divorce laws all over the global. The increasing rates incases of judicial separation and divorce have lead the judiciary to take a moreliberal take on the matter.

The focus is now on how to mitigate thetraumatizing effects of the breakdown and hence the courts now look into anypossibility of reconciliation under a positive duty to endeavor to bring about reconciliation. 1 In India, marriage isconsidered as a sacred institution. The Family Courts Act imposes an obligationon the Courts to attempt for reconciliation and preservation of marriage beforegranting the decree for divorce. The process that iscurrent legal framework that is being used by the judiciary is not only longand tedious but also taxing emotional, financial and physically. In the courtboth the spouses are put up against each other and the need is to win a war. But what is actually needed a settlement between both the parties so as tomaintain the peace and tranquility. The pressure to provide a special court wasalways present as this would help in the speedy settlement of family relateddispute.

This is where the need for an alternate forum comes in. This where forthe first time, a non adversarial approach was demanded for. This meant usingalternate methods like counseling to secure speedy settlement of thesedisputes. In the 59thLaw Commission Report, the committee stated the need for developing a separateforum for the matters related to ‘ family’. It stressed on the fact that thecourts needed to develop a new, radical method different from the existing ordinarycivil proceedings so that reasonable amount of effort can be put intosettlement before the commencement of trial. This resulted in the amendment ofCivil Procedure Code, which provided for a special procedure to be adopted inthe matters related to family. Since there was no change in the way how thecourts dealt with the family related matters, the need of the hour became toestablish the family courts.

Family Courts Act washence finally passed in 1984. Section 3, of the Act provides for a Family Courtto be established in every area of a State where the population exceeds onemillion. This has to be made by the State Government after consultation withthe High Court of the State. The Central Government only has the authority toprovide for the qualification of the Judges of Family Courts and nothing elseaccording to this act. The Act provides thatpersons who are appointed to the family courts should be committed to the needto protect and preserve the institution of marriage and to promote thesettlement of disputes by conciliation and counseling. Preference would also begiven for appointment of women as Family Court Judges.  The Government has taken note to ensure appointmentof more number of women judges to the Family Courts as stipulated in the FamilyCourt Act, 1984.

According to Section 6 of the Act, the State Governments arealso required to determine the number and categories of counselors, officersetc. to assist the Family Courts. Specialized courts, viz., Family Courts, about 84 in number, have been established in 18 States  and  Union  Territories,  since  the year  1984,  todeal with the issues pertaining to family  matters, like  marriage,  divorce, child custody, guardianship, maintenance, etc.

This has also broughtthe civil and criminal jurisdiction under the same roof. This was made toascertain that all litigation centralizing women be brought under the sameroof. This also brings the added advantage of civil suits with criminal natureso as make sure of quicker disposal of these cases. The Legal ServicesAuthorities Act, 1987, amended in 2002 provides access to justice for women.

Itprovides for alternate dispute resolution mechanisms through the Lok Adalath(mediation and conciliation) and undertakes Parivarik Adalat (dealing withfamily disputes) in collaboration with the National and State Commissions forWomen. Due to these alternate mechanisms many of the disputes have beenresolved out of court, thus providing women access to speedy justice andresolution of their problems. This project aims tofocus at the present situation alternate dispute settlement in matrimonialmatters in India. As we progress further in this project we will see howcounseling is aimed to be a more humane approach to the idea of divorce. Evenif we presume that the chance of saving the marriage is not high the couplegets to settle the matter in their own manner without having to go through thetedious process of court proceedings.

1 Derrett J. D. M.

, “ An Introduction to Modern Hindu Law, (1963) at 177 quotedby Werner F. Menski in “ Hindu Law: Beyond Tradition andModernity” (2003) at p. 443 footnote. 30.