

Family the focus is now on how to

[Family](#), [Marriage](#)



Family is one of the most important institutions in the society. The growing trend shows a constant breakdown of this institution. It is not just an emotionally traumatic experience but also results in financial, social and psychological repercussions. Hence when these matters come to court, the court has always tried to bring about reconciliation in the marriage even if they are appeal cases. This has led to liberalization in the divorce laws all over the globe. The increasing rates of cases of judicial separation and divorce have led the judiciary to take a more liberal take on the matter.

The focus is now on how to mitigate the traumatizing effects of the breakdown and hence the courts now look into any possibility of reconciliation under a positive duty to endeavor to bring about reconciliation.

1 In India, marriage is considered as a sacred institution. The Family Courts Act imposes an obligation on the Courts to attempt for reconciliation and preservation of marriage before granting the decree for divorce. The process that is current legal framework that is being used by the judiciary is not only long and tedious but also taxing emotionally, financially and physically. In the court both the spouses are put up against each other and the need is to win a war. But what is actually needed is a settlement between both the parties so as to maintain the peace and tranquility. The pressure to provide a special court was always present as this would help in the speedy settlement of family related disputes.

This is where the need for an alternate forum comes in. This is where for the first time, a non-adversarial approach was demanded for. This meant using alternate methods like counseling to secure speedy settlement of these disputes. In the 59th Law Commission Report, the committee stated the

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need for developing a separate forum for the matters related to 'family'. It stressed on the fact that the courts needed to develop a new, radical method different from the existing ordinary civil proceedings so that reasonable amount of effort can be put into settlement before the commencement of trial. This resulted in the amendment of Civil Procedure Code, which provided for a special procedure to be adopted in the matters related to family. Since there was no change in the way how the courts dealt with the family related matters, the need of the hour became to establish the family courts.

Family Courts Act was hence finally passed in 1984. Section 3, of the Act provides for a Family Court to be established in every area of a State where the population exceeds one million. This has to be made by the State Government after consultation with the High Court of the State. The Central Government only has the authority to provide for the qualification of the Judges of Family Courts and nothing else according to this act. The Act provides that persons who are appointed to the family courts should be committed to the need to protect and preserve the institution of marriage and to promote the settlement of disputes by conciliation and counseling. Preference would also be given for appointment of women as Family Court Judges. The Government has taken note to ensure appointment of more number of women judges to the Family Courts as stipulated in the Family Court Act, 1984.

According to Section 6 of the Act, the State Governments are also required to determine the number and categories of counselors, officers etc. 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, to deal with the issues pertaining to family matters, like marriage, divorce, child custody, guardianship, maintenance, etc.

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

It provides for alternate dispute resolution mechanisms through the Lok Adalat (mediation and conciliation) and undertakes Parivarik Adalat (dealing with family disputes) in collaboration with the National and State Commissions for Women. Due to these alternate mechanisms many of the disputes have been resolved out of court, thus providing women access to speedy justice and resolution of their problems. This project aims to focus at the present situation alternate dispute settlement in matrimonial matters in India. As we progress further in this project we will see how counseling is aimed to be a more humane approach to the idea of divorce. Even if we presume that the chance of saving the marriage is not high the couple gets to settle the matter in their own manner without having to go through the tedious process of court proceedings.

1 Derrett J. D. M.

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