

Family Court Study - EKTA

# *A Study of family courts TamilNadu*

**EKTA** *Resource Centre for Women*

# *Preface*

**I congratulate EKTA, a Women Resource Centre** for carrying out these very valuable and incisive analyses of Family Court in Tamilnadu. Though the statistical profile of litigation trends is confined only to one district, Madurai, the interviews of stake holders and functionaries of the Family Courts are conducted across the state hence, the recommendations are inclusive of the challenges faced by litigants in other districts and the same are reflective of their needs.

Every institution, however lofty and laudable its objectives, will yield results only if it is constantly monitored and is subjected to periodic social audit. It is in this context a study of family courts becomes relevant. The time is now ripe to examine the extent to which the ideological framework of gender justice has been integrated within the family court project. There is a need to assess the impact family courts have had in protecting the rights of women and children in the arena of family disputes. This innovative experiment in dispute resolution was of immense value for women who were burdened under the stress of lengthy, technical and costly legal battles for their crucial rights of survival and human dignity.

Taking stock of the situation at this juncture, when more than two decades have passed since the Family Courts Act came into existence, one notes with dismay that the goals for which the family court project was conceptualized have remained illusive and out of reach of most women litigants. The family courts have failed to usher in a new and dynamic approach to family litigation and to ensure gender justice. The aspiration of ushering in a less formal and technical and more women friendly environment has been shattered. The courts have remained formidable and technical and the difficulties of accessing justice, persist. In the absence of a built in monitoring mechanism either at the State level or at the Central level of judicial administration, the family courts which have been instituted are firmly set in their own specific style and pattern of functioning which varies from court to court and from State to State. Hence specific state wise and court wise studies of the functioning of Family Courts are extremely useful to bring in necessary changes within their structures and performance.

The Family Courts Act were meant to make the right of divorce a practical and feasible reality rather than a nightmare by ensuring that matrimonial proceedings were speedy, devoid of anti-women biases, and economically more fair and just to women. The aim had to be gender justice. The judiciary and court officials had to be carefully selected or alternatively oriented towards achieving

this end. But unfortunately, the Family Courts Act did not stipulate this. Instead, the Preamble lay down that the commitment of the Act is towards preserving the institution of marriage and family. So counselors and judges feel that they are bound by this mandate and at times, dispute the risk of violation of their human rights, force women for a reconciliation with their husbands. The study has very well focused on this aspect.

The study will be of great value to the state administration while making budget allocations and providing infrastructure. It will also be extremely valuable to the higher judiciary while evaluating the performance of Family Court judges and for carrying out sensitization programmes for them. The recommendations are focused and specific and address the root cause of the problems faced by stake holders of the Family courts in Tamilnadu. While some of them would require greater infrastructural support, some of the recommendations can easily be implemented with a little initiative from the judiciary and state executive.

While I congratulate EKTA for the study, I realize that the task has just begun. Their next step would be to ensure that some of these recommendations see the light of day. Of extreme value are the suggestion for a 'Help Desk' and standardized formats which will make justice more accessible to poor, illiterate and needy women.

I wish the group the very best and assure my co-operation and support to carry on this work even further and scale greater heights in their endeavour to ensure gender justice.

**Flavia Agnes, Advocate**  
Director, Legal Centre of Majlis  
Mumbai.



## *Message*

I am extremely happy to have been invited by EKTA, a Women's Resource Centre in Madurai, Tamil Nadu established in the year 1990 to send them a message to be published along with their recent report on the Study on Family Courts in Tamil Nadu. It is usually rare that a 'women's organization' invites a 'man' to provide such messages. But at the outset, I would like to place on record the sincerity with which EKTA has for the past many years been pursuing the business of securing gender justice as an engagement of men and women on equal terms. They have categorically through their program initiatives demonstrated this and I have consistently been, sometimes, under pressure to find male representatives to attend their programs on gender justice. It is for this understanding of partnership of men and women in furthering gender justice that I would like to first of all appreciate EKTA for.

I would secondly like to appreciate EKTA for this very bold and unique initiative of studying the functioning of Family Courts. This institution established under a 1984 legislation has been functioning in Tamil Nadu since 1998 and in Madurai since 1992. In spite of its existence in Tamil Nadu now for 20 years, it is astonishing that neither the Madras High Court or the Government of Tamil Nadu or the Tamilnadu State Women's Commission have undertaken a study of this sort. In the absence of such statutory institutions and the Government failing to undertake such a study, the role of monitoring the functioning of the Family Courts undertaken by this Women's Resources Centre needs extraordinary appreciation for their courage and in particular for their patience that studies of such a nature usually demand.

I am intrigued even at this stage of not having access to all the chapters of the report before me to already say the following. Had this study been a comparative one on the quantity and quality of justice emanating from an institution like the Family Courts compared to the existing Criminal and Civil Courts where similar such legal disputes are also handled, I am sure the results may have been much more shocking to us. While we appreciate EKTA for this very bold initiative in undertaking this first of its kind study, we also assure EKTA that civil society organizations throughout the State will stand by them in any major study of Family Courts in the State that will follow - a study which should be supported by the Government of Tamil Nadu as well as the Madras High Court if gender justice has to be made a reality to the struggling women from a variety of violence that they suffer and particularly domestic violence in society.

I do not think personally that any of these recommendations which have so meticulously been spelt out should even be considered for implementation - including the major demand that Family Courts be multiplied throughout the State of Tamil Nadu - without ensuring that all such Family Courts are located in places where women could boldly and courageously walk into. I personally,

in spite of being a Lawyer and in spite of upholding right of lawyers to appear before a variety of Tribunals and Fora to defend clients including Family Courts, I still would like to insist that the location of the Family Courts cannot and should not be inside the existing known 'court campuses'. Women who march to these institutions are doing so at very great personal risk – risk of security, risk of their reputation, risk sometimes to their future and you have to be only a woman, a woman in distress and who has been subjected to domestic violence to know what it is to stand outside on the verandahs of such Family Courts, stand there regularly week after weeks, months after months and as the study points out sometimes years after years. The urgent call that EKTA gives to gender justice in Tamil Nadu is a call that these Family Courts move away from the regular Courts. This Court should create for themselves an atmosphere of trust, belongingness and confidence building for the women who throng them along with their family members – parents, children etc.

The material contained in this report is material for Judges, Policy Makers, Lawyers, Women Activists, Legal Activists and a variety of other sections to read and ponder over. I am sure this report will lead to agitating several minds in Tamil Nadu. I also hope the State Women's Commission as well as the Government of Tamil Nadu and the Madras High Court will officially take cognizance of the findings of this report which are shocking and move towards a collaborative effort of putting gender justice into practice with organizations like EKTA as their partners - who have spent almost two decades of their full time to make gender justice of reality.

This call cannot be delayed; it is to be implemented with the greatest urgency that the situation demands. Otherwise the call of EKTA to bring fresh air into functioning of Family Courts in Tamil Nadu will be turned into that voice of Sister Meena Lalita Barwa speaking to the media in New Delhi after the Chief Justice of India refused a CBI investigation into her case of rape in Kandhamal. I hope these institutions may wake up before it is too late.

Thank you EKTA. I also have to thank my very good friend Ms.Flavia Agnes for guiding them through the Research; the Data Collectors and those who contributed to the analysis. You have done a wonderful and commendable job. This is a significant contribution to the promotion of gender justice in Tamil Nadu. All of us are proud of you and the results of your study.

We assure that we will be partners in your struggle to make this a reality.



**Henri Tiphagne**  
Executive Director  
People's Watch, Madurai.

## *Message*

The EKTA is a very dedicated and committed social organisation rendering yeoman services to the society with its focus on women's rights. I have participated in many of its activities as a general body member of EKTA. It is involved in various activities right from White Ribbon campaign to women's capacity building programme, Tsunami intervention, legal service to the women and research on issues affecting women which were some of the important activities of the EKTA women's resource centre.

This time EKTA has taken up the issue of functioning of Family courts in Tamilnadu, thereby it tries to evaluate the functioning of these judicial bodies and mindset of family court Judges, lawyers, counselors and staff members.

The Family Court Act of 1984 was the outcome of the continuous struggle of various women's movements and organizations. The Law Commission of India in its 59<sup>th</sup> report stressed that the court ought to take an approach radically different from that adopted in ordinary civil proceeding and that reasonable effort should be made towards amicable and speedy settlement before the commencement of the trial. The committee on status of women – recommended that all matter concerning family should be dealt with separately.

The study of Family Court in Tamilnadu not only speaks about the existing system of the court but also suggesting various recommendations to overcome obstacles and constraints in their functioning. The Government should seriously consider the recommendations of the study team.

The study clearly states "Women also become victims of the anti-women bias in society which gets reflected in the attitude of the Judges, court clerks and persons who often treat the women litigants with contempt".

The study team has made very qualitative recommendations to improve the conditions of the Family Courts in Tamilnadu and elsewhere in India. Some of the recommendations are:

Family Courts should be provided with all the infrastructural facilities and basic amenities to ensure litigant friendly congenial atmosphere for resolving matrimonial disputes. It should have sufficient space to accommodate the counseling centre for Family Court counselors (separate room for each counselor), child centre cum crèche, meeting room for couple to talk freely with each other,

waiting room for litigants, pre-litigation counseling centre canteen, toilets, drinking water etc. The facilities available in the family courts in Chennai have to be extended to other family courts.

A minimum of three years should be fixed as the tenure of the Family Court Judges. The newly recruited Family Court Judges should undergo gender and equity sensitization course, and training on conciliation before being appointed. Judges should make an effort for settlement by inviting both the parties, before initiating trial proceedings.

To ensure the litigant-friendly approach, petitions / applications / suits for seeking different relief and affidavit format should be standardized and printed in English and vernacular languages and be made available to the litigants. These forms should be in simpler terms and easy to use. Every Court should have a 'Help-Desk', having a panel of advocates from Legal Aid Centre, to assist the litigants to file petitions and counter petitions and empower them to defend their cases on their own.

Women litigants should be exempted from paying court fee. Interim maintenance may be ordered even before the case is being posted for conciliation. This will enable women to bear the direct and indirect costs of litigation

Following the model of the Family Courts, Chennai, the procedure for withdrawal of maintenance amount should be simplified, by opening an account in the name of the women litigants once it is deposited in courts.

The recruitment of the present counseling team should be restructured. The qualifications for the Family Court Counselors should be prescribed as post-graduate in social work / psychology / family therapy and diploma / degree in counseling. They should have a minimum of five years experience in counseling. In addition to the academic qualification and experience, their personal traits, attitude, ethical values should be assessed. They should be middle aged people. After selection, they should be capacitated in the area of gender, legal, medical and conciliation skills. EKTA needs to be commended and congratulated for this project which sheds light on an important arm of the judiciary. The recommendations of the team are worthy of serious consideration by the authorities.

**A.Mahaboob Batcha**  
Managing Trustee  
SOCO Trust, Madurai.

## *Foreword*

Thirty seven percent of ever married Indian women interviewed under the National Family Health Survey 2005-2006 reported experiencing spousal violence in their life. The comparative figure for Tamil Nadu was higher at forty two percent. Whether this higher proportion of ever married Tamil Nadu women reporting spousal violence is due to greater incidence of violence, or greater confidence to report is a moot question. However, nobody can deny the high incidence of spousal violence in Tamil Nadu. This timely study on Family Courts in Tamil Nadu by EKTA indicates that the number of women who are not willing to put up with physical and mental violence by spouses and even incompatibility is increasing. In Madurai Family Court the cases of application for divorce has increased by nearly five times between 1998 and 2008. Slightly over 50% of the litigants were women.

The study points out that Family Court Act were enacted in 1984 due to pressure from multiple stakeholders. The women's movement demanded that the State should constitute a separate court to deal with issues confronting women in the institution of family taking into account the unequal power relationship between men and the women. The Law Commission in its 59<sup>th</sup> Report in the year 1974 stressed that the courts ought to take an approach radically different from that adopted in ordinary civil proceedings and that reasonable efforts should be made towards amicable and speedy settlement before the commencement of the trial. The Code of Civil Procedure was amended in 1976, and it was recommended that adversary model adopted in Courts should be replaced by conciliatory approach. However, the adversary approach continued to be adopted in courts, and the Family Court Act was enacted in 1984 to bridge this gap. Issues such as declaring a marriage as null and void, judicial separation, dissolution of marriage, restitution of conjugal rights, declaration as to matrimonial status of any person, declaration as to ownership of the party concerned, and maintenance & custody of children come under its ambit. The Family Courts are headed by Judges and supported by Counsellors. While the Act does not encourage intervention by advocates, it does not ban it either.

This timely study by EKTA on Family Courts in Tamil Nadu suggests that this tension between the objective of dealing with unequal power relations between men and women through alternative procedures and the objective of conciliation (includes reconciliation and preserving the institution of marriage) continues to be reflected in the attitudes of some of the counsellors in the family courts studied, the judges met, and the advocates who are associated with Family Courts. A significant number of stakeholders (in particular advocates and judges) hold the view that it is women's education cum economic independence and their intolerance of in-laws which is



contributing to marital breakdown. Fortunately not all counsellors, Family Court judges and advocates hold this view. But, as a result of these multiple world views of stakeholders as well as factors such as non-appointment of required number of counsellors, their uneven attendance on all days, lack of privacy for counselling, stalling by advocates when their clients do not agree with the outcome of counselling and the present provision for entertaining multiple petitions on the same issue, only 33% of cases between 1989 and 2007 in Madurai family Court have been disposed within one year and 37% of cases have been disposed of in two years or more. Reconciliation and mutual consent divorce decree awarded was much less than divorce claimed by petitioners showing that amicable settlement was not being reached. Maintenance awarded to women was difficult to enforce, with few Courts adhering to salary attachment even where possible or having procedures and tie ups with police for enforcement. Further, 11% of orders issued by Family Court were on restitution of conjugal act which if filed by a man may be a violation of women's right to be free of marital rape under the Prevention of Domestic Violence Act, 2005. However, traditional views have also acted in women's favor with custody of children being granted to 'mothers' in 70% of divorce cases in Madurai Family Court during the same period.

This rich quantitative and qualitative study of Family Courts in Tamil Nadu by the EKTA team includes recommendations to address these different constraints which act against the interest of women getting justice speedily where their rights have been violated within the family, and which hinder their access to counselling services to reconcile when there is scope for change towards equal relationships within the family. The recommendations deal with changing traditional mind sets of stakeholders where necessary, expansion of Family Courts in Tamil Nadu, modifying administrative procedures where essential, staffing and qualification/expertise of staff of Family Courts, infrastructure and location of Family Courts, the role of advocates in Family Courts, and lastly amendments to the Act itself that are required. If implemented, there will be greater gender justice in Tamil Nadu and lesser trauma for men and women going through difficulties in their marriage and their children. Recommendations suggested in this report would also be useful to other states in India as well.

I would like to congratulate the Director of EKTA, Board members involved in the study, research team members (staff and consultants), stakeholders who gave their valuable time, donors who funded this study and Flavia Agnes, Majlis (who guided the study initially) for making this study possible. The challenge lies in ensuring that the recommendations are taken forward, and we in EKTA hope to rise to this challenge.

**Ranjani K Murthy**

President, EKTA.

# *Acknowledgement*

My sincere thanks to Ms.Flavia Agnes of Majlis, Mumbai for her guidance to the process of this study. My special thanks to the Honorable Family Court judges of Madurai and Coimbatore for helping us to understand the functioning of the Family Courts.

Sincere thanks to Ms.Ajitha and Ms.Sheila Jayaprakash, Advocates, Chennai High court for their valuable comments to deepen our insight. Thanks to all Advocates, Counselors and NGOs Leaders who participated in various consultations and Focus Group Discussions and helped us to understand the dynamics in the Family Courts.

Ms.Ranjani K Murthy, Mr.Mahaboob Batcha and Mr.Henry Tiphagne for reviewing the report, giving useful suggestions and writing foreword and messages.

My sincere appreciation to the Research team - Ms.Gandhimathi, Ms.Ramanie, Ms.Shankari, Ms.Uma and Ms.Malar for their involvement at different stages of the study. Special thanks and appreciation to Ms.Phavalam for coordinating the field study and data analysis, Ms.Selvi, Ms.Jeya and Mr.Rajadurai for Design and Layout.

I express my gratitude to Christian World solidarity, NZ for financial support.

Madurai  
05.11.2008

**Bimla Chandrasekar**  
Director, EKTA

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# CHAPTER I

## INTRODUCTION

### *1.1 Background*

Despite initiatives at various levels to enhance women's position in the Indian society, the multi faceted issue of violence against women remains a real challenge. With the progress of education and employment, the scenario has not changed very much. It is hard to understand why victims of family violence have to tolerate the intolerable for as long as they do. The underpinnings behind such a proposition are that many women due to strong socialization factors continue to accept a secondary status within marriage. They feel the onus of making a marriage work is on them. (Kalpana Sharma 2004).

It has been more than a decade since domestic violence as an issue and a concept has engaged the attention of women's movements and activist groups, and today, increasingly, women's organizations and NGOs. While in the 1980s violence against women - including rape, molestation, witch hunting, - was the main focus of the women's movements, the late 80s and early 90s the family too was seen as a site of violence and no longer a sacrosanct and 'safe' domain - immune to conditions that violate a woman's rights to life, liberty and freedom. In the 1990's with women's movements actively taking up the cause across the country the debates which centered mostly around 'dowry deaths' - - gradually the concept expanded, to take cognizance of all physical and mental abuse/violence perpetrated on women within the marital institution - whether or not it is legally 'valid.'

The Family Court Act of 1984 was conceived as part of the legal reform to improve the position of women. The Act also brought civil and criminal jurisdictions under one roof. This was seen positive measure to centralize all litigations concerning women.

Finally, the Family Courts Act, 1984, was enacted 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 by adopting an approach radically different from that adopted in ordinary civil proceedings.

Thus the Family Courts Act encouraged and empowered various state governments to set up Family Courts in all cities with a population of over one million people. The first State to set up a Family Court was Rajasthan on 1.1.1986. The Ministry of Law, Department of Justice is the nodal Department concerned with the administration of the Act.

In Tamilnadu the first Family Court was started in Chennai in 1988, the second in 1992. The Family Courts (Tamilnadu) Rules was formulated in 1987. The Family Court was instituted in Madurai in 1992, in Coimbatore in 1995 and in Salem in 1996. At present there are six Family Courts in the State, three in Chennai and one each in Madurai, Coimbatore and Salem. People living in other districts have to take recourse to the civil and criminal courts within their jurisdiction to raise family disputes.

EKTA being a Women Resource Centre has been providing family counseling services and legal support for the victims of family disputes, as a part of its overall strategy. In this process, EKTA has also availed the legal aid services from Free Legal Aid Centers and due to this the female victims of violence were guided to redress their problem through legal litigation as well as through Family Court in Madurai. Thus, the organization has exposure to the functioning of the Family Courts and the difficulties faced by the women clients in getting legal relief through the Courts. It was observed that while both women and men are affected in any given situation, women who have less or no exposure to and experience in dealing with public institutions like the Courts suffer immensely. The women also become victims of the anti-women bias in society which gets reflected in the attitude of the judges, court clerks or peons who often treat the women litigants with contempt.

Therefore, EKTA initiated a field study in 2003 to have an in-depth understanding about the functioning of the Family Courts. At the same time, there were initiatives at the nation - level to review the functioning of the Family Courts. EKTA was also a part of that discussion. In 2005, association with Ms.Flavia Agnes of Majlis, Mumbai prompted EKTA to undertake a detailed study in Tamilnadu. Based on the above exposure and experiences "A Study of Family Courts – Tamilnadu" was undertaken with the following objectives:

### **1.2 Objectives of the Study:**

- To study the nature of litigations filed under the Family Courts Act and the outcome of the litigations
- To document the conciliation proceedings attempted to arrive at an amicable settlement
- To study the role of Counselors, Judges and Advocates in conciliation proceedings
- To examine the process and outcome of litigation proceedings
- To come out with recommendations and suggestions for the effective functioning of the Family Courts and the effective enforcement of the Family Courts Act and Rules in Tamilnadu

### **1.3 Methodology:**

**The following methodology was adopted to fulfill the objectives of the study:**

- Visiting the Family Courts in Chennai, Madurai, Salem and Coimbatore to get first hand information about the infrastructure facilities available in the Courts and to observe the conciliation and litigation proceedings.
- Organizing district and state-level consultations and holding focused group discussions with the Family Court Judges, Family Court Counsellors, Advocates and identified NGOs
- Collecting information and data relating to the functioning of the Family Courts
- Collecting secondary data for 10 years from the Family Courts under Right to Information Act.
- Analyzing and consolidating data and information gathered
- Reviewing the Orders pronounced by the Family Courts
- Evaluating the Family Court Rules of different States in India and
- Finalizing the report with suggestions and recommendations for necessary changes in the implementation of the Family Courts Act

### **1.4 Limitations of the Study:**

- Using Right to Information Act, data was sought from all the Family Courts in TamilNadu but received data only from Family Court, Madurai.
- While the interviews of stake holders and functionaries of the Family Courts were conducted across the state, the statistical profile of litigation trends is confined only to Madurai. Hence, unable to draw conclusions based on empherical data.
- Attempts were made to contact primary petitioners through home visits to elucidate their opinion about the litigation proceedings, but as they showed no interest to share any information, their opinion could not be obtained.

### **1.5 Structure of the report:**

**The report has been divided into seven chapters and annexure**

- The first chapter gives an introduction to the overall scenario with regard to family court.
- The second chapter focuses on the genesis, structure and powers of the family courts.
- The third chapter refers to the data analysis.
- The fourth chapter explains the counseling process and challenges.
- The fifth chapter focuses the advocates view on family courts.
- The sixth chapter is the interview with the Family Court Judge
- The seventh chapter provides the suggestions and recommendations.
- In Annexure some relevant materials related to the subject of the study is made available.



## Chapter II

### ***Genesis, structure and powers of the Family Courts***

The Family Courts Act was part of the trend of legal reforms concerning women. The immediate reason for setting up of family courts was the mounting pressures from several associations of women, welfare organizations and individuals for establishment of special courts with a view to providing a forum for speedy settlement of family-related disputes. Family Courts have been in existence for several decades in countries like United Kingdom, Japan, Australia etc but the movement to establish Family Courts in India was initiated around 1958 by Smt Durgabhai Deshmukh, the noted Social Worker from Maharashtra.

The Committee on Status of Women recommended in 1975 that all matters concerning 'family' should be dealt with separately. The emphasis should be laid on conciliation and achieving socially desirable results with the elimination of rigid rules of procedure and evidences. The Law Commission in its 59<sup>th</sup> Report in the year 1974 had also stressed that, the courts ought to take an approach radically different from that adopted in ordinary civil proceedings and that reasonable efforts should be made towards 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, to establish Family Courts for speedy settlement of family disputes.

**The Family Courts Bills was framed in the year 1984 that seeks to achieve the following objectives: Received assent of the President of India on the 14<sup>th</sup> Sep 1984 and was published in the gazette of India dated the 14<sup>th</sup> Sep,1984.**

- 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. Proceedings under Chapter IX of the Code of Criminal Procedure ( relating to order for maintenance of wife, children or parents)
  - vi. Make it obligatory on the part of the Family Court to endeavour, in the first instance to effect reconciliation or a settlement between the parties to a family disputes. During this stage, the proceedings will be informal and the rigid rules of procedure need not apply;
- e) Provide for the association of social welfare agencies, counselors, etc., during conciliation stage and also to secure the services of medical and welfare experts;
- f) 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;
- g) Simplify the rules of evidence and procedures so as to enable a Family Court to deal effectually with a dispute;
- h) Provide for only one right of appeal which shall lie to the High Court.

Thus the Family Court Act encouraged and empowered various state governments to set up Family Courts in all cities with a population of over one million people. The Ministry of Law, Department of Justice is the nodal Department concerned with the administration of the Act.

In Tamilnadu the first Family Court was started in Chennai in 1988 and the Family Courts (Tamilnadu) Rules was made in 1987. At present there are six Family Courts in the State, three in Chennai and one each in Madurai, Coimbatore and Salem. People living in other areas have to take recourse to the civil and criminal courts within their jurisdiction to raise family disputes.

**The Family Courts are 'Civil Courts' exclusively dealing with the following matters:**

- Declaring a marriage as null and void,
- Restitution of conjugal rights,
- Judicial separation and dissolution of marriage
- Declaration as to matrimonial status of any person,
- Declaration as to the ownership of property of the party concerned,
- Interim order or injunction arising out of marital relationship,
- Declaration of legitimacy of any person or guardianship of a person or the custody or access to any minor,
- Suits or proceedings for maintenance.

***Procedure:***

- (1) The primary duty of the Family Court is to make efforts for settlement. (1) In every suit or proceeding, endeavour shall be made by 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.

***General Procedure:***

- (1) Subject to the other provisions of this Act and 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 purpose of the said provisions of the Code, a 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 there under, shall apply to the proceedings under Chapter IX of the 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.

***Salient Features of the Act:***

Sec 2 of the Act, defines the terms such as “Judge”, “Notification”, “Prescribed” and “Family Court”. Sec 3, which provides for establishment of Family Courts, required the State Government concerned to establish Family Courts not merely for areas in its State covered by cities and towns, but also for all other areas of the State in need of the establishment of such Courts. Sec 4, which provides for selection of persons for appointment as Judges of Family Courts, requires that 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 the children and qualified by reason of this exercise to promote the settlement of disputes by conciliation and counseling, are selected and preference shall be given to women. Sec 5 contains the provisions which enable the Family Court to function with the association of institutions or organizations engaged in social welfare or the persons working in the field of social welfare, with a view to effectively exercise its jurisdiction. Sec 6 contains the provision which enables the Family Court to obtain assistance in its functioning from counsellors, officers and employees. Sec 7 enumerates the categories of matters respecting which Family Court shall have and exercise jurisdiction. Sec 8 talks about the exclusion of jurisdiction of other courts in respect of matters categorised under Sec 7, and declare that if any such categorized matter was pending before the other court, the same shall stand transferred to Family Court on its establishment in the concerned area. Sec 9 imposes a duty on the Family Court to make all efforts in bringing about an amicable settlement of disputes between the parties before it.

Sec 10 talks about the procedure to be adopted in the Family Court, the provisions of the Code of Civil Procedure shall apply for civil matters and the Code of Criminal Procedure shall apply for maintenance proceedings initiated under Sec 125 of CRPC. The Family Court is deemed to be 'Civil Court' and is conferred with the powers of a civil court. As per Sec 10(3), the Family Court is also conferred with the power to lay 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 one party and denied by the other. Thus, the Family Court frees it from the shackles of rigid rules of procedure by which ordinary courts are bound. Sec 11 says that the proceedings may be held in camera. Sec 12 permits the Family Court to secure the services of medical and welfare experts, preferably a woman where available, in discharging its functions. Sec 13 states that no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner but allows the Family Court to seek the assistance of a legal expert as *amicus curiae*.

Sec 14 empowers the Family Court to receive as evidence any report, statement, document, information or matter for effectively deciding the disputes before it and frees it from the shackles of rigorous Rules of evidence as to relevancy or admissibility of evidence under the Indian Evidence Act, 1872, by which ordinary courts are bound. Sec 15 relieves the Family Court of the burden of recording evidence of witnesses at length by permitting it to make a memorandum of the substance of such evidence. Sec 16 permits the Family Court to receive evidence of normal character given by affidavit.

Sec 18 not merely declares that the judgments and decrees of the Family Court to have the same force and effect as that of the Civil Court, but also empowers the Family Court to execute its judgments and decrees or orders as Civil or Magistrate Courts execute them. . Sec 19 while provides for filing of an appeal against every judgment or order of the Family Court before the High Court and such appeal being heard by a Bench consisting of two or more Judges, expressly prohibits the filing of an appeal or revision against any interlocutory order made by the Family Court. Sec 20 takes care to declare the over-riding effect of the Act on matters covered by its provisions, notwithstanding anything to the contrary in any other law in force or in any instruments having effect by virtue of any other law. Sec 21 states the power of the High Court to make rules on matters such as working hours of the Family Court, places of holding the sittings and the efforts and procedure that may be followed by a Family Court to arrive at a settlement. Sec 22 states the

power of Central Government to make rules regarding the qualification and appointment of Family Court Judges. Sec 23 mentions the powers of the State Government to make rules on matters such as salary or honorarium and other allowances and the other terms and conditions of services of Judges, Counsellors and other employees, fees and expenses of medical and other experts, fees and expenses to legal practitioners appointed as amicus curiae.

**The Family Courts Act also covers areas of the following Acts:**

- i. Hindu Marriage Act, 1955
- ii. Special Marriage Act, 1954
- iii. Hindu Adoption and Maintenance Act, 1956
- iv. Parsi Marriage and Divorce Act, 1936
- v. Indian Divorce Act, 1869
- vi. Christian Marriage Act, 1972
- vii. Dissolution of Muslim Marriage Act, 1939
- viii. Hindu Minority and Guardianship Act, 1956
- ix. Criminal Procedure Code, 1973, Sec 125, 126, 127 and 128
- x. Guardians and Wards Act, 1890



## CHAPTER III

### *Data Analysis*

With an intention to study the nature of litigation filed before the family court, details of the litigations and litigants and the outcome of the litigations, the data for the years 2001 - 2005 years were enumerated from the registers maintained by the family court, Madurai and the data for 10 years from 1998 to 2007 was also collected under the Right to Information Act.

**Table 1: Gender wise break up of filing petitions**

Gender of Petitioner	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Total
Women petitioner	360	252	355	390	397	575	574	732	810	825	5270
Men petitioner	379	280	330	351	410	550	600	720	769	767	5156
<b>Total</b>	<b>739</b>	<b>532</b>	<b>685</b>	<b>741</b>	<b>807</b>	<b>1125</b>	<b>1174</b>	<b>1452</b>	<b>1579</b>	<b>1592</b>	<b>10426</b>

50.5 per cent of the petitioners were women and 49.5 per cent were men.

**Table 2: Comparative Data of the Matrimonial cases and maintenance cases filed by all litigants**

Nature of / application / suits	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Total
<b>Matrimonial related</b>	600 81%	445 84%	601 88%	642 87%	678 84%	989 88%	980 83%	1255 86%	1317 83%	1366 86%	8873 85%
<b>Maintenance</b>	139 19%	87 16%	84 12%	99 13%	129 16%	136 12%	194 17%	197 14%	262 17%	226 14%	1553 15%
<b>Total</b>	<b>739</b>	<b>532</b>	<b>685</b>	<b>741</b>	<b>807</b>	<b>1125</b>	<b>1174</b>	<b>1452</b>	<b>1579</b>	<b>1592</b>	<b>10426</b>

Statistics show that the number of petitions and suits filed before Family Court has increased every year consistently and almost more than doubled in 10 years. It was 739 in 1998 and increased to 1592 in 2007.

It is clear from the above table that, out of the total petitions and suits being filed each year, the litigation for maintenance that includes litigation under 125 Cr.P.C., petition for recovery of awarded maintenance, for enhancement and for cancellation constitutes less than 15 per cent. Thus, the data indicates that the bulk of the family court litigation revolves around matrimonial disputes.

The general understanding is that a large segment of maintenance litigants are almost women. This data has to be corroborated with the data of women litigants, to understand the contribution of maintenance cases amongst the cases filed by women. The following table details this analysis.

**Table 3 : Comparative Data of the Matrimonial cases and maintenance cases filed by women in original application**

Women litigants	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Total
<b>Maintenance</b>	70 19%	45 18%	27 8%	43 11%	61 15%	68 12%	111 19%	118 16%	136 17%	104 13%	783 14%
<b>Matrimonial</b>	290 81%	207 82%	328 92%	347 89%	336 85%	507 88%	463 81%	614 84%	674 83%	721 87%	4487 86%
<b>Total</b>	<b>360</b>	<b>252</b>	<b>355</b>	<b>390</b>	<b>397</b>	<b>575</b>	<b>574</b>	<b>732</b>	<b>810</b>	<b>825</b>	<b>5270</b>

The data in the above table shows the ratio of main petitions filed by women litigants claiming maintenance in the first instance. The table reveals that the average ratio of maintenance cases filed by women litigants is 15 per cent of cases filed in the Family Court in these 10 years. Thus, the major chunks of the family court litigation filed by the litigants are matrimonial disputes of civil nature. Though the women litigants and the wards of the women litigants have every right to claim interim alimony and maintenance from their marital partners, even when matrimonial proceedings are in progress in the family court, the data shows that only 15 per cent are filing petitions under 125 CrPC in the Family Court.

**When comparing the rate of increase in number of maintenance cases and matrimonial cases in these 10 years, it is clear from the data for the year 1998 and 2007 that the growth rate of maintenance case is 49 per cent, whereas it is more than double (218%) in matrimonial cases, This proves the ever increasing incidents related to domestic violence and martial discord.**

Though 'The Protection of Women from Domestic Violence Act 2005' opens up new portal of hope for women, and the women could take recourse on this Act for obtaining protection, residence and monetary relief order, custody and compensation order for their matrimonial issues in shorter time, it has little impact on the increasing number of matrimonial and maintenance cases in Family Court and particularly the number of cases filed by women. It could be inferred that due to lack of

awareness about the PWDV Act and as the procedure under PWDVA Act is of criminal procedure in nature, women still resort to Family Court in large number.

**Table 4: Backlog of Cases**

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Total
<b>Backlog of petitions / suits as on 1<sup>st</sup> January</b>	664	799	884	738	853	613	546	712	919	1441	8169
<b>Petitions / suits instituted during the year (new cases)</b>	739	532	685	741	807	1125	1174	1452	<b>1579</b>	1592	10426
<b>Total No. of petitions / suits tried during this period</b>	1403	1331	1569	1479	1660	1738	1720	2164	2498	3033	18595
<b>Petitions / suits disposed during this period</b>	604	447	831	626	1047	1192	1008	1254	1057	1573	9639
<b>Backlog as on 31<sup>st</sup> December</b>	799	884	738	853	613	546	712	910	1441	1460	8956
<b>% of Backlog to Total cases instituted , tried and disposed</b>	57%	66%	47%	58%	37%	32%	41%	42%	58%	48%	48%

From the above table it is understood that the number of new cases / petitions instituted each year increases and the number of cases / petitions disposed every year also increases. The Family Court which had disposed 604 cases during the period 1998, disposed 1192 cases in the year 2003. Similarly, in the year 2007, there was a sharp increase in disposal of cases. This shows that the proceedings were speeded up for disposal during these periods. Yet, there is a gap between the disposal of cases and new petitions being filed in the years 2005, 2006 and 2007. To be detailed, only 1254, 1057 and 1573 petitions / suits were disposed during the period 2005, 2006



and 2007 respectively whereas 1452, 1588 and 1592 petitions were instituted (new cases) in the said periods. Hence the backlog of cases also increases every year, a symptom for delay in delivering justice.

The backlog of cases was 799 by the end of the year 1998 which increased to 2024 by the end of the year 2007, almost 183 per cent increase. The percentage of backlog of cases to total cases instituted is 48 per cent in the past 10 years. Analysis of data for the year 1999 and 2001, in the context of the reason for the comparatively less number of disposal was due to the failure of appointing a regular judicial member in the Family Court, during that period. A procedure which does not provide disposal within a reasonable period cannot be said to be just. Hence, to deal the ever increasing cases and the number of backlog cases, there is a need to appoint an additional judicial member in the Family Court, for the early and effective disposal of cases. The Family Courts Act also permits the appointment of more than one presiding officers.

**Table 5: Classification of litigants' petitions based on religion**

Religion	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>Litigants are Hindu</b>	510	412	509	554	580	882	890	1117	1250	1289
<b>Christian</b>	143	65	93	97	134	153	159	183	203	175
<b>Muslim</b>	85	54	79	86	85	89	120	145	121	125
<b>Others</b>	0	0	0	0	0	0	0	0	0	0
<b>Spouses belonging to different religion</b>	1	1	4	4	8	1	5	7	5	3

It is seen that a major chunk of the litigants belong to Hindu religion. The total number of litigants belonging to Hindu religion in all these 10 years is 7993, constituting 78 per cent. This is followed by Muslims numbering 1405, covering 14 per cent of the total litigants and Christians constituted 8 per cent having 904 litigants. As per the data available, no litigant belongs to religion other than the mentioned three religions. The data also shows that a minimal of 39 litigants have their spouses from different religions. This data has to be corroborated with the data of the population in Madurai District. The district has 92 per cent Hindus, followed by 5 per cent Muslims and Christians 3 per cent. While doing so, the actual population and litigant population are not proportionate in the context of religion. The factors underlying this variation need to be studied.

Table 6 : Categories of original petitions filed during different periods

Nature of Petitions	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Total
HMOP	173	185	173	157	199	386	436	524	570	542	3345
GWOP	24	12	19	27	10	32	52	17	22	27	242
IDOP	17	11	11	11	32	39	48	53	43	60	325
POP	6	9	6	3	5	4	2	6	6	3	50
SMOP	1	1	4	4	8	1	5	7	5	3	39
OS	23	18	27	15	24	41	31	45	19	23	266
MC	70	45	27	43	61	68	111	118	136	104	783
<b>Total No. of cases</b>	314	281	267	260	339	571	685	770	801	762	5050
<b>Total No. of petitions / applications / suits filed</b>	739	532	685	741	807	1125	1174	1452	1579	1592	10426
<b>Interlocutory petitions</b>	425	251	418	481	468	554	489	682	778	830	5376

**HMOP** : Hindu Marriage Original Petition  
**GWOP** : Guardianship and Wards Original Petition  
**IDOP** : Indian Divorce Original Petition  
**POP** : Pauper Original Petition  
**SMOP** : Special Marriage Original Petition  
**OS** : Original Suit  
**MC** : Maintenance Case

Original Suits include litigation related to property claims in family disputes, to get legal sanctity for divorce when the marriage was dissolved before the traditional panchayat, and to get legal sanctity for all out of court settlements arrived between the parties on matters concerning to family etc. The gap between the total number of main petitions filed and the total number of petitions/ applications / suits filed represent the number of **interlocutory** applications filed by the litigants in their main petitions. (**Interlocutory** refer to an order, sentence, decree, or judgment, given in an intermediate stage between the commencement and termination of a cause of action, used to provide a temporary or provisional decision on an issue.)

A striking feature that emerges from the data is that the number of petitions filed as HMOP and petitions filed as IDOP have increased more than three fold in the 10 years.

**Table 7: Categories of Maintenance Cases**

Details of maintenance cases	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Total
<b>Maintenance under Sec 125 CrPC</b>	70	45	27	43	61	68	111	118	136	104	783
<b>Execution petition</b>	48	24	38	32	49	54	63	58	98	102	566
<b>Enhancement</b>	12	10	14	16	13	11	11	12	16	12	127
<b>Cancellation</b>	9	8	5	8	6	3	9	9	12	8	77
<b>Total</b>	<b>139</b>	<b>87</b>	<b>84</b>	<b>99</b>	<b>129</b>	<b>136</b>	<b>194</b>	<b>197</b>	<b>262</b>	<b>226</b>	<b>1553</b>

Maintenance under Sec 125 CrPC are the application made to the family court for maintenance under the criminal law. The data includes a very small percentage of parents who sought maintenance from their wards. The filing of Execution Petitions indicates the women who had approached the court again because the husbands did not comply with the order of maintenance. In the 10 year period, only 783 applications had been filed for maintenance in the first instance. Of them, 566 had approached again to recover the maintenance awarded by the court. i.e. 72 per cent of women, had filed applications again. For these women, it is the second round of litigation.

**The data clearly shows that getting maintenance from their husbands, to claim their legal rights is a great hardship for women.**

The Act empowers the Family court to execute its judgments and decrees or orders as Civil or magistrate Courts execute them or execute the order under the code of criminal procedure, if it is of maintenance. Yet, the procedure and formalities foster trouble and delay in getting maintenance relief for the litigants.

The data in this table has to be corroborated with the data related to the maintenance awarded to get a clear picture about the hardships experienced by the women and the repeated petitions being submitted to recover the maintenance amount.

The table in the next page presents clearly about this.

**Table 8: Outcome of litigation in Maintenance Cases**

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Total
<b>Filed application under Sec 125 CrPC</b>	70	45	27	43	61	68	111	118	136	104	783
<b>Maintenance granted</b>	28	21	38	31	73	58	53	66	49	52	469
<b>Salary attached</b>	3	4	6	8	6	10	8	12	10	11	78
<b>Sentenced; Arrest Warrant issued</b>	10	6	16	12	24	12	10	9	8	12	119

The above table indicates the number of maintenance applications filed in the first instance and the maintenance awarded by the court. In a 10 year period, 783 women have applied for maintenance. However, maintenance was ordered only in 469 applications. 60 per cent of the applications were entertained and order passed. However, the previous table shows that 566 applications were received for recovery of maintenance. The conclusion is that a single applicant is repeatedly filing Execution Petitions. The inference is that the women petitioners are not ensured of regular maintenance and to maintain themselves they are repeatedly filing Execution Petitions. Yet, warrants were issued only against 119 respondents (21 per cent) for non-payment of maintenance and for not complying with maintenance orders and few were sentenced.

A woman petitioner and a mother of a child, who got married two years back, filed a suit under 125 Cr.P.C. for the maintenance for her child and herself. The respondent was a government employee. The order was passed after 3 years, awarding a maintenance amount of Rs.500/- for the petitioner and Rs.300/- for the child. The salary was not attached, though the respondent was an employee in the organized sector. No interim maintenance was awarded.



One way of dealing with this problem is to order interim maintenance, and unless interim maintenance is deposited in court, the very suit should not be entertained. If the husband is employed, a salary attachment order can be made at the time of interim maintenance order itself. Generally, the salary attachment order is being ordered only at the time of disposal of the execution petition, that too when the respondents failed to comply with the court order.

The petitioner was the wife. She filed a suit for dissolution of marriage under Sec 13(1)(ia) of Hindu Marriage Act. The respondent was a government employee. She simultaneously filed a suit for maintenance under 125 CrPC., as she has no independent income to maintain herself. Subsequently, her husband filed a petition for restitution of conjugal rights. As she could not prove the cruelty, her petition was dismissed after three years and ordered for restitution of conjugal rights. No order was passed on her maintenance petition, till the case proceedings on her primary petition came to an end.

Sec 24 of Hindu Marriage Act and Sec 36 of Special Marriage Act and Sec 36 of The Divorce Act and Sec 125 CrPC speaks of **maintenance pendent elite** ( maintenance during the pending of proceedings) and expenses of proceedings. These sections should be automatically invoked in all the eligible cases.

**Table 9: Outcome of litigation in maintenance recovery case**

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Total
<b>Recovery petitions filed</b>	48	24	38	32	49	54	63	58	98	102	566
<b>Recovery proceedings – claims satisfied</b>	17	15	21	16	10	42	40	48	41	49	299

The above table shows a very distressing data. Execution Petitions are being filed by women and it is a second round of litigation for them. The court was able to execute the maintenance order it had already passed and could successfully make the husbands to deposit the arrears of maintenance amount only in 53 per cent of the petitions. The data also projects the hardships faced by the women in claiming the maintenance.

**Table 10 : Details of relief maintenance**

Details of relief	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Total
<b>Lump sum</b>	12	10	16	9	10	2	3	4	4	5	75
<b>Monthly</b>	47	28	35	32	40	51	48	55	42	47	425
<b>Salary attached</b>	3	4	6	8	6	10	8	12	10	11	78
<b>Maintenance granted</b>	28	21	38	31	73	58	53	66	49	52	469

The data under 'maintenance granted' include both the interim maintenance and permanent alimony. The data under 'lump sum' includes one time settlement of maintenance and arrear amount recovered as lump sum. From the above table, we can infer that a large segment of wives and their ward get their maintenance on a monthly basis. Even if the litigation proceedings get over, they have to come to the court every month to withdraw the maintenance amount deposited in the court. Further, there is no guarantee for the amount being deposited, as only in 18 per cent of cases, the salary is being attached to recover the maintenance amount at source of income. Only 18 per cent of those awarded maintenance amount are assured of economic security. If the amount is not being deposited in time, they have to come repeatedly to the court. If not being deposited for months together, they have to file petitions for recovering the arrears amount.

The petitioner was a man, who filed a petition, praying for the dissolution of marriage on the ground of cruelty, under Sec 13(1)(ia). He and his wife were living separately for more than two years. He sent a legal notice through his counsel, before filing a suit in the Family Court. He quoted various incidents that amounted to mental cruelty to him. The respondent in her counter statement averred that he was an alcoholic and was overpowered by his mother, brother and his wife. She also stated that he used to beat her. Both came to a conclusion that reunion was not possible. The order of divorce was passed after two years. A lump sum maintenance of Rs.7500/- was awarded and the petitioner was ordered to return the vessels and utensils of the respondent.

**Table 11: Categories of divorce cases**

Case categories	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Total
<b>Divorce claimed by petitioners</b>	85 68%	102 70%	110 67%	112 66%	110 49%	205 68%	312 82%	380 84%	425 84%	410 84%	<b>2251</b> 79%
<b>Mutual consent Divorce</b>	38 32%	42 30%	55 33%	58 34%	56 51%	65 32%	68 18%	75 16%	78 16%	76 16%	<b>611</b> 21%
<b>Total</b>	<b>123</b>	<b>144</b>	<b>165</b>	<b>170</b>	<b>166</b>	<b>270</b>	<b>380</b>	<b>455</b>	<b>503</b>	<b>486</b>	<b>2862</b>

The above table indicates the consistent increase of petitions for dissolution of marriage and the rise was sharp from 2003 onwards. The number became almost five fold in 2007 when compared to the year 1998. In the first six years period from 1998 to 2003, the ratio of divorce petitions filed under mutual consent to that of divorce petition filed by one spouse was comparatively higher. Where as the ratio decreases since 2004. In these 10 years period, the petition filed under mutual consent constitutes 21 per cent.

**Table 12: Outcome of litigation in mutual consent divorce (MCD) petitions**

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Total
<b>Passing Decree of Divorce on MCD petition</b>	37	40	53	55	55	62	66	73	75	72	588
<b>MCD petitions received</b>	38	42	55	58	56	65	68	75	78	76	611

The data indicates that decrees of divorce were granted in 96 per cent of the cases. In the case of 'mutual consent divorce', the petitions are supposed to be kept in abeyance for a statutory period of 6 months and the order should be passed within a period of 18 months. However, the statutory period of six months could be waived if the court concluded that there was no useful purpose served by keeping the petitions for six month. Thus, almost all the mutual consent divorce petitions would have been heard and disposed within this stipulated time.



**Table 13: Outcome of litigation on petition seeking divorce by one marriage partner**

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>Divorce order passed</b>	99	101	124	132	190	173	180	225	189	NA
<b>Divorce claimed by one marriage partner</b>	85	102	110	112	110	205	312	380	425	410

NA: not available

The data of the above table is being analysed in two time periods: a) from 1998 to 2002 b) from 2002 to 2006. A striking feature which emerges from the data in the above table is that the number of divorce orders passed during the period from 1998 to 2002 exceeded the number of divorce petitions filed before the court, in the same period. This could be due to the speedy disposal of pending cases of the previous years seeking dissolution of marriage.

But the situation is striking differently during the period from 2003 to 2007. The petitions seeking dissolution of marriage is on the increase and the order granting the plea of the petitioner is comparatively less. The inference is that the divorce petitions are not being disposed speedily or serious efforts are being taken to protect the institution of marriage. Or there could have been no judge for long periods of time

The husband, a petitioner filed a suit for restitution of conjugal rights and after a year, the wife filed a suit for dissolution of marriage under Sec 13(1)(ia) and (ib). Their only male child was under the custody of the woman. She is also working and has sufficient means of livelihood. There is no dispute regarding the custody of the child and maintenance. In their petitions, they blamed each other and stated that they experienced mental cruelty by each other's behaviours. Decree of divorce was pronounced after four years of filing the initial petition.



**Table 14: Outcome of all litigation**

Details of outcome	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Total
Dismissal of petitions	38	36	40	32	64	86	78	90	76	98	638
Reconciled, settled, withdrawn	22	28	32	30	42	45	42	48	37	60	386
Maintenance granted	28	21	38	31	73	58	53	66	49	52	469
Recovery proceedings – Claims satisfied	17	15	21	16	10	42	40	48	41	49	299
Salary attached	3	4	6	8	6	10	8	12	10	11	78
Sentenced; Arrest Warrant issued	10	6	16	12	24	12	10	9	8	12	119
Exparte decree	52	48	55	44	49	52	54	55	51	53	513
Annulment	0	0	0	0	0	0	0	0	0	0	0
Divorce	99	101	124	132	190	173	180	225	189	194	1607
Mutual Consent Divorce	37	40	53	55	55	62	66	73	75	72	588
Judicial Separation	2	23	27	15	39	18	20	25	18	16	203
Restitution of conjugal rights	31	33	50	25	81	68	75	87	88	79	617
Custody of children with wife	7	4	8	6	12	22	18	12	10	11	110
Custody of children with husband	8	2	5	2	11	5	7	3	2	3	48
Custody of children with both	0	0	0	0	0	0	0	0	0	0	0

Out of the 5675 orders / decree passed, order for dismissal of petition constituted 11 per cent. 386 cases (7%) were reconciled / settled or filed petitions were withdrawn. This shows the impact of the conciliation proceedings initiated by the counselors and the role of 'Mediation and Conciliation Centre'. There is not a single case seeking for annulment of marriage.

Custody of the children can be claimed either under HMOP or under GWOP. Custody of children is perhaps the bitterest part of divorce proceedings. Data relating to the custody of the children clearly showed that the custody of children was given to one parent. In 70 per cent of the cases,

the children were placed under the custody of the mothers. The data regarding the visitation order given to other parent is not available.

**Table 15: Time gap between filing and disposal of all disposed cases**

Time gap	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Total
<b>Within 1 year</b>	189	153	223	193	365	389	372	392	367	475	311833 %
<b>1-2 years</b>	253	128	286	198	286	338	293	363	295	401	284130 %
<b>2-3 years</b>	104	89	202	119	189	246	205	285	213	208	186020 %
<b>3-5 years</b>	61	71	101	87	133	177	113	178	162	219	130214 %
<b>More than 5 years</b>	0	18	25	28	36	42	25	27	20	91	3123 %
<b>Total</b>	607	459	837	625	1009	1192	1008	1245	1057	1394	9433

The above table shows the time taken by the court to complete the conciliation and litigation proceedings and to dispose the petitions. The data is discussed only for the disposed cases. 33 per cent of the cases were disposed with in a year; 30 per cent in two years; 34 per cent in three to five years and 3 per cent of the cases takes more than five years.

The primary petition was filed by a man, seeking for dissolution of marriage under Sec 13(1) (ia) (ib) of Hindu Marriage Act. After two years, his wife, the respondent filed a petition for restitution of conjugal rights. After 5 years of filing the primary petition, the court passed a decree of divorce.

The husband filed a petition for divorce. The petitioner and respondent had 2 children. One was with the petitioner and the other with the respondent. The husband got an ex parte order judicial separation within a year as the court can grant judicial separation instead of divorce if it sees fit. The wife filed a petition to set aside the ex parte order after a year and this was dismissed and a divorce granted after 4 years.

The object of the Family Courts Act is to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs. But, the act does not spell out the time limit for disposal of the cases. Further, the parties to the petitions are not entitled, as of right, to be represented by a legal practitioner. Hence, for every hearing, the parties should appear before the court unless an application for leave of absence is submitted before the court. Generally, each petition is posted once in 15 days or in 30 days, depending upon the stage of the proceeding. The delay and compulsory appearance for each hearing poses a real challenge to women litigants in particular.

**The data also shows that the very objective of the Act is not being met, in view of the time taken for disposal of petitions.**

The petitioner was a woman and living separately with her two children. She filed a suit under section 27(d) of Special Marriage Act, following a legal notice sent by her husband for restitution of conjugal rights. She is a government employee. She could not get a decree for divorce on the ground of cruelty as she could not prove her allegation for want of sufficient evidence. After 6 years, the court concluded that the relief sought for cannot be granted and dismissed the petition.



## CHAPTER IV

### *Counselling Process and Challenges*

#### ***4.1 Counsellor in the Enforcement of the Family Courts Act:***

The very purpose of the Family Courts Act is to promote conciliation and where there is no scope for conciliation efforts should be made to secure speedy settlement of disputes relating to marriage and family affairs and the connected matters. A duty is cast on the Family Court to make efforts for settlement in every proceeding or suit before the court, by persuading the parties to arrive at the settlement in disputes related to breakdown of marriages, restitution of conjugal rights, claim for maintenance, and claim for custody of children etc. Counselors are specially being nominated to perform the important task of conciliation and to arrive at settlement between the parties of the disputes. Thus, the counselors are the key players in accomplishing the very objective and purpose of the Act.

The term '**conciliation and settlement**' should be understood in the right sense. Conciliation is an alternative method of dispute resolution and an attempt at preserving the institution of marriage. Under Family Court Act, the counsellors are expected to carry out the conciliation process. The counsellors, guided by the principle of objectivity, fairness and justice should assist the parties in an independent and impartial manner to arrive at an amicable settlement, considering the rights and obligations of the parties. The counsellors are supposed to make proposals for a settlement of a dispute, based on the preferences made by the parties. They offer a range of choices for resolving the dispute; 'formulate' or 'reformulate' the terms of a possible settlement; considering the factual and legal aspects of the dispute as well as what the counsellor considers could be an appropriate resolution to the dispute. The range of dispute resolution process could be options to live together, matters such as maintenance, lump sum settlement, sharing of property, custody of the children, returning of jewels, articles, clothes, visitation of children, divorce on mutual consent, legal separation etc. Thus, the counsellors are expected to play a proactive role.

To effectuate the conciliation, the Family Court Act has provisions and accordingly every Family Court shall maintain a list of persons and agencies engaged in the field of social welfare. The persons and agencies should be professionally engaged in promoting the welfare of the family and working in the field of social welfare. The Act also permits that the assistance of medical experts and welfare experts in every proceeding, to discharge its functions.

**Family Courts (Tamilnadu) Rules, 1987** says that 'The Family Court shall prepare a list of not less than ten persons (including institutions or organizations) from among those engaged in the field of social welfare or representative thereof, professionally engaged in promoting the welfare of the family, working in the field of social welfare. The Family Court shall nominate two persons who may include representatives of institutions or organizations out of the list prepared as counsellors. The term of office of the Counsellors so nominated shall be three months. If for any reason, a Counsellor so nominated is unable to attend the Family Court, the Family Court may nominate another Counsellor from out of the list prepared. Every Counsellor shall be entitled to a sitting fee of Rs.300/- per day in Chennai and Rs.200/- per day in other cities and will be paid upto a maximum of Rs.4000/- per month. Initially, this sitting fee was Rs.30/- per day'.

As per G.O.Ms.No.500, dated 11<sup>th</sup> April 2007, two Marriage Counsellors are appointed for each Family Court, at a consolidated pay of Rs.5000/- per month as honorarium. The Marriage Counsellors should possess a degree in Social Work or Psychology. They are appointed on temporary basis for one year. Rs.7.2 lakhs was earmarked for this proposal.

Though it is not being spelt out explicitly in the preamble that the very objective of the Act is to promote conciliation with an intent to protect and preserve the institution of marriage, this is being spelt out under Sec 4 of the Family Courts Act, which says that the judges appointed should be committed to the need to protect and preserve the institution of marriage and to promote the welfare of children and to that effect, the judges should promote the settlement of disputes by conciliation and counseling. Thus, in turn, the counsellors appointed under the Act are instructed to do the conciliation, keeping this objective in focus.

**The normal procedure being followed in the Family Court** is that after a petition is being filed by a petitioner, the same is presented before the Sheristedar of the Family Court who goes through it and if any more information is required to be mentioned, he informs the petitioner accordingly

and after the filing procedures are complied with, the petition is taken on file and assigned a number. After the Petition is numbered, the summon is served on to the respondent either through the court bailiff or through registered post acknowledgement due along with the copy of the petition with a specified date for hearing. On that date the petition is called in court and if both parties are present the date for counseling is fixed in consultation with the parties. The parties are supposed to meet with the counsellor on the date so fixed.

The Family Courts (Tamilnadu) Rules, 1987 does not mention anything about the duties, functions and powers of the counsellors. However, the Andhra Pradesh Family Courts (Court) Rules, Family Courts (Kerala) Rules, Family Courts (Maharashtra) Rules, Family Courts (Goa) Rules, Family Courts (West Bengal) Rules and Family Courts (Madhya Pradesh) Rules, stated elaborately the duties, functions and powers of the counsellors. The main duties include a.)right to supervise custody of children b)right to supervise the reconciled couples c)to do pre-litigation counseling d)to undertake home visits e)to seek information from the employer of any of the parties, if need arises and f)Referral to an expert etc.

#### ***4.2 Functioning of the Counsellors:***

With a view to understand the functioning and review the conciliation and settlement proceedings, the counsellors' role in the process and to document their views in the conciliation process, the research team interviewed the counselors in the Family Courts in all the four districts.

##### ***4.2.1 Appointment and attendance of counsellors***

In Madurai Family Court, 7 counselors have been listed as on record. Through visit and discussion it was found that four counselors of whom two are women are available for counselling. The counseling sessions are being held one day in a week (Wednesday) and two counsellors are expected to sit on every counseling day. In consultation with the counsellors, the staff designated for this purpose in the Family Court prepares a monthly time-table for the sittings of the counsellors and communicates the same to the counselors by post.

In Salem District it was found that there is a list of 10 counsellors on record and all of them are engaged in counselling on rotation basis . The counseling day was fixed as Thursday.

In Coimbatore District, the number of counsellors as per record is 10, but only six of them – four women and two men are on attendance. The counsellors sit on every working day of the Family Court.

In Chennai, there are two counselors in each of the Family Courts. All of them are senior people and they sit on every working day of the Family Courts.

#### **4.2.2 Professional skills of the counselors and capacity building:**

It was observed that Counselors have been listed with varied educational background. It was found that some are under graduates while others are, graduates and post graduates in different subjects very few were from Social Work, Psychology and Social Work Regarding the capacity building process, in the initial stage, the Department of Social Welfare had organized training programme for counsellors of Family Courts and Family Counselling Centres. In one district (Madurai) an NGO had trained the Counsellors in counselling techniques.

#### **4.2.3 Sittings:**

In Salem and Coimbatore, every single case is being attended by two counsellors, as a team. In Madurai and Chennai each case is attended by a single counsellor. In Salem District, two counsellors are nominated for three months. After this tenure of three months, a new set of two counsellors among the list of representatives of institutions or organizations are nominated. The counsellors in Salem expressed their concern over this, as the outcome of their conciliation efforts could not be conceived within the stipulated period of 3 months.

#### **4.2.4 Sitting Fee:**

As of now the Counsellors are entitled to receive a sitting fee of Rs.200 per day in Coimbatore, Madurai and Salem. In Chennai, this amount is fixed as Rs.300/- per day. The unanimous opinion was that this fee has to be enhanced. Some expressed that it may be increased to a minimum of Rs.700 per sitting day, though there was a prevailing opinion that rendering service is their priority.

#### **4.3 Infrastructure:**

The infrastructure facilities available for the counsellors are different in each of the Family Courts in Tamil Nadu. In Madurai, the counseling is taking place in a 'record room' of the Family Court, and both the counselors sit in the same room. They shared that the counseling room does not provide a congenial atmosphere for persons to share her/his feelings as it lacks adequate privacy. After consistent demand, a screen has been placed near the door, so that the outsiders cannot observe the counseling proceedings. In Coimbatore, separate counselling room has been allotted yet it is far from satisfactory. In Chennai and Salem, the counsellors were satisfied by the infrastructure provided for the counseling. There are separate rooms for counselling with all required facilities. In Chennai the family court premises has a psychology centre, counselling centre and children room.

**4.4 Fixing date for counseling:**

In Madurai, until four years back, the counsellors fixed the date for the next counselling session. Now, the dates are being fixed by the court, on the suggestions of the counsellors. If one of the parties failed to attend the counsellor on the date and at the time fixed, the counsellor makes a report to the Court stating that one or both the parties have failed to attend counseling. On such report being made, the court fixes another date and informs the absent party. Generally, the time gap between two counseling sessions is two months, unless otherwise emphasized by the counsellors, to fix a date within a short period. There is a little chance that a single case will be followed by the same counsellor, till the end of the counseling proceeding.

**4.5 Right of the litigants to choose the counsellor:**

The parties can exercise their choice in choosing a particular counsellor, if they desire to do so. Otherwise, the petitions are entrusted randomly to the counsellors. If the counsellors feel that a particular case need to be followed by them consistently for effectiveness, they have to take initiative by writing a note in the case file and see to it that the case file is posted to them for the subsequent counseling days. It was a commonly expressed opinion by the counselors that the counselors should not be frequently changed as it causes hardship to the litigant who has to explain her/his problems afresh to the new counselors each time.

**4.6 Cases posted for counselling:**

There is no set target for the counsellors, with regard to the number of cases to be attended by them on each day. The number cases posted for counselling in a particular day includes fresh cases and follow-up cases. In Coimbatore, it was shared that a maximum of 10 cases are being posted on each day, in Salem the number was 18 per day, and this is being reduced to 8 now. In Madurai where the counsellors come for a day in a week, each one hears a minimum of 4 petitions and a maximum of 15 petitions. It was shared that 4 to 5 petitions per day are the optimal number and when this number exceeds, the quality of time spent for each petition remains in question.

If felt the necessity for a detailed investigation / longer sessions / therapeutic intervention, then very few counsellors, with the consent of the parties, refer the case to their respective organization, with the permission of the Judges, so that they could contribute a quality time to the parties for an amicable settlement.



#### ***4.7 Conciliation proceeding:***

After a petition is filed in the Family Court, on the first date of hearing, when both the parties come to Court, the matter is referred to the Counsellors. Advocates are not allowed during the conciliation proceedings. Each counsellor has her / his own way of carrying out the conciliation proceedings, depending upon their expertise, orientation and sensitivity. The Counsellor hears the grievances of each party in dispute separately and then jointly and try to understand the intensity of the problem. The Counsellor, after hearing both the parties, counsels them in an attempt to diffuse their differences and tries for reconciliation. The parties are then given sufficient time to think over the proposal for reconciliation given by the Counsellor. Mostly, the proposal suggested will be discussed by the litigants with the family members and their legal advisors. A minimum of three to five such sessions are held and If the parties agree to some solution by which they can reconcile, then the terms for reconciliation are written and both the parties are made to sign the same. The Counsellor also countersigns and the matter is then referred back to the Court. The Judge, after reviewing the terms of the reconciliation, directs accordingly to the parties. On request and based on the need, an interim period to follow the directions of the Judge is granted. If during that period the parties are able to live together peacefully, then on the next date of hearing the matter is disposed of.

##### ***4.7.1 The different approaches of individual counsellors adopted in conciliation process:***

Most of the counselors met shared that they motivate the parties to resolve their differences and come to a conciliatory arrangement between them. If the parties agree to some solution by which they can reconcile and decided to live together, then the counsellors attempts to identify the root cause of conflict and tries to help the parties develop insight and control over their conflicts. If necessary, the children, the family members, relatives and friends who are associated with the conflict between the parties are included in the conciliation proceedings.

Even in case of adultery, bigamy and cruelty, the litigants are being counselled and proposals to live together are being placed before the women litigants often, against the wishes of the litigants. The parties who filed petitions for divorce under mutual consent are also referred to counselors and the counselors do attempt the parties of the litigants to live together. Many counselors directed the women litigants to be patient, accept the negative behavior of others, forgive the wrongs of their partners and family members, tolerate the violence to some extent and pester them to live together.

The counselors in Salem and Coimbatore are striving only for family reunion if the petition is of matrimonial dispute in nature. They say with strong conviction that their role is limited to protect and preserve the institution of marriage and to that effect the only proposal they present before the parties in case of marital dispute is restitution of conjugal rights. If the attempts for reunion failed, they feel dejected and consider their effort as a failure. Thus, success of their attempts depends upon whether they succeed in motivating the parties to live together. Their religious values and personal belief also influences their attitude and thus in turn discourage the couple from breaking the marital bond. They advised and sometimes pressurized the parties to bear the hardship for the sake of their children, even if the relationship with the spouse is abusive. One female counselor shared that the pressure and repeated advice do yield positive results. Many counselors met, in these two districts lamented repeatedly about the taboo against divorce. They preached the litigants to be tolerant.

#### ***4.7.2 Amicable Settlement in case reconciliation fails:***

If all the efforts of the counsellors to reconcile the parties for their reunion fail, then the counsellors in the Madurai and Chennai Courts adopt the approach to help the parties disengage from their relationship, ideally arriving at a win-win agreement causing less distress for self and others. The emotional turmoil surrounding issues such as maintenance, residence, returning of property, division of property, custody of children, visitation rights etc., were handled in a therapeutic way rather than in a legal manner. The option of divorce by mutual consent is also proposed by counsellors. If this is possible, then terms are prepared accordingly and the parties are directed to file consent terms to take divorce by mutual consent. Thus, the counsellors help them arrive at an amicable settlement.

In the disputes related to child custody, by and large, counsellors (both women and men) said that they are always in favour of women getting the child custody and their efforts would be towards that option. They have the premise that the welfare of the children and the best interest of the children can be assured only by mothers.

#### ***4.7.3 Availing Support Services:***

As per the Family Courts Act, the counsellors can avail the support services of social welfare organizations and other experts, if they feel that such services are necessary for the amicable settlement. However it was shared by the counselors met that, they cannot avail it directly. The need for such services has to be recorded in the case file and the court has to arrange for it. But

hardly do the counsellors record such suggestions and place it before the judges. Most counselors, however, try to solve all the problems by themselves. But a few counsellors, with their personal interest and influence, have managed to send the parties to the appropriate agencies to avail the services. For example, if the cause for marital dispute identified as personality disorder the litigant shall be referred to a psychologist and if it is sexual incompatibility to a marriage counselor or a sexologist. They felt that such alliances are necessary to reach amicable settlements.

It was learnt that in Chennai, there is an additional counseling unit named 'Special Psychiatric Counselling Centre', attached to the Family Courts that helps in the process of bringing amicable settlement. An expert in the area of psychiatry and psychotherapy is visiting this centre three days in a week. The parties who are in need of psychological assessment and psychiatric intervention are referred to such unit. The proceedings in this special counseling centre generally goes for a minimum period of 3 months.

#### ***4.7.4 Advocates preference over counselling:***

Counsellors met expressed that the legal representatives of the parties prefer to contest the case in the court and orient the litigants accordingly. Such litigants are found to be non-cooperative in the counseling proceedings and are not receptive to any of the initiatives of the counsellors. Such litigants strictly follow the advice of their legal representatives. It was stated that the advocates prefer court proceedings to counselling and thus close the doors of reconciliation.

It was also shared that the legal representatives of the litigants, in order to arrive at expeditious remedy, ignore the efforts of the counsellors for family union and take up cases before the Mediation and Conciliation Centre established in their respective districts to dissolve the marriage on mutual consent, thus nullifying the efforts of the counsellors.

#### ***4.8 Access of children to parents:***

The Counsellor also performs the role of resolving the matters regarding access of parents to children. If any of the parent has applied for dissolution of marriage and the child is under his/her custody, and the parent possessing the child strongly deny the access of the child to other parent, the counsellors make every effort for the access to the child to the denied parent at least in the court premises or in an agreed common place. This again depends upon the initiative and sensitivity of the individual counsellor.

**4.9 Time limit:**

There is no time limit set for the counsellors to complete the conciliation proceedings. If the counsellor perceives that there is a reasonable possibility for reconciliation or settlement, then the counseling sessions prolong for years together. There are cases in the counseling process pending for more than 5 years.

**4.10 Settlement Rate:**

The counsellors expressed that 20 to 30 per cent of the cases posted for counseling get reconciled or amicably settled. They also opined that if the parties were referred to the counsellors at the pre-litigation stage, and if the legal advisors of the litigants encourage their clients to be receptive to the conciliation proceedings, then the success rate of reconciliation and amicable settlement would be significantly higher.

**4.11 Reporting format for counselors:**

The report format to be submitted by the counsellors includes columns such as: Case Number, Case Category, Name of the Petitioner, Name of the Respondent, Children if any, Claim record, any other criminal proceedings on either side, sitting number, problem detail, intervention and suggestion and the signature of the counsellor. It was learnt that there is no uniform format for the submission of report. The counsellors are supposed to submit the report in the prescribed 2 page format, soon after completion of the session on each day. If the parties there of arrive at a settlement or reconciliation before the counsellor relating to the dispute, the same is being recorded and submitted before the Judge. If further counseling session is required, the same will be recorded. The report being submitted by the counsellors are kept in confident. If the opinion of the medical or other experts' opinion is required, the same will be recorded by the counsellors. If efforts to strive for amicable settlement between the parties do not yield any positive results, the counsellor submits a report stating that it had not been possible to bring the settlement. Other than submission of the report, the counsellors are not maintaining any other register / records.

**4.12 Role of gender:**

To this point the male counsellors responded that 'professionalism' rather than 'gender' impacted the counseling proceedings. The women counsellors responded that they receive better acceptance and if the counselee is of same gender, there is little reluctance in open communication. Further,

ventilation of feelings and emotions becomes easier. Even if the counselee is of opposite gender, if the counsellor is gender neutral in her/his approach, building confidence is not an issue. In Madurai District, the counsellors transfer the clients among themselves, to effectuate the conciliation proceedings, if the counsellors feel that the gender plays a role in any particular case.

#### **4.13 Counselor's opinion on Causes for marital disputes:**

Lack of commitment for marriage, failed expectations or unmet needs, conflict between individual identity and family identity, unhealthy power relationship, ego clash, addictions and substance abuse, physical, sexual or emotional abuse, lack of conflict resolution skills, mismanaged conflict, poor communication, extramarital relationship, lack of trust on each other, dowry harassment, sexual incompatibility, physical illness, conflict with in-laws were expressed as the causes for the matrimonial disputes. Their perception was that the number of love marriages ending up in conflicts is higher than that of the number of arranged marriages. Most of them were in confirmation with the prevailing social perception that educated and economically independent women are nowadays mostly seeking legal redressal. Even communities which have a strong traditional system of redressal mechanisms are also approaching the court for matrimonial disputes.

#### **4.14 Non Enforcement of GO:**

The counsellors interviewed were not aware of the G.O.Ms.No.500 of Home (Courts.II) Department, dated 11.04.2007, which says about the appointment of two full time 'Marriage Counsellors' for each Family court, to assist the Family Courts in rendering counseling to the parties. It has been mentioned that the marriage counsellors are required to possess a Master degree in Social Work, Psychology with minimum two years of experience in Family Counselling. Legal qualification and legal background are preferable. Though orders were issued a year back, this G.O. has not been implemented yet.



## CHAPTER V

### *Advocates view on family courts*

#### **5.0 Introduction**

The Family Courts Act does not necessitate the appearance of advocates yet they play a critical role in the litigation process. 35 Advocates practicing in family Courts (both women and men) participated in the consultations and Focus Group Discussions held in all the four districts to elicit their views on the following:

#### ***5.1 Reasons for increase in number of cases coming to family courts***

The advocates opined that the current instability of marriage and family system is the cause for increase in number of cases coming to the family courts. This was viewed as the outcome of many social and cultural changes of the recent times. The lack of preparation for marriage, hasty marriages, changing economic roles of husband and wife, economic independence of women, the growing individualism, emotional immaturity, economic insecurity, sexual incompatibility, lack of respect for elders and in-laws, increasing alcoholism among men were attributed as the primary cause for the above. Sometimes, even a trivial fight and ego clash destroys the matrimonial relationship. The basis for a happy marriage such as mutual trust, confidence, understanding, adjustment, mutual respect for each other and their respective families etc. are slowly disappearing. Many advocates met, mainly men, blamed that women are responsible for this alarming trend, pointing to the need for sensitizing them on gender. However, this was disputed by pointing out that the growing awareness of legal provisions and human rights has enabled women, who were so far marginalized, to come forward to assert their rights as individuals.

It has been observed that newly married couples, are seeking divorce within a year of their marriages and this ratio is on the increase. The advocates who participated in the discussion expressed that sexual incompatibility is the single most primary cause for marital discord for young couples. If the couple have a satisfactory sex life, other areas of conflicts becomes a non priority.

The young couples, who have been married for more than one year have opted out of marriages these days due to rise in violence, cruelty, lack of trust on each other, alcoholism, problems of adjustment especially in a joint family, extra-marital affairs, physical illness, falling values etc.

Increasing awareness and the negative effect on the psyche of the spouses and children because of abusive relationship and unsatisfying marriage push them to part through legal measures. These couples believe that their education, employment, and increasing social network give them positive identity and fulfillment in life.

If the ego of the male is being hurt and if the woman had filed complaints in the police station and the husband and his family members experienced harassment by the police authority, then the hostility ends up in determination to retaliate, resulting in breaking up of the marriage.

### **5.2 Preference for Family Court over Civil Court:**

- i) **Voice of clients:** Regular courts are filled with civil disputes and are controlled by advocates where clients have little say in the litigation proceedings and dispute resolution. But the family court requires the presence of the parties in dispute to participate in the conciliation and litigation process. Direct participation of the parties to the dispute has thus, to a great extent, facilitated their involvement in the decision making process. The parties can determine the course of the litigation. The parties are helped to gain a better understanding of their respective position and the likely result if they proceed with litigation. The litigants have the power as per the Act to express their view directly before the Judge in the open court.
- ii) **Sensitivity of judges in civil courts:** Judges of the civil courts are neither expected nor show sensitivity required dealing with the family disputes.
- iii) **Expeditious relief:** In civil court, expeditious relief cannot be expected by the litigants. Issues such as child custody require human approach and the magistrates may not have the required skills to deal such issues. The litigants, particularly the women litigants feel discomfort to appear before the civil courts.
- iv) **Special adjudication environment:** Family Court is a special court to deal only issues related to family disputes and has a special adjudication environment, following non-adversarial procedures. Amicable settlement could be possible in most of the cases.

### ***5.3 Advocates' view on strengths and weaknesses of keeping advocates out of conciliation process***

The advocates pointed to several weaknesses and a few strengths of keeping advocates out of conciliation process. They also shared some of the ways ahead to resolve the issue with regard to the presence of advocates in Family Courts.

#### ***5.3.1 The weaknesses of keeping advocates out of conciliation:***

##### **i) Lack of familiarity of women litigants with procedures:**

The Act states that the party to a suit or proceeding before a Family Court is not entitled to be represented by a legal practitioner as of right. As a result, the parties of the Family Court's jurisdiction suffer without the direct role of legal personnel. The procedure is that the litigant has to go to the Family Court at every stage from filing, numbering, participating in conciliation proceedings, appearing in the Court for every hearing etc. But the petitions have to be filed in the prescribed format. Further, there are specific filing procedures, in the manner prescribed by the Civil Procedure Code or Criminal Procedure Code. For all these things, the litigants heavily rely on advocates. In the advocates' opinion their role is much necessary in every stage of the litigation proceedings, from the preparation of the petition itself.

All the advocates interviewed strongly placed that the refusal of permission to be represented by a lawyer to a party before the Family Court and the consequent failure of defending oneself with no rightful legal assistance amounts to violation of the fundamental rights of the party. Some even stated that the advocates have the right to enter any Court. Denial of that right is a violation as per the Advocates Act.

Their apprehensions were that, even if the litigants were literate, they would find it difficult to understand the intricacies and nuances of the legal procedure. In the absence of the advocates, they have to rely upon the staff of the Court, to help them to follow the complicated rules and procedures. They have to depend upon the staff in filing a petition, what statement should be included in the petition, what prayer to be made, what documents are to be enclosed, what to be included in the counter etc. The strength of the case depends upon the primary application filed in the court. They are not aware of the consequences of the



suggestions made by the court staff. The advocates observed that only they could guide the parties, what would be the possible move of the respondents and accordingly frame the complaints and grievances in the petitions. If not guided properly, it will be detrimental to the petitioner's interest.

Again, how to conduct the case, how to place her argument, how to face cross-examination, what evidence should be produced etc., depend upon the capacity of the individual. If the individual does not have the skills, is non-literate, then the very denial of permission to be represented by a legal practitioner shuns them from seeking legal remedy for their matrimonial dispute.

**ii) Emotional Trauma to litigants through direct representation**

The advocates interviewed also fear that if they are not allowed to appear, problem could arise even in the area of identification of parties appearing before the court. It would be difficult for the court to know whether the person who submitted the petition and appearing before the court are the same person. They also added that the direct clash between the petitioners and opponents in the court premises were avoided because of the representation of advocates. Many a times, the emotional upheaval of the parties provoke situations of quarrel.

**iii) Weak conciliation procedure and skills of counselors**

All accepted the fact that the counsellors have a tremendous role to play in the conciliation proceedings. Many opined that the conciliation proceedings of present nature, with the help of the existing counsellors are a futile exercise. Many said that it is just a formality, a part of the litigation proceedings.

In general, the advocates were critical about the functioning of the counsellors. They were of the view that the counsellors except one or two are not qualified and are not experts in conciliation. They do not possess scientific acumen, technical ability, and professional competence needed for counseling - the basic qualities for a counselor. They lack professional ethics. Corruption charges were also made by a few advocates met.

The advocates in Salem and Coimbatore put-forth a striking remark that the counsellors have not reconciled a single case. The advocates in Madurai District shared that they had very little knowledge about the profile of the counsellors, who they are, from which organization they come etc. The advocates in Chennai also commented that the settlement rate of the counselors in Chennai is very low.

**iv) Violation of rights of victims in settlements when advocates are not Involved**

The women litigants are often persuaded for restitution even in cases with the complaints of bigamy, adultery, physical violence and grave offences. In such cases, settlement should be worked out in the area of maintenance, custody of children, sharing of property and residence in matrimonial home. Similarly, serious efforts are being made to motivate the couples to live together, who opted for mutual consent divorce. Many advocates were of the opinion that such cases should be exempted from conciliation proceedings, thus the workload of the counsellors could be minimized. Few felt that counsellors can just do one session to assess the factual account of the matter in the petition and whether there was any other force operating, moving them to file petition for mutual consent divorce. The advocates from Chennai shared that the cases filed for mutual consent divorce are not posted for conciliation.

Many a times, the relief suggested by the counselors are not appropriate, much lesser than the relief through legal measures. Many counsellors have little knowledge in the field of legal and the legal validity of the proposal suggested by them. In such a situation, the legal representatives have no option but to encourage the clients to disengage themselves from the conciliation proceedings. Some counsellors even coerced or threatened the clients to arrive at an amicable settlement.

**Some advocates interviewed accepted the charges that some legal representatives of the parties are using delaying tactics for their own survival by unnecessary adjournments and there are advocates paid only for the adjournments. So the cases prolong for years. Just for the same reasons, some advocates even advocated their clients not to yield to the settlement efforts of the counselors and reassured their clients that they would get better relief by contesting the case in the Court.**

### **5.3.3 Advocates opinion on Ways forward on advocates' role in family courts**

The advocates interpreted that the Act does not preclude from granting permission in the exercise of its discretion to a party to be represented by a legal practitioner. The party as of right cannot claim to be represented by a legal practitioner. But, the Family Courts decide whether it should permit such representation. The representation by a legal practitioner is therefore depending upon the discretion of the Family Court. Thus, the Family Court does not impose a total ban on representation by a legal practitioner. The Court may grant the services of an advocate in the deserving cases, as the parties are not expected to be well versed in the legal procedures and formalities. Further, if representation by a legal practitioner is given to one party, the court should grant the same to the other. Otherwise, it would be in violation of the principle of natural justice.

Generally, in Tamilnadu, advocates are permitted routinely to represent the parties in all cases, on submission of permission petition. Thus filing a permission petition is a mere formality. The advocates interviewed in Salem shared that their representation was unrestricted and even without filing permission petition; they were representing the parties as **amicus curiae**. Majority of the advocates had the following suggestions on their role.

**i) Panel of Advocates to sit in Family court to assist litigants, but not intervene in conciliation:**

The advocates in Chennai recommended that there is a panel of advocates of Legal Aid Centre sitting daily in the Family Court Campus on all days of the Family Court and assisting the litigants to file the petitions and counter petitions and empower them to defend their cases, then, the need for representation of advocates can be restricted. This new system need to be developed to promote and ensure the litigant-friendly approach in the Family Court Proceedings, one of the purposes for which this special court was established.

**ii) Restrict reconciliation to cases where they are needed:**

The advocates made a strong statement that in Maintenance Cases, in which the proceedings are summary in nature and in cases of divorce under mutual consent, the representation of advocates are not at all needed. Thus, only in limited cases, when the conciliation failed and amicable settlement could not be reached; where the need for contestation arise and the regular civil and criminal procedure need to be followed; then the representation of advocates may be encouraged as *amicus curiae*.

### **iii) Selection panel for counselors and criteria for selection of conciliation team to be widened**

All put a strong appeal that utmost care should be taken in selecting the counsellors. While some advocates met opined that the selection panel should have a representation for advocates, others considered it not necessary . Some even insisted that the conciliation panel should have medical personnel in addition to the counselors and advocates. At present two counsellors are sitting on every counselling day. The counsellors can assist the parties to resolve their disputes from the social and psychological dimensions. The advocates can facilitate the process by providing legal inputs, make the clients aware of the legal rights and possible relief within legal framework. As many disputes have medical component as underlying cause, the presence of a medical personnel is necessitated. Thus the panel could assist the litigants to arrive at an amicable settlement easily and quickly. They recalled the conciliation panel of 90s, which included representation for advocates.

When asked about the proposal of the Tamilnadu Government in appointing two full time marriage counsellors, almost all said they were ignorant of the government proposal and the related Government Order in that respect. However, they added that the appointment process should be meticulous.

### **iv) Number of counselors and their attitudes:**

Suggestions were also made to increase the number of counsellors, as of present, one counsellor is spending a maximum of 15 minutes for each case, which is not sufficient for the parties of the litigation to free their mind and receptive to the efforts of the counsellor to arrive amicable settlement. The counsellors should not restrict their role to conciliation for reunion. They should make efforts for amicable settlement, even if conciliation for reunion failed.

The time gap between two successive counselling sessions for a single case is 15 – 30 days, as counselors are sitting only one day in a week in some Family courts. The counselling days should be increased, to expedite the settlement.

v) **Adopting different Counselling strategies for different types of cases:**

In matters related to **maintenance**, interim maintenance and maintenance during the court proceedings and expenses of the proceedings, the advocates opined that an amicable settlement could be arrived in a few sittings. The counselors have to make the parties understand that the claim for maintenance is a right and obligations of the parties. The counselor has to assess whether there was an association between the parties as husband and wife for a considerable time, economic independency of the parties, the sources and the quantum of income. With this limited information, the proposal for a settlement could be placed before the parties.

In the matters of **restitution**, both the sides of the parties are loaded with emotions and grievances. If they are listened to patiently and genuinely, and if the parties feel that they were heard to their satisfaction, then the grounds for their discord can be assessed and resolved. If either of the parties placed conditions for family reunion, that could be worked out. If one opted for restitution and other pressed for divorce and if there is no possibility for reunion, then proposal for mutual consent divorce could be placed.

If the case of **mutual consent divorce**, the counselor role is just to assess whether there is any element of force operating in their decision. Thus, most of the matrimonial disputes could be reconciled and amicable settlement could be arrived by the efforts of the counsellors, leaving limited petitions to proceed to the trial stage.

Most of the advocates interviewed admitted that they do **pre-litigation counselling** and strive to bring about amicable settlement between the parties even before preparing legal complaints. They said they encouraged their clients to bring their marital partners for open talk, with an intention to weed out the difficulties, differences and accumulated irritations. Very rarely, both the husband and wife appear together in this process. Mostly, they said, they could persuade only one of the parties to rebuilding the distorted marital relationship, as the other side fail to report. Even after such persuasion, if the parties are not willing to restructure the marital bond, they have no option but to prepare the legal complaints. Just to strengthen the case, they have to incorporate false allegations against the opponent. Almost all the advocates said that they too have the social responsibility and as such their primary role, especially in matrimonial cases is to protect the institution of marriage and family. They reiterated that they are not for breaking up the marriage though they fight aggressively to win a suit in other cases.

They do agree that there are advocates targeting for monetary considerations by multiplying their cases and such advocates never promote their clients for reconciliation.

When asked whether the present counsellors would do pre-litigation counseling, the answers were no. Unless the petitions filed by the petitioner are numbered and unless both the parties appear before the court, the court cannot instruct the parties to appear before the counsellors. Thus, it is not pre-litigation. Without taking the petition to file, the court cannot send summon and order the other party to appear before the Court.

**The alternative option** could be that a reputed institution providing professional counseling services can be identified by the Court and notified. If the parties so desire, they can seek the services of the said institution. The institution should have the authority to demand the presence of both the parties. The probability of success could be more before the litigation stage. The report provided by such institution may be included as a document at the time of filing legal petition before the Family Court. The failure report of the institution may be considered while posting the case for conciliation. The unnecessary delay due to attempting mandatory conciliation proceedings could be avoided.

Though this proposal was welcomed, many feared and questioned the uprightness of such institutions, in the present situation of unhealthy competition to obtain recognition to provide the counseling services.

**vi. Transfer delayed cases to Mediation and Conciliation centers:**

Many advocates in Salem and Coimbatore expressed that they prefer to settle the case through '**Mediation and Conciliation Centre**' where is this in district court having a panel of experts in the field of judiciary, law, medical, social work, psychiatry and social welfare. Even cases pending before the counselors for conciliation are transferred to a Mediation Centre by the advocates, with the mutual consent of both the parties. They do so, because the counselors take unduly number of sessions to reconcile the parties for reunion, against the wishes of the parties. Speedy and smooth settlement was ensured for the parties.



## **5.4 Advocates view on strengths and weaknesses of judges appointed in Family courts**

### **i) Appointment of retiring judges has negative consequences**

Many a times, judicial members of retiring age are being appointed as Family Court Judges. They often have a rigid, conservative value system and they cannot digest the challenges and changes confronting the present family system. From their experiences as practicing advocates in family courts, the advocates shared that such senior judges treat the women litigants with contempt. They accuse the parties in the open court and passes comments that hurt the psyche of the litigants.

### **ii) High turnover of judges, and vacancies are not filled on time**

At times judges do not even complete a year, and as of now there is a vacancy in Chennai for the post of Family court judge

#### **5.4.1 Recommendations**

### **i) Fill vacancies for judges and extend tenure**

The advocates recommended that the Judge post should not be left vacant in the Family Courts. All advocates interviewed shared that the judges' tenure should be a minimum of one year. Some said that it should be for a period of 3 years.

### **ii) Preference to middle aged judges**

All advocates recommended that the Judges should be of middle age, between 40 – 50 years. Their willingness and interest to serve the Family Court should be elicited.

### **iii) Careful selection and training of judges:**

Most of the advocates interviewed expressed that the judges appointed to the Family Court, in addition to the basic qualifications as mentioned in the Act and Rules, should have expertise in dealing with family disputes and should have expertise in conciliation. Besides the educational and professional qualifications as mentioned in the Act and Rules, the Judges should have innate qualities such as social consciousness, sensitivity to issues related to family matters, commitment, eagerness to protect the rights of the individuals

and conviction to protect and preserve the institution of family. However there was difference of opinion on this and some Advocates expressed their view that the wishes of the parties particularly the women should be given prime importance in this process.

**iv) Gender of the judge not a barrier:**

The Act says that preference should be given to women in the appointment of Family Court Judges. It was shared that from its inception the Family Courts in TamilNadu had only one or two women judges. All advocates met expressed that the gender of the Judges is not an issue at all. It was interesting to note that many prefer male Judges and supported their views by saying that male judges will be gender neutral in their legal proceedings. They fear that women judges will be biased in favor of women. Some contradicted this view and said that to avoid criticism from the public, the female judges are very conscious to be gender neutral in the legal proceedings. However there was an agreement on acceptance of the fact that the women litigants feel comfortable before the women judges. Advocates of Coimbatore district shared that their experience with the woman Judge was very positive. Her adjudication procedures are still being remembered and appreciated.

**v. Judges should play a role in secondary counseling.**

Few judges are interested and voluntarily do secondary counseling, even after the conciliation proceedings of the counselors have failed. There are instances where judges, even during the trial proceedings, do make efforts for an amicable settlement, though not mentioned in the Act. The advocates strongly opined that the judges should do secondary counseling, particularly in cases where they agreed for amicable settlement before the counselors with conditions. But for non arrival of consensus on the conditions, the settlement proposals were discarded. In such a stalemate situation, the intervention of the judges brings positive results. Many a times, the parties of the disputes accepted if the proposal for settlement is placed by the judges. Their concern, their position and the power of authority influences the decision of the parties to reach an amicable settlement.





**vi) Judges should not have access to counselor's reports**

It is this free talk of the parties, which takes a mediator to the real dispute or core of the dispute or the underlying interest of the parties. The information gathered by the counsellor, any note or report prepared by the counsellor are at present treated as confidential. Further, the counsellors are not permitted to give evidence in any court and cannot be cross-examined. So the parties of the disputes talk freely before the counsellors. The counsellors too facilitate and post questions in such a way to bring out the real dispute or the core of the dispute to the front, with intent to facilitate the process of reaching an amicable settlement. In many cases, the second marriage, the extramarital relationship, the cruelty will be admitted before the counsellors. If all these are documented by the counsellors in their reports, and courts are permitted to consider the report, the concern is that the court may develop some bias that may influence the course of the trial proceedings. Hence, advocates were of the opinion that the counsellors' report need not be considered by the court.

**vi) Extend the powers to the judges in Family court to include protection injunction under the PWDV Act**

The Family Court Act has not explicitly empowered the Court to grant injunctions preventing violence. Some advocates opined that Judges could give and some Judges are giving oral instructions to the perpetrator of violence, to refrain from such misconduct. Some opined that such residing and protection injunction could be given by the Family Court Judges ensuring the rights of the wife and children to reside in the matrimonial home, not to be thrown out, not to perpetuate assault, maintain the wife and children, preventing second marriage etc. However all questioned the enforceability of such orders. Though it sounds well, it cannot be executed. Many a times, the victims prefer to leave the oppressive environment in the matrimonial home and seek refuge in their parental homes.

**vii) Judges to play a role in getting clients statutory interim maintenance and maintenance claim procedure:**

Sec 24 of Hindu Marriage Act and Sec 36 of Special Marriage Act and Sec 36 of The Divorce Act speaks of maintenance pendent elite and expenses of proceedings. As per these sections either the wife or the husband, having no sufficient independent income

may file an application before the court for the payment of the expenses of the proceeding and such monthly sum during the proceeding. Such applications shall be disposed within 60 days from the date of service of notice on the wife or the husband.

The applicant's cost of litigation also include the amount spent for traveling a distance from the place of her residence to the Court for herself, for her children and the person accompanying her. The amount also includes additional charges for her dearness allowance. The monthly interim maintenance can be granted not only for the applicant but also for the children. While deciding the alimony, it is just enough to consider, whether there was an association between the parties as husband and wife for a considerable time.

Further, these sections say that the right to claim maintenance and expenses pending the proceedings is an independent statutory right conferred upon the party when the proceedings are pending and such a right cannot be defeated on the ground that a separate order of maintenance was applied by the applicant or passed by the Court. Thus, even if the litigants have applied for alimony and maintenance under Sec 125 Cr.P.C. / under Hindu Marriage Act / under Special Marriage Act or already awarded the interim or permanent alimony and maintenance, the applicants have every right to apply for maintenance *pendent elite* and expenses of proceedings. Thus, every woman satisfying the mentioned criteria, whether she is a petitioner or a respondent has a right to avail the benefit under these sections. But, hardly the women are aware of these provisions and their legal representatives are not guiding them or helping them to avail the benefit of these provisions.

#### **5.4.2 Difficulty in enforcement of maintenance order:**

All the advocates admitted that the women litigants are facing hardships because of non enforcement of the maintenance order. Though the proceedings under Sec 125 CrPC are summary in nature, many a times, the matter has gone to the trial stage. The women litigants find it hard to prove the income sources of their spouses and the lengthy cross examination process that takes place before pronouncement of maintenance order creates havoc for the . The next struggle before the women litigant is the execution of the order.

If the order of the maintenance passed against the husband is flouted by him, he is not supposed to continue the matters to proceed. But, many a times, the Judges permit the defaulting parties to proceed the matter. All felt that the Judges should play an active role and stay the proceedings unless the maintenance order is complied by the parties concerned. Even if the Judges issue warrant against the defaulters for contempt of Court Order, generally, police does not cooperate in executing the warrant.

**ii) Undue Delays when amicable settlement cannot be reached:**

If a settlement cannot be reached through conciliation proceedings, then a regular trial proceeds. As per the Act, a Family Court has been given all the powers of a Civil Court under the Code of Civil Procedure. For matters under Sec.125 of the CrPC., the procedure prescribed by the Criminal Procedure Code apply.

They expressed their concern about the delay in getting the relief. Though the proceedings under section 125 Cr.P.C. are summary in nature, yet once the matter has gone to the trial stage there is no limit as to examination of witnesses. The lawyers enter into the field and examine number of witnesses and a lengthy cross-examination follows. Some advocates use delaying tactics to drive the wife to a state of destitution and resourceless, thus putting her in a non-negotiable state and pushing her to accept the settlement terms offered by the husband.

**iii) Challenges in Salary attachment:**

One advocate from Chennai narrated her experience in claiming maintenance for her client from her husband, a government employee. Though a salary attachment order was passed in favour of the petitioner, the salary certificate provided by his employer showed that his net salary after all deduction was only Rs.35/-. She also quoted that there is a G.O. to the effect that the deductions from salary should not exceed 50% of the take home salary of the worker.



### **5.4.3 Recommendations of advocates on Family Courts**

#### **i) Extend family courts to all Districts:**

All the advocates interviewed opined that the Family Court should be established in all districts of Tamilnadu. The districts should have at least one Family Court and the number of Courts or number of Judges can be increased in accordance with the increase in number of petitions filed. The advocates from Chennai shared that there is a proposal to establish two more family courts in Chennai in addition to the existing three Family Courts, as at present more than 100 cases are being posted everyday.

#### **ii) Separate Building for Family courts:**

Regarding opinion on separate buildings for family courts it was expressed that the Family Court should be within the premises of the District / High Court and not in a separate campus. The presence of the Court within the District/High Court is likely to create a protective environment for women litigants from the risk of attack from the opponents.

The suggestion emerged that the Family Court should have infrastructure for counseling, child care, meeting room for couple to talk freely with each other, waiting room, canteen, toilets and drinking water etc As of now, it is in the secluded place, in one corner of the room, within a court campus. They all stated that the litigants do not want to be exposed themselves to the public eye that they have a family dispute and moving to court for resolution. The present location of the court removes the risk of being exposed.

The litigants have better access to their legal representatives and the lawyers can attend to the call of their clients in no time, if the Family Court is within the court buildings. All demanded for better infrastructure facilities and basic amenities in all the Family Courts.

#### **iii) Restrict adjournments in maintenance cases, and enforce interim maintenance**

It was suggested that the family courts should take some firm decision regarding adjournments in the maintenance cases.

- The number of adjournments should be restricted.
- Case should be posted for continuous trial on subsequent days
- Orders for interim maintenance and maintenance pendent elite and expenses of proceedings should be passed before initiating trial proceedings to decide the permanent alimony.

- Interim maintenance may be ordered even before the case is being posted for conciliation. In many cases, the woman litigant has no economic resource, and the delay puts her in a disadvantaged situation and affects the lives of innocent children.
- Unless the interim maintenance is paid, the main petition should not be heard.

**iv) Enforce salary attachment as per government order:**

The Court should enforce the G.O. to the effect that the deductions from salary should not be less than the sufficient amount for livelihood. Hence, it has been recommended that the government should issue a circular to strictly enforce the said G.O.

The advocates from other districts also supported this view and clarified the rules that under the different items of deductions from the salaried class, a deduction for maintenance of wife and children stands first and the other deductions follows next.

**v) Continue the procedure of maintenance amount being deposited in the Family court, but court should transfer to women's bank accounts:**

Maintenance amount is generally deposited by the husbands in the Family Court. When the amount is deducted from the salaries of the husbands, that amount too comes to the Court in the name of the Judge. The entire maintenance amount is deposited and is given to the wives whenever they come to the Court. The Court is maintaining a separate register for this.

Just to draw the money, the women litigants are supposed to report to the Court every month. When asked about the possibility of opening an account and directly depositing the amount in their respective account by their husbands, the advocates reacted that that system would not work out. The general attitude of the husbands is to evade from paying the amount. The proposed suggestion encouraged the husbands from non-payment and to escape from the scrutiny of the Court.

Depositing the maintenance amount in the court is a safety clause for women. There is a direct supervision for consistent period. Further, it opens up chances for the couple to see each other, which could pave way for family reunion. However, to reduce the time taken for women to come each month, the advocates suggested that once the maintenance order

was passed, the women litigants should be asked to open an account, as was being done in the Principal Family Court in Chennai. As soon as the spouse deposits the maintenance amount in the court, it is transferred to the account of the women litigants. It was heartening to learn that the women account holders have ATM facilities. There are Cash Counters in all the three Family Courts in Chennai.

**iv) Independent machinery to execute orders of maintenance:**

The advocates met recommended that independent machinery be established to execute the orders of maintenance ought to be established. They also suggested that every police station should have a unit, just to execute the warrant issued by the Court.

**Lack of Awareness of advocates on Amicus Curiae:**

**Amicus curiae is one, who voluntarily or on invitation of the Court instructs the Court on a matter of law concerning which the latter is doubtful or mistaken, or informs the court of facts, a knowledge of which is necessary to a proper disposition of the case.**

**Family Courts (Tamilnadu) Rules, 1987 is silent about the appointment of legal experts as amicus curiae.**

**The advocates expressed ignorance about the appointment of amicus curiae in every court. The importance and necessity was not sensed by the advocates, as the litigants are permitted to be represented by advocates.**

***5.5 Opinion about the Litigation Proceedings:***

**5.5.1 Speed up custody procedures:**

On matters related to custody of children, the advocates expressed that it is a very sensitive issue, and the proceedings should be speeded up. Counsellors should make efforts in motivating the parents contemplating divorce to come to some mutually agreed settlement on this issue of parenting. Family Therapy may be given with inclusion of children in the process. If settlement could not be reached in the conciliation proceedings, till the final decree is being passed by the Court, visitation order should be given to the other parent with whom the child does not stay.

### 5.5.2 Time Limit for disposal of petitions

The period for reaching the finality of petition should be stipulated and recommended that this time limit should not exceed five years. If one of the spouses filed a suit for dissolution of marriage and the other spouse pleaded for restitution of conjugal rights, and if the prayer of the primary petitioner is dissolution, and if the litigation proceeding exceeded the stipulated period of five years, then the prayer of the primary petitioner should be granted. However this point was contested and concern expressed over the impact of these decisions on the women litigants. It has been observed that if the husband is the primary petitioner and files petition for restitution of conjugal rights and the wife files case for dissolution of marriage, then the above decision would adversely affect the woman. Considering the patriarchal nature of our society where women are constantly marginalized, this point needs greater reflection.

### 5.5.3 Avoiding multiplicity of petitions

Suggestion also came out on multiplicity of petitions filed by both the spouses on matrimonial issues. Some suggested that once a petition is filed under the matrimonial law, any other matrimonial relief sought for by either spouse should be filed under the first petition. Even if the relief sought for is one for restitution of conjugal right, whereas the other spouse filed for divorce, it must be strictly implemented to avoid multiplicity of procedure. Many advocates suggested that the petitions filed by the parties seeking different relief through separate petitions may be consolidated and posted on a single day.

In addition to the above, it was suggested that the Court should pass order of injunctions to avoid violence on women. Further it was stressed that all women should be given free legal aid services.



## CHAPTER VI

### ***INTERVIEW WITH THE FAMILY COURT JUDGES***

*This chapter records the opinion of the Family Court judge on different aspects of the functioning of the family court in Coimbatore :*

#### ***6.1 Pre-litigation Counselling not legally possible:***

The present Family Court Counsellors cannot do pre-litigation counseling. The Court cannot instruct or order the primary petitioner to go for pre-litigation counseling along with their spouses. The procedure is that only after the petition is taken to file, notice sent to the respondents, and appearance of both the parties on the returnable date, the Judge can direct the parties to go for counselling. Hence, the court cannot order to go for pre-litigation counseling.

#### ***6.2 Consideration of reports of the Counsellors not legally possible:***

In Coimbatore, the Family Court is not considering the report of the counselor. The Judge shared that he does not consider the report, as the report is of confidential nature and also it cannot be considered as a document of evidence. Further, the Act does not allow the counselors to be cross-examined.

#### ***6.3 Counsellor's honorarium: demand for increase***

As many counselors came voluntarily and accepted this role, the daily honorarium paid for the counselors is fine. However, the counselors feel that their honorarium is low. The counselors placed a demand to increase the honorarium to Rs.700/- per day. The Judge said, he would place this demand before the higher authorities.

#### ***6.4 Maintenance cases- difficult to enforce:***

The Judge said that the staffs of police and revenue department are not cooperating for the enforcement of the maintenance orders passed by the Court. Opening a saving account and depositing the maintenance directly in the account number, though executable is not appreciable as the respondents mostly try to evade from depositing the amount. Very few men have the commitment and conviction that it was their duty to maintain their wife and children.



### **6.5 Standard format not possible due to diversity in cases:**

The Rules does not prescribe standard format for submission of petition, suit, applications, etc., for different matters such as restitution of conjugal rights, mutual consent divorce, interim maintenance, custody of children, maintenance etc. The Judge opined that the standard format may not be a possibility as the nature of complaints vary from case to case.

### **6.6 No. of Cases and causes for marital discord:**

Approximately 700 – 800 new matrimonial cases are being filed every year in Coimbatore District and 75 per cent of the cases are disposed by the year end. Of late, there is an increase in young couples seeking divorce. Most of these couples are educated, economically independent and they lack mutual understanding, adaptability to joint family system, negative perception of in-laws. They show no interest to nurture the marital bond. Ego clashes add to the above causing marital rift.

However, the judge did not question the patri-local nature of marriage in most communities in India, under which the girl is expected to go and live with the in laws family upon marriage

### **6.7 Advocates representation high:**

Advocates represent the litigants in 75 per cent of the cases, on getting legal permission.

### **6.8 Training:**

It was shared that there was no training given on conseling, conciliation and gender sensitization, etc on appointment as Family Court Judge.

### **6.9 Increasing the number of Family Courts in Coimbatore district and appointing additional Judges:**

There is no need for additional Family Court for Coimbatore District. He also said that one Judge can handle the present number of cases.



## CHAPTER VII

### ***SUGGESTIONS AND RECOMMENDATIONS***

1. Family courts should be established in all districts of Tamilnadu. The number of courts/ judges in each district should be increased in proportion to the number of cases filed in the Family Courts.
2. A comprehensive Family Court Rules should be framed incorporating all the good features of Family Court Rules of different States.
3. There should be a separate unit in the Family Court to follow up on execution of the orders passed by the Family Court, and liaise with police where necessary. For execution of maintenance granted under Sec 125 Cr.P.C independent machinery ought to be established in the family court.
4. There should be a special unit in every police station to execute the warrant order of the Family Court. Or, there should be a police unit in the Court Campus, vested with powers to execute the warrant orders of all the Courts.
5. Family Courts should have all the infrastructure facilities and basic amenities to ensure litigant friendly atmosphere. It should have sufficient space to accommodate counseling centre (separate room for each counselor), children room, meeting room for couple to talk freely with each other, waiting room, canteen, toilets and drinking water etc. The facilities available in the family courts in Chennai may be seen as a model for replication.
6. To ensure the litigant-friendly approach, petitions / applications / suits for seeking different relief and affidavit format should be standardized and printed in English and vernacular languages and be made available to the litigants. These forms should be in simpler terms and easy to use.
7. Every Court should have a 'Help-Desk', having a panel of advocates from Legal Aid Centre, to assist the litigants to file the petitions and counter petitions and empower them to defend their cases on their own.

8. Women litigants may be exempted from paying court fee. Interim maintenance may be ordered even before the case is being posted for conciliation. This will enable women to bear the direct and indirect cost of litigation.
9. Unless interim maintenance is deposited in court, the very suit should not be entertained. If the husband is employed, a salary attachment order can be made at the time of interim maintenance order itself.
10. Following the model of Family Courts in Chennai, the procedure for withdrawal of maintenance amount should be simplified, by opening an account in the name of the women litigants once it is deposited in courts.
11. The Family Court should run a Pre-litigation Counselling Centre, which shall be operated outside the court campus, so that the couples in early stage of disagreement can seek the services.
12. Full time Judges should be appointed in vacant positions with immediate effect and a minimum of three years should be fixed as their tenure as Family Court Judges. The newly recruited Family Court Judges should be provided trainings on gender sensitization, conciliation and counselling.
13. Petition by the other party in the Family court should be treated under the first petition. Even if the relief sought for is one for restitution of conjugal right whereas the other spouse filed for divorce, it must be strictly implemented to avoid multiplicity of procedure. All the pending petitions / suits under one matrimonial case should be consolidated and should be posted on a single day.
14. The Court should be empowered to cancel the representation of the advocates, if the court found that they purposefully use the delaying tactics by seeking unnecessary adjournments. The number of adjournments should be restricted. Orders for maintenance pendent elite and expenses of proceedings should be passed before initiating trial proceedings to decide on the permanent alimony.

15. While awarding restitution of conjugal right to a man the wishes of his wife must be given prime consideration. There are many instances when the wife files a petition for maintenance, the husband often files counter petition seeking restitution to escape payment of maintenance.
16. Permanent full time Marriage Counselors should be appointed in all the Family Courts as stipulated in the GO. The number of full time marriage counselors should be increased
17. The recruitment of the present counselling team should be restructured. Their qualifications should be prescribed as post-graduate in social work / psychology / family therapy and diploma / degree in counseling.
18. The performance of the counsellors should be reviewed periodically, to continue their position and legal awareness programmes and conciliation skills training should be organized for them on a regular basis. The counselors should be empowered to seek the services of the experts, not only for their opinion but mainly for their therapeutic services.
19. During the conciliation proceedings, each case should be attended by only one counselor. If a case is counseled by more than one person, it is a violation of professional ethics and the principles of counseling. Maximum efforts should be taken to ensure that each case is posted to the same counselor, to reduce the burden of the parties to repeatedly narrate the problem to different persons.
20. Trial proceeding in the matters of interim maintenance, visitation in the matters of disputes on child custody should be speeded up, by posting the case on successive dates. Visitation orders should be given to the spouse not having the custody of the children.
21. The Courts should be empowered to pass order of injunctions to protect the women from domestic violence, when the proceedings were pending before the Court.
22. Time limit for disposal of the case should be specified, depending upon the nature of the case. However, keeping the intent of the Family Courts in focus: speedy proceedings should be attempted as *Justice delayed is justice denied*.

## *Critical Reflection and Way Forward*

Family Courts were established with a view to promote conciliation and secure the speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith. Conciliation, speedy settlement and removal of gender bias are the stated objectives in the legislation, but in reality there is a huge gap which needs to be addressed by developing various gender fair mechanisms, systems and processes inclusive of gender sensitive civil society organizations. At the State level annual review of the functioning of the family court and outcome of cases related to women should be made integral part of this process.

The Act says that the Family Court Judge shall be qualified and have experience and expertise in promoting the settlement of disputes by conciliation and counseling. Some States have framed Rules, making the Family Court Judges to involve in the settlement. In the absence of such Rules in Tamil Nadu, the Judges are not doing secondary counseling. Further, the appointed Judges have not been trained in counseling and conciliation. Therefore, appointment of Judges in the Family Courts, sensitization process and infrastructural support should be given due importance.

The family courts have not succeeded to usher in a new dynamic approach to family litigation and to ensure gender justice. If no settlement arrived, then the regular trial follows. The Rules do not simplify the procedures but merely follows the Code of Civil Procedure. Hence, the litigation proceeding prolongs. The backlog of cases consistently increases every year. Thus, the very objective- speedy disposal of cases is not materialized. Therefore it is impeartive to critically reflect on these issues and take immediate steps to bring necessary changes within the structure and performance of family courts.

The issue of compulsory registration of marriages has been again and again debated in various forums. In accordance to it's commitment to CEDAW Committee the GOI has initiated actions to implement the same by 2010. This also needs to be reviewed in the context of the Protection of Women from Domestic Violence Act-2005 which has a much broader definition of familial relationship.

There are other critical issues like the custody of children, right over matrimonial properties and above all addressing women's rights to dignity.

Family Court (Madhya Pradesh) Rules says that the Family Court can call upon report or interim report from the institutions / organizations regarding their effort for amicable settlement between the parties, and such report become part of the record of the suit or proceedings. The State Rules of Goa, Maharashtra, Kerala includes a provision that the report of the counsellor will be considered to assist the court in adjudicating the matter before it. The Rules of Kerala permits the parties to get a copy of the report of the counsellor. The Rules of Maharashtra says that the report of the counsellors regarding the home visit, parent - child relationship may be considered in deciding the question of custody or guardianship of the children, in determining the maintenance amount to be granted to one of the parties. In the same way, the report of the counsellors should be part of the record of the suit and considered by the Family Court Judges in Tamil Nadu in deciding the case. A detailed reporting format for counsellors should be prepared.

The recommendations for a **help desk, appointment of gender sensitive Judges and counsellors, standardization of formats, simplification of procedures and gender sensitization at all levels** shall make Justice more accesible to poor, illiterate and needy women. The challenges lie in ensuring that the recommendations given in this study are taken forward. EKTA is committed to campaign for the implementation of the above recommendations.



## ANNEXURE 1

### ***THE FAMILY COURTS ACT, 1984***

#### **THE FAMILY COURTS ACT, 1984**

(No.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:

#### **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 except the State of Jammu and Kashmir.
- (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.

##### **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 Sec.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.

#### **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.

#### 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;
  - (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 qualification 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 that 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) No 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 purposes 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.

**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 ~w, to be a district Court or, 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 subsection are suits and proceedings of the following nature, namely:

- (a) a suit or proceeding between the parties to a marriage for decree of a nullity 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 valldity 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);
    - (b) and such other jurisdiction as may be conferred on it by any other enactment

**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 Sec. 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 Sec. 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 or such Family Court before 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 has 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***

#### **9. Duty of Family Court to make efforts for settlement:-**

- (1) In every suit or proceeding, endeavour shall be made by 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.

#### **10. Procedure generally**

- (1) Subject to the other provisions of this Act and 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 purpose of the said provisions of the Code, a 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 the 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 the 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.

**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*.

**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 suit or proceedings, before a Family Court, it shall not be necessary to record the evidence of witnesses at length, but the Judges 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.

**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.

**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 may be executed either by the Family Court which passed it or by the other Family Court or ordinary Civil Court to which it is sent for execution.

## CHAPTER V

### *Appeals and Revisions*

#### 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 judgment 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 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 judgment or order of a Family Court.
- (4) The High Court may, of its own motion or otherwise, call for and 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.
- (5) Except as aforesaid, no appeal or revision shall lie to any Court from any judgment, order or decree of a Family Court.
- (6) An appeal referred under sub-section (1) shall be heard by a Bench consisting of two or more Judges.

## 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.

#### 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 the 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 Cl.(c) of sub-section (3) of Sec.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 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 terms and conditions of Judges under sub-section (6) of Sec. 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 Sec. 6;
  - (c) payment of fees and expenses (including travelling expenses) of medical and other experts and other persons referred to in Sec. 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 Sec. 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.



## ANNEXURE 2

### ***THE FAMILY COURTS (TAMIL NADU) RULES, 1987***

(G.O Ms. No. 1871, Home (courts VII), 3<sup>rd</sup> August, 1987, Published in the TamilNadu Government gazette, Part III – Section 1(a), dated 19<sup>th</sup> August 1987 on Pages 534-536)

**No.SRO.A-195/87** – In exercise of the powers conferred by s.23 of the family courts act , 1984(central act 66 of 1984) the governor of TamilNadu, after consultation with the High court, Madras, hereby makes the following rules, namely:-

#### **RULES**

##### **1. Short title and commencement:-**

- (1) These rules may be called the family courts (TamilNadu) Rules, 1987. (2) They shall come into force at once

##### **2. Definitions:-**

- (a) 'Act' means the Family courts Act, 1984 (Central Act 66 of 1984). (b) 'Judge' means the Judge or as the case may be the principal Judge, Additional Principal Judge or other Judge of a Family Court.

##### **3. Terms and conditions of service of the Judge:-**

- (1) A Judge shall hold office for a term of five years or until he attains the age of sixty two years, whichever is earlier.
- (2) A Judge shall be entitled to the pay, allowances and leave as admissible to a District Judge: Provided that if he is in receipt of a pension in respect of any previous service under any government, he shall be entitled to the pay last drawn by him, less the pension and the pension equivalent of other pensionary benefits, if any, drawn by him and in addition, he shall be entitled to draw the allowances admissible to a District Judge: Provided further that if a serving District Judge is appointed as a Judge, he shall be entitled to such pay and allowances that would have been admissible to him but for his appointment as a Judge and if he retires from service before the expiry of this term, he shall, from the date of his retirement, be entitled to such pay and allowances admissible under the first provision.
- (3) The conditions of service applicable to a District Judge shall apply to a Judge.
- (4) A Judge shall not be entitled to any pension for the service rendered by him as a Judge:

Provided that, an officer of the State Government on deputation shall be entitled to count his service as such till the date of his superannuation for the purpose of his pension.

**4. List of persons and agencies engaged in the field of social welfare:-**

- (1) The family court shall prepare in the month of January every year a list of not less than ten persons (including institutions or organizations) from among those engaged in the field of social welfare and whose association with the family court may enable it to exercise its jurisdiction more effectively in accordance with the purpose of the Act and submit to the high court for approval:  
Provided that if the Family court is established in the middle of any year, such list shall be submitted within one month from the date of establishment of such court.
- (2) The list shall be valid till the approval of the next list by the High court.

**5. Nomination of persons as Counselors:-**

- (1) The family court shall nominate two persons which may include representatives of institutions or organizations out of the list prepared under subrule (1) of R.4 as Counselors to assist the said court in discharge of its functions
- (2) The term of office of the Counselors so nominated shall be three months.

**6. Substitute for Counselor nominated:-**

If, for any reason a Counselor so nominated is unable to attend the Family Court, the Family Court may nominate another Counselor from out of the list prepared under sub-rule(1) of R.4.

**7. Fee for Counselor:-**

Every counselor shall be entitled to sitting fee of Rs.30 (Rupees thirty only) per day.

**8. Number and categories of Officers and other Employees of Family Court:-**

- (1) Every Family Court shall have the posts specified in the Schedule to these rules.
- (2) The salary, allowances and other conditions of service of the officers and other employees of the family Court referred to in sub- section (2) of S.6 of the Act shall be the same as those applicable to the employees holding similar posts in the Tamil Nadu Judicial Ministerial Service, the Tamil Nadu General Subordinate Service and the Tamil Nadu Basic Service.
- (3) Appointment to the posts specified in the Schedule to these rules shall be made by the Principal Judge by deputation from among persons holding equivalent posts in the Tamil Nadu Judicial Ministerial Service in Tamil Nadu General Subordinate Service and the Tamil Nadu Basic Service.

**9. Fees and expenses of Medical and the Experts:-**

The Medical experts and the persons referred to in S.12 of the Act, whose services are secured for assisting the Family Court, shall be paid traveling and daily allowances at the rate admissible to the official witness appearing before the Criminal Courts for giving evidence.

**10. Fees of Legal Practitioners:-**

The legal practitioners appointed under S.13 of the Act as amicus curiae shall be entitled to fees at the rate of Rs.100(Rupees one hundred only) per case.



**THE SCHEDULE**

(See Rule 8)

S.No. (1)	Name of the Post (2)	Number of Post (3)
	<b>Principal Judge's Court</b>	
1.	Sheristedar	One
2.	Assistants	Two
3.	Stenographer	One
4.	Typist	One
5.	Copyist	Three
6.	Junior Assistant	Four
7.	Attender	One
8.	Jamedar	One
9.	Office Assistants	Six
10.	Sweeper-cum-watchman	One
11.	Bailiffs	Two
12.	Process Servers	Four
	<b>Additional Principal Judge's Court</b>	
1.	Assistant	One
2.	Stenographer	One
3.	Typist	One
4.	Jamedar	One
5.	Office Assistants	Four



## ANNEXURE 3

### **G.O.Ms.No. 500 DATED 11.04.2007 – APPOINTMENT OF MARRIAGE COUNSELLORS**

#### **ABSTRACT**

Court – Appointment of two Full Time Marriage Counsellors for each Family Court – Orders – Issued

Home (Courts.II ) Department G.O.Ms.No. 500 Dated:11.04.2007 Read:

- 1) From the Register ( Admin) High Court Chennai Lr. No 841/A/06/F1 dated 22.12.2006 and 09.02.2007
- 2) G.O.MS No 75, SW & NMP, dated 25.02.2002

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#### **ORDER**

- 1) The Registrar General High Court Chennai has sent a proposal to the Government requesting to sanction 12 Marriage Councilors for 6 family Court viz., Chennai (6), Madurai (2) Salem (2), Coimbatore (2) as decided in the joint meeting of the Honourable Chief Minister and the Honourable Chief Justice held on 08.07.2006 .
- 2) The Register General High Court Chennai has stated that at present, there are no Marriage counsellors in the family Courts. However, there is a panel of persons as Counsellors, out of which on rotation basis , two counsellors for each family Courts are being nominated to assist the family Courts in rendering counselling to the parties. The existing Marriage counsellors are appointed on adhoc basis. and they are paid Rs.200/- per day upto a maximum of Rs.4,000/- p.m. As already prescribed in the Draft Tamil Nadu Family Court (Counsellors) Rules, 2006, the Full Time Marriage Counsellor is required to possess a Master degree with minimum two years of experience in Social Work, Psychology and family counselling and legal qualification and legal background are preferable.
- 3) The Government after careful examination have decided to accept the proposal of the Registrar General, High Court and they accordingly sanction the creation of 12 posts of Marriage Counsellors for 6 Family Courts at the rate of 2 Marriage Counsellors for each Court viz., Chennai (6), Madurai (2), Salem (2), Coimbatore (2). at an expenditure not exceeding Rs. 7.2 lakhs annually (Rupees Seven lakhs and Twenty thousand only) The Marriage counsellors are appointed at a consolidation pay of Rs.5000 per month as honorarium. They should possess for degree in social work or Psychology. They are appointed on temporary basis for one year.
- 4) The expenditure sanctioned in paragraph 3 above, shall be debited to “2014 00– Administration of Justice – 105 Civil and sessions Courts – I Non-Plan-AE – Family Courts 01. Salaries – 09.Honorarium (D.P.C. No.2014 00 105 AE 0199).

- 5) Necessary funds will be provided in R.E./F.M.A. 2007-2008. Pending provision of such funds in R.E./F.M.A. 2007-08, the Registrar (Admin), High Court of Madras is authorized to incur the expenditure sanctioned in para 3 above. He is also requested to include the above expenditure while sending proposal for RE/FMA 2007-08 at the appropriate time without fail.
- 6) This order issues with the concurrence of Finance department vide its U.O.No.21219/Home 1/07, dated 09.04.2007 and with ASL No.18. (BY ORDER OF THE GOVERNOR)

S. MALATHI,  
SECRETARY TO GOVERNMENT

To

The Register General High Court Chennai 104  
The Accountant General Chennai 18/35  
THE Pay and Accounts Officer, High Court, Chennai 104.  
The Pay Accounts Officer, Madurai.  
The Treasury Officers, Salem and Coimbatore.

**Copy to**

The Finance ( H.1) (PG II) Dept. Chennai -9  
//forwarded by order//  
SECTION OFFICER



## ANNEXURE 4

### **REPORT OF THE COMMITTEE ON EMPOWERMENT OF WOMEN ON FUNCTIONING OF FAMILY COURT**

#### **Functioning of family courts Circular sent to the chief secretaries of all state Governments**

From

P.K. Agrawal  
Joint secretary (j-ii), Department of justice  
Jaisalmer I House, Mansingh Road  
New Delhi – 110011.

Sir,

I am directed to state that the committee on Empowerment of women (2001-2002) prior to submitting its fifth Report on functioning of family court in December, 2001 before both the Houses of parliament had informal discussions with the chairpersons and Members of the National and State Commissions for women, NGOs, Advocates and representatives of the state Government and based on visits by the committee to some states, the committee noticed a number of shortcomings/deficiencies regarding the functioning of the Family Courts.

On the basis of the above the committee in its Fifth Report on Functioning of Family Courts, in Para 1.56 has suggested the following measures:

1. Selection of Family Courts judges should not be limited to judicial officers alone but extended to administrators, social workers, etc. Judges should be psychologists, psychoanalysis, social workers and social engineers.
2. One of the reasons for delay in disposal of cases is that there is dearth of judges especially women judges and support systems.
3. Lawyers appearance should be avoided as they are the main cause for the delay. There is a need to impart para-legal training to the counselors. The appointment of researchers should be made to assist the family court judges to eliminate the role of lawyers.
4. Judiciary ought to be sensitized about women's problems. Judges of the Family Courts should be given suitable training from time to time to enable them to understand complicated family disputes and to help them in rendering justice to the wife who is generally the weaker party in the dispute.
5. The atmosphere in the family courts should be such as to enable a woman to express herself freely.
6. Judges should also have a limited number of cases to be decided and should not be over-burdened.
7. Family courts are working more or less like ordinary civil courts. The Family Courts Judges follow the Cr.Pc and as a result many times is delayed. Family Courts should be more in a nature of friendly conciliatory for a and procedure laid down in Cr.Pc should not be strictly followed. Otherwise the Family Courts will not serve the purpose and timely justice will not be afforded to the parties.

8. Information centers should be set up at all Family Courts to explain the procedure and functioning of Family Courts to all potential litigants.
9. The Committee calls upon the respective State Governments/state Commissions for Women to undertake legal literacy programmes and issue pamphlets in regional languages giving basis information relating to functions and working of Family Courts, legal rights and procedures.
10. A list of cases should be prepared by the Registrar's office which are ready for hearing and be presented to the court each day. A provision should be made in the Rules that they should be disposed of within one year from the date of institution, so that the objectives of the Act are fully achieved.
11. A standard proforma should be worked out and published in all regional languages papers setting out the list of documents required to be filled in court. The proforma should be simplified, requiring the parties to state only facts without substantiating each fact with evidence.
12. The procedure for serving of summons through Bailiff is cumbersome and results in undue delay of proceedings. Therefore, serving of summons should be made permissible through registered post.
13. In cases where there has been repeated history of physical violence, or where the husband has committed bigamy or adultery, women should not be compelled to attempt reconciliation. Where reconciliation has been already attempted by other organizations such as women's organizations, community organizations or legal aid committees, the Court should dispense with the attempt at reconciliation, and should accept a certificate issued by and of these groups that reconciliation has been attempted without success. This would minimize delays.
14. There should be compulsory registration of marriages in order to avoid bigamy.
15. All women who wish to file cases in the Family court and who want legal aid should be provided legal aid. For this purpose legal aid committees should be set up and made to function in the premises of Family courts.
16. The lengthy procedure and paper work should not form a barrier to speedy justice. In this regard, the Court should find an indigenous and local method so as to avoid frequent adjournments which will reduce the number of times the women litigants have to appear before the court.
17. The women litigants must be explained in the presence of the counselors, the full text of the recorded statement and the action likely to be taken in the matter.

The Committee's suggestions are explained encompassing wide arena of functioning of Family Courts.

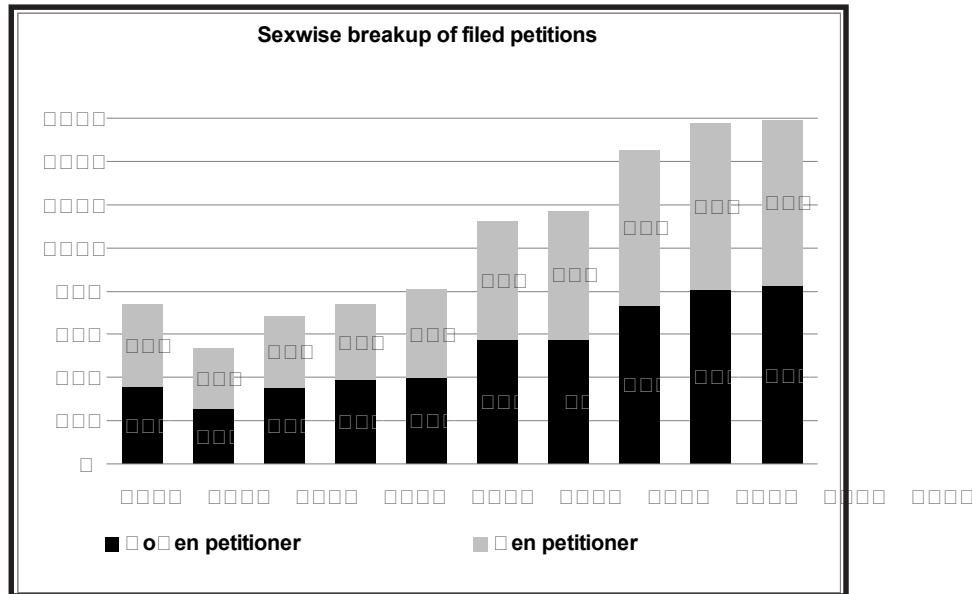
The State Government where the Family Courts are functioning is, therefore, requested to take necessary action in consultation with the High Courts. Wherever it is necessary for removing the short comings/ deficiencies, as mentioned above.

The State Government is also requested to furnish their comments/Action Taken Note in this regard so as to facilitate this Department to send a consolidated Action Taken Report to the Committee. The reply may be sent to this Department by 28<sup>th</sup> January, 2002.

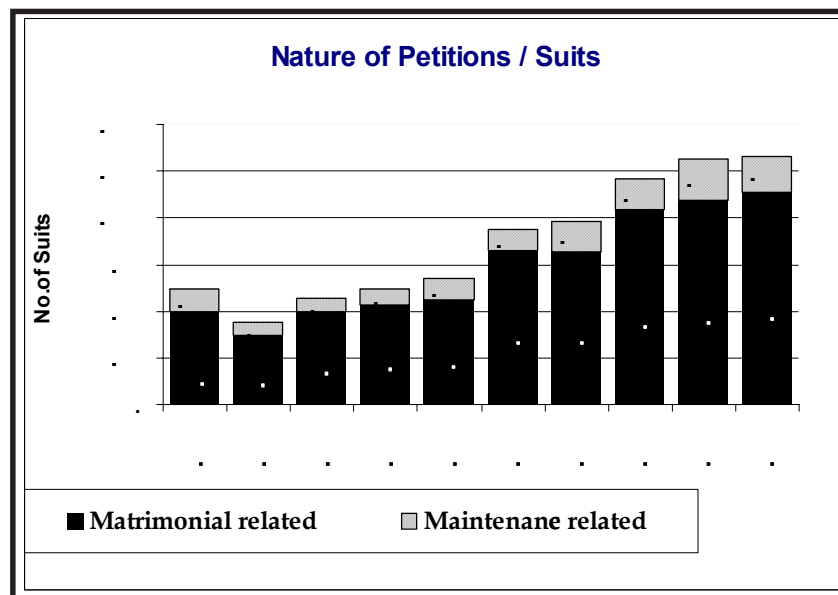
## ANNEXURE 5

### Graphical representation of the Tables in Chapter - III of Data Analysis

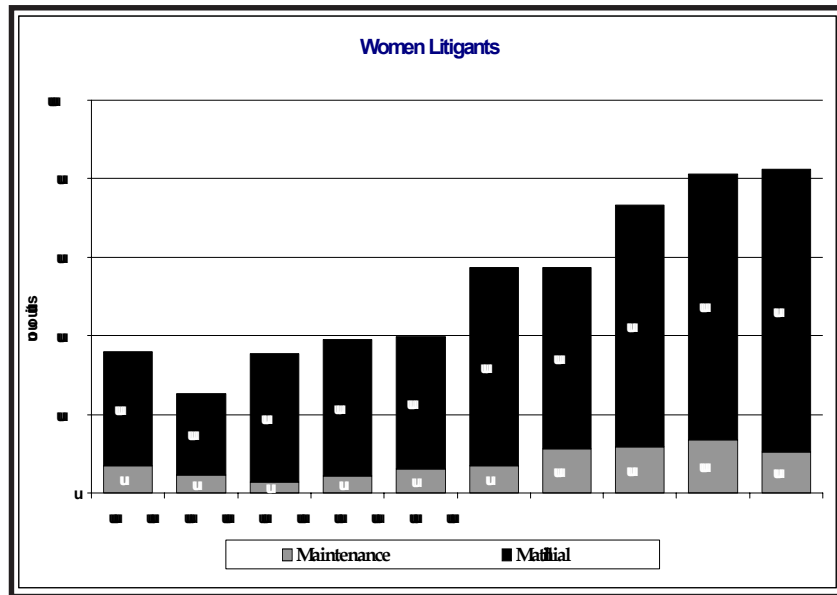
**Table 1: Gender wise break up of filing petitions**



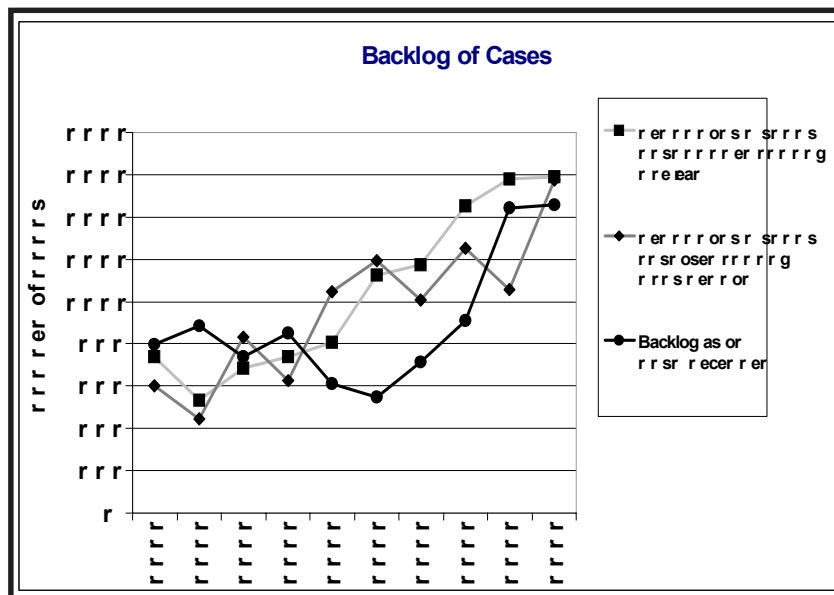
**Table 2: Comparative Data of the Matrimonial cases and maintenance cases filed by all litigants**



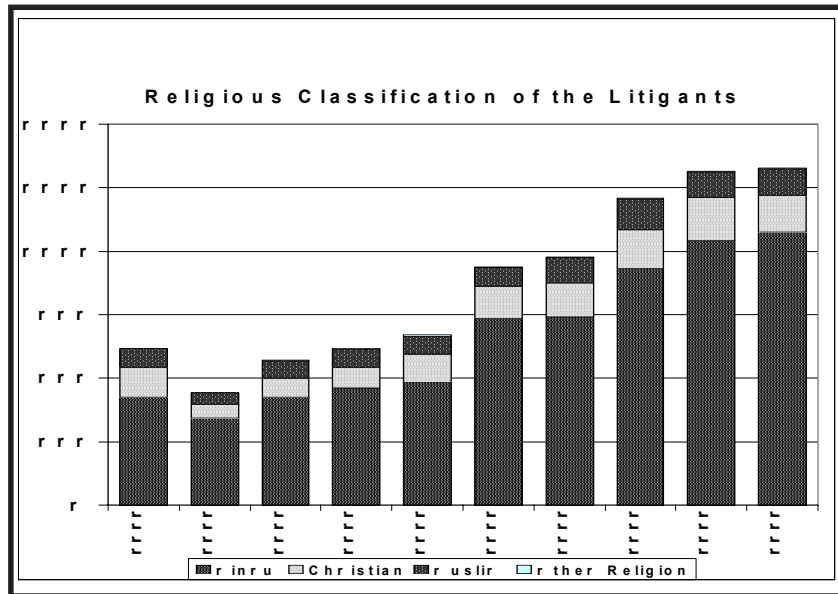
**Table 3 : Comparative Data of the Matrimonial cases and maintenance cases filed by women in original application**



**Table 4: Backlog of Cases**



**Table 5: Classification of litigants' petitions based on religion**



**Table 6 : Categories of original petitions filed during different periods**

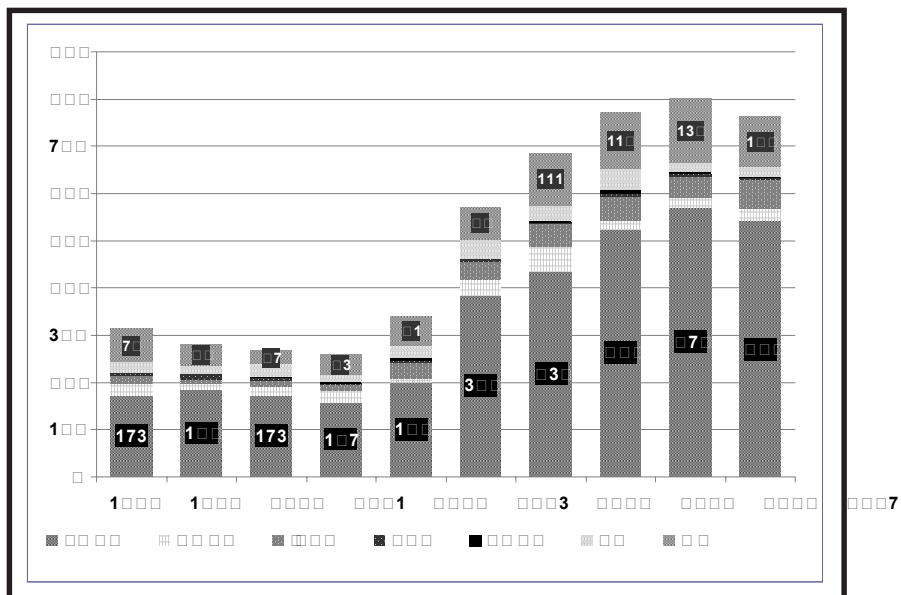


Table 7: Categories of Maintenance Cases

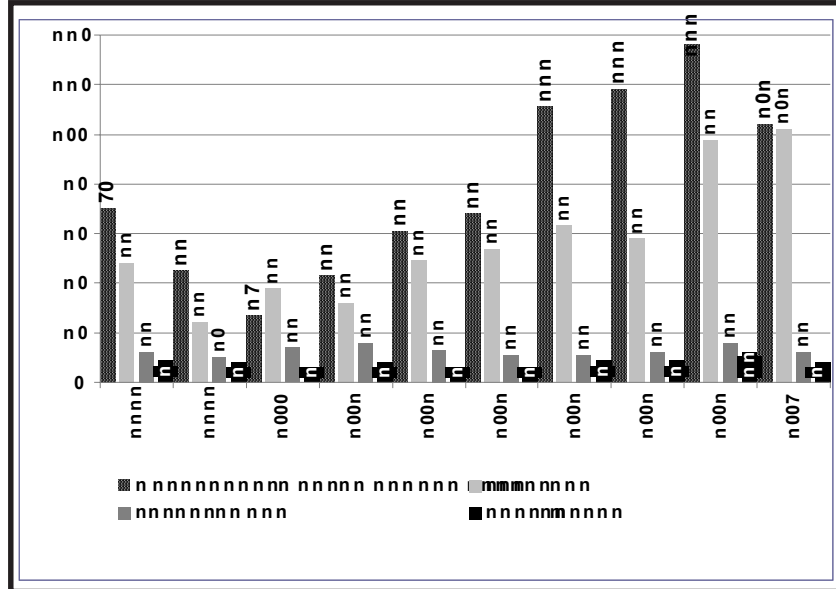


Table 8: Outcome of litigation in Maintenance Cases

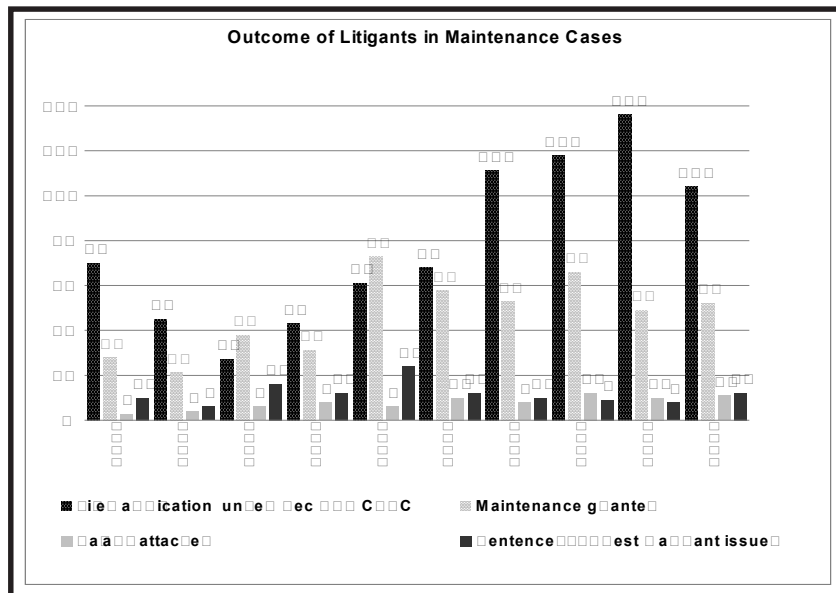




Table 9: Outcome of litigation in maintenance recovery case

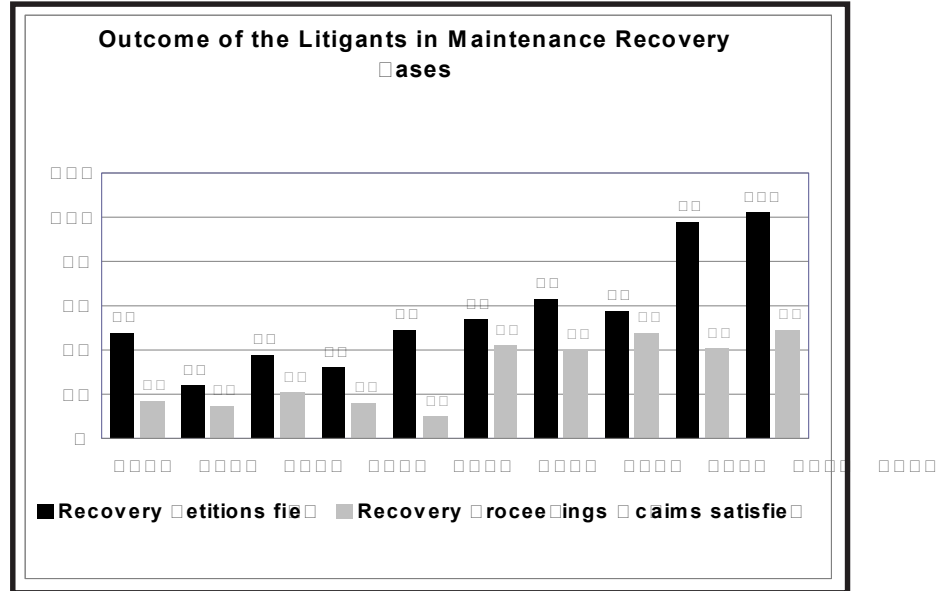


Table 10 : Details of relief maintenance

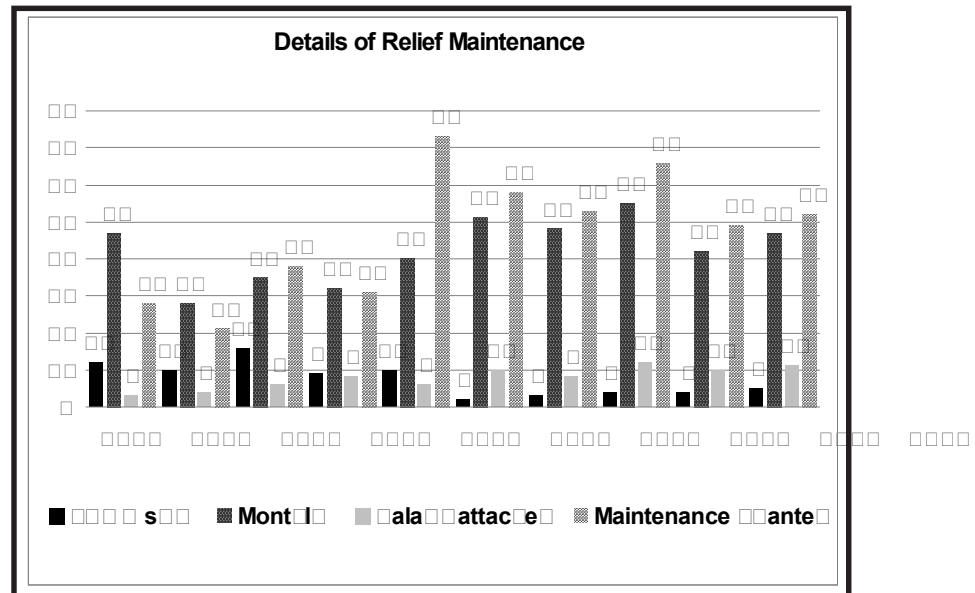


Table 11: Categories of divorce cases

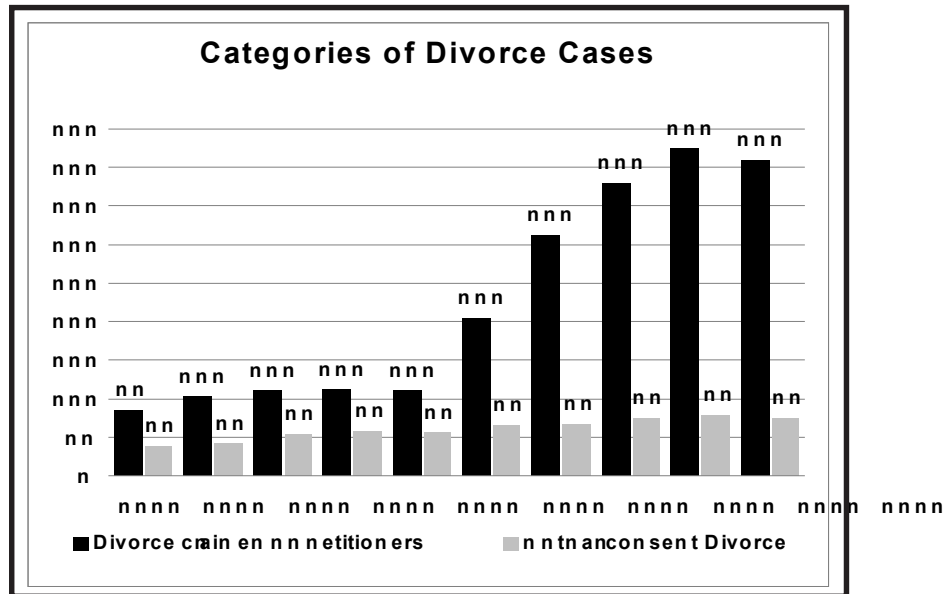
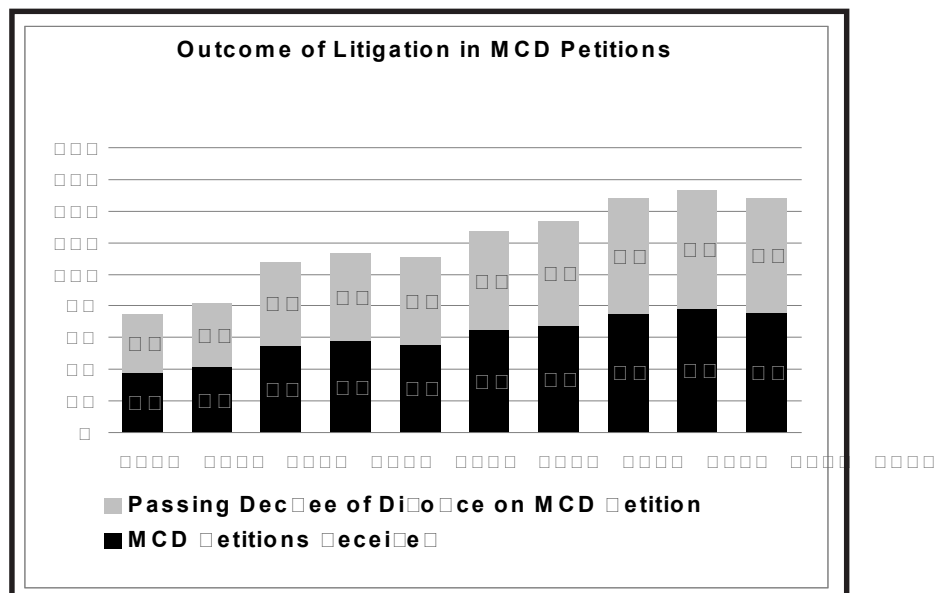
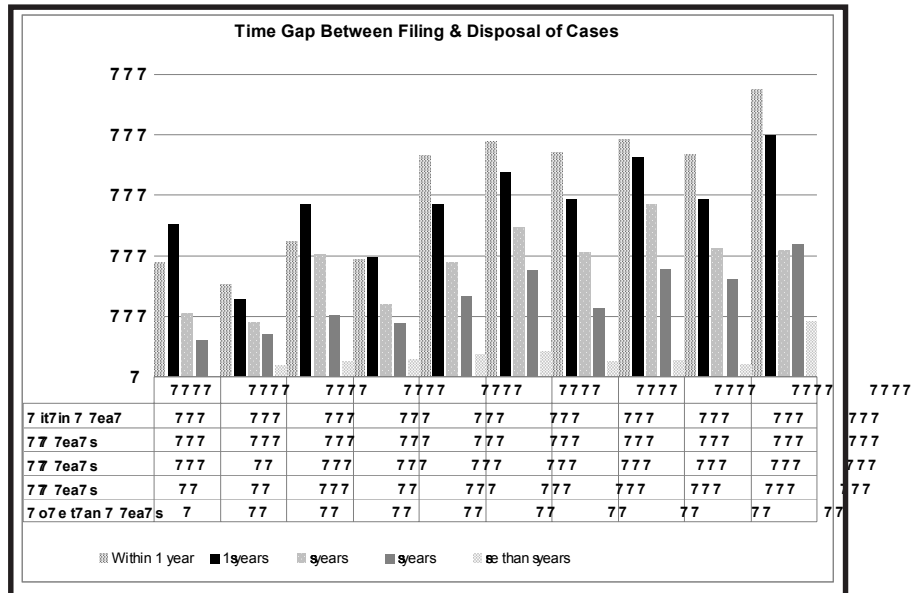


Table 12: Outcome of litigation in mutual consent divorce (MCD) petitions



**Table 15: Time gap between filing and disposal of all disposed cases**



*P.S : Graphical representation of the Tables 13, 14 not available*



## ANNEXURE 6

### *Family Court Rules in other States*

#### **The Family Courts (Kerala) Rules, 1989**

A party to a suit or proceeding shall be entitled, with the permission of the Court, to take legal advice at any stage of a suit or proceeding either before the counselor or before the Court.

#### **Duties and Functions of a Counselor:**

The counselor helps the parties in arriving at reconciliation. The counselor in the discharge of his duties shall be entitled to pay home visits to the homes of any of the parties. The counselor in the discharge of his duties shall be entitled to interview relatives, friends and acquaintances of parties or any of them. The counselor in the discharge of his duties may seek such information as he may deem fit from the employer of any of the parties. The counselor may in the discharge of his duties refer the parties to an expert in any other area such as medicine or psychiatry.

#### **Confidentiality of information:**

Any information gathered by the counselor, any statement made before the counselor or any notes or report prepared by the counselor shall be treated as confidential. The Counselor shall not be called upon to disclose this information, statements, notes or report to any court except with the consent of both the parties.

#### **Counselor not to give evidence:**

The counselor shall not be permitted to give evidence in any court in respect of the information, statements, notes or report. Provided, that the counselor shall submit to the Court a report relating to the home environment of the parties concerned, their personalities and their relationship with their child/children in order to assist the Court in deciding the question of custody or guardianship of any child/children of the marriage. Provided further that the counselor shall also submit to the Court a report relating to home environment, income or standard of living of the party or parties concerned in order to assist the Court in determining the amount of maintenance and/or alimony to be granted to one of the parties.

#### **Counselor not to be cross-examined:**

The counselor shall not be asked to give evidence and shall not be cross-examined in any court in respect of the report so made.

#### **Submission of memorandum:**

The Counselor shall submit a brief memorandum to the Court informing the court of the outcome of the proceedings before him/her.

**Settlement before Counselor:**

When the parties arrive at a settlement before the Counselor relating to the dispute or any part thereof, such settlement shall be reduced to writing and shall be signed by the parties and countersigned by the counselor. The Court shall pronounce a decree or order in terms thereof unless the Court considers the terms of the settlement unconscionable or unlawful.

**Counselor's right to supervise custody of children:**

The Counselor shall be entitled to supervise the placement of children in custody of a party and for reasons to be recorded in writing, shall be entitled to pay surprise visits to the home where the child resides between 6 a.m. to 6 p.m. In the event of the Counselor coming to a conclusion that any alteration is required in the arrangement relating to custody of a child / children, the Counselor shall make a report to the Court in that connection. Thereupon the court may, after notice to the parties, pass such orders in that connection as the Court may deem fit.

**Assistance of Legal Experts:**

The Family Court shall maintain a panel of legal experts willing to be appointed as 'amicus curiae'. Persons appointed as 'amicus curiae' shall be paid out of the revenue of the State, fees at the rate of rupees five hundred per case and other expenses.

**The Family Courts (Maharashtra) Rules**

**Permission for Representation by a Lawyer:**

The court may permit the parties to be represented by a lawyer in Court. Such permission may be granted if the case involves complicated questions of law or fact, as if the court is of the view that the party in person will not be in a position to conduct his or her case adequately or for any other reason. The reason for granting permission shall be recorded in the order. Permission so granted may be invoked by the Court at any stage of the proceedings if the Court considers it just and necessary.

**Appearance by advocates excluded:**

No party to a suit or proceeding before Family Court shall be entitled, as of right, to be represented by a legal practitioner and no court shall permit any legal practitioner to represent or appear on behalf of any party.

**Partly entitled to legal advice:**

A party will be entitled to take legal advice at any stage of the proceedings either before the Counselor or before the Court. A party in indigent circumstances will be entitled to free legal aid and advice.

**Panel of lawyers for free legal advice:**

The Court shall maintain a panel of lawyers willing to render free legal aid and advice. A party entitled to free legal aid and advice will be entitled to select any of the lawyers from the said panel provided the lawyer is available and willing to accept the case.

**Legal experts as ‘amicus curiae’:**

If the Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as amicus curiae. For that purpose, the Court shall prepare a list of legal experts who are willing to assist the Court as amicus curiae and such legal experts shall be paid fees and expenses out of the revenue of the State Government.

**Counselling Centre:**

There shall be attached to the Family Court in each city, town or other area, a Centre to be known as ‘The Counselling Centre of the Family Court’. Each such centre may have a Principal Counselor and shall have as many counselors as may be determined by the High Court.

**Appointment of Counselors:**

Principal Counselor and other Counselors attached to the Counselling Centre shall be appointed by the High Court in consultation with one or more professionally qualified experts in Family and Child Welfare, preferably working with a recognized institution of social science or social work. Persons having a Master’s Degree in Social Work with a minimum experience of 2 years in Family Counselling shall be eligible for appointment as Counselors.

**Functions of a Counselor:**

Counselor entrusted with any petition shall assist and advise the parties to arrive at a settlement. . The counselor shall also help the parties in arriving at conciliation. The counselor in the discharge of his duties shall be entitled to pay home visit to the homes of any of the parties. The counselor in the discharge of his duties shall be entitled to interview relatives, friends and acquaintances of parties or any of them. The counselor in the discharge of his duties may seek such information as he may deem fit from the employer of any of the parties. The Counselor may refer the parties to an expert in any other area such as medicine or psychiatry.

**Panel of Experts:**

The Principal Judge of the Family Court in consultation with the Principal Counselor shall prepare a panel of medical and other experts and such experts shall be paid fees and expenses.

The Principal Judge in consultation with the Principal Counselor shall also prepare a list of institutions, organizations or agencies working in the area of family welfare, child guidance, employment or in any other area that he may deem fit, in order to enable a Counselor or parties to obtain the assistance of such an institution, organization or agency and may also lay down the manner and conditions for association of such institutions, organizations or agencies with a Family Court.

**Confidentiality of information:**

Any information gathered by the counselor, any statement made before the counselor or any notes or report prepared by the counselor shall be treated as confidential. The Counselor shall not be called upon to disclose this information, statements, notes or report to any court except with the consent of both the parties.

Such notes or report or statement or any material lying with the Counselor shall be kept in sealed packets by the Counselor and shall not form a part of evidence before the Court. The same may, however, be used for the purpose of research or education with the permission of the Principal Judge on condition that the identities of the parties involved shall be kept concealed.

**Counselor not to give evidence:**

The counselor shall not be permitted to give evidence in any court in respect of the information, statements, notes or report. Provided, that the counselor shall submit to the Court a report relating to the home environment of the parties concerned, their personalities and their relationship with their child/children in order to assist the Court in deciding the question of custody or guardianship of any child/children of the marriage. Provided further that the counselor shall also submit to the Court a report relating to home environment, income or standard of living of the party or parties concerned in order to assist the Court in determining the amount of maintenance and/or alimony to be granted to one of the parties.

**Report from the Counselor:**

The Court may also request the Counselor to submit to it a report on any other subject in order to assist the Court in adjudicating upon the matter before it.

**Counselor not to be cross-examined:**

The counselor shall not be asked to give evidence and shall not be cross-examined in any court in respect of the report so made.

**Submission of memorandum:**

The Counselor shall submit a brief memorandum to the Court informing the court of the outcome of the proceedings before him.

**Counselor's right to supervise custody of children:**

The Counselor shall be entitled to supervise the placement of children in custody of a party and for reasons to be recorded in writing, shall be entitled to pay surprise visits to the home where the child resides between 6 a.m. to 6 p.m. In the event of the Counselor coming to a conclusion that any alteration is required in the arrangement relating to custody of a child / children, the Counselor shall make a report to the Court in that connection. Thereupon the court may, after notice to the parties, pass such orders in that connection as the Court may deem fit.



## **The High Court of Madhya Pradesh Family Courts Rules**

### **Efforts for arriving at settlement:**

The Family Court consider whether any institution, organisation or any person, in each case shall be associated for amicable settlement. It call upon representative of such institution, organizations or persons for assistance or for use of good offices for bringing about amicable settlement between the parties.

### **Report from institutions, organization etc.:**

A Family Court may call for report as regards efforts made or to be made by the institution, organization or persons. Where efforts for amicable settlement are continuing or are deferred, the Family Court may require the institution, organization or persons to submit before it and 'interim' report.

Where efforts to arrive at amicable settlement between the parties do not yield any positive results, the institution, organization or the person shall submit report to the Family Court stating why it had not been possible to bring about amicable settlement of dispute between the parties, and suggesting future course of action. Every report including an interim report under this rule shall form part of the record of the suit or proceeding.

## **The GOA Family Court Rules**

### **Party entitled to legal advice:**

A party will be entitled to take legal advice at any stage of the proceedings either before the counselor or before the court. A party in indignant circumstances will be entitled to free legal aid and advice.

### **Panel of lawyers for free legal advice:**

The Court shall maintain a panel of lawyers willing to render free legal aid and advice. A party entitled to free legal aid and advice will be entitled to select any of the lawyers from the said panel provided the lawyer is available and willing to accept the case.

### **Legal experts as 'amicus curiae':**

If the Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as amicus curiae. For that purpose, the Court shall prepare a list of legal experts who are willing to assist the Court as amicus curiae and such legal experts shall be paid fees and expenses out of the revenue of the State Government.

### **Counselling Centre:**

There shall be attached to the Family Court a Centre to be known as "The Counselling Centre of the Family Court". Each such centre may have a Principal Counselor and shall have as many counselors as may be determined by the High Court. The Counselling Centre may be divided into different units and may be located in the court premises and/or I such other place or places as the High Court may direct.



Principal Counselor and other Counselors attached to the Counselling Centre shall be appointed by the High Court in consultation with one or more professionally qualified experts in family and child welfare, preferably working with a recognized institution of social science or social work. Persons having a degree in social work with a minimum experience of 2 years in family counselling shall be eligible for appointment as Counselors.

**Fixing time and date for Counselling:**

The Counselor appointed to advise the parties shall fix the time and date of appointment. The parties shall be bound to attend the Counselor on the said date and at the time so fixed. If one of the parties failed to attend the Counselor on the date and at the time so fixed the Counselor may fix another date and time and inform the absent party accordingly by registered post. If the said party does not attend the counselling Centre on such adjourned date, the Counselor may make a report to the Court stating that one or both the parties have failed to attend counselling Centre. On such report being made, the Court may proceed with the matter without prejudice to other powers of the Court to take action against the defaulting party.

**Functions of a Counselor:**

Counselor entrusted with any petition shall assist and advise the parties to arrive at a settlement. The Counselor shall also help the parties in arriving at conciliation. The counselor in the discharge of his duties shall be entitled to pay home visit to the homes of any of the parties. The counselor in the discharge of his duties shall be entitled to interview relatives, friends and acquaintances of parties or any of them. The counselor in the discharge of his duties may seek such information as he may deem fit from the employer of any of the parties. The Counselor may refer the parties to an expert in any other area such as medicine or psychiatry.

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