



Study of The Family Courts Act, 1984

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Abstract : The concept of Family court implies an integrated broad-based service to families in trouble. Litigation in regard to any matter concerning family, whether divorce, maintenance and alimony, or custody, education and financial support for children etc. should not be viewed in terms of failure or success of legal actions but as a social therapeutic problem needing solution. It should be viewed as litigation in which parties and there counsel are engaged in resolving family conflicts where humane considerations outweigh everything else.

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THE FAMILY COURTS ACT, 1984

The family courts act, 1984 has not yet been brought into force in all the states. Section 3 of the act talks about establishment of family courts:

Section 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.

It appears that the family courts act stipulates to confer on the family court a status like that of the income-tax tribunal. It is higher than that of the district judge and lower than that of the High Court, appeals from its decisions lie to the High Courts. The state government in consultation with the High Court may also provide for associations/ welfare agencies (section 5) to enable the Family Courts to exercise its jurisdiction more effectively. It has to be noted that this provision is



not mandatory. The use of word “may” indicate that it is the discretion of the state government whether to provide for such associations or agencies or not.

The Court established to conclude upon matters relating to family law like matrimonial reliefs, custody of children, maintenance for wife and children etc is termed as Family Court. In United States the ‘Domestic Relations Court’ was established in 1910 which is the first family court in the world. The Central Government enacted the Family Courts Act in India in 1984 with an intention to encourage and protect prompt settlement of disputes dealing with family affairs and matrimonial issues. The Status of Women Committee in 1975 together with the report of the 59th Law Commission recommended the Central Government to establish a separate judicial forum to settle family disputes immediately before the beginning of the trial proceedings. Hence it was decided to establish a family court in India by the Act of 1984.

The Act under Section 3 provides for the establishment of Family Courts in areas where the total population goes beyond one million and in the areas where the State deems necessary to establish such a Court. The power to establish family courts and determination of the jurisdiction are vested in the State Government after seeking advice from the concerned High Court. The Act empowers the State Government to appoint such number of judges, Principal Judges and Additional Principal Judges in a Family Court where it considers essential, in accordance with and procedure prescribed under the Act.

For appointing a person as the judge of Family Court, he should have seven years experience in the judicial service in India, or he should have served as a member of the tribunal, or has seven years of practice as a lawyer in the High Court or other additional qualifications prescribed by the Union in consultation with Chief Justice of India. The Act further provides that a Judge of the family court shall be preferably women and shall be a person dedicated to the need to safeguard and care for the marital relations and uphold interests of children and experienced to resolve disputes by way of conciliation and provide counseling where necessary. The State Government shall frame rules on the advice of the High Court to associate, the services of family welfare organizations, social activists, persons or professionals interested to uphold the welfare of family, with the family court to assist in fulfilling the powers in concurrence with the present legislation.



The Family Court shall have the same status as that of a District Court and shall exercise the jurisdiction accordingly and also empowered to initiate suits and proceedings in par with the conditions stipulated by the Act. Where there is any chance for settlement of the dispute between the parties, the Family Court shall postpone the proceedings and take steps for settlement at the earliest. Under the Act a party to the dispute cannot claim the service of a legal practitioner as of right, but the Court shall have the power to appoint a legal professional as amicus curiae. An aggrieved party may, however, prefer an appeal to the High Court from an order of the Family Court. The High Court shall frame rules in the matters connected therewith, after publishing in the Gazette. The Act also confers power on the Central and State Government to formulate rules as prescribed under the Act.

The Central aim of the legislation was to resolve family disputes and settle the disputes through conciliation where ever possible. But the goal could not be achieved due to the prolonged procedures and improper implementation of the provisions of the Act. The counselors shall be appointed on a permanent basis so that the family problems need not be clarified to the new counselor every time. The modifications if made to certain provisions and the proper implementation of the Act would indeed serve the intention of the current legislation.

References :

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