

***FAMILY COURTS ACT, 1984**

(Act No. 66 of 1984)
[14th September 1984]

An Act to provide for the establishment of Family Court 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-fifty year of the Republic of India as follows:

CHAPTER I: PRELIMINARY

Section 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.

Section 2: Definitions

In this Act, unless the context otherwise requires, -

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

CHAPTER II: 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.

Section 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 Judges and any other Judge to be the Additional Principal Judge;

(c) The Principal Judge may, from time to time, make such arrangements as he may deem fit for the distribution of the business of the Court among the various Judges thereof,

(d) The Additional Principal Judge may exercise the powers of the Principal Judge in the event of any vacancy in the office of the Principal Judge or when the Principal Judge is unable to discharge his functions owing to absence, illness or any other cause.

(3) A person shall not be qualified for appointment as a Judge unless he-

(a) Has for at least seven years held a judicial office in India or the office of a member of a tribunal or any post under the Union or a State requiring special knowledge of law; or

(b) Has for at least seven years been an advocate of a High Court or of two or more such Courts in succession; or

(c) Possesses such other qualifications as the Central Government may with the concurrence of the Chief Justice of India, prescribe.

(4) In selecting persons for appointment as Judges, -

(a) Every endeavour shall be made to ensure that persons committed to the need to protect and preserve the institution of marriage and to promote the welfare of children and qualified by reason of their experience and expertise to promote the settlement of disputes by conciliation and counseling are selected; and

(b) Preference shall be given to women.

(5) No person shall be appointed as, or hold the office of, a Judge of a Family Court after he has attained the age of sixty-two years.

(6) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of a Judge shall be as the State Government may, in consultation with the High Court, prescribe.

Section 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.

Section 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

Section 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 proceeding of the nature referred to in the explanation; and

(b) Be deemed, for the purposes of exercising such jurisdiction under such law to be a district court 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 sub-section are suits and proceedings of the following nature, namely:

(a) A suit or proceeding between the parties to a marriage for a decree of nullity of marriage declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) A suit or proceeding for a declaration as to the validity of a marriage or a, 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 all order or injunctions 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 or, or access to, any minor.

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

(a) The jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) Such other jurisdictions as may be conferred on it by any other enactment.

Section 8: Exclusion of jurisdiction and pending proceedings

Where a Family Court has been established for any area:-

(a) No district court or any subordinate civil court referred to in sub-section (1) of Section 7 shall, in relation to such area, have or exercise any jurisdiction in respect, of any suit or proceeding of the nature referred to in the explanation to that sub-section;

(b) No magistrate shall, in relation to such area, have or exercise any jurisdiction or power under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

(c) Every suit or proceeding of the nature referred to in the explanation to, sub-section (1) of Section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974), -

(i) Which is pending immediately before the establishment of such Family Court before any district court or subordinate court referred to in that sub-section or, as the case may be before any magistrate under the said Code; and

(ii) Which would have been required to be instituted or taken before such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established,

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

CHAPTER IV: PROCEDURE

Section 9: Duty of Family Court to make efforts for settlement

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

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

Section 10: Procedure generally

(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said

provisions of the Code, 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 that Code before a Family Court.

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

Section 11: Proceedings to be held in Camera

Every suit or proceedings to which this Act applies, the proceedings may be held in camera if the Family Court so desires and shall be so held if either party so desires.

Section 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.

Section 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

Section 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).

Section 15: Record of oral evidence

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

Section 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.

Section 17: Judgement

Judgement 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.

Section 18: Execution of decrees and orders

(1) A decree or all 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: ¹[APPEALS AND REVISIONS]

Section 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 ¹[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.

²[(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 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 preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges.

CHAPTER VI: MISCELLANEOUS

Section 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.

Section 21: Power of High Court to make rules

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

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

(a) Normal working hours of Family Courts and holding of sittings of Family Courts on holidays and outside normal working hours;

(b) Holding of sittings of Family Courts at places other than their ordinary places of sitting;

(c) Efforts which may be made by, and the procedure which may be followed by a Family Court for assisting and persuading parties to arrive at a settlement.

Section 22: Power of the Central Government to make rules

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

(2) Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making it any modification in the rule or both Houses agree that the rule should not be

made, the rule shall thereafter have effect only in such modified form or be of no effect, as the else may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Section 23: Power of the State Government to make rules

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

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

(a) The salary or honorarium and other allowances payable to, and the other terms and conditions of Judges under sub-section (6) of Section 4;

(b) The terms and conditions of association of counselors and the terms and conditions of service of the officers and other employees referred to in See section 6;

(c) Payment of fees and expenses (including travelling expenses) of medical and other experts and other persons referred to in Section 13 out of the revenues of the State Government and the scales of such fees and expenses;

(d) Payment of fees and expenses to legal practitioners appointed under Section 13 as amicus and 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 State Government under this Act shall be laid as soon as may be after it is made, before the State Legislature.

***Act came into force in the State of Kerala on 21/10/1989, vide No. 79/5/86 dt. 17/10/1989, Gazette of India Ext. Part.II Section 1.**

1. Inserted by Act. No. 59 of 1991

2. Sub-sec (4) inserted and original sub-section (4) & (5) re-numbered as (5) & (6) by Act No. 59 of 1991.

Statement of objects and reasons

I

Act 66 of 1984

Several associations of women, other organisations and individuals have urged, from time to time, that Family Courts be set up for the settlement of family disputes, where emphasis should be laid on conciliation and achieving socially desirable results and adherence to rigid rules of procedure and evidence should be eliminated. The Law Commission in its 59th report (1974) had also stressed that in dealing with disputes concerning the family the Court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial. The Code of Civil Procedure was amended in 1976 to provide for a special procedure to be adopted in suits or proceedings relating to matters concerning the family. However, not much use has been made by the Courts in adopting this conciliatory procedure and the Courts continue to deal with family disputes in the same manner as other civil matters and the same adversary approach prevails. The need was, therefore, felt, in the public interest, to establish Family Courts for speedy settlement of family disputes.

2. The Bill *inter alia*, seeks to—

- (a) provide for establishment of Family Courts by the State Governments;
- (b) make it obligatory on the State Governments to set up a Family Court in every city or town with a population exceeding one million;
- (c) enable the State Governments to set up, such Courts, in areas other than those specified in (b) above;
- (d) exclusively provide within the jurisdiction of the Family Courts the matters relating to—

- (i) matrimonial relief, including nullity of marriage, judicial separation, divorce, restitution of conjugal rights, or declaration as to the validity of marriage or as to the matrimonial status of any person;
 - (ii) the property of the spouses or of either of them;
 - (iii) declaration as to the legitimacy of any person;
 - (iv) guardianship of a person or the custody of any minor;
 - (v) maintenance, including proceedings under Chapter IX of the Code of Criminal Procedure;
 - (e) make it obligatory on the part of the Family Court to endeavour, in the first instance to effect a reconciliation or a settlement between the parties to a family dispute. During this stage, the proceedings will be informal and rigid rules of procedure shall not apply;
 - (f) provide for the association of social welfare agencies, Counsellors, etc., during conciliation stage and also to secure the service of medical and welfare experts;
 - (g) provide that the parties to a dispute before a Family Court shall not be entitled, as of right, to be represented by legal practitioner. However, the Court may, in the interest of justice, seek assistance of a legal expert as amicus curiae;
 - (h) simplify the rules of evidence and procedure so as to enable a Family Court to deal effective with a dispute;
 - (i) provide for only one right of appeal which shall lie to the High Court.
3. The Bill seeks to achieve the above objects.

(Published in the Gazette of India, Part II S.2 Ext. No. 47, Bill No. 21/1984).

II

Act 59 of 1991

Matters relating to maintenance allowance to wives, children and parents are heard under Section 125 of the Code of Criminal Procedure, 1973. After the enactment of the Family Courts Act, 1984, a proceeding for maintenance falls within the jurisdiction of the Family Courts at the places where such Courts have been established. At other places, Magistrate of the area exercises the jurisdiction in such matters. There is provision for appeal under the Family Courts Act, 1984 against order made by a Family Court but, when the maintenance order is passed by a Magistrate, a revision lies under the Code of Criminal Procedure, 1973.

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

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

4. The Bill seeks to achieve the above objects.

(Published in the Gazette of India, Part II S.2 Ext. No. 35 dt. 16/08/1990).