

All About Family Courts Act, 1984

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Introduction

Both 59th Law Commission Report (1974) and the Committee on the Status of Women (1975), was of the view that family disputes should be dealt with differently than ordinary civil proceedings. Law Commission report also suggested that there should be the establishment of family courts by States and selection of Judicial Officers based on experience to benefit the society. In 1976, the Code of Civil Procedure was amended to adopt a special procedure for disputes concerning the family. But the amended law was unable to serve the purpose as many courts still treated disputes concerning family alike ordinary civil proceedings. Several NGOs, women's associations and individuals also pressurized government to provide the special courts for speedy settlement in disputes related to the family. Therefore, in 1984 the Family Courts Act was passed.

Q1. What was the main objective behind passing this act?

Ans. This act was passed to establish Family Courts in states to ensure conciliation and speedy settlement of disputes concerning the family.

Q2, When did act come into force?

Ans. The act came into force for different states on different dates. It came into force as follow:

- Union territory of Andaman & Nicobar Islands, Madhya Pradesh, Delhi, Maharashtra: On 19th November 1986.
- Union territory of Pondicherry: On 1st May 1987
- Karnataka: On 25th May 1987.
- Orissa: On 1st May 1989.
- Kerala: On 21st October 1989.
- Goa: On 16th April 1990.
- Assam: On 2nd October 1991.
- West Bengal: On 1st November 1991.
- Bihar: On 10th December 1991.
- Manipur: On 3rd February 1992.

- Haryana: On 2nd November 1992.
- Andhra Pradesh: On 15th February 1995.
- Gujarat: On 1st January 2000.
- Union territory of Daman and Diu: On 10th October 2003.

Q3. Who has the power to establish family courts and appoint judges?

Ans. The State Government with the consultation of High Court was empowered to: establish Family Court, decide the Jurisdiction of Family Court which it can increase, reduce or alter any time by giving a notification, appoint one or more judges for a Family Court.

Q4. On what basis family courts were to be established?

- Area of State consisting of city or town, having a population over one million.
- Such other areas in the State as it may deem necessary

Q5. What are the criteria of Appointment of Judges?

According to section 4, while appointing a judge for family court preference should be given to women and requirement of following qualifications:

- a person should have either seven years' experience as a Judicial officer in India or office of a Member of a Tribunal or any post under the Union or a State requiring special knowledge of law or practised in High Court or two or more such courts in succession for seven years or qualifications asked by Central Government in consultation with Chief Justice of India.
- must be less than sixty-two years.
- is devoted to protecting and preserving: the institution of marriage, welfare of children and conciliation and counseling as techniques for settling disputes

Q6. What is the Jurisdiction of a Family Court?

A Family court has jurisdiction in both civil and criminal matters under the act. Under civil matters, it can deal with any suit and proceeding related to matrimonial issues, spousal property, the legitimacy of any person, maintenance, guardianship of the person or custody of or access to any minor. Under criminal matters, it has jurisdiction over

orders related to maintenance of wife, children and parents described under Chapter IX of Criminal Procedure Code (Cr. P. C.).

Any suit or proceeding of the above-mentioned nature should necessarily be heard by family court excluding the jurisdiction of the district court or any other subordinate court or any magistrate. Also, any such suit or proceeding which is already pending before any other court or magistrate should be immediately transferred to the family court.

Q7. What is the duty of the Family Court?

Ans. As also suggested by the 59th Law Commission Report, the Family Court mainly focuses upon conciliation or settlement of the dispute. If there is a possibility for settlement between parties in a case on their own, the family court should adjourn the proceedings of the case till the parties arrive at a settlement.

Q8. What procedure is followed by the Family Court for the hearing of suits or proceedings?

Ans. When family court under its jurisdiction hears a case from chapter IX of Criminal Procedure Code (Cr. P.C.), the rules or provisions of Code may be applicable.

- Except for the above-mentioned exception, the Civil Procedure Code(CPC) and any other law as suitable will be applicable for the suits or proceedings.
- Family court can decide its own procedure to arrive at the settlement, depending upon the circumstances or facts of the case.
- If parties and Family Court is willing, then proceedings can be held in camera.
- Family Court can ask for amicus curiae if necessary for a case. But not in any circumstances, parties should be allowed to seek legal practitioner.
- Family court is free to seek the help of medical or welfare experts if needed.

Q9. What powers are invested with Family Courts regarding evidence?

Ans. Family Court is free to consider any evidence if it assists effectively in dealing with a dispute despite its admissibility under Indian Evidence Act, 1872.

- Judge of a family Court can order for recording the oral evidence given by a witness.
- Family Court is free to summon and examine any person who is part of an affidavit submitted in the court as a form of evidence.

Q10. What kind of Judgement should a Family Court pass?

Ans. The judgment should be concise containing pleadings, the point for determination, decisions along with the reasoning behind them.

Q11. How decrees and orders passed by a Family Court is executed?

Ans. Depending on the nature of the case, CPC or Cr. P. C. provisions could be enacted to execute the decrees and orders passed by a Family Court.

Q12. Where can be an appeal filed against the Family Court Judgement or order?

Ans. An appeal against the judgment or order passed by the Family Court can be filed in High Court preferably within 30 Days.

