



RIGHT TO LEGAL REPRESENTATION UNDER FAMILY COURTS IN INDIA

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Introduction

Family Courts Act, 1984 aims is preserving the family values and in the stabilization of a sacred institution of marriage.

**Legal provision for Right to legal representation in Family Courts-
Section 13 says** 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.

Right of advocates to practice: Section 30 of the Advocate's Act, 1961 Subject to provisions of this Act, every advocate whose name is entered in the [State roll] shall be entitled as of right to practise throughout the territories to which this Act extends,

- (i) in all courts including the Supreme Court;**
- (ii) before any tribunal or person legally authorised to take evidence; and**
- (iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise.**

Thus Section 30 of the Advocate's Act, 1961 provides a statutory right to a legal practitioner to plead before 'all' courts including the Supreme Court of India or a tribunal. It was introduced by the Parliament of India with an aim to amend and consolidate the law relating to legal practitioners and to provide for the constitution of the Bar Councils and an All-India Bar. Unfortunately, the Act failed to achieve the aim with which it was introduced. This is due to the reason that section 30 of the Act could never come into force from the very inception of the Act.

It was only on June 9, 2011 that this specific provision was made effective by a notification in an official gazette. Consequently, after 23 years of enforcement of the Advocates Act, 1961 the legislature divested the fundamental right of legal practitioners to legal representation before a family court while incorporating section 13 in the Family Courts Act, 1984. As a consequence only the presiding officers of family courts were conferred with the discretionary powers to decide on the requirement of a legal representation before them in a case.

Legislative Intent-- Section 13
was drafted in such a manner so
as to minimize the involvement
of lawyers before the family
courts where emotional
considerations outweigh all
other considerations.

Pros of Section 13 of the Family Courts ACT----Lawyers are generally presumed to promote delays in the disposal of matters due to obvious reasons of having vested monetary interests in adjournments

Cons of Section 13 of the Family Courts ACT-

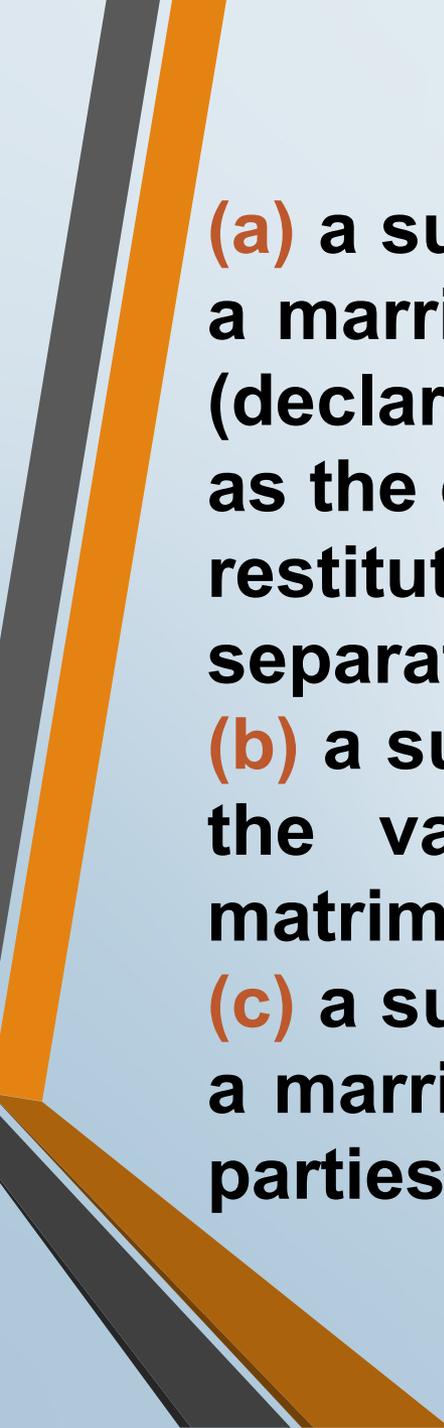
Last few decades there has been a considerable rise in matrimonial litigations. With complexities in this field the role of advocates has become indispensable where these matters are not just limited to contending a civil matter.

The Bar Associations are of the view that fair trial, which is an integral component of article 21 of the Constitution of India, is set to be obliterated due to section 13 of The Family Courts Act, 1984.

Nexus between the Advocates Act and the Family Courts Act Section 7 of the Family Courts Act, 1984 reads as under: 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 proceedings 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 subsection are suits and proceedings of the following nature, namely:—

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- (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 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 circumstance 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); and

(b) such other jurisdiction as may be conferred on it by any other enactment.

The term ‘Courts’ clearly accommodates ‘Family Courts’ within its purview was per section 30 (i) of the Advocates Act, 1961. Such inference may be drawn on the basis of the fact that the family courts are legally authorized to take evidence as the suits or proceedings of the nature mentioned in explanation to section 7(1) of the Family Courts Act, 1984, cannot be decided without taking evidence and conducting a full-fledged trial. The words used under section 30 (ii) of the 1961 Act “legally authorized to take evidence” are clearly indicative of the indispensable role of a legal practitioner before

such courts at the time of recording of evidence. Due to these legal complexities the proceedings cannot be considered as a simple ordinary proceedings between spouses, but they also involve the issues relating to the determination of proprietary rights, declarations as to the validity of marriage, legitimacy of a person, guardianship and also injunctions etc

Thus, the adversarial nature of the suits and proceedings provided in the explanations to section 7(1) of the Act suggest the indispensable role of lawyers before a family court. The reason being that such proceedings require a full-fledged trial involving complex and intricate legal issues which for the obvious reasons cannot be conducted by the parties without assistance of an advocate. Furthermore, these suits and proceedings can't be decided by the court without taking evidence. The suits and proceedings to be decided by the family court are not only be set with complex factual and legal issues, but even affect third party rights. Similarly, section 18 of the Family Courts Act, 1984, empowers the family court to execute its decrees and orders in the Family Courts Act, 1984,

S. 18 reads: 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.

The aforesaid legal provisions in my view obviously needs the engagement of an advocate so as to enable the decree holder to reap the fruits of the decree passed in his/her favor.

The High Court of Kerala and Rajasthan declared that section 13 of The Family Courts Act, 1984 has become redundant due to notification of section 30 of Advocates Act.

Approch of Courts in India

It was felt that the uneducated and poor litigants are being totally handicapped in the conduct of their cases for want of legal assistance. The court also highlighted that even the educated and the rich find it difficult to follow the court procedures. Thus, in the absence of convincing reasons, permission by lawyers ought not be refused and adjudication of a complicated or highly contested matrimonial dispute in the light of law and interpretation of provisions by different courts over a period of time would require assistance from advocates.

CONCLUSION

Hence, After the enforcement of section 30 of the Advocates Act in 2011 the legislature has ignored to amend the section 13 of the Family Courts Act to make legal representation mandatory before the family courts.

Therefore, In my humble opinion section 13 of the Family Courts Act, 1984 read with section 30 of the Advocates Act, 1961 being violative of article 19(1)(g) of the Constitution of India and section 5 of General Clauses Act, 1987.



THANK YOU