



## Restriction on Litigants to Engage Advocates in Family Courts : Demerits Outweigh Merits

DR. Sukrati Tyagi

Associate Professor and Head, Department of Law, K.G.K. (P.G.) College, Moradabad (U.P.) India

Received- 11.11.2019, Revised- 15.11.2019, Accepted - 20.11.2019 E-mail: sukratityagi@gmail.com

**Abstract:** *Indian Parliament enacted the family courts Act in 1984, providing for the creation of separate family Courts. The whole idea behind the Act is to ensure speedy settlement of matrimonial disputes with least formalities and technicalities. There is a lot of emphasis on conciliatory efforts and amicable settlement. As a measure to simplify procedural technicalities, Section 13 of the Act takes away the right of the parties to engage legal practitioners. However the litigants who desire to be represented by Advocates can make application to the Court for consideration. Either on its own motion or on application to this effect, the Family Court can seek assistance of legal expert as amicus curiae. In This research paper, the author has critically examined Section 13 as to its rationale, constitutionality, differentiation between amicus curiae and advocate of party's choice. The author has also discussed through various case laws as to how discretionary power is exercised by the Family Courts to permit advocates to appear or not to appear on behalf of the litigants. The author has also pointed out the difficulties faced by the litigants in absence of advocates of their choice. Findings suggest that Section 13 needs to be repealed in order to allow litigants to engage advocates of their choice*

**Key Words:** Legal representation, amicus curiae, reconciliation, discretionary power, Family Courts.

**Introduction-** The quality of married life determines not only the health and happiness of the parties concerned but also of the society at large. Therefore, the public policy relating to marriage is to foster and protect it, to make it permanent, to encourage parties to live together and to prevent separation. But, unfortunately due to dwindling human values, unrestrained materialistic approach, exposure to global culture and influence, legal awareness among the spouses about their individual rights and most importantly due to refusal by the present day Indian women to be subjugated by their husbands for life and assertion for their legitimate equal status in the family, the myth of permanence and inviolability of marriage has been blatantly eroded and institution of marriage seems to be in crisis as number of divorce cases is increasing every year. The gradual liberalization of divorce laws has also contributed to it.

The need was, therefore, felt to protect and preserve the family, which is basic unit of the society. It was also seen that the whole process of

determination of matrimonial disputes in the overburdened regular courts in nerve racking, complex, expensive, time consuming and involves a lot of mud slinging. Thus, in order to minimize the hardship of litigating spouses, Indian Parliament enacted the Family Courts Act in 1984, providing for the creation of separate Family Courts. The whole idea behind the Act is to ensure speedy and inexpensive relief with least formality and technicalities. There is a lot of emphasis on conciliatory efforts and amicable settlement of matrimonial disputes. The Family Courts Act, 1984 (hereinafter called the Act) is merely a procedural law and does not in any way effect the substantive law. It only attempts to regulate and simplify the procedure in the Family Courts, "Family" for the purpose of the Act means and includes husband, wife and their children. The Family Court exercises jurisdiction in respect of suits between the parties to the marriage over the matters referred to in explanation to Section 7 of the Act, i.e., a suit or proceedings for : a decree of nullity of marriage;

Corresponding Author

PIF/4.005 ASVS Reg. No. AZM 561/2013-14



restitution of conjugal rights; judicial separation; divorce; a declaration as to the validity of a marriage or as to the matrimonial status of any person; with respect to the property of the parties or either of them; injunction in circumstances arising out of a matrimonial relationship; a declaration as to the legitimacy of any person; a suit or proceeding for maintenance; guardianship of the person, or custody of, or access to, any minor.

For the purpose of dealing with matrimonial disputes, other than that of maintenance u/s 125 Cr.P.C., the Family Courts, act as civil courts, and apply the procedure laid down in the Code of Civil Procedure (CPC in short) and any other related law in addition to the rules framed by the High Courts, Central and State Governments. Besides that, provisions of the Code of Criminal Procedure (Cr.P.C. in short) are made applicable to the Family Courts in regard to maintenance cases under Section 125 Cr.P.C. The Act also confers powers on these courts to lay down its own procedure to facilitate proper speedy settlement of disputes. Provisions of the Evidence Act are not strictly adhered to. Evidence on affidavit also is made permissible.

As a measure to simplify the procedural technicalities and consequential delays in proceedings Section 13 of the Act takes away the right of the parties to engage legal practitioners. However, the litigants who desire to be represented by lawyers can make application to the court for consideration. Either on its own or on application to this effect, the court can seek the assistance of a legal expert as *amicus curiae* Section 13 reads as follows:

"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 to 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 legal expert as *amicus curiae*."

**Rationale behind Section 13-** Every

statutory provision is enacted with a motive behind it. Therefore, understanding and comprehending the rationale behind Section 13 and comprehending the rationale behind Section 13 is necessary. Section 13 of the Act says that no party to a suit or proceeding before the Family Court shall be entitled 'as of right' to be represented by a legal practitioner. Evidently, this stipulation has reasons and principles backing the same. In a proceeding before the Family Court, the court is to make all attempts to conciliate and settle the dispute. Presence of a person alien to matrimonial relationship may, it is reasonable to assume, impede the attempt to conciliate and settle the dispute. It is also not correct to say that such presence in every case be counter productive to a settlement. There may, however be cases in which such presence of a third party to the matrimonial proceeding other than a presiding Officer/Conciliator, may effect a possible harmonious settlement. That is why the Act only provides that no party to a suit or proceeding before the Family Court shall be entitled as of right to be represented by a legal practitioner.

There is one more strong reason for exclusion of lawyers. In a matrimonial proceedings, embarrassing personal details may have to be revealed to the Family Court. Inter-personal relationship between the spouses, both mental and physical, may have to be revealed. In such proceedings presence of a legal practitioner may impede the process of discovery of truth. A party may be embarrassed and upset and may not be in a position to reveal such intimate details in the presence of a representative of the adversary even if such representative be a member of the noble profession and evidently this is the reason why Section 13 insists and mandates that as of right a party is not entitled to insist on representation by a legal practitioner.

Furthermore, the prevalent idea that lawyers foment litigation and drive in unnecessary wedges rather than helping to bridge gaps, may be reason behind laying down Section 13.



**Constitutionality of Section 13-** In law, *ignorantia juris non excusat*, i.e., ignorance of law is no excuse. Under this maxim the law expects every man whether literate or illiterate, whether native or foreigner to know all the laws of the land. Even though that is the maxim, there are hundreds and thousands of educated persons who are ignorant of the law applicable to them. When a difficulty crops up in one's life, one desires to consult and take advice of the expert in that particular area. When the difficulty or trouble is in relation to litigation, naturally one will approach a lawyer of his confidence. One cannot be compelled or persuaded to have the advice and advocacy of a person in whom he has no confidence. A litigant to a matrimonial dispute has a right and privilege to consult and engage an advocate of his confidence and to take his services for that case. That privilege is exercised as a matter of right. If that right is taken away one is deprived of his effective defence, one may not have confidence or trust in another. One may not be able to express what one's difficulties are so effectively as his advocate can do before the court in cross examining the adversary and eliciting the points required in proof of one's case. The moment a Family Court is established in district parties are deprived of engaging their advocates for the cases before Family Court. Because legal practitioners cannot participate or represent a party as a matter of right since it is prohibited under Section 13. While, at the same time all such litigants involved in matrimonial cases in other districts of the same state where Family courts have not been established are enjoying the right of engaging the advocates of their confidence. To this extent, *prima facie*, the provision appears to be discriminatory as a law creating discrimination between citizens residing in one district and citizens residing in other districts.

In *Lata Pimple v the Union of India and Others* a writ petition was filed before the Bombay High Court in which a question was raised regarding constitutional validity of Section 13 of the Family Courts Act, 1984 and that Section 13 is violative of

Articles 19(1)(a), 21 and 39 of the Constitution. It was urged that litigant governed by provisions of the Family Courts Act has got a fundamental right to be represented by a lawyer in any court of law. This fundamental right to be represented under Article 21 is a part of every litigant's life. Under the Family Courts Act, this right is denied, and at any rate effective exercise of this right is denied.

It was held that, this submission, on plain reading of Section 13 is wholly unfounded. A fair reading of the section indicates that there is no total prohibition of being represented by a legal practitioner. The proviso clearly provides that if the Family Court considers it necessary in the interest of justice, may seek assistance of legal expert as *amicus curiae*. As regards litigants who desire to be represented by a lawyer in the Family Court, they can avail facility as provided by Rule 37 of the Family Courts (Court) Rules, 1988. Under this rule, the court may permit the party to be represented by a lawyer in certain circumstances. This rule sufficiently takes care of grievance made on behalf of the petitioners.

It was urged on behalf of the Union of India that Section 13 does not prohibit the party from availing services of the lawyer. Such permission can be granted on an application if made by a party and if the court comes to the conclusion that it is necessary to do. It was further said that there is no fundamental right to a citizen/litigant to appear through a lawyer save and except in case of Article 22(1) of the Constitution of India. In support of this submission, the decisions of the Supreme Court in *Pradip Port Trust v Their Workmen*, and, *Lingappa Pochanna v State of Maharashtra* were relied. The latter case was under Maharashtra Restoration of Lands and Scheduled Tribes Act, 1971. Section 9-A of the aforesaid Act has laid down a restriction of appearance of Advocate on behalf of non-tribal in proceedings under the said Act. Challenge was under Article 19(1)(g) of the Constitution, while dealing with this challenge, the Supreme Court held that "Now it is well-settled that apart from the provisions of Article 22(1) of the Constitution, no litigant has a





fundamental right to be represented by a lawyer in any Court. The only fundamental right recognized by the Constitution is that under Article 22(1) by which an accused who is arrested and detained in custody is entitled to consult and be defended by a legal practitioner of his choice. In all other matters, i.e., suits or other proceedings in which the accused is not arrested and detained on a criminal charge, the litigant has no fundamental right to be represented by a legal practitioner."

The Supreme Court has recognized that only one fundamental right under the Constitution to be represented by a lawyer is under Article 22(1) of the Constitution. In view of this authoritative pronouncement by the Supreme Court, the Bombay High Court was not impressed by the challenge raised by the petitioners to Section 13. It held that in view of the settled position of law, contention raised on behalf of the petitioner that petitioners have fundamental right under Articles 21, 19(1)(g) and 39-A of the Constitution to be represented by a legal practitioner, must be rejected.

It was then contended on behalf of the petitioners that Section 13 is discriminatory on the ground that litigants falling outside the jurisdiction of the Family Courts are permitted to be represented by a lawyer where litigants covered by the jurisdiction of the Family Court are not permitted. This argument was again found devoid of any merit by the Bombay High Court and it held that once it is established that classification made by Section 3(1)(a) of the Act is reasonable classification, then the same reasoning must hold good as regards Section 13 also. It must also be emphasized that Section 13 does not create absolute bar and it is open to the party to make an application to the Family Court in the circumstances stated in Section 13 for being represented by a lawyer. Thus the Bombay High Court held that there is no substance in any of the constitutional challenges to the Family Courts Act and Rules raised in the petition. All the challenges must fail.

**Amicus curiae cannot be a better substitute of Advocate of One's Choice-** Proviso to

Section 13 lays down 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*. The expression *amicus curiae* has a special connotation. It means a friend of the court; a member of the Bar who voluntarily or on invitation of the court, and not on the instructions of any party helps the court in any judicial proceedings. In *Sarla Sharma v State of Rajasthan*, the Rajasthan High Court interpreted the term "*amicus curiae*" and made distinction between *amicus curiae* and advocate appearing for individual party. The High Court held that *amicus curiae* is one who gives information to the court on some matter of law in respect of which the Court is doubtful.

As per Section 23(2) clause (d) of the Family Courts Act, 1984, payment of fees and expenses to legal practitioner appointed as *amicus curiae* are to be arranged by the State Government by making appropriate rules. Hence, it seems that the legislature, in reality, had the intention of framing a panel or list of legal practitioners as *amicus curiae*. Thus, use of the expression 'legal expert' having been used in Section 13 is an example of *mala propison*.

As *amicus curiae* are engaged at the instance of the court and not at the option of the party, this is something imposing upon the party against his/her will. Under such circumstances it becomes doubtful as to what extent the litigants appearing before Family Courts may have confidence in them to represent their case and also as to what extent they can trust the so called legal expert engaged by the court as *amicus curiae*.

**Discretionary Power of the Family Courts to Permit the Advocates to appear or not-** As all the family disputes pertaining to several communities and religious groups governed by their respective personal and special laws have been brought under one roof for settlement, the Family Courts have to deal with different matrimonial Acts. Though the Family Courts are aimed to function in an informal way, the parties may not know the legal complexities and their adverse effects and therefore may not be



able to present their own cases effectively in the court atmosphere. Therefore the Judge of the Family Court is endowed with a discretion to permit parties to appear themselves through legal practitioner in the Family Court, taking in to consideration the nature of the case and conditions under which parties are placed.

In *Prabhat Narain Tickoo v Mrs. Mamta Tickoo and Others*, wherein a writ petition was filed before the Allahabad High Court by the petitioner for permission to appear through his counsel before the Family Court, the High Court was of opinion that the correct interpretation of Section 13 of the Act is that a lawyer has no absolute right to appear on behalf of a party before the Family Court, but it is the discretion of the Family Court to permit the lawyer to appear or not. This interpretation becomes evident when we notice the words 'as of right' in Section 13 of the Act. If the intention of the Parliament was to debar the advocates absolutely from appearing in the proceedings of Family Courts, the words 'as of right' would not have been there. The presence of the aforesaid words indicate that intention of the Parliament was that it should be left to the discretion of the Family Court to allow lawyers to appear or not. As regards the Proviso to Section 13, this only deals with the appointment of *amicus curiae*, and it has nothing to do with the representation of the parties. The Bombay High Court also held in *Leela Mahadeo Joshi v De Mahadeo Sita Ram Joshi and Smt. Lata Pimple v Union of India and Others*, that Section 13 does not prescribe a total bar to representation by a legal practitioner.

Another question for determination before the Allahabad High Court in this case was that when should the court permit representation by lawyers and when it should not? The Allahabad High Court was of opinion that "the correct approach should be that the Family Court should not permit lawyers to appear before it when it is trying to seek reconciliation between the parties under Section 9 of the Act. It is the first duty of the court hearing matrimonial cases to try to reconcile the parties as envisaged by Section

9 of the Act. At this stage, lawyers are not at all necessary, and it is for the court to persuade the husband and wife to get reconciled. Lawyers may also not be allowed to appear in cases under Section 13-B of the Hindu Marriage Act (divorce by mutual consent). However if the reconciliation attempt fails and the matter has to be adjudicated, the court should ordinarily allow lawyers to appear on behalf of the parties. This is necessary because Divorce Laws and other Family Laws have become a complicated branch of law, and an ordinary layman cannot be expected to know this law. It may be mentioned that there is a catena of decisions both in England and India on this branch of law, and without a knowledge of the same, a party cannot properly represent himself/herself in the case, and only a trained lawyer can do so, for example, Section 13(1)(b) of the Hindu Marriage Act provides that separation of two years in a ground for divorce. A layman would probably think that proof of two years of physical separation alone is required for divorce on this ground, but the case law on this point is that mere physical separation for two years is not sufficient and the petitioner also has to prove *animus deserendi*, i.e., intention to bring cohabitation permanently to an end. Similarly, cruelty is a ground for divorce, and the layman would ordinarily regard cruelty to mean physical cruelty, but by judicial decisions, it has been interpreted to mean mental cruelty also. There is a catena of case law on this subject, and no layman can be expected to know this case law as it takes years to study and understand it. Moreover a layman would be ignorant of procedural rules also. Hence it is obvious that a layman cannot ordinarily represent himself properly in such cases. Representation by lawyers will not only be of great assistance to the parties, it will also be great assistance to the court to do justice expeditiously. Some people say that lawyers will cause delay in the proceedings, in our opinion, far from delaying the proceedings, a lawyer will greatly expedite it because, by his knowledge of law and procedure and his training, he can quickly come to the relevant points. Moreover, lawyers know the art



of cross-examination, and the rules of procedure, which a layman does not. Hence we are of the opinion that the discretion in granting/refusing representation by lawyers must be exercised in the manner afore mentioned, namely, that at the stage when the court is trying to reconcile the parties or when the divorce is sought by mutual consent, no lawyer should ordinarily be permitted, but otherwise when the matter is being adjudicated, lawyers should ordinarily be allowed to represent the parties."

Thus, according to the Allahabad High Court's interpretation in the aforementioned case, Section 13 gives discretion to the Family Court Judge to permit or not to permit representation by lawyers. However, Section 13 does not mention as to when and in what circumstances, permission should be granted and when it should not. Hence this gap in the law has to be filled in by judge made law, which the High Court judges had tried to as best as they could.

In *Durga Prasad v Union of India*, where in a writ petition filed before the Andhra Pradesh High Court, the question for determination was whether appearance of the Advocate in the Family Court is totally barred, the High Court held that when once the Family Courts Act recognises the necessity of taking assistance of the legal practitioner, the bar of his appearance before the Family Court cannot be read into the Family Court Act. The court further held that the Section 13 and its proviso should not be mixed up and confused. The Act does not mean that the parties are not at all entitled to appoint legal practitioners to plead their cases before the Family Court. Section 13 and its Proviso does not spell out any such meaning. Truly understood, Section 13 does not create a total embargo on the parties before the Family Court to engage their advocates.

In *Krishna Murari v State of Jharkhand and Others*, the Jharkhand High Court held that under Section 13 there is no complete embargo, no total prohibition in the engagement of the lawyers and in a given situation, in a particular case, the discretion vests with the Presiding Officer to permit the parties

to be represented by the counsel of their choice. How this discretion is to be exercised in a given case, of course, would depend on the fact-situation of every such case. There can be situation where the court finds that the parties or one of them is illiterate or so ignorant of his/her rights and claims that he/she is not in a position because of illiteracy/ignorance, to present his/her case in the court. If a party does apply to a court with an application duly supported by material facts and particulars (and is based on sound reasons) for engagement of a counsel on his/her behalf, the court should consider such an application and on the basis of brief and short reasons to be recorded in writing, allow the parties to be represented by a lawyer. Actually, the reasons even though may be recorded briefly and shortly, should indicate the exercise of the court's discretion for allowing the party to be represented through a lawyer.

The Court further held that however, if the Family Court finds that in a particular case, only one party has applied for being represented by a lawyer, it must, as a matter of obligation on its part enquire from the other party also as to whether it would like to be represented by a lawyer of his/her choice. The court by allowing one party to be represented by a lawyer cannot put the other party to a position of disadvantage by not being represented by a lawyer of his/her choice. If, therefore, in a given situation, only one party comes forward with a plea of being represented by a lawyer and if the court in the exercise of its discretion decides to permit such a party to be so represented and allows his or her plea and if it finds that the other party is either not coming forth with such a plea or that admittedly is not in a position, for any reason, financial or otherwise, to engage a lawyer of his/her choice, it would be a mandatory requirement that in such situation, the court should provide to such a party the assistance of a counsel, either by appointing as *amicus curiae* by itself or by selecting a lawyer from the panel available with the District Legal Aid Authority or from Legal Aid Clinic in that District, but an





endeavour must be made to ensure that the provision of such a facility to such an unrepresented party is not a mere formality, not an empty ritual. It would always be bounden duty of the court in every such situation to ensure that any such helpless party is not bogged down, prevented, brow beaten or cowed down by the presence of a mighty lawyer representing the opposite party. That situation would run counter to the basic spirit of the legislative intent behind Section 13 and rather than advancing the cause of justice, it would not only frustrate but retard the very basic purpose for which Section 13 was enacted. Such a situation would undoubtedly result in grave miscarriage of justice.

The court also held that the power to grant permission also includes power to revoke the permission. If at any stage of the proceedings, the Family Court finds that the presence of lawyers is not helping the parties or the cause of justice or that because of the participation of the lawyers, the progress of the suit or proceeding is being obstructed or hampered, it may, for reasons to be recorded in writing, revoke the permission granted.

**Difficulties faced by Litigants in the Absence of Lawyers-** The Family Courts Act excludes lawyers during the procedure unless court grants permission. This is due to the prevalent idea that lawyers foment litigation and drive in unnecessary wedges rather than helping to bridge gaps. This presumption is not without justification. But functioning within a system, which no matter how informal it is made, is still alien to the majority of people, can be a difficult task. This is especially so when the people who come to the courts are people with problems, because of which very often they are emotionally and mentally upset. Whatever the criticism of lawyers, they act as some kind of a buffer between the women and her spouse. They protect the woman from facing a direct onslaught of violence, either verbal or physical. Lawyers can to some extent mitigate the power imbalance between the parties, whether in presenting a case or arriving at a settlement. Finally, court proceedings whether

formal or informal are based on formal statutory rights. Under these circumstances it is essential that a lawyer or at least a person with legal knowledge is available in order to protect the rights of the parties. Otherwise valuable rights are unknowingly or unwittingly lost, given up, abridged or not safeguarded since the parties lack sufficient knowledge.

It is a myth that the Act does away with the need of lawyers. The Family Court counsellors themselves state that the litigants are exploited by lawyers who charge exorbitant fees just for giving legal advice and for simple drafting of the petition. All technicalities of a Civil Court are strictly followed by the Family Courts. So long as substantive personal laws (which are based on religion and are diverse, complex and confusing) and the technicalities of the procedural laws are strictly followed, the need for lawyers cannot be eliminated.

The Civil Procedure Code lays down the procedure which ought to be and can be followed in court, which is meant for lawyers to understand and follow. For a lay person who is not familiar with legal jargon, it is extremely difficult to follow this code. The Family Courts Act and Rules excludes representation by lawyers, without creating any alternative and simplified rules. Merely stating that the proceedings are conciliatory and not adversarial does not actually make it so. The situation has worsened, because in the absence of lawyers, litigants are left to the mercy of court clerks and peons to help them, follow the complicated rules women are not even aware of the consequences of the suggestions made by court officials. For instance, when a woman files suit for divorce and maintenance, the husband turns around and press for reconciliation only to avoid paying maintenance. It is crucial to the woman that people who are mediating are aware of these strategies. But if a judge or counsellor feels that a woman should go back to the husband only because he is making the offer and as a wife it is her duty to obey him, it will be detrimental to the woman's interests. Reconciliation can be brought about only



by persons committed to protecting women's rights.

The Division Bench of Rajasthan High Court, in an appeal under the Act, expressed its opinion that by incorporating Section 13 in the Act the very purpose of keeping the lawyers away from litigation seems to be completely defeated in cases where complicated issues are involved and a litigant who finds himself unequal and unable to plead his own case and who has in any case to depend on the lawyer for advice is deprived of services of a competent and responsible professional in the court. The court felt that the remedy has proved more harmful than the disease in certain cases. The court suggested that it is high time that the legislature takes a second look at the provision contained in Section 13 of the Act.

**CONCLUSION-** The foregoing analysis makes it clear that sometimes the appearance of the advocates in Family Courts seems to be an obstacle, but at times their assistance serves useful purpose. The Advocates help in many ways, for example, advocates help in the identification of litigating parties. When advocates are not allowed to appear in a matter, a reasonable apprehension of identification of parties arises. The registrar who gives oath is not in a position to know whether the person who is coming to swear or to make the affidavit is the same person. May be in the place of Mrs. Saxena, Mrs. Gupta comes and identifies herself that she is Mrs. Saxena and takes the oath and the work of affidavit is over. Appearance of the Advocates on behalf of the litigating parties works as some safeguard to overcome this kind of situation of fraud. Besides that, Advocate are the nearest person to his/her client in comparison to a judge, a counsellor or social workers. They act as some kind of a buffer between the litigants. They mitigate the power imbalance between the parties, whether in presenting a case or in arriving at a settlement. So far, diverse, complex and confusing personal laws and all technicalities of Civil Procedure Code are strictly followed by the Family Courts, the need for Advocates cannot be eliminated. Amicus Curiae,

who are engaged at the instance of the court cannot take place of advocates who are engaged by the litigants themselves and whom they trust.

Thus, at the first stage, wherein Family Court send parties before the conciliators who make all efforts for conciliation, there is no need of advocates. The question of appearance of advocates would arise only when the conciliators/counsellors report that the conciliation attempt has failed and conciliation between the litigating parties is not possible. As the matter has to be adjudicated, when the reconciliation attempt fails, then Family Court should ordinarily allow advocates to appear on behalf of the parties. This is necessary because Family Laws as well as procedural laws are very complicated and an ordinary layman cannot be expected to know such complex laws. It is essential that an advocate should be available in order to protect the rights of the parties. Representation by advocates will not only be of great assistance to the litigants but also help the courts to do justice expeditiously. Because Advocates make research in respect of their cases, they assist the courts as to the provisions of law and about decisions rendered by the High Courts and Supreme Court on that point and thus assist the court to come to a right conclusion. Thus deprivation of a party to be represented by a legal practitioner is not only harmful for a litigant but also a great impediment to the Family Court Judge.

By restraining litigants to engage advocates of their choice, without the permission of the Family Court, no purpose has been achieved so far. Section 13 has only aggravated difficulties of the parties. Expeditious disposal of cases without restraining lawyers is possible if certain norms are laid down, to be followed by the Family Courts, such as: laying down procedures for regulating time to be taken for arguments, or for disallowing irrelevant and long winding cross-examinations, requiring written briefs by advocates, simplifying procedural rules etc. A cadre of socially active advocates and sensitive judges could also make Family Courts a meaningful





and efficient forum of matrimonial disputes settlement. Thus, it is need of the hour to repeal Section 13 of the Family Court Act in order to enable parties to engage advocates of their choice.

#### REFERENCES

1. Moideen Bawa Manchestra Banot v Shahida, AIR 2006, Kerala 362-363, para 6.
2. Ibid, at para 7.
3. AIR 1993, Bom. 255.
4. The Family Courts (Maharashtra High Court) Rules, 1988: Rule 37. 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 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 revoked by the court at any stage of the proceedings if the court considers it just and necessary.
5. AIR 1977 SC 36.
6. AIR 1985 SC 389.
7. S. Krishnamurthi Aiyer; Golden Legal Maxims, New Second Edition 1998, Page 18.
8. 1 (2002) DMC 409 (DB).
9. Section 23. Power of the State Government to make rules:  
(i) The State Government may, after consultation with the High Court, by notifications make rules for carrying out the purposes of this Act.  
(ii) In particular and without prejudice to the provisions of sub-section (1), such rules may provide for all or any of the following matters, namely:... (d) Payment of fees and expenses to legal practitioners appointed under Section 13 as amicus curiae out of the revenues of the State Government and the scales of such fees and expenses;
10. See, K. Panduranga Rao's Commentary on the Family Courts Act, 1984, 5th Edition, 2008, Page 71.
11. 1998 (2) AWC 1551.
12. Ibid.
13. AIR 1991 Bom. 105.
14. AIR 1993 Bom. 255.
15. Supra, foot note 11, at para 10, Justice M. Katju & Justice Saraf.
16. AIR 1998 AP 290.
17. AIR 2004 NOC 139 (Jhar).
18. Family Courts- A Critique : D. Nagasila. Economic and Political Weekly. Aug 15, 1992
19. Family Courts. From the frying Pan in to the Fire? The lawyers, Sept. 1990.
20. Smt. Nandana v Pradeep Bhandari, 1 (1996) DMC 285.

\*\*\*\*\*