NOTES AND COMMENTS

ARRIVING AT A SETTLEMENT UNDER FAMILY COURTS ACT, 1984: DECONSTRUCTING THE ROLE OF THE JUDGE OF THE FAMILY COURT AND COUNSELOR

Abstract

Access to justice is a basic human right and has been elevated to the level of a fundamental right in the justice discourse. Among many mechanisms that are utilised to enable access, alternate dispute resolution methods are seen as the most viable. This has led to much emphasis being laid on adoption of alternate dispute resolution methods in recent years, with the field of matrimonial dispute resolution being no exception to this trend. Provisions of the Family Courts Act, 1984 and various decisions concerning it make it amply clear that special emphasis is placed on ensuring amicable settlement of family disputes. The presiding officer of the family court and the attached counsellor are under a mandate to ensure all possible efforts to try and settle matrimonial disputes through conciliation. However alternate dispute resolution mechanisms by their very nature are prone to abuse where institutions force parties to settle. A similar problem is likely to arise under Family Courts Act, 1984. The paper elaborates on the problem, and attempts through an extended reading of statutes and case laws to provide a viable solution.

I Introduction

RECENT TIMES have witnessed an enormous thrust on resolution of disputes through alternate means or more commonly known as alternate dispute resolution methods (ADR). This is so because ADR is seen not merely as the most practical solution to some of the persistent problems plaguing the operations of the Indian judiciary (such as docket explosion), it is seen as *the* method to realize and fructify the hallowed promise embedded in the Indian Constitution, that of access to justice, a basic human right. These methods are considered as the most appropriate to not only resolve but also prevent occurrence of a range of disputes, be it commercial or matrimonial. This fundamental change in outlook on how to approach dispute resolution has prompted radical changes in the design of current legislations. Legislations now actively incorporate ADR mechanisms to perform both preventive and curative functions. In other words, they conceptualize an affirmative action on the part of stakeholders especially judiciary to use ADR methods to resolve disputes. Many go a step further requiring exhaustion of a range of ADR mechanisms before the matter could be actually litigated.[1]

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1 A good example of this focus could be witnessed in s. 89 of the Code of Civil Procedure, 1908. One could almost witness an attempt to generate a *dispute resolution fatigue*. Dispute

The flagship matrimonial dispute resolution law, the Family Courts Act, 1984, is no exception to this trend. It mandates an active involvement on the part of the court to arrive at an amicable settlement between the parties.[2] There is, however, no guidance provided to either the court or counselors operating under the court on how a settlement has to be attempted. Lacking clear guidelines, there is a danger that any settlement effort may become counterproductive.[3] It is urgent that uniform guidelines to streamline the working of counselors or judges of the family courts while attempting

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resolution fatigue could be understood as the constant build up of urgency to get the matter resolved. This is achieved through getting the parties to repeatedly discuss and deliberate upon their problem with each other. It is hoped that the constant interaction between parties coupled with staunch refusal of the courts to look at the matter in the first instance *i.e.* without having exhausted other alternate means of dispute resolution, would blunt parties stubbornness to have their matter resolved only though court litigation. A genuine interest to resolve the dispute coupled with increased delay translating into increased cost would force them to go beyond their positions and focus on the interests of parties.

2 Paras Diwan, *Law of Marriage and Divorce* 754 (Universal Law Publishing Co, New Delhi, 15th edn, 2008). The statement of objects and reasons and the various provisions of the Family Court Act, 1984 clearly suggest this. The usual process followed before a family court is as follows – with both parties before the family court for the first time, the matter is referred to a counselor attached to the court. The counselor attempts conciliation among the parties. The conduct of counselor is guided by the applicable rules if enacted by the state government/ high court. In the event the effort is successful (or failure) a report is made to the referring court simply noting that the matter is settled (or settlement has failed). If the matter is settled then details of the settlement might be noted. However if the matter is not settled then reasons for failure are not required to be noted in the counselors report. That said often the report notes the reason for failure of conciliation, and the party responsible for the same. See for instance *Durga Prasanna Tripathy* v. *Arundhati Tripathy,* AIR 2005 SC 3297, where the report was not only made available but was referred to in detail by the appellate courts. The court then attempted to adjudicate the matter on merits in view of relevant applicable law. There have, however, been instances when after the matter has returned to the family court, the presiding judge has attempted to conciliate the matter. The problem lies precisely in the two instances where conciliation is being attempted. There is wide disparity among rules passed by various states regarding how counselors and judges of the family courts are to conciliate. Lack of proper guidelines on how the settlement efforts are to be conducted, introduces possibility for adhocism and arbitrary behavior, in turn causing harm than intended good to the parties.

3 There is at present no set of uniform rules as to what procedures/format of procedures have to be adopted by the judge of the family court/counselors when interacting with the parties aiming to arrive at an amicable settlement. Various states have passed rules to facilitate operations of the Family Court e.g. The Family Courts (Orissa) Rules, 1990 (SRO No.963/99); Maharashtra Family Court Rules, 1987; Madhya Pradesh Family Courts Rules, 2002 (Noti.No. F-4-1-02-XXI-B (1) Bhopal, 20th June 2002), *etc.* In almost all instances the rules directs the counselors to help parties in arriving at reconciliation, e.g. rule 35 of Calcutta High Court Family Court Rules, 1990 (No.1476-A-dated, 19th Feb. 1988); Rule 15 of Goa Family Courts Rules 1988; Rule 18 of The Family Courts (Jharkhand High Court) Rules, 2004 (Noti.No.1.A/Court Gathan 102/2003-2060/J, dated 20th July 2004), *etc.* Even Rule 18 of the Model Family Courts

settlement be laid down considering the mushrooming[4] of family courts across the country. The specific aim of this brief exposition is to delineate minimum necessary requirements and principles to be adhered to by a family court and counselors operating thereunder when attempting reconciliation between the parties.

II Working of family courts

The Family Courts Act, 1984 was enacted to achieve manifold objectives such as decongestion of ordinary trial courts, providing a safe and secure environment for resolving family disputes, *etc*. At the core was the understanding that a family dispute was unlike any other dispute and therefore necessarily had to be dealt with differently.[5] This philosophy saw incorporation within the legislation of a dispute resolution

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Rules, 2002, makes a similar suggestion. These rules are available as annexure to National Commission for Women, Report on Working of Family Courts in India and Model Family Court, (March, 2002) *available at*: http://ncw.nic.in/pdfreports/Working%20of%20Family%20courts%20in%20India.pdf (last visited on July 15, 2014). There is however a conspicuous silence in all on how the counselor is expected to achieve the settlement between the parties. Almost all rules provide for a vague directive to the effect that the counselor shall *assist and advise* the parties regarding the settlement of the subject matter of dispute and shall endeavour to *help* the parties in arriving at conciliation. This is where they stop, making way for high flexibility at the same time creating high possibility of arbitrariness. These rules are silent on even the most basic principles which must animate any settlement efforts. At this juncture it should clearly be noted that none of the rules provide any power to the presiding judge to attempt to conciliate the matter. See also Flavia Agnes, *Marriage, Divorce and Matrimonial Litigation*, 300 (Oxford University Press, New Delhi, Vol II, 2011) – the author clearly notes that initially there was no clarity on the role to be played by the counselor and that there was wide disparity in the counseling techniques adopted by individual Counselors.

4 Flavia Agnes, II *Marriage, Divorce and Matrimonial Litigation*, 318 (Oxford University Press, New Delhi, 2011). Agnes puts this figure at around 100 courts across the country. It is important to note that the Family Court Act, 1984, § 3(1)(a) mandates establishment of a family court in every city or town population of which exceeds one million.

5 See for instance observations of the Jharkhand High Court in *Smt. Hina Singh* v. *Satya Kumar Singh*, AIR 2007 Jhar 34 (para 16) – "The matrimonial disputes are distinct from other types of disputes on account of presence of certain factors which are not found in other disputes. These factors are motivation, sentiments, social compulsion, personal liabilities and responsibilities of the parties, the views of the two parties regarding life in general and to the institution of marriage in particular, the security of the future life, so on and so forth. […] The main role of the Court is to discover a solution instead of breaking the family relations. It is the mandate of law as also the social obligation of the Judge to make an earnest attempt for reconciliation. […] because for the sensitive area of personal relationship special approach is needed keeping in view the forefront objective of family counseling as a method of achieving the ultimate object of preservation of the family." Similar idea was expressed in *Jagraj Singh* v. *Birpal Kaur*, AIR 2007 SC 2083. See also Government of India, Report: *Report of the Committee on the Empowerment of Women on Functioning of Family Courts* (Parliament, 2001) *available at*: http://164.100.24.208/ls/committeeR/Empowerment/5th/Report.htm (last visited on July 16, 2014) "The basic concept of family courts emerged from the conviction that the family being a

framework that was non-litigious and consensual in nature. Such profound changes were at the behest of active role played by different bodies attached to this field.[6] The increased stress on amicable settlement of family dispute is apparent in the specific provisions of the Act[7] as well as in the repeated exhortations of the higher judiciary to take recourse to alternate methods of dispute resolution in cases of family disputes.[8]

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social institution, disputes connected with family breakdown, divorce, maintenance, custody of children etc. needs to be viewed from the social rather than legal perspective."

6 For instance the Law Commission of India had advocated for a radical change in the manner in which matrimonial disputes were resolved. See Law Commission of India, *59th Report on Hindu Marriage Act, 1955 and Special Marriage Act, 1954* (Mar.1974) *available* at: http://lawcommissionofindia.nic.in/51-100/Report59.pdf (last visited on July 3, 2014). However at this juncture it is necessary to point out that Family Court Act, 1984 does not provide for new substantive law to resolve matrimonial dispute for instance like the Hindu Marriage Act, 1955 or the Indian Succession Act, 1925. Instead it merely prescribes or mandates a new procedural approach to be adopted to apply to the existing substantive matrimonial laws. Flavia Agnes, II *Marriage, Divorce and Matrimonial Litigation*, 270, 282-286 (Oxford University Press, New Delhi, 2011). See also National Commission for Women, Report on Working of Family Courts in India and Model Family Court(Mar. 2002), *available at*: http://ncw.nic.in/pdfreports/Working%20of%20Family%20courts%20in%20India.pdf (last visited on July 15, 2014). This report also suggested the Model Family Courts Rules, 2002.

7 S.9. "Duty of Family Court to make efforts for settlement. -(1) In every suit or proceeding, endeavour shall be made by 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." The nature of this duty was succinctly captured by the Andhra Pradesh High court in the decision of *R. Durga Prasad* v. *UOI* II (1998) DMC 45 (para 12) wherein it was noted – "…and as by virtue of Section 9 of Family Courts Act, a duty is cast on the Family Court to make endeavour to assist and persuade the parties in arriving at a settlement in respect of the subject matter of the suit or proceedings and should the Family Court feel that there is a reasonable possibility of settlement between the parties, the proceedings have to be adjourned for a reasonable period to enable the parties to effect such settlement. We make it clear that the Family Court shall not skip this important stage and per se the Family Court on the first appearance of the respondents shall make endeavour as aforesaid and only if it comes to the conclusion after the above exercise that the settlement is impossible, then the case should be posted for further steps such as written statement/counter, *issues, trial and so* on." This is a mandatory duty and is reminiscent of s. 23(2) of the Hindu Marriage Act, 1955 that mandates the court to attempt reconciliation between the parties. Similar exhortation is also found in Order 32-A, Rule 3 of the Code of Civil Procedure, 1908. For observations of other high courts on the nature of duty under s.9, see Bimal Kumar, *The Family Courts Act, 1984* 75-79 (Rajpal and Company, Allahabad, 2006). See also H.K. Saharay, *Family Law in India* 288 (Eastern Law House, Kolkata, 2011). See also Editorial, "Courts should bless settlement of matrimonial row, says SC" *The Hindu* Mar. 16, 2013.

8 In *K Srinivas Rao* v. *DA Deepa*, AIR 2013 SC 2176 (para 36) another requirement was added under s.9. The apex court mandated "In terms of Section 9 of the Family Courts Act, the

III The problem

Though this focus on ADR is admirable and indeed necessary, the legal fraternity should not be blind to the problems created by excessive push in this direction. The Supreme Court noted with concern the adoption of extreme ideas and attitudes by officers engaged in attempts to resolve disputes using the ADR mechanism. Observations of the apex court also seem to suggest that it is convinced of the pervasiveness of the problem. For instance in the case of *State of Punjab* v. *Jalour Singh*[9] it observed thus:

> But we find that many sitting or retired Judges, while participating in Lok Adalats as members, tend to conduct Lok Adalats like courts, by hearing parties, and imposing their views as to what is just and equitable, on the parties. Sometimes they get carried away and proceed to pass orders on merits, as in this case, even though there is no consensus or settlement. Such acts, instead of fostering alternative dispute resolution through Lok Adalats, will drive the litigants away from Lok Adalats. Lok Adalats should resist their temptation to play the part of Judges and constantly strive to function as conciliators. The endeavour and effort of the Lok Adalats should be to guide and persuade the parties, with reference to principles of justice, equity and fair play to compromise and settle the dispute by explaining the pros and cons, strength and weaknesses, advantages and disadvantages of their respective claims.

This problem could possibly not remain isolated only to *lok adalats*, and is bound to permeate to similarly situated ADR mechanisms. The manner of conduct noted above is the precise accusation faced by those engaged in utilizing ADR mechanisms to resolve the disputes. One is likely to witness such problems in the context of family courts in instances where the judge of the family court attempts to arrive at a broad

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Family Courts shall make all efforts to settle the matrimonial disputes through mediation. Even if the Counselors submit a failure report, the Family Courts shall, with the consent of the parties, refer the matter to the mediation centre. In such a case, however, the Family Courts shall set a reasonable time limit for mediation centres to complete the process of mediation because otherwise the resolution of the disputes by the Family Court may get delayed. In a given case, if there is good chance of settlement, the Family Court in its discretion, can always extend the time limit."

9 AIR 2008 SC 1209 (para 9). Though the context in this matter was that of *lok adalat*, it serves to drive home the point that excessive focus towards using ADR mechanism mightsoon be turning it into a pure number game, mirroring a corporate scenario where higher numbers indicate better performance. This is dangerous as it introduces a very real possibility of a 'solution' being forced upon a pliable party.

consent based solution to the entire matter. To discharge this onerous burden, the Act makes provision for assistance by trained counselors. Though it paints a very promising picture, it is far removed from reality.[10]

The counselors are routinely accused of intimidation or painting an incorrect picture as to the cost, time and possibilities involved in arriving at a litigated solution, to quickly resolve or *settle* disputes. Such an approach instead of helping often misleads the parties and forces them to settle for something they ordinarily would never have accepted. Adoption of such tactics generates a suspicion on the part of parties against the counselor and at times unfortunately against the mechanism as a whole.[11]

The tales of success are sparse and perhaps the constant failings are due to lack of adequate support in terms of proper infrastructure, trained counselors and cogent guidelines, all severely hampering the effectiveness of family courts.[12] Such failings, specifically lack of proper guidelines, make the entire process of counseling, whether by the judge of the family court or by the counselors, adhoc and suspect to abuse. Such a scenario only undermines the entire thrust to resolve the dispute through amicable means.

IV Possible solution

Though some states have put in place rules[13] to assist the family courts and counselors in their approach to the dispute settlement, many are yet to provide for appropriate

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10 For a critical appraisal of working of counselors in different states see Flavia Agnes, II *Marriage, Divorce and Matrimonial Litigation* 299-305 (Oxford University Press, New Delhi, 2011).

11 Noting such a trend it was observed in *Leela Mahadeo Joshi* v. *Mahadeo Sitaram Joshi (Dr.)* (1990) Mah LJ 1267. "Provisions regarding reference to Counselor does not mean that parties must be forced against their wishes or interest to patch up a marriage which cannot be mended "

12 See for instance Government of India, Report: *Report of the Committee on the Empowerment of Women on Functioning of Family Courts* (Parliament, 2001) *available at*: http://164.100.24.208/ls/committeeR/Empowerment/5th/Report.htm (last visited on July 16, 2014). This is a continuing problem for instance see http://articles.timesofindia.indiatimes.com/2012-11-19/coimbatore/35204889_1_new-court-mahila-court-coimbatore-bar-association,http://articles. times of india. indiatimes.com/2012-10-01/chennai/34197427_1_counsellors-courts-borderline-personality-disorder, http://m.indianexpress.com/news/family-court-lawyers-staff-rue-delay-in-completion-of-new-building/1091194/ (last visited on July 3 2014).

13 National Commission for Women, Report on Working of Family Courts in India and Model Family Court, (Mar. 2002) *available at*: http://ncw.nic.in/pdfreports/Working% 20of% 20Family%20courts%20in%20India.pdf (last visited on July 15, 2014) clearly notes this deficiency. Though different high courts have laid down different rules of procedure, there is no uniform set of rules that applies to all the family courts. The report further observed that a constant suggestion from the participating family court judges was that a meaningful and effective procedure should be evolved to ensure that efforts towards reconciliation are genuinely made.

guidelines, leaving the system susceptible to dangers noted above. Absence of guidelines thus necessitates looking elsewhere to bridge the gap. To do so a two pronged approach will have to be adopted *i.e.* one derived from statutory law and the other from case law.

One, there is a clear extension of principles of conciliation as noted in the Arbitration and Conciliation Act, 1996 to settlement efforts under the Family Courts Act, 1984. This conclusion is reached primarily focusing on two ideas. One there is absolutely no doubt that both judge of the family court and counselor operating under the Family Court Act, 1984 are required to attempt to *conciliate* the dispute.[14] Second, the Arbitration and Conciliation Act, 1996 extends application of provisions[15] relating to conciliation to any conciliation proceedings. The only exceptions being, instances where the relevant legislation ousts the application of these provisions, or prohibits such disputes from being referred to conciliation. The two exceptions clearly have no application to instances being conciliated under the Family Court Act, 1984.[16]

Second, inspiration could also be had from decisions of the apex court regarding working of other similarly placed ADR methods. To rectify and plug a similar shortcoming in the workings of *lok adalats* the apex court in the case of *BP Moideen Sevamandir* v. *AM Kutty Hassan*[17] engaged in an act of judicial law making and laid down the principles to be borne in mind by members of *lok adalats* in the absence of detailed rules. It first equated and then extended understanding of conciliation under the Arbitration and Conciliation Act, 1996 to workings of *lok adalats*.[18]

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14 See for instance the statement of objects and reasons of the Family Courts Act, 1984, that provides - An Act to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith. Similarly see ss. 4(a), 5 and 6 of the Act. See also Government of India, Report: *Report of the Committee on the Empowerment of Women on Functioning of Family Courts* (Parliament, 2001) *available at*: http://164.100.24.208/ls/committeeR/Empowerment/5th/Report.htm (last visited on July 16, 2014) noting "The emphasis of the Family Courts is on conciliation and achievement of socially desirable results rather than adherence to rigid Rules of procedure and evidence adopted in ordinary civil proceedings. Reasonable efforts are made in the Family Courts for settlement of family dispute."

15 S.61 of the Arbitration and Conciliation Act 1996 – (1) Save as otherwise provided by any law for the time being in force and unless the parties have otherwise agreed, this part shall apply to conciliation of disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto. (2)This Part shall not apply where by virtue of any law for the time being in force certain disputes may not be submitted to conciliation.

16 The exclusion of application of other legislations is specific and noted in s.10 of the Family Courts Act, 1984. For more see footnote no.18.

17 (2009) 2 SCC 198.

18 "We suggest that the National Legal Services Authority as the apex body should issue uniform guidelines for the effective functioning of the lok adalats. The principles underlying following provisions in the Arbitration and Conciliation Act, 1996 relating to conciliators, may also be treated as guidelines to members of lok adalats, till uniform guidelines are issued : s. 67 relating

V Family courts and conciliation: translating these principles into working of family courts

Looking beyond the designation of specific ADR mechanism employed and focusing on the actual method utilized, one would envision a seamless application of these principles to any ADR method that attempts a conciliated settlement among the parties. Therefore it is only natural that requirements as noted above by the apex court be applied in their true spirit to the working of judge of the family courts and counselors operating in the family courts. Thus judge of the family court or counselors when attempting settlement:[19]

1. should assist the parties in an independent and impartial manner to reach an amicable settlement of their dispute;
2. be guided by the principles of objectivity, fairness and justice, giving due consideration to, among other things, the rights and obligations of the parties, and the circumstances surrounding the dispute, while assisting the parties;
3. were of the opinion that a settlement seems likely, at any stage of the proceedings may suggest plausible areas/issues of agreement, and encourage discussions on settlement.[20] Such suggestions need not be in writing and need not be accompanied by a statement of the reasons;
4. as regards matters discussed during attempts of settlement, they cannot be relied upon or used as evidence in any adversarial proceedings before the family court. This would in particular extend to views and suggestions expressed by a party as regards a possible settlement, admissions made by any party, proposals made by the counselor or judge of the family court as the case maybe, and sentiments expressed by any party as regards these proposals;[21]

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to role of conciliators; s.75 relating to confidentiality; and s. 81 [sic] relating to admissibility of evidence in other proceedings".(para 11)

19 Principles 1-3 find their source in s.67, Arbitration and Conciliation Act, 1996, while principle 4 in s.75. All relevant rules relating to functioning of family courts make confidentiality a high priority. For example, rule 8 of the Karnataka Family Courts (Procedure) Rules 1987, clearly mandates that all information gathered by the counselors in the course of attempts for reconciliation shall be treated as confidential. The counselor shall not disclose to others or be compelled to disclose such information.

20 There is an avid danger of permitting judge of the family court to suggest solutions to parties. It is a natural tendency of persons to have a greater attachment towards ideas suggested by them. Such ownership of the solution might lead to coercion on the part of the judge of the family court on parties to accept the solution suggested by her.

21 *Supra* note 18, s.81. One could argue that s.14 of the Family Court Act read with s.20 thereof permits the judge of the family court to take cognizance of such evidence, and that it would override provisions of s.81 of the Arbitration and Conciliation Act 1996. However a credible

5. at no point of time should any pressure, threat, force or coercion be visited on the litigant to settle their dispute against their wishes;[22]
6. must clearly desist from finding fault with a particular litigant if the matter is not conciliated, so as not to prejudice themselves when they adjudicate the matter. In such an instance what happened during conciliation or parties' behavior during conciliation would become completely irrelevant. [23]

As discussed previously, the only mandate that is provided to officials of family courts is the need to assist the parties in coming to a solution sans any detailed guidelines as to how this mandate is to be executed. All of the above principles could easily be adopted and indeed are necessary to be adopted and borne in mind by the counselors and judge of the family court when attempting conciliation. This in turn would ensure that a settlement is truly consent-based-informed settlement that has been willingly arrived at.[24]

VI Conclusion

From the perspective of dispute resolution, family courts are a step in the right direction, *i.e.* by creating a separate setup infused with differing procedural requirements than those found in the ordinary court system. The thrust of this new setup is preservation of family and protection of gender rights, yet wherever possible these

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argument could be made in favour of the latter provision, on two specific grounds – a) the Family Court Act, 1984 mandates conciliation, and to such conciliation provisions of Arbitration and Conciliation Act extends by virtue of s.61 of that Act, and b) because of such extension s. 81 mandating exclusion of certain information as evidence would operate. For instance The Maharashtra Family Courts Rules 1987 (No. HMA -1685-1125-149) clearly make provisions for confidentiality and bar on evidence. In particular Rule 24(1) & (2) provides for absolute confidentiality to be maintained concerning interactions of the parties with the counselor or judge of the family court attempting to conciliate the matter. This bar is broken only when both parties agree. Further information or report or statement or notes of counselor cannot be utilized as evidence. Additionally counselor cannot be called upon to give witness or face cross examination as regards report made by him to the court (Rule 29). Clearly such rule making exhibits foresight, which unfortunately is lacking in rules by many of the other high courts.

22 *BP Moideen Sevamandir* v. *AM Kutty Hassan* (2009) 2 SCC 198, para13.

23 *Id.,* para 14

24 One could argue that the efficacy of protection envisaged under formulation suggested in the paper would be contingent on working of counselors and judges of the family courts. If they chose to ignore these principles then such protection would be only remain protection on paper. The argument though valid is generic to working of any law. Implementation is a problem, but not within the scope of this paper. This paper merely attempted to draw certain principles that could be utilized to afford protection to the litigants in the absence or deficiency on the part of existing rules.

goals are to be achieved by adopting inquisitorial and conciliatory approach instead of standard adversarial techniques. Provisions of the Family Courts Act, 1984 clearly exhibit the above noted policy. However absence of clear guidelines has at times impeded in meaningful translation into practice *i.e.* of the mandatory obligation of the family court to attempt settlement before adjudicating the matter. Absence of guidelines also introduced potential dangers concerning discharge of this duty. In the current paper recourse to case law was included to show that the present lacuna had been addressed by the apex court through issue of certain guidelines albeit for another similarly placed ADR method. Adoption of these guidelines *in mensura aequa* in the working of the family courts would go a long way in improving its functioning.

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