



BOOK REVIEWS

COMMENTARY ON THE FAMILY COURTS ACT, 1984 (3RD EDITION 2006). BY V. Narayana Swamy. MJS Publications, No. 21, 2nd Cross, Magadi Main Road, Bangalore- 560023, Pp. 192, Price Rs. 150/-.

THE ESTABLISHMENT of family courts has been backed by the idea of lessening the flood of matrimonial disputes in the ordinary civil courts. The restitution of conjugal right, judicial separation, mutuality of marriage, divorce, maintenance, property of spouses and custody and guardianship of the minor children have been causes giving rise to family disputes. The redressal of such conflicts involve serious emotional aspects. Social scientists assert that to avoid the pains of discordant family the ailments be diagnosed properly because special social diseases require special remedies. The *Commentary on the Family Courts, 1984* is to be viewed in the light of this approach.

The book under review¹ is the third edition and seems to have proved its credibility, utility and relevance. The present edition of the book is thoroughly revised and encompasses many aspects relating to the family court. The aim of the author seems to be that the state being the custodian of social justice must provide a protective umbrella to women — the weaker section of the society — by providing for a simple procedure to resolve dispute between the warring spouses amicably for the sound health of the society.²

The book is divided into six chapters and two appendices which provide relevant material on the subject. It is an annotated commentary on each and every section of the Family Courts Act, 1984. Chapter one gives details regarding the title, extent and commencement of Act along with the statement of objects and reasons for its enactment.

The provisions regarding the establishment of the family court and appointment of judges, social welfare agencies, counselor and officers have been discussed in chapter two. Chapter three keeps focus on the jurisdiction of the family courts. The commentary on section 7³ has been made under sixty five different aspects covering the whole range of the legal ambit pertaining to matrimonial causes. The law relating to procedure adopted by the family courts has been narrated and examined

1. V. Narayana Swamy, *Commentary on the Family Courts Act, 1984* (2006).

2. *Id.*, Preface to the third edition at 6.

3. *Id.*, Explanation attached to s. 7.



under chapter four. This is a significant aspect of the family court law. It brought significant changes in the functioning of the courts dealing with the matters of civil nature. It laid emphasis on conciliation and achieving socially desirable results. It avoided the adherence to rigid rules of procedure as contained in Civil Procedure Code and the law of evidence. The author opines that before reaching the conclusion, the court must utilize modern scientific methods to probe the veracity of assertions and statements of the parties to dispute. The author throws light on the significance of reconciliation.⁴ “Duty is cast on the court in the first instance to make every endeavour to bring about reconciliation between the parties.”⁵ The author applauds the devices like counseling, reconciliation and compromise utilized to reach settlement.⁶ The positive obligation in every case of matrimonial cause is to make every endeavour to bring about reconciliation between the parties. This is because the objective of family counseling should be to preserve or secure the integrity of the matrimonial home creating cordial atmosphere.⁷ In the Family Courts Act, 1984, law makers follow⁸ the advice of the Law Commission regarding the enactment of provisions relating to the procedure to be adopted by the family court. The Law Commission of India⁹ had advised that the family court “ought to adopt a humane approach radically different from that adopted by traditional courts, that the court should make reasonable efforts at settlement before the commencement of the trial.” Section 13 of this Act has been most controversial as it envisages little role for the lawyer. The author seems to be in opposition to this approach of the statute. The author is of the view “that Section 13 creates a hostile discrimination between the litigants of matrimonial cases in one district where they can have advocates of their choice and in the family court where they cannot have the advocates of their choice”¹⁰ if some districts do not have family courts.

The law relating to appeals and revision is covered in chapter five. The author discusses the discriminatory nature of section 19 of the Act. The author laments “the provisions of the Act are *prima facie* discriminatory in as much as it creates a discrimination between the litigants of Bangalore city and other parts in the state and it deprives the litigants in Bangalore city of an opportunity of preferring a revision or

4. Family Courts Act, 1984, s. 9(1).

5. *Supra* note 1 at 133.

6. *Ibid.*

7. *Supra* note 4, s. 8.

8. *Id.*, s. 10.

9. Law Commission of India, *54th Report*, chapter 32-A.

10. *Supra* note 1 at 146.



appeal to the High Court but for the Act they cannot exercise that right.”¹¹ Chapter six of the book speaks about the “miscellaneous” provisions of the Act like its overriding effect, and government’s power to make rules. The case law has been inserted at appropriate places explaining the sections of the Act. The author has tried to make this work objective and excellent but the lengthy synopsis given under every section could have been avoided. At the end of the book, the author has reproduced the amendment Act of 1991 and the rules framed by the government. The book also contains a subject index.

The work is interesting and provides an insight into the operational aspect of the Family Courts Act, 1984.

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11. *Id.* at 163.

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