

**COMMITTEE ON EMPOWERMENT OF WOMEN
(2002-2003)**

(THIRTEENTH LOK SABHA)

FUNCTIONING OF FAMILY COURTS

**MINISTRY OF LAW AND JUSTICE
(DEPARTMENT OF JUSTICE)**

*[Action Taken on Fifth Report of Committee on Empowerment of Women
(Thirteenth Lok Sabha)]*

TWELFTH REPORT

**LOK SABHA SECRETARIAT
NEW DELHI**

March, 2003/ Chaitra, 1925 (Saka)

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PART II

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**COMPOSITION OF THE COMMITTEE ON EMPOWERMENT OF WOMEN
(2002-2003)**

CHAIRPERSON

Smt. Margaret Alva

MEMBERS

LOK SABHA

2. Dr. (Smt.) Anita Arya
3. Smt. Jayashree Banerjee
4. Shri Bhan Singh Bhaura
5. Smt. Krishna Bose
6. Smt. Santosh Chowdhary
7. Smt. Renuka Chowdhury
8. Dr. (Smt.) Beatrix D'Souza
9. Adv. Suresh Ramrao Jadhav
10. Smt. Abha Mahto
11. Dr. Ashok Patel
12. **Shri E. Ponnuswamy
13. Shri Bishnu Pada Ray
14. Smt. Sushila Saroj
15. Dr. (Smt.) V. Saroja
- 16 Smt. Minati Sen**
17. Smt. Shyama Singh
18. Smt. Jayaben B. Thakkar
19. Shri Prakash Mani Tripathi
20. Dr. (Smt.) Vukkala Rajeswaramma

RAJYA SABHA

21. Smt. Shabana Azmi
22. Dr. (Ms.) P. Selvie Das
23. Smt. Saroj Dubey
24. *Smt. Vanga Geetha
25. Smt. S.G. Indira
26. *Smt. Gurcharan Kaur
27. *Smt. Chandra Kala Pandey
28. *Smt. Bimba Raikar
29. Miss Mabel Rebello
30. Smt. Savita Sharda

SECRETARIAT

1. Shri P.D.T. Achary - Additional Secretary
2. Shri K.V. Rao - Joint Secretary

- | | | | |
|----|-------------------|---|------------------|
| 3. | Shri Ashok Sarin | - | Deputy Secretary |
| 4. | Smt. Veena Sharma | - | Under Secretary |

* Nominated to the Committee w.e.f. 20th May, 2002

** Nominated as Member of the Committee w.e.f. 28th August, 2002 *vice* Shri N.T.Shanmugam, MP ceased to be a Member of the Committee on his appointment as Minister.

INTRODUCTION

I, the Chairperson of Committee on Empowerment of Women, having been authorised by the Committee to present the Report on their behalf, present the Twelfth Report (Thirteenth Lok Sabha) on the Action Taken by the Government on the recommendations contained in the Fifth Report of the Committee on Empowerment of Women (Thirteenth Lok Sabha) on 'Functioning of Family Courts' relating to the Ministry of Law and Justice (Department of Justice).

2. The Fifth Report (Thirteenth Lok Sabha) of the Committee on Empowerment of Women was presented to both Houses of Parliament on 3rd December, 2001. Replies of the Government to all the Observations/Recommendations contained in the Report have been received.

3. The Draft Report was considered and adopted by the Committee on Empowerment of Women (2002-2003) at their sitting held on 13th March, 2003. The Minutes of the Sitting form Part II of the Report.

4. For facility of reference and convenience, the Observations/Recommendations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in Appendix – I of the Report.

5. An Analysis of the Action Taken by the Government on the recommendations contained in the Fifth Report (Thirteenth Lok Sabha) of the Committee is given at Appendix II.

**NEW DELHI;
March 24th, 2003
CHAIRPERSON,
3 Chaitra 1925 (Saka)
WOMEN.**

**MARGARET ALVA
COMMITTEE ON EMPOWERMENT OF
WOMEN.**

CHAPTER – I
REPORT

1.1 This Report of the Committee deals with the action taken by the Government on the recommendations contained in Fifth Report (Thirteenth Lok Sabha) of the Committee on Empowerment of Women relating to the Ministry of Law and Justice (Department of Justice).

1.2 The Fifth Report was presented to Lok Sabha on 3rd December, 2001. Replies of Government in respect of all recommendations have been received and are categorised as under:-

- i) Observations/Recommendations which have been accepted by the Government
Para Nos. 1.45, 1.46, 1.49, 1.51, 1.54, 1.55, 1.56, 1.57**

- ii) Observation/Recommendation which the Committee do not desire to pursue in view of the replies of the Government:
Para Nos. 1.50**

- iii) Observations/Recommendations, replies to which have not been accepted by the Committee and which require reiteration:
Para Nos. 1.47, 1.48, 1.52, 1.53, 1.58**

- iv) Observations/Recommendations in respect of which final replies have not been received.
Nil**

1.3 The Committee desire that the replies in respect of recommendations contained in Chapter I should be furnished to the Committee expeditiously.

The Committee will now deal with those action taken replies of the Government, which need reiteration or merit comments.

Non-establishment of Family Courts by some States/UTs

Recommendations (Para Nos. 1.47 and 1.48)

1.4 In the aforesaid paragraphs, the Committee had observed that Section 3 of the Act empowers the State Government, after consultation with the High Court to establish a Family Court in a city or town with a population exceeding one million and with regard to other areas in the State, the State Government might establish Family Courts as it deemed fit. The Committee had regretted to note that even after seventeen years of the enactment of the Family Court Act, 1984 only 84 Family Courts had been set up in 17 States and one U.T. The Family Courts were yet to be set up in States/UTs such as Arunachal Pradesh, Chhattisgarh, Goa, Haryana, Himachal Pradesh, Jammu & Kashmir, Madhya Pradesh, Meghalaya, Mizoram, Punjab, Nagaland, Tripura, A & N Islands, Chandigarh, Delhi, Daman & Diu, Dadra & Nagar Haveli and Lakshadweep. The Committee were not impressed by the various reasons advanced by the States for non-establishment of Family Courts such as cities not having requisite population of one million, insufficient number of matrimonial cases, lack of financial resources, prevalence of customary courts dealing with matrimonial cases, etc. In the opinion of the Committee, non establishment of Family Courts reflected the failure on the part of the Department of Justice to fulfil their responsibility to properly administer an Act of Parliament. The Committee pointed out that as a result of the discussion held by them with the concerned authorities at Raipur and Delhi, the Committee had been assured that two Family Courts in Chhattisgarh and three Family Courts in Delhi would be set up very soon. Also, the Hon'ble Chief Minister of Madhya Pradesh had assured the Committee that seven Family Courts would be set up in Madhya Pradesh by March, 2002. The Department of Justice which was the nodal Department concerned with the administration of the Act should impress upon the

remaining State Governments and UT administrations, that it was mandatory for them to establish Family Courts in their respective territories.

1.5 The Committee had further observed that Family Courts had been established in the metropolitan cities and not in all the eligible cities and towns and that there seemed to be an impression that the duties of the State Government under the Act were exhausted when it catered to large cities. The Committee had, therefore, recommended that steps should be taken to set up Family Courts in every district of the country so that women did not have to travel long distances to reach the courts.

1.6 In their action taken reply, the Department of Justice have stated that the recommendation of the Committee has been forwarded to all the State Governments and Union Territories vide their letters dated 14.12.2001&5.2.2002 with the request to take urgent steps to set up Family Courts. It was also communicated to them that the Central Government would consider 50% sharing of expenditure on additional Family Courts which may be set up henceforth. The Department have stated that one Family Court has been set up in Chhatisgarh at Raipur and Rs.10 lakhs have been released for the purpose. The Government of Madhya Pradesh has set up seven Family Courts in all the divisional headquarters of the State for which Rs. 70 lakhs have been released. The Department of Justice have stated that the Government of Bihar has one Family Court functioning at Patna, a new Family Court has been established at Muzaffarpur and one more is likely to be set up at Bhagalpur very soon. In addition, proposal for establishment of one more Family Court at Patna and one Family Court in each District of the State has been sent to the High Court of Patna for concurrence. Four Family Courts have also been set up in the state of Assam.

1.7 The Department have stated that the Government of Himachal Pradesh has not established Family Courts in the State of Himachal Pradesh, giving the pendency of cases and the geographical and topographical conditions of the State and the expenditure involved as reasons. The Government of Meghalaya has stated that in Meghalaya, societies of the tribes are matriarchal with the women having

equal advantage in family matters and cases relating to marriage, divorce, maintenance and other family matters are looked after by the existing civil and criminal courts and such cases even as of now are not many. Further, marriage, divorce and customary laws are subjects of the District Council. As such, the prevailing situation in the State being different, the Government of Meghalaya is not contemplating to set up any Family Court in the State at this stage.

1.8 According to the Department, the Government of Nagaland has stated that the State of Nagaland is predominantly inhabited by Scheduled Tribes who are governed by their customary laws and social practices. The State Government, therefore, does not consider it necessary to set up Family Courts in the State.

The Department have stated that according to the UT Administration of Chandigarh a reference was made by it to the Punjab and Haryana High Court for setting up a Family Court and for appointment of a person to be Judge of the Family Court for the Union Territory. However, the High Court has declined their request as the population figure has not exceeded the one million mark. However, the matter will be taken up once again.

The UT Administration of Dadra & Nagar Haveli has informed the Department that Dadra and Nagar Haveli has informed the Department that Dadra and Nagar Haveli is a small Union Territory having a population of about 2.3 lakhs whereas as per Rule 3 of the Family Courts Act, Family Courts are to be established for a population of at least one million. Family Courts have, therefore, not been set up in the UT. Further, the UT had requested the Bombay High Court to furnish the details of cases pending before the District Court, Silvassa which would be tried by the family Court. There are only 68 such cases pending with the UT.

The UT Administration of Daman and Diu has sought concurrence of the High Court of Bombay for establishment of Family Court at Daman & Diu. The High Court has replied that the Recruitment Rules for the Ministerial staff (Non-Gazetted) in the Family Courts have not yet been approved by the State

Government of Maharashtra. In view of this, the UT is not in a position to take any action in the matter.

1.9 In a subsequent communication indicating the latest position regarding establishment of Family Courts, the Department have stated that presently, 100 Family Courts have been set up in various parts of the country. Apart from this, it has been decided to set up 15 Family Courts in the NCT of Delhi (for which 1.00 crore has been released by the Central Government).

1.10 In the Original Report, the Committee had regretted that even after 17 years of enactment of the Family Courts Act, 1984 only 84 Family Courts had been set up in 17 States and one Union Territory. The Committee had felt that being the nodal Department, the Department of Justice should have taken the initiative to persuade the State Governments and ensured that they set up Family Courts. In their action taken reply, the Department of Justice have stated that the recommendation of the Committee has been forwarded to all the State Governments and Union Territories with the request to take urgent steps to set up Family Courts. The Department is also stated to have communicated that the Central Government would consider 50% sharing of expenditure on additional Family Courts.

1.11 The Department have stated that the Government of Chattisgarh has set up one Family Court at Raipur and the Government of Madhya Pradesh has set up 7 Family Courts in all the divisional headquarters of the State. At present two Family Courts are functioning in the State of Bihar, one more court is likely to be set up very soon and in addition, the proposal of establishment of one Family Court at Patna and one in each district of the State has been sent to the High Court for concurrence. Four Family Courts have been set up in the State of Assam.

1.12 Intimating the latest position regarding establishment of Family Courts, the Department have stated that 100 Family Courts have been set up in various parts of the country. Apart from this, it has been decided to set up 15 Family Courts in the NCT of Delhi (for which 1.00 crore has been released by the Central

Government). However, neither has any Family Court been set up in Haryana, Punjab, Tripura and Jammu & Kashmir after the presentation of the Report of the Committee in December, 2001, nor any explanation therefor been furnished. Regarding non establishment of Family Courts by some States/UTs like Himachal Pradesh, Meghalaya, Nagaland, Chandigarh, Dadra & Nagar Haveli and Daman & Diu, the Department have forwarded the various reasons given by these State Governments/UTs. The Committee are not convinced with the reasons advanced by States/UTs to the Department for non-establishment of Family Courts such as cities not having requisite population of one million, insufficient number of matrimonial cases and prevalence of customary courts dealing with matrimonial cases. As pointed out by the Committee earlier, the fact that the establishment of a Family Court in an area with less than one million population is left to the discretion of the State Government, does not mean that such areas should continue to be kept out until the figure of one million is reached. The intention under-lining the Act is that disputes concerning the family should be dealt with in a forum totally different from the judicial forum. The basic concept of family courts emerged from the conviction that the family being a social institution, disputes connected with family breakdown, divorce, maintenance, custody of children etc. needs to be viewed from the social rather than legal perspective. The need for such a forum exists as much for less populated areas as it does for densely populated areas.

The Committee would have appreciated had the Department spelt out the steps taken by them to persuade these State Governments/Union Territories to set up Family Courts, instead of simply forwarding to the Committee, the replies given by them.

1.13 Hitherto the States had been hesitant to set up Family courts on account of financial constraints. Now, since the Central Government have decided to consider 50% sharing of expenditure on additional Family Courts, which may be set up henceforth, it should not be difficult for the States to positively and expeditiously act in this direction. The Committee would, therefore, like to reiterate that the Department of Justice being the

nodal Department concerned it should impress upon the remaining State Governments and Union Territory Administrations that it is mandatory for them to establish Family Courts in their respective territories. The Committee also desire that efforts should continue to be made to ensure setting up of more Family Courts in those States which have Family Courts but their number is grossly inadequate as compared to their population and pending cases so that benefits of these Courts accrue to the women by way of quick and fair disposal of matrimonial disputes. The ultimate aim should be to set up Family Courts in every district of the country.

Need to provide adequate infrastructure to the Family Courts

Recommendations (Para No. 1.51)

1.14 In the aforesaid paragraph, the Committee had observed that mere establishment of a Family Court did not mean that substantial implementation of the Act had been achieved. It was equally important that the Family Courts were provided with the necessary infrastructure and support system for their proper functioning. The Committee had urged the Government to impress upon the various State Governments the need to provide adequate infrastructure and support system to family courts for their effective functioning.

In reply, the Department of Justice have stated that the recommendation of the Committee has been forwarded to the State Governments and Union Territories on 14.12.2001 and 05.02.2002 with the request to provide adequate infrastructure and support to the Family Courts so that the Family Courts could function effectively.

1.15 After presentation of their Report to Parliament on 3rd December, 2001, the Committee visited Hyderabad and Jaipur in November, 2002 and February, 2003 respectively and saw the functioning of Family Courts. At both the places the Committee were informed that Family Courts were functioning from rented buildings and there was no proper place for the parties to sit. There was no separate room for Counsellors. Also,

there was shortage of staff. At Hyderabad Family Court, it was informed that there was shortage of computers and photocopying machines. At Jaipur Family Court, it was informed that there were presently no posts of clerks, typists and record sorters due to which a lot of difficulties were being faced in its effective functioning. It was also stated that there was non-availability of computer printers, fax and photocopying machines.

1.16 The Committee had earlier urged the Government to impress upon the various State Governments, the need to provide adequate infrastructure and support system in Family Courts for their effective functioning. However, forwarding of this recommendation to the States by the Department of Justice for implementation does not seem to have created any impact.

1.17 During their recent visit to Family Courts in Andhra Pradesh and Jaipur the Committee have noticed that there was shortage of staff and non-availability of computer printers, fax and photocopying machines. In Jaipur Family Courts, there are presently no posts of clerks, typists and record sorters, due to which lot of difficulties are being faced in its effective functioning. Also, at both the places, the Family Courts are functioning from rented buildings with no proper place for the parties to sit.

Apart from vigorously persuading the States to provide necessary infrastructure and facilities in the existing Family Courts, the Committee feel that 50% sharing of expenditure on additional Family Courts by the Central Government should be subject to provision of proper facilities by the respective States in the Family Courts, so that they could function properly. For this, a proper mechanism ought to be developed at the Centre to ensure proper utilisation of 50% funds provided by the Central Government to the concerned States.

Inadequate representation of women as Presiding Officers of the Family Courts

Recommendation (Para No. 1.52)

1.18 In para 1.52 of their Original Report, the Committee had observed that Under Section 4 of the Act the State Government has the power to appoint one or more persons to be the judge or judges of a Family Court. Preference was to be given for appointment of women as Family Court Judges. The Committee had, however, regretted that the provision that women judges should be appointed had remained only on paper. Although there were 84 Family Courts in the country, the number of women judges in the Family Court was only 18. While emphasising the need for adequate representation of women as Presiding Officers of the Family Courts, the Committee had recommended that every endeavour should be made to ensure that persons committed to the need to promote the welfare of children and qualified by reason of their experience and expertise to promote the settlement of family disputes and having the necessary commitment, were selected.

1.19 In the action taken reply, the Department of Justice have stated that the recommendation of the Committee has been forwarded to all the State Governments and UT Administrations with a request that while appointing judges in Family Courts, preference may be given for appointment of women as judges. They have also been requested that while appointing judges in Family Courts in consultation with the High Courts, it may be ensured that judges having the necessary background are selected.

1.20 In the Original Report, the Committee had regretted that the provision that women Judges should be appointed in Family Courts had remained only on paper. Although, there were 84 Family Courts in the country, the number of women Judges was only 18. In many States, the Family Courts did not have a single woman Judge. The Committee had emphasised the need for adequate representation of women as Presiding Officers of Family Courts.

1.21 The Committee are constrained to note that despite the recommendation of the Committee having been forwarded to the State Governments, there are no women Judges in most of the Family Courts. This fact has been corroborated during the recent visit of the Committee to Jaipur, when it was again noticed that

there was no woman Judge in any of the Family Courts in the State. The Committee, therefore, reiterate that the Department should take suitable steps to impress upon the State Governments and Union Territory Administrations the need for appointment of women judges in Family Courts in consultation with the High Courts. It may also be ensured that the persons who are gender sensitive, humane and have necessary commitment and experience are selected as Judges.

Inadequate number of Counsellors

Recommendations (Para Nos.1.53 and 1.54)

1.22 The Committee in the aforesaid paragraphs had observed that Section 6(1) of the Family Courts Act provides that the State Government shall, in consultation with the High Court, determine the number and categories of Counsellors required to assist the Family Courts in the discharge of its functions and provide the Family Courts with such Counsellors as it may think fit. The Committee noted that the Counsellors were required to assist the Family Courts in the discharge of its functions and the judges, by and large, were expected to depend on their report. The role of Counsellors was, therefore, very crucial in the Family Courts to promote conciliation between the parties. However, the Committee found that some State Governments viz. Gujarat, Jharkhand, Jammu and Kashmir had not appointed any Counsellors in the Family Courts. Further, the Committee noticed that the number of Counsellors in the Family Courts was inadequate in most States. The Committee had recommended that as the Counsellors were to play a pivotal role in the functioning of the Family Courts, Counsellors, preferably women, should be appointed in every Family Court in sufficient numbers. The Committee had also recommended that well-known local NGOs should be associated with the Family Court to serve as Counsellors on behalf of the litigants.

1.23 The Committee had further noted that there was no uniformity amongst the States in regard to qualification, tenure, method of appointment and remuneration

paid to the Counsellors. Since the Counsellors played a very important role, the Committee desired that sufficient incentives including enhanced remuneration should be paid to the Counsellors so that those with legal background and having experience in social service could be selected for the purpose.

1.24 In reply, the Department of Justice have stated that the recommendation of the Committee has been forwarded to all the State Governments and UT Administrations with the request to take necessary action. They have been requested to keep in view the draft Model Rules formulated by the Department of Justice in consultation with the States and circulated on 16th July, 2002, while taking necessary action in this regard.

1.25 In a note furnished subsequently to the Committee, the Department have stated that in the Model Rules it is provided that a minimum of Rs. 75 per sitting for consultation may be paid to the Counsellors. In case of reconciled matter, a fee of Rs. 125 per sitting is to be paid. The Department have further stated that the State Governments have been requested to revise the fees accordingly based on the model rules of Family Courts.

1.26 During their recent visit to Hyderabad Family Court, the Committee were informed that no Counsellors were appointed in any of the Family Courts in the State of Andhra Pradesh. The Judge of the Family Court during interaction with the Committee stated that immediately after filing of cases, it was the duty of the Court to conciliate and refer the matter to the Counsellors. As there were no Counsellors in the Family Courts, the Presiding Officers had to take all the trouble and to spend most of their time to reconcile the parties till the final disposal of cases.

In Jaipur Family Court I, visited by the Committee, it was informed that there were only two Counsellors in that Court and even they attended the Court once a week. No Counsellors had been appointed by the State Government since 1998. When asked, whether Family Court Rules had been framed by the State

Government of Rajasthan for appointment of Counsellors, the Law Secretary of the State Government replied in the negative whereas the local official who accompanied the Committee to the Family Court, stated that the Rules in this regard had already been framed.

1.27 The Committee desired to know whether any action had been taken for appointment of Counsellors in the State. The representative of the Law and Legal Affairs Department of the State Government replied that as per the directions issued under the Act, eight Counsellors in Jaipur Family Court and one Counsellor in Ajmer Family Court had been appointed for the period of two years w.e.f. 8.11.96. Now the Registrar General, Rajasthan High Court, Jodhpur, has invited applications for the post of Counsellors through a notification issued on 27-09-2002. The list of Counsellors which will be finally received by the State Government after completing all the formalities as well as the disposal of these applications at the level of the Hon'ble High Court will be published immediately after taking appropriate action in this regard.

1.28 The Committee had observed that Section 6 (1) of the Family Courts Act provided that the State Governments shall, in consultation with the High Court determine the number and categories of Counsellors required to assist the Family Courts in the discharge of its functions and provide the Family Courts with such Counsellors as it may deem fit. The Committee, however, were surprised to find that some State Governments viz. Gujarat, Jharkhand, Jammu and Kashmir had not appointed any Counsellors in the Family Courts. The Committee had also noticed during their Study Visits to some of the States that the number of Counsellors in the Family Courts was inadequate. The Committee had, therefore, recommended that, keeping in view the crucial role of Counsellors in the functioning of Family Courts, sufficient number of Counsellors should be appointed in every Family Court.

1.29 The Committee are not satisfied with the reply given by the Department that the recommendations of the Committee had been forwarded to all the State Governments/Union Territory Administrations with the request to take necessary action. Even after presentation of their Report on the subject to Parliament in December, 2001 and forwarding of the recommendations contained therein by the Department of Justice to the State Governments for implementation and bringing to their notice the Family Courts Rules on 16th January, 2002, the position does not seem to have improved as was evident to the Committee during their recent visits to Family Courts at Hyderabad (in November, 2002) and Jaipur (in February, 2003). No Counsellor had been appointed in the State of Andhra Pradesh in any of the Family Courts. As no Counsellors were appointed, the Presiding Officers had to take all the trouble and to spend most of their time to reconcile the parties till the final disposal of cases. During its visit to Jaipur Family Court the Committee noticed that no Counsellors were appointed by the State Government since 1998. There were only two Counsellors in Jaipur Family Court and even they attend the Court once a week. The Committee are informed that action was initiated by the High court by inviting applications for appointment of Counsellors. The Committee are surprised to note that after a period of 5 years, action is being initiated for appointment of Counsellors. Also as regards the framing of Rules regarding appointment of Counsellors, contradictory views were given by the State Government officials and they were not even aware whether necessary Rules in this regard had been framed. This shows the sorry state of affairs of the functioning of Family Courts in the States.

The Committee would like to emphasise once again that the role of Counsellors to promote conciliation between the parties is very crucial in the Family Courts. The success of the Family Courts largely depends upon the expertise and skill of the Counsellors. If there are no trained and qualified Counsellors, the very purpose of setting up of Family Courts is defeated as the parties will have to depend on Lawyers. It is, therefore, high time the States appointed sufficient number of Counsellors, especially women and NGOs, to assist the Family Courts in the discharge of its duties.

1.30 The Committee have observed that in many States there is no fixed tenure for Counsellors; the remuneration being paid to them is too low and expenses on transport etc. are not being reimbursed to them. Further, there is hardly any place/room provided in almost all the Family Courts where the Counsellors can sit and interact with the parties.

1.31 As regards the remuneration to be paid to the Counsellors, the Committee note that the Model Rules circulated by the Department to the States on 16th July, 2002 *inter-alia* provide that a minimum of Rs. 75/- per sitting for consultation and a fee of Rs. 125/- per sitting in case of reconciliation proceedings may be paid to the Counsellors. The State Governments are stated to have been requested to revise the fees accordingly. The Committee feel that even though these remunerations are not adequate to attract trained, talented and experienced Counsellors, at least the rates specified in the Draft Model Rules should be paid uniformly to all the Counsellors. For this, the Department must impress upon the State Governments the need to strictly implement the provisions of the Model Rules.

1.32 The Committee also desire that proper accommodation should be made available for the Counsellors in the Family Courts for their efficient and effective functioning. Reimbursement of expenses on transport for home visits etc. as also secretarial assistance needs to be considered. The Committee desire that the Department look into these aspects and issue necessary guidelines to the State Governments/UTs in this connection.

Appearance of lawyers in the Family Courts

Recommendation (Para 1.55)

1.33 In para 1.55 of their Original Report, the Committee had observed that Section 13 of the Act provides that no party to a suit or proceedings before a Family Court shall be entitled, as of right, to be represented by a lawyer or a legal practitioner. However, the Court may, in the interest of justice, provide the assistance of a legal expert as *amicus-*

curiae. Though the provisions of the Family Courts Act, 1984 did not completely prohibit the party to be represented by a legal practitioner, the Committee during tour to some of the States, found that lawyers invariably appeared in the Family Courts. In Mumbai, the Committee found that Lawyers were appearing in the Family Courts in a routine manner. The Committee had pointed out that the underlying idea of enactment of the Family Courts Act was that the problems or grounds for matrimonial breakdown or dispute being essentially of a personal nature, it was better to adjudicate these issues, as far as possible, by hearing the parties themselves and seeking assistance from trained Counsellors with legal background. Thus, appearance of lawyers in Family Courts was against the spirit of the Act. The Committee had desired that the number of Counsellors should be suitably increased in the Family Courts and they should be given para-legal training to enable them to assist the Judges and guide the parties in reconciliation so that the appearance of lawyers in the Family Courts was eliminated.

1.34 The Department of Justice have inter-alia stated in the action taken reply that the recommendation of the Committee has been forwarded to all the State Governments and UT Administrations with the request to take necessary action.

1.35 The Department have further stated that as regards appearance of lawyers in Family Courts in a routine manner in Mumbai, it has been clarified to the Government of Maharashtra vide Department of Justice letter dated 28-05-2001 and 27-09-2001 that there does not seem to be any contradiction between Section 13 of the Family Courts Act, 1984 and Rule 37 of the Family Courts (Court) Rules, 1988 of the High Court of Judicature at Bombay. The Bombay High Court has also correctly interpreted the aforesaid rule in the case of L.M. Joshi Vs. Dr. M.S. Joshi that there does not seem to be any such contradiction.

1.36 According to the Department, clarifications have also been issued to all the State Governments vide Department of Justice letter dated 28-09-2001 forwarding therewith a copy of Supreme Court judgement delivered in W.P. No. 1128/87 – Kanpur Bar Association Vs. Union of India and others.

1.37 The Department have added that Model Family Courts Rules framed by the Department of Justice, in consultation with the States, have been circulated to all the State Governments, UT Administrations and High Courts vide Department of Justice letter dated 16.1.2002.

1.38 The Committee had observed that the Lawyers were invariably appearing in the Family Courts in the States despite the provision of Section 13 of the Act which provided that no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a Lawyer or a legal practitioner. While pointing out that if Lawyers represented the cases of parties, the functioning of Family Courts could not be termed different from other Civil Courts, the Committee had desired that steps be initiated so that appearance of Lawyers in the Family Courts was eliminated.

1.39 However, despite the adverse comments of the Committee in their Original Report and forwarding of the Recommendations of the Committee together with necessary clarifications to the States by the Department of Justice, the position unfortunately has not changed. The Lawyers continue to dominate the proceedings of the Family Courts which is against the spirit of the Act. This was noticed by the Committee when they recently visited Family Courts in Hyderabad and Jaipur.

1.40 The Committee were informed that the advocates were present in the court and tried to intervene in its proceedings without permission. The Committee feel that since the provisions of the Act are not being properly implemented, the Department of Justice should consider the possibility of amendment of the Family Courts Act, 1984 to make it more effective so that the presence of Lawyers in Family Courts is totally eliminated. The Committee would also like to reiterate that more and more Counsellors with para-legal training, should be appointed, to assist the Judges and guide the parties so that the need for Lawyers in the Family Courts does not arise. For this, it is necessary that Counsellors are paid adequately so that they take keen interest and properly assist the Family Courts.

Review of the Family Courts Act, 1984

Recommendation (Para 1.58)

1.41 In the aforesaid para of the original Report, the Committee felt that as almost seventeen years had passed since the enactment of the Act, the time had come for the Department of Justice to assess the effectiveness of the Act in the light of shortcomings pointed out by the Committee. Such assessment should cover a review of the implementation of the Act, as also an evaluation of the substance of the Act and its limitations and the changes and modifications which were necessary to activate the Family Courts and make their work fruitful and meaningful. The Committee had desired that the review should be carried out by the Department of Justice in consultation with the National Commission for Women expeditiously, with a view to taking suitable corrective steps and by amending the Family Courts Act.

1.42 In its action taken reply to the above recommendation, the Department of Justice have stated that the National Commission for Women was requested to offer their comments by 31st January, 2002. The Department of Justice was informed by the National Commission for Women that the Commission proposed to hold a one day “National Workshop on the Functioning of the Family Courts” to assess the working of the Family Courts and implementation of the Family Courts Act and to suggest suitable amendments in the Act to make it more effective.

The Department have stated that from the letter of Chairperson, National Commission for Women dated 8.4.2002 it is noted that the workshop on the working of Family Courts was held on 20th March, 2002. In the workshop, the National Commission for Women took up again the issue of setting up of Family Courts with the Chief Ministers of all States where such Courts have not been established so far. The conclusion reached by the Commission is that the poor financial condition of

the concerned states is one reason why Family Courts have not been set up. The Commission was of the view that the Department of Women and Child Development may take up a proposal with the Planning Commission for starting a Plan Scheme with 100 per cent financial assistance by way of grants-in-aid. However, the detailed recommendations of the workshop held by the National Commission for Women are still awaited.

1.43 The Committee had desired that as almost 17 years had passed since the enactment of the Family Courts Act in India, the Department of Justice should assess the effectiveness of the Act in the light of the shortcomings pointed out by the Committee. It was suggested that the review of the Act should be carried out by the Department in consultation with the National Commission for Women expeditiously with a view to taking suitable corrective steps and by amending the Family Courts Act. In their action taken reply, the Department have stated that the National Commission for Women was requested to offer their comments by 31st January, 2002. The Department of Justice was informed by the Commission that a one day workshop on 'the functioning of Family Courts' was held on 20th March, 2002 to assess the working of the Family Courts, the implementation of the Family Courts Act and to suggest suitable amendments in the Act to make it more effective. The conclusion reached by the Commission is that the poor financial conditions of the concerned States is one reason why Family Courts have not been set up. The detailed recommendations of the workshop held by the Commission are stated to be awaited.

1.44 The Committee are not satisfied with the action taken reply furnished by the Department. The Department of Justice have failed to ensure the proper implementation of the Family Courts Act by the States, be it the question of setting up of Family Courts, provision of proper infrastructure, appointment of Counsellors or the appearance of Lawyers. The Department of Justice have

furnished a stock reply to virtually all the Recommendations of the Committee that they have forwarded a Recommendations to States for implementation. The Department have absolved themselves of the responsibility and shifted it to the National Commission for Women narrating the steps taken by the National Commission for Women to assess the working of the Family Courts. The Committee are also not convinced by the reply of the Department that the detailed recommendations of the workshop held by the National Commission for Women are still awaited. In the Original Report of the Committee, the Department had been made aware of various deficiencies and it was expected that they would take prompt action to do the needful if necessary by amending the Family Court's Act. The States have apparently not implemented the Family Courts Act properly. It is in this context that the Committee had asked the Department of Justice to assess the effectiveness of the Act and take corrective steps. The attitude of the Department in not taking seriously the recommendations of the Committee is most regrettable. While reiterating their earlier recommendation, the Committee recommend that the Department of Justice immediately take steps to assess the implementation of the Act and evaluate the substance of the Act, its limitations and the changes/modifications required to activate the Family Courts with a view to taking suitable corrective steps and by amending the Family Courts Act. The Committee desire to be apprised about the steps taken in this regard.

CHAPTER II

OBSERVATIONS/RECOMMENDATIONS WHICH HAVE BEEN ACCEPTED BY THE GOVERNMENT

Recommendation

The Family Courts Act 1984 was enacted with a view to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith. The Act was passed in response to the demands of women's organisations who desired the substitution of the traditional, formal, adversarial system of solving disputes by an informal and humane system with a different approach and a different atmosphere and the replacement of adjudication by fair and dignified reconciliation and settlement. Most important of all, the Act was supposed to remove the gender bias in statutory legislation.

(Para No. 1.45)

Reply of the Department

The observations of the Committee have been noted.

[Department of Justice O.M. No. J-12012/15/2001-JR dated June 24, 2002]

Recommendation

The Family Courts Act provided for establishment of Family Courts with the objective of ensuring the welfare of the family through a multi-disciplinary approach of resolving family problems within the framework of the law. These courts aimed at securing the legal rights of the individuals on the one hand while performing the role of guide, helper and Counsellor on the other. The basic concept of family courts emerged from the conviction that the family being a social institution, disputes connected with

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

(Para No. 1.46)

Reply of the Department

The observations of the Committee have been noted.

[Department of Justice O.M. No. J-12012/15/2001-JR dated June 24, 2002]

Recommendation

The Central Government is not extending any financial assistance to the State Governments to set up Family Courts. While on tour to some of the States, the Committee were urged by some State Governments to ensure that the Central Government extends some financial support to them to establish Family Courts. The Committee note that the Department of Justice under the centrally sponsored schemes provide funds to the States for infrastructure for setting up of Courts. Since in some States, the Family Courts have not been set up due to scarcity of funds, the Committee recommend that the infrastructure for setting up of Family Courts should be included in the above schemes so that the State Governments are able to get some financial assistance from the Central Government for this. The Department of Justice should approach the Planning Commission and the Ministry of Finance for increased budgetary allocations if required for this purpose.

(Para No. 1.49)

Reply of the Department

The matter has been taken up with Ministry of Finance and Planning Commission. The Planning Commission has also been requested to make a

provision of Rs. 75.00 crore in the Xth Five Year Plan for setting up of 500 Family Courts.

The Ministry of Finance has provided an amount of Rs. 1.70 crore from Non-plan, in the BE 2002-2003 to this Department for establishment of Family Courts, which was revised to Rs. 1.50 crore in R.E. 2002-2003.

The Planning Commission has not been able to provide any separate allocation for the Family Courts. However, an amount of Rs. 3.40 crore has been allocated for 34 Family Courts and residences of Judges during 2002-2003 from the funds available under the Centrally Sponsored Scheme with the concurrence of the Planning Commission. The amount provided under Plan and Non-plan side will be released to various States after the receipt of firm proposals from the respective States/UTs. Provision for setting up of more Family Courts will be made in consultation with the Ministry of Finance if proposals are received from the State Governments.

Under Plan side funds have been released to the following State Governments for setting up of the Family Courts during the current financial year:

<u>State</u>	<u>No. of Courts</u>	<u>Amount Released</u>
Gujarat	3	Rs. 30.00 lakhs
Chattisgarh	1	Rs. 10.00 lakhs
Madhya Pradesh	7	Rs. 70.00 lakhs
Kerala	2	Rs. 20.00 lakhs
Uttaranchal	3	Rs. 30.00 lakhs
West Bengal	1	Rs. 10.00 lakhs
Manipur	1	Rs. 10.00 lakhs
Bihar	2	Rs. 20.00 lakhs
Delhi	15	Rs. 100.00 lakhs
Total	35	Rs. 300 lakhs

[Department of Justice O.M. No. J-12012/15/2001-JR dated February 14, 2003]

Recommendation

The Committee feel that mere establishment of a Family Court does not mean that substantial implementation of the Act has been achieved. It is equally important that the Family Courts are provided with the necessary infrastructure and support system for their proper functioning. The Committee would, therefore, urge the Government to impress upon the various State Governments the need to provide adequate infrastructure and support system in such courts for their effective functioning.

(Para No. 1.51)

Reply of the Department

The recommendation of the Committee has been forwarded to all the State Governments and Union Territories on 14.12.2001 and dated 5.2.2002 with the request to provide adequate infrastructure and support to the Family Courts so that the Family Courts function effectively.

[Department of Justice O.M. No. J-12012/15/2001-JR dated June 24, 2002]

Recommendation

The Committee further note that there is no uniformity amongst the States in regard to qualification, tenure, method of appointment and remuneration paid to the Counsellors. The West Bengal Family Courts Rules 1994 do not provide for any educational qualification for the Counsellor whereas the Delhi Family Court Rules 1996 provides an educational qualification of a degree in social sciences such as social welfare, sociology etc. preferably with a degree in law. Similarly, the remuneration being paid to

the Counsellors differs from State to State. In Tamil Nadu, every Counsellor is paid Rs. 30/- per day whereas in Orissa the Counsellors are paid Rs. 100/- per day. There is also no uniformity on the tenure of the Counsellors. There is no fixed tenure for Counsellors in Sikkim but in Tamil Nadu, the Counsellors are nominated for three months. Since the Counsellors play a very important role, the disparities in remuneration, educational qualification, method of appointment etc. of Counsellors are not conducive to their working. Sufficient incentives including enhanced remuneration should be paid to the Counsellors so that those with legal background and having experience in social service could be selected for the purpose. Further, the Committee would like to emphasize the need to ensure that educational qualifications, tenure, method of appointment and remuneration to be paid to the Counsellors should be uniform in all the States.

(Para No. 1.54)

Reply of the Department

The recommendation of the Committee has been forwarded to all the State Governments and UT Administrations vide Department of Justice's letters dated 14.12.2001 and dated 30.1.2002 with the request to take necessary action.

Model Family Courts Rules formulated by Department of Justice, in consultation with the States, have been circulated to all the State Governments, UT Administrations and High Courts by Department of Justice on 16th January, 2002.

[Department of Justice O.M.No.J-12012/15/2001-JR dated June 24, 2002]

Recommendation

Section 13 of the Act provides that no party to a suit or proceedings before a Family Court shall be entitled, as of right, to be represented by a lawyer or a legal practitioner. However, the Court may, in the interest of justice, provide the assistance of a legal expert as *amicus-curiae*. Though the provisions of the Family Courts Act, 1984 does not completely prohibit the party to be represented by a legal practitioner, the

Committee during tour to some of the States found that Lawyers invariably appear in the Family Courts. In Mumbai, the Committee found that lawyers were appearing in the Family Courts in a routine manner. The underlying idea of enactment of the Family Courts Act is that the problems or grounds for matrimonial breakdown or dispute being essentially of a personal nature, that it was better to adjudicate these issues, as far as possible, by hearing the parties themselves and seeking assistance from trained Counsellors with legal background. Therefore, appearance of lawyers in Family Courts is against the spirit of the Act. The Department of Justice are also in agreement with the Committee that if Lawyers represent the cases of parties, the functioning of Family Courts cannot be termed different from other civil courts and it amounts to defeat of the very purpose for which Family Courts were established. The Committee desire that the number of Counsellors should be suitably increased in the Family Courts and they should be given para-legal training to enable them to assist the Judges and guide the parties in reconciliation so that the appearance of Lawyers in the Family Courts is eliminated”.

(Para No. 1.55)

Reply of the Department

The recommendation of the Committee has been forwarded to all the State Governments and UT Administrations vide Department of Justice’s letters dated 14.12.2001 and dated 30.1.2002 with the request to take necessary action.

As regard appearance of lawyers in Family Courts in a routine manner in Mumbai, it has been clarified to the Government of Maharashtra vide Department of Justice letter dated 28.5.2001 and 27.9.2001 that there does not seem to be any contradiction between Section 13 of the Family Courts Act, 1984 and the Rule 37 of the Family Courts (Court) Rules, 1988 of the High Court of Judicature at Bombay. The Bombay High Court has also correctly interpreted the aforesaid rule in the case of L.M. Joshi Vs. Dr. M.S. Joshi that there does not seem to be any such contradiction.

Clarifications have also been issued to all the State Governments vide Department of Justice letter dated 28.9.2001 forwarding therewith a copy of Supreme Court judgment delivered in W.P. No. 1128/87 – Kanpur Bar Association Vs. Union of India and others.

Model Family Courts Rules framed by the Department of Justice, in consultation with the States, have been circulated to all the State Governments, UT Administrations and High Courts vide Department of Justice letter dated 16.1.2002.

[Department of Justice O.M. No. J-12012/15/2001-JR dated June 24, 2002]

Recommendation

As a result of informal discussions with the Chairpersons and Members of the National and State Commissions for Women, NGOs, Advocates and representatives of the State Governments and based on impressions gained by the Committee on its visits to some States, the Committee noticed a number of shortcomings/deficiencies regarding the functioning of the Family Courts and suggested the following measures:

- (i) Selection of Family Courts judges should not be limited to judicial officers alone but extended to administrators, social workers, etc. Judges should be psychologists, psychoanalysts, social workers and social engineers.**
- (ii) One of the reasons for delay in disposal of cases is that there is dearth of judges especially women judges and support systems.
- (iii) Lawyers' appearance should be avoided as they are the main cause for the delay. There is need to impart para-legal training to the Counsellors. The appointment of researchers should be made to assist the family court judges to eliminate the role of lawyers.

- (iv) Judiciary ought to be sensitized about women's problems. Judges of the Family Courts should be given suitable training from time to time to enable them to understand complicated family disputes and to help them in rendering justice to the wife who is generally the weaker party in the dispute.
- (v) The atmosphere in the family courts should be such as to enable a woman to express herself freely.
- (vi) Judges should also have a limited number of cases to be decided and should not be over-burdened.
- (vii) Family Courts are working more or less like ordinary Civil Courts. The Family Court Judges follow the Cr.P.C and as a result many times justice is delayed. Family Courts should be more in the nature of friendly conciliatory fora and procedure laid down in Cr. PC should not be strictly followed. Otherwise the Family Courts will not serve the purpose and timely justice will not be afforded to the parties.
- (viii) Information centres should be set up at all Family Courts to explain the procedure and functioning of Family Courts to all potential litigants.
- (ix) The Committee calls upon the respective State Governments/State Commissions for Women to undertake legal literacy programmes and issue pamphlets in regional languages giving basic information relating to functions and working of Family Courts, legal rights and procedures.
- (x) A list of cases should be prepared by the Registrar's Office which are ready for hearing and be presented to the court each day. A provision should be made in the Rules that cases should be disposed of within one year from the date of institution, so that the objectives of the Act are fully achieved.
- (xi) A standard proforma should be worked out and published in all regional languages papers setting out the list of documents required to be filed in Court. The proforma should be simplified, requiring the parties to state only facts without substantiating each fact with evidence.
- (xii) The procedure for serving of summons through Bailiff is cumbersome and results in undue delay of proceedings. Therefore, serving of summons should be made permissible through registered post.

- (xiii) In cases where there has been repeated history of physical violence or where the husband has committed bigamy or adultery, women should not be compelled to attempt reconciliation. Where reconciliation has been already attempted by other organizations such as women's organizations, community organizations or legal aid committees, the Court should dispense with attempting reconciliation, and should accept a certificate issued by any of these groups that reconciliation has been attempted without success. This would minimize delays.
- (xiv) There should be compulsory registration of marriages in order to avoid Bigamy.
- (xv) All women who wish to file cases in the Family Court and who want legal aid should be provided legal aid. For this purpose legal aid committees should be set up and made to function in the premises of Family Courts.
- (xvi) The lengthy procedure and paper work should not form a barrier to speedy justice. In this regard, the Court should find an indigenous and local method so as to avoid frequent adjournments which will reduce the number of times the women litigants have to appear before the Court.
- (xvii) The women litigants must be explained in the presence of the Counsellors the full text of the recorded statement and the action likely to be taken in the matter.

(Para No. 1.56)

Reply of the Department

The measures suggested by the Committee have been forwarded to all the State Governments, UT Administrations and High Courts vide Department of Justice letters dated 14.12.2001 and 14.1.2002 with the request to take necessary action.

[Department of Justice O.M. No. J-12012/15/2001-JR dated June 24, 2002]

Recommendation

Under Section 21 of the Act, the High Courts have been vested with the power to make Rules for the procedure to be followed by the Family Courts in arriving at settlements and other matters. Further, the State Government under Section 23 of the Act has been empowered to specify after consultation with the High Court, Rules regarding working of the Family Courts and other procedural matters. The Committee are concerned to note that although 18 States/UT have established Family Courts in their jurisdiction, only 7 States have framed Rules under the Act. Further, the Committee find that different High Courts have specified different Rules of procedure to be followed by the Family Courts. The Committee are of the opinion that there should be a uniform set of Rules for the functioning of the Family Courts. To achieve this, the Department of Justice should frame Model Rules and circulate them to the High Courts and to the State Governments so that there is uniformity in the provisions of the Rules. The proposed Model Rules should be simple, precise and specific. The Home Secretary who is also Secretary, Department of Justice agreed to the suggestion during evidence, that the Central Government should frame and circulate these Model Rules. The Committee desire that this work should be accomplished within three months of the presentation of this Report.

(Para No. 1.57)

Reply of the Department

The recommendation of the Committee has been forwarded to all the State Governments, UT Administrations and High Courts vide Department of Justice letter dated 14.12.2001.

The following State Governments, UT Administration and High Courts have framed Family Courts Rules so far under Section 21/23 of the Family Courts Act, 1984:

1. State Government of Assam
2. State Government of Gujarat
3. State Government of Karnataka
4. State Government of Kerala

5. State Government of Maharashtra,
6. State Government of Orissa,
7. State Government of Rajasthan
8. State Government of Sikkim,
9. State Government of Tamil Nadu
10. State Government of West Bengal,
11. State Government of Uttar Pradesh
12. NCT of Delhi,
13. Government of Pondicherry,
14. High Court of Andhra Pradesh,
15. High Court of Gauhati,

16. High Court of Gujarat,
17. High Court of Karnataka,
18. High Court of Orissa,
19. High Court of Rajasthan,
20. High Court of Sikkim.

Copies of the Family Court Rules framed by above State Governments/UT Administrations/High Courts have already been forwarded to Lok Sabha Secretariat vide this Department's letter Nos. J-12012/1/2000-JR dated 17.4.2001 and J-12012/14/2001-JR dated 14.2.2002 except the Family Court Rules framed by State Governments of Kerala and Uttar Pradesh and High Court of Orissa, High Court of Rajasthan and High Court of Sikkim. Copies of the Family Court Rules framed by Govts. of Kerala & Uttar Pradesh and High Courts of Orissa, Rajasthan and Sikkim are being sent separately.

Model Family Courts Rules framed by the Department of Justice, in consultation with the States, have been circulated to all the State Governments, UT Administrations and High Courts on 16.1.2002.

[Department of Justice O.M. No. J-12012/15/2001-JR dated June 24, 2002]

CHAPTER III

OBSERVATIONS/RECOMMENDATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE REPLIES RECEIVED FROM THE GOVERNMENT

Recommendation

The Committee also note that Fast Track Courts are being set up for speedy disposal of cases for which the Central Government is extending financial assistance to the States. The Committee recommend that five per cent of the Fast Track Courts proposed to be set up in States, be set apart for establishment of Family Courts.

Para No. 1.50

Reply of the Department

Fast Track Courts have been set up under the recommendations of the Eleventh Finance Commission. These recommendations do not provide for conversion of a part of these courts into Family Courts.

Department of Expenditure, Ministry of Finance, is releasing the Financial assistance from the Central Government for setting up of Fast Track Courts. As such, the recommendation of the Committee has been forwarded to Ministry of Finance. Comments of the Ministry of Finance are awaited.

[Department of Justice O.M.No.J-12012/15/2001-JR dated June 24, 2002]

Further reply of the Department

In respect of the above recommendation, the reply of the Ministry of Finance is as follows:-

“It is for the Ministry of Law and Justice to decide the issue keeping in view the recommendations of the Eleventh Finance Commission and that the discretion of allotment of cases to subordinate courts lies within the powers of the respective High Courts.”

In this regard it is stated that Fast Track Courts have set up mainly to dispose of long pending sessions cases, including the cases involving under-trials who have been in jails for a long time. The discretion to allot cases to Fast Track Courts is in the jurisdiction of the High Courts.

It is pertinent to point out that in view of the Recommendations of the Parliamentary Committee on Empowerment of Women, the Department of Justice took the initiative to separately provide an amount of Rs. 3.40 crore under the Plan Head for Family Courts in the current year. So far an amount of Rs. 1.80 crore has been released on the Plan side for construction of Family Courts. An amount of Rs. 1.70 crore has also been provided under Non-Plan expenditure during the current year. This amount will be released for running of Family Courts after the Family Courts are actually set up by the State Governments. The States are being persuaded to set up more Family Courts by utilising the above amount and incurring expenditure under Non- Plan as well. It is likely that 34 new Family Courts would be set up this year as a result of these efforts, as against 85 courts set up from the inception of the scheme in 1985.

In view of the above, this Department is of the view that there is no need to earmark 5% of the Fast Track Courts for dealing with cases pertaining to family disputes. However, the State Governments/ Union Territories will be requested periodically to establish more family courts and utilise the allotted funds. In case more funds are needed by the State Governments/ Union Territories, the Ministry of Finance/ Planning Commission will be approached at the appropriate time.

[O.M. No. J-12012/15/2001-JR dated 14th February, 2003]

CHAPTER IV

OBSERVATIONS/RECOMMENDATIONS REPLIES TO WHICH HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

Recommendation

The establishment of Family Court under the Family Courts Act, 1984 is the responsibility of the State Governments. Section 3 of the Act empowers the State Government, after consultation with the High Court to establish a Family Court in a city or town with a population exceeding one million. With regard to other areas in the State, the State Government may establish Family Courts as it deems necessary. The Committee regret to observe that even after seventeen years of the enactment of the Act, only 84 Family Courts have been set up in 17 States and one UT. The Family Courts are yet to be set up in States/UTs such as Arunachal Pradesh, Chhattisgarh, Goa, Haryana, Himachal Pradesh, Jammu & Kashmir, Madhya Pradesh, Meghalaya, Mizoram, Punjab, Nagaland, Tripura, A & N Islands, Chandigarh, Delhi, Daman & Diu, Dadra & Nagar Haveli and Lakshadweep. Various reasons have been advanced by the States for non-establishment of Family Courts such as cities not having requisite population of one million, insufficient number of matrimonial cases, lack of financial resources, prevalence of customary courts dealing with matrimonial cases, etc. The Committee are, however, not impressed by these reasons. Further, during informal discussions with the various authorities, the Committee were informed that stiff resistance from the lawyers' lobby is the primary reason for non-establishment of Family Courts in some of the States. The Committee feel that by not setting up Family Courts as envisaged in the Act women have been deprived of the benefits which would have accrued to them by way of quick and fair disposal of matrimonial disputes.

In the opinion of the Committee the non-establishment of Family Courts reflects the failure on the part of the Department of Justice to fulfil its responsibility to properly administer an Act of Parliament. Except for writing to the State Governments in a

routine manner, the Department has not taken any concrete steps to persuade them to set up Family Courts. Being the nodal Department mandated with the administration of the Act, the Department should have taken the initiative to persuade the State Governments and ensured that they set up Family Courts. Though the meeting of Law Secretaries/Home Secretaries of the States are held twice in a year in the Department of Justice for discussing infrastructural facilities for the judiciary, the Department of Justice does not seem to have discussed the functioning of Family Courts in these meetings. It speaks adversely of the functioning of the Department of Justice. It is only after the Committee on Empowerment of Women took up this subject for detailed examination that the Department of Justice decided to convene a meeting of the Law Secretaries/Home Secretaries of the State Governments on 30th October, 2001 to deliberate inter-alia on matters concerning the setting up and functioning of Family Courts in the States/UTs. The Committee hope that the deliberations of this meeting would ensure that the States take the required steps for the implementation of the Act.

The Committee would like to point out that as a result of the discussion held by them with the concerned authorities at Raipur and Delhi, the Committee have been assured that two Family Courts in Chhatisgarh and three Family Courts in Delhi would be set up very soon. Also, the Hon'ble Chief Minister of Madhya Pradesh has assured the Committee that seven Family Courts would be set up in Madhya Pradesh by March, 2002. The Department of Justice which is the nodal Department concerned with the administration of the Act should impress upon the remaining State Governments and UTs administrations that it is mandatory for them to establish Family Courts in their respective territories.

(Para No. 1.47)

Reply of the Department

The recommendation of the Committee has been forwarded to all the State Governments and Union Territories vide Department of Justice's letters dated

14.12.2001& 5.2.2002 with the request to take urgent steps to set up Family Courts. It was also communicated that the Central Government will consider 50% sharing of expenditure on additional Family Courts which may be set up henceforth.

One Family Court has been set up at Raipur. Rs.10.00 lakh has been released by the Central Government for setting up of the Family Court.

The Government of Madhya Pradesh has set up seven Family Courts in all the divisional headquarters of the State for which Rs.70.00 lakh has been released by the Central Government.

The Government of Himachal Pradesh has informed that Family Courts have not been established in the State of Himachal Pradesh keeping in view the pendency of cases and the geographical and topographical conditions of the State and the expenditure involved. Setting up of such separate Family Court for any area in the State would be grossly disproportionate to the public benefit and advantages.

The Government of Meghalaya has informed that in Meghalaya, the societies of the tribes are matriarchal with the women having equal advantage in family matters, cases relating to marriage, divorce, maintenance and other family matters are looked after by the existing civil and criminal courts and such cases even as of now are not many. Further marriage, divorce and customary laws are subjects of the District council according to jurisdiction embedded as per sixth schedule to the Constitution of India. As such, the prevailing situation in the State of Meghalaya being different, the Govt. of Meghalaya is not contemplating to set up any Family Court in the State at this stage and that family matters will continue to be dealt with by the existing courts including the courts of the District Councils.

The Government of Nagaland has informed that the State of Nagaland is predominantly inhabited by members of Scheduled Tribe communities who are governed by their customary laws and social practice. On consideration of the peculiarity of the tribal conditions, the State Government of Nagaland does not consider it necessary to set up such Family Courts in the State.

The UT Administration of Chandigarh has informed that a reference was made to the Punjab and Haryana High Court for setting up of a Family Court and for appointment of a person to be Judge of the Family Court for the Union Territory of Chandigarh. However, the High Court has declined the request of the UT as the population figure has not exceeded one million mark. However, the matter will be further taken up.

The UT Administration of Dadra & Nagar Haveli has informed that Dadra and Nagar Haveli is a small Union Territory having population of about 2.3 lakhs whereas as per Rule 3 of the Family Courts Act, Family Courts are to be established for a population of at least one million. Family Courts have, therefore, not been set up in the UT. Further the UT had requested the Bombay High Court to furnish the details of cases pending before the District Court, Silvassa to be triable by the Family Courts. According to the information furnished by the High Court, there are only 68 cases pending with the UT which are triable by Family Courts.

The UT Administration of Daman and Diu has informed that the UT has sought concurrence of the High Court of Bombay for establishment of Family Court at Daman & Diu. The High Court has informed that the recruitment Rules for the Ministerial staff (Non-Gazetted) in the Family Courts have not yet been approved by the State Government of Maharashtra. In view of this, the UT is not in a position to take any action in the matter.

Presently, 100 Family Courts have been set up in various parts of the country. Apart from this, it has been decided to set up 15 Family Courts in the NCT of Delhi (for which Rs. 1.00 crore has been released by the Central Government)

Four Family Courts have been set up in the State of Assam.

[Department of Justice O.M.No.J-12012/15/2001-JR dated February 14, 2003]

Recommendation

The Committee are constrained to note that the Family Courts have been established in the metropolitan cities and not in all the eligible cities and towns. There seems to be an impression that the duties of the State Government under the Act are exhausted when it caters to large cities. This is a misconception. The fact that the establishment of a Family Court in an area with less than one million population is left to the State Government does not mean that such areas should continue to be kept out until the figure of one million is reached. The intention underlying the Act is that disputes concerning the Family should be dealt with in a forum totally different from the routine judicial forum. The need for such a forum exists as much for less populated areas as it exists for densely populated areas, though for administrative reasons, the Act did not make it mandatory for the State Governments to establish Family Courts in all areas of the State. The Committee, therefore, recommend that steps be taken to set up Family Courts in every district of the country so that women do not have to travel long distances to reach these courts.

(Para No. 1.48)

Reply of the Department

The recommendation of the Committee has been forwarded to all the State Governments and Union Territories vide Department of Justice's letters dated 14.12.2001 and dated 5.2.2002 with the request to take steps to set up Family Courts in each District.

The Government of Bihar has informed that at present one Family Court is functioning at Patna. One new Family Court has since been established at Muzaffarpur and one more Family Court is likely to be set up at Bhagalpur very soon. In addition, proposal for establishment of one more Family Court of Additional Principal Judge at Patna and one Family Court in each District of the

State has been sent to the High Court of Patna for their concurrence. Draft Family Court Rules and Regulations for the functioning and appointment in the Family Courts have also been sent to Patna High Court for direction.

As regards setting up of Family Courts in every District of the States/UTs of Chhattishgarh, Himachal Pradesh, Meghalaya, Nagaland, UT of Chandigarh, Dadra & Nagar Haveli and Daman & Diu, the position is the same as stated in the reply furnished to Para 1.47.

[Department of Justice O.M.No.J-12012/15/2001-JR dated June 24, 2002]

Recommendation

Under Section 4 of the Act the State Government has the power to appoint one or more persons to be the judge or judges of a Family Court. Where more than one judge is appointed, one of them would be designated as a Principal Judge and the others would be designated as Additional Principal Judges. The qualifications for appointment as a Family Court Judge are the same as for appointment of a District Judge directly requiring seven years experience in judicial office or seven years practice as an Advocate. Preference is to be given for appointment of women as Family Court Judges. The Committee, however, regret to point out that the provision that women judges should be appointed has remained only on paper. Although there are 84 Family Courts in the country, the number of women Judges in the Family Courts is only 18. In many States the family court does not have a single women judge. The Committee cannot but emphasize the need for adequate representation of women as Presiding Officers of the Family Courts. Further, if the Family Courts are to be successful, the Presiding Officers of such courts should be aware of the nature of family disputes, and be gender sensitive and humane. The Committee recommend that while selecting persons for appointment as Judges, every endeavour should be made to ensure that persons committed to the need to promote the welfare of children and qualified by reason of their experience and expertise to promote the settlement of family disputes and having the necessary commitment are selected.

(Para No. 1.52)

Reply of the Department

The recommendation of the Committee has been forwarded to all the State Governments and UT Administrations on 14.12.2001 and 5.3.2002 with a request that while appointing judges in Family Courts, preference may be given for appointment of women as judges. They have also been requested that while appointing judges in Family Courts in consultation with the High Courts it may be ensured that judges having the necessary background are selected.

[Department of Justice O.M.No.J-12012/15/2001-JR dated June 24, 2002]

Recommendation

Section 6(1) of the Family Courts Act provides that the State Government shall, in consultation with the High Court, determine the number and categories of Counsellors required to assist the Family Courts in the discharge of its functions and provide the Family Courts with such Counsellors as it may think fit. The Counsellors are required to assist the Family Courts in the discharge of its functions. The suffering women respond to the Counsellors and take them into confidence for all help to sort out their family disputes and differences. During the course of consultation and interaction with the estranged couples, the Counsellors come to know whether the parties are amenable to conciliation or not. The Judges, by and large, depend on their report. The Role of Counsellors is, therefore, very crucial in the Family Courts and to promote conciliation between the parties. The Counsellors are appointed by State Governments in consultation with the High Courts. The success of the Family Courts largely depends upon the expertise and skill of the Counsellor. However, the Committee are surprised to find that some State Governments viz. Gujarat, Jharkhand, Jammu and Kashmir have not appointed any Counsellors in the Family Courts. Further, the Committee during their study visit to some of the States noticed that the number of Counsellors in the Family Courts was inadequate. As the Counsellors play a pivotal role in the functioning of the Family Courts, Counsellors preferably women, should be appointed in every Family

Courts in sufficient numbers. The Committee recommend that well-known local NGOs be associated with the Family Court to serve as Counsellors on behalf of the litigants.

(Para No. 1.53)

Reply of the Department

The recommendation of the Committee has been forwarded to all the State Governments and UT Administrations vide Department of Justice's letters of 14th December, 2001 and 30th January, 2002 with the request to take necessary action. They have been requested to keep draft Model Rules in view while taking necessary action in this regard.

[Department of Justice O.M.No.J-12012/15/2001-JR dated June 24, 2002]

Recommendation

Almost seventeen years have passed since the enactment of the Family Courts Act in India. The Act was expected to facilitate satisfactory resolution of disputes concerning the family through a forum, which was expected to work expeditiously, in a just manner and with an approach ensuring the maximum welfare of society. The Committee feel that the time has now come for the Department of Justice to assess the effectiveness of the Act in the light of the shortcomings pointed out by the Committee. Such assessment should cover a review of the implementation of the Act, as also an evaluation of the substance of the Act and its limitations and the changes and modifications which are necessary to activate the Family Courts and make their work fruitful and meaningful. The review of the Act should be carried out by the Department of Justice in consultation with the National Commission for Women expeditiously, with a view to taking suitable corrective steps and by amending the Family Courts Act accordingly.

(Para No. 1.58)

Reply of the Department

The National Commission for Women was requested to offer their comments by 31st January, 2002. The Department of Justice was informed by the National Commission for Women that the Commission proposed to hold a one day “National Workshop on the Functioning of the Family Courts” to assess the working of the Family Courts and implementation of the Family Courts Act and to suggest suitable amendments in the Act to make it more effective.

It is observed from the letter of Chairperson, National Commission for Women dated 8.4.2002 that the workshop on the working of Family Courts was held on 20th March, 2002. In the workshop, the National Commission for Women took again the issue of setting up of Family Courts with the Chief Ministers of all States where such Courts have not been established so far. The conclusion reached by the Commission is that the poor financial condition of the concerned states is one reason why Family Courts have not been set up. The National Commission for Women was of the view that the Department of Women and Child Development may take up a proposal with the Planning Commission for starting a Plan Scheme with 100 per cent financial assistance by way of grants-in-aid.

However, the detailed recommendations of the workshop held by National Commission for Women are still awaited.

[Department of Justice O.M.No.J-12012/15/2001-JR dated June 24, 2002]

APPENDIX II

[Vide Para 1.2 of the Report]

ANALYSIS OF ACTION TAKEN BY GOVERNMENT ON THE FIFTH REPORT OF THE COMMITTEE ON EMPOWERMENT OF WOMEN (THIRTEENTH LOK SABHA)

I)	Total number of Recommendations	-	14
II)	Observations/Recommendations which have been accepted by the Government		
	Sl .Nos 1.45, 1.46, 1.49,1.51, 1.54, 1.55, 1.56, 1.57		
	Total		8
	Percentage		57.14%
(iii)	Observations/Recommendations which the Committee do not desire to pursue taking into consideration the replies of the Government:		
	Sl . Nos. 1.50		
Total		1	
	Percentage		7.14%
(iv)	Observations/Recommendations in respect of which replies to the Government have not been accepted by Committee which required reiteration		
	Sl. No. 1.47, 1.48, 1.52, 1.53, 1.58		
	Total		5
	Percentage		35.71%
v)	Observations/Recommendations in respect of which Government have furnished interim replies		
	Total		Nil
	Percentage		

MINUTES OF THE SEVENTEENTH SITTING OF THE COMMITTEE ON
EMPOWERMENT OF WOMEN (2002-2003)

The Committee sat on 13th March, 2003 from 1500 hours to 1600 hours in Room
No. 115, Parliament House Annexe, New Delhi.

PRESENT

IN CHAIR

Smt. Margaret Alva - Chairperson

MEMBERS

LOK SABHA

2. Smt. Anita Arya
3. Smt. Jayashree Banerjee
4. Shri Bhan Singh Bhaura
5. Smt. Krishna Bose
6. Smt. Santosh Chowdhary
7. Smt. Renuka Chowdhury
8. Dr. (Smt.) Beatrix D'Souza
9. Adv. Suresh Ramrao Jadhav
10. Smt. Abha Mahto
11. Shri E. Ponnuswamy,
12. Smt. Sushila Saroj
13. Smt. Jayaben B. Thakkar
14. Dr. (Smt.) Vukkala Rajeswaramma

RAJYA SABHA

15. Smt. Saroj Dubey
16. Smt. Vanga Geetha
17. Smt. Chandra Kala Pandey
18. Smt. Bimba Raikar

SECRETARIAT

1. **Shri K. V. Rao** - **Joint Secretary**
2. **Shri Ashok Sarin** - **Deputy Secretary**
3. Smt. Veena Sharma - Under Secretary

At the outset, the Chairperson welcomed the Members to the sitting of the Committee. The Committee then took up for consideration the draft Action Taken Report on the subject 'Functioning of Family Courts'. After some deliberations, the Committee adopted the draft Report and authorised the Chairperson to present the Report to the Parliament.

2. The Chairperson then drew the attention of the Members to a letter addressed to her by Shri Bishnu Pada Ray, MP and Member of the Committee in which it was mentioned that a team of 3-Members of Lok Sabha headed by Shri Anadi Sahu, IPS (Retd.), MP (in which he was also a member) visited the spot of an incident of barbarous, gang rape and molestation of women and dacoity that occurred in the night of 5th February, 2003 in the marriage barat party buses in Dist. Nadia in West Bengal. In the letter, he has *inter-alia* requested the Chairperson that a team of Parliamentary Committee namely the Committee on Empowerment of Women should visit the spot and submit the report to the Parliament. After some deliberations, the Committee decided that the copy of the letter may be sent to the National Commission for Women for their information and necessary action. It was also decided that the copies of the letter be circulated to all the Members of the Committee for their information.

3. The Committee then decided to meet again on 27th March, 2003 to consider and adopt the draft Action Taken Report on the subject 'Health and Family Welfare Programmes for Women'.

The Committee then adjourned.