

A Toothless Tiger

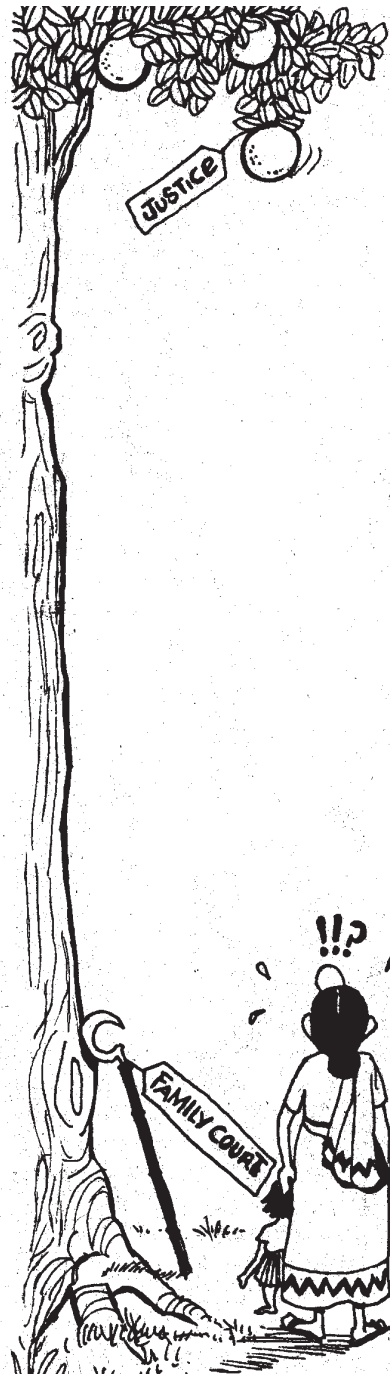
A Critique of the Family Courts

by
Flavia

The provision for special proceedings in family matters was included in the Code of Civil Procedure by an amendment in 1976. The family was broadly defined under Order 32-A rule 6 to include brothers, sisters, ancestors and lineal descendents. The provisions were to be applied to all matters instituted by a member of the family and relating to any matter concerning the family in respect of which the parties are subjected to their personal law, including matters relating to wills, succession and intestacy. But nothing further was done to implement this order till the issue of Family Courts was raised by the women's movement during the early '80s.

The women's organisations demanded changes in laws concerning women. In response to this, the rape law was amended in 1983, the Dowry Prohibition Act in 1984 and in 1986. Section 498(A) (IPC) (cruelty against wives) and 304(B) (IPC) (dowry deaths) were added to the Criminal Procedure Code in 1984. The Family Courts Act, a Central Act passed in 1984, was a part of the same trend of legal reforms concerning women. The women's organisations which had raised these issues focussed attention on the issue of unequal power relationships between men and women at every level and the anti-women bias within the laws and in courtrooms. A demand was made for laws and procedures to ensure women's economic rights within marriage and make divorce proceedings speedy, less expensive and less traumatic for women.

What was required was matrimonial courts and laws along the lines of labour laws and labour courts which recognise the unequal power balance between



labour and management. Special statutes and procedures have been enacted so that the balance is tilted in favour of labour. According to legal experts O.P. and K.R. Malhotra, the law governing industrial relations is an attempt to mitigate disequilibrium inherent in the employer-employee relations, moulding contract through legislation. The main object of industrial adjudication is to be a countervailing force to counteract the inequalities of bargaining power inherent in the employer-employee relationship.

Pro-family or Anti-women

Since the demand for a uniform, secular and non sexist code was not conceded, the Family Courts Act was seen as a small potentially positive step, at least where procedural law is concerned.

But the Family Courts Act does not assist women to obtain justice. Instead the Act was committed to preserving the institution of marriage. Further the Act stipulated that persons committed to the need to protect and preserve the institution of marriage should be appointed as judges. By this very definition women activists and lawyers, whose fight for gender justice had in the first place raised the demand for the Family Courts, would be disqualified by the very nature of their activities. But unfortunately at this juncture the women's groups did not raise a strong objection to the Act and instead hoped

* **Manushi**, however, anticipated all these problems and opposed the Family Courts legislation right from the beginning. See article *Preserving Family at the Cost of Women* in issue No. 25, 1984, pp. 41-47.



How the Courts Actually Function

Some Case Studies

I give below summaries of some of the cases with which I have been personally involved as a lawyer to give the reader an idea about the actual functioning of the court.

Some of the cases have been pending in courts for a long time and were later transferred to the Family Court either from the magistrate's courts or the City Civil Court, Bombay. The cases deal with the problems women face in executing maintenance orders. They reflect not just the complexities of the legal issues involved in each case, but also show that an illiterate or semi-literate woman cannot handle these proceedings without the help of a lawyer any better than she can the regular court proceedings.

Name: Sunanda Mane
Age: 24 Years
Education: Illiterate
Dependent children: One
Husband's name: Appa Mane
Occupation: Business and agriculture
Income: Not known
Husband has remarried without divorcing the first wife. Hence he has committed bigamy.

Petition for maintenance under Section 125 Or. P.C. filed in 1988
Ground: Desertion

Sunanda became friendly with a young boy around her own age. Later the boy pressurised her to get married to him. His parents opposed the marriage. In order to please them, he deserted

Sunanda a few months after the marriage while she was pregnant. Sunanda came back to her parents and gave birth to a son. She and her son are both dependent on her parents.

Sunanda filed a petition for maintenance for herself and her minor son under Section 125 Cr. P.C. in 1988. No interim order was passed. In order to defeat her claim for maintenance, the husband filed a petition in the City Civil Court seeking annulment of the marriage on the ground that he was a minor at the time of the wedding. Both cases were transferred to Family Court in 1989. The husband's petition for annulment was dismissed as he did not appear in the court to follow up the case.

Later he left Bombay, went to his village and got married. He had a video tape business in Bombay. In the village he lives with his father. Sunanda does not know his actual income. Since the husband did not appear in court, her case kept getting postponed. Finally, after several applications, an ex-parte order was passed granting the minor child a maintenance of Rs 150 per month. Payment was to begin on the date of the order despite the fact that the matter was delayed only because of non-appearance in court by the husband. Sunanda was not awarded any maintenance. The order in fact made comments which questions the validity of her marriage: "The respondent is bound to pay maintenance for the child, legitimate or illegitimate."

There is a legal presumption that any child born in the course of a valid marriage

is deemed to be a legitimate child. Hence the comments regarding the legitimacy of the child are totally uncalled for and only serve to caste aspersions on the woman's moral character.

Sunanda does odd jobs like rolling *papads*. This gives her *occasional* income. She stated to the court that she occasionally earns around Rs 10-15 a day. But the order simply states that she earns around Rs 15 a day.

There are several judgements which hold that when a woman earns irregular and occasional income by doing odd jobs it should not be viewed as regular income. A woman's mere fight for survival should not be used to defeat her claim for maintenance. Despite this established legal position she was not awarded any maintenance.

Sunanda has not received even the Rs 150 ordered by the court for the child. It will be extremely difficult to enforce the order as the husband lives in the village. It would involve far too much effort, time and money to recover this small amount

She has filed an appeal in the High Court to set aside the order of the Family Court and requesting maintenance for herself and higher maintenance for the child. It will be years before this matter can ever come up for hearing in the High Court.

Name: Tarabai Kavlitke
Age: 40 years
Educational status: Illiterate
Dependent children: Four

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that the actual functioning of the courts would work in women's favour.

The provisions that women judges should be appointed and that the judges should have an expertise and experience in settling family disputes have remained only on paper. The Family Court in Bombay does not have a single woman judge. Also the judges appointed to the Family Court do not seem to have any special experience or expertise in dealing with family matters. In fact the experience of the Family Court in Bombay indicates that the post of principal judge is a stepping stone for elevation to the high court.

Not Really an Alternative

While the Act laid down the broad guidelines, it was left to the state government to frame the rules of procedure. The Maharashtra Family Courts Rules framed in 1987 deal elaborately with the function and role of marriage counsellors in the Family Court. In fact 27 out of the 37 sections deal with this aspect. A lot of power has been given to the marriage counsellors to make home visits, to ascertain the standard of living and relationship with children, to seek information from employers, and so on. But the report of the marriage counsellor is to be kept confidential, they cannot be cross examined and the report of the counsellor is not binding on the judges. Also it is not often that a marriage counsellor uses these powers to safeguard the woman's interest.

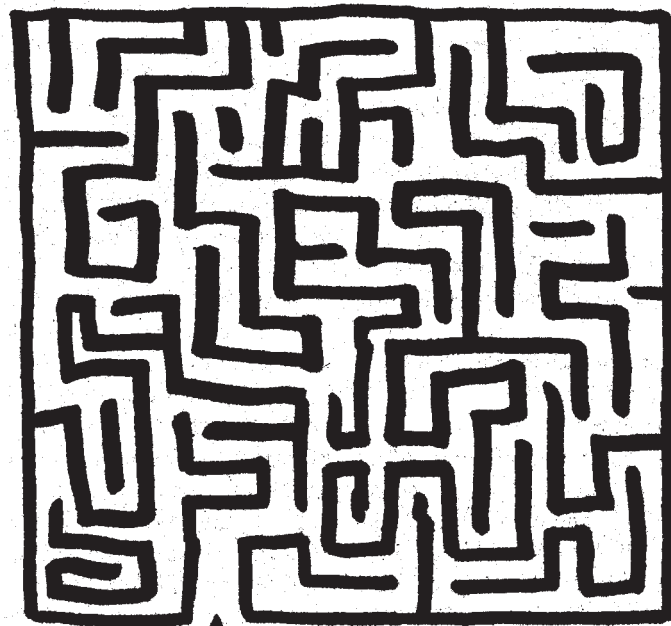
After the preliminary meeting with the marriage counsellor, the case would proceed as per the rules of the Civil Procedure Code. The marriage counsellors state that their duty is to see that reconciliation is possible. The meetings with a marriage counsellor which are compulsory might serve a useful purpose in some cases. However, where the marriage has broken down irretrievably, this would only delay the proceedings for enforcement of economic rights. For successful functioning of Family Courts and for bringing speedy relief to aggrieved

parties, these provisions need to be closely examined and modified where necessary.

The Rules laid down by the state government do not simplify procedures but merely reproduce the Civil Procedure Code. The Civil Procedure Code lays down the procedure to be followed in court. So for a lay person who is not familiar with the legal jargon, it would be extremely difficult to follow them. The Act and the Rules exclude representation by lawyers without creating any alternative and simplified rules. Merely asserting that the proceedings are conciliatory and not adversarial does not

actually make them so. The situation has actually worsened because in the absence of lawyers the litigants are left to the mercy of court clerks and peons to help them in following the complicated rules. Moreover, Family Courts were intended to be for women who are predominantly illiterate and totally unexposed to the ways of the courts. Even during a conciliatory proceeding it is crucial that the women's interests are not compromised and any reconciliation can be facilitated only by people who share this framework. However under the present Act, the court officials, both judges and marriage counsellors, are

FAMILY COURT



ENTER
HERE

... TO SEEK JUSTICE
(and hope for the best)



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Husband's
name :
Babanrao
Kavitke
Appa Mane
Occupation:
Skilled
worker; also
business.

Income: Around Rs 3,000 from skilled job and additional income from other sources.

Husband has remarried without divorcing the first wife, hence charged with bigamy.

Petition for maintenance under Section 125 Cr.P.C. filed in 1983

Ground: Desertion.

Tarabhai is around 40 years old. She has four children. Her husband is a factory worker and earns around Rs 3,000 a month. He owns four to five tenements which have been rented out. He also runs a small tailoring shop. He deserted Tarabai when the children were very small. Later he started living with another woman. In order to survive, Tarabai started working as a domestic help.

In 1983 Tarabai filed a petition for maintenance under Section 125 Cr.P.C. The case was dormant for a long time. Finally, in 1989 when the Family Courts were introduced, the case was transferred from the magistrate's court to the Family Court. No order was passed even for interim maintenance.

When Tarabai filed her petition in 1983 she had four minor children. When the Family Court passed an order in 1990, the eldest daughter was married and hence no maintenance was granted for her.

Tarabai herself was granted Rs 200 per month and the three children Rs 100 per month till they attained adulthood. So the total amount due to Tarabai and her children is Rs 500 per month since 1983. Now the husband comes and tells the court that the next two children have reached the age of 18 and hence they

are not entitled to maintenance.

Fortunately for Tarabai, even though the amount was meagre, the court gave her maintenance from the date she filed her application, that is, from the year 1983. But her husband did not bother to pay any maintenance. She made regular visits to the court to find out what she should do next. Her case was being closely followed by a community organisation. But even the organisation was unable to decide on a course of action. Several informal applications were made to the court to issue a warrant against the husband but they were not taken on record.

By then it was March 1991. If proceedings were not initiated by the end of March, Tarabai would lose all the arrears of maintenance due to her from 1983. From April 1991 she would be entitled to claim maintenance only from April 1990, as under Section 125 Cr. P.C. arrears in maintenance cannot be collected for a period longer than 12 months prior to the date of the order if it had not been enforced within that period.

Her husband appeared in court and pleaded his inability to pay. When a distress warrant was taken out for the attachment of salary in March 1991, the court issued a show cause notice to the husband questioning why his salary should not be attached.

Once the orders for maintenance are passed the women feel that the husbands would automatically pay up. But in order to execute an order of maintenance separate execution proceedings either for salary or property attachment or arrest of the accused have to be initiated. Then a fresh notice is issued to the husband to appear in court. Execution proceedings exert pressure on husbands and many of them start paying at least small amounts as maintenance to avoid such drastic action.

Dates in Family court are given at an interval of two months. When Tarabai's husband appeared in Court on 23rd May 1991, he was very perturbed. He pleaded

that he would pay the amount in regular instalments and clear up the arrears. When he came out of the courtroom, he consulted lawyers who reassured him that he could escape salary attachment if he paid small amounts. On the next date, 5th August 1991, he paid around Rs 1,000.

On 20th September 1991 the husband paid Rs 750 and assured the court that he would pay the same amount every month. He pleaded that his salary should not be attached as it would be a stigma. Accordingly the judge did not issue any direction for attachment of salary but merely directed him to pay Rs 750 every month. His salary was not attached despite there being several Family Court judgements which have held that in cases of non-payment of maintenance deterrent action should be taken.

The judge did not consider the fact that the husband had not paid any maintenance since 1983 and the amount which is past due to Tarabai is well over Rs 40,000. The husband is required to pay Rs 400 every month for current maintenance. This means that he would be paying only Rs 350 each month on the arrears. Even if he pays Rs 750 every month it would take around 12 more years to clear up the arrears at the rate at which he has promised to pay.

When Tarabai started crying, the judge asked her not to disturb the court (*bud-bud nako kar*). He also asked her lawyer, "Do you want me to arrest him? How will that help her?"

Tarabai desperately needs money for her children's further education as they are finishing school and entering college. She also needs a lump sum for her daughter's marriage. After pursuing the case for eight years, Tarabai asks, "But how did the judge believe him when he has not paid anything all these years?" The courts have no answer, nor need they provide one.

Name: Jamila Ibrahim Sheikh

Age: 45 years

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committed to preserving the family and not necessarily to the interests of the women. Such reconciliation efforts often jeopardise the woman's interest and may even prove fatal to her.

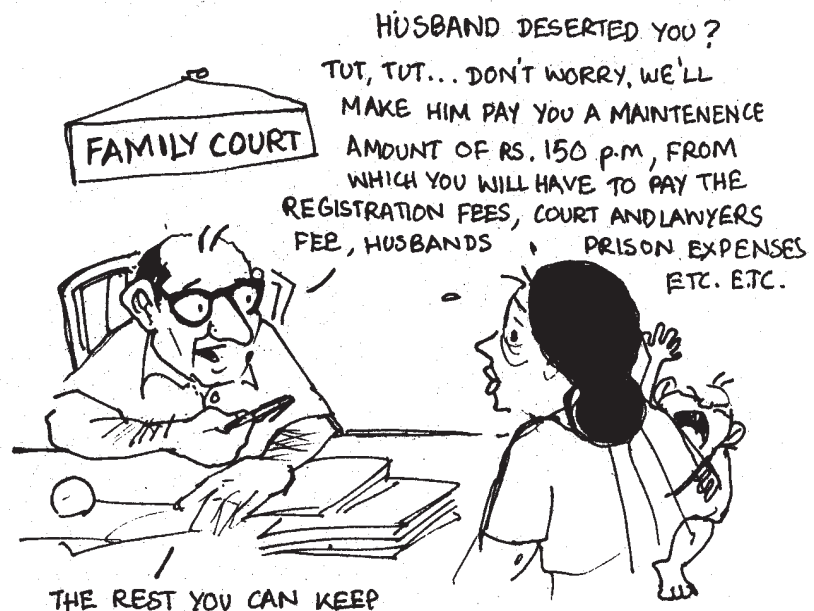
Actual Functioning Traumatic

The haphazard way in which the courts were set up has made the situation worse for litigants. The total lack of infrastructure and basic facilities makes the fight for justice a herculean task. While both men and women are affected, in any given situation men have had more exposure to public institutions. Women, conditioned as they are to remain within the four walls of the home, find it extremely difficult to follow procedures and explain their problems to a male judge while constantly being intimidated by their angry husbands. The women also become victims of anti-women biases of judges, court clerks and peons.

When representation by lawyers was dispensed with, a grave and serious duty was cast on the courts to protect the rights of the weaker partners, that is, women. But ironically, far from fulfilling this serious responsibility the Family Courts have served to strengthen the exploitation of women as is evident in the examples provided from Maharashtra.

Judges actually ask the women litigants to stand outside the courtrooms during court proceedings, which are, in any case held in camera, while they discuss the case privately with the husband. Instead of routinely asking the husband to produce evidence of their income and investments, the judges take the husband's word at its face value, chide the women and pass derogatory and humiliating comments.

Quite often one can hear comments such as: "You heard him. He says he does not have money to pay you. Do you expect me to pay you out of my pocket?" "Do you want a divorce or are you after his money?" "The maintenance is paid only for survival and not for you to live in luxury." The judges do not even seem to be in touch with the reality of the



women's lives. "A wife is bound to know her husband's income. It is not the responsibility of the court to find this out," they claim.

Kanta, who is totally illiterate, had spent considerable time, money and efforts in following up her case for maintenance, an order for which had been passed. Meanwhile, the husband kept creating a nuisance in her neighbourhood by making scenes and casting wild allegations of immorality against her. Weary of all this, she informed the counsellor and the judge that she just wanted to be left in peace. The parties were advised to file a mutual consent divorce without any claims against each other. This is exactly what the husband wanted.

When finally, through a fortuitous intervention on behalf of the woman, it was pleaded that the maintenance order should be passed first, before a mutual consent divorce could be agreed upon, there was more to follow. The well groomed husband clad in terrycot clothes informed the judge that he earned around Rs 300-400 and hence was not able to pay maintenance to his wife and two children. The judge expressed his reluctance to pass any order. This

inspite of the established legal position regarding maintenance that if an able bodied man capable of earning does not earn sufficient to maintain his wife and children it is no defence to him to escape payment of maintenance under Section 125 Cr.P.C.

The conciliatory approach adopted by the marriage counsellors further jeopardises the rights of women. When women file criminal cases against the husbands, the counsellors advise the women not to harass the husbands by filing such cases.

Not that all is rosy once an order of maintenance is passed. It is here that the travails of women actually begin. Since there is no commitment to protecting women's rights, prompt action is not taken to effect enforcement of the orders. And women lose their rights either through lack of proper guidance or through the indifference of the court itself. Even the meagre amount of maintenance owed her keeps piling up into thousands of rupees with no effective ways of enforcing payment while many husbands make merry and start a new family all over again.

The amount of maintenance due to Premlata, a woman in a severely destitute



Educational status: Illiterate

Dependent children: None

Husband's name: Ibrahim

Ahmed

Sheikh

Occupation: Police Constable

Income: Around Rs 2,000 (official)

Husband has remarried.

Petition for maintenance c/s Cr. filed in 1989

Ground: Desertion

Jamila was deserted by her husband 15 years ago. She has two daughters who remained with the father and are not married. Jamila lives alternately with her sister and her two married daughters and does some odd chores as a domestic maid. She approached a voluntary agency, Aawaz-e-Niswan, for help in filing a case, under Section 125 Cr. P.C. in 1989. No interim maintenance was granted. The final order was passed in September 1990, granting Jamila maintenance of Rs 300 per month. Her husband paid the amount for three months, then he gave her *talaq*. He also kept intimidating her by sending police constables to her house.

The lawyer who filed the case did not follow it up. In the Family Courts lawyers are not allowed to appear on behalf of women. Therefore, they tend to lose touch with the case. Jamila approached the voluntary agency who referred her to yet another lawyer.

The maintenance order did not clarify whether maintenance is granted from the date of filing or from the date of the order. This is an important issue as the amount of maintenance will greatly vary as

usually the cases lie in court for several years. Since proceedings are held behind closed doors it is extremely difficult to have access to the judge to clarify such ambiguities. Finally, when approached, the judge clarified that the order is from the date of filing, that is, from 1989. Jamila's husband had agreed to provide maintenance only from the date of the order, that is, from September to December 1990. Since maintenance was due since 1989, proceedings were initiated for recovery of arrears. Also a fresh petition was filed under the Muslim Women's (Protection of Rights on Divorce) Act, 1986.

When copies of all these proceedings were served on the husband he was under pressure. Jamila was lucky because her husband was in government service and there was some possibility of recovering the arrears from his salary. On 21st March 1991, when the matter came up the husband appeared in court.

The judge had orally confirmed that the order was effective from the date of filing and not from the date of order. However, the filing department refused to accept the proceedings for attachment of salary because nothing was given to them in writing regarding this issue. A lot of time was wasted convincing the filing department and the registrar that the proceedings were in order. Meanwhile, when the case came up, Jamila's lawyer could not be with her because she was held up in the filing department where she had gone to file in the execution proceedings for Jamila's maintenance.

Even otherwise Family Court rules do not permit a woman to claim the right of representation by a lawyer during proceedings. However, some lawyers do remain present in the court if the woman is illiterate and unable to argue the matter. Some judges do not object to this but the decision is purely arbitrary. Some judges also allow a lawyer to argue the case on behalf of the woman but if the

husband takes objection, she is not granted permission.

The judge spoke to Jamila rudely and contemptuously and asked her why she was in court once again. She explained that her husband had not been paying any maintenance to her and also told him that her husband had divorced her. The judge informed her that in that case she has no right to maintenance and she should not waste the precious time of the court by filing such petitions. She informed the judge that since she is not educated and does not understand the petitions her lawyer could come and explain to the judge. At that point the judge told her that her lawyer would not be allowed to represent her. He also threw the papers at her. The bench clerk and the peon joined the husband in ridiculing Jamila. Jamila was in tears. Her husband started shouting that she was a woman of immoral character and she had no right to maintenance. He also started discussing his case with lawyers who hover around in the Family Court, all of whom advised him that he need not pay any maintenance.

In the usual procedure, when a case is filed the parties are asked to see the marriage counsellor. The marriage counsellors can only ascertain whether reconciliation is possible. In this case the parties were already divorced. There was, therefore, no basis for this direction. Nevertheless they appeared before the counsellor. The husband informed the marriage counsellor that he would not pay Jamila any maintenance. At this stage her lawyer intervened (a rare case as no one is allowed to intervene in proceedings before a marriage counsellor) and explained to the marriage counsellor that the husband's salary could be attached at source and he has no other recourse but to pay her. At this point he was ready for a lump sum settlement Jamila asked for Rs 20,000. After much negotiation the husband agreed to pay Rs 13,000 on 6 April 1991 as full and final settlement of

condition, was well over Rs 30,000. YUVA, a voluntary agency which offers legal aid and had been following up her case for years, helped Prema to take out a warrant of attachment of property. At dawn when the bailiff, a social worker, and Prema reached the home for attachment, the husband fetched his lawyer who informed the bailiff that since his name did not appear in the warrant he had no right to attach the property. By the time the warrant was reissued, the husband, a local *goonda*, not only stripped the house of all the valuables, but even locked up the house and absconded. Will the Family Court pay damages to Prema for the lapses and negligence of its officers due to which the woman has been deprived of her crucial means of subsistence?

Persisting in the matter, Prema then took out a warrant of arrest. On the next date, two months after the date of filing this application, she was told that the notice could not be issued as the Rs 3.50 process fees had not been paid. In this case the woman was accompanied by a social worker. One can imagine what happens to thousands of others, who are seeking justice on their own. And after all this her ultimate remedy is civil imprisonment, which means that she would herself have to pay the cost of keeping the husband in prison. The scene would have been absurdly comic and hilarious if only it did not sacrifice the basic requirement for survival of the woman concerned.

Even when a husband has a government job his salary is not attached at the source, causing untold misery and hardships to the woman. The women are left at the mercy of the court clerks and typists who are extremely rude and contemptuous and who in any case constantly give wrong advice. Many a time after several trips to the court to enquire whether the husband has paid the maintenance amount to the court, one fine day she is told that all her maintenance dues have lapsed under Section 125 Cr.P.C. If a maintenance order

is not enforced within 12 months of its being passed, all the arrears lapse. There is no one in the Family Court to advise the woman on this issue and guide her through a proper course of action.

A court which was meant to save women from the clutches of exploitative lawyers was expected at least to have appropriate machinery to disseminate information about women's rights, to prevent exploitation and corruption within its premises, and to safeguard the interests of women at every stage.

There are no women judges or *amicus curiae* or even sympathetic judges with a special commitment towards protecting women's rights. One had at least assumed that the presence of social workers within the court premises would curb corruption, and would facilitate the setting up of an alternate, socially committed and non-corrupt investigative and enforcement machinery.

In the absence of any such supportive measures to ensure women's rights, non-representation by lawyers has become a farce. Since the procedures are not simplified, the need for lawyers is not dispensed with. Since no free legal aid is offered, it has left the ground wide open for unscrupulous lawyers to charge exorbitant fees. The court has not even set a ceiling for lawyers who solicit within the court premises. And since they come only with a view to commercial gain, women who are in pursuit of mere subsistence maintenance and are desperately seeking sound legal advice are not even in a position to afford these lawyers.

The court building has five floors and five courtrooms. One assumed that they would be numbered in ascending or descending order. But no. There seemed to be some queer logic operating whereby one found courtroom no 2 on the 1st floor, courtroom no 4 on the second floor and courtroom no 1 on the third floor. And litigants are expected to appear in person without being aided by lawyers. This is some way of simplifying matters!

In the absence of a basic infrastructure like a stamp office, typist and stationery, or even adequate sitting arrangements, the litigants are subjected to endless hardships. After articles were written in the press, the situation was rectified. Now the court numbers correspond with the floor numbers. Typists and a stamp office have also been provided.

The Acts and Rules provide for legal experts to be appointed as *amicus curiae* and also a panel of experts in various fields to help the courts to arrive at settlements. The Act also provides for tape recorders to be used while recording evidence. But all the positive directions have remained only on paper.

The nexus between the court clerks, bailiffs, lawyers and husbands creates yet another obstacle for the women seeking 'justice'. The bailiffs charge as much as Rs 200 to serve an urgent court order, a situation unheard of in the city civil court in the pre-Family Court days. The court clerks openly ask for bribes. The husbands are informed in advance before property attachment so that they have enough time to lock up the house and abscond.

The issues concerning destitute women have been focussed upon through statewide rallies and high level committee recommendations. But even if they result in bringing about positive legislative changes they cannot bring justice if at the implementation level there is such apathy, inertia and downright hostility towards women.

While not denying the fact that Family Courts are important, merely instituting such courts haphazardly in a perfunctory manner will not in any way aid women in obtaining their rights. While some of the problems are teething problems of any new institution, others are more inherently built into the Act and the Rules. Unless they can be corrected at this juncture, the Family Courts will be a hindrance rather than an aid to women's fight for justice. □



all her claims. Although the amount was meagre she agreed as something was better than nothing.

One 6 April 1991 the husband came in with the money. The parties were called to the judge's chamber. The judge asked her whether the matter had been settled. She answered in the affirmative. He did not inquire whether the money had been paid to her. He passed an order dismissing the petition without mentioning the fact that the petition was being withdrawn because the parties had arrived at certain consent terms as per which the husband had agreed to pay a lump sum of Rs 13,000 in settlement of her claim.

But the money did not change hands. Jamila waited for yet another two hours in the court and finally asked the court clerk whether the money had been paid. The clerk rudely informed her that her case has been dismissed. If at all any money had to be paid it would be paid in the accounts department, he informed her. Again she approached the court on 8 April 1991 after realising that her husband had left without paying the amount either to her or to the court. Since the order did not mention anything about the money there was no way she could have enforced it.

Fortunately for Jamila, an association of women litigants organised a protest demonstration outside the Family Court on 6 April 1991 to highlight the plight of women litigants. One of the issues that was highlighted was the way Jamila was treated in the court.

The demonstration received publicity. The husband was scared. Two days later he came to the court and paid

the amount. Actually it was coincidental that the demonstration was held on the same date as the hearing on Jamila's case. The demonstration and Jamila's case received coverage in the press. The wide publicity that case received may have convinced her husband that it was a deliberate conspiracy against him.

This is a rare instance. But in most cases things don't work out this way and a woman loses out at every step.

Name: Suleka Balekar
Age: 35 Years
Education: Illiterate
Dependent children: One
Husband's name: Syruyakand Balekar
Occupation: Business
Income: Not known
Petition for divorce filed in 1988
Ground: Desertion

Her husband compelled Suleka to leave the marital home with his ill treatment. This happened in 1982 when her daughter was eight months old. Since then she has been living with her brother who has been supporting her. Her husband has not paid any maintenance for Suleka or his daughter since then.

Suleka approached a women's organisation, Mahila Dakshata Samiti, for help. They advised her to file a petition for divorce, which she did in 1988. She also asked for permanent and interim maintenance. Her husband was earning around Rs 2800 per month. But just before she filed the petition he resigned his job. She was awarded a sum of Rs 300 per month as interim maintenance and a further sum of Rs 200 as interim maintenance for their daughter. Her husband did not pay her anything.

The matrimonial home was a joint family household and the house belonged to her husband's father. She then took out an injunction restraining her husband from disposing of the house. The husband's family got the

house transferred to her brother-in-law. Her brother-in-law had not been party to the injunction. Before the situation could be rectified, her husband's family sold the house.

Her husband had received Rs 28,000 from his employer when he resigned his job. He stated that the money was used to repay a loan which he had taken from his sister. Now her husband claims that he is not working and has no income that he is being supported by his brother.

On very court date Suleka gets extremely upset with the judge and her husband's lawyer. Once the judge remarked that he thinks she has gone mad. Even though she has not been granted permission by the court to bring her lawyer, her husband brings his lawyer. The amount of maintenance which is due to Suleka is around Rs 16,000. The judge says that he is helpless and cannot endorse the order since the husband has no income.

Ironically the husband is interested in the very same remedy, that is, divorce for which she has approached the court. The husband and his lawyer both state in court that they will not contest the divorce and the divorce may be granted to Suleka. This will only help to set him free for remarriage. Suleka has no place to stay and wants her right in her matrimonial house or a lump sum settlement so she can buy a place for herself. If she is only granted divorce on her petition she will lose the right to the matrimonial home.

Suleka's need is maintenance. she feels that she was wrongly advised to file for divorce when all she needed was maintenance. So she withdrew her petition for divorce and filed a fresh petition for maintenance under Section 125 Cr.P.C.

As it turned out eventually, Suleka's husband got married, sold the house and disappeared from the scene. She and her lawyer are perplexed about the next course of action. □