

Family Dispute Redressal Mechanism In India - Right To Be Represented In Family Courts

Shrey Chakraborty¹

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¹ Student, School of Law, KIIT University, Bhubaneswar

Abstract

The backlog of cases in Indian Courts is one of the most known and problematic issue of the nation's judiciary. It has been noted that in year 1999, a total of 34683 cases were filed in the apex court of India whereas a total of 70350 cases were filed in the year 2008.² This shows an increase of 103% in 9 years. To counter the backlog of cases pending before a court, there have been alternative dispute mechanisms which have been coming into light lately. The mechanisms include mediation, arbitration, conciliation etc.

The need of establishing a family court was first recognized in 1953 by Smt. Durgabai Deshmukh after she went on a tour in China. She studied the family courts in China and tried to implement the same system in India.

Ideally, a family dispute matter is to be taken to a Family Court. A Family Court is also a court of law which is constituted under Section 3 of the Family Courts Act 1984. A Family Court's hierarchical power is somewhere between a District Court and a High Court.

They say that 'Justice delayed is justice denied.' To ensure speedy disposal of cases, these Family Courts come into picture. They not only ensure speedy trials but also makes sure that the cases are dealt in an efficient and effective manner. A family court is well equipped with counsellors and psychologists who make sure that the disputes are being handled by the experts. These experts' role are not limited to counselling but extends to conciliation and mutual settlement of the parties in the most feasible manner possible.

Family Courts are free to make their own rules of procedure. As a matter of fact, the Civil Procedure Code was amended in order to fulfill the purpose of setting up Family Courts. According to Family Courts Act 1984, a person is not entitled with a

² Archi Agnihotri and Medha Srivastava, 'Family Courts In India'; Available at:

<http://www.legalserviceindia.com/article/I356-Family-Courts-in-India.html> Last visited on: 14:59 on 14.08.216

right to be represented in a Family Court. This means that the parties of a dispute need to present their case on their own merits.

However, this is against the principle of Natural Justice³. A person who is denied the right to be represented is denied the right to fair hearing which is one of the fundamental principles of Natural Justice.

According to Advocates Act, every person whose name is listed in the state roll is entitled to practise throughout the territory of India. So there lies a conflict of laws and the issue arises as to which law shall supersede the other. Whether the right to be represented according the principles of Natural justice prevails over the provisions of Family Courts Act or not. In order to figure this, it is essential that one understands the object of these provisions of law.

³ Shivaraj, 'Principles Of Natural Justice In Indian Constitution'; Available at: <http://www.legalservicesindia.com/article/article/principles-of-natural-justice-in-indian-constitution-1519-1.html>, Last visited on: 15:20 on 27.08.2016

Scope and Objective:

The scope of this research extends to the topic of family dispute redressal mechanism in India. The sub topic of this study is the representation of parties by an advocate. This research tries to find the purpose of Section 13 of the Family Courts Act 1984 and also tries to study the laws which states the otherwise. This research work is limited to the Family Courts of India that are constituted under the Family Courts Act 1984. The object of this research is to understand the current position of the Section 13 of the Family Courts Act and to study its validity.

This research is limited to the representation of parties in a Family Courts and does not deal with other aspects of the mechanism involved in the redressal of family disputes.

Research Methodology:

The Research Methodology opted in this study is analytical and descriptive kind. The research places heavy reliance on the judgments by the High Court and the Apex Court of India, especially in the case of *Sadhana Patra v. Subrat Pradhan*. The research also places reliance on primary sources of law such as statutes and central laws.

The author has also referred to various secondary sources like books and articles.

Chapterization:

This research project is divided into the following chapters:-

Chapter 1: The first chapter would briefly elucidate on the purpose and scope of laws which are in conflict of each other. The main theme of this chapter would include the aim and objective of the laws which are in conflict with each other.

Chapter 2: The second chapter shows the clash of laws. Advocates Act over the Family Courts Act or the other way around? Which shall prevail? This chapter shows the deadlock that the two laws are in.

Chapter 3: In order to understand the overriding effect, it becomes important to know the reasoning behind each provision. This chapter tries to reason out the deadlock between the said provisions of law and figure out the current position of law.

Chapter 4: The fourth chapter concludes by answering the research question briefly.

Chapter 5: The fifth chapter is based on the bibliography of the project which would broadly mention the reference sources for the purpose of the completion of this project.

Research Questions:

1. What is the purpose of Section 13 of the Family Courts Act 1984?
2. Whether Section 13 is in contravention with any law or not?
3. Does Section 13 supersede the right of Advocates to practice under Section 30 of the Advocates Act?
4. What is the current position of law on this conflict of laws?

Hypothesis:

Hypothesis I: The Object Of Section 13 Is Reconciliation Of The Marriage And Prevent An Increase Of Litigation.

A marriage in India is supposed to be a sacramental ceremony. It holds a lot of religious significance in various religions. In many religions, it is also considered a point in life when a man attains his manhood. Since a marriage in India holds so much of significance, the bond of two families through a marriage is very sacred. If there happens to be any conflict between the spouses, it not only affects the spouse but also their respective families. An act of divorce is devastating not only for the counterpart but also for his or her family.

In order to protect the sanctity of a marriage, it is imperative on part of the Family Court to make sure that the condition of the marriage doesn't worsen by adverse litigation. To prevent such adverse litigation, Section 13 of the Family Courts Act comes into play. It makes sure that the condition of a marriage doesn't worsen and the relations between the spouses doesn't wear out.

The Court would always try to reconcile the marriage because of the sanctity it holds in an Indian society.

Hypothesis II: Advocates Right Under Advocates Act Can Supersede Section 13 Depending On Case To Case Basis.

According to one of the principles of Natural Justice, every person has a right to a fair hearing i.e. audi alteram partem. Every person must have a right to be

represented in a court of law. If a person is deprived of this right, then the principle of natural justice is said to be violated. It is important to preserve such a principle. This is why the Advocates Act comes into play.

Apart from the right to be represented, there is also a right to represent on every lawyer as per Advocates Act. According to Section 30 of the Advocates Act, every advocate whose name has been entered into the state roll has a right to practise throughout the territory of India.

Therefore, there lies a question of law here as to which law shall prevail.

Preamble

Family Courts come into existence by the virtue of the Family Courts Act 1984. The need of establishing a family court was first recognized in 1953 by Smt. Durgabai Deshmukh after she went on a tour in China. She studied the family courts in China and tried to implement the same system in India.

The said legislation lays down provisions for the basic rules of a Family Court. However, these Rules are subject to will of a state. A state government has the power of laying down rules for purpose of carrying out the legislation. Some of the rules may be contrary to the Act and therefore, becomes an exception to the general rule. This research project tries to study these exceptions and tries to gauge the current position of law.

In doing so, it is important to know the scope and purpose of the provisions of law which are in conflict. The research project attempts to understand the purpose of these provisions and looks for any contravening laws. Research also makes an attempt to see which law supersedes which one and on what basis does one supersede (if one supersedes).

While understanding the scope and purpose of the legislations, the research project also studies the principles of natural justice and correlates it with this subject.

Introduction

Section 13 of the Family Courts Act states as follows: "Notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be entitled, as of right to be represented by a legal practitioner: Provided that if the

Family Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as *amicus curiae*.”

According to this provision of the said legislation, a person who approaches a family court with a dispute, is not entitled to any right that enables him to be represented by a legal practitioner. However, the provision has made an exception to this general rule. The exception can be applied in cases wherein it is essential to appoint a legal practitioner in the interest of justice. A legal practitioner appointed through this exception shall be deemed as ‘*amicus curiae*’ i.e. a friend of the court.

The purpose of such a provision is to reconcile a marriage and not obliterate it. The Court would always try to conciliate a marriage. Section 9 of the Family Courts Act states as follows: “(1) In every suit or proceeding, endeavour shall be made by Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit. (2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties. The Family Court may adjourn the proceedings for such period, as it thinks fit to enable attempts to be made to effect such a settlement. (3) The power conferred by sub-section (2) shall be in addition to, and not in derogation of, any other power of the Family Court to adjourn the proceedings.” This clearly shows that a Family Court would keep attempting to reconcile the dispute between the parties till the last straw has dropped.

In the leading case of *Sadhana Patra v. Subrat Pradhan*⁴, it was argued that if a matter can be mutually settled through counselling and there exists a scope of reconciliation, then an involvement of an advocate could worsen and cause duress to the concerning parties. This would ultimately result in the obliteration of a sacred marriage. Thus, to prevent such a jeopardy of the marriage, Section 13 comes into play.

⁴ *Sadhana Patra v. Subrat Pradhan* AIR 2006 Ori 105 (India).

Nature and Scope of Section 13

Prima facie, Section 13 does make it quite clear that any person who has approached the Family Court is not endowed with any 'right' per se, to be represented. This provision also enables a Family Court to appoint an Amicus Curiae in a matter where the court finds it necessary in the interest of justice to assist the Family Court. But this doesn't mean that a legal practitioner can only appear as an Amicus Curiae in a Family Court. In the case of *Sashana Patra v. Subrat Pradhan*⁵, it was stated: "Truly understood, Section 13 does not create a total embargo on the parties before the Family Court to engage advocates." In the leading case of *Sarla Sharma v. State of Rajasthan*⁶, a basic distinction between a practitioner appearing as an Amicus Curiae i.e. a friend of court and a lawyer appearing for an individual party was laid down. From this case it can be gathered that an Amicus Curiae is a person who volunteers or is invited by the court on a matters of law and facts. On the other hand, a private counsel is appointed by the parties of the case and represents them in a partisan manner.

This brings the question of the scope of the restriction as per Section 13. The nature and scope of Section 13 is much debated upon.

In the case of *Leela Mahadeo Joshi v. Dr. Mahadeo Sitaram Joshi*⁷, it was held that in the matrimonial cases pertaining to custody of children, visiting rights, maintenance, alimony etc. are matters where the parties may not be competent enough to protect their own interest or may not be able to envisage the problems that could arise in the future and therefore, end up giving up their own rights or failing to safeguard it. The inevitable conclusion would be that there would be hardship to the parties and would invite litigation in the future. These consequences are undesirable by the court and are also against the public policy.

⁵ Supra n. 3

⁶ *Sarla Sharma v. State of Rajasthan* (2002) DMC 409 (DB) (India).

⁷ *Leela Mahadeo Joshi v. Dr. Mahadeo Sitaram Joshi* 1991 (1) BomCR 130 (India).

Nature and Scope of Section 30

On the other hand, there is another provision of The Advocates Act 1961. Section 30 of the legislation states as follows:

“Subject to provisions of this Act, every advocate whose name is entered in the 1[State roll] shall be entitled as of right to practise throughout the territories to which this Act extends, —

- (i) in all courts including the Supreme Court;
- (ii) before any tribunal or person legally authorised to take evidence; and
- (iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise.”

According to this, every advocate whose name has been entered in the State Roll is entitled with a right to practise throughout the territory of India. Therefore, no advocate, whose name has been entered in the State Roll can be barred from practising. This Right extends to the Hon’ble Supreme Court of India, any tribunal or person that is legally authorised to evidence and any other authority where the advocate within the law is entitled to practise.

On a bare reading of this provision, it is clear that an eligible advocate is given an absolute right to practise law within the territories of India. Reading both the provision, we can state that Section 13 doesn’t impose an absolute bar on parties to engage an advocate in their case.⁸

The Hon’ble Supreme Court made a clear distinction between the two expressions ‘persons practising’ and ‘persons entitled to practice’.⁹ The court in this case disagreed with the contention that the term ‘persons practising before the Court’ is narrower than the term ‘persons entitled to practise before the Court.’ The Court reasoned this by stating that any entitlement to be endowed upon an individual, the person must satisfy a certain eligibility criteria. This restricts the scope of an entitled paradoxically. Therefore, with any entitlement, there also lies a restrictive eligibility scale which must be satisfied.

⁸ <http://www.lawyersclubindia.com/forum/Advocates-Act-S-30-Right-to-practice-39189.asp> Last visited on: 20:51 on 26.08.2016

⁹ Lily Isabel Thomas v. Unknown [1964 6 SCR 229]

Also, in the case of *Ashwini Kumar Ghosh and Anr. v. Arabinda Bose and Anr.*¹⁰, the Court has further explained what 'right of practise' meant. In this the court held that the right to practise not merely to plead but to act as well.

It is crystal clear from the above stated case laws that Section 30 of the the Advocates Act confers an entitlement on the advocates but such an entitlement also suffers from the limitation of satisfying the eligibility laid down in the Act itself.

Since there lies an exception to the general rule, it can be said that this restriction is not in an absolute nature.

Clash: Section 13 v. Section 30

The previous chapter has shed some light on the said provisions of law, its scope and the purpose. However, this research project aims to study the clash between the two aforementioned provisions. It is quite evident that the two provisions discussed are in conflict with each other. One tries to empower the advocates of the nation with a right to practise their profession without any hindrance and on the other hand, the other tries to bar the litigants from pursuing any legal aid from any practitioner. One restricts an advocate from practising his own profession in a Family Court and the other vests an absolute right on an advocate from doing the same.

Section 13, as stated before, restricts the litigants from being represented in a Family Court due to reasons mentioned for the public policy. Section 30, on the other hand, gives a right to practise the profession throughout the territories of India. Does that mean that a Family Court is an exception to this right vested on the advocates? Does this mean that a legal right vested on an advocate is inferior compared to a restriction put on a litigant? Does this mean that a marriage is so sacramental that, in order to maintain its sanctity, a legal right of a professional can be negated? Or does it mean that a legal right of an advocate can outweigh the restriction put by the Family Courts Act? Who is to prevail is the question.

As per Section 9 of the Family Courts Act, the primary objective of restricting a litigant from being represented by an advocate is to maintain the sanctity of the said marriage. It is presumed by the courts that most marital dispute can be resolved

¹⁰ *Ashwini Kumar Ghosh and Anr. v. Arabinda Bose and Anr* AIR 1953 SC 75 (India).

with time. A marriage should not be sabotaged simply because there was a petty disagreement between the parties. This is why, a court would restrict the litigants from being represented and hopes to reconcile the marriage.

However, there are often cases where a dispute between the parties has taken such a form that there remains no scope of reconciliation. Can a party still not be permitted to be represented? If representation is still denied in cases where there lies complicated question of facts and the parties are unaware of the provisions of law which puts them in a better position in the case, then wouldn't it be amounting to miscarriage of justice? However, if based on such an argument, a person is permitted to be represented in a Family Court, then every other litigant would try to display the nature of his or her own dispute in such a manner so that the court would be compelled to permit the party to be represented. This could lead to a misuse of the provision. This brings us back to the central problem that which provision is to supersede and on what grounds.

Provision of the Grundnorm

In India, the grundnorm is the Constitution and nothing can prevail over the constitution. It is important that there exists no right in the Constitution of India where a person is vested with a right to be represented except for what is provided in Article 22(1) of the Constitution as a fundamental right. According to this, a person who has been arrested has a fundamental right to be represented by a legal practitioner of his own choice. However, such a right to be represented by a legal practitioner is only vested with a person who has been arrested or detained.¹¹ There is no other provision in the Constitution of India which secures such a right on litigants who are engaged in a civil case such as a matrimonial dispute.

So, if there exists no provision in the grundnorm of India i.e. the Constitution, then on what grounds can a person seek legal assistance in matters of a family dispute in a Family Court?

¹¹ *Supra* n.2

Exceptions of Section 13

It must be noted that the government can make rules for the purpose of carrying out The Family Courts Act. The Central Government, with the concurrence of the Chief Justice of India, is only entitled to make rules prescribing the appointment of the Judges.¹² The State Government on the other hand is entitled to make other rules for carrying out the said Act. Therefore, there is a lot of discrepancy when it comes to the Family Court Rules in different states. However, there are certain rules which are quite common in most states. This includes the rule where a court has the power to make an exception to Section 13 of the Family Courts Act.

According to Rule 27 of the Family Court (Orissa) Rules 1990, "A party will be entitled to take legal advice at any stage of the proceeding either before the counsellor or before the Court. A party in indigent circumstance will be entitled to free legal aid and advice." This is however different from the right to be represented. Similarly, Rule 37 of the Family Court (Court) Rules 1988, "The Court may permit the parties to be represented by a lawyer in Court. Such permission may be granted if the case involves complicated questions of law or fact, if the Court is of the view that the party in person will not be in a position to conduct his or her case adequately or for any other reasons. The reasons for granting permission shall be recorded in the order. Permission so granted may be revoked by the Court at any stage of the proceedings if the Court considers it just and necessary." This provision is provided in the Maharashtra Family Court Rules. According to this, the court can grant a person to be represented if the court is satisfied and convinced that the case involves a complicated questions of fact and law.¹³

It is quite evident that the state may make rules to carry out the said legislation and in that process, the state also makes certain exception to Section 13 of the Family Courts Act. The main objective of this is to prevent a miscarriage of justice. It is

¹² Section 22 of the FAMILY COURTS ACT.

¹³ Prasanta Varma, Appearance Of Adcovates Before Family Court; Available at: <http://hindtoday.com/Blogs/ViewBlogsV2.aspx?HTAdvtId=9424&HTAdvtPlaceCode=WORLD>, Last Visited: 16:12 on 27.08.2016

undesirable for the court to settle the matter in such a manner that would invite litigation of the same matter in the near future.

Escaping the Deadlock

The previous chapters highlighted the scope, purpose and clash between the aforementioned provisions of law. This chapter would try to escape the deadlock between the laws clashing with each other. The provisions in clash with each other are namely: Section 13 of the Family Courts Act and Section 30 of the Advocates Act. In the Hussainara Khatoon case¹⁴, Justice Bhagwati observed that, in India, to ensure reasonable, fair and just trial, Article 39A has been inserted to the Indian Constitution. This makes sure that the poor, indigent and disabled persons or any other persons are given a fair opportunity to present their case. In this way, sufficient safeguard has been provided to preserve the principles of natural justice. Thus, it can't be said that the Constitution is in anyway violative of the principles of natural justice. The Indian Constitution makes sure that every person has a right to free legal aid and legal consultation.

Also, in the case of Nandini Satpathy v. P.L. Dani and Anr¹⁵, the Supreme Court enlarged the scope of Article 22. The right to counsel flowing out of Article 22(1) is not only bestowed upon a person who has been arrested but also on an accused person under circumstances of near-custodial interrogation. However, the scope of Article 22 hasn't been extended enough to cover the litigants pursuing a matter in a Family Court. Therefore, such litigants are still deprived of the Right to Counsel as enshrined under Article 22.

Section 13: An absolute bar?

The bar put by Section 13 of the Family Courts Act is not an absolute one since the Courts of various states have made exceptions to this provision through the enactment of Rules to be followed to carry out the legislation.

¹⁴ Hussainara Khatoon & Ors v. Home Secretary, State of Bihar; 1979 AIR 1369 (India).

¹⁵ Nandini Satpathy v. P.L. Dani and Anr 1978 AIR 1025; 1978 SCR (3) 608 (India).

In the case of *Smt. Lata Pimple v. The Union of India and Ors*¹⁶, it was contended that Section 13 does not prohibit the party from availing services of a lawyer. Such a permission can be granted by the Court itself on an application made by the party. However, it was urged that there lies no fundamental right to a citizen/litigant except for the provision of Article 22(1) of the Indian Constitution. The Supreme Court in this case held that no party can claim as a matter of right, a right to be represented through lawyer.

From the above case law it is well settled that apart from the provision of Article 22(1) of the Constitution, a litigant has no fundamental right to be represented by a legal practitioner. However, this doesn't mean that Section 13 creates a total embargo on the parties before a Family Court to engage advocates.¹⁷ This still doesn't resolve the clash between the two provisions.

Application of Doctrine of Repugnancy

In order to understand the overriding effect, it is important to know the nature of law. Doctrine of Repugnancy has been laid down under Article 254 of the Indian Constitution. According to this doctrine, any inconsistency between the provisions of a Center made law and a State made law, the provisions of Center made law would prevail over the state made law.¹⁸ Thus, using this doctrine the deadlock can be escaped very easily. However, this doctrine can't be applied since neither of the laws (Family Courts Act and The Advocates Act) are state laws. Both of them are Center made laws. So, the conflict remains to be unsolved.

Position of Law

Thus, in order to understand the position of law and to solve this conflict, the research paper has placed heavy reliance on case laws. In the case of *Manguli Dalei v. Smt. Malini Dalei*¹⁹, the Court held:

¹⁶ *Smt. Lata Pimple v. The Union of India and Ors* AIR 1993 Bom 255, (1993) 95 BOMLR 311 (India).

¹⁷ *R. Durga Prasad v. Union of India and Anr*; 1998 (2) ALD 25 (India).

¹⁸ Suyash Verma, 'Constitutional Law – Doctrine of Repugnancy and the Constitution of India'; Available at: <http://www.desikanoon.co.in/2014/05/doctrine-of-repugnancy-and-constitution-of-india.html>, Last Visited on: 22:12 on 28.08.2016.

¹⁹ *Manguli Dalei v. Smt. Malini Dalei* (1997) 12 OCR 196 (India).

“In view of Section 13 of the Act, a party cannot be represented by a lawyer as of right in a suit or proceeding before the Family Court, but that does not mean, in no circumstance a litigant in the Family Court is to be allowed to be represented through a lawyer. Though as of right no litigant is to be represented by a legal practitioner in the Family Court, if the litigant desires to be represented by a legal practitioner, ordinarily the same should be permitted by the Family Court especially in complicated cases affecting the rights and liabilities of the parties before the Family Court. Apart from the provisions of Rules 27 and 30 of the Family Courts (Orissa) Rules, 1990, a Family Court should liberally grant permission to litigants to engage lawyers of their own choice depending upon facts and circumstances of a given case. If the facts of a particular case appear to be complicated and the parties so desire, it would be better on the part of the Family Court to permit a party to engage a lawyer so that all the relevant materials be brought on record. If a matter can be mutually settled through counselling and process of reconciliation, the question of engaging a lawyer may not arise, but when cases cannot be decided on the basis of reconciliation or amicable settlement, it may be desirable to permit an applicant to engage a lawyer. In this connection, it must be kept in mind that the branch of law relating to matrimonial disputes though may appear to be simple on the face, of it, in fact, quite complicated and it is always advisable to get the benefit of proper legal advice.”

From the above judgement, the position of law gets much more clarified. In the above mentioned judgement, the following issues settled:

1. A litigant is vested with no right to be represented by a lawyer before a Family Court.
2. Section 13 doesn't imply that under no circumstance a litigant can engage a lawyer.
3. Apart from the provision provided under the State Rules such as Rule 27 of the Family Court (Orissa) Rules 1990, a Family Court should be liberal enough to grant the party to be represented.
4. In cases where no reconciliation is possible, it is desirable to permit the party to engage a lawyer.

The purpose of Section 13 of the Family Courts Act extends to the point of reconciliation. Albeit, in cases where there is no more scope for reconciliation left, it is not only desirable by the parties but also by the Courts to permit the applicant to engage a lawyer. This in turn ensures that all the facts of the case comes into light and prevents litigation in the near future.

Since Section 13 of the Family Courts Act does not impose an absolute bar on the litigants, the clash between Section 30 of The Advocates Act and Section 13 of the Family Courts Act can be prevented even before it arises. Had Section 13 been an absolute bar on the litigants appearing before a Family Court, then there would have been a clash between the two said provisions of law. Section 13 has many exceptions to it such as the appointment of Amicus Curiae, granting permission to be represented on the Court's discretion, Rule 27 of the Family Courts (Orissa) Rules 1990 etc. Due to so many exceptions made on the general rule, the restriction is said to be not an absolute one. Thus, the clash between two provisions get settled even before they arise.

Conclusion

This chapter concludes the research project by answering the research problems briefly.

The purpose of the said legislation is pretty clear. Section 9 of the Family Courts Act clearly describes the ultimate objective a Family Court i.e. to reconcile a dispute and not destroy the relation further. For reasons stated above, the Court always tries to maintain the sanctity of a marriage.

From the entire study, it can be said that Section 13 of the Family Courts Act is indeed in contravention with Section 30 of Advocates Act. On a plain reading of the legislatures, the contravention seems unavoidable and appears to be a clash of laws. However, on a deeper analysis of Section 13, we come to know that the restriction imposed by the said legislation is not of an absolute nature and there lies certain exceptions to it. The scope of Section 13 is limited and the State has the power to make rules for the purpose of carrying out the legislation that are in contravention with Section 13 itself such as: Rule 37 of the Family Court (Court) Rules 1988 and Rule 27 of the Family Court (Orissa) Rules 1990. Thus, it is clear that since Section 13

is not an absolute restriction, the question of which provision of law supersedes which one does not arise.

At last, the research project shows the current position of law on this subject. The Courts has a discretionary power to let the parties who have appeared before it be represented by a lawyer, provided that the court is satisfied on the grounds of permitting the same. These grounds could be grounds such as: complicated facts of case, party not in a position to decide the best interest for itself, exceptions provided under the Rules laid down for carrying out the Act etc.

In the case of *Kanpur Bar Association v. Union of India*²⁰, the court recognized the role of a legal practitioner and stated as follows:

“The profession of lawyers is an essential and integral part of the judicial system and lawyers may figuratively be described as priests in the temple of justice. They assist the court in dispensing justice and it can hardly be disputed that without their help, it would be well nigh impossible for the court to administer justice.”

With this, the study concludes by citing the *R. Durga Prasad v. Union of India*²¹, wherein the court held that Section 13 is ‘unconstitutional’ in its nature since it puts a certain bar on the Advocates’ unlimited right of representing according to Section 30 of The Advocates Act. Once a Family Court recognizes the necessity of taking the assistance of legal practitioner, the said provision may get struck down.

As cited in the above case, the said legislation is deemed to be an unconstitutional provision of law. There must be a reform in the said legislation which would make the provision constitutional. Until such a time arrives, the said legislations would have no option but to co-exist with each other.

²⁰ *Kanpur Bar Association v. Union of India* 1998 236 ITR 848 AII (India).

²¹ *Supra* n.16