

TYPES AND STYLES OF FAMILY PROCEEDINGS

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SUMMARY: I. *Introduction*. II. *Family Courts (or Family Division of Courts)*. III. *The Role of Judges*. IV. *Enforcement*. V. *Alternative Dispute Resolution*.

I. INTRODUCTION

Inevitably, proceedings for family law disputes differ from those for ordinary civil disputes. The main reason for this is that family relationships such as conjugality or filiality are primarily based on natural ties and emotional feelings, unlike transactional or commercial relations which are based on rational and economic sense.

Accordingly, the use of techniques of negotiated justice and alternative conflict resolution such as mediation and conciliation, are sometime more desirable in family law disputes than traditional dispassionate adversarial proceedings.

As family proceedings involve highly sensitive issues which require a deep insight into humanity, additional expertise and special knowledge of psychology, pedagogy and sociology are often needed. In addition, courts must also take into account considerations of social policy as well as the personal interests of parties. These factors, however, vary from country to country, reflecting their legal and cultural back grounds and history.

The jurisdictions which I was responsible for analysing are primarily East Asian and common law countries, namely: Australia, China, England and Wales, India, Japan, Korea, Philippines, Singapore, South Africa, Thailand and the United States of America. Among these countries, Australia, England and Wales, India, Singapore, South Africa and the United States

are generally categorized as common law countries, and the others are deemed to be civil law countries. To be more precise, Japan and South Africa can be seen as a third group, both having some mixed characteristics at least from a procedural perspective.

The legal system in South Africa which was rooted in Roman-Dutch law, was overlaid with a substantial blanket of English law, particularly in the fields of administration of justice and procedural law. Similarly, the original Japanese procedural law was modeled on the old German Code but was subsequently amended several times and significantly influenced by United States law in many respects.

Family law proceedings within the countries in these three groups are significantly disparate, which makes a detailed analysis very difficult. Accordingly, in this General Report, I attempt to provide as much information as possible regarding the countries mentioned above, rather than making a superficial analysis.

This General Report is based on the National Reports written by the following scholars and practitioners. I would like to express my sincere thanks to all of them.

- Ms. Helen M. Alvaré, Professor, Catholic University of America (USA).
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- Mr. Masatoshi Kasai, Professor, Kyoto University (Japan).
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- Mr. Nigel V. Lowe, Professor, University of Wales (England & Wales).
- Ms. Elizabeth Pangalangan, Professor, University of the Philippines (Philippines).
- Ms. June Sinclair, Professor, University of Pretoria (South Africa).
- Mr. Suwit Suwan, Attorney at Law, Mongkolnavin Law Office (Thailand).
- Ms. Mee-Sook Yeo, Judge, Seoul District Court (Korea).

Each National Report varies, and places major emphasis on different points. Accordingly, I had no alternative but to highlight only a number of issues which were dealt with by most National Reports. I chose: 1) Family

Courts (or the Family Division of Courts), 2) the Role of Judges, 3) Enforcement and 4) Alternative Dispute Resolution.

II. FAMILY COURTS (OR FAMILY DIVISION OF COURTS)

In general, there is a visible trend in many jurisdictions towards having specialized courts or divisions of courts which deal fully or partially with family law cases.

The thinking behind this trend is to concentrate family disputes in specialized courts or divisions, and guarantee that such disputes will be effectively dealt with by judges who have the necessary expertise. However, this appears to be quite a recent trend, as far as the Asian and common law countries for which I received National Reports are concerned.

Many countries are still in the process of establishing nationwide family court systems and their current arrangements are a type of patchwork coverage between courts where only a part or parts of the country have specialized Family Courts or special divisions for family matters.

In China, a few courts in some metropolitan areas are attempting to partition family law cases to be dealt with by an independent tribunal. About one-third of courts nationwide are on a route to reform, and family law cases are set aside to be disposed of by a certain panel in those courts. The remainder of the courts deal with family law cases in the same way as any other civil cases.

In India, the *Family Courts Act* of 1984 was enacted to provide for the establishment of family courts. Under the *Family Courts Act*, Family Courts were initially to be established in cities and towns having a population of more than one million, and in other areas as and when necessary. A survey conducted in 2001 showed that so far 84 Family Courts have been established in 18 States and Union Territories, and that there were no Family Courts in the 18 remaining States and Union Territories.

In Korea, there is only one Family Court in the nation's capital city, although there are 3 other cities which have family branches of District Courts. In the remaining parts of Korea Family Divisions within District Courts function like Family Courts. In the Philippines, a family court system started to be established in 1997 under the *Republic Act 8369*. The Act states that a Family Court shall be established in every province and city in the country. However to date, the country is still in the transitional

stages of implementing the Act. In South Africa, the government instituted a pilot project of Family Court Centres integrating the services of Divorce Courts, Maintenance Courts, Family Violence Courts and Children's Courts for all races at 5 sites across the country. Thailand has also started to establish special courts to handle family and juvenile matters, known as the Family and Juvenile Courts, pursuant to the *Establishment of Family and Juvenile Courts and the Rules of Procedure for Family and Juvenile Cases Act* of 1991. Nine Family and Juvenile Courts have already been established in major provinces thus far. In those provinces that do not have a Family and Juvenile Court, a Family and Juvenile Department has been established within the Provincial Courts. In the United States, 34 of the 51 jurisdictions (50 state and the District of Columbia) have created specialized courts or separate divisions of courts for family matters alone. In the remainder of the states, family law cases are still treated as part of a general civil trial docket.

On the other hand, a few countries have already established integrated Family Courts or family divisions of courts throughout the nation. In England and Wales, at the High Court level, family law cases have been handled exclusively by the Family Division since 1970. At the County Court level, most family cases are heard by specialist divisions. In Japan, the family court system was established in 1949 just after the World War II. The territorial jurisdiction is the same as that of the District Courts. The Republic of Singapore established its Family Court on 1 March 1995 within its Subordinate Courts. Today the Court resolves all family disputes for the vast majority of Singaporeans who are non-Muslim.

It should be noted that the concept of Family Courts or family divisions of courts varies depending on the legal system under which it is established. In some systems, "Family Court" means a court which has exclusive subject matter jurisdiction over all type of family law cases including actions for divorce, annulment of marriage and separation, together with actions for ancillary relief regarding maintenance, property settlement and children. In other systems, however, it means a court which has limited subject matter jurisdiction over a certain type of family law case or a court which has concurrent jurisdiction with other ordinary courts. For example, the Family Court in Singapore has a comprehensive jurisdiction over the entire spectrum of family disputes. In India, the Family Courts are also empowered to comprehensively deal with all the issues that may arise in

disputes pertaining to family matters. On the other hand, under the current system in Japan, original jurisdiction over family law cases is divided between District Courts and Family Courts. Family Courts deal with non-contentious cases such as appointment of a guardian and non-litigious cases such as partition of deceased estates, and the District Courts now have original jurisdiction over litigious family matters, disputes between married couples such as divorce or relating to parent-child relationship.

However, there can be seen another movement in which some countries try not only to create Family Courts or Divisions but to design Family Courts or Divisions to take comprehensive subject matter jurisdiction over all type of family matters. In Japan, for example, the new *Law for Procedure in Actions relating to Personal Status*, which was enacted in July 2003 and is supposed to be effective from April 2004, will transfer the original jurisdiction over such litigation from the District Courts to the Family Courts. Therefore, in and after April 2004, the Family Courts will render judgments on divorce, acknowledgment of children, and all other litigious family law cases as well as non-contentious or non-litigious cases. To give another example, in the United States, following the suggested concept of a unified family court, about 11 states have adopted some form of unified Family Court, and 23 states and the District of Columbia are running their first pilot programs. A unified Family Court may hear all civil and criminal cases involving one particular family.

1. *Australia*

In Australia, there are two sets of courts which deal with the respective jurisdictions. In family law, jurisdiction is exercised for all practical purposes exclusively by the Family Court of Australia, established in 1975, and the Federal Magistrates Court, established in 2001.¹ They are both specialised courts and deal with family law disputes. Parallel with that the States and Territories have maintained their own court structures. There is a Children's Court in each State and Territory which deals exclusively with child protection matters and is a specialised court. The more general

¹ In Australia, the Federal government had power in relation to marriage, divorce, the children of a marriage, and property and maintenance disputes between husband and wife.

State or Territory courts deal with relationship disputes about property which fall within the State or Territory jurisdiction.²

2. *China*

In China, courts have civil, criminal and administrative tribunals within the courts.³ The civil tribunals are subdivided into several types. General disputes between individuals are referred to Civil Tribunal I (CT I), while Civil Tribunal II (CT II) deal with commercial disputes. In general, family law cases are under the jurisdiction of CT I, however, there are wide variations of assignments of cases from court to court depending on the stage of judicial reform. A few courts in some metropolitan areas, especially intermediate courts, are attempting to partition family law cases to be dealt with by a independent tribunal which is parallel with CT I. About one-third of the courts nationwide are on a route to reform and family law cases are set aside to be disposed of by a certain panel in CT I in those courts. The remainder of the courts deal with family law cases in the same way as any other civil cases in CT I. However, in China, even in those courts which assign family law cases to a special panel or tribunal, such classification does not carry much weight due to the lack of special procedure, specialized judges and availability of expert assistance for family law cases.

3. *England and Wales*

Family law cases are dealt with by the Family Divisions of courts or several kinds of centres, all at the level of original jurisdiction. At the High

² The States retained powers in relation to ex nuptial children, child protection in respect of all children, and property and other financial disputes between couples who were not married, such as defacto relationships and same sex relationships. However, the obvious inconvenience of dividing powers along the line of marriage or non marriage was increasingly recognised over time and more especially in recent years as the number of non marriage relationships has increased dramatically. The situation in relation to children was rectified by the States transferring to the Federal government in 1986 its powers in respect of children except for child protection.

³ The judicial system in China consists of a four-tier hierarchy with the court of second instance being that of last resort. The four tiers are the Supreme Court, High Courts, Intermediate Courts and Basic Courts.

Court level,⁴ family law cases have been handled exclusively by the Family Division since 1970. Judges sitting in the Family Division are mainly drawn from experienced specialists in family disputes. At the County Court level,⁵ most family cases are heard by specialist divisions. All matrimonial causes, that is, actions for divorce, annulment of marriage and separation, together with actions for the ancillary relief of maintenance, property division and children's matters must be commenced in County Courts for this purpose. Of more recent creation during the 1990s and early 2000s are family hearing centres, care centres and adoption centres. Only judges who have undertaken specialist training have jurisdiction to hear cases at these centres. Like County Courts, Magistrates' Courts⁶ were reorganized in the 1990s with the creation of Family Proceedings Courts. These are staffed by magistrates drawn from the family panel and they have sole jurisdiction to hear family proceedings. Membership of the Panel requires induction training and a course of basic training. Magistrates are subject to appraisal in accordance with the Magistrates' National Training Initiative.

4. *India*

The matrimonial statutes provide for a category of civil courts which exercises original and appellate jurisdiction over family disputes. Under the *Hindu Act* and the *Special Act*, the District Courts exercise matrimonial jurisdiction. In the case of Christians, matrimonial jurisdiction is also exercised by the District Courts. In the case of Parsis, the matrimonial jurisdiction is exercised by the Special Parsi Matrimonial Courts constituted under the *Parsi Act*. In the case of Muslims, matrimonial jurisdiction is vested in the local courts exercising original jurisdiction, normally the

⁴ The High Court is physically located in London, however, judges of the Family division are all liable to go on circuit. Furthermore, additional judges are available to go out on circuit at short notice to hear cases in which a Family Division judge is required.

⁵ There are some 240 County Courts which are geographically spread across the country. Approximately 176 are divorce County Courts, 114 are family hearing centres and 56 are care centres with a similar number of adoption centres.

⁶ There are about 600 magistrates' courts and sections of them have been designated family proceedings courts. Magistrates' courts are mainly staffed by unpaid "lay" persons known as magistrates or justices.

subordinate courts.⁷ In 1984, the *Family Courts Act* was enacted to provide for the establishment of Family Courts with a view to promote reconciliation and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith.⁸ Under the *Family Courts Act*, the Family Courts were initially to be established in cities and towns having a population of more than one million, and in other areas as and when necessary. However, a survey conducted in 2001 showed that so far only 84 Family Courts have been established in 18 States and Union Territories and that no Family Courts have been established in the 18 remaining States and Union Territories. The Family Courts are empowered to deal comprehensively with all issues that may arise in disputes pertaining to family matters. There are special qualifications for the judges to be appointed to the Family Courts. In order to be appointed as a judge under the *Family Court Act*, a person should be a judicial officer or an advocate of the High Court for at least 7 years, or such other qualification as may be prescribed by the Central Government. It has also been stated under the *Family Courts Act* that when selecting a person for appointment as a Judge of a Family Court, every endeavor should be made to ensure that the person should be committed to the need to protect and preserve the institution of marriage and to promote the welfare of children. He or she should be qualified by reason of his or her experience and expertise to promote the settlement of disputes by conciliation and counseling. Preference should always be given to women.

⁷ The substantive family laws in India are respective in accordance with the religious communities to which the individual parties of family disputes belong and the substantive aspects of the personal laws have their influence in the procedural aspects of the law applicable to such disputes. Those could be broadly grouped under four systems, that is, Hindu law, Muslim law, Christian law and Parsi law. The courts are required to follow the procedure prescribed under the respective personal law statutes while deciding cases involving family disputes arising under the respective statutes, apart from the common procedure prescribed under the Code of Civil Procedure of 1908 (“the Civil Code”) and the *Family Courts Act* of 1986.

⁸ The hierarchical structure of the Indian Courts is as follows: At the national level is the apex Court, which is the Supreme Court of India. Below it are the High Courts at the State level. Below the High Courts at the District level are the District Courts, which exercise original jurisdiction in matrimonial matters. Below the District Courts are the Subordinate Courts, and below them are the Munisif Courts, which exercise respective original jurisdiction.

5. *Japan*

The family court system in Japan was established in 1949 in accordance with the concept of promoting the welfare of families and seeking sound upbringing of juveniles as a part of the postwar democratization. The Family Court is a specialized court dealing with family affairs cases and juvenile delinquency cases. There are 50 family courts in Japan, each having territorial jurisdiction over its respective district, which is based on prefectural boundaries. The territorial jurisdiction is the same as that of the District Courts.⁹ The judges in the Family Courts enter the judiciary by the same route as other judges. They usually have been assigned to one or more District Courts, and they may transfer to another court including a District Court and a High Court in the future.

In the current system, the original jurisdiction over family law cases is divided between District Courts and Family Courts. According to the Civil Code and the *Law for Determination Proceedings of Domestic Affairs*, the Family Courts deal with non-contentious cases (*e. g.*, appointment of a guardian) and non-litigious cases (*e. g.*, partition of a deceased estate) through the determination proceedings, which follows a more relaxed procedure than litigation. The Family Courts also deal with litigious cases (*e. g.*, divorce) through the court-annexed conciliation in accordance with the *Law for Determination Proceedings of Family Affairs*. Non-litigious but contentious cases are also dealt with by conciliation.¹⁰ On the other hand, District Courts now have the original jurisdiction over litigation on family matters, which are disputes between married couples (*e. g.*, divorce, confirmation of annulment of marriage) or relating to parent-child relationships (*e. g.*, acknowledgment of a child, confirmation of nonexistence of such relationship, dissolution of adoptive relations).¹¹

⁹ The family courts have 203 branch offices and 77 local offices. The family court system is organized with approximately 350 judges and assistant judges.

¹⁰ In 2002, in the family courts throughout the nation, the number of newly accepted applications for determination is 490,519 (479,781 non-contentious cases and 10,738 contentious cases), and the number of newly accepted applications for family conciliation is 128,554. These numbers are constantly increasing during recent seven years, and these numbers in 2002 are the most ever since the establishment of the family court system in 1949.

¹¹ In 2002, in the district courts throughout the nation, the number of newly filed actions relating to personal status is 10,120. The number is constantly increasing during recent ten years.

Most recently, there has been considerable reform of the jurisdiction over litigation as to family law cases. The new *Law for Procedure in Actions relating to Personal Status*, which was enacted in July 2003 and is supposed to be enforced in April 2004, will transfer the original jurisdiction over such litigation from the District Courts to the Family Courts. Therefore, in and after April 2004, the Family Courts will render judgments on divorce, acknowledgment of children, and all other litigious family law cases. This means that the Family Court will have comprehensive jurisdiction to deal with various family matters through the proceedings of litigation, determination and conciliation. The main aims of this reform are to make the court system more accessible by integration of the jurisdiction over conciliation and litigation and to utilize the expert officers affiliated with the Family Courts in litigation proceedings.¹²

6. Korea

In Korea, the only Family Court is in Seoul. There are several family branches of District Courts or Family Divisions within District Courts in other cities. To be more specific, the Seoul Family Court was established in 1963 as a specialized court dealing exclusively with family matters and juvenile delinquency cases. In three other major cities, family branches of District Courts deal with those cases. In the remaining parts of Korea, family divisions within District Courts function like Family Courts. The Seoul Family Court is the only specialized court that has an abundance of both human and material resources, and its procedures strongly influence other courts. The Family Court has jurisdiction over all disputes and conflicts within the family and other related affairs of legal significance, including litigious and non-litigious family cases. On the other hand, in principle, the Family Court is not allowed to handle non-family disputes because it has limited jurisdiction to deal only with family disputes. However, if it is

¹² Approximately 1,500 family court expert officers are assigned to the family courts. They are specialists in the fields of human sciences such as psychology, sociology, pedagogy, and social work. They make comprehensive investigations into the actual situation, turn in a scientific report for the judge, and coordinate human relationship for the proper disposition of family law cases. There are also medical officers, who are experts on psychiatry. The judges can utilize their diagnostic results.

required to settle a related civil dispute in conjunction with a family matter, the parties may apply for conciliation with the permission of the conciliation committee or judge in charge of conciliation. If the disputes are not settled by conciliation, the Family Court transfers the civil case to a competent court. The judges in Family Courts have the same qualifications as other judges in other courts.

7. *Philippines*

The Family Courts in the Philippines were established in 1997 under the *Republic Act 8369*. The Act states that “a Family Court shall be established in every province and city in the country. Where the city is the capital of the province, the Family Court shall be established in the municipality with the highest population”. However to date, the country is still in the transition stages of implementing the Act. In areas where there are no Family Courts, family law cases are adjudicated by the Regional Trial Court, which are courts of general jurisdiction. There are no special divisions within the ordinary courts.

8. *Singapore*

The Republic of Singapore established its Family Court on 1 March 1995 as a customised forum within its subordinate courts. Today the court resolves all family disputes for the vast majority of Singaporeans who are non-Muslim. The minority Muslim population continue with the privilege of having recourse to the Muslim Syariah Court that resolves selected family disputes between persons who married under Muslim law.¹³ Applications to the Family Court cover the entire spectrum of family disputes. During the subsistence of marriage, these are applications regarding chil-

¹³ The latest 1990 Census of Population of Singapore shows that only 15% of the resident population of some 3 million people declare themselves as ‘Muslim’. The vast majority of 85% subscribe to several different religions including Buddhism, Taoism, Christianity, Hinduism and Judaism. In legal regulation of family matters, this 85% majority is classified as ‘non-Muslim’ to distinguish them from the ‘Muslim’. In family matters the two groups are regulated largely by different sets of laws enforced by different courts, a phenomenon attributable to historical developments.

dren (including matters of guardianship, custody, care and control and access), maintenance of spouse and children (including the enforcement of maintenance orders made by other courts), adoption of children and protection from violence orders. When the spousal relationship has deteriorated, there may be petitions for judicial separation or divorce. Where the marriage may not have been valid in the first place, there are petitions for declarations of nullity of marriage. Whenever any petition is presented there may be ancillary applications relating to the living arrangements of children, maintenance after termination of marriage and the division of matrimonial assets. There are 9 judges and registrars, 9 court officers and 30 corporate support officers at the Family Court.

9. *South Africa*

In South Africa, the government instituted a pilot project of Family Court Centres integrating the services of the Divorce Court, the Maintenance Courts, the Family Violence Courts and the Children's Courts for all races at 5 sites across the country. Traditionally, in South Africa, the jurisdiction over family law cases was confined to the High Court.¹⁴ In addition, this rule applied only to the cases of whites, coloureds and Asians. Black persons wishing to dissolve their marriages were relegated to special Divorce Courts which operate at the level of regional Magistrates' Courts. In 1997, the special Divorce Courts were given jurisdiction to dissolve the marriages of persons of all races and to adjudicate ancillary matters such as custody, maintenance and division of property. In the same year, after a number of reports recommending a Family Court, a Family Court Task Team was established to implement a pilot project to create a Family Court structure. The aim of the project is to incorporate under one roof Divorce Courts, Maintenance Courts, Family Violence Courts and Children's Courts. The idea was to move from an adversarial to a therapeutic model in family

¹⁴ In South Africa, the Supreme Court of Appeal may decide appeals in any matter and is the highest court of appeal, except in constitutional matters. High Courts, consisting of provincial divisions, may hear constitutional matters other than those that may be heard only by the Constitutional Court, and any other matters not assigned especially to other courts. The jurisdiction of magistrates' courts and other courts is determined by the appropriate Act of Parliament.

dispute resolution, in which a one-stop approach with specialised staff would deliver holistic services to citizens in a non-threatening way.

10. *Thailand*

Thailand has established special courts, known as the Family and Juvenile Courts, to handle family and juvenile matters pursuant to the *Establishment of Family and Juvenile Courts and the Rules of Procedure for Family and Juvenile Cases Act* of 1991. The Family and Juvenile Courts have limited subject matter jurisdiction over family disputes and juvenile cases. Nine Family and Juvenile Courts have been established within the nine major provinces thus far. For those provinces that do not have a Family and Juvenile Court, a Family and Juvenile Department has been established within the Provincial Courts. The Family and Juvenile Department has the same personal jurisdiction as that of the Provincial Court. Regarding the courts' jurisdiction, the rule of thumb is that the Family and Juvenile Courts can hear all cases that concern family and juvenile matters within their personal jurisdiction. There is no dispersion or fragmentation of jurisdiction according to the type of litigation or when it takes place. Various family matters may be scheduled for the same day. Moreover, the courts can adjudicate both the family disputes and associated non-family matters together since the courts also have jurisdiction over non-family matters that are closely related to the family dispute case over which the courts have jurisdiction. Family and Juvenile Court judges are not necessarily specialized in this field. No special training or particular attributes are required for a judge to be appointed to the Family and Juvenile Court. However, most judges who decide to work in the Family and Juvenile Court have particular interest and experience in the field. The Act requires two ordinary judges and two lay judges who are experts on family and juvenile matters, one of which must be female. There is a strict standard for an appointment of a lay judge. For example, a lay judge must be at least 30 years old, must be trained with regard to judicial duties as well as the Family and Juvenile Courts' objectives and must either have (or had) at least one child or have at least two years of experience in a field that involves child welfare, teaching or training. If the court has determined before the hearing that the lawsuit does not involve the benefit of a minor, then one or both of the parties may ask the court not to have lay judges present in the proceeding.

1. USA

In the United States, while the first Family Court was established in the State of Ohio in the early 1900s, momentum toward statewide family court systems grew in the 1960s and has increased in the 1990s. According to a 1998 survey, by that time, 34 of the 51 jurisdictions (50 States and the District of Columbia) have created specialized courts or separate division of courts for family matters alone. The breakdown is as follows: 11 jurisdictions have instituted either a separate Family Court or a Family Division or Department of an existing trial court. 14 jurisdictions separate family law cases within a family law division of a larger court or in a separate Family Court in only some part or parts of the state. 9 jurisdictions have planned or operating Family Court projects. In the remainder of the states, family law cases are still treated as parts of a general civil trial docket. Recently, the American Bar Association hosted a “Summit on Unified Family Courts” suggesting not only the creation of separate Family Courts or Divisions, but Family Courts designed to take comprehensive jurisdiction over all types of legal matters traditionally denominated as family cases. To date, about 11 states have adopted some form of a unified Family Court, and 23 states and the District of Columbia have their first pilot program. The concept of a unified Family Court is that such courts attempt to combine most or all family matters under the jurisdiction of one court, and even under the supervision of one judge or team of judges who remain with the family throughout all of their family proceedings. A unified Family Court may hear all civil and criminal cases involving one particular family. A sample list of matters falling with the jurisdiction of a single unified Family Court could include: divorce, annulment, maintenance, custody, visitation, child support, paternity, termination of parental rights, dependency, adoption, juvenile crimes, domestic violence, conservatorship, guardianship, and criminal domestic violence. Another important feature of unified Family Courts is their close cooperation with social services regularly needed by families in conflict. These social services may be available in a family resource center located physically within the court, or by referral from court personnel to services located in the wider community.

III. THE ROLE OF JUDGES

In many jurisdictions, proceedings for family law cases show a marked tendency to be more of an inquisitorial nature even in the jurisdictions based on adversarial culture. As mentioned above, family relations are primarily based on natural ties and emotional feelings unlike with transactional or commercial relations which are based on rational and economic sense. This characteristic inevitably requires courts to handle family law disputes with great sensitivity towards the parties. Judges are sometimes expected to play a paternalistic role. When managing family law cases, they have to always give serious consideration to not only the legal and factual aspects but also the mental and emotional aspects. Judges should be given a wider discretion to implement such consideration. In addition, as family disputes are closely related to personal matters, the disposition of each party should be greatly respected. Therefore, consensus-based case management is preferable to purely adversarial proceedings. However, even though the common tendency is toward inquisitorial proceedings in most countries, differences still exist between common law countries and civil law countries depending on their fundamental legal structures.

In the common law countries of Australia, England and Wales, India, Singapore, South Africa and the United States, the role of judges in family law proceedings is basically still adversarial rather than inquisitorial in nature. The parties are responsible for the gathering and presentation of evidence. Judges presiding at a hearing remain on the side of a more detached model of adjudication. The courts have no separate power to gather evidence. However, even in the common law countries, deviation from traditional adversarial proceedings can be seen in several specific types of cases. One evident example is cases which involve the welfare of children. In England and Wales, under the *Children Act* 1989, the court must control the proceedings by setting timetables, giving directions about the assessment of the child, the appointment of experts and the filing of witness statements. They can also make orders in proceedings that neither party has specifically sought. Another example is cases where one or both parties act *pro se*. In such cases, in the United States, judges adopt a more interventionist approach in order to assist such litigants in framing the issues, setting priorities, and gathering and presenting the necessary and relevant facts.

The basic structure of civil procedure in most civil law countries is becoming more adversarial. This means that the procedure for family law

proceedings even in many civil law countries is under the control of parties in one way or another. However, it is also true that the inquisitorial nature of family law proceedings in civil law countries is stronger in comparison with those of common law countries. In Japan, for instance, the court may, on its own authority, take into consideration facts which are not produced by the parties and examine evidence which is not offered by them. In Korea, the procedure for family law disputes is basically inquisitorial. The judge conducts an *ex officio* investigation, seizes necessary evidence, and examines the parties or their legal representatives.

1. *Australia*

In Australia, the role of the judge or magistrate in proceedings in any jurisdiction still remains basically adversarial, in broad conformity with the common law tradition. However, the disadvantages of that approach in cases involving the welfare of children have been recognised, and courts have been encouraged by the legislature to adopt a more interventionist and directory approach. This is being done to an increasing extent, especially where one or more of the parties is unrepresented

2. *China*

The procedure of litigation in family law disputes is the same as for general civil cases under the 1991 *Civil Procedure Law*, and is extremely inquisitorial.¹⁵ The 1991 *Civil Procedure Law* provides that “It is the duty of the party to provide evidence in support of his allegations; if, for objective reasons, a party and his agent are unable to collect the evidence by themselves or if the People’s Court considers the evidence necessary for the trial of the case, the People’s Court shall investigate and collect it”. The main duty of the courts is to “examine and verify evidence compre-

¹⁵ The inquisitorial system of Chinese style is quite different from that in Continental countries such as Japan or Germany. Since judges are public servant of the people, they take charge of the whole cases refer before them. Their duty is to ensure the judgment correct, to this aim, they can examine evidence and interrogate witness and even collect proofs outside the court, just as lawyers do in pretrial procedure.

hensively and objectively”. It is very common for a judge to interview one or two parties in an office room.

3. *England and Wales*

The family law proceedings in England and Wales are apparently adversarial with the exception of those involving children. Under the *Children Act 1989*, the court must control their proceedings by setting timetables, giving directions about the assessment of the child, the appointment of experts and the filing of witness statements. They can also make orders in proceedings that neither party has specifically sought. However, the conduct of a case is still left to the parties and their advisers even in cases involving children. The courts have no separate powers to gather evidence. The parties are responsible for the gathering and presentation of evidence, although these powers are subject to the overall control of the court either to limit oral evidence or to dispense with it altogether in *Children Act* proceedings. In most cases, parties are legally represented and it is the lawyer who presents the case in court.

4. *India*

Courts are generally required to follow the procedure prescribed under the relevant matrimonial statutes. In addition, a civil court is required to follow the special procedure prescribed under the Civil Code. A Family Court established under the *Family Courts Act* has to follow the procedure prescribed under that Act. The *Hindu Act* and *Special Act* prescribe certain special powers and duties of the Courts while deciding family disputes involving these statutes. For example, the matrimonial statutes provide for more liberal rules on evidence in comparison with ordinary trials where there are strict rules about the admissibility of documentary evidence. The other special procedure under the *Hindu Act* and the *Special Act* includes the power of the court to consolidate related petitions, the duty of the court to dispose of the case expeditiously, the duty of the court to bring about reconciliation between parties and the power to hold *in camera* proceedings. In the case of Christians and Parsis, the respective matrimonial statutes do not provide for any special procedure, but expressly state that the Civil Code governs the proceedings. The special procedure under the Civil

Code includes the duty of the court to bring about settlement between the parties, the power of the court to secure the services of a welfare expert and to hold *in camera* proceedings. The *Family Court Act* of 1984 provides for more radical changes. The Family Court is empowered to receive any evidence which in its opinion would assist it to deal effectively with a dispute, though such evidence is not relevant or admissible in other Courts or other cases. The other special procedure under the *Family Court Act* includes the duty of the court to make efforts toward settlement, the power of the court to secure the services of a medical expert or family welfare expert and to hold *in camera* proceedings.

5. *Japan*

Under the basic structure of the general civil procedure of Japan, the parties have the primary initiative in and responsibility for producing facts and evidence and formulating the point at issue, and the court may not take into consideration facts and evidence which are not presented by the parties. However, in the litigation about family law matters, being disputes between married couples and disputes relating to the parent-child relationship, which are currently handled by the District Courts, the court may, on its authority, take into consideration facts which are not produced by the parties and examine evidence which is not offered by them, but only in order to maintain the marital status or the parent-child relationship. In such cases, the court must ask questions about the facts and the results of the examination of evidence to the parties. After the enforcement of the new *Law for Procedure in Actions relating to Personal Status*, the Family Court will be able to take into consideration facts and examine evidence not produced by the parties in order both to maintain and to dissolve the marital status or the parent-child relationship. However, even in such litigation, in practice, the principles of general civil procedure prevails, and thus, the parties (and their representatives) have the primary initiative in and responsibility for asserting facts and producing evidence. The courts are usually not very active. Such authority of the courts is and should be only a secondary one. Besides that, under the new law, a court may inquire into facts in order to make an ancillary decision including designating which parent should exercise parental powers or have custody of a child, and in relation to distribution of property. The main methods of the inquiry into

facts are conduct of a hearing by the court and investigation by Family Court expert officers.

6. Korea

The judge plays a more active role in family law disputes than in ordinary civil disputes. Basically, the procedure is inquisitorial. The judge conducts an *ex officio* investigation, seizes necessary evidence, and examines the parties or their legal representatives. The judge can order the family investigative officers¹⁶ to carry out investigative affairs. The judge may also entrust such investigative affairs as he or she deems necessary to make a proper report to an administrative agency such as the police, or an organization, or individual.

7. Singapore

The Family Court functions under the adversary system of litigation although the more divisive aspects of the adversarial system have been tempered by both the substantive family law in Singapore and the processes of the Family Court. The adversary system remains the basic underlying structure, although not in the details of how family disputes are resolved. There are judicial precedents in Singapore whereby judges have noted that there is keen public interest and concern in family disputes, especially matrimonial proceedings for divorce. Accordingly, courts try to discover the truth so that the law is upheld in every application made to court. By the same token, the Family Court can draw adverse inferences from the failure of parties appearing before it to make full and frank disclosure of their financial status. To the extent that is fair, the judges are proactive in order to discover the facts they need to make the right decision.

¹⁶ There are family investigative officers who are experts that assist judges in family court. By putting their psychological, sociologic, and pedagogical knowledge to practical use, investigative officers inquire into the educational background, career, living conditions, financial conditions, character, condition of health, and home environments of the parties involved in the case. After their investigation, they submit a report to the judge.

8. *South America*

In general, family law disputes proceedings have been very adversarial. The judge in the High Court is passive, granting only what is properly claimed. The atmosphere is cold and inhospitable. However, since the setting up of the pilot Family Court Centres, a discernible, informal, but striking change has occurred. It is reported that the presiding officer attempts to assist plaintiffs over the procedural hurdles. Rather than the strict adversarial mode of the High Court, these courts are much more inquisitorial. The presiding officers do not waive the fundamental rules of court procedure, but they are willing to allow a degree of flexibility so long as technical requirements are complied with. They pose pivotal questions to circumvent lengthy explanations. Difficult concepts are explained by the presiding officer to the parties, especially where they are unrepresented, and about half are unrepresented.

9. *Thailand*

The procedure as a whole for family and juvenile cases in Thailand is adversarial. But in a case involving a minor's benefit, the Observation and Protection Center will be in charge of the investigation and identify the facts of the case for the court. When necessary, in light of the well-being and benefit of the child, the *Establishment of Family and Juvenile Courts and the Rules of Procedure for Family and Juvenile Cases Act* allows the court to appoint a social welfare officer or a psychologist to investigate the position or condition of the family in order to assist the settlement. The Act provides further that the court may order physical or mental examination of any parties if such examination is appropriate and the parties agree. After the commencement of the action, the judge will urge the parties to negotiate and to settle the dispute. Emphasis will be placed on the child's benefit and well-being and the stability of the marriage.

10. *USA*

The litigation as to family law disputes in the United States is of adversarial not inquisitorial nature. The roles of parties and their attorneys in court is quite similar to other civil matters. Hearings are usually held in a

courtroom, without the public present, although pre-trial meetings are regularly held in judicial chambers. Judges presiding at hearings remain on the side of a more detached model of adjudication *versus* an investigative or inquisitorial model. They rely primarily on the parties and representatives to adequately present the necessary and relevant information. Judges are assisted in this task by rules of procedure which require parties to complete standard discovery forms. However, when courts operate as Unified Family Courts, it is likely that judges and their staff will tend toward a problem-solving posture. In these settings, parties are likely to receive more help in scheduling their various appearances and with accessing necessary social services. Furthermore, in cases where one or both litigants act *pro se*, judges move toward the interventionist approach in order to assist such litigants in framing the issues, setting priorities, and gathering and presenting the necessary and relevant facts.

IV. ENFORCEMENT

The mechanism for enforcement of judgments or orders related to family litigation is basically no different from that for ordinary civil litigation in many countries. The major exception to this is child support. In general, separated fathers (or mothers) fail to pay adequate maintenance for their children, although the living expenses of children arise periodically. Hence, mechanisms for enforcement of child support need to be specially designed. Many countries try to establish a mechanism which renders speedy and satisfactory methods for regular collection of child support.

For example, in Singapore, apart from traditional measure to enforce maintenance orders, several modern measures are also available. The most effective enforcement mechanism is the order for attachment of earnings, which can be activated even before there has been default. The order for attachment of earnings is actually addressed to the employer of the person ordered to pay and the employer should deduct the amount from the salary. In China, similar measures are available. If the father or mother fails to make a payment by instalment, an executive official can order the employer of the person ordered to pay to deduct the designated sum in instalments.

In some countries, administrative processes rather than traditional judicial processes are adopted as faster and effective methods for enforcement.

In Australia, for example, an administrative child support scheme was created in the late 1980s. This is a strong government-based system of enforcement and collection, and it has been coordinated with the social security system in relation to the amount of social security payments to be made to the parent who cares for the children. It has virtually removed child support issues from the court system and provides much more uniform and enforceable assessments.

In some other countries, a court order for maintenance can be enforced by using criminal procedure. In India, the execution of a decree under the Civil Code is through several modes, namely, by attachment of the property or by arrest of the person and committal to civil prison. In South Africa, failure to comply with a court maintenance order is also punishable as a criminal offence. However, a unique feature of the process of enforcement is that a magistrates' court hearing a criminal trial for failure to comply with a maintenance order may, if it appears desirable, convert the criminal proceedings into a civil maintenance enquiry.

There are several powerful and innovative tools for enforcement of child support in the United States. In 1992, Congress passed the *Federal Child Support Recovery Act*, which for the first time made it a federal crime to wilfully fail to pay child support to a person in another state. In 1996, Congress also passed the *Personal Responsibility and Work Opportunity Reconciliation Act*, which permits state agencies to enforce routine child support orders without the need to obtain an order from any other judicial or administrative tribunal. The Act also gave states new tools designed to assist them with child support enforcement, such as requiring employers to withhold support from employee pay; tracking license applications for purposes of denial or suspension for unpaid child support; intercepting workers' compensation payments, judgments, settlements and lotteries; and establishing liens against real estate and personal property for overdue support. These remedies are in addition to traditional judicial remedies such as contempt and execution.

1. *Australia*

In the late 1980s, the child support scheme was established. This provides an administrative process for assessment of the amount for each year, a strong government-based system of enforcement and collection, and the

co-ordination of that with the social security system in relation to the amount of social security payments to be made to the parent who cares for the children. This system is now well established in Australia and has worked effectively. It has virtually removed child support issues from the court system and provides much more uniform and enforceable assessments.

2. *China*

There are no distinctions between the enforcement of family cases and other civil cases. If the father or mother fails to pay according to the judgment, either by instalments or in total, an executive official may, on the request of the other party, enforce the judgment by detaining the debtor's deposit, salary or other income. In the case of payment by instalments, an executive official usually order the employer of the debtor to deduct the designated sum in instalments.

3. *England and Wales*

The court orders in family law cases are no different in comparison with any other civil cases in England and Wales. In other words, all court orders are enforceable and disobedience is punishable as a civil contempt of court in theory. However, in practice, committal orders are deemed as remedies of last resort particularly in family law cases and there is an understandable reluctance to punish offenders by committing them. The higher courts' contempt powers are wide and sanctions can include fines, sequestration and imprisonment. Magistrates' powers are restricted by the *Magistrates' Courts Act* 1981. The contempt sanction is the most serious one available for disobedience and ought only to be used when other sanctions have failed. For example, in the context of maintenance orders, enforcement can be by distress, committal and by making an attachment of earning order which directs the employer to deduct sums out of the employee's wages or salary.

4. *India*

All the matrimonial statutes specifically state that decrees and orders of a court in any proceedings shall be enforced in the same manner, as if they

were decrees or orders made in a regular civil suit. In a similar way, the *Family Courts Act* also contains a provision that the decree or order of a Family Court shall have the same force as a decree or order of a civil court and shall be enforced in the same way as prescribed by the Civil Code for the execution of decrees or orders. Thus, all the matrimonial statutes and the *Family Courts Act* have uniformly equated a decree or order passed in a matrimonial dispute with that of a decree or order passed in an ordinary civil suit and enforceable under the Civil Code. The only exception is an order for maintenance passed under the Code of Criminal Procedure. An order passed by the Family Court can also be enforced under the Code of Criminal Procedure by a Criminal Court. The execution of a decree under the Civil Code is through several modes, namely by attachment of the property in execution and sale, or by arrest of the person and committal to civil prison. In family disputes, the decree generally involves payment of maintenance to a spouse and children. In addition, there may be directions or orders pertaining to the custody of children. When the enforcement of an order or decree involves directions other than just the payment of money, the courts have the power of contempt to punish a person who has deliberately disobeyed an order passed by the court.

5. *Japan*

A determination and a judgment that become final and binding are enforceable. Though in principle District Courts have jurisdiction over compulsory enforcement, the Family Court has jurisdiction over some forms of enforcement. In cases where a person fails to perform a duty imposed by a determination, the Family Court may force the person to perform that duty, upon the motion of an entitled person. In cases where a person fails to perform a duty imposed by a determination to pay money or to deliver property, the Family Court may order the person to perform that duty, upon the motion of an entitled person. The same power applies to duties imposed as ancillary decisions in a judgment rendered by the Family Court under the new *Law for Procedure in Actions relating to Personal Status*.

6. *Korea*

In principle, the enforcement of a judgment or adjudication in family cases is the judicial task of District Courts. However, it is often difficult to

make a claim for a civil enforcement because the costs are too high compared with the amount of the periodic payments ordered by the Family Court. For this reason, the *Family Procedure Act* provides some special provisions. If a person who is liable to perform an obligation in relation to property, such as the payment of money, or delivery of an infant pursuant to a judgment or adjudication, fails to fulfil his or her obligation without justifiable reason, the judge may request the person to fulfill such obligation within a specified period. If the person violates the order, the judge may punish the person with a fine for negligence, not exceeding one million won. If a person who is ordered to make periodic payments fails to fulfill that obligation three times or more, or if a person who is ordered to deliver an infant fails to fulfill that obligation even after the sanction of a fine for negligence, the judge may punish the person by detention for up to thirty days until the obligation is fulfilled.

7. Singapore

The Family Court possesses wide power to assist the beneficiary of a court order. In disputes over property as well as ancillary applications for division of matrimonial assets, if the Family Court has ordered one spouse to transfer real property in his or her name to the other spouse, the Registrar of the court possesses the authority (where necessary) to carry out the conveyancing just as if the Registrar were the owner of the property. In this way the order is not rendered futile by the intransigence of the spouse who owns the property.

In maintenance orders, whether during the subsistence of marriage or after its termination, there has traditionally been a string of enforcement mechanisms. Besides the traditional, several more modern measures are available. The most effective enforcement mechanism is one that is activated even before there has been default, the 'attachment of earnings' order. Where the person ordered to pay is a salaried employee, it is possible for the Family Court to make such an order after having made a maintenance order. The order for attachment of earnings is actually addressed to the employer of the person ordered to pay. The employer is directed and empowered by the court order to deduct the amount from the salary of the person ordered to pay and to pay this amount into the Registry of the Fam-

ily Court. The beneficiary of the maintenance order can then go the Registry and the money is waiting there for him or her.

Another innovation of the Family Court is to use the common device of automatic deductions by banks. After making a maintenance order the court can make a further order directing the person ordered to pay to write an authorisation to his or her bank to make automatic deductions from his or her account to the account of the beneficiary.

8. *South Africa*

In South Africa, failure to comply with a court maintenance order is punishable as a criminal offence, although placing the convicted defaulter in prison of course deprives him of the capacity to earn the funds to discharge his debt. A unique feature of the process of enforcement is that a magistrates' court hearing a criminal trial for failure to comply with a maintenance order may, if it appears desirable, convert the criminal proceedings into a civil maintenance enquiry. The order is also enforceable by civil execution, against property of the judgment debtor, and by attachment of emoluments (including pensions, annuities and gratuities). The judgment creditor is the person who applies to the court for a warrant of execution. Some jurisdictions have opted for a form of administrative order which automatically entitles the judgment creditor to payment, from the coffers of the state, on production of the court order. It is then the obligation of the state to find the defaulter and make him pay or send him to prison. Success rates when the state is tracing the debtor for its own account rather than on behalf of a citizen suggest that the system is worthy of consideration.

9. *Thailand*

With regard to enforceability, the Rules of Civil Procedure apply since the *Establishment of Family and Juvenile Courts and the Rules of Procedure for Family and Juvenile Cases Act* is silent on this point. There is no special means to enforce decisions, including those relating to child maintenance, custody and visitation rights, alimony or maintenance. In general, a judicial order can be enforced immediately by the winning party. If the

winning party is unable to enforce the judgment, he may ask the court to order an executing officer to enforce the judgment on his behalf.

10. USA

Courts regularly enforce orders for payment of spousal support by means of civil and criminal contempt, assignment, garnishing, replevin, sequestration and/or attachment of property, wage execution, execution on the obligor's retirement accounts or even upon his estate after death, liens on real estate and other assets, interest on past due payments, and costs and attorneys' fees on the defendant. Failures to abide by court orders for property distribution are enforced most often by civil contempt. Enforcement of custody and visitation orders might involve an order of extra time to the non-violating party, contempt, compensation for losses and expenses, a coercive fine, and an order to pay the costs of any enforcement action. For violation of custody and visitation orders involving kidnapping, a large number of states impose criminal penalties, including incarceration. The major exception to this is child support where the federal government requires states to make increased use of child support agencies to enforce child support orders using the many additional tools.

In 1992, Congress passed the *Federal Child Support Recovery Act*, which for the first time made it a federal crime to wilfully fail to pay child support to a person in another state. In 1996, Congress also passed the *Personal Responsibility and Work Opportunity Reconciliation Act* ("PRWORA"). Under the PRWORA, state agencies are permitted to enforce routine child support orders without the need to obtain an order from any other judicial or administrative tribunal. The PRWORA also gave states new tools designed to assist them with child support enforcement, such as, requiring employers to withhold support from employee pay; tracking license applications (driving, occupational, and professional) for purposes of denial or suspension for unpaid child support; intercepting workers' compensation payments, judgements, settlements and lotteries; and establishing liens against real estate and personal property for overdue support. These remedies are in addition to traditional judicial remedies such as contempt and execution.

V. ALTERNATIVE DISPUTE RESOLUTION

In family law disputes, the intentions and wishes of the parties are important as family relationships are of the most personal and private nature. Therefore, negotiated justice and alternative conflict resolution techniques are sometimes more desirable than litigation proceedings. This is the main reason that alternative dispute resolution developed in many countries. For the same reason, amicable measures of dispute resolution, namely, conciliation or mediation, are more popular than arbitration for dealing with family law disputes. Recently, the use of statutory based conciliation is increasing in many countries. In England and Wales, for example, the *Family Law Act 1996* contains the first statutory base for the use of mediation in the resolution of family law disputes.

In some countries, there is a court-annexed conciliation system which is must be followed before litigation proceedings are commenced. In Japan, the court-annexed conciliation system for family matters was established in 1949. Family law disputes such as petitions for divorce must firstly be submitted for conciliation in the Family Court and the parties may bring a suit only when no agreement is reached through conciliation. The object of this is that settlement of family disputes should first be sought through the more private procedures, taking emotions into consideration. In Korea, there is also a court-annexed conciliation system for family law disputes. Attempts at conciliation are required before litigation proceedings are commenced. On the other hand, in Thailand, alternative dispute resolution is not mandatory, although in practice most cases reach court only when the parties are not able to settle the dispute on their own.

1. *England and Wales*

Mediation, or as it used to be called, conciliation, has been a feature of the English family justice system since the early 1970s. It was prompted in part by the new divorce laws which came into force in 1971. In the late 1970s, conciliation services both in and out of court were created and an umbrella body, the National Conciliation Council, was formed. In 1983, an in-court conciliation scheme for dealing with disputed children's cases began at the Principal Registry of the Family Division in London. By the 1980s there was a well developed interest in mediation which reflected a

change of attitude towards divorce and a shift of emphasis from the fact of its dissolution to its financial consequences and especially its effect on the children of the marriage. Further developments took place in the 1990s. Mediation was to be at the heart of the new divorce laws to have been brought in by the *Family Law Act* 1996 and that Act contains the first statutory basis of the use of mediation in the resolution of family law disputes in England and Wales. From July 2000, a nationwide scheme known as Final Dispute Resolution (“FDR”) was implemented. FDR is designed to facilitate agreements upon financial relief ancillary to divorce proceedings. An FDR hearing should be ordered in every case save where it is not appropriate in the circumstances. The judge, after a one-or two-hour hearing, will give a summary forecast of what in his opinion would be the likely outcome if the case were to proceed to trial. If, on the basis of this forecast, the parties reach agreement, an order by consent can be made at the end of the FDR hearing thereby ending the litigation. If no agreement is reached the case is set down for future trial. The judge who hears the FDR appointment cannot then be involved in the contested formal hearing. At present, the Judicial Studies Board has organized a series of seminars both about mediation and other forms of alternative dispute resolution and, since November 2001, has ensured that district judges are specifically trained about the purpose of mediation. Meanwhile under the new Law Society Family Law Protocol, issued in 2002, solicitors are required, unless it is clearly inappropriate to do so, to explain the mediation process and to advise on its benefits for clients.

2. *Japan*

In Japan, a court-annexed conciliation system for family matters was established in 1949 in order to realize the new post-war ideals in accordance with the new Constitution. Family law disputes such as petitions for divorce must firstly be submitted to conciliation in the Family Court and the parties may bring a suit only when no agreement is reached through conciliation. The object of this is to ensure that settlement of family disputes is first sought through the more private proceedings, taking emotions into consideration. However, even when a suit is filed without an attempt at conciliation, the court need not submit the case to conciliation if the court finds it inappropriate to do so. In court-annexed conciliation, a

conciliation committee, which is composed of single judge and two or more civil persons, hears parties' cases, investigates facts when it is necessary to do so, and facilitates or persuades the parties, on the basis of reason and their interpretation of the law, to reach a compromise and resolve the dispute through agreement between the parties in accordance with the actual circumstances of the dispute. Conciliators are appointed by the Supreme Court. The selection criteria of selection for conciliators include having a great deal of knowledge and experience in social life or expert knowledge and experience, and in principle, being between 40 and 70 years of age. If the conciliation committee needs to know the actual circumstances of the case or the mental state of the parties in detail, such methods as investigation by expert officers or medical officers of the Family Courts are utilized. When an agreement has been reached through compromise by the parties on a date for conciliation, the result is entered into the record. The terms entered into the conciliation record have the same effect as a final and binding determination or judgment.

3. *Korea*

There is a court-annexed conciliation system for family law disputes in Korea. Attempts at conciliation are required before proceeding to a dispute on such cases as judicial divorce, the claims for damages caused by divorce, and the division of the property. Family conciliation cases are handled by a conciliation committee that includes a chief mediator and two or more mediators. The chief mediator is a judge. The chief mediator nominates mediators to the conciliation committee from among those who are well-educated and have a good reputation. Mediators are commissioned in advance every year by the chief judge of the family court, or are appointed with agreement of parties.

4. *Singapore*

The Family Court offers free mediation of disputes. It would appear that these services are extremely effective as the Family Court website reports that, of contested divorce petitions, less than 0.5% proceed to trial. The rest are resolved harmoniously so that the Family Court need only record a consent judgment. Litigation is truly a last resort. In mediation

parties go before a neutral third party (deputy registrars of the Court or volunteers such as psychologists, family therapists and legal academics) who facilitates discussion of their problems injecting some structure to help them proceed as smoothly as possible. To allow mediation to reach even more parties, there is opportunity for night-time mediation where a party may be at work the entire day or where both parties are only free at night.

5. *Thailand*

The *Establishment of Family and Juvenile Courts and the Rules of Procedure for Family and Juvenile Cases Act* does not require any steps to be taken before the party brings an action to the court. There is no mandatory alternative dispute resolution. However, in practice, cases reach court only when the parties are not able to settle the dispute on their own. In fact, only a small percentage of all family disputes reach the Family and Juvenile Court. There are also many organizations that provide counseling services and legal aid, but it is up to the parties to seek these services if they wish. Although mediation is not required, the Act allows the court to appoint a mediator to help the parties settle. The mediator can be any person the court thinks is appropriate and capable of the task. If the court orders mediation between the parties, the case will be suspended until it concludes. During this period, the judge will not be involved in the negotiation between the parties. If in the end the parties reach an agreement, this agreement will be submitted to the court. If the agreement complies with the law, the court will issue a judicial order in the terms of such agreement.

6. *The United States*

The most popular kind of alternative dispute resolution used in family law cases in the United States is mediation. It was introduced in a significant way into family court proceedings in the 1970s. Mediation is intended to be used in connection with traditional litigation and not to replace it. Estimates regarding the percentages of contested family court issues that are resolved through mediation range from a low of 50% to a high of 85%. By 1995, there were 200 court connected mediation programs available in 38 states for family cases. Mediators are sometimes court employees. Elsewhere, courts keep lists of approved mediators who are not court employ-

ees. Mediation is most popular in the custody context. All states but 6 in the United States require parents to mediate disputes concerning custody. Other states allow custody mediation only by voluntary choice of the parties. However, almost every state presently requires parties to resort to mediation to some degree in the course of a custody dispute. In 11 states as of 1996, custody mediation must take place before the parties can proceed to adversarial litigation. Commonly excepted from mandatory mediation are cases involving family violence. Mediation is also popular in the United States in the property distribution and support contexts. Courts will sometimes require it after the lapse of a certain period of time following the filing of the divorce petition if the parties have not reached any agreement on these matters. Mediation is often explored at the beginning of a suit, at the initial status conference. It may be required that parties attend at least one mediation session following the filing of the complaint before the case may proceed further. Some other states require at least an attempt at mediation before any pretrial settlement conference. Another variation is to refuse either a pretrial or final hearing unless the parties have at least attended a seminar about alternative dispute resolution. Another possibility is to allow a final, contested hearing only on those matters about which the parties have not been able to reach agreement during mediation.

Mandatory mediation also plays a role in some jurisdictions at the time of any attempted enforcement or modification of a support, custody or visitation order. Parties may be required to attend mediation before going to court with such requests. It is also possible that the parties will be allowed to cease mediation after a minimum time period has elapsed without the parties having reached agreement. The ranks of mediators are filled with lawyers, mental health professionals and social workers for the most part. Because mediators come from different professions, several professional organizations have established minimum standards for mediators, including both the American Bar Association (ABA) and the American Academy of Family Mediators. The ABA recommends that mediators have knowledge and training regarding: family law, the impact of family conflict on all family members, child development, domestic and child abuse, the processes of mediation itself, and the ability to recognize the impact on mediation of culture and diversity. Arbitration may be used in matters concerning property division, and child and spousal support. Resort to arbitration is also sometimes specified as part of the divorce settlement itself when parties agree in writing that any future controversies will be decided by some form of arbitration.