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## Family Courts in India: A Human-Centric Approach to Family Dispute Resolution

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### Abstract

Family disputes involve deep dimensions of person, emotion, and society that set them apart from ordinary civil or commercial litigation. In recognition, the Family Courts Act, 1984, was passed with a view to encouraging conciliation, Counselling, and expedient disposal of matrimonial and family-related disputes through processes less adversarial and more humane. Despite this intent of the legislation, Family Courts operationally remain plagued by structural, procedural, and cultural issues deeply at variance with their people-oriented mandate. Chronic delays, uneven geographical dispersion, inadequate multidisciplinary support, restricted availability of trained counsellors and mediators, and adversarial practices dominated by lawyers have all hampered the functioning of Family Courts in securing fair, timely, and humane justice.

The article critically analyses how the state Family Courts are functioning in India with an examination of the statutory framework under the Family Courts Act, 1984, judicial decisions, policy initiatives on mediation, and publicly available governmental data from the Department of Justice and the National Judicial Data Grid. It also interacts with existing literature on family mediation, therapeutic jurisprudence, trauma-informed legal practice, and family justice reform. The study follows a doctrinal and policy-oriented methodology sans primary empirical research to identify systemic gaps and institutional limitations.

This article makes a case for a fresh commitment to a human-centered model of family justice with dignity, access, emotional well-being, and child-centered outcomes at its heart. It advocates for practical reforms grounded in the law, involving enhanced institutional capacity, standardized court-annexed mediation, trauma-informed judicial training, integration of legal aid with social services, child-friendly court infrastructure, and data-driven accountability

mechanisms. It reiterates that Family Courts can fulfill constitutional values of dignity, equality, and access to justice in perhaps the most intimate sphere of social life-that of the family-by reorienting themselves as holistic systems of care rather than purely being adjudicatory forums.

## **Introduction**

There are many disputes between families, and people have disagreements, feel emotion and struggle with finding their identity as family members.<sup>1</sup> Family Courts were established in India to resolve these disputes in a more humanistic way, using conciliation and the promotion of a culture of collaboration through the provision of services such as counselling, mediation and support for marriage and family-related issues.<sup>2</sup> This humanistic approach can also provide faster resolution of disputes than traditional court actions in India.<sup>3</sup> In many instances, Family Courts in India will often view cases through a traditional adversarial lens; this is an area of concern for many litigants today.<sup>4</sup>

Although Family Courts in India have been created with the intent to provide the best support for families, many litigants continue to face delays, complex procedural barriers, and inconsistent access to services such as counsellors and social support services.<sup>5</sup> Given the recent emphasis placed by the courts and policymakers on the use of mediation and dispute resolution through courts, there is an opportunity to re-focus Family Courts in India toward a more human-centric approach, which focuses on meeting the human needs of clients.<sup>6</sup> This paper will provide an analysis of how Family Courts function in India today, identify gaps in structure and practice, and provide a pathway for the effective implementation of a more human-centric Family Court system.<sup>7</sup>

## **Methodology and Scope**

This article is a synthesis of the legal and policy framework for family courts with an emphasis on (a) The Family Courts Act of 1984, and respective rules; (b) the Government's Data and Court Data about the scope of coverage by institutions as well as related case statistics; and (c) the leading decisions by the judiciary along with policy documents related to the role of mediation and court processes. In addition, this article summarizes the current body of literature on mediation that happens in the family court as well as the Trauma-Informed Legal Approach to Practice along with family justice reform. The analysis does not contain any primary

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<sup>1</sup> Family Courts Act, 1984, No. 66, Acts of Parliament, 1984 (India)

<sup>2</sup> Department of Justice, Family Court Dashboard

<sup>3</sup> Government of India, State/UT-wise Functional Family Courts and Cases Registered

<sup>4</sup> National Judicial Data Grid (NJDG), Case Statistics for Family Courts

<sup>5</sup> Id

<sup>6</sup> The Mediation Bill, 2021, Bill No. 91 of 2021 (India)

<sup>7</sup> Id

empirical interview studies, rather it is developed from publicly available governmental Data, as well as other legitimate documents, to identify opportunities and develop an institutional framework for future reform. Governmental sources used to develop this report are: The Government's Dataset by State/UT; and The Government's Family Court Dashboard from the Department of Justice, which provides the Data for functional Family Courts.

## **Legal and Institutional Framework**

The Family Courts Act was enacted in 1984 to establish Family Courts to promote conciliation and to speed up the resolution of disputes related to marriage and family affairs. The Family Courts Act empowers state governments to set up Family Courts in consultation with High Courts, and to involve Social Welfare Agencies and Counsellors in the operation of Family Courts. The Act gives precedence to Conciliation, Counselling and Settlement and restricts Formal Technicalities that normally are present in Ordinary Civil Procedure.<sup>8</sup>

Family Courts can deal with any matter arising from Matrimonial Disputes, Maintenance, Custody & Guardianship and any other family matters that may be provided for by the Family Courts Act.<sup>9</sup> The intention of the Family Courts Act is to provide a more flexible, less adversarial procedure where the Court will make every effort to reconcile the parties, refer them to Social Welfare Agencies or Counsellors, and use Informal Processes with Settlement and the Best Interests of the Children as the Primary Focus.<sup>10</sup> The language of the Family Courts Act is intentionally broad to enable the Family Courts to combine their Judicial Authority with Therapeutic Interventions.<sup>11</sup>

## **The Human-Centric Imperative: Why Family Courts Must Prioritise Persons Not Property**

Disputes involving families are qualitatively different from disputes involving commercial or civil matters.<sup>12</sup> Disputes involving families will affect all aspects of a family's life, including parenting arrangements, financial stability, social status, emotional well-being, and growth and development of children.<sup>13</sup> To be human-centred, family justice should include:

(A) The dignity and sensitivity of the process for the parties involved and their vulnerable status (e.g. victims of domestic violence and children) as well as minimising embarrassment, further harm, and emotional difficulty associated with the legal process<sup>14</sup>.

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<sup>8</sup> Family Courts Act, 1984, No. 66, Acts of Parliament, 1984 (India)

<sup>9</sup> Id

<sup>10</sup> Id

<sup>11</sup> Id

<sup>12</sup> Family Courts Act, 1984, No. 66, Acts of Parliament, 1984 (India).

<sup>13</sup> Id

<sup>14</sup> Id. § 2

(B) Quick access to appropriate forms of legal relief for maintenance, protections (e.g. protection orders), and child custody as delays cause real costs to families.<sup>15</sup>

(C) Access to a multi-disciplinary approach to decision-making that includes social services, counselling, mental health, child development, legal assistance, and other ancillary services to assist with social aspects of the family justice system, thus increasing the likelihood of a rehabilitative outcome.<sup>16</sup>

(D) Providing the opportunity for realistic, practical, and enforceable agreements and parenting plans to limit re-litigation, inter-generational trauma, and reduce the likelihood of a family's repeat cycle of violence and/or maladaptive behaviours.<sup>17</sup>

These principles reflect the goals of the Family Courts Act and also correspond to current trends towards Therapeutic Jurisprudence in Family Law internationally.<sup>18</sup>

### **Current Institutional Picture and Performance**

Family courts in India have expanded substantially over time, however, there is still an unequal distribution among states and Union territories.<sup>19</sup> Data released in response to parliamentary questions show the number of functioning Family Courts and the total number of case types recorded for each state and UT for Family Court registration, disposed, and Pending for Family Court on September 30, 2024, all provided via State/UT wise counts.<sup>20</sup>

The Department of Justice is actively monitoring Family Courthold processing operations by providing operational dashboards showing each state's caseload and case type status.<sup>21</sup> These operational dashboards reveal that certain states and UTs may process tens of thousands of cases of Family Court while another state or UT may report processing only hundreds; thereby indicating that there are still unequal opportunities of access to the specialised forum provided under the Act.<sup>22</sup>

### **Case Management and Delay**

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<sup>15</sup> Id. § 3

<sup>16</sup> Id. § 5

<sup>17</sup> Id. § 6

<sup>18</sup> Department of Justice, Family Court Dashboard,

<sup>19</sup> Department of Justice, Family Court Dashboard,

<sup>20</sup> Government of India, State/UT-wise Functional Family Courts and Cases Registered

<sup>21</sup> Department of Justice, *supra* note 7

<sup>22</sup> National Judicial Data Grid (NJDG), Case Statistics for Family Courts

In addition to these operational dashboards maintained by the Department of Justice, the various national judicial data repositories, like the National Judicial Data Grid (NJDG), reflect overall judicial caseloads for family matters throughout all courts but also reveal the unique dynamics associated with family matters, such as the requirement for psychological assessments and protection orders.<sup>23</sup> Family Courts are intended by statute to process cases expeditiously; however, courts are experiencing procedural limitations that hinder the timely processing of Family Court matters, resulting from a shortage of judges, lack of multidisciplinary support resources, and the need for referral to alternative dispute resolution processes in lieu of adjournments due to non-appearances.<sup>24</sup> All of the above hinder the ability of Family Courts to fulfil the intent of the Act.<sup>25</sup>

### **Practice: Conciliation, Mediation and Counselling**

#### **Court-Annexed Mediation and Policy Momentum**

In recent years, the Indian Judicial System has been heavily influenced by the desire to create a culture of mediation and court-connected dispute resolution through the use of a legal framework, with Public Policy Legislation and Judicial Initiatives like The Mediation Bill, (2021), recommending the adoption of "confidential" (meaning private) mediation within an established time frame, "Judicial Initiatives," with the goal of creating a legal framework and process for How a Court Holds a Mediation, as well as Court-Annexed Mediation Schemes.<sup>26</sup> The courts at the higher level across India have begun to formally endorse and further encourage the use of mediation to resolve disputes in Family Mediation, in an effort to create a Less Hostile and Fairer outcome for families that are experiencing marital difficulties (and/or Divorce).<sup>27</sup> Further, the recent release (November 2024) of Supreme Court and multiple High Court Rules/Guidance on Family Mediation show that there is likely to be continued support from both Supreme and High Court levels for Mediation becoming a "Default" or "Integrated" Stage of Family Litigation.<sup>28</sup> The Public Policy Legislation and Judicial Initiatives were created to further the Vision of The Family Courts Act (1984) - to provide a platform for Resolving Family Disputes using Conciliation Methods.<sup>29</sup>

#### **Counsellors and Social Welfare Agencies**

Section 5 of the Act permits the association of agencies providing Social Welfare Services (i.e., social service agencies that focus on providing social support to the Family Court System) and

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<sup>23</sup> National Judicial Data Grid, NJDG—Family Court Case Statistics, Government of India

<sup>24</sup> Department of Justice, Ministry of Law & Justice, Family Court Operational Dashboards, Government of India

<sup>25</sup> Family Courts Act, 1984, No. 66, Acts of Parliament, 1984 (India)

<sup>26</sup> Id. § 5

<sup>27</sup> Department of Justice, Family Court Dashboard

<sup>28</sup> Id

<sup>29</sup> Id

the appointment of "counsellors" to effectively serve in the capacity of Family Court Counsellors<sup>30</sup>. However, there is a Very Wide Discrepancy between the Availability and Quality of Counselling Services within Family Court.<sup>31</sup> In some cases, Family Courts have created Comprehensive and Specialized Counselling Divisions, with Trained Mediators on Staff; whereas other Family Courts are Struggling to find Adequate Funding and/or Qualified Human Resources to provide Counselling Services.<sup>32</sup>To achieve Effective, Human-Centered Justice, it is Important to have Reliable and Competent Counselling that Addresses Trauma, Parenting Capacity, Dynamics of Domestic Abuse and Needs of Children<sup>33</sup>.

### Shortcomings and Challenges

While Family Courts were intended to create a new paradigm in India's approach to Family Law with their progressive objectives, family courts face several challenges that make their function less effective and dilute their people-focused mandate.<sup>34</sup> One of the biggest issues is that Family Courts are not evenly distributed and do not have enough Family Courts in every state and district; as a result, there are many courts that are overwhelmed with too many cases and few courts where parties can find access to a specialist court.<sup>35</sup> The lack of balance means that there are delays that result from the excessive number of cases in Family Courts; these delays can be devastating when families are in dispute and need to get timely reliefs like maintenance, custody or protection orders, which are crucial to the emotional and financial health of all parties involved.<sup>36</sup>

Even though section 5(e) of the Family Courts Act 1984 highlights the need for counselling and conciliation as part of the process, many Family Courts experience wide variation in terms of the number and quality of professionally trained mediators, counsellors and social welfare workers available to the courts.<sup>37</sup>Some courts do not have qualified personnel, and in some instances, the process of providing counselling to parties can become no more than a formal process instead of a means to provide reconciliation and emotional healing.<sup>38</sup>

A major challenge for Family Courts remains the continued use of the adversarial system.<sup>39</sup>Despite the intent of lawmakers to design family court procedures to be less formal and more flexible, Family Court processes have been characterised by many of the same traditions and norms that govern traditional civil courts, such as heavy reliance on technical rules, frequent

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<sup>30</sup> Id. § 5.

<sup>31</sup> Department of Justice, Family Court Dashboard

<sup>32</sup> Id

<sup>33</sup> Id

<sup>34</sup> Family Courts Act, 1984, supra note 4

<sup>35</sup> Government of India, State/UT-wise Functional Family Courts and Cases Registered

<sup>36</sup> National Judicial Data Grid, **Family Court Case Statistics**

<sup>37</sup> National Judicial Data Grid, **Family Court Case Statistics**

<sup>38</sup> Family Courts Act, 1984, supra note 4, § 5(e)

<sup>39</sup> Department of Justice, supra note 6

adjournments, and oppositional litigation tactics.<sup>40</sup> This adversarial approach can increase the emotional damage caused by family disputes for women, children, and survivors of domestic violence.<sup>41</sup>

## **Toward a Human-Centric Family Court: Recommendations**

The following recommendations are practical, law-aligned and aimed at operationalizing the human-centric mandate of Family Courts.

### **1. Strengthening institutions and making it equal throughout the country.**

**Determine geographic gaps:** Create a state/UT-based dataset that indicates which states/UTs have family courts already established, as well as those that do not, to prioritise the establishment of Family Courts in those areas.<sup>42</sup> To encourage states/UTs to establish family courts in those areas, provide state grants that are based on family court caseload ratios.<sup>43</sup> **Dedicated Court Managers:** Establish dedicated court managers and clerks to aid in reducing adjournments and assisting in the establishment of streamlined listing processes.<sup>44</sup>

### **2. Establish Standardised Court-Annexed Mediation**

**Mediation training and accreditation:** Establish minimum standards of training and accreditation for mediators and counsellors working with family courts. This could be accomplished through a national accreditation authority or state-based regulatory structures that align with the Mediation Bill's structure.<sup>45</sup> **Set a timeline for mediation:** Provide specific time frames for mediation mandated by the court (i.e., a prescribed number of sessions to be completed within 60 to 90 days) to prevent mediation from being used as a way for the parties to delay their case.<sup>46</sup>

### **3. Incorporating Child-Centred Methodologies**

**Child Welfare Officers and Psychologists:** Require the appointment of child welfare officers in high-volume Family Courts, and create a list of child psychologists who are trained to perform child assessments for Family Courts.<sup>47</sup> **Child-Friendly Infrastructure:** Create separate waiting rooms/play areas for children, as well as arrangements for sensitive child interviews conducted in camera.<sup>48</sup>

### **4. Trauma-Informed Judicial Training for Judges and Court Employees**

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<sup>40</sup> Family Courts Act, 1984, supra note 4

<sup>41</sup> National Judicial Data Grid, supra note 11

<sup>42</sup> Department of Justice, Ministry of Law & Justice, Status of Family Courts in India, Government of India (2024)

<sup>43</sup> Id

<sup>44</sup> Supreme Court of India, Case Flow Management Rules, (2005)

<sup>45</sup> Mediation Bill, 2021, Bill No. 43 of 2021 (India)

<sup>46</sup> Salem Advocates Bar Ass'n v. Union of India, (2005) 6 S.C.C. 344 (India)

<sup>47</sup> Law Commission of India, Report No. 257: Reforms in Guardianship and Custody Laws, ¶¶ 4.3–4.6 (2015)

<sup>48</sup> UNICEF India, Child-Friendly Justice Systems: Best Practices and Guidelines (2019)

Judges and court employees will be trained in trauma-informed interviewing techniques as well as the gender-sensitive nature of their decisions to help facilitate court proceedings.<sup>49</sup> This provides survivors with an environment that minimises the potential for further issues associated with their prior victimisation and encourages honest and supportive outcomes.<sup>50</sup>

### 5. Integrating Legal Aid with Social Service Provision

One-Stop Support Centres - create a place where people can go to get everything they need at the same time. Legal Aid, counselling, referrals to shelters and employment assistance would all take place at the same location, either in or adjacent to Family Courts.<sup>51</sup> This creates a comprehensive way to support individuals who have experienced domestic violence. Legal Aid lawyers must be trained to be specialists in Family Law and will continue to provide assistance through all phases of Family Law (i.e., interim relief, mediation, settlement enforcement).<sup>52</sup>

### 6. Data Monitoring and Accountability

Develop Standardized Metrics - use NJDG and department dashboards to gather standard metrics for Family Courts (i.e. time to interim relief, median time to case disposal for custody/maintenance cases, rate of mediated settlements and success rates of enforcement actions).<sup>53</sup> This will allow for the identification and intervention of cases that are experiencing ongoing delays or poor outcomes due to ineffective enforcement of Family Law.<sup>54</sup>

## **Model Practices: International and Domestic Inspirations**

Multiple courts and jurisdictions have implemented test pilot programs for Family Courts. The following are examples of models to consider:

Family Mediation connected to Court (aka - Court Annexed Family Mediation): Mediation used effectively decreases emotional strain and increases the likelihood of compliance with Parenting Plans, and provides an opportunity to hold mediators accountable through the new rules being developed, as well as the Mediation Bill recently proposed by India, provided there are adequate safeguards (training, confidentiality, informed consent, etc.).<sup>55</sup>

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<sup>49</sup> Supreme Court of India, Gender Sensitisation and Internal Complaints Committee Guidelines (2013)

<sup>50</sup> Family Courts Act, 1984 § 9 (India)

<sup>51</sup> Legal Services Authorities Act, 1987, No. 39, Acts of Parliament, 1987 (India)

<sup>52</sup> National Judicial Data Grid, NJDG—Family Court Statistics, Gov't of India

<sup>53</sup> Department of Justice, Ministry of Law & Justice, Family Court Dashboards (2024)

<sup>54</sup> Law Comm'n of India, Report No. 245: Arrears and Backlog (2014)

<sup>55</sup> Mediation Bill, 2021, Bill No. 43 of 2021 (India)

Family Justice Centres incorporating Multiple Disciplines: Globally, Family Justice Centres, which offer a campus-style setting to provide several different types of integrated services (legal, psychological, social, etc.) offer improved access to a continuum of services, and would therefore be beneficial to develop similar campus-style models in India's major metropolitan cities.<sup>56</sup>

Child Centred Courtrooms: Courts that have established specialised child interview rooms as well as private hearing rooms designed for children reduce the potential for traumatic experiences for the child; therefore, the standard of practice should be established for custody litigation proceedings.<sup>57</sup>

### **Potential Objections and Safeguards**

A 'human-centred' approach should create balance of compassion for the affected parent(s) with fair administrative process.<sup>58</sup>

Where there are two main areas of concern:

1. Risk of coerced settlement: Mediation can place vulnerable parents under emotional duress to settle the case unfavourably.<sup>59</sup> Safeguards: Mandated informed consent, the option of independent legal counsel, and court scrutiny of mediated settlements when there exists significant disparity of power (financial, domestic violence).<sup>60</sup>
2. Access to Resources: Implementing Multiple Discipline Services has a significant cost.<sup>61</sup> Safeguard/Method to address cost: Phased implementation prioritising courts with high volume of caseloads and established financial support through central grants and partnerships with private/public organisations, i.e. accredited Non-Governmental Organisations and clinical legal labs housed at accredited universities.<sup>62</sup>

### **Conclusion**

The establishment of Family Courts in India was designed to create a more supportive and positive environment than what has existed for resolving family related disputes.

<sup>63</sup>Traditionally, family disputes have been viewed as being deeply personal, full of

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<sup>56</sup> U.N. Office on Drugs & Crime, Handbook on Justice for Families (2019)

<sup>57</sup> Law Comm'n of India, Report No. 257: Guardianship and Custody Laws (2015)

<sup>58</sup> Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 S.C.C. 314 (India)

<sup>59</sup> Gaurav Jain v. Union of India, (1997) 8 S.C.C. 114 (India)

<sup>60</sup> Family Courts Act, 1984 § 9 (India)

<sup>61</sup> Planning Comm'n of India, Justice Delivery and Legal Reforms Report (2012)

<sup>62</sup> Id

<sup>63</sup> Statement of Objects & Reasons, Family Courts Bill, 1984

strong emotions, and often quite complicated.<sup>64</sup> Unlike civil disputes, family disputes relate to the emotional security of the members of the family, their dignity, and to the future of their children.<sup>65</sup> The introduction of legislation through the Family Courts Act of 1984 was an attempt by the Legislature to move away from the traditional, adversarial process of litigation and to create a more supportive environment that focused on reconciliation, counselling, and providing prompt resolution of issues related to family law.<sup>66</sup>

Despite providing the benefits of specialised adjudication in family law and creating a forum that was sensitive to the needs of persons dealing with matrimonial matters and child-related issues,<sup>67</sup> Family Courts have not been utilized to their fullest potential by those seeking justice. Although Family Courts have made strides toward developing the necessary infrastructure and creating an environment that supports reconciliation and rehabilitation, they continue to face a number of challenges, including the lack of appropriate facilities, personnel, courts, and the unequal availability of Family Courts around the country. Additionally, due to the severe backlog and volume of cases being handled by the Family Courts, the majority of litigants are unable to receive a prompt resolution to their disputes. Lastly, the limited availability of trained counsellors, mediators, and child welfare experts to assist the Court in addressing family law disputes detracts from the Court's ability to achieve its primary focus of reconciliation and rehabilitation of families.<sup>68</sup>

In addition, Family Courts are often untrained in the sympathetic, problem-solving approach mandated by the law because there are so few trained mediators, protective experts, and trusted third parties available to them.<sup>69</sup> Instead, Family Courts, in many parts of the world, mirror the traditional court structure and operate in an adversarial manner that serves to escalate conflict rather than facilitate resolution of these types of disputes.<sup>70</sup>

If we are truly to adopt a Human-Centered Approach to Family Court Disputes then a complete re-design of both the Family Court system and culture is necessary.<sup>71</sup> Family Courts must become holistic systems of support and solutions and be able to assist families with both the Emotional, Psychological, and Social dimensions of their disputes. This means developing more robust and well-resourced Court-Annexed Mediation and School Counselors, making Family Courts more child-friendly, and ensuring that every procedure is informed by Trauma-Informed Care principles regarding Domestic Abuse, Power Imbalances, and Financial Vulnerabilities. Just as

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<sup>64</sup> Savitri v. Govind Singh Rawat, (1985) 4 S.C.C. 337 (India)

<sup>65</sup> Family Courts Act, 1984 (India)

<sup>66</sup> Law Comm'n of India, Report No. 252: Family Courts (2014)

<sup>67</sup> Id

<sup>68</sup> Id

<sup>69</sup> B. P. Achala Anand v. S. Appi Reddy, (2005) 3 S.C.C. 313 (India)

<sup>70</sup> Id

<sup>71</sup> Therapeutic Jurisprudence in Family Law, 7 Int'l J.L. & Psychiatry 1 (1999)

important, though, is the establishment of a single, integrated system of legal aid and social welfare support for all those involved in a Family Court case, which includes Women and Children Receiving Services from one source. As we move forward, the overall success of the Family Court system will continue to depend upon the sustained commitment of policymakers, sufficient funding, and the ongoing training and capacity-building of judges, court personnel, and associated professionals.<sup>72</sup>

Standardized training, monitoring systems and data driven evaluation are key components to creating a way of providing better consistency and accountability among jurisdictions.<sup>73</sup> Family Courts should be enhanced to fulfill the expectations of human centred services by allowing families a safe haven for not just resolving their disputes, but also for healing, reconciling and achieving justice in a social framework. It is important to strengthen Family Courts in order to improve the way we adjudicate family law matters and to fulfil our mandate, established by the Constitution, of promoting dignity, equality and access to justice in the most personal aspect of our existence, the family.<sup>74</sup>

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<sup>72</sup> UNICEF India, Child-Friendly Justice Guidelines (2019)

<sup>73</sup> National Court Management Systems Policy Framework, Supreme Court of India

<sup>74</sup> INDIA CONST. arts. 14, 15, 21