



ROLE OF FAMILY COURT IN INDIA

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ABSTRACT

Family is the foundation of Indian society, and maintaining harmony within families is crucial for social stability. The Family Courts Act, 1984, was enacted to establish family courts across India to handle family-related disputes efficiently and amicably. The role of family courts is not just to enforce laws but also to promote reconciliation, counselling, and mediation, ensuring that disputes are resolved in a less adversarial manner. Family courts have exclusive jurisdiction over various matters related to marriage, family, and child welfare. These courts function under the Family Courts Act, 1984, which empowers them to handle. Family courts have the power to summon parties, examine witnesses, appoint counsellors, and enforce judgments in family disputes. They function with less rigid procedural rules to provide an environment conducive to reconciliation and justice. By addressing family disputes with empathy, efficiency, and fairness, family courts uphold the principles of justice, equality, and social welfare in India's legal system.

Key Words: Family Court, Family, The Family Courts Act, 1984, reconciliation, counselling, mediation.

INTRODUCTION

Family is the foundation of Indian society, and maintaining harmony within families is crucial for social stability. However, conflicts within families are inevitable, and when disputes arise, they require an effective legal mechanism for resolution. The Family Courts Act, 1984, was enacted to establish family courts across India to handle family-related disputes efficiently and amicably. These courts aim to resolve marital, parental, and financial disputes while prioritizing the well-being of the individuals involved, particularly women and children. The role of family courts is not just to enforce laws but also to promote reconciliation, counselling, and mediation, ensuring that disputes are resolved in a less

adversarial manner. This article explores the structure, jurisdiction, functions, significance, and challenges of family courts in India.

OBJECTIVES OF THE STUDY

A study on the working of family courts in India aims to achieve several critical objectives. Firstly, it seeks to assess the efficiency and effectiveness of these specialized judicial bodies in handling a wide range of familial and matrimonial disputes, including issues related to marriage, divorce, guardianship, custody, and maintenance. The study aims to evaluate how well family courts facilitate timely and fair resolutions. Moreover, the study endeavors to understand the working of family courts through the provisions of the Family Courts Act of 1984. Finally, by identifying key challenges and areas for improvement, the study aims to contribute to ongoing discussions on reforms needed to enhance the efficacy of family courts in India.

RESEARCH METHODOLOGY

This study employs doctrinal research to investigate the working of family courts in India. The doctrinal aspect involves a meticulous review and analysis of legal principles, statutes, and judicial precedents governing family court proceedings, including the Family Courts Act of 1984 and relevant case laws. This follows the constitutional and legislative mandates to elucidate the procedural frameworks and interpretative nuances influencing case outcomes in matters such as marriage, divorce, guardianship, custody, and maintenance. It also contains internet resources.

ESTABLISHMENT OF FAMILY COURT

As per Section 3 of the Act of 1984, the establishment of family courts is mandated by the state government in regions with a population exceeding one million or as deemed essential by the state government in collaboration with the High Court to facilitate the resolution of disputes concerning marriage and family matters. In regions with smaller populations, the establishment of Family Courts is at the discretion of the State Government, depending on their evaluation of necessity. These courts are designed to encourage reconciliation and ensure prompt settlement of such disputes. The 14th Finance Commission recommended the establishment of 235 Family Courts between 2015 and 2020 in districts lacking such facilities. Additionally, it encouraged State Governments to utilise increased fiscal resources resulting from tax devolution (from 32% to 42%) for this purpose. As of February 2024, there are 819 operational Family Courts nationwide, aiding in the resolution of familial and matrimonial disputes.

JURISDICTION AND POWERS OF FAMILY COURT

Family courts have exclusive jurisdiction over various matters related to marriage, family, and child welfare. These courts function under the Family Courts Act, 1984, which empowers them to handle:

1. Marriage-Related Cases

- Divorce under different personal laws (Hindu Marriage Act, Muslim Personal Law, Christian Marriage Act, Special Marriage Act, etc.).

- Judicial separation, restitution of conjugal rights, annulment of marriage.

2. Maintenance and Alimony

- Granting maintenance to wives, children, and parents under Section 125 of the CrPC.

- Deciding alimony (permanent and interim) during or after divorce proceedings.

3. Child Custody and Guardianship

- Deciding custody arrangements based on the Guardians and Wards Act, 1890 and personal laws.

- Determining visitation rights for non-custodial parents.

4. Property and Inheritance Disputes

- Division of matrimonial property after divorce.

- Succession rights, particularly when family members contest wills or inheritance claims.

5. Protection from Domestic Violence

- Handling cases under the Protection of Women from Domestic Violence Act, 2005.

- Issuing protection orders and residence orders for victims.

6. Adoption and Surrogacy-Related Disputes

- Granting legal status to adoptive parents.

- Resolving disputes over child adoption and guardianship.

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CONSTITUTIONAL AND LEGISLATIVE MANDATE

In India, the operational framework of family courts is principally derived from the Constitution of India, which delineates principles and directives pertinent to the administration of justice within the family courts as under:

🏛️ **Right to Equality (Article 14):** The Constitution of India assures equality before the law and equal protection of the laws to all individuals. This mandates that family courts must treat all parties before them fairly and without discrimination based on factors such as gender, religion, caste, or socioeconomic status.

🏛️ **Right to Life and Personal Liberty (Article 21):** Article 21 ensures the right to life and personal liberty, a provision that Indian courts have interpreted expansively to encompass the right to live with dignity. This mandates that family courts must consider the best interests of the individuals involved, particularly children, in matters such as custody and guardianship.

🏛️ **Directive Principles of State Policy (Part IV):** While not enforceable by courts, the Directive Principles of State Policy provide guidelines for state action, including in matters related to family welfare, protection of children, and social justice. Family courts may take these principles into consideration while adjudicating disputes and making decisions.

🏛️ **Protection of Women and Children (Article 15(3) and Article 39(f)):**

The Constitution contains provisions aimed at protecting the rights of women and children, including affirmative action measures to promote their welfare. Family courts are tasked with upholding these protections, particularly in cases involving domestic violence, dowry harassment, etc.

🏛️ **Freedom of Religion (Articles 25-28):** The Constitution assures the freedom of religion to all individuals, which may be relevant in cases involving inter-faith marriages, conversion, or issues related to personal laws governed by religious customs.

🏛️ **Separation of Powers (Article 50):** The Constitution mandates the separation of powers between the judiciary, executive, and legislature. Family courts operate within this framework, exercising judicial authority independently of other branches of government.

The landmark cases which have significantly influenced family law in India, setting important precedents and guiding principles for family-related disputes as mentioned below:

In **Mohd. Ahmed Khan v. Shah Bano Begum case**, which precipitated the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, The principle of providing maintenance for divorced Muslim women beyond the Iddat period was established.

The **S.R. Batra v. Taruna Batra case** affirmed the wife's equal share in her husband's property, regardless of when the property was acquired, strengthening women's property rights in marriage.

In **Githa Hariharan v. Reserve Bank of India case** established the equal right of a mother to guardianship of her child, challenging traditional gender roles and recognising the importance of maternal care in child custody matters.

In **Indra Sarma v. V.K.V. Sarma**, the concept of irretrievable breakdown of marriage was recognised, this case allowed divorce on the grounds of unconciliable differences, providing relief to couples in dysfunctional marriages.

These cases have not only shaped family law jurisprudence but also contributed to societal progress by promoting gender equality, safeguarding women's rights, and fostering a more inclusive and just legal framework for family matters in India. The central aim of the Family Court is to facilitate the prompt adjudication and resolution of family cases, catering to the requirements of the involved parties in a timely fashion. Additionally, it strives to promote conciliation and mediation in disputes concerning marriage and family affairs, advocating for peaceful settlements and the preservation of familial bonds. Another pivotal goal is to protect and uphold family connections by addressing disputes in a manner that preserves the cohesion and unity of the family structure. Moreover, it endeavors to resolve family issues expeditiously, minimising prolonged legal conflicts and facilitating the swift conclusion of disputes.

APPOINTMENT OF JUDGES

Section 4 of the Act, 1984 grants authority to the state government to appoint one or more individuals as judges of the family court, with the requirement of consultation with the High Court. Judges of the Family Court must meet the following qualifications:

- Minimum seven years of experience in a judicial office, tribunal, or specialised legal position.
- Seven years of practice as an advocate in High Courts or multiple courts of succession.
- Qualifications are set by the Central government after consultation with the CJI.
- Age limit of not exceeding sixty-two years.

FUNCTIONING OF FAMILY COURTS IN INDIA

■ **Judicial powers:** these courts are considered to be civil courts and are vested with the authority of such courts.

■ According to section 7 of the act, family courts are endowed with equivalent powers and jurisdiction as district courts or subordinate civil courts in their suits and proceedings. moreover, section 7(2) empowers family courts to exercise jurisdiction similar to that of a magistrate of the first class under chapter ix of the code of criminal procedure, 1973, and any other jurisdiction conferred by law.

■ **Application of CPC:** Section 10(1) of the act of 1984 mandates the application of the provisions of the code of civil procedure, 1908, in suits or proceedings before it.

■ **Special provision under chapter 9 of CPC:** Section 10(2) specifies the application of cpc provisions, particularly those under chapter 9, to proceedings of the family court.

■ **Flexible procedure:** Section 10(3) grants it the authority to establish its own procedure, tailored to the suit or proceeding, with the aim of facilitating settlement between parties.

■ **In camera proceedings:** Section 11 allows the proceedings to be held in camera, either at the court's discretion or upon the request of the parties. this ensures privacy and confidentiality, especially in sensitive family matters.

■ **Simplified evidence recording:** Family courts operate with less formality, recording only relevant evidence. lengthy witness testimonies are avoided unless directly pertinent to the case.

■ **Admissibility of reports and documents:** Section 14 permits the admission of reports, statements, or documents of the case under the Indian Evidence, 1872

■ **Summary of Evidence:** Section 15 stipulates that it isn't mandatory to record the entirety of a witness's evidence; only relevant portions pertaining to the suit need be recorded and signed by both the judge and the witness.

■ The judgment must include a concise statement of the case, the issues for determination, the decision reached, and the reasons behind the decision.

■ An appeal against a judgment can be filed in the High Court within 30 days from the date of the judgment. These procedural aspects ensure the active functioning and facilitate the resolution of family disputes in a fair, efficient, and expedient manner.

DUTY OF FAMILY COURT

■ **Reconciliation Efforts:** Section 9 outlines duty of the court to make efforts to promote resolution of differences between the parties. This includes encouraging settlement agreements and adjourning proceedings if there exists a likelihood of settlement.

■ **Personal Appearance:** Parties are required to appear in person before the court and are not entitled to be represented by legal practitioners.

■ **Recording of Evidence:** The court records witness depositions, which are signed and form part of the official record. The court may also summon and examine persons regarding the facts contained in affidavits.

IMPORTANCE OF FAMILY COURTS IN INDIA

Family courts serve as a crucial institution in the Indian judiciary for maintaining social harmony and addressing family conflicts effectively. Their role is vital in:

1. Speedy Disposal of Cases

- The traditional judicial system is burdened with a huge backlog of cases, and family disputes often take years to resolve.

- Family courts work on a fast-track basis to ensure quicker resolutions.

2. Ensuring Justice for Women and Children

- Women and children are often the most affected in family disputes.

- Family courts protect their rights to financial support, shelter, and security.

3. Promoting Alternative Dispute Resolution

- Family courts encourage mediation and conciliation instead of long, exhausting legal battles.

- This reduces hostility between family members and ensures peaceful settlements.

4. Strengthening the Institution of Marriage

- In some cases, family courts help prevent unnecessary divorces by promoting counselling.

- Couples are encouraged to reconcile and resolve differences amicably.

CHALLENGES

Despite their importance, family courts face numerous challenges in fulfilling their objectives effectively:

1. Overburdened with Cases

- High pendency of cases leads to delays, contradicting the purpose of family courts.

2. Lack of Awareness

- Many people, especially in rural areas, are unaware of the existence and benefits of family courts.

3. Social Stigma

- Divorce, child custody battles, and maintenance cases still carry social stigma, preventing many people from seeking justice.

4. Inconsistent Implementation Across States

- Some states have well-established family courts, while others lack the required resources and facilities.

CONCLUSION AND SUGGESTIONS

Family court is a mixture of inquisitorial system, adversarial system and participatory form of grievance redressal.²³ The main purpose behind the establishment of family court is to assist

the smooth and effective functioning of the court and speedy disposal of the cases relating to family matters. This research proposal delves into the functioning of family courts in India, scrutinising their adherence to both constitutional principles and legislative mandates. Through an inclusive analysis of the constitutional framework and pertinent legislation, the study aims to shed light on the efficacy and challenges faced by these courts in dispensing justice within the realm of family law. Examining the relevant statutes such as the Family Courts Act, 1984, and subsequent amendments, this research seeks to ascertain the extent to which legislative provisions align with constitutional principles and whether they effectively address the evolving needs of families in contemporary Indian society. By identifying lacunae in the existing framework and proposing potential reforms, this research endeavors to contribute to the enhancement of family court functioning and the realisation of constitutional ideals pertaining to justice and equality.

Boosting the legal aid services will bridge the gap in access to justice, particularly for marginalised individuals such as women and children, by providing essential legal support and representation. Additionally, the widespread integration of technology within court proceedings is anticipated to streamline processes, enhance transparency, and ultimately alleviate procedural delays. Moreover, prioritising child-centric approaches in custody and guardianship matters is expected to yield positive outcomes for children, ensuring their emotional well-being and stable living arrangements. Gender-responsive justice practices hold promise in mitigating gender bias and discrimination, thereby advancing gender equality within familial disputes. Strengthening alternative dispute resolution mechanisms is hypothesised to foster amicable settlements, reducing litigation burdens and promoting family harmony. Lastly, legal reforms aimed at safeguarding vulnerable populations are anticipated to yield improved outcomes, providing marginalised litigants with enhanced safety, security, and access to vital support services. Through these hypotheses, the study seeks to shed light on avenues for enhancing the effectiveness, fairness, and inclusivity of family court proceedings in India. The functioning of family courts in India is marked by a complex interplay of systemic challenges, societal dynamics, and procedural complexities. While these courts serve as crucial institutions for resolving familial disputes and upholding the rights of individuals within family structures, they are beset by a myriad of obstacles that impede their effectiveness and hinder access to justice.

The persistent backlog of cases, procedural delays, resource constraints, and socio-cultural biases present formidable hurdles to the expeditious and equitable resolution of family disputes. These challenges not only undermine the confidence of litigants in the judicial system but also perpetuate injustices, particularly for marginalised communities and vulnerable groups. However, amidst these challenges lie opportunities for reform and innovation. Efforts to enhance judicial infrastructure, streamline procedures, promote legal awareness, and strengthen alternative dispute resolution mechanisms hold the promise of transforming the landscape of family court administration in India. By embracing a holistic approach that addresses both systemic deficiencies and socio-cultural barriers, stakeholders can strive towards a more accessible, efficient, and responsive family court system that

upholds the principles of justice, equality, and familial harmony. In the pursuit of this vision, collaboration and dialogue among policymakers, legal professionals, civil society organisations, and the broader community are indispensable. By harnessing collective expertise, resources, and commitment, it is possible to chart a path towards a future where family courts in India serve as beacons of justice, compassion, and empowerment for all individuals navigating the complexities of familial relationships.

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