



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Family Court: Need of the Hour

Rossel Aggarwal^a

^aArmy Institute of Law, Mohali, India

Received 17 September 2021; *Accepted* 07 October 2021; *Published* 11 October 2021

The Family Court is the special court established for the speedy and affordable trial of matters related to the institution of the family. Before the enactment of The Family Courts Act, 1984, family-related matters were heard by regular courts but the regular courts were already weighed down by other cases and family-related issues were not getting the required attention. The enactment of The Family Courts Act, 1984 led to the establishment of Family Courts. The main aim of The Family Courts is to provide an inexpensive, speedy, efficient method to resolve disputes while maintaining the dignity, respect, and civility of the disputant parties. The Family Courts Act, 1984 gives various guidelines about the Family Courts such as the establishment of the court, appointment of judges, jurisdiction, etc. Divorce, child custody, adoption, inheritance, maintenance are some of the disputes which come under the jurisdiction of family court. Various methods of alternate dispute settlement, other than legal remedies, are opted for the settlement of disputes such as mediation, premarital counseling, marriage counselling, etc. There are many challenges ahead of Family Courts but are also working hard to overcome these challenges.

Keywords: *court, family courts act, speedy trial.*

INTRODUCTION

Family is an important institution in Indian society and Indian Law as well. It is considered to be the very foundation of a civilized society. This institution of the family also witnesses many disputes such as divorce proceedings, alimony, child custody, inheritance, etc.

According to National Judicial Data Grid¹, in today's time, more than 4 crore civil and criminal cases are pending before the Indian courts which is the largest accumulation of pending cases in the world. The Judiciary was trying its best to ensure justice but due to a large number of pending cases, family disputes were getting ignored which led to the establishment of special courts dealing with matters related to family i.e. Family Courts. Emphasis was led on the need for the establishment of separate courts for dealing exclusively family-related disputes. Law Commission of India in its Chapter 2 of the 59th report² in 1974 also stated the need for the same.

These discussions led to the enactment of The Family Courts Act, 1984, which came into force on September 14, 1984. The first family court was established in the State of Rajasthan in 1985. The main aim of the Family Courts is to provide people with speedy and affordable justice. In India, the system for the settlement of family disputes is yet not fully developed, but gradually the system is improving. Family courts are set up in various parts of India for the fast disposal of cases. Disputes related to marriage forms the major part of disputes addressed by the family courts. Adoption, inheritance, etc are some of the other issues addressed in the family courts.

FAMILY COURTS ACT, 1984

Establishment

Section 3 of The Family Courts Act, 1984 deals with the establishment of family courts.

“Establishment of Family Courts – (1) For the purpose of exercising the jurisdiction and powers conferred on a Family Court by this Act, the State Government, after consultation with the High Court, and by notification, –

- a) shall, as soon as may be after the commencement of this Act, established for every area in the State comprising of city or town whose population exceeds one million, a Family Court;

¹ 'Welcome to NJDG - National Judicial Data Grid' (*Njdg.ecourts.gov.in*, 2021)

<<https://njdg.ecourts.gov.in/njdgnew/index.php>> accessed 07 September 2021

² Law Commission, *Hindu Marriage Act, 1955 and Special Marriage Act, 1954* (Law Com No 59, 1974)

- b) may establish Family Courts for such other areas in the State as it may deem necessary.
- (2) The State Government shall, after consultation with the High Court, specify, by notification, the local limits of the area to which the jurisdiction of a Family Court shall extend and may, at any time, increase, reduce or alter such limits.”³

According to section 3 of the Family Courts Act, 1984 the State government, after consultation from the High Court, shall establish in every state comprising of city or town whose population exceeds 1 million every area of the state with a population exceeding 1 million or the areas where the State government deem necessary. The State Government shall, after consultation with the High Court, shall extend and may, at any time, increase, reduce or alter such local limits of the area to which the jurisdiction of a Family Court extends.

Appointment

Section 4 of the Family Courts Act, 1984 deals with the appointment of judges of Family Court

“Appointment of Judges – (1) The State Government may, with the concurrence of the High Court, appoint one or more persons to be the Judge or Judges of a Family Court.

(2) When a Family Court consists of more than one Judge –

- a) each of the Judges may exercise all or any of the powers conferred on the Court by this Act or any other law for the time being in force;
- b) the State Government may, with the concurrence of the High Court, appoint any of the Judges to be the Principal Judge and any other Judge to be the Additional Principal Judge;
- c) the Principal Judge may, from time to time, make such arrangements as he may deem fit for the distribution of the business of the Court among the various Judges thereof;
- d) the Additional Principal Judge may exercise the powers of the Principal Judge in the event of any vacancy in the office of the Principal Judge or when the Principal Judge is unable to discharge his functions owing to absence, illness, or any other cause.

³ Family Courts Act 1984, s 3

- (3) A person shall not be qualified for appointment as a Judge unless he –
- a) has for at least seven years held a judicial office in India or the office of a Member of a Tribunal or any post under the Union or a State requiring special knowledge of law; or
 - b) has for at least seven years been an advocate of a High Court or of two or more such Courts in succession; or
 - c) possesses such other qualifications as the Central Government may, with the concurrence of the Chief Justice of India, prescribe.
- (4) In selecting persons for appointment as Judges –
- a) every endeavour shall be made to ensure that persons committed to the need to protect and preserve the institution of marriage and to promote the welfare of children and qualified by reason of their experience and expertise to promote the settlement of disputes by conciliation and counselling are selected; and
 - b) preference shall be given to women.
- (5) No person shall be appointed as, or hold the office of, a Judge of a Family Court after he has attained the age of sixty-two years.
- (6) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of, a Judge shall be such as the State Government may, in consultation with the High Court, prescribe.”⁴

Section 4 of the Family Courts Act, 1984 deals with the appointment of judges. It states that state government with the agreement with the High Court may appoint one or more judges as the judges of Family Court. It also states that if there is more than one judge in the Family Court then the state government with the agreement with the High Court may appoint any of the judges to be the Principal Judge and any other judge to be the Additional Principal Judge. The Principal judge shall be responsible for the distribution of business among other judges of Family Court. The Additional Principal judge may act as the Principal Judge in case of vacancy or when the Principal Judge is not able to discharge the office due to any reason.

⁴ Family Courts Act 1984, s 4

This section also talks about the qualification of judges for their appointment to the Family Court. According to section 4 of The Family Courts Act, 1984, the maximum age for a person to be appointed as the judge of Family Court is sixty-two years. The salary, other allowances, and other terms and conditions shall be prescribed by the State Government in consultation with the High Court.

Jurisdiction

Section 7 of the Family Courts Act, 1984 deals with the Jurisdiction of family courts

“Jurisdiction - (1) Subject to the other provisions of this Act, a Family Court shall –

- a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and
- b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation – The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely: –

- a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;
- b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;
- c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;
- d) a suit or proceeding for an order or injunction in circumstance arising out of a marital relationship;
- e) a suit or proceeding for a declaration as to the legitimacy of any person;

- f) a suit or proceeding for maintenance;
- g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise –

- a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and
- b) such other jurisdiction as may be conferred on it by any other enactment.”⁵

Section 7 of The Family Courts Act, 1984 tells about the matters which can be heard in the Family Court.

Family Courts in India

In India, family courts were set up, which would exclusively deal with matters related to the family. Family courts are now established in most of the districts of India. In Punjab, the family court has been established in almost every session division of the state with camp courts at sub-division.

TYPES OF CASES ADDRESSED IN FAMILY COURT

The main purpose of the establishment of Family courts was to provide a speedy and affordable trial for matters related to the family. Some of these family disputes are:

Divorce

Divorce proceedings form the major part of the disputes handled in the family courts. Heated arguments are one of the reasons for the divorce between couples. Divorce proceedings are of two kinds –

1. Divorce with the mutual consent of both parties: This type of proceeding of divorce is initiated with the consent of both parties.

⁵ Family Courts Act 1984, s 7

2. A contested divorce, this type of proceeding of divorce is initiated by one of the two parties in the dispute. The reasons for the initiation of such a proceeding can be many. Marriage obtained by fraud, concealment of facts like insanity, one of the parties indulged in adultery, domestic violence, cruelty, etc. are some of the reasons for a contested divorce.

Divorce provisions provided under different religions⁶ –

- Divorce under Hindu Laws: Section 13 – B of the Hindu Marriage Act, 1955 deals with divorce for Hindus.
- Divorce under Muslim Laws: There are two categories under Muslim Law i.e. Judicial category and the Extra-Judicial Category. In the case of Muslims, Mutual divorce fall in the category of extra-judicial matters. It is assumed that the courts should not intervene in this matter, as divorce is the act of the parties. Khula and Mubarat are the two kinds of mutual divorces under Muslim Law.
- Divorce under Christian Laws: Divorce for Christians in India is given under Section 10A of the Divorce Act, 1869.
- Divorce under Parsi Laws: Parsi divorce matters come under the ambit of the Parsi Marriage and Divorce Act, 1936. Section 32B of the Parsi Marriage and Divorce Act, 1936 deals with rules of mutual divorce. In order to get a mutual divorce from the court, some preconditions are required to be fulfilled, which are given in the Parsi Marriage and Divorce Act, 1936.

Child Custody

According to Section 7 of The Family Courts Act, 1984, the family court has jurisdiction concerning the custody of the child or minor. After the breakdown of marriage or separation of the spouse, custody of the child is decided while keeping in mind the child's welfare.

"Factors that constitute the welfare of the child:

⁶ 'Mutual Divorce Law for Different Religions in India' (*Legalserviceindia.com*)
<<https://www.legalserviceindia.com/legal/article-1330-mutual-divorce-law-for-different-religions-in-india.html>> accessed 08 September 2021

- *The ethical upbringing of the child*
- *Safe-keeping of the child*
- *Good education to be imparted*
- *The economic well-being of the guardian”⁷*

In India, child custody agreements are of three kinds:

- Physical custody
- Joint Custody
- Legal Custody⁸

Adoption

“There are many international conventions on Human Rights that expressly mention the positive duty in order to provide protection and assistance to children like Convention on Rights of Child, 1989. The concept of adoption is not applicable to other communities like Muslims, Christians, etc.” In such matters, the Guardians and Wards Act, 1890 is relied upon. Matters relating to Hindu adoption come under the ambient of the Hindu Adoption and Maintenance Act, 1956.⁹

METHODS OF DISPUTE SETTLEMENT

In family courts, it is often tried to reconcile the parties by an alternate method of dispute resolution, other than legal remedies. Some of these methods are:

- **Mediation** – Section 89 of Civil Procedure Code, 1908 deals with the resolution of disputes by Alternate Dispute Resolution which includes Mediation. The main aim of mediation is to assist disputant parties in reaching an agreement. The content of the agreement is not given by a third party rather it is determined by the parties themselves. Acting impartially, Mediators tries to open and improve dialogue. This

⁷ Vidhikarya, 'Child Custody Laws in India' (*Legalserviceindia.com*) <<https://www.legalserviceindia.com/legal/article-710-child-custody-laws-in-india.html>> accessed 09 September 2021

⁸ *Ibid*

⁹ 'Adoption Laws in India' (*Legalserviceindia.com*) <<https://www.legalserviceindia.com/legal/article-721-adoption-laws-in-india.html>> accessed 09 September 2021

method is emerging as a workable and efficient method as it is less expensive and disputes are resolved with dignity, mutual respect, and civility. The Supreme Court also recognizes Mediation as an effective method of resolution. In the case of *K. Srinivas Rao v. D.A. Deepa*¹⁰, The Supreme Court emphasized on the relevance of mediation in matrimonial disputes. Parties are often directed to explore various possibilities for resolution of the dispute, a positive approach is encouraged and escalation of such disputes is discouraged.

- **Premarital counselling** – Premarital counselling is mainly for couples considering a long-term commitment such as marriage. It can also be referred to as a type of therapy. The main goal of such counselling is to confront any possible conflict in a relationship beforehand. It also teaches new couples various methods to tackle conflicts by themselves only.
- **Marriage Counselling** – Marriage counselling is another way to settle disputes. The marriage counsellor helps the parties in many ways to bridge the communication gap between the parties and provides different ways to resolve conflicts.\

CHALLENGES FACED BY FAMILY COURTS IN INDIA

Family Courts were established to provide speedy and affordable justice, which exclusively deals with matters related to family.

- Section 2 of the Family Courts Act, 1984 has defined various terms whereas the term ‘family’ is not defined under this act, which may affect some of the matters of family court.
- Due to the continuation of a suit for a long time, counsellors tend to change which makes it difficult for the parties, especially women to convey their issues and open up to a new person.
- The complex laws create difficulty for a layman to comprehend difficult procedures. The act also rejects the presence of lawyers in the proceeding of the family court which further complicates the matters for a common person to understand due to which they

¹⁰ *K Srinivas Rao v DA Deepa* (2013) 5 SCC 226

try to seek help people present in the court and even slightest of wrong advice can make the conditions worse.

SUGGESTIONS

Some of the reasons for most of these disputes are unfulfilled basic needs, the difference of opinions, misunderstandings, etc. To avoid these issues it is necessary to develop mutual understanding. Therefore, Counselling can help in starting the dialogue between the parties, so that they can resolve their issues.

- Discussion of family disputes in front of outsiders should be avoided.
- People should be made aware of how to share their responsibilities and other measures to avoid conflict.
- Non-governmental organizations can play an important role by intervening at the time of crisis.
- Organization of family programs can be conducted to prevent family disorganization.
- Stress should be laid upon an interpersonal relationship by the counselling centers. An increase in family time should be suggested so that parties can resolve their issues through dialogue.
- Premarital counselling can help in spreading awareness & provide information on how they can settle their disputes on their own.
- A social worker can play an important role in solving family-related disputes by playing the role of mediator or a guide.

CONCLUSION

Before the enactment of The Family Courts Act, 1984, all matters related to the institution of the family were heard by the regular courts due to which it was taking a long period to provide relief to the parties as there were many other matters which also need immediate attention. In 1984, The Family Courts Act, 1984 was passed with the main objective to resolve family-related disputes at priority and provide speedy and affordable trials. These aims are yet

not fulfilled. The family courts are trying their best to provide speedy justice. Conditions are getting better gradually leading to the disposal of a large number of cases.