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Navigating The Path to Family Harmony: Insights into Family Court Procedures

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The Family Courts Act of 1984, was enacted for the formation of family courts¹. Its goal was peacemaking and prompt settlement related to family issues. Moreover, the idea behind establishing family courts was to, not look at disputes between family members as 2 rival groups fighting against each other, but as a social welfare issue that has to be dealt with. It was the 59th Law Commission Report of 1974 which suggested the formation of family courts². This Act is a result of the efforts taken by various women's organizations and NGOs along with the report of the law commission³. This particular journal article deals with the history and development of family courts and the procedures involved in it, with its major criticisms of the entire system. It also outlines the roles and functions of the family courts in India with various reforms and initiatives aimed at improving its functioning. Lastly, it cites certain case laws through which one can understand the workings of family courts, along with the family issues they deal with.

Keywords: *family courts, law commission, counselling, mediation, speedy settlement.*

¹ Family Courts Act 1984, s 3

² Law Commission, *Hindu Marriage Act, 1955 and Special Marriage Act, 1954* (Law Com 59, 1974) paras 19-21

³ National Commission for Women, *Family Courts* (2002) paras 1-4

INTRODUCTION

The Family Courts Act of 1984 provides for the provision of establishment of family courts in different States. The establishment of family courts is a result of consultation by the States with the High Courts of those particular States. Family courts are formed to deal with the issues or disputes that occur within the families. It mainly includes family matters such as child custody and visitation rights, divorce, adoption and guardianship, paternity disputes, spousal support etc. The main aim behind the formation of family courts is to provide families with a suitable, flexible and informal atmosphere for the proceedings which is again affordable at the same time. The legal proceedings within the family courts help to provide families with just and impartial treatment, enabling families to deal with their challenging legal matters in a much more effective way. The structure of family courts consists of one or more judges appointed by the respected State in consultation with the High Courts. The jurisdiction exercisable by District Courts or any other subordinate Civil Courts is also exercisable by the family courts. Other than judges it also includes the services counsellors, welfare experts, organizations, doctors etc. According to the current statistics of 2023, a total number of 775 family courts has been reported across India.

HISTORICAL BACKGROUND AND EVOLUTION OF FAMILY COURTS

It was the Committee on the Status of Women who for the first time proposed the establishment of courts which would specifically deal with 'family' issues or matters. Later this was supported by the Law Commission and in the 59th report of the Law Commission, it stressed upon the formation of the same. A step was taken to form courts whose proceedings would differ from those of civil proceedings. It was also taken into account that including judges there would be a separate staff of family courts which would include social workers, counselors, mediators etc. The aim was to provide an atmosphere for families that was inclusive of professionalism, confidentiality, resolution-focused, child-centric, sentimental neutral and most importantly suitable and informal. The Family Courts Act was then passed on 14th September 1984. This particular act contains 6 chapters with headings as Preliminary, Family Courts, Jurisdiction, Appeals and Revisions and Miscellaneous. It was decided by this Act that the family courts

would be established in every area of the state wherein the population exceeds one million inclusive of the cities and towns⁴.

ROLES AND FUNCTIONS OF FAMILY COURTS

Some of the duties or the roles that a family court performs with respect to certain matters that can be filled and decided upon include the following:

Termination of Marriage: Termination of marriage takes place through divorce proceedings. The family court ensures that the termination process is fair and equitable for both parties involved while considering the best interests of any children.

Legal Separation: This particular separation allows couples to live apart while still being legally married. The family court ensures that the separation agreement is fair and legally enforceable, providing guidelines for the couple's arrangement until they decide to reconcile or proceed with divorce.

Custodianship: It assesses factors such as the child's best interests, parental capabilities, and living arrangements to make decisions regarding custody. The family court may grant sole custody to one parent or joint custody, where both parents share responsibility for the child's upbringing.

Plea for Sustenance: In cases where one spouse seeks financial support from the other after separation or divorce, the family court handles pleas for sustenance, often referred to as spousal support or alimony.

Declaration of nuptial status and rights of any person: The family court may be involved in determining the nuptial status and rights of individuals in various situations, such as marriage validity, annulment, recognition of marriage, division of marital property, spousal rights etc.

⁴ National Commission for Women, *Family Courts (2002)* paras 1-4

Spousal Assets Matters: In cases of divorce or separation, the family court handles spousal asset matters to ensure fair and equitable distribution of marital property. This typically involves asset identification, asset valuation, asset division, enforcement etc.

Parental Rights and Responsibilities: The Family Court is responsible for handling matters related to parental rights and responsibilities concerning children. This includes deciding custody arrangements, visitation schedules, child support obligations etc.

Declaration of Restraining Orders in Case of Domestic Violence Acts: The family court is tasked with issuing restraining orders in cases involving domestic violence. This involves legally prohibiting the perpetrator from contacting or approaching the victim and may include other provisions to ensure the victim's safety.

Financial and Educational Assistance for Children: The Court may mandate medical support, educational expenses, and even college costs to ensure children receive proper care and education, considering the parent's financial abilities and the child's welfare.

FAMILY COURT PROCEEDINGS

Lodging the Complaint: A complaint or an issue is filed by the petitioner with respect to the problem he/she is facing in a family. All the case specifics or facts along with the relief it tries to seek from the court are filed by the petitioner. The relevant information and details with respect to the case are also expected to be included by the petitioner when filing a case. The case filed against a particular person, is the one who is referred to as the Respondent. Both the petitioner as well as the respondent have to be present for the initial proceedings of the court.⁵

Mediation and Counseling under Court's Supervision: One of the most important aims of the family courts is to resolve disputes between family members with the help of counselling and mediation sessions. This is mentioned under the Section 9 of the Family Courts Act of 1978. If at any point in time, the court finds that there is even the slightest possibility of resolving the

⁵ Vidhikarya, 'Family Court Procedures in India' (*Vidhikarya*, 26 September 2023)

<<https://www.vidhikarya.com/legal-blog/family-court-procedures-in-india>> accessed 17 March 2024

dispute by reaching a settlement among the parties, it can adjourn its proceedings for some time. There are counseling and mediation sessions conducted in order to provide a quick and efficient case resolution. This depends upon the nature and circumstances of the case and the parties involved.

Unresolved Mediation: Court Proceedings forge ahead: Under Section 10(3) of the Family Courts Act 1984, the court has full authority to continue with the proceedings ahead, if the mediation or counseling doesn't showcase a significant impact in resolving the disputes. Also under this Section, the court can form its own guidelines of procedure. Also, the provisions of the Code of Civil Procedure 1908 (5 of 1908) and the Code of Criminal Procedure 1973 (2 of 1974) can also be applied to the proceedings according to Section 10 (1) and (2) of the same Act⁶.

Evidence and its Validation: The evidence that is presented in the court should be formal, which is to be presented through affidavits. The provisions of the Indian Evidence Act, 1872 (1 of 1872) are applicable to all the evidence presented which in turn would be admissible in the court. The appellant and the respondent can provide any documents, findings, details, facts, particulars, etc. which are relevant to the issue in the form of evidence.

Proceedings: On-camera session: According to Section 11 of the Act, the court has full authority to conduct the proceedings in front of the camera. Even if any one of the parties wishes for the same, the proceedings can be conducted on camera. Along with it, we can see the recording of oral evidence done by the family courts. The judges need not have to record all the evidence or the entire proceedings with the examination and arguments, they can opt for recording only the parts of proceedings which they find of utmost importance. At the end, the Judge as well as the witness must sign it.⁷

Right to an Attorney: As per Section 13 of the Family Courts Act, the right to an attorney or a legal counsel is not available to any of the parties present in the family court matters. However,

⁶ Kishan Dutt Kalaskar, 'Procedures Involved In A Family Court Case' (*Legal Service India*, 24 April 2021) <<https://www.legalserviceindia.com/legal/article-5394-procedures-involved-in-a-family-court-case.html>> accessed 10 March 2024

⁷ Family Courts Act 1984, s 11

if the matter appears to be complex or if the court in the pursuit of justice finds it important, this particular section grants permission for a legal practitioner in the form of Amicus Curiae i.e. friend of the court⁸.

Input from Medical and Welfare Specialists: The court has the right to secure the services of medical professionals or the experts that the court finds fit for promoting the welfare of the parties involved in a dispute. In such cases, the preference is given to women (subject to availability). So basically, this helps to facilitate the court's process in a much more efficient manner and it also assists the family court in performing its functions more effectively as prescribed by the act.

Judgement or the Verdict by the Court: While declaring a judgment, the judges or the family court critically analyzes and considers all the legal arguments made by the parties, the evidence or proofs presented along with the laws and precedents applied. The judgements are often delivered while keeping in mind the best interests of the parties along with fairness and justice. The court provides its decision on various cases pertaining to family law and also mentions appropriate backing or reasons for such decisions as well.

COMPLICATIONS WITHIN THE FAMILY COURT SYSTEM

Although family courts in India were established with a purpose, which was to provide families with a judicial forum, that takes into account the various forces and intricacies surrounding family disputes and challenges, it has up to some extent failed in performing its functions effectively. The family courts today in India experience certain challenges and issues within its system.

One of the major hurdles within the family courts is its inability to perform its duties well, with no standard procedure established for the same. Section 10(3) of the Family Courts Act 1984, grants permission to the family courts to establish their procedure which would differ from state to state. This brings in the element of confusion among families where it becomes difficult for

⁸ Family Court Procedures in India (n 5)

families to maneuver through the system effectively. Also, certain procedures opted for by the courts are a bit lengthy, due to which it results in delays in resolving family disputes⁹.

The next obstacle that disturbs the smooth flow of the proceedings of the court is the element of transparency. Almost all the family courts in India lack the very important element of transparency in their proceedings. This is one of the major criticisms that we see of the family courts. Most of the proceedings or the hearings of the family courts are done in the private sphere. Over here, the public is not allowed to be a part of the same. It leads to excessive secrecy which hinders the confidence among people regarding the judicial process or system. Further, the family courts contain a very small amount or limited media coverage which raises the question of transparency and accountability.

Another issue with respect to family courts is the unavailability of adequate infrastructure in family courts. Most of the family courts in India lack proper infrastructure in terms of resources, auxiliary staff, number of courtrooms, adjudicators or judges etc. This becomes a major hurdle in the smooth functioning of the family courts. Also, this will affect the efficiency and efficacy of the court with which it works.

Section 13 of the Family Courts Act 1984 talks about the right to legal representation which is again a very controversial question, whether the advocates should represent their clients in family courts only during complex cases or they should be a part of each of the cases reported in the family courts? Certain aspects of family courts such as examination and cross examination are very difficult to conduct without a proper legal representative. Similarly in complex cases where technical problems are involved such as jurisdiction, injunction etc., it becomes very important to have an advocate by your side¹⁰.

⁹ Pridhi Chopra, 'Jurisdiction and Procedure of Family Court' (*Law Times Journal*, 25 September 2021) <<https://lawtimesjournal.in/jurisdiction-and-procedure-of-family-court/>> accessed 10 March 2024

¹⁰ National Commission for Women, *Family Courts* (2002) para 5

CASE LAWS RELATED TO FAMILY COURTS

The following are the types of cases or matters that are dealt with in family courts:

Rajnesh v Neha, 2020:¹¹ In this particular case, the appellant-husband was directed to make the payment of the arrears towards interim maintenance to the wife. It was noted that only some parts of the arrears were paid by the husband and the court directed him to pay the balance amount. If the husband fails to do the same, the contempt of court order would be passed by the court was the judgment given by the family court in Bombay.

K. Srinivas Rao v D.A. Deepa, 2013:¹² This case revolves around the husband who filed a counter-divorce claim after his wife filed a complaint in the family court of Secunderabad for the restitution of conjugal rights. The judges dismissed the plea for restitution of conjugal rights while allowing the counter-divorce claim. Later, the respondent-wife challenged the family court's decision in the High Court and the High Court allowed and granted permission for the restitution of conjugal rights. The appellant-husband against the said judgement, fills the present appeal.

N.C.V. Aishwarya v A.S. Saravana Karthik Sha, 2022:¹³ The appellant-wife's appeal for the transfer of the case from Vellore to Chennai was allowed by the court, considering her circumstances of age, lack of support, financial dependency, and the convenience of legal proceedings. The decision ensures fair access to justice, efficiency and practicality in legal proceedings in family courts, ultimately serving the interests of all the parties involved.

Smriti Madan Kansagra v Perry Kansagra, 2020:¹⁴ The case revolves around custody and guardianship issues concerning a child. The court considered the child's best interests paramount and addressed concerns through directives regarding passport handling, visitation arrangements, and academic records, also demonstrated a commitment to prioritizing the

¹¹ *Rajnesh v Neha* AIR 2021 SC 569

¹² *D.Velusamy v D.Patchaiammal* AIR 2011 SC 479

¹³ *N.C.V. Aishwarya v A.S. Saravana Karthik Sha* (2022) LiveLaw (SC) 627

¹⁴ *Smriti Madan Kansagra v Perry Kansagra* AIR 2020 SC 875

child's wellbeing. The case underscores the importance of safeguarding the welfare and interests of the child amidst parental disputes.

CONCLUSION

Overall, the conclusion of the Family Courts Act highlights the importance of addressing family matters with delicacy, empathy, understanding and mastery to uphold the principles of familial bonds and relationships by promoting the welfare and harmony of families. It not only includes legal proceedings but also involves various other dispute resolution methods such as mediation and counseling. It looks into the welfare of both parties along with a child-centric approach. The main aim of family courts is to deal with especially family issues in a very effective and sensitive manner. For the same, it keeps bringing various reforms in its procedures and helps to promote the harmony of families.