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**TRANSFORMING FAMILY JUSTICE IN INDIA: THE ENDURING
IMPACT OF THE FAMILY COURTS ACT 1984**- Shahnaz Mondal¹**Abstract**

It is nodenying that family disputes arethe most common issue in India. With the multi-layers of points, it is impossible for a single forum or method to resolve them peacefully. However, to cater for the problems, numerous courts were constituted. In this regard, The Family Courts Act1984 included family courts to promote speedy settlement of disputes in matrimonial matters. Family courts can adopt settlement procedures through regulations created in consultation with the High Courts to streamline proceedings. If one does not obey the law, chaos will occur, and misuse of rules will become a norm. They have said that arbitration and conciliation processes might be helpful in this regard. Its success relies on a range of all-encompassing services, including counselling, conciliation, the judicial system, and how these supportive services are run. Hence, this paper attempts to amplify the significance of Family courts in India and their judgments and further impart some suggestions for improving the situation in all possible ways.

Keywords: *Matrimonial Disputes, High Courts, Conciliation, Social welfare agencies, Family Courts, Principal Judge*

1. Introduction

The Family Courts Act of 1984 was introduced to establish Family Courts, which will be regarded as Special Court and deal with sensitive matters. It is a fact that Family disputes are not easy to handle; instead, it is a very time taking and lengthy process. Fortunately, the provisions under the Family Courts Act of 1984 have created room for conciliation, and several other Acts have contributed to rendering similar results. There is a need to revisit and evaluate provisions and landmark judgments to measure the

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significance of Family Courts. The term "Family Justice" underlines the focus of the Act, which addresses family-related issues such as divorce, child custody, alimony, and property partition while considering the best interests of all parties involved. The statute emphasises fostering equitable and just outcomes while protecting family ties.

In a nutshell, the Significance of the Family Courts Act 1984 highlights the significance and applicability of this legislation in establishing the family justice system. It highlights how the act has been essential in changing how family law has traditionally been handled by the courts, taking into account the special dynamics and complexities present in family relationships.

2. Brief History of Family Courts in India

The Law Commission stated in its 59th report from 1974 that to handle family law disputes, the court should adopt an approach of significant steps by excluding from the currently in place ordinary civil proceedings and that these courts should make reasonable efforts at settlement before the trial. The Commission for Women emphasised the requirement that an exclusive forum be set up immediately for resolving family-related disputes.²

3. Facets of Family Courts Act,1984

By doing away with strict process norms, knowledgeable individuals such as judges, social workers and representatives from other welfare organisations should hear and settle all family-related disputes. The Code of Civil Procedure underwent several revisions to provide a particular method for lawsuits or actions connected to family-related issues. Even though the courts still handle family conflicts in the same way as other civil issues, the challenges remain the same, as previously mentioned. It was therefore seen to be in the public interest to establish family courts for quick resolution of family issues.

The Family Courts Act of 1984 was enforced to encourage conciliation and confers expeditious settlement of disputes relating to marriage and other family matters.

The term conciliation means an action or process for ending an argument. Conciliation is an informal procedure distinct from typical court proceedings where an independent third party assists conflicting

²<https://ncwapps.nic.in/pdfreports/Working%20of%20Family%20courts%20in%20India.pdf>.

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parties in coming to a resolution. It is a process by which the parties, with the help of a neutral party or parties, identify the issue at hand, form opinions, consider potential resolutions, and negotiate a solution that meets their requirements and expectations.

According to Cambridge Dictionary, “Family court is a court of law that deals with cases involving family law, such as divorce and arrangement for looking after children after divorce”.

This Act contained VI chapter and 23 sections and extended to India. Its enforcement date is on such date as central govt by notification in the Official Gazette.

According to section 2(a) of the family courts Act, 1984, the term judge includes principal judge, additional principal judge or other judges appointed in a family court. The family court has been defined superficially under section 2 (d) of the Act and held that family court means family courts established under section 3.

As per Collins's definition, “Family Court is a court that hears cases involving families and children.”

Section 3 of the Act 1984 deals with establishing family courts. After consultation with the High Court, the State governments shall ingrain a family court in every area where the population exceeds one million.

The state government may establish other family courts if required. As recorded in December 2022, 743 Family Courts are functional nationwide.

According to Section 4 of the Act, the state government may select one or more people to serve as judges or judges of a family court with the approval of the High Court.

The State Government, after consultation with respective High Courts, appointed any of the judges in a family court as principal judges and other judges to be regarded as principal judges. Moreover, the principal judge shall distribute the workload to other judges when required. It also mentioned that an additional judge may exercise the powers of the chief judge if the chief judge could not serve his functions on account of illness or any other reason whatsoever.

Sub-section 3 of Section 4 of the Act emphasised the qualification for appointment of a judge under a family court; these are as follows.

i) He should have at least seven years of experience holding an office as a judicial officer in India or the office as a member of a tribunal or having special knowledge of the law while serving any part under the union or state governments. or

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- ii) He has an experience of at least seven years as an advocate of a high court or of two or more such courts in succession.
- iii) He has been enlisted with specific qualifications as prescribed by the Central government in consultation with the conformity of the chief justice of India.

Sub-section 4 of Section 4 has laid down some critical criteria for selecting a judge under a family court in a manner that the person who will be chosen should firmly commit to the institution of marriage. They should believe in the promotion of the welfare of children and should have the expertise to settle any dispute by applying conciliation methods. Here preference shall be given to a woman.

However, a judge cannot be assigned to a family court if he turns 62. They are paid a salary or honorarium and other benefits by the guidelines established by the national government and the relevant High Courts.

Section 5 entails that the State Government, in conformity with the High Court, associate other social welfare agencies or organisations to exercise the matter under family court effectively.

By Section 7 of the Family Courts Act of 1984, a family court may exercise all the authority granted to a district court or other subordinate courts under applicable legislation in any actions or procedures.

- i) Nullity of marriage or judicial separation or restitution of conjugal rights
- ii) A proceeding related to the declaration of the validity of a marriage or relating to the matrimonial status of persons.
- iii) A proceeding between the parties to a marriage concerning a property.
- iv) Suit or injunction arising out of a marital relationship
- v) Legitimacy of persons
- vi) suit or proceedings related to maintenance
- vii) Matter of guardianship of any minor

The Family Court shall also be granted the authority to exercise the jurisdiction given to first-class magistrates under Chapter IX of the Code of Criminal Procedure, 1973, as well as any additional authority that may be conferred upon it by other statutes.

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Section 8 of the Act also specified that no other District court or subordinate civil court under sub-section (1) of section 7 shall accept any of the subjects mentioned there in any location where a Family Court has been established. Once it is installed and if it has been brought before any other courts, the family court will take up the case.

According to Section 9 of the Act, every Family Court must arrive at an adjustment of the dispute and place an adjournment whenever necessary. However, the rules and regulations shall conform to the High Court.

Interestingly, a Family Court shall be supposed to be a civil court and have all such powers or provisions as mentioned under the Code of civil procedure, 1908.

As per section 11 of the Act of 1984, if the Family Court inclines or either of the parties agreed to it, the proceedings may be held on camera. Even a family court can provide medical assistance for the party's welfare if required.

Section 13 of the Act discarded the right to get a party's legal representation; however, for the sake of justice, it can appoint amicus curiae to assist them in a court proceeding.

According to Section 14, a family court may accept records and information as evidence to aid in resolving disputes, whether or not they are identical, pertinent, or admissible under the Indian Evidence Act of 1872. The court may record oral testimony if the witnesses properly sign the transcripts.

Section 17 of the F.C. Act contemplates that judgment of a family court shall be succinct, complete, coherent, and based on reasons. Once a decree or order is passed under Chapter IX of the Code of Criminal Procedure 1973, The Code of Civil Procedure, 1908 will govern how the execution process is handled. Such a decree may be carried out by the Family Court that issued it, another Family Court, or a regular civil court if necessary.

Chapter V of the Act of 1984 has brought appeal provisions. An appeal shall lie against any order or judgment except interlocutory orders passed by family courts to the High Court on facts and law. However, no appeal shall lie from a decree or order passed by the family court without the consent of the parties, as mentioned in chapter IX of CrPC, 1973, except where a matter is pending before the High Court before the enactment of the family (Amendment) Courts Act, 1991. The limitation period for placing an appeal is 30 days from the date of the family court order's judgment for sustaining the Act's objectivity. An appeal referred for hearing shall be heard by a Bench constituted by two or more judges. Further, the High Court, Central Government and state governments have the power to make

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rules relating to family disputes settlement from time to time. However, these above-menstruates mentioned aboveneed to be consistent intent with each other.

4. Need for Conciliation in Family disputes

i) To save matrimonial disputes: Amicable settlement of disputes is the need of the hour to incorporate in matrimonial disputes. It is well-known that marriage is a sacrament bonding of two souls. Hence, using the methods of conciliation, the chances of Divorce and breakdown of marriage can be minimized.

ii) Protection of the life of children: Divorce or breakdown of marriage can have tremendous effects but the impact on children is worsening nowadays. Due to this family turmoil, they become a victim of circumstances. If the matrimonial issues are settled peacefully, they will receive a room of comfortless and their mental health will also be protected.³

iii) Protection of parties' dignity and reputation: It is often seen to prove their points that parties have come up with intolerable allegations against each other. This is not hampering the images of parties; they have also been humiliated in the workplace and front of acquaintances. If the process of peace keeping methods is invoked, then at least the party's dignity and reputation dignity be preserved.

iv) Restoration of social institutions: The institution of marriage is one of the oldest form the society possesses. Even many ancient scriptures recognised the significance of marriage. The ideology or liberalization of living outside the marriage violates social norms and even pressures law enforcement agencies and the Judiciary. Due to lack of attention, miscommunication should not be considered a path of connecting the remedy like divorce. Hence, it is of utmost need to restore the social institution by filtering out the potential cases relating to matrimonial disputes through conciliation.

v) Stabilization of society: Preservation of societal bonding, protection and nourishment of children, and procurement of individual dignities is the need of the hour to promote negotiating methods in family disputes which will eventually formulate the way of bringing social stability.

³ Nandini Gore, Alternative Dispute Resolution As A Solution For Family Disputes, India (February 2023), <https://www.mondaq.com/india/arbitration--dispute-resolution/1199420/alternative-dispute-resolution-as-a-solution-for-family-disputes>.

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vi) Bring economic prosperity: It is true that court proceedings are not only a time taking process but also come with financial burdens. Playing effective methods and less complicated processes through alternate dispute resolutions is much cheaper.

vii) Prevention of crime: Family disputes often lead to psychological dilemmas, physical torture, societal humiliation and finally ended up with crimes. One cannot ensure that every family dispute will be resolved or mitigated through ADR. However, it informs the parties about their standpoints and brings valuable outputs.

viii) Reduction of the burden from the Judiciary: Since the inception of Alternate dispute resolution, Lok Adalats, the queue of litigations was reduced in a significant manner. Creating specialised courts or inculcating alternate methods has allowed the Indian Judiciary to look after other significant cases.⁴

5. Amicable and expeditious remedies of Family disputes in other Statutes

- **Constitution of India, 1950:** The objective of the Indian Constitution was secure justice, equality, and freedom for all citizens. Article 21 of the Indian Constitution touched numerous dimensions by stretching its potentiality and people's needs. Therefore, the right to privacy and speedy trial were added. These two rights are surely relevant in family disputes.
- **Hindu Marriage Act, 1955:** Section 13B of the said Act laid down the provisions relating to Divorce by Mutual Consent. Even if the parties agree mutually, the court attempts to bring them together and restore the institution of Marriage.⁵

In *Smruti Pahariya vs Sanjay Pahariya*,⁶ the Hon'ble Apex Court held that the Family Courts Act adopted a comprehensive approach to settling disputes by incorporating a fair process. In the present case, Family Court showed a hasty attitude; mere absence of two or three days cannot consider a husband reluctant and order an ex parte decree for a wife.

⁴ Government of India Ministry of Law & Justice, Speedy Disposal of the Cases (25-March-2022), <https://pib.gov.in/newsite/PrintRelease.aspx?relid=233889> (last visited Feb 17, 2023).

⁵ Dr. S. R. Myneni, *Alternate dispute resolution (The Arbitration and Conciliation Act 1966)*, 2017.

⁶(2009) 13 SCC 388,

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- **Special Marriage Act,1954:** According to subsection 2 of Section 34 of this Act has given strength to the reconciliation process between parties. It also allows the Courts to prefer every possible attempt at an amicable settlement of parties.
- **Code of Civil Procedure,1908:** Section 89 of the Code incorporated a way to settle disputes by applying informal judicial mechanisms in the name of Arbitration, Conciliation, and mediation.
- **Arbitration and Conciliation Act,1996:** The Alternative Dispute Resolution process was introduced in 1996 to minimise the burden of the judiciary and impart social justice. Part III of the Arbitration and conciliation act deals with the conciliation process. The conciliator is an independent entity for settling a dispute. He shall be guided with a judicious and fair attitude. He shall conduct the process for speedy settlement of any matrimonial issues even if the concerned parties can place their suggestions in front of a conciliator. It also ensures the room of confidentiality.⁷

6. Magnitude of the Problem Relating to Family Courts

The Family Courts Act came into the picture in 1984, and since then, several amendments have been made to move at par with the changing needs of the people. However, there is an error in the mechanisms, or even full of absurdity. It has yet to mention any practical guidelines on resolving the issues that come its way for adjudication. Sometimes, the Court needs to show a better attitude in the matters. Moreover, they similarly treated all problems. Nowadays, the causes of family breakdown have included many predictable and unpredictable attributes; it is of utmost importance to look out each case meticulously.

7. Judicial Interpretation and Family Courts

⁷ R. K. AGARWALA, HINDU LAW, 23rd Edition 2011

In Sachindra Kumar Samal v. Madhusmita Samal @ Swain & Anr,⁸The Orissa High Court emphasised that the Family Court possesses the inherent potential to restore Section 125 under the Code of Criminal Procedure.

In V. Kamala vs State of Tamil Nadu and others⁹ Kerala High Court,they held that the family courts have all the right to find the truth even if the parties have not placed any plea for relief.

In K. Srinivas vs D.A. Deepa¹⁰ - The Supreme Court held that “Mediation” is a valuable method of alternative dispute resolution in matrimonial cases. It helps to prevent criminal cases filed by parties and resort to all possibilities of amicable settlements.

The way forward: Divorce cases and family disputes are alarming.The matters relating to family disputes are so sensitive that they cannot be treated rigidly.Family Courts were established to give special attention to and solve matrimonial cases. But unfortunately, despite its appearance, the actual purpose could not even serve with due diligence.

The conciliation process is incorporated positively; the problem lies in the existing mechanisms. The current laws and the Indian Judiciary also favour and work towards the welfare of the individual. In this context, family plays a significant role in a society where people relate to each other by blood or marriage. If the relationship among the members is not protected, other social problems will arise. Hence, not only the judges or welfare agencies but proper psychological counselling should be ensured for the parties under Family courts.

Some disputes can be solved even by several attempts, but such processes should not compromise one dignity or reputation or even valuable life. It is a typical quote where Justice delayed means justice Denied, but such justice should come with a colour of fairness and equity. Hence, an intelligent classification shall be made to filter out the potential couples and families to get out of the dilemma, appointments of professional counsellors, family cooperation among parties and robust mechanisms need to be added for securing effective justice and bringing stability in the society.

⁸ Read all Latest Updates on and about Family Courts, (17th February 2023), <https://www.livelaw.in/tags/family-courts>.

⁹ Login For DocumentLink <https://www.sconline.com/>.

¹⁰(2013) 5 SCC 226,SCC Online,