



CHALLENGES IN THE FAMILY COURT SYSTEM

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Abstract

Through the use of this article, the researcher makes an attempt to evaluate the multiple obstacles that are encountered by the family courts in India. These issues are a result of the discord that exists between the expectations that people have for the legal institution and their hopes of achieving long-term objectives. The expectations of the people might be interpreted as their presumption about the role of the judicial organisation and the tasks that it is expected to carry out in a certain manner, which, according to them, is what is considered to be appropriate in the society. This is the case for the purpose of the subject matter. On a contrary note, their ambitions are their wants to accomplish the array of goals that make an egalitarian society, like gender justice, child rights, equality, civil freedoms, etc. As a consequence of this, it is possible to deduce that there is a mismatch between the short-term and long-term objectives of the country, which is the cause of the many conflicts that are now being faced by our system of justice delivery. In the course of the study, the researcher, in addition to discussing the issues that are common in the current social milieu, also makes an effort to provide some potential answers that may be of assistance in bringing harmony to the existing discordance that exists inside our mentality.

Keywords-: Family, Courts, India, Challenges, System.

INTRODUCTION

It is believed that India's legal system and practices predate all others. Its laws and case law have evolved into a living tradition that has changed and grown with the diverse population that has lived within it over many decades. It is hardly surprise that India has a big married population, since the country has the world's second-largest population. The majority of marital problems are being addressed through the judicial system, which is a worrying trend given the rising number of married individuals. problems within marriages can arise from a variety of sources.

Family courts are there to mediate disputes over divorce and child custody and other issues directly related to families. The family court is primarily responsible for resolving legal issues that may emerge inside families. The family court system plays a crucial role in



providing remedy to plaintiffs who face interminable and drawn-out delays in obtaining justice. The reason behind this is that family courts are tasked with minimising the number of cases that end up in an already overburdened court system. Family courts were originally founded with the goal of swiftly settling conflicts via the use of simple processes, as stated in section 3 of the Family Courts Act of 1984.

Lata Pimple v. Union of India[1] mandated that all states establish family courts of first instance in cities with a million or more residents. The state government was made to comply with this mandate. The development of this clear and reasonable differentiation was driven by the need to guarantee the accomplishment of the aims and purposes outlined in the Act. In addition, it was determined: "It was noticed that the petitions under the Hindu Marriage Act could not be disposed of within a reasonable time and some matters remained pending for years together." It was a reference to the reality that many marital disagreements occur in cities with a population of one million or more. It was with this specific aim in mind that family courts were established in urban areas with populations over one million. Clear and intelligible distinctions have been drawn in each category, and these distinctions are reasonably related to the aims of the Act. The establishment of family courts was also predicated on population in order to achieve these aims. There is no way to contest the provision on the grounds that it is discriminatory or violates Article 14 of the Constitution.

The Indian Judiciary's always open doorway is understandable given the sheer volume of pending cases. The number of petitions filed with the highest court in the land has been steadily rising. Some cases, like those involving property or families, have persisted for decades and include a broad range of subjects. In such a situation, the cases are transferred to other courts that have been set up specifically to settle them. This helps to resolve the issues quickly and also allows the specialist court professionals to handle them more efficiently. So, you must think about the adage "justice delayed is justice denied."

Another thing to keep in mind is that the institution of marriage has lately been under a lot of legal examination. When it comes to marriage and all its components, there are a plethora of court requirements. Despite the potential future benefits of these legal measures, the effect is a breach of this institution's privacy. Another example of a law that has been misused is Section 498A of the Indian Penal Code. Other examples are the Protection of Women from



Domestic Violence Act, Section 125 of the Code of Criminal Procedure, and laws regarding child custody.

Sometimes, problems like alimony become the source of heated debate and even harassment inside the family. Another growing problem is the tendency for personal matters to be entangled with legal matters, which in turn causes these cases to drag on needlessly. The younger generation, which is being unfairly blamed for the current state of affairs, is squandering its productive years in the lengthy lines that form outside the family, criminal, and magistrate courts as they wait for justice. This is a result of the Liberals' and Conservatives' subsequent cultural battle.

The idea behind these courts is to provide a friendly environment where family disputes may be resolved amicably. The cases are being handled in a way that deviates from the hallmarks of a formalised justice system. Conciliators are experts chosen by the Tribunal to mediate disputes. Any aggrieved party may seek redress by submitting an appeal to the High Court once a final ruling has been made. Two judges will sit on the panel that will hear the appeal. The most notable aspect of these proceedings is that they are focused towards conciliation for the first time ever in the Family Court processes. After all attempts at resolution through mediation have failed, the case will be placed before the court for trial. A party cannot be represented by an attorney without the express permission of the court, as stated in the legislation; nonetheless, it is usually the judge who gives this consent.

FAMILY LAW: THE GENERAL PARLANCE

As a consequence of imperialism, English law was brought to India, but there is little evidence that these rules reflect the social changes that have occurred. The lack of systematic development in family laws in post-colonial India is due, in part, to a number of political concerns. Indian law is still stuck in the past, even if judicial attitudes have changed a lot.⁴ Also, the courts have the inevitable paternalistic trait, and laws are enacted over the rights of children, mothers, and other historically excluded people. In order to meet its governmental obligations, the sovereign nation of India has long relied on the idea of religion personal laws, which it inherited from its colonial past.⁵ In some cases, lawmakers have changed these personal laws, and in others, they have overturned court rulings that were accepted as violating these laws' sanctity.⁶ It is important to consider whether religious personal



standards are necessary in the context of modern Indian society, which has seen considerable changes, rather than assuming that they are inevitable.

A traditional liberal view holds that concepts of equality and fairness, which are linked to the "public sphere," do not apply to the structuring of private familial ties. Susan Moller Okin brilliantly answers this question by arguing that, in interpersonal interactions, seeking justice is not the pinnacle of virtue but rather one of many significant goals. However, it is an essential ideal that must be upheld in all cases; hence, fair family law is the foundational necessity for equitable conflict resolution. Justice is not a universally accepted definition, hence various people will ascribe different meanings to it when used to family law. Instead of supposing that particular religious or minority identities will supersede principles of justice, these variations will adapt to different contexts.

ISSUES IN FUNCTIONING OF FAMILY COURTS

For the most part, the Family Courts are here to help get family law matters resolved quickly and easily. Regardless, the functioning of these courts is not without its share of concerns, which, as with any system, can lead to debate. Among these numerous issues is the need for consistency. For example, in Tamil Nadu's family courts, counsellors are often switched as often as every three months. Consequently, if the circumstances persist for an extended length of time, the affected individual will have to adapt to new counsellors and recount their story more than once.

A major shortcoming of the law is that the Family Court Act does not explicitly authorise judges to issue injunctions to prevent domestic violence. There are still unanswered concerns about jurisdiction, despite advancements like the 2005 enactment of the Protection of Women from Domestic Abuse Act, which establishes procedures for prosecuting female perpetrators of abuse. The Family Courts Act must be understood in its whole, which necessitates that it be interpreted in accordance with the rules contained in other statutes, such the Code of Civil Procedure, pertaining to matters of jurisdiction.

Despite having the power to make restrictive rulings and not having the ability to address matters involving hatred, it seems that the Family Court is not taken as seriously as a magistrate or a civil court in the city. In addition, the Family Courts Act specified that female judges must constitute the majority. That specific clause, however, was disregarded. During a workshop organised by the National Commission for Women in March 2002, it was noted



that only about 18 out of 84 judges from the Indian Family Courts had gender. These courts were once part of the larger system.

The power to establish rules that specify additional requirements lies with the government. In addition, other from determining the necessary qualifications for Family Court Judges, the Central Government is not involved in the implementation of this Act. Numerous procedural norms have been set down by several High Courts. One possible explanation for the preponderance of family disputes in civil courts is the absence of consistency. The lack of uniformity in the civil courts is the reason behind this. Collaboration between family courts and feminist groups and other nonprofits devoted to family, women's, and children's welfare is also essential.

The fact that individuals are not required to have legal representation while appearing before a family court (as stated in Section 13 of the Act) adds another layer of complexity. However, in the interest of justice, the court may give amicus curiae status to a legal expert who may aid and assist the court. In this case, the family court was unable to achieve its goal because to the numerous procedural mistakes that took place. The conciliatory nature of the proceedings does not relieve them of the burden of any complex legal issues that may arise as a result of the family dispute.

THE NEED FOR A LEGAL REFORM

The "must" conversation on just and equitable family law In India, religion personal regulations have always been intertwined with family law. This is due to the fact that disputes abound throughout family law's past. What would constitute a "just" family law has not been the subject of an extended discussion for the last fifty years.⁹ We must immediately begin a conversation on a "just" family law, which will inevitably expand the discussion beyond issues of gender equality to encompass everyone who has been left out of it up until now. 10 As an example, discussions of gender justice in India's family law debate have persisted over the years. Instead, the rights of children have received very little attention. Gender equality and children's rights are thus seen as separate discourses with different relative importance. Nothing in the Indian legal literature on family law suggests that child rights have ever been considered an aspect of family law or that family law has ever been examined through the lens of children's rights. Based on the data that is currently accessible, this is the inevitable conclusion. To attain justice in family laws, it is necessary to first attempt to establish such a



conversation among legal specialists. This, in turn, can lead to the creation of possible reform strategies and procedures. The task ahead for legal scholars is to formulate a discourse on family law that prioritises modern social factors and principles of justice, fairness, and equality. Currently, the former is dominated by conventional and religious customs, while the latter stands in opposition to this.¹¹ An important first step would be to broaden the definition of "family law" to encompass not just children and non-married partners but also grandparents, great-grandparents, and others who have long been marginalised within the realm of family law. Providing provisions for substantive rules is necessary if it is to recognise the interconnectedness of family structures, the economy, and the modern context. It is necessary to dispel the misconceptions that the private sphere is immune to legal regulation in order to conceive of a family law that respects religious liberty. In order to accomplish the aim of creating a family law, this is essential. We should aim to resolve the impasse that has been caused by disagreements over religion vs. state, majority vs. minority, or personal laws vs. uniform laws in our approach to the conversation. The ideal family law would allow people to live in loving relationships based on mutual respect and affection, and this should be our goal.

THE REQUISITE OF INSTITUTIONAL MECHANISMS

It is safe to say that the lack of regular institutional mechanisms is to blame for the general lack of enthusiasm surrounding subjects related to legislation change. Even while the present administration receives guidance from the Law Reform Commission on how to reform the legal system, the commission's decisions are just advisory and do not have any weight or influence.¹² Many other Commissions do the same thing; however, the government is under no legal obligation to implement any of these recommendations because they are just that—recommendations. Rather than implementing a well-thought-out reform strategy in the family area, the government tends to react to family needs on an as-needed basis. Can be found online at this URL: <https://ssrn.com/abstract=3551493> rules and regulations. First and foremost, we must inquire, what is our intended goal in enacting family-related legislative regulations? The question is whether the law should be framed primarily as a means for married couples to settle their disputes, or if it should also address other issues like parental employment, maternal health care access, intimate partner violence, social welfare



requirements, etc. Legislation of this kind must ideally make use of broad concepts and language with a lot of room for interpretation and application by the courts depending on the specifics of each case. Although all pending cases in the magistrate courts were transferred to the Family Courts upon their inception, the process of delivering summonses that was previously followed by those courts has remained unchanged. Because the police are not directly subject to the authority of the family courts, there is an absence of seriousness and oversight, and there have been cases when the police and the other side have collaborated. The executive branch and police have been so indifferent that the good things that came out of giving family court judges great authority are now meaningless. It is acknowledged that these judges have been given unique powers, but this has not changed anything. Officers of the tax department and other government agencies whose decisions affect the attachment of compensation orders are subject to the same rules.

THE CONFRONTATION TO JUDICIAL AUTHORITY

The appointment of judges

The success or failure of family courts is heavily dependent on the process for selecting its presiding officers, as well as these officers' credentials, experience, and education. Most appointments are made through the transfer of District and Sessions judges. Quite a few people have expressed reservations about this process. A family court's guiding principles and procedures differ significantly from those of a regular criminal or civil court. In terms of both philosophy and practice, this is correct. Being deeply rooted in the adversarial pattern of conflict resolution, judges must adapt to the needs of plaintiffs in family disputes, who often experience significant levels of emotional distress, which is no easy feat. A suggestion made by experts in the field of law is that the Family Courts should be staffed by judges selected from the District Courts. This is due to their extensive background, confidence in breaking with precedent, and natural comfort in the Family Courts' unique setting. Conversely, issues arise when just a handful of senior judges consent to these elevations to Can be found online at this URL: <https://ssrn.com/abstract=3551493> There are tribunals that handle family matters, but they are not authorised to use their "judging" abilities in line with the standards of proof and the principles of civil and criminal law.²⁶ Most district judges who preside over family courts are currently midway through their careers. While there are some individuals who are innovative, proactive, and willing to try new things to challenge the status quo, they



could be effective Family Court judges with the right education and sensitivity. Judgement in family court cases requires a high level of mental engagement from the judge, in addition to familiarity with the law and its processes. A judge may need two or three years to fully immerse themselves in the family court system and feel comfortable there. When he or she can alter the rules that control the processes, it's time for a change. thirty-seven, aA judge with a term of at least five years would benefit both the court and themselves. Those with decision-making power would have the chance to make real contributions to constructive change within this time frame. There is a wide range of practices among the states regarding the selection of Family Court judges. There is a new kind of family court judge in Maharashtra, and they're all chosen through open recruiting processes. A major development in this field is the elevation of marriage counsellors to the rank of family court judge. For these judges, the necessary training is different from that of justices moved from the District court. Although it's admirable that judges are appointed directly and that they don't have to undergo as much of a philosophical transformation to fit in with the Family Court culture as judges appointed through transfers do, who are familiar with the complex procedural and legal requirements, these judges still face their own unique set of problems. Many people believe that qualified solicitors aren't interested in being appointed to Family Court judges' positions because these judges are never transferred and their appointments aren't seen as part of the mainstream judiciary.²⁸, a Since family courts in West Bengal function more like quasi-judicial forums, most judges appointed to them resign once they reach retirement age. This is because at sixty years of age, judges are required to retire, whereas family court justices are required to retire at sixty-two years of age.²⁹. If they accept the nomination to serve as a family court judge, they will be regarded as serving on deputation to the state government. The state government need to assume control of their activities until they attain the retirement age of sixty, at which point the high court loses the power to do so. Conversely, state officials believe they are absolved of any duty to monitor the functioning of the court system. A direct result of this circumstance is the lack of oversight and accountability.

Conclusion

Because of the particular restrictions, there are a number of issues that are controversial and that are up for discussion. One of these issues is the issue of whether or not to hire an



attorney. The absence of uniformity with regard to the regulations that have been set by the various states is another aspect that contributes to the ambiguity that is associated with its execution. In addition, the necessity of revising certain laws needs to be researched and put into effect in an expedient manner in order to guarantee that these courts will not meet any obstacles in the course of their work. These very insignificant changes, if adopted, would go a long way towards ensuring that the family courts are able to effectively perform the vital purpose for which they were founded to a greater extent. This would be a significant step towards ensuring that the family courts exist.

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