

Understanding Family Courts System in India

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ABSTRACT

This article ventures into the evolving discourse surrounding of the power, procedures and working of the family court. The thorough analysis of the family court act and the powers conferred to the family courts under the act is analyzed through this paper. A family court is a specialized court created to address legal issues resulting from familial relationships. The family court follows less strict rules of operation than regular civil or criminal courts. It is distinguished by unique intake procedures that weed out possible cases that don't actually need judicial attention.

Keywords: Family Courts, Family Counseling Centers, Dispute

INTRODUCTION

The prompt purpose behind setting up family courts was the mounting pressures from few ladies' affiliations, government assistance associations, and people for the foundation of exceptional courts with the end goal of giving a discussion to the quick settlement of family-related debates. Accentuation was laid on a non-antagonistic technique for settling family debates and advancing placation and making sure about a rapid settlement of questions identifying with marriage and family issues.

It is realised that family courts have been in presence for quite a few years in nations like Britain, Japan, Australia, and so forth the development to set up family courts in India was started around 1958 by Smt. Durgabhai Deshmukh, a prominent social activist from Maharashtra. From the earliest starting point, the goal of setting up these courts was to give quick removal of cases including issues experienced by women who were outraged by marriage that had turned uncordial.

EXERCISABLE JURISDICTION

A Family court has purview in both civil and criminal issues under the act. Under civil issues, it can manage any suit and proceeding identified with marital issues, spousal property, and the authenticity of any individual, upkeep, guardianship of the individual, or authority of or admittance to any minor. Under criminal issues, it has jurisdiction over requests identified with the support of a spouse, youngsters, and guardians depicted under Chapter IX of the Criminal Procedure Code (CRPC).

Any suit or continuing of the previously mentioned nature ought to fundamentally be heard by the family court barring the purview of the region court or some other subordinate court or any officer. Additionally, any such suit or continuing which is now forthcoming under the steady gaze of some other court or officer ought to be promptly moved to the family court.

APPLICABILITY OF FAMILY COURT ACT, 1984

Jurisdiction-

1. Subject to different provisions of this Act, a Family Court will - (1) Subject to different provisions

of this Act, a Family Court will

- 1.1. 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 regard of suits and procedures of nature alluded to in the clarification; and
- 1.2. be considered, for the motivations behind practicing such purview under such law, to be a district court or, by and large, such subordinate civil court for the territory to which the ward of the Family Court broadens. Explanation - The suits and procedures alluded to in the sub-section are suits and procedures of the accompanying nature, to be specific: -
 - a suit or continuing between the parties to a marriage for a declaration of nullity of marriage (proclaiming the union with be invalid and void or, by and large, canceling the marriage) or compensation of intimate rights or legal detachment or disintegration of marriage;
 - a suit or continuing for a presentation regarding the legitimacy of a marriage or concerning the wedding status of any individual;
 - a suit or continuing between the gatherings to marriage as for the property of the gatherings or both of them;
 - a suit or continuing for a request or order in conditions emerging out of a conjugal relationship;
 - a suit or continuing for an assertion concerning the authenticity of any individual;
 - a suit or continuing for maintenance;
 - a suit or continuing according to the guardianship of the individual or the authority of, or admittance to, any minor.
2. Subject to different provisions of this Act, a Family Court will likewise have and work out-
 - 2.1. the purview exercisable by a Magistrate of the First Class under Chapter IX (identifying with a request for support of a spouse, kids, and guardians) of the Code of Criminal Procedure, 1973 (2 of 1974); and
 - 2.2. such other jurisdiction as might be given on it by some other authorization.¹

In the case of **Balram Yadav v. Fulmaniya Yadav**,² the Hon'ble Supreme Court held that, Under Section 7(1) Explanation (b), a suit or a procedure for the declaration concerning the legitimacy of both marriage and marital status of an individual is inside the selective local or jurisdiction of the Family Court, since under Section 8, each one of those jurisdictions covered under Section 7 is prohibited from the domain of the purview of the common courts. On the off chance, there is a question on the wedding status of any individual, a statement in such manner must be looked for just under the steady gaze of the Family Court. It does not affect with regards to whether it is an agreed alleviation or a negative help. What is significant is the announcement concerning the marital status.

Family Courts additionally have jurisdiction exercisable by a Magistrate of the first class relating with a decree for the upkeep of spouse, kids, and parents under the Code of Criminal Procedure.

SUITS OR PROCEEDINGS

The Family Courts are enabled to manage the accompanying issues:

¹ THE FAMILY COURTS ACT, 1984

² (2016) 13 SCC 308,

- A suit or continuing between the parties to a marriage for nullity of marriage or compensation of intimate rights or disintegration of a marriage.
- A suit or revelation for the legitimacy of a marriage or concerning the marital status of any individual
- A suit or continuing between the parties to marriage regarding the property of the parties or both of them.
- A suit or continuing for a request or directive in conditions emerging out of a conjugal relationship.
- A suit or continuing for a presentation with regards to the authenticity of any individual
- A suit or continuing for support.
- A suit or continuing corresponding to the guardianship of the individual or the care of, or admittance to, any minor.

HOW FAMILY COURT FUNCTION?

The intent and point of building up the Family Courts is to ensure and protect the foundation of marriage and to advance the well-being of children and accommodate the settlement of the conflict by mollification. Each State Government after discussion with the High Court sets up in each region of the state, a Family Court. At least one appointed authority heads it and inclination is given to women judges.

As likewise proposed by the 59th Law Commission Report, the Family Court fundamentally centers upon pacification or settlement of the dispute. On the off chance, there is an opportunity for settlement between parties for a situation all alone, the family court ought to defer the procedures of the case till the parties show up at a settlement.

DUTIES OF FAMILY COURT

1. In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect to the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.
2. If in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a settlement.
3. The power conferred by sub-section (2) shall be in addition to, and not in derogation of, any other power of the Family Court to adjourn the proceedings.³

POWERS CONFERRED TO FAMILY COURTS

Exclusion of jurisdiction and pending proceedings – As per section 8 of the Family Court Act, where a Family Court has been established for any area, -

- A. No district court or any subordinate civil court referred to in sub-section (1) of section 7 shall with such area, have or exercise any jurisdiction in respect of any suit or proceeding of nature referred to in the Explanation to that sub-section;
- B. No magistrate shall, with such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

³ The Family Courts Act, 1984

- C. Every suit or proceeding of nature referred to in the Explanation to sub-section (1) of section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):
1. which is pending immediately before the establishment of such Family Court before any district court or subordinate court referred to in that sub-section or, as the case may be, before any magistrate under the said Code; and
 2. which would have been required to be instituted or taken before such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established, shall stand transferred to such Family Court on the date on which it is established.

Proceedings to be held in camera. -

As per section 11 of the family court act, in every suit or proceedings to which this Act applies, the proceedings may be held in camera if the Family Court so desires and shall be so held if either party so desires.

The assistance of medical and welfare experts. -

As per the section 12 of the act, in every suit or proceedings, it shall be open to a Family Court to secure the services of a medical expert or such person (preferably a woman where available), whether related to the parties or not, including a person professionally engaged in promoting the welfare of the family as the Court may think fit, to assist the Family Court in discharging the functions imposed by this Act.

Right to legal representation. -

Section 13 of the act empowers that notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner: Provided that if the Family Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as amicus curiae.

Application of Indian Evidence Act, 1872. -

Section 14 of the family court act empowers that A Family Court may receive evidence IN any report, statement, documents, information, or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872).

Record of oral evidence. -

As per section 15, in suits or proceedings before a Family Court, it shall not be necessary to record the evidence of witnesses at length, but the Judge as the examination of each witness proceeds, shall record or cause to be recorded, a memorandum of the substance of what the witness deposes, and such memorandum shall be signed by the witness and the Judge and shall form part of the record.

Evidence of formal character on affidavit. -

Section 16 of the act emphasis:

1. The evidence of any person where such evidence is formal, may be given by affidavit and may, subject to all just exceptions, be read in evidence in any suit or proceeding before a Family Court.

2. The Family Court may, if it thinks fit, and shall, on the application of any of the parties to the suitor proceeding summon and examine any such person as to the facts contained in his affidavit.

Judgment under section 17—

Judgment of a Family Court shall contain a concise statement of the case, the point for determination, the decision thereon, and the reasons for such decision.

Execution of decrees and orders under section 18. -

1. A decree or an order [other than an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)], passed by a Family Court shall have the same force and effect as a decree or order of a civil court and shall be executed in the same manner as is prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the execution of decrees and orders.
2. An order passed by a Family Court under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) shall be executed in the manner prescribed for the execution of such order by that Code.
3. A decree or order may be executed either by the Family Court which passed it or by the other Family Court or ordinary civil court to which it is sent for execution.⁴

WELFARE ORGANISATIONS AND COUNSELLOR'S ROLES

- As indicated by Section 5 of the Family Court Act, the state government after talking to the High Court may make rules about the relationship of accompanying people or organizations with the family court.
 - Associations or foundations identified with social government assistance;
 - An expert individual who will work for the government assistance of the family court;
 - Any individual who is working in the field of social government assistance;
 - Whatever other individual whose presence will guarantee the compelling working of the family court.
- Section 6 of this demonstration gives that the state government in the wake of talking with the family court will decide the number of guides, officials, and different representatives who will help the family court in releasing its capacities successfully and will guarantee the presence of such advisors, officials and different workers.

The advisors assume a significant part in the working of the family court. The vast majority of the instances of the family court can be addressed by compelling advising. Thus, the reasonable choice of instructors for the family court should be guaranteed.

The State Government, in reference to the High Court, decides the number and classifications of advocates, officials, and different workers needed to help a Family Court. The instructive foundation of these advisors ought to be graduated with a law degree. They are selected on the authoritative reason for the underlying time of a half year and further, broadened dependent on their prosperity and execution. These family guides talk about the case with both the gatherings and attempt to concoct satisfactory arrangement/bargain acknowledged to both the gatherings of course these case documents are sent back to the Additional District Judge for the official conclusion.

The idea of family counseling was gestated by the Central Social government assistance Board (CSWB) in the 1980s when there was a spate of endowment passing. The Board led the mission by setting up Voluntary Action Bureaus, which accordingly took the state of Family Counseling Centers.

⁴ THE FAMILY COURTS ACT, 1984

The goal of the Family Counseling Centers is to offer preventive and rehabilitative types of assistance to ladies and families who are survivors of abominations and family mal changes through emergency mediation and methodical advising. The focus additionally makes mindfulness and assembles popular assessment on social issues influencing the status of women.

The plan of Family Counseling Centers (FCCs) was dispatched by the Government of India in 1983 and it is being actualized by CSWB through intentional associations the nation over. At present, around 800 Family Counseling Centers are working in various states. The FCCs work in a closely coordinated effort with nearby organization, police, courts, free lawful guide cells, clinical and mental foundations, professional instructional hubs, short-stay homes, and so on.

FAMILY COURT AS A PACIFIER

It isn't obscure that a vast escape clause in the Indian Judiciary is the excess of cases. The quantity of cases being documented in the Supreme Court is reliably on the ascent. 34683 cases were recorded in Supreme Court in the year 1999, though 70350 were documented in the year 2008, the increment being about 103% in nine years. Cases are managing an expansive range of issues, for example, family matters and property which proceed for ages. Such cases proceed for monstrous timeframes, going from 7 years to 30 years. In such a situation, the diverting of cases to various courts set up uniquely, for this reason, guarantees their fast removal yet additionally guarantees that the cases being managed specialists in courts extraordinarily set up for this object are managed all the more successfully. The platitude that "justice delayed is justice denied" at that point gets applicable to think about.

Further, relevant to note here Marriage is an establishment that has gotten the subject of extraordinary legal investigation. There are various legal arrangements managing marriage and its different viewpoints. The outcome is that, notwithstanding the different focal points that these legitimate arrangements may give the protection of this foundation that has been compromised. According to considers directed in Mumbai and Delhi, 40 % of relationships are going towards separate. There are likewise instances of abuse of arrangements like Section 498A of the Indian Penal Code, Protection of Women from Domestic Violence Act, Section 125 Criminal Procedure Code, and Child Custody laws to give some examples.

There are issues like the provision which become the subject of incredible debate and cause provocation to families. What further turns into an issue is that private matters get entwined with the lawful issues and lead to the pointless delaying of the removal of these cases. The more youthful age, being made a substitute in the changing occasions because of the following social battle among conservatives and liberals, squanders its helpful youth in the regions of the prosecuting hallways of the family courts, criminal courts, and judge courts holding up in long lines being eager of getting equity.

CONCLUSION

The setting up of these family courts was a dynamic advance so far as lessening the accumulation and arranging off cases while guaranteeing that there is a viable conveyance of equity goes. Notwithstanding, as previously mentioned, there are still issues of concern that plague these courts. The issues identifying with the working of these courts are to be found altogether. There are numerous disputable and far from being true issues, for example, connecting with an attorney because of the particular arrangements of the Family Courts Act.

Moreover, the absence of consistency concerning the principles set somewhere nears various states likewise prompts disarray in its application. Just passing a focal enactment isn't itself a total advance for

execution in its soul, it is to be guaranteed that some degree of consistency is kept up at any rate in the underlying phases of its happening. Further, the need to revise certain laws is likewise to be analysed and actualised successfully to guarantee that these courts don't confront any obstacle in their work. These little advances whenever inspected and actualised in inside time will go far to guarantee that the Family Courts are fruitful, positively, to satisfy the respectable reason for which they were made.