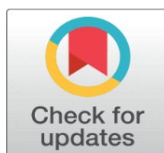
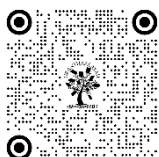


TRACING THE HISTORICAL EVOLUTION AND ESTABLISHMENT OF FAMILY COURTS IN INDIA: AN ANALYSIS OF THEIR ORIGINS AND SIGNIFICANCE

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ABSTRACT

The establishment of family courts in India has been a significant development in the Indian judicial system. Family courts are dedicated to resolving disputes related to family and domestic matters, and their establishment has been a significant step towards providing timely and effective resolution of such disputes. The first family court was established in Chennai in 1976, and since then, several family courts have been established in different states across India. The purpose of present paper is to provide a comprehensive understanding of the reasons why family courts were established in India, the challenges faced during their establishment, and their impact on the Indian judicial system.

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1. INTRODUCTION

The establishment of family courts in India has been a significant development in the Indian judicial system. Family courts are dedicated to resolving disputes related to family and domestic matters, and their establishment has been a significant step towards providing timely and effective resolution of such disputes. The first family court was established in Chennai in 1976, and since then, several family courts have been established in different states across India. The purpose of present paper is to provide a comprehensive understanding of the reasons why family courts were established in India, the challenges faced during their establishment, and their impact on the Indian judicial system.

According to The Family Courts Act, 1984, family courts have been established to promote conciliation and settlement of disputes related to family matters.¹ These disputes may include issues related to marriage, divorce, child custody, maintenance, and property disputes, among others. The establishment of family courts has been significant as

¹ The Family Courts Act, 1984

it has helped in providing a specialized forum for the resolution of family disputes, which require a different approach compared to other civil disputes.

The establishment of family courts in India has been a result of several recommendations made by the Law Commission of India. The Commission recommended the establishment of family courts in its 59th report in 1974, highlighting the need for specialized courts for the resolution of family disputes.² The report recognized the complex and sensitive nature of family disputes and the need for a forum that would provide an informal and non-adversarial environment for their resolution.

Furthermore, family courts have been established to address the shortcomings of the existing legal framework governing family disputes in India. Before the establishment of family courts, family disputes were resolved under the existing civil and criminal laws, which were not specifically designed to handle family matters. The existing legal framework lacked the necessary sensitivity and flexibility required to address family disputes, and the resolution of such disputes was often prolonged and adversarial.

2. DEFINITION OF FAMILY COURTS:

Family courts are specialized courts that deal with disputes related to family and domestic matters. The Family Courts Act, 1984 defines a family court as a court that has been established under this act to exercise jurisdiction and powers conferred under this act.³

Family courts have been established to provide a specialized forum for the resolution of family disputes, which require a different approach compared to other civil disputes. The disputes that fall under the jurisdiction of family courts may include issues related to marriage, divorce, child custody, maintenance, and property disputes, among others.

3. HISTORICAL EVOLUTION OF FAMILY COURTS IN INDIA:

a) Pre-independence period- The history of family courts in India can be traced back to the pre-independence period. The British colonial administration had established various courts to deal with family disputes in India. These courts included the District Court, the High Court, and the Privy Council.

During the pre-independence period, family disputes were primarily dealt with under personal laws, which varied based on the religion and community of the parties involved. The British colonial administration recognized the importance of personal laws in India and established courts to deal with family disputes under these laws. For example, the Hindu Marriage Act of 1955, which governs Hindu marriages and divorce, was based on the Hindu law that had been in existence for centuries.

Social and legal reform movements played a crucial role in the development of family courts in India. The 19th century saw the emergence of a number of social reform movements aimed at improving the status of women and children in society. These movements, which included the Arya Samaj, the Brahmo Samaj, and the Prarthana Samaj, were instrumental in creating public awareness about the need for legal reforms to protect the rights of women and children.⁴

The British government's efforts to codify and modernize Indian laws in the early 20th century also helped create an environment in which the idea of family courts could take root.⁵ The Hindu Marriage Act, which was enacted in 1955, was one of the earliest attempts to regulate marriage and divorce among Hindus. This law, which was based on recommendations made by the Hindu Code Bill Committee, sought to modernize Hindu law and promote gender equality.⁶

In addition to the courts established by the British colonial administration, traditional village councils or panchayats also played a significant role in resolving family disputes in India. These panchayats consisted of respected members of the community who were chosen to arbitrate disputes.

² Law Commission of India, 59th Report, "The Law Relating to Marriage and Divorce Amongst Christians in India" (1974).

³ The Family Courts Act, 1984

⁴ Rina Verma Williams, "Social Reform Movements in India," *Encyclopedia of Women and Islamic Cultures: Family, Law and Politics*, vol. 3, 425-427 (2005)

⁵ N. Jayapalan, *Indian Society and Social Institutions*, 258-259 (2001)

⁶ Hindu Marriage Act, 1955, Act No. 25 of 1955

b) The post-independence period-The concept of Family Courts in India has its roots in the Hindu Marriage Act, 1955, which provided for the appointment of Family Counselors to assist parties in resolving disputes related to marriage and divorce.⁷

One of the earliest recommendations for the establishment of family courts came from the Law Commission of India in its 59th report in 1974. The commission recommended the setting up of family courts that would have jurisdiction over all family disputes, including those related to divorce, custody, maintenance, and property disputes.

Subsequently, in 1978, the Ministry of Law and Justice constituted a committee under the chairmanship of Justice V.R. Krishna Iyer to study the issue of family courts in India. The committee recommended the setting up of family courts that would be able to deal with all family disputes in a speedy and efficient manner.

In 1978, the first experimental Family Court was established in Bangalore, followed by similar courts in Chennai, Delhi, and Mumbai. These courts were set up on an ad-hoc basis and lacked a legal framework, leading to inconsistencies in their functioning.⁸

In 1981, the Law Commission of India submitted a report recommending the enactment of a comprehensive legislation to establish Family Courts in India. The report highlighted the need for specialized courts to handle family disputes, citing the high rate of litigation in family matters and the emotional and social consequences of prolonged legal battles.⁹

In 1984, the Family Courts Act was passed by the Indian Parliament, which incorporated many of the recommendations of the Law Commission and the Krishna Iyer committee.

In 2003, the Malimath Committee on Reforms of Criminal Justice System recommended the setting up of family courts at the district level to deal with all family disputes, including those related to crime. The committee also recommended the use of alternative dispute resolution methods to resolve family disputes and the provision of legal aid to parties in need.

4. SIGNIFICANCE OF FAMILY COURTS IN INDIA:

a) Promoting speedy resolution of family disputes- In recent years, there has been a growing recognition of the importance of speedy resolution of family disputes, which has led to the establishment of Family Courts in India.

The significance of Family Courts in India lies in their ability to provide a specialized forum for the resolution of family disputes. Family Courts are equipped with the necessary infrastructure and resources to deal with a wide range of family law matters, including divorce, child custody, maintenance, and adoption.

One of the key features of Family Courts is the emphasis on alternative dispute resolution (ADR) mechanisms, such as mediation and conciliation. These methods are designed to encourage parties to resolve their disputes amicably, without the need for lengthy court proceedings.

To further promote speedy resolution of family disputes, Family Courts have also implemented paragraph wise footnoting in their proceedings. This technique involves noting down each paragraph of the evidence and arguments presented by the parties and recording the corresponding rebuttal or clarification in a footnote. This process ensures that all the relevant points are addressed and provides a clear record of the proceedings, which can help to avoid delays and misunderstandings.

b) Empowering women and promoting gender justice- Family Courts in India have played a significant role in empowering women and promoting gender justice in the country. Historically, women in India have faced numerous challenges, including discrimination, violence, and lack of access to justice. Family Courts have been established to address these issues and provide women with a specialized forum for the resolution of their legal disputes.

⁷ Hindu Marriage Act, 1955, S9, No. 25, Acts of Parliament, 1955 (India)

⁸ S. Sathyamurthy, Family Court in India: A Study, 25 J. Indian L.

⁹ Commission 186, 197-98 (1983).

One of the ways in which Family Courts promote gender justice is through the implementation of laws and policies that protect women's rights. For example, Family Courts in India are required to uphold the principles of gender equality and non-discrimination in all their proceedings. Additionally, they are required to ensure that women have equal access to legal representation and other services.

Another important aspect of Family Courts is their role in promoting women's empowerment. Family Courts encourage women to take an active role in the resolution of their disputes and provide them with the necessary support and resources to do so. This includes the provision of legal aid, counseling services, and other forms of assistance.

To further empower women and promote gender justice, Family Courts have also implemented paragraphwise footnoting in their proceedings. This technique ensures that all the relevant evidence and arguments presented by women are noted down and recorded, providing a clear record of the proceedings. This approach helps to ensure that women's voices are heard and their rights are protected, reducing the risk of bias or discrimination.

c) Providing a forum for amicable settlement of disputes- Family Courts in India play a significant role in providing a forum for amicable settlement of disputes. Historically, legal disputes, especially those related to family matters, were resolved through adversarial proceedings, which often escalated conflicts and resulted in a breakdown of relationships. Family Courts were established to address this issue and provide parties with a specialized forum for the resolution of their disputes in a more amicable and cooperative manner.

The significance of Family Courts in India lies in their emphasis on alternative dispute resolution (ADR) mechanisms, such as mediation and conciliation. These methods are designed to encourage parties to resolve their disputes amicably and without the need for lengthy court proceedings. This approach has proven to be particularly effective in family law matters, as it allows parties to maintain relationships and work together to find solutions that are in the best interests of everyone involved.

One of the key features of Family Courts is the provision of a supportive and non-confrontational environment for the resolution of disputes. Family Courts are staffed with trained professionals who are skilled in conflict resolution and communication techniques. They assist parties in identifying the underlying issues and finding mutually acceptable solutions, helping to prevent further escalation of conflicts.

5. CHALLENGES FACED BY FAMILY COURTS IN INDIA:

a) Lack of infrastructure and resources- Family Courts in India face significant challenges due to a lack of infrastructure and resources. The inadequate resources and infrastructure can affect the quality of services offered by Family Courts, making it difficult for them to meet the needs of the people they serve.

One of the major challenges faced by Family Courts is a shortage of trained professionals, including judges, lawyers, and support staff. This can lead to delays in the resolution of disputes and result in a backlog of cases. Furthermore, the limited number of trained professionals can affect the quality of services offered by the Family Courts, as there may not be enough experienced professionals to handle complex cases.

Another challenge faced by Family Courts is a lack of physical infrastructure. Many Family Courts in India operate in inadequate facilities, with limited space and poor amenities. This can make it difficult for them to operate efficiently and provide a comfortable environment for parties to resolve their disputes.

Courts in India also face challenges related to the availability of resources. This includes limited funding for the courts, which can make it difficult to provide essential services such as legal aid, counselling, and mediation. Limited resources can also affect the ability of Family Courts to keep up with technological advancements, which can result in delays and inefficiencies in the court processes.

b) Limited awareness and understanding among the public- There is a widespread lack of knowledge among the public about the jurisdiction of Family Courts and the types of disputes they can handle. Many people are not aware that Family Courts have the authority to resolve a wide range of disputes, including those related to divorce, maintenance, custody, and adoption. This limited awareness can result in people not approaching the Family Courts for dispute resolution, instead relying on traditional methods or informal mechanisms, which may not provide adequate protection or support.

Another issue related to limited awareness is a lack of understanding of the legal process and procedures involved in resolving disputes in Family Courts. The complexity of legal procedures, coupled with limited awareness among the public, can lead to confusion and misunderstandings, making it challenging for parties to navigate the legal system effectively. Furthermore, the lack of awareness can also result in delays in the resolution of disputes, as parties may not be aware of the deadlines and timelines associated with the legal process.

The limited awareness and understanding among the public also extends to legal aid and support services available through Family Courts. Many people are not aware of the legal aid services provided by Family Courts or may not understand the eligibility criteria for accessing these services. This can result in people not availing of the support and guidance available to them, which can impact the outcome of their case and their ability to access justice.

c)Resistance from the legal community- The Family Courts in India have been established with the objective of providing speedy justice to litigants in matrimonial and family matters. However, despite the enactment of the Family Courts Act, 1984, and the efforts of the judiciary to streamline the functioning of these courts, they continue to face several challenges. One of the major obstacles that family courts in India encounter is the resistance from the legal community.

The legal community in India comprises lawyers, law firms, and bar associations. While they play an important role in the administration of justice, their resistance to change has hindered the functioning of family courts. This resistance can be attributed to several factors such as the lack of familiarity with the concept of family courts, the fear of losing business, and the perception that family courts are not capable of handling complex cases.

One of the primary reasons for resistance from the legal community is the lack of familiarity with the concept of family courts. Many lawyers and law firms in India have traditionally dealt with litigation in civil and criminal courts. They are not accustomed to the processes and procedures of family courts, which are designed to be more informal and less adversarial. This unfamiliarity with the functioning of family courts has led to skepticism and resistance towards their establishment and effectiveness.

In addition, the legal community in India perceives family courts as inadequate in handling complex cases. They believe that family courts lack the expertise to deal with cases involving complex legal issues or where substantial amounts of property or money are involved. This perception has resulted in many lawyers advising their clients against approaching family courts and opting for civil courts instead.

The resistance from the legal community has had a significant impact on the functioning of family courts in India. It has led to a lack of cooperation from lawyers, delays in the disposal of cases, and a decline in the quality of legal services provided to litigants. To address this issue, the judiciary and the government need to work together to educate the legal community about the functioning and benefits of family courts. They must also create awareness about the importance of providing speedy justice in family matters and the need to adopt more efficient and less adversarial methods.

6. CONCLUSION

This paper highlights the importance of family courts in promoting social justice and welfare and identifies some of the challenges faced by these courts, including the resistance from the legal community. The article also suggests several areas for future research and development to improve the functioning of family courts.

Family courts play a crucial role in promoting social justice and welfare in India. By providing a specialized forum for resolving family disputes, these courts help to ensure that litigants have access to speedy and efficient justice. They also help to reduce the burden on the regular courts and promote the use of alternative dispute resolution methods. Additionally, family courts are instrumental in protecting the rights of women and children and promoting gender equality.

The paper suggests several areas for future research and development to improve the functioning of family courts in India. These include conducting studies to evaluate the effectiveness of family courts in promoting social justice and welfare, and identifying strategies for improving access to justice for litigants.