



RESEARCH ARTICLE

JURISDICTION OF FAMILY COURTS IN INDIA: A CRITICAL STUDY

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Abstract

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Introduction:-

“Marriage is an institution that has become the subject of great judicial analysis. It is practically realized all over the world that the resolution of family disputes requires special procedure. Procedures designated to their differences and were necessary to provide assistance. It is realized that traditional adversarial procedure has to be replaced by a less formal procedure because adjudication of family matters is entirely a different matter, a different culture and different jurisprudence. There are a number of judicial provisions dealing with marriage and its several aspects. The need to establish the Family Courts was first stressed by the late Smt. DurgabiDeshmukh. After she came from China in 1953, where she had crammed the working of the Family Courts, Smt. Deshmukh conversed the subject with Justice Chagla and Justice Gajendragadkar and made a proposition to set up Family Courts in India to the then Prime Minister Pt. Jawahar Lal Nehru.”

“Parliament therefore enacted the Family Courts Act, 1984 which at the first instance stipulates for the establishment of Family Courts for those towns and cities whose population exceeds one million. ¹The State Government however under Section 3 of the Act may also set up Family Courts for other areas. ² Appointment of Judges of Family Courts under Section 4(1) is to be made by the State Government with the concurrence of the High Court of the State. Where there is more than one judge in a Family Court. Each Judge is competent to exercise all or any powers of the Family Court under sec 4(b) of the Act.”³

Explanation of The Term “Jurisdiction” Under the Various Sections of Family Courts Act, 1984

“A Family Court when constituted in a District Court for the purposes of Section 7 and 8 read with section 2 (e). All suits falling and petitions falling under any of the clauses (a) to (f) of Explanation to section 7 of the Family Court Act, 1984 will be under jurisdiction of the Family Court constituted for that area.”⁴

“Original jurisdiction of the High Court in respect of such matters that may fall under the explanation to section 7 of the Act is not ousted and the High Court continues to exercise it’s notwithstanding the coming into force of the Family Courts Act. Suits and petitions under the Indian Divorce Act, 1869⁵ and relating to Muslim women where the cause arises under the Dissolution of Muslim Marriages Act 1939 ⁶and Muslim Women (Protection of Rights on

¹ Family Courts Act, 1984.

²Sec 3, Family Courts Act, 1984.

³Section 4, Family Courts Act, 1984.

⁴ Section 7 and 8, Family Courts Act, 1984.

⁵Indian Divorce Act 1936.

⁶ Dissolution of MuslimMarriagesAct 1939.

Divorce) Act, 1986 as well as matrimonial causes amongst Jews have continued to be under the original jurisdiction as prior to the Family Courts establishment in the area. Matters governed by the Parsi Marriage and the Divorce Act 1936 would be under the jurisdiction of the Parsi Matrimonial Court.”

“Under cl (g) of the Explanation to section 7 of the Family Courts Act suits and petitions relating to the guardianship will be cognizable by the Family Court. All suits and proceedings wherein the question of guardianship of the person of any minor or his custody or access to him arises, whether governed by any personal law or the provisions of the Guardians and the Wards Act, would be cognizable by the Family Court would have no jurisdiction if the question involved relates to appointment of a guardian in respect of property of a minor or of a guardian both purposes namely person and property of a minor.”

“Suits and petitions wherein matrimonial relief is not sought in the nature contemplated by any of the Clauses between (a) to (f) of Explanation to section 7 but is based on non-existence of matrimonial relationship such as where the marriage is restricted or is alleged to be void will not be cognizable by the Family Court and will not be transferred to the Family Court. Dispute between husband and wife is a necessary ingredient for conferring for conferring jurisdiction on the Family Court. Thus, where a sister filed a partition suit against her brother in respect of properties left by her father, it was held that by no stretch could the Family Court assume jurisdiction in such a case. Petition by daughter against her father that he is bound to conduct her marriage and provide sufficient funds were held to be not maintainable under section 7 of the Act.”

“In *Nagaraj v. Ammayamma*, a wife filed a suit for injunction or restraining her husband or anyone claiming through him, from interfering with possession of the property assigned to her by her husband for her exclusive use and occupation for her lifetime under section 8 of the Hindu Adoptions and Maintenance Act, 1956. The same was held to be tenable under explanation (c) of section 7 (1) of the act.⁷

“Where the main dispute in respect of some movable properties is between the husband and wife, the mere fact that the father in law has been impleaded as the second defendant is no reason to hold that the Family Court has no jurisdiction”.

“And dispute arising between parties to marriage, irrespective of the caste or creed can be brought before Family Court for getting their rights declared. Thus, where the both parties were Christians and married according to Hindu Vedic rites, the husband’s suit before Family Court for dissolution of marriage on the ground that he was forced to marry the respondent was held to be within the jurisdiction of the Family Court. According to the settlement of disputes relating to marriage takes in not only matters of an admitted marriage but also a dispute regarding the very existence of marriage. In other words, existence or otherwise of a marriage is also a dispute relating to marriage which the Family Courts is competent to try”.

“A suit for damages by the husband against his wife alleging fraud committed by her parents by suppressing the fact of her illicit relations prior to marriage was held to be a proceeding arising out of circumstances in connection with the marriage relationship and hence within the jurisdiction of the Family Court.”

‘*K.A Abdul Jaleel v. T.A. Shahida*’ involved a significant and interesting issue on the jurisdiction of the Family Courts viz does this court have jurisdiction to decide a dispute between parties to a former marriage as against subsisting marriage? The maintenance.⁸ The husband raised an objection as to the maintainability of the wife’s suit in the Family Court on the ground that he divorced her and the Family Court had no jurisdiction to decide a dispute between former spouses; it was argued on his behalf that the Family Court had jurisdiction to decide dispute only “between parties to the marriage” and on divorce they do not remain parties to the marriage. A further objection raised was that since the respondent wife had already filed an application under section 3 of the Muslim Women’s Act, 1986⁹, she could not proceed under the Family Court Act. The Family Court Act did not accept the arguments and decreed the suit against which the husband filed an appeal before the Kerala High Court which was dismissed. Hence, the husband’s appeal before the Supreme Court. Dismissing the appeal, the Court held that if the expression “suit or proceedings between parties to a marriage” were to be construed as “suit or proceedings between the parties

⁷*Nagaraj v. Ammayamma*, ILR 2001 KAR 4004.

⁸*K.A Abdul Jaleel v. T.A. Shahida*, AIR 2014 SC 2875.

⁹Sec 3, Muslim Women’s Act, 1986.

to a marriage” were to be construed as “suit or proceedings between parties to a subsisting marriage, “it would lead to miscarriage of justice and would frustrate the object wherefore the Family Courts were set up”.

The court emphasized that the expression “disputes relating to marriage and family affairs and matters connected therewith” in the preamble must be liberally construed. Thus, the Family Court was held to have jurisdiction to decide a dispute relating to properties claimed by the parties irrespective of whether the marriage is subsisting or not. Further, the fact that the wife had already filed an application under sec 3 of the Muslim Women’s Act, was held to be no bar against the Family Court exercising jurisdiction in the matter.”¹⁰

“In “Bharat Kumar v. Selma MINI”, the issue was whether paternity of a child is an issue which can be considered by the Family Court under section 7 (1) (e) of the Family Court Act, without a matrimonial cause. This was a case where there was a dispute regarding paternity of child born in extra marital relationship with the petitioner. It was held that the Family Court cannot entertain any proceeding for declaration as to legitimacy of any person without any claim on marital relationship.”

Section 8 of the Act, provides for exclusion of jurisdiction and proceeding of the nature provided for in the explanation to section 7 (1) will be transferred to the Family Court. “It is provided that where a Family Court has been established in any area no District Court or any subordinate Civil Court shall, in relation to such area have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the explanation to section 7 (1).¹¹ Section 8 (c) provides that any suit pending, immediately before the establishment of such Family Court, before any district Court or subordinate Court shall stand transferred to such Family Court on the date of which it is established.”

Recent Case Review on The Issue of Jurisdiction Before Deciding A Matter Of Divorce

In the recent case of “Kalpana v. Gorakhnath, Justice Vasanti A. Naik and Justice B. Varale decided on the question whether a couple having their native place from another State can file for divorce in another city or state. It was ruled out that before such question arises the Family Court must first address the issue of Jurisdiction before such commencement of the case”.

The Judge Bench observed that, “Firstly, it was necessary for the Family Court to frame the issue of jurisdiction and then permit the parties to submit evidence, both, oral and documentary, on the issue of jurisdiction. It is a well established position of law that the jurisdiction of the Court cannot be decided on the written statement or the documents tendered by the parties.”¹²

“The verdict of Family High Court was challenged by the wife, seeking a remand of the matter which was brought to the Family Court Nagpur, on the ground that there was no jurisdiction of the Family Court to entertain the petition filed by the husband. Wife claimed as there was no cause of action in Nagpur so the Family Court cannot entertain and decide the petition. She denied all the allegations of cruelty and desertion made against her. It was confirmed by the petition filed by the husband that the wife has refused to join the company at Nagpur. The Court made a note that despite the precise objection of the wife that the Petition should not be entertained by the Family Court, Nagpur, the Court ignored to frame such issue in regard to the jurisdiction of the Court. Devoid of framing such an issue, the Family Court proceeded on the hypothesis that it held jurisdiction to entertain the petition.”

Accepting the arguments put forward by the wife, the High Court observed, “It is rightly stated taking the side of the wife that it was necessary for the Family Court to have framed the issue of jurisdiction and if the identical was answered in favor of the husband, then only the Family Court ought to have proceeded to decide the Hindu Marriage Petition, on merits.” The High court regressed the case back to the family court for properly deciding the issue.¹³

Critical Analysis and Suggestions Pertaining To The Family Court

The Family Courts Act of 1984 was passed in an effort to encourage negotiation and ensure a prompt resolution of conflicts involving marriage, family, and related issues. Although this was intended to eliminate gender prejudice in

¹⁰Ibid.

¹¹Sec 7, Family Courts Act, 1984.

¹²Kalpana v. Gorakhnath, SC judgement.

¹³Ibid.

statutory law, the objective has not yet been met. To ensure that violence against women is prevented in the first place, the family courts' mechanism must create protocols and procedures, potentially with the aid of civil society organisations.

Action forums related to family courts should be established and strengthened by include NGOs, elected official representatives, and active department members such Urban Community Development as members. To examine the operation and conclusion of the cases involving women in the family courts, state-level monitoring systems might be implemented. Judges who are women who have experience and competence in resolving family conflicts ought to be selected.

The Actual Way of Working of The Family Court

The state's attitude towards family issues is reflected in the haphazard way the courts were set up. It reaffirms the fact that most legal improvements have only been implemented as a show of good faith to placate feminist organisations rather than out of genuine concern for women. The courts were set up almost immediately with no prior planning. The struggle for justice is a Herculean endeavour due to the complete lack of infrastructure and basic amenities. Although both men and women are harmed, the weaker gender, which lacks exposure to and expertise dealing with governmental institutions, always suffers the most.

The judges, court clerks, and peons treat female litigants with contempt as a result of the general anti-women bias in society, which also affects women. In contrast, men enjoy a sense of brotherhood (the brotherhood of men) with the judge, clerks, and peons, depending on the social class to which they belong. The plaintiffs face countless difficulties in the absence of basic infrastructure like a stamp office, typist, stationery, notarial services, or simply a suitable sitting area, canteen, and drinking water. Instead of deciding important legal and financial matters, the court is more commonly thought of as a tribunal that awards maintenance orders. The judges appointed to the family court do not seem to have any special experience or expertise in dealing with family matters, nor any special expertise in settling disputes through conciliation, a requirement prescribed in the Act.

The Act also includes provisions for those litigants who are more economically needy to get legal help services. For the family courts, who currently lack the requisite 8 supplies for paper and stationery, this idea would be too ambitious. The Rules allow tape recorders to be used during trial proceedings to record evidence that may be used in the appeals stage. Using the family courts will make it more difficult to achieve justice if these loopholes are not closed.

Unavailability of Lawyers

For the layperson who is utterly ignorant of the legalese, the necessity to obey the Civil Procedure Code makes matters even more challenging. The Act and Rules forbid legal representation without establishing any substitute or streamlined Rules. It does not truly make the procedures conciliatory or non-adversarial to simply state that they are. Because litigants are left at the mercy of court clerks and peons to assist them in adhering to the complex regulations in the absence of attorneys, the situation has gotten worse. Even the repercussions of the court officials' proposals remain unknown to the general public. For instance, the husband may advocate for reconciliation after a woman files for divorce and maintenance in order to avoid having to pay maintenance. It is essential for the lady that the mediators are aware of these techniques. It will be damaging to the woman's interests if a judge or counsellor believes that she should return to her husband only because he is making the offer and since she is his wife, she must obey him.

Conclusion:-

Family courts have been established to handle issues that emerge upon divorce, restoration of conjugal rights, alimony and maintenance claims, and child custody disputes. The creation of family courts has no impact on the law's core provisions governing marriage. A woman loses her right to the marital house after divorce. In order to receive maintenance during a separation or after a divorce, she must be able to demonstrate her husband's financial stability. It is difficult, if not impossible, to verify a man's income since women are frequently ignorant of his business transactions and sources of money. Making problems worse, it is hard to determine the legal source because there is a parallel illicit market. In such a situation, unless the law changes in radical ways conferring rights on women and creating new rights in their favour, the setting up of family courts will not help to alter their position of earnings.

Domestic abuse is another area of legislation that affects women but is mostly ignored. There is no effective law to prohibit wife beating or to shield a woman from a violent husband, despite the fact that it is common in all socioeconomic strata. Even if cases are filed the Court asks for evidence and if evidence is not provided the case is disposed under trivial acts. There is a vacuum in the laws and applicability which requires urgent understanding. Likewise, laws should be gender neutral while being drafted as at times men are also sufferers but there is no provision under law for men to file cases against their spouses which makes the men in a disadvantageous position. Thus, domestic violence should be debated to be wholesome and alter changes accordingly.

The Family Courts Act does not specifically allow the court the authority to issue orders prohibiting violence or ordering the expulsion of abusive husbands. There is still a long way to go, even though some courts have begun issuing these injunctions based on the wife and children's legal right to live in the marital home and the husband's duty to support his wife and children, which includes housing. As a result, the Act has proven to be an insufficient tool for delivering justice to women.