



LEGAL EAGLE

Review Document

The Family Courts Act, 1984

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THE FAMILY COURTS ACT, 1984

Introduction:

The Family Courts Act, 1984¹ was enacted to achieve manifold objectives such as decongestion of normal preliminary courts, giving a protected and secure environment for settling family disputes, and so forth. The core understanding that a family dispute was unlike any other dispute and accordingly had to be dealt with differently. Such significant changes were at the command of active roles played by various bodies joined to this field. The expanded stress on amicable settlement of family debate is evident in the particular provisions of the Act just as in the repeated exhortations of the higher legal executive to take action to alternate methods of dispute resolution in cases of family disputes.

Significances of the act:

1. The Family Courts are allowed to advance their own principles of method, and once a Family Court does as such, the standards so surrounded abrogate the guidelines of the system pondered under the Code of Civil Procedure. In fact, the Code of Civil Procedure was amended so as to satisfy the reason behind setting up of the Family Courts.
2. Special emphasis is put on settling the dispute by mediation and conciliation. This ensures the issue by an understanding between both the parties and reduces the chances of any further conflict. The aim is to give priority to the mutual understanding over the usual process of adjudication. To put it plainly, the point of these courts is to frame a suitable atmosphere where family disputes are settled agreeably. The cases avoid the features of a formal legitimate framework.
3. The most interesting angle with respect to the procedures under the Family Court is that they are first referred to conciliation and only when the conciliation proceedings fail to resolve the issue successfully, then case is been taken up for trial by the Court.

¹https://www.indiacode.nic.in/handle/123456789/1844?view_type=browse&sam_handle=123456789/1362#:~:text=India%20Code%3A%20Family%20Courts%20Act%2C%201984&text=Long%20Title%3A,and%20for%20matters%20connected%20therewith.

4. The Conciliators are experts who are appointed by the Court. Once a final order is passed, the aggrieved party has an option of filing an appeal before the High Court. Such appeal is to be heard by a bench consisting of two judges.
5. To take the cases dealing with family disputes away from the intimidating atmosphere of regular courts and ensure that an amicable environment is set up to deal with matters such as marriage, divorce, alimony, child custody etc.
6. To handle the issue of pendency by improving productivity of the framework, where courts are equipped with counsellors and psychologists to ensure that while there may be core legal issues to be dealt with; there is likewise a human and psychological dimension to be dealt with in these matters.

Object of the Act:

1. This act was passed to establish Family Courts in states to ensure conciliation and speedy settlement of disputes concerning the family matters.
2. The purpose and aim of establishing the Family Courts is to protect and secure the organization of marriage and to promote the welfare of children and provide for settlement of disputes by conciliation.
3. Every State Government after consultation with the High Court sets up in every area in the state, a Family Court. One or more judges head it and preference is given to women judges.
4. Simplify the rules of evidence and procedures so as to enable a Family Court to deal effectively with a dispute.
5. Provide for only one right of appeal which shall lie to the High Court.

Important provision:

1. Section 4 of the Family Courts Act contains provisions for the appointment and functions of judges, their qualifications, designation, age limit, the powers of the central government to frame rules regarding selection of judges, service conditions etc.
2. Section 5 of the Act stipulates for the association with the court proceedings of institutions or organisations engaged in the social welfare of persons professionally

engaged in promoting the welfare of the family of persons working in the field of social welfare or any other expert in family law matters.

3. Section 6 of the Act also stipulates for the appointment of counsellors, officers and other employees necessary for the functioning of the family court system.
4. Section 7 (1) & (2) explanation of the Family Courts Act of 1984 describes the kind of disputes over which the family court has jurisdiction.
5. Section 8 of the Family Courts Act excludes the jurisdiction of civil courts in matrimonial matters and of criminal courts in respect of maintenance under Section 125 of the Cr. P.C.
6. Section 11 of the Family Court Act, 1984, “In very 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.”
7. Section 12 secures the service of a medical expert or such other persons who specialize in promoting the welfare of the family and to assist in the discharge of its functions.
8. 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.

Case laws under Family courts:

1. *Balram Yadav vs Fulmaniya Yadav*²

Question involved: Overriding effect of Family Courts Act over other laws?

Held: Under Section 7(1) Explanation (b), a Suit or a procedure for a declaration regarding the validity of both marriage and matrimonial status of an individual is within the exclusive jurisdiction of the Family Court, since under Section 8, all those jurisdictions covered under Section 7 are barred from the domain of the purview of the Civil Courts. In case, there is a dispute on the matrimonial status of any person, a declaration in that regard has to be sought only before the Family Court. It makes no difference as to whether it is an affirmative relief or a negative relief. The important

²AIR 2016 SC 2161

for the declaration regarding the matrimonial status stated under Section 20 also endorses the view which we have taken, since the Family Courts Act, 1984, has an overriding effect on other laws.

2. *Narayan vs Baba sahib and ors*³

Question involved: Alienation of property of minor by guardian, Legal necessity, limitation Act. ?

Held: When the permission of district court was not obtained under section 8(2)(a) of the Hindu Minority and Guardianship Act, and sale was not done for legal necessity, then it was held that minors can impeach the sale transaction within 3 years after attaining majority.

3. *ShamimaFarooqui Vs Shahid Khan*⁴

Question involved: Approach of Family Court Judge?

Held: Family Courts have been established for adopting and facilitating the conciliation procedure and to deal with family disputes in a speedy and expeditious manner. The judges of the Family court expects to be sensitive to the issue pertaining to the marriage and issues ancillary thereto. There has to be a proactive approach in this regard and the said approach should be instilled in the family court judges by the judicial academies functioning under the High Court.

4. *Syamala Devi Vs Sarala Devi*⁵

Question involve:Declaration of Status as legally wedded wife?

Held: Dispute between the couples, seeking declaration that plaintiff is legally wedded wife of a deceased. Even if the dispute is not between parties to alleged marriage, or even after the death of either or parties to marriage. Such dispute falls within purview of Section 7 (b) of Family Courts Act. The husband, during the pendency of the proceedings, if dies, the proceeding does not become abated or cease to be triable by the Family Court. It will be continued by the heirs of the husband claiming themselves to step into the shoes of the husband or by those interested in prosecuting the matter. Such proceedings will certainly fall under the jurisdiction of the Family Court.

5. *Davu Gopal Lunani Vs. Siva Gopal Lunani*⁶

³ AIR 2016 SC 1666; (2016) 6 SCC 725

⁴ AIR 2015 SC 2025

⁵ 2009 (5) RCR Civil 421 (Kerala HC)

⁶ AIR 2014 AP 29; 2014 (1) ALT 396

Question involved: Section 7 of Family Courts Act vis-à-vis jurisdiction of Civil Court?

Held: With reference to Section 7 (1) of Family Courts Act. A suit for declaration filed a person claiming that defendant was the father and that plaintiff was born to defendant. The proceeding between parties to marriage alone is dealt with under Clause (a) to Section 7 (1). To come within clause (e) – that third party, who has filed the suit, should obviously be off-spring of persons having a matrimonial relationship. Family Court cannot entertain any suit or proceeding for a declaration as to legitimacy of any person without establishing validly any claim of marital relationship of parents. Therefore, matter will not fall under the purview of Clause (e) to Sub Section (1) of Section 7.

Recent Amendment:

1. The Supreme Court has upheld the presumption that couples who live together as husband and wife are legally married and women can claim maintenance under Section 125 of Code of Criminal Procedure (Cr.P.C). The apex court held that law presumes in favour of marriage and against concubine when man and woman have cohabited continuously for a number of years.

Loopholes:

1. The Family Courts' primary object is to help the smooth and powerful removal of cases identifying with family matters. Notwithstanding, similar to some other framework, there are certain issues that become a matter of concern with regards to the working of these courts.
2. A significant downside of the Family Courts Act happens to be that it doesn't expressly enable Courts to grant injunctions to forestall abusive behaviour at home. While there has been advancing, viz the authorization of the Protection of Women from Domestic Violence Act, 2005 which currently reaches out to punishing women for acts of viciousness also; there are still issues of jurisdiction to be handled.
3. Since the Family Court has a prohibitive jurisdiction and does not have the power to decide issues of contempt, individuals don't appear to pay attention to the court as they would to a judge or a city civil court.

4. The Government is empowered to make rules prescribing some more qualifications. Aside from recommending the qualification of the Judges of Family Courts, the Central Government has no task to carry out in the administration of this Act. Different High Courts have set down various guidelines of the procedure. In any case, this absence of consistency could likewise be one reason behind the way that family matters are as yet being heard by civil courts.
5. The substantive part of the law can't be ignored on the ground that it is what cases are made of.
6. Coherence and no fixed tenure for counsellors.
7. Less power and doesn't explicitly empower Courts to grant injunctions to forestall aggressive behaviour at home.
8. No legal representation, the parties are not entitled to the right to be represented by a legal practitioner. The fact that the procedures are mollifying doesn't relieve them of the complicated legal issues which may be engaged in the family dispute.

Conclusion:

It is clear that the setting up of these family courts was a powerful step so far as decreasing the backlog and disposing off cases while ensuring that there is a productive delivery of justice goes. However, as aforementioned, there are still matters of concern which plague these courts. The issues identifying with the working of these courts is to be found altogether. Besides, the absence of consistency with respect to the guidelines set by different states various additionally prompts disarray in its application. Merely passing a central legislation isn't in itself a prefect; at least in the initial stages of its coming into effect. Further, the need to change certain laws is likewise to be analysed and executed adequately so as to guarantee that these courts don't confront any prevention in their working. These few changes if analysed and executed, will go a long way to ensure that the Family Courts are fruitful, indeed, to satisfy the honourablereason for which they were made.

About the Author



My name is Pooja Mandotar and I am studying Bishop Cotton Women's Christian Law College, Bengaluru. My experience at LEGALEAGLE LAW FORUM, internship was for 4 weeks, which started with a zoom call to explain us regarding the research to be accomplished. After which I was given a set of 6 Bare Acts Title which was supposed to be completed by me. It was a great learning opportunity for me. The research work has made me to accept more in my composing aptitudes and has acquired a lot of certainty in me concerning my capacities to think and efficiently put it down in writing. I would like to thank the Organization for giving out an opportunity like this, especially during a pandemic situation, and a special thanks to the mentors for being so cooperative with me and clearing the doubts in a short span of time.