

ACCESS TO JUSTICE FOR WOMEN: THE ROLE OF FAMILY COURTS IN INDIA

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Abstract—Access to justice is a fundamental constitutional guarantee in India, rooted in Articles 14, 21, and 39A, yet for many women it remains more aspirational than real due to entrenched socio-cultural and structural barriers. This paper examines the role of Family Courts in India as a specialized institutional mechanism aimed at enhancing women’s access to justice in family-related disputes. It critically analyzes how patriarchal norms, socio-economic inequalities, lack of legal awareness, and procedural complexities impede women’s ability to effectively seek legal remedies in matters such as divorce, maintenance, child custody, and domestic violence.

The study explores the objectives and functioning of the Family Courts Act, 1984, highlighting its emphasis on conciliation, mediation, and speedy dispute resolution as a departure from the adversarial model of traditional courts. It evaluates whether Family Courts have succeeded in creating a more accessible, efficient, and gender-sensitive forum for justice delivery. While these courts have contributed to reducing procedural delays and emotional distress, challenges such as inadequate infrastructure, limited awareness, and inconsistent implementation persist.

The paper concludes that although Family Courts represent a progressive step toward strengthening access to justice for women, there is a need for systemic reforms, enhanced legal aid, and greater gender sensitization to fully realize their potential in ensuring substantive justice and empowerment for women in India.

Index Terms—Access to Justice, Fundamental rights, Women, Family Court.

I. Introduction

Access to justice is a cornerstone of the Indian Constitution, embodied in Articles 14, 21, and 39A, which guarantee equality before the law, protection of life and liberty, and free legal aid, respectively. However, for many women in India, this right remains largely theoretical due to deeply entrenched systemic barriers. Patriarchal norms often relegate women to subordinate roles within families, limiting their autonomy and access to resources. Socio-economic disparities further compound these challenges, as many women, particularly in rural or marginalized communities, lack the financial independence or education to navigate the legal system. Legal complexities, including lengthy procedures and inadequate representation, add another layer of difficulty, especially in family law matters such as divorce, maintenance, child custody, and domestic violence. These issues disproportionately burden women, who are often economically and socially dependent on their families, making it harder for them to seek redress or assert their rights in a traditionally male-dominated society.

In response to these pervasive challenges, the Indian legal system introduced the Family Courts Act, 1984, establishing specialized Family Courts to address disputes arising from familial relationships. These courts were designed with the specific intent of creating an accessible, efficient, and gender-sensitive mechanism for justice, departing from the adversarial nature of conventional courts. The Act emphasizes conciliation and mediation as primary tools to resolve disputes amicably, reflecting an understanding of the emotional and social complexities involved in family matters. By prioritizing speedy resolutions, Family Courts aim to reduce the prolonged trauma that women and children often endure during legal battles over divorce, alimony, or custody. Moreover, these courts are mandated to operate with a focus on the welfare of women and children, offering a forum where their voices can be heard and their rights safeguarded. Despite these progressive intentions, implementation remains uneven, with issues like inadequate infrastructure, lack of trained personnel, and societal stigma still hindering the courts' ability to fully deliver justice to women across India.

II. HISTORICAL BACKGROUND OF FAMILY COURTS IN INDIA

The establishment of Family Courts in India marks a significant shift in the judicial approach to family disputes, reflecting a growing recognition of the need for specialized forums. Historically, family-related matters were adjudicated in regular civil and criminal courts, which were often ill-equipped to handle the emotional and social complexities of such cases. The adversarial nature of these courts, coupled with procedural delays and a lack of sensitivity, exacerbated the plight of women seeking justice.

The push for Family Courts began in the mid-20th century, influenced by social reform movements advocating for women's rights. The Committee on the Status of Women in India (1974) highlighted the inefficiencies of traditional courts in addressing family disputes and recommended the creation of specialized courts to handle matrimonial and related issues with empathy and efficiency. This recommendation was rooted in the understanding that women, often economically and socially disadvantaged, required a judicial mechanism that prioritized reconciliation and speedy resolution over prolonged litigation.¹

The Family Courts Act, 1984, was enacted as a legislative response to these concerns. Inspired by similar models in countries like the United Kingdom and the United States, the Act aimed to establish Family Courts in cities and towns with populations exceeding one million, with the flexibility to extend them to other areas as deemed necessary by State Governments in consultation with High Courts. The first Family Court was inaugurated in Chennai in 1984, marking the beginning of a new era in family law adjudication. Over the years, the network of Family Courts has expanded, with approximately 850 courts operational across India as of October 2024, reflecting a commitment to improving access to

justice for women and families.

¹**Ministry of Education and Social Welfare, Committee on the Status of Women in India Report, Towards Equality, 1974.**

III. LEGAL PROVISIONS FOR WOMEN IN FAMILY LAWS

India's legal framework provides several provisions to protect women's rights within the family, forming the backbone of Family Court proceedings. These laws address issues such as marriage, divorce, maintenance, custody, and domestic violence, ensuring that women have legal recourse in familial disputes.

The Hindu Marriage Act, 1955²: Applicable to Hindus, Buddhists, Jains, and Sikhs, this Act governs marriage and divorce. It provides women with rights to seek divorce on grounds like cruelty, desertion, and adultery (Section 13), and restitution of conjugal rights (Section 9). Section 24 ensures maintenance pendente lite, supporting women during litigation.

The Muslim Personal Law (Shariat) Application Act, 1937³: Governs Muslim family matters, including marriage (nikah), divorce (talaq), and maintenance. The Muslim Women (Protection of Rights on Divorce) Act, 1986, further safeguards divorced Muslim women's rights to maintenance, though its scope has been expanded by judicial interpretations.

²**The Hindu Marriage Act, 1955.(Act 25 of 1955)**

³**The Muslim Personal Law (Shariat) Application Act, 1937.(Act 26 of 1937)**

The Indian Divorce Act, 1869⁴: Applicable to Christians, it allows women to seek divorce and maintenance, though its provisions have been criticized for being outdated and gender-biased, prompting calls for reform.

The Protection of Women from Domestic Violence Act, 2005 (PWDVA): A landmark legislation, it provides civil remedies like protection orders, residence orders, and monetary relief to women facing domestic violence, complementing the criminal provisions under Section 498A of the Indian Penal Code (IPC).

The Family Courts Act, 1984⁵: While not a substantive law, it establishes the procedural framework for Family Courts, emphasizing conciliation and informal proceedings to make justice accessible to women.

*The Hindu Succession (Amendment) Act, 2005*⁶: This amendment grants daughters equal coparcenary rights in ancestral property, enhancing women's economic security within families.

These provisions collectively aim to empower women by addressing gender-specific vulnerabilities. Family Courts serve as the primary adjudicatory bodies for enforcing these laws, ensuring their effective implementation in a gender-sensitive manner.

IV. ROLE OF FAMILY COURTS IN PROVIDING ACCESS TO JUSTICE FOR WOMEN

⁴ **The Indian Divorce Act, 1869. (Act 4 of 1869)**

⁵ **The Family Courts Act, 1984. (Act 66 of 1984)**

⁶ **The Hindu Succession Amendment Act 2005 (Act 39 of 2005)**

Family Courts play a crucial role in bridging the gap between women and justice by offering a specialized platform tailored to their needs. Their key contributions include:

Conciliation and Mediation: Unlike traditional courts, Family Courts prioritize reconciliation over confrontation. Section 9 of the Family Courts Act mandates efforts to settle disputes amicably, reducing hostility and preserving family relationships where possible. This approach benefits women who often face societal pressure to maintain marriages.

Speedy Resolution: By simplifying procedures and dispensing with rigid evidentiary rules (Section 14), Family Courts aim to expedite cases, minimizing the financial and emotional burden on women litigants.

Sensitivity to Gender Issues: Judges in Family Courts are often trained to handle cases with empathy, recognizing the socio-economic disadvantages women face. This is particularly evident in cases of domestic violence and maintenance, where courts prioritize women's safety and financial support.

Child Welfare Focus: In custody disputes, Family Courts emphasize the best interests of the child, often aligning with women's roles as primary caregivers, as seen in cases like *Smriti Madan Kansagra v. Perry Kansagra* (2020).

Informal Atmosphere: The relaxed procedural norms create a less intimidating environment, encouraging women—many of whom lack legal literacy—to approach the courts confidently.

Through these mechanisms, Family Courts empower women to assert their rights, offering a viable

alternative to the delays and insensitivity of traditional judicial forums.

V. RECENT DEVELOPMENTS IN FAMILY COURTS

Family Courts in India have evolved to address contemporary challenges, reflecting societal changes and technological advancements. Key recent developments include:

Expansion of Infrastructure: The 14th Finance Commission (2015-2020) recommended establishing 235 additional Family Courts, increasing their reach. As of October 2024, 850 courts are functional, with efforts ongoing to cover underserved areas.⁷

Digitalization: The integration of technology, such as e-filing and virtual hearings (accelerated during the COVID-19 pandemic), has improved accessibility, particularly for women in remote areas.

Focus on ADR: Alternative Dispute Resolution (ADR) mechanisms like mediation and counseling have gained prominence, reducing courtroom acrimony and promoting settlements.

Legal Aid Enhancements: Collaboration with Legal Services Authorities under the Legal Services Authorities Act, 1987, has strengthened free legal aid for women, ensuring representation in Family Courts.

Judicial Sensitivity Training: Programs to sensitize judges on gender issues and child welfare have been introduced, aligning court practices with constitutional mandates of equality and justice.

These developments signify a progressive shift, making Family Courts more responsive to women's needs in a rapidly changing socio-legal landscape.

⁷ Department of Justice, Government of India, Family Court Dashboard, Available at <https://dashboard.doj.gov.in/family-court-cases/> (Visited at 11.42 pm, 7th April 2025)

VI. CASE LAWS FOR ENHANCING WOMEN'S RIGHTS

Landmark judicial decisions have significantly bolstered women's rights within the ambit of Family Courts and family law:

Vishaka v. State of Rajasthan (1997)⁸: While primarily addressing workplace harassment, this case inspired Family Courts to adopt a broader interpretation of women's rights, influencing domestic violence adjudications.

Lata Singh v. State of Uttar Pradesh (2006)⁹: The Supreme Court upheld an adult woman's right to

marry or live with a partner of her choice, directing Family Courts to protect such autonomy against familial opposition.

*Shayara Bano v. Union of India (2017)*¹⁰: This case declared instant triple talaq unconstitutional, empowering Muslim women to seek equitable divorce remedies in Family Courts.

*Smriti Madan Kansagra v. Perry Kansagra (2020)*¹¹: The Supreme Court emphasized child welfare in custody disputes, reinforcing Family Courts' role in prioritizing psychological and emotional factors, often favoring mothers.

*Vineeta Sharma v. Rakesh Sharma (2020)*¹²: Upholding the 2005 amendment to the Hindu Succession Act, this ruling affirmed women's equal coparcenary rights, impacting property disputes in Family Courts.

VII. CHALLENGES FACED BY WOMEN IN FAMILY COURTS

Despite their potential, Family Courts face several challenges that hinder women's access to justice:

⁸ AIR (1997) 6 SCC 241.

⁹ AIR (2006) 5 SCC 475.

¹⁰ AIR (2017) 9 SCC 1.

¹¹ AIR (2020) 12 SCC 1.

¹² AIR (2020) 9 SCC 1.

Overburdened Courts: High caseloads lead to delays, undermining the goal of speedy resolution. Women, often financially dependent, suffer disproportionately from prolonged litigation.

Lack of Infrastructure: Many Family Courts lack adequate facilities, such as counseling centers or childcare services, deterring women from pursuing cases.

Gender Bias: Patriarchal attitudes among some judges and court staff can result in victim-blaming or trivialization of women's grievances, especially in domestic violence cases.

Low Awareness: Many women, particularly in rural areas, remain unaware of Family Courts' existence or their rights under family laws, limiting their access.

Economic Barriers: Despite legal aid, incidental costs like travel and lost wages pose significant hurdles for indigent women.

These challenges highlight the gap between the legislative intent of Family Courts and their practical efficacy, necessitating systemic reform.

VIII. ROLE OF LEGAL AID AND NGOS IN SUPPORTING WOMEN

Legal aid and non-governmental organizations (NGOs) play an indispensable role in supporting women navigating Family Courts:

Legal Services Authorities: Under the Legal Services Authorities Act, 1987, women are entitled to free legal aid if they meet eligibility criteria. District Legal Services Authorities (DLSAs) provide representation, counseling, and assistance in Family Courts.

NGOs as Advocates: Organizations like the National Commission for Women (NCW), Majlis, and Sakshi offer legal counseling, mediation, and awareness campaigns. Women's courts (mahila adalats), often run by NGOs, provide informal dispute resolution, complementing Family Courts.

Emotional and Practical Support: NGOs assist with filing cases, accompanying women to court, and providing shelters or vocational training, addressing both legal and socio-economic needs.

Policy Influence: NGOs advocate for legislative reforms and judicial training, amplifying women's voices in the justice system. Together, legal aid and NGOs bridge critical gaps, ensuring that Family Courts remain accessible and effective for women.

IX. RECOMMENDATIONS FOR IMPROVING ACCESS TO JUSTICE FOR WOMEN

To enhance Family Courts' effectiveness in delivering justice to women, the following recommendations are proposed:

Increase Court Numbers: To make Family Courts more accessible, it is essential to expand their presence beyond urban centers and into rural areas where women often face significant barriers to justice. By establishing additional courts in underserved regions, the government can reduce the travel burden on women, many of whom lack the resources or freedom to journey long distances, thereby ensuring that geographical constraints do not prevent them from seeking legal recourse.

Enhance Infrastructure: Improving the physical and operational facilities of Family Courts is critical to supporting women litigants effectively. This includes providing dedicated counseling rooms for private discussions, childcare facilities to assist mothers attending hearings, and modern digital tools like computers and internet access for smoother case management. Such enhancements create a more welcoming and practical environment, addressing the unique needs of women who may otherwise be deterred by inadequate or intimidating court settings.

Judicial Training: Regular and mandatory training programs focused on gender sensitivity should be implemented for judges and court staff to address and eliminate ingrained biases. These programs would educate personnel about the socio-economic challenges women face, fostering empathy and ensuring that decisions are made fairly, particularly in sensitive cases like domestic violence or maintenance, where patriarchal attitudes can undermine justice.

Public Awareness Campaigns: To bridge the knowledge gap, comprehensive awareness initiatives using television, radio, social media, and community-based outreach should be launched to inform women about their legal rights and the services offered by Family Courts. Grassroots efforts, such as workshops led by local leaders or NGOs, can empower women, especially in rural and marginalized communities, to recognize and exercise their entitlements under family laws.

Strengthen Legal Aid: Boosting financial support for District Legal Services Authorities (DLSAs) and simplifying the application process for free legal aid can ensure that women receive timely and high-quality representation. This involves not only increasing budgets but also training more legal aid lawyers to handle family law cases efficiently, making justice truly accessible to indigent women who might otherwise be excluded due to economic constraints.

Integrate Technology: Expanding the use of e-courts, including online filing systems and virtual hearings, can significantly lower the barriers of cost and distance for women in remote areas. By leveraging technology, Family Courts can offer a convenient alternative to physical appearances, saving litigants travel expenses and time, which is particularly beneficial for those balancing familial responsibilities or facing mobility restrictions.

Monitor Case Disposal: To tackle the persistent issue of delays, clear benchmarks and timelines for resolving cases should be established and enforced within Family Courts. Regular monitoring and accountability mechanisms, such as performance audits or judicial oversight, can ensure that cases are disposed of promptly, reducing the emotional and financial toll on women who often endure prolonged litigation due to overburdened court schedules.

X. CONCLUSION

Family Courts in India embody a forward-thinking approach to addressing the unique challenges women face in family disputes, reflecting a historical commitment to gender equity enshrined in the Indian Constitution. Established under the Family Courts Act, 1984, these courts provide a specialized platform designed to move away from the adversarial nature of traditional judicial systems, emphasizing conciliation, sensitivity, and efficiency. Legal frameworks such as the Hindu Marriage Act, 1955, the Protection of Women from Domestic Violence Act, 2005, and landmark judicial precedents like Shayara

Bano v. Union of India (2017) have bolstered women's rights in matters of divorce, maintenance, and protection from violence. Furthermore, recent advancements, including the integration of digital tools like e-filing and virtual hearings—accelerated during the COVID-19 pandemic—demonstrate the adaptability of Family Courts to contemporary needs. These developments have made justice more accessible, particularly for women in remote areas, while reinforcing the courts' role as a responsive and empathetic forum for resolving familial conflicts.

Despite these strides, Family Courts face significant hurdles that hinder their ability to fully deliver on their promise of justice for women. Overburdened dockets result in prolonged delays, disproportionately affecting financially dependent women who cannot sustain extended litigation. Infrastructural shortcomings, such as the absence of counseling centers or childcare facilities, deter many from pursuing their cases, while lingering patriarchal biases among some judges and staff can lead to dismissive attitudes toward women's grievances. The lack of awareness about these courts and the rights they uphold, especially in rural areas, coupled with economic barriers like travel costs, further limits access. However, the collaboration between legal aid services under the Legal Services Authorities Act, 1987, and NGOs like the National Commission for Women has been instrumental in bridging these gaps, offering representation, counseling, and advocacy. To overcome these challenges and align with the constitutional ideals of equality and dignity, systemic reforms—such as expanding court networks, enhancing infrastructure, and mandating judicial training—are imperative. By acting on these targeted recommendations, India can transform Family Courts into robust institutions that truly empower women and uphold justice.

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