

# WHY FAMILY COURTS IN INDIA NEED TO DELIVER SPEEDY JUSTICE

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"If I get married, I want to be very married." - Audrey Hepburn .

So true. This is the exact expectation that dwelt in the minds of every couple entering into marriage 'once upon a time'. Not anymore. Today marriage is really a contract or a business venture where couples are in it seeking 'whats in it for me?'

Marriage as an institution is deteriorating with the rate of marriage coming down and getting replaced with the easy, instant, legal, modern, cheaper version of joint living called as 'live-in' relationships. Mind you, it's still termed as relationship and not an institution. It may not guarantee you privileges of marriage if that's also what you are looking for in a live-in relationship. So today what we see is that 40% of the marriages are heading towards divorce and entering Family Courts. The common man has expectations of justice being delivered speedily and being done with the whole sequence of drama and trauma. Ironically, as years pass by, wasting his time, youth and energy a judgement is delivered finally making him realize it was a leap from frying pan to fire.

Before 1984, all family matters were heard by the ordinary Civil Court Judges who used to take a

long time to provide relief to the parties. Hence the Family Courts Act, 1984, was enacted by the Parliament to provide an innovative forum to take the cases dealing with family matters away from the intimidating atmosphere of regular courts and to ensure that a congenial environment is set up to deal with matters such as marriage, divorce, alimony, child custody etc.

Section 3 of the Family Court Act 1984, provides to set up the Family Court. The Act has empowered the State Government to make rules for the working of the Family Court in their states but most of the State Government haven't effectively used these powers to make rules and set up Family Courts. The Act was enacted to establish Family Courts across the country with a conciliatory approach to secure speedy relief to the parties but it has been failing in its objective in many ways.

The main objective of the Family Court was to provide speedy settlement with fewer expenses and formalities, in disputes relating to marriage and family and to make an agreement between the parties for their reconciliation. It was predicted that this forum will work in a just manner to secure the maximum welfare of the family. But this objective is yet to be achieved.

Section 2 of the said Act has defined some terms; however, it has not defined the term "family", due to which matters arising out of economic consequences which affect the family in various ways are not covered by the Family Court. Only matters related to marriage, maintenance and divorce are dealt with by the Family Court.

In India, the Family Court can accept the appeals for grant of decree of divorce under various acts like Dissolution of Muslim Marriage Act, 1939, Muslim Women (Protection of Rights on Divorce) Act, 1986, the Parsi Marriage and Divorce Act, 1936, the Divorce Act, 1869, the Special Marriage Act, 1954, Foreign Marriage Act, 1969 etc. For the dissolution of Hindu marriage, one can file an appeal for divorce under Hindu Marriages (validation of proceedings) Act, 1960. However the Family Courts Act has not specifically mentioned the jurisdiction of the Family Court in matters of domestic violence which also arises in the marriage. It affects everyone in the family. Though the said Act hasn't made any provision related to the matters of domestic violence, there is a provision under the Protection of Women from Domestic Violence Act, 2005 (hereinafter DV Act), according to which the Family Court can entertain the matters related to domestic violence.

The Family Court should actually have a litigant friendly approach and function in the spirit of helping parties resolve their disputes – either mutually, or through the Courts determination. It is expected to act with due application of mind and without being hypertechnical about matters brought before it. But this is not always the face of reality. As the Family Court follows the provisions of Code of Civil Procedure in the suits or proceeding it creates difficulties for a common man to understand the complex law. The Act hasn't created any simplified rules which can be understood by a layman so the procedure prescribed by the Act should be simplified by the legislature so that it

could be easily understood. Ironically, though we have handbook of instructions for using gadgets in our daily life, there is no handbook of instructions needed for a layman to understand what procedures will follow in the Courts and what he or she will be expected to produce or prove in the Court to get justice that will affect his or her entire life. Hence it's necessary to make such arrangements for creating awareness of the procedures in various Courts under various laws for even an uneducated layman to understand.

The aim of Family Courts while settling dispute of the family through a conciliatory approach should be with an attempt to secure gender-based equality. The disputes can be resolved in friendly manner. But the government and the legislature haven't thought of making some changes in the law to ensure that.

The Family Courts are equipped with Counsellors and Psychologists who help even in reconciliation and mutual settlement because while there may be core legal issues to be dealt with; there is also a human and psychological dimension to be dealt with in these matters. These same factors will help the party win or loose the case.

The issue of the custody of a child arises after the completion of the divorce or the judicial separation and is one of the most important burning issues on which the Court must decide. All aspects of psychology of all parties involved should be looked into while dealing with the issues of child custody because we have to ensure the best interests of the child not the interest of the parent. The endeavour of the Family Court should be more towards the joint custody of the child as it happens to be one of the best solutions in the custody battle favoring the child except in exceptional cases, primarily because of two reasons. First and foremost is the fact that no parent feels deprived. Hence, the grant of joint custody rights ensures that both parents play a significant role in the upbringing of the children involved. The second advantage of a joint custody is that the children gets the affection of both the parents equally. No matter the arrangements, children who have gone through the separation of parents are left with a psychological scar. The feeling of loss, deprivation, security and social stigma attaches to their tender minds due to the outside world. This arrangement allows the child to receive the attention and love of both parents equally to be able to share and gain confidence to face all odds. Moreover, the child also gets to understand who is in affecting adversely and can convey the same to the other worthy parent who can then get the child's sole or physical custody if needed in exceptional cases. If the court deems that both the parents are incapable of raising a child and to let anyone of them have the rights of the child would not be beneficial for the child then a third party who is in some way related to the parents is given the right to be the guardian of the child. To do all this evaluation there must be really well trained Counsellors, Psychologists appointed in the Family Courts .

According to some men's rights activists, cruelty, when alleged by men, is less likely to be believed

by judges. This is particularly significant since divorce on grounds of cruelty is often used in divorce cases. But reality can be totally different. Often men don't want to voice the cruelty faced by them because it's shameful to accept themselves as victims before society, where there is a stereotype image about men being macho. Also in case of child custody we observe the Family Court has often failed to ensure gender justice and equality due to orthodox thinking of judges and biased attitude of the Counsellors. The favour is more towards the mother because she is looked upon as the nurturer of the family while father is the provider, even though reality is not the same. As such, fathers might be looked down upon by the court in a child custody case for "not doing enough." For example, in a regular family, if you ask a father when his child's next regular doctor's checkup is, he might not know. This should not be counted against him though as he knows the mother has these details. Since he trusts her, he knows she will take care of this. Additionally, if she needs help, he knows she will tell him so. But such things can be used against him in the Courts during the child custody issues. So Family Courts must ensure gender justice.

The situations become worse when the Counsellors and other authorities keep on changing. If a suit went for a long time and in the middle of it if the Counsellors got changed then it became difficult for the parties to convey their problems again. Hence there is a need to ensure the Counsellors are not changed frequently and well trained Counsellors should be appointed. Additionally technology can be used to record the whole process to understand and study each case to be more accurate in observing and judging the parties, especially when they keep changing their statements etc.

There should be an organized program where judicial education on gender justice be imparted. This can be done by NGOs and social welfare organizations. This is necessary because the role of Counsellors has to be clear as they only focus on the reunion of family, if there is scope for it, otherwise they need to instill sense into a meaningful exit. There is a need to also care about the interests and security of the parties involved be it a man or a woman. They should be trained to be more neutral while settling the disputes. The provision of the Act which grants maintenance should also include the residence of women if it's found necessary in specific cases of uneducated, financially poor, disabled or ailing women or women with minor children without a roof over them.

The Act has also negated the presence of lawyers in the suit or proceeding of a Family Court which create difficulties for a common person to understand the procedure and formalities of the court. In such circumstances, the parties of a suit have to depend on the clerks and peons of the court. So the Family Courts can take assistance from NGOs and other welfare societies to help the court in discharging its functions which brings professional competence into well-being and community needs.

The Judges of the family court are appointed based on the qualification as that of judges of District Court. There is a need to change this process. A significant step is also to make use of the available

human resource. We can ensure qualified senior and experienced Judicial Officers to be posted as Principal Judges of the Family Courts, with the expectation that they will display legal acumen. Also, these Judges should be trained well in dealing with the disputes related to the family. This will solve the problem on lack of judges. We need the best brains in the top levels of the judiciary to uphold justice.

Statistics report that cases are piling up at all levels of the Court including the Family Courts. An effective way of tackling the problem of pendency is to improve the efficiency of the justice delivery system rather than changing the justice delivery systems because despite the plethora of reports, the inefficient justice delivery system has only become more inefficient. The Singapore judiciary has successfully implemented case management. Our policymakers seem to have an impression that because of the sheer volume of pending cases, it is not possible to do case management. But this is not true. We must do our best to deliver speedy justice at all costs to ensure that the faith in institution of marriage stays intact, families are formed healthier from lessons learnt and children grow up into worthy citizens who bring pride to themselves and their parents too.

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