

ROLE OF FAMILY COURTS IN HINDU MARRAIGES

AUTHOR – DIVYANSHU KRISHNA, STUDENT AT BABU BANARASI DAS UNIVERSITY, LUCKNOW

BEST CITATION – DIVYANSHU KRISHNA, ROLE OF FAMILY COURTS IN HINDU MARRAIGES, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (11) OF 2025, PG. 202-217, APIS – 3920 – 0001 & ISSN – 2583-2344

Chapter 1: Introduction

1.1 Background and Significance of the Study

Family is the fundamental unit of society, and the institution of marriage serves as its cornerstone, especially within the Hindu community where marriage is traditionally considered a sacrament (samskara) rather than contract. However, the increasing complexity of modern relationships, urbanization, and individual autonomy have led to a rising number of matrimonial disputes, including issues related to divorce, maintenance, custody, and domestic violence.

To address such sensitive matters with a conciliatory approach, the Family Courts Act 1984 was enacted to establish a special forum for resolving family and matrimonial disputes in a humane, non-adversarial and expeditious manner. These courts aim not only to adjudicate but also to reconcile parties, wherever possible, before the breakdown of marriage becomes irreparable.

In Hindu Law, where traditional customs intersect statutory provisions under The Hindu Marriage Act, 1955 the role of family courts becomes more critical. This study explores the effectiveness and significance of family courts in maintaining the sanctity of Hindu marriage while balancing individual rights and legal remedies.

1.2 Rationale of the Research

This research is rooted in the growing relevance of family courts as protectors of familial relationships and as agents of social justice. While several studies have examined family law and personal laws independently, there exists a gap in academic literature specifically addressing how family courts operate within the unique framework of Hindu Matrimonial Law.

Given the surge in matrimonial litigation and the increasing stress on courts, this research is important to understand:

- Whether family courts are maintaining their statutory mandate of conciliation.
- How effectively they address women's rights, maintenance, child custody etc.
- What reforms are needed to strengthen their role in resolving Hindu Matrimonial Disputes.

1.3 Statement of the Problem

Despite the creation of family courts as specialized judicial bodies, the growing number of unresolved or delayed cases questions their efficacy and its impact. In Hindu Marriages, where traditions, rituals, and statutory rights overlap, the family court's role becomes complex. Problems arise due to:

- **Procedural delays despite the objective of speedy justice.**
- **Insufficient focus on counselling and mediation.**
- **Gendered use and misuse of legal remedies.**
- **Lack of public awareness regarding the role of family courts.**

Thus, there is a need to evaluate whether family courts are genuinely bridging the gap between legal mandates and matrimonial realities in Hindu society.

1.4 Research Objectives

This research aims to :

1. Examine the statutory framework and functioning of Family Courts In India .
2. Analyze the application of family court procedures in Hindu Marriage Disputes .
3. Evaluate the effectiveness of conciliation and mediation mechanisms .
4. Identify the challenges and limitations faced by Family Courts .
5. Recommended legal and administrative reforms to improve the working of Family courts.

1.5 Research Questions

1. What is the role of Family Courts in adjudicating Hindu matrimonial disputes?
2. How effective are Family Courts in reconciling parties and preventing divorce?
3. Do Family Courts provide adequate remedies to women and children in Hindu Marriages?
4. What are the key Judicial precedents guiding Family Courts practice in Hindu Law?
5. What reforms are required to make Family Courts more efficient and accessible?

1.6 Hypothesis (if any)

Hypothesis 1: Family Courts have not been able to fully achieve their objective of speedy and amicable settlement of Hindu Matrimony disputes due to procedural and systematic limitations.

Hypothesis 2: Increased use of mediation and counselling mechanisms within Family Courts could significantly reduce matrimonial litigation and restore familial harmony in Hindu society.

1.7 Scope and Limitations of the Study

Scope :

- . This research is confined to the functioning of Family Courts with respect to Hindu matrimonial disputes under the Hindu Marriage Act, 1955.
- . It includes an analysis of legal provisions, case laws, and procedural practices in Indian Family Courts.
- . This research paper focuses primarily on urban and semi- urban jurisdictions due to availability of data.

Limitations:

. This research does not cover non- Hindu personal laws (e.g , Muslim , Christian, or Parsi law).

. It does not include a field survey or empirical data due to time and resource constraints.

. Jurisdictional practices may vary across states, making uniform analysis difficult.

1.8 Research Methodology

This Research follows a doctrinal research methodology based on :

Primary Sources: Statutes (Family Courts Act, 1984;Hindu Marriage Act, 1955), Supreme Court and High Court judgements .

Secondary Sources: Legal commentaries, Journal articles, Law Commission Reports, scholarly writings.

Comparative analysis is used to contrast Indian Family Courts with systems in other jurisdictions like the USA and UK.

1.9 Review of Literature

Several scholars and institutions have examined family courts from various perspectives:

Law Commission of India (59th Report) emphasized the establishment of family courts as a necessary reform to protect familial integrity.

Prof. Kusum's work on personal laws highlights the intersection of statutory and customary practices in Hindu marriages.

Flavia Agnes and other feminist legal scholars have critiqued the gender bias in matrimonial litigation and the role of courts in empowering women.

Articles in journal publications (e.g., Indian Bar Review, SCC Online, and NUJS Law Review) have analyzed the success and shortcomings of family court procedures.

However, comprehensive studies focusing exclusively on Hindu marriages within the context of Family Court adjudication and mediation practices remain limited – indicating a gap that this research aims to fill.

Chapter 2: Theoretical and Legal Framework

Family Courts are specialized courts instituted for adjudicating matters relating to family and matrimonial disputes. The underlying idea to

provide a therapeutic, non-adversarial, and conciliatory environment for resolving sensitive familial conflicts. Unlike traditional civil courts, Family Courts combine elements of social work, legal adjudication, and mediation, aiming to preserve family harmony wherever possible.

The Family Courts Act, 1984 was enacted to institutionalize this concept. According to its Preamble, the act seeks “to provide for the establishment of Family Courts with a view to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith”.

These courts address disputes under various personal laws, especially the Hindu Marriage Act 1955, thus playing a vital role in Hindu matrimonial issues such as divorce, judicial separation, restitution of conjugal rights, custody, maintenance, and guardianship.

2.2 Historical Development of Family Courts in India

The idea of Family Courts in India emerged from the need to create a specialized forum to deal with matrimonial disputes with sensitivity and speed. The 59th Report Of Law Commission In India (1974) was a landmark in recommending the establishment of family courts. The Committee On The Status Of Women In India (1975) also supported this proposal, noting the adversarial civil court system was inadequate to address the emotional and psychological dimensions of family disputes.

Although states like Maharashtra experimented with family courts in the late 1970s, it was only with enactment of the Family Courts Act in 1984 that nationwide framework was provided. The act mandates the establishments of family courts in cities with populations over one million, with discretion for expansion.

2.3 Objectives and Philosophy Behind Establishment of Family Courts

The key of objectives and philosophical foundations of family courts are as follows:

. **Promoting Conciliation:** Encouraging amicable settlements of disputes through

mediation and counselling before legal adjudication.

. **Speedy Justice:** Avoiding the long delays associated with regular civil courts.

. **Access To Justice:** Providing simplified procedures for easy access, especially for women and children.

. **Human -Centric Approach:** Addressing the emotional, psychological, and social aspects of family breakdowns.

. **Integrated Jurisdiction:** Consolidating civil and certain civil jurisdiction under one forum of family matters.

2.4 The Family Courts Act, 1984 – An Overview

The Family Courts Act, 1984 is the primary legislation governing the structure and function of Family Courts in India. Key provisions include:

. **Section 3:** Provides the establishment of Family Courts by the State Government in consultation with High Court.

. **Section 4:** Lays down qualification and criteria for appointment of judges, giving preference to women and those with experience in Family Law.

. **Section 6:** Enables the appointment of counsellors, psychologists, and social workers to assist courts the courts.

. **Section 7:** Details the exclusive jurisdiction of Family Courts in matrimonial, custody and property related disputes.

. **Section 9:** Mandates the courts to make efforts to reconciliation before proceeding the trial.

. **Section 10:** Allows procedural flexibility, emphasizing justice over technicalities.

. **Section 11:** Permits in camera proceedings to maintain privacy and dignities of the parties.

2.5 Structure and Composition of Family Courts

A typical Family Court consists of:

Presiding Judge: Appointed as per Section 4 of the Act. The judge is usually a person with judicial experience and knowledge of family law.

Counselors and Mediators: Appointed under Section 6 to aid in conciliation and counseling. They may include trained professionals in psychology, social work, and legal counseling.

Support Staff: Includes clerks, record-keepers, and administrative personnel.

Legal Advisors and NGOs (as permitted): May be involved in certain jurisdictions to assist in complex cases or represent parties unable to afford legal aid.

2.6 Role of Judges, Counselors, and Social Workers

The judge of a family court is not merely an adjudicator but also a facilitator of reconciliation and a protector of vulnerable parties. The judge may:

Encourage compromise and settlement.

Refer parties to counselors or mediators.

Ensure child custody decisions align with the “best interest of the child” standard.

Grant interim and permanent maintenance and visitation orders.

Counselors are crucial in enabling emotional healing and suggesting solutions acceptable to both parties. Social workers and psychologists may assist in assessing the mental and emotional conditions of parties and children, ensuring child welfare in custody matters.

2.7 Procedural Flexibility under the Act (Section 10)

Section 10 of the Family Courts Act empowers the court to follow its own procedure guided by the principles of natural justice, instead of adhering strictly to the Civil Procedure Code (CPC) or the Indian Evidence Act, 1872. This flexibility allows:

Oral applications and statements.

Non-technical cross-examinations.

Minimization of legal jargon.

Faster hearings and simplified pleadings.

The goal is to make the process accessible, efficient, and responsive to emotional complexities rather than being mired in legal formalities.

2.8 Mediation and Conciliation Mechanism (Section 9)

Section 9 of the Act imposes a mandatory duty on the court to endeavor reconciliation between the parties. It states:

"In every suit or proceeding, it shall be the duty of the Family Court to make every effort in the

first instance to assist and persuade the parties in arriving at a settlement."

If reconciliation is possible, the court may adjourn proceedings and involve counselors or mediation centers. Only if these efforts fail, the court proceeds with the trial.

This reflects the principle that divorce or separation should be a last resort, especially in Hindu law, where marriage is traditionally considered sacred.

2.9 In-camera Proceedings and Privacy Provisions (Section 11)

Section 11 empowers Family Courts to conduct in-camera proceedings, especially in sensitive matters such as:

Allegations of cruelty or adultery.

Testimonies involving minor children.

Issues relating to sexual conduct or violence.

The court may restrict public access and prohibit media reporting. This provision ensures:

Protection of the dignity and privacy of parties.

Creation of a safe environment for open communication.

Preventing social stigma, especially for women and children.

Chapter 3: Hindu Marriages – Legal Context

3.1 Concept and Nature of Hindu Marriage

Hindu marriage is one of the most ancient and sacrosanct institutions in Indian society. Traditionally, it has been considered not merely a contract but a religious and spiritual union – a samskara (sacrament) aimed at fulfilling dharma (duty), procreation (praja), and sensual gratification (rati), as per the classical Hindu texts.

Marriage is seen as a bond that continues for seven lifetimes (saptapadi) and not just a civil union. Despite this philosophical foundation, over time, modern legislative reforms have recognized marriage as a legal relationship, granting individuals enforceable rights and remedies in case of breakdown.

3.2 Hindu Marriage as a Sacrament vs. Contract

The sacramental view of Hindu marriage emphasizes its religious character,

indissolubility, and the absence of exit options like divorce. Key features include:

Performance of sacred rituals (e.g., saptapadi, homa, kanyadaan).

Lifelong bond between spouses.

Emphasis on family and societal obligations over individual will.

In contrast, the contractual view, endorsed through legislative reforms, regards marriage as a social contract, granting:

Legal rights to enter or exit the relationship.

Access to divorce, maintenance, and custody.

Autonomy to individuals, especially women, to challenge marital injustice.

The Hindu Marriage Act, 1955 seeks to balance both approaches by preserving rituals and customs while providing statutory remedies for matrimonial disputes.

3.3 Grounds for Judicial Intervention under Hindu Marriage Act, 1955

The Hindu Marriage Act, 1955, governs the legal aspects of Hindu marriages. It provides statutory grounds for judicial intervention in situations of:

Non-consummation or mental disorder.

Cruelty or desertion.

Conversion or renunciation.

Adultery or venereal disease.

Irretrievable breakdown of marriage (judicially evolved).

These grounds are reflected in key sections such as Section 9 (restitution), Section 10 (judicial separation), and Section 13 (divorce), enabling parties to seek legal relief from the Family Courts.

3.4 Key Provisions

3.4.1 Section 9 – Restitution of Conjugal Rights

This section allows a spouse to petition the court when the other party has withdrawn from their society without reasonable cause. The court may decree restitution if:

The withdrawal is unjustified.

There is no legal or factual impediment to cohabitation.

While critics argue that this provision can be coercive, the Supreme Court in *Saroj Rani v. Sudarshan Kumar Chadha* (AIR 1984 SC 1562)

upheld its constitutionality, considering it a tool to preserve the marital bond.

3.4.2 Section 10 – Judicial Separation

This provision allows spouses to live separately without ending the marriage. It can be sought on grounds similar to divorce. Unlike divorce, judicial separation does not dissolve the marriage, but suspends marital obligations, offering time for possible reconciliation.

3.4.3 Section 13 – Divorce and Breakdown of Marriage

Section 13 lays down various fault-based grounds for divorce, such as:

Adultery

Cruelty

Desertion (for 2 years)

Mental disorder

Conversion to another religion

Presumption of death

Section 13B (added via amendment) allows for mutual consent divorce, reflecting the recognition of individual autonomy. Courts have also read in irretrievable breakdown of marriage as a ground for divorce in exceptional cases.

3.4.4 Section 24 – Maintenance Pendente Lite

This section empowers either spouse (usually the economically weaker one) to seek interim maintenance and litigation expenses while the suit is pending. Courts ensure that:

The claimant lacks independent income.

The relief is just and reasonable.

This provision is critical in safeguarding women's access to justice, especially in matrimonial litigation.

3.4.5 Section 26 – Custody of Children

Section 26 allows courts to pass interim or final orders regarding the custody, maintenance, and education of minor children, keeping in mind the welfare of the child as the paramount consideration.

In *Githa Hariharan v. RBI* (1999), the Supreme Court emphasized gender-neutral guardianship rights, promoting equal parental roles.

3.5 Matrimonial Remedies and Reliefs Available

The Hindu Marriage Act offers several remedial provisions that enable parties to address matrimonial grievances:

Restitution of conjugal rights (Section 9)

Judicial separation (Section 10)

Divorce (Section 13 and 13B)

Alimony and maintenance (Sections 24–25)

Custody and guardianship (Section 26)

These remedies aim to balance personal liberty and social stability, allowing individuals to either seek reconciliation or exit a harmful marriage.

Family Courts exercise exclusive jurisdiction over such matters and are expected to ensure:

Just adjudication

Reconciliation efforts

Welfare of dependents

3.6 Role of Custom and Personal Law in Hindu Marriages

Even though the Hindu Marriage Act codifies marriage laws, custom continues to play a vital role. Under Section 3(a) of the Act, “custom” refers to any usage which has obtained the force of law and is certain, reasonable, and not opposed to public policy.

Examples include:

Validity of regional or community-specific ceremonies.

Recognition of sapinda relationships as prohibited or not.

Consent and age requirements influenced by traditional practices.

Courts have acknowledged that while statutory provisions take precedence, customary practices are relevant in interpreting the validity and nature of the marriage—provided they meet the legal test of recognition.

Thus, Family Courts often navigate a complex interplay of codified law and uncoded customs, especially in rural or traditional settings.

Chapter 4: Role of Family Courts in Hindu Matrimonial Disputes

4.1 Jurisdiction of Family Courts over Hindu Marriages

Under Section 7 of the Family Courts Act, 1984, Family Courts have exclusive jurisdiction in matters relating to marriage, divorce, restitution of conjugal rights, judicial separation, maintenance, legitimacy of children, custody, guardianship, and property disputes between spouses. For Hindus, these matters arise predominantly under the Hindu Marriage Act, 1955 and allied personal laws.

Thus, any matrimonial dispute between Hindus, such as a petition for divorce or custody, must be adjudicated by a Family Court, not a civil or criminal court. This centralized jurisdiction fosters specialization, efficiency, and sensitivity in dealing with complex personal relationships.

4.2 Preventing Breakdown of Marriage: The Conciliatory Role

One of the core objectives of Family Courts is to preserve marriages where possible. Section 9 of the Family Courts Act mandates judges to attempt reconciliation before adjudication. The court may refer parties to counselors or mediation centers to facilitate dialogue and healing.

This conciliatory approach is particularly significant in Hindu marriages, where cultural and religious norms often stigmatize divorce.

Family Courts strive to:

Address misunderstandings through counseling.

Promote negotiated settlements.

Delay litigation until alternatives are exhausted.

Courts have reiterated that reconciliation should not be a formality but a genuine effort to save marriages.

4.3 Protection of Women's Rights: Maintenance, Custody, and Residence

Family Courts serve as vital platforms for protecting the rights of Hindu women, particularly those facing marital discord. Under the Hindu Marriage Act and Section 24–25, courts can grant:

Maintenance pendente lite (during litigation).

Permanent alimony post-separation or divorce.
Right to reside in the matrimonial home.

Family Courts also hear applications under Section 125 CrPC (maintenance), and sometimes even Protection of Women from Domestic Violence Act, 2005, offering multi-dimensional legal reliefs in a single forum.

Women often face financial and social vulnerabilities after separation. Family Courts mitigate these by:

Speedy interim maintenance orders.

Preventing economic destitution.

Enforcing visitation and child support rights.

4.4 Speedy and Accessible Justice for Families

The Family Courts Act was enacted to counter the delay and technicality of civil litigation. These courts adopt summary procedures under Section 10, avoiding formal evidentiary and procedural complexities. This allows:

Faster disposal of matrimonial suits.

Simplified presentation of facts.

Cost-effective access to justice.

Moreover, Family Courts often waive strict adherence to the Indian Evidence Act, encouraging informal narratives over legal jargon, thereby making courts less intimidating and more inclusive—especially for women and unrepresented litigants.

4.5 Protection of Children: Custody and Welfare Principle

In Hindu matrimonial disputes involving children, Section 26 of the Hindu Marriage Act empowers courts to make orders regarding custody, maintenance, and education of minors. The paramount consideration is the welfare of the child, as emphasized in *Gaurav Nagpal v. Sumedha Nagpal* (2009).

Family Courts:

Assess the child's emotional, educational, and physical needs.

Consider parental behavior and stability.

Encourage joint custody or visitation if appropriate.

Family Courts also employ child psychologists or counselors to assess the minor's best interest, a vital component in ensuring child-centric justice.

4.6 Prevention of Domestic Violence and Interim Reliefs

Though the Protection of Women from Domestic Violence Act, 2005 is generally enforced by magistrate courts, many High Courts have allowed Family Courts to exercise concurrent jurisdiction, especially when domestic violence claims arise during divorce or custody proceedings.

Reliefs that may be granted include:

Protection orders

Residence orders

Monetary relief

Custody orders

Compensation for trauma

This integration helps streamline litigation and provides victims with holistic remedies within one courtroom.

4.7 Informal and Therapeutic Adjudication

Family Courts adopt a therapeutic jurisprudence model, where the focus is on healing and problem-solving rather than punishment. Features include:

In-camera proceedings (Section 11) to ensure privacy.

Non-adversarial setup resembling a counseling environment.

Active judicial role in proposing settlements.

Such an approach acknowledges that family disputes are not just legal issues, but deeply emotional crises that need empathy and care, especially in culturally rooted Hindu marital contexts.

4.8 Application of Secular and Personal Laws by Family Courts

Family Courts navigate between secular statutes (like the Family Courts Act, CrPC, and DV Act) and personal laws (like the Hindu Marriage Act). They must:

Interpret customs consistent with constitutional morality.

Apply statutory grounds for relief while respecting religious practices.

Ensure that personal laws do not violate fundamental rights.

Courts have often struck down discriminatory customs under Article 14 and 15, showing that

Family Courts are also instruments of social reform, especially when dealing with entrenched patriarchal practices in Hindu marriages.

4.9 Role of Counselors and Mediation Centers

Counselors and mediators form the backbone of the conciliatory model of Family Courts. Their roles include:

Conducting joint and individual sessions with spouses.

Rebuilding trust and communication.

Proposing realistic solutions (e.g., parenting plans, financial settlements).

Counseling is especially effective in preventing impulsive divorces and encouraging mutual consent resolutions. Most courts today maintain court-annexed mediation centers in collaboration with NGOs, legal aid clinics, and trained professionals.

4.10 Case Management and Practical Approaches of Family Judges

Family Court judges adopt proactive strategies such as:

Fixing strict timelines for each stage of the case.

Refusing unnecessary adjournments.

Encouraging pre-litigation mediation.

Holding child-focused interactions in custody disputes.

Ensuring compliance through enforcement orders.

Judges often balance legal standards with cultural nuances, especially in Hindu families where concepts of duty, honor, and tradition are central. Their discretion is guided not just by law but also by equity and fairness.

Chapter 5: Landmark Judgments and Judicial Trends

5.1 K.A. Abdul Jaleel v. T.A. Shahida, (2003) 4 SCC 166

Issue: Whether the Family Court has jurisdiction to entertain a suit for return of mahr (dower) under Muslim law.

Holding: The Supreme Court held that Family Courts have broad jurisdiction over all matters arising from marriage, regardless of religion, under Section 7 of the Family Courts Act, 1984.

Relevance: Although the case involves Muslim parties, it firmly establishes that Family Courts can adjudicate civil disputes related to marriages, including property and financial matters. This reinforces their comprehensive role in managing matrimonial disputes, applicable to Hindu marriages as well.

5.2 Savitri Pandey v. Prem Chandra Pandey, (2002) 2 SCC 73

Issue: Whether denial of divorce due to absence of conclusive evidence of desertion was justified.

Holding: The Court emphasized that marriage should not be continued by compulsion if it has broken down irretrievably, even if statutory grounds are not met rigidly.

Relevance: This case contributed to the emergence of irretrievable breakdown of marriage as a valid ground for divorce, even though not explicitly mentioned in the Hindu Marriage Act. It illustrates the judicial trend toward realistic and compassionate interpretation of matrimonial laws.

5.3 Shyamali Sarkar v. Ashim Kumar Sarkar, (2007) 14 SCC 445

Issue: Divorce on the grounds of mental cruelty.

Holding: The Supreme Court granted divorce, citing unfounded allegations, threats of suicide, and hostile conduct as forms of mental cruelty.

Relevance: This case expanded the scope of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act. It indicates how Family Courts and higher courts interpret psychological abuse and non-physical harm as legitimate grounds for divorce.

5.4 Sarla Mudgal v. Union of India, (1995) 3 SCC 635

Issue: Whether a Hindu husband can convert to Islam to contract a second marriage without dissolving the first.

Holding: The Court held that such conversion for the purpose of bigamy is fraudulent and constitutes an abuse of religious freedom under Article 25.

Relevance: This case upheld the monogamous nature of Hindu marriage and condemned misuse of religious conversion to bypass

personal laws. It reinforced judicial commitment to gender justice and uniform matrimonial standards.

5.5 Githa Hariharan v. RBI, (1999) 2 SCC 228

Issue: Interpretation of the term “after him” in Section 6(a) of the Hindu Minority and Guardianship Act, 1956.

Holding: The Court ruled that the mother can be a natural guardian even during the father's lifetime if he is absent or unfit.

Relevance: This landmark judgment paved the way for gender equality in guardianship, which is vital in custody matters before Family Courts. It emphasized the welfare of the child as the paramount consideration, regardless of gender roles.

5.6 High Court and Family Court Cases on Reconciliation and Counseling

Several High Courts have emphasized the statutory duty of Family Courts to promote reconciliation:

Bombay High Court in *Kalpna Lajpatrai Gugnani v. Lajpatrai Gugnani* (2005): Directed Family Courts to engage counselors meaningfully before proceeding to litigation.

Kerala High Court in *Mini v. Gireeshkumar* (2011): Held that reconciliation attempts must not be symbolic but sincere and therapeutic.

Delhi Family Court: Regularly promotes pre-litigation counseling through its Mediation and Conciliation Centers, which have successfully resolved over 60% of family disputes amicably.

These judgments demonstrate the judicial preference for saving marriages, where possible, while safeguarding individual dignity.

5.7 Emerging Judicial Trends in Family Law Adjudication

Modern Indian judiciary, especially the Supreme Court and High Courts, have evolved progressive doctrines in family law:

Recognition of Live-in Relationships: Courts have held that long-term cohabitation may confer certain legal rights (e.g., *Indra Sarma v. V.K.V. Sarma*, 2013).

Irretrievable Breakdown of Marriage: Though not codified, courts use Article 142 of the Constitution to grant divorce in hopelessly

broken marriages (*R. Srinivas Kumar v. R. Shametha*, 2019).

Gender-neutral Justice: Increasing emphasis on equitable reliefs for both spouses, especially in maintenance and custody disputes.

Therapeutic Justice Models: Encouragement of informal, non-adversarial approaches through in-camera proceedings and psychological counseling.

Child Welfare: Introduction of shared parenting models and preference for psychological assessments in custody matters.

Chapter 6: Challenges Faced by Family Courts

6.1 Procedural Delays and Case Backlogs

Despite the Family Courts Act, 1984 aiming to provide expeditious resolution, Indian Family Courts are plagued by case backlogs and procedural delays. The reasons include:

Inadequate number of judges relative to case load.

Frequent adjournments, often on request of litigants or advocates.

Lack of effective case management practices.

Complex interlinking of family law issues with criminal and property disputes.

According to the National Judicial Data Grid (NJDG), several Family Courts report an average pendency of over 3–5 years, defeating the Act's purpose of timely justice in sensitive matters like custody, maintenance, and divorce.

6.2 Infrastructural and Human Resource Constraints

Many Family Courts suffer from poor infrastructure and lack of trained professionals, including:

Shortage of trained counselors, psychologists, and mediators.

Insufficient courtrooms, counseling spaces, and child-friendly facilities.

Poor technological integration, especially in Tier-II and Tier-III cities.

Frequent transfer or non-specialization of judges in family law.

This affects the informal, therapeutic, and reconciliatory environment envisioned by the law. It also deters vulnerable litigants—

especially women—from pursuing or continuing litigation.

6.3 Misuse of Legal Provisions and Gender Bias

Although Family Courts are meant to be neutral spaces, allegations of misuse and bias are common:

Some men's rights groups argue that Section 498A IPC and domestic violence laws are misused to harass husbands.

On the other hand, many women face institutional bias or pressure for reconciliation even in cases of cruelty or abuse.

Courts must walk a tightrope between preventing injustice to either gender while upholding constitutional values of equality and dignity. The lack of sensitivity training for court personnel exacerbates this challenge.

6.4 Limited Public Awareness of Family Court Role

Many citizens, particularly in rural or marginalized communities, remain unaware of:

What a Family Court does?

What reliefs can be sought?

What procedures are followed?

There is a lack of legal literacy campaigns or institutional outreach. This limits access to justice and perpetuates dependence on informal panchayats or community elders, where women and children may suffer unlawful settlements.

6.5 Inadequate Use of Mediation and Counseling Services

Although Sections 9 and 10 of the Family Courts Act encourage conciliation and counseling, in practice:

Mediation is treated as a formality, not a sincere attempt at conflict resolution.

There is an acute shortage of qualified counselors.

Many courts lack dedicated mediation centers or pre-litigation counseling services.

This undermines the courts' potential to prevent marital breakdowns and promote amicable settlements, especially in emotionally charged Hindu matrimonial disputes.

6.6 Inaccessibility in Rural and Remote Areas

Family Courts are mostly concentrated in urban and district headquarters, leading to:

Geographical and financial hardship for rural litigants.

Travel costs and lost workdays, which disproportionately affect women.

Delays in accessing justice due to jurisdictional limitations.

This results in many women compromising or abandoning their legal rights, particularly in cases of desertion, maintenance, or child custody.

6.7 Fragmented Jurisdiction and Overlapping Laws

Family law in India involves a complex web of personal laws, secular statutes, and constitutional principles. This results in:

Overlapping jurisdiction with civil, criminal, and magistrate courts (e.g., DV Act under magistrate vs. matrimonial case under Family Court).

Conflicting interpretations of custom, religious law, and gender rights.

Lack of a uniform civil code, leading to varied treatment of similar issues based on religion.

Such fragmentation causes confusion, inconsistent judgments, and procedural entanglements, especially when Hindu family law disputes overlap with inheritance, criminal law, or domestic violence issues.

Chapter 7: Comparative and International Perspectives

7.1 Family Courts in UK, USA, Australia, and Sri Lanka

United Kingdom

The UK has a well-structured Family Justice System with Family Division Courts as part of the High Court and Family Proceedings Courts under magistrates. Key features include:

Single Family Court system (since 2014) that handles all family matters.

Child Arrangements Program focusing on the best interests of the child.

Heavy reliance on Alternative Dispute Resolution (ADR) like mediation.

Specialized judges and multi-disciplinary teams including social workers and child psychologists.

United States

In the US, family law is governed at the state level, with dedicated Family Courts in most jurisdictions. Features include:

Jurisdiction over divorce, custody, domestic violence, juvenile cases.

Mandatory mediation or parenting classes in many states before divorce.

Emphasis on no-fault divorce, simplifying proceedings.

Use of guardian ad litem to represent the child's interests.

Australia

Australia operates a federal system with Family Court of Australia (now merged into the Federal Circuit and Family Court). Salient features:

Family Relationship Centres assist with counseling, mediation.

Compulsory Family Dispute Resolution (FDR) before approaching courts.

Focus on shared parental responsibility and welfare of children.

Integration of legal and therapeutic services under one roof.

Sri Lanka

Sri Lanka has Family Courts under its District Court structure. Notable features:

Application of Buddhist, Hindu, and Muslim personal laws alongside common law.

Special Family Units for maintenance, custody, and divorce.

Active role of Women's and Children's Desks in family violence cases.

Growing use of mediation boards for pre-litigation resolution.

7.2 Lessons from International Jurisdictions

From global systems, several lessons emerge for India:

Unified Family Court Model (UK) reduces jurisdictional conflicts.

Mandatory mediation and counseling (Australia, USA) decrease litigation.

Child-focused interventions, including child advocates and psychologists, ensure better custody decisions.

Therapeutic and multi-disciplinary frameworks enhance outcomes for emotionally vulnerable litigants.

Technology integration (e-filing, virtual hearings) promotes accessibility and efficiency. Cultural contextualization is essential—as seen in Sri Lanka, which balances religious diversity and modern law.

These models prioritize accessibility, emotional sensitivity, and procedural efficiency, which align with the objectives of the Indian Family Courts Act but are not yet fully realized.

7.3 Role of Family Mediation in Global Legal Systems

Mediation is increasingly the cornerstone of modern family justice:

In Australia, Family Dispute Resolution (FDR) is mandatory before filing for parenting or financial orders. Accredited mediators work in neutral centers.

In the UK, the MIAM (Mediation Information and Assessment Meeting) is a prerequisite to filing family cases.

US courts often require mediation in custody or visitation matters before litigation.

Sri Lanka uses community-based Mediation Boards, especially in rural areas.

Benefits observed internationally:

Higher compliance with mediated settlements.

Reduced emotional trauma and financial costs.

Less adversarial outcomes—especially beneficial in long-term relationships like Hindu marriages.

India's underutilized mediation framework could be significantly enhanced by adapting these structured, professionally managed models.

7.4 Applicability of Comparative Models to Indian Context

While each country has a unique socio-legal fabric, several components are adaptable to India:

☑ Integrated Family Court System (like UK): To streamline jurisdictional overlaps.

✓ Mandatory Pre-litigation Counseling (like Australia): To promote reconciliation and reduce adversarial cases.

✓ Child Welfare Experts & Shared Parenting (like USA): For more balanced custody outcomes.

✓ Legal and Psychological Support Services: Family Courts in India should adopt multi-disciplinary support models, integrating counselors, social workers, and legal aid.

✓ Digitization and Online Access: Remote and digital dispute resolution (especially relevant post-COVID) can help bridge access gaps in rural India.

However, any model must be localized—respecting India’s diversity in personal laws, customs, and access disparities. Reforms should also be inclusive of gender, caste, and economic concerns, given India’s plural society.

Chapter 8: Reforms and Suggestions

8.1 Need for Strengthening Mediation

Infrastructure

The spirit of the Family Courts Act, 1984 lies in reconciliation and amicable settlement. However, in practice, mediation is often underutilized or merely symbolic. Reforms should include:

Establishment of full-time, court-annexed mediation centers within Family Courts.

Appointment of professionally trained and accredited mediators, including retired judges, psychologists, and legal experts.

Mandatory pre-litigation counseling sessions, especially in cases involving minor children or long-term marriages.

Dedicated Mediation Awareness Campaigns, particularly in urban slums and rural areas where litigation often breaks families irreparably.

A robust mediation system can significantly reduce pendency and emotional trauma in matrimonial disputes.

8.2 Training of Judges, Counselors, and Court Staff

Many family court judges are rotated from general civil or criminal postings and lack

specialized training in family law or psychology. Proposed reforms:

Judicial training modules focused on child psychology, gender sensitivity, conflict resolution, and trauma-informed adjudication.

Regular capacity-building workshops for counselors and support staff on mental health and conflict management.

Certification programs for family law mediators and counselors through national law universities or judicial academies.

Training judges to ensure in-camera proceedings are empathetic and non-threatening, especially in cases of domestic violence or abuse.

This would professionalize and humanize the family justice process.

8.3 Legal Literacy and Public Outreach Programs

Lack of awareness about Family Courts and remedies under laws such as the Hindu Marriage Act, Domestic Violence Act, and Guardianship laws keeps many litigants—especially women—from accessing justice.

Suggested initiatives:

Legal aid clinics and awareness drives in villages, towns, and women’s shelters.

Collaboration with panchayats, NGOs, and self-help groups to spread awareness.

Inclusion of basic family rights in school and college syllabi.

Legal literacy campaigns on television, radio, and social media focusing on women’s rights, custody laws, and court procedures.

An informed citizenry can hold institutions accountable and utilize the legal system more effectively.

8.4 Ensuring Gender-Neutral Justice

Family law must evolve to be fair to all genders, while protecting the vulnerable. Challenges like gender-biased presumptions, misuse of certain provisions, and societal patriarchy must be addressed by:

Crafting gender-neutral definitions in maintenance, custody, and guardianship laws.

Ensuring due process for both spouses in cases of cruelty, adultery, and domestic violence.

Developing shared parenting models where appropriate, rather than defaulting to maternal custody.

Encouraging neutral assessment reports from court-appointed counselors.

Justice must be both protective and balanced—neither assuming victimhood nor fault based solely on gender.

8.5 Technology and Digitization in Family Courts

The integration of digital systems in Family Courts is essential to increase access, transparency, and efficiency. Suggestions include:

E-filing systems, particularly for maintenance and custody applications.

Virtual hearings and online mediation, especially for NRI litigants or long-distance spouses.

Online status updates, SMS notifications, and e-summons to reduce physical dependency on court visits.

Digitization of records, judgments, and case files to improve data management.

This is especially useful in post-pandemic India where digital literacy and infrastructure are rapidly growing.

8.6 Increasing Number of Family Courts

The uneven distribution of Family Courts across Indian districts creates justice gaps, particularly in rural and tribal areas.

Reform measures:

Mandate the establishment of at least one Family Court per district, with sub-centers in high-population areas.

Mobile Family Courts in remote areas on a pilot basis.

Fast-track family benches in civil courts where full Family Courts are unavailable.

Prioritize regions with high matrimonial litigation, domestic violence, or child custody disputes.

Accessibility is a constitutional mandate under Article 39A—justice delayed due to location is justice denied.

8.7 Legislative Reforms: Harmonizing Family Laws

India's family law system is fragmented among personal laws (Hindu, Muslim, Christian, Parsi) and secular statutes (e.g., Special Marriage Act, Domestic Violence Act). The result is:

Jurisdictional confusion.

Unequal treatment across communities.

Inconsistent case outcomes.

Reform suggestions:

Codify uniform procedural rules for Family Courts, while preserving religious autonomy in substantive law.

Create a unified code of matrimonial procedure applicable to all personal laws.

Consider harmonizing maintenance, custody, and inheritance provisions, irrespective of religion or gender.

Encourage debate on Uniform Civil Code (UCC) in a sensitive, inclusive, and consensual manner.

A harmonized family law regime can help Family Courts deliver more consistent and equitable justice.

Chapter 9: Conclusion

9.1 Summary of Key Findings

This study critically examined the origin, structure, legal framework, and functioning of Family Courts in the context of Hindu marriages in India. The following key findings emerge:

Family Courts were established with the objective of providing speedy, accessible, and non-adversarial resolution of matrimonial disputes.

The Family Courts Act, 1984 incorporates provisions for conciliation, in-camera proceedings, and procedural flexibility, reflecting a departure from traditional adversarial litigation.

The Hindu Marriage Act, 1955, remains the core statute governing Hindu marital relationships, providing grounds and remedies for judicial intervention in cases of divorce, restitution, maintenance, custody, etc.

Family Courts play a vital role in resolving disputes involving marriage breakdown, child

custody, domestic violence, and maintenance, often through counseling and mediation.

Judicial pronouncements have shaped and expanded the scope of Family Courts—favoring reconciliatory justice, child welfare, and gender sensitivity.

However, numerous challenges persist, including case backlogs, infrastructural inadequacies, jurisdictional overlaps, gender bias, and limited awareness of rights.

These findings indicate that while the legal intent behind Family Courts is progressive, practical implementation falls short, especially in rural and underserved areas.

9.2 Role of Family Courts in Protecting Hindu Marriage Values

Hindu marriage, traditionally viewed as a sacrament, has evolved under law into a legal and social institution governed by mutual rights and obligations. Family Courts play a pivotal role in upholding the sanctity and stability of Hindu marriages by:

Facilitating reconciliation through pre-litigation counseling and mediation.

Offering judicial remedies for genuine grievances, such as cruelty, desertion, or non-cohabitation.

Protecting women's rights to maintenance, residence, and custody—upholding the ideal of dignity within marriage.

Intervening in cases of child neglect or parental disputes, thereby protecting the best interests of children born out of Hindu marriages.

By striking a balance between preserving matrimonial bonds and protecting individual rights, Family Courts ensure that the institution of Hindu marriage remains relevant in a modern constitutional democracy.

9.3 Balancing Tradition and Modern Legal Needs

Indian family law—especially regarding Hindu marriages—functions at the intersection of tradition and modernity. Family Courts are uniquely positioned to:

Navigate religious customs and personal law alongside constitutional mandates of equality, liberty, and justice.

Recognize the breakdown of marriage as a social reality while attempting reconciliation before dissolution.

Promote non-adversarial dispute resolution, preserving respect and dignity between litigating spouses.

Protect culturally rooted institutions like joint families, while recognizing new realities such as nuclear families, live-in relationships, and gender fluidity.

Thus, Family Courts function as both custodians of tradition and agents of legal evolution—enabling personal autonomy within the bounds of social values.

9.4 Final Observations and Policy Recommendations

Based on the findings, the following policy recommendations are proposed to enhance the effectiveness of Family Courts:

Increase the number of Family Courts across all districts, ensuring geographic and economic accessibility.

Mandate and standardize mediation and conciliation services, with proper training, infrastructure, and monitoring.

Implement regular training and sensitization programs for judges, counselors, and staff to deal with family law cases empathetically and efficiently.

Promote legal literacy about matrimonial rights and Family Court procedures, especially among women and marginalized communities.

Incorporate technology and digitization to streamline case management, enable online filings, and facilitate remote hearings.

Consider harmonization of family laws to reduce jurisdictional confusion, while respecting religious pluralism and personal freedoms.

Ultimately, Family Courts must evolve into responsive, empathetic institutions that uphold both individual rights and familial harmony—a balance critical in Hindu matrimonial disputes where social, emotional, and legal dimensions are deeply intertwined.

Annexures

Annexure I: Family Courts Act, 1984 (Key Sections)

<u>Section</u>	<u>Title</u>	<u>Summary</u>
Section 3:	Establishment of Family Courts	Empowers the State Government to establish Family Courts in consultation with the High Court.
Section 4:	Appointment of Judges	Requires judges to have expertise in family law and social welfare. Preferably female judges.
Section 6:	Counselors	Provides for the appointment of counselors to assist in reconciliation efforts.
Section 9:	Duty to Make Efforts for Settlement	Mandates that courts attempt reconciliation before proceeding with trial.
Section 10:	Procedure	Family Courts are not bound by the Civil Procedure Code; they follow principles of natural justice.
Section 11:	In-camera Proceedings	Hearings are to be held in camera if requested or deemed necessary.
Section 14:	Evidence	Allows acceptance of evidence that may not be admissible under the Indian Evidence Act.
Section 20:	Act to Have Overriding Effect	Provisions of this Act prevail over other conflicting laws.

Bibliography

I. Statutes and Legislations

The Family Courts Act, 1984

The Hindu Marriage Act, 1955

The Code of Criminal Procedure, 1973 (CrPC) – Sections relating to maintenance (Section 125)

The Protection of Women from Domestic Violence Act, 2005

The Indian Evidence Act, 1872

The Constitution of India – Article 39A, Article 21, etc.

II. Case Laws

(Cited and analyzed in Chapters 3–5)

K.A. Abdul Jaleel v. T.A. Shahida, (2003) 4 SCC 166

Savitri Pandey v. Prem Chandra Pandey, (2002) 2 SCC 73

Shyamali Sarkar v. Ashim Kumar Sarkar, (2007) 2 CHN 630

Sarla Mudgal v. Union of India, (1995) 3 SCC 635

Githa Hariharan v. Reserve Bank of India, AIR 1999 SC 1149

Additional Family Court and High Court cases on reconciliation, custody, and counseling (referenced in chapters)

III. Books and Treatises

Diwan, Paras. Family Law: Hindu Law, Muslim Law, Christian Law & Parsi Law. Allahabad Law Agency.

Mulla, Dinshaw Fardunji. Principles of Hindu Law. LexisNexis.

Kusum. Family Law Lectures: Family Law-I. LexisNexis, 2015.

Shobha, V. Family Courts in India: Issues and Challenges. Eastern Book Company.

Desai, Satya Raj. Law of Marriage and Divorce in India. LexisNexis, 2020.

IV. Journals and Periodicals

NUJS Law Review – Articles on family mediation and gender justice.

Journal of the Indian Law Institute (JILI) – Articles on family law reforms.

SCC Online Articles – Commentary on recent family law cases and judicial trends.

ILI Law Review – Scholarly discussion on matrimonial jurisprudence.

V. Government Reports and Committees

Law Commission of India –

59th Report: Hindu Marriage Act and Grounds for Divorce (1974)

257th Report: Reforms in Guardianship and Custody Laws (2015)

Justice Malimath Committee Report on Criminal Justice Reforms, 2003

Report of the Committee on Reforms of Criminal Justice System, 2002

Ministry of Law and Justice Reports on Family Court Performance, Annual Reports

VI. Online Resources

www.indiacode.nic.in – Official legal texts.

www.sci.gov.in – Supreme Court judgments.

www.nja.gov.in – National Judicial Academy training materials.



INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 5 AND ISSUE 11 OF 2025

APIS – 3920 – 0001 (*and*) ISSN – 2583-2344

Published by
Institute of Legal Education

<https://iledu.in>

www.njdg.ecourts.gov.in – National Judicial
Data Grid on pendency statistics.

SCC Online and Manupatra Databases (used
for case law research).

