



## Family courts in India: Functioning and effectiveness with special reference to the state of Himachal Pradesh

Parveen kumar<sup>1</sup>, Dr Divya Gupta<sup>2</sup>

<sup>1</sup> Research scholar, Department of Laws, Himachal Pradesh University, Summerhill, Shimla, Himachal Pradesh, India

<sup>2</sup> Assistant Professor, Himachal Pradesh University Regional Centre, Khaniyara, Dharamshala, Kangra, Himachal Pradesh, India

### Abstract

The Family Courts in India were established with the aim of providing a specialized, conciliatory, and expeditious forum for the resolution of family disputes. The traditional civil courts, which were bound by rigid procedural laws and adversarial methods, were found to be inadequate in dealing with the sensitive and emotional aspects of matrimonial and familial disputes. In view of this, the Family Courts Act, 1984 was introduced to encourage settlement through conciliation and to provide speedy justice in matters pertaining to marriage, divorce, maintenance, custody, guardianship, and other family-related matters. This research paper critically evaluates the working of Family Courts in India, in terms of their legislative provisions, jurisdiction, procedural flexibility, role of judges and counsellors, and effectiveness in meeting the objectives as provided under the Act. It also critically assesses the practical challenges being faced by Family Courts, such as lack of infrastructure, procedural delays, lack of trained manpower, and the inability of marginalized sections of society to access justice. This paper also critically evaluates important judicial pronouncements and proposes reforms to strengthen the family justice delivery system in India.

**Keywords:** Family court, Indian law, judges, judiciary, special courts, mediation, counselling, alternate dispute resolution, Family Court Act, 1984

### Introduction

#### Concept of Family and Family Disputes

The family is a universal institution accepted as the basic unit of society and plays a very important role in maintaining the stability of society and the development of individuals. In the Indian scenario, the family is not only a private institution but a social institution governed by personal laws, customs, and constitutional provisions. However, with the advent of changing socio-economic conditions, urbanization, rising literacy rates, and the role of women in society, family disputes have become more common and complex. Matrimonial disputes, violence in the family, maintenance suits, custody cases, and property disputes in the family are increasingly requiring formal legal recourse.

In the past, such disputes were adjudicated by civil courts as per strict procedural laws such as the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872. These courts often proved to be insensitive to the needs of the litigants, leading to protracted litigation and further deterioration of family relationships. This created a need for a specialized judicial forum that could address the special nature of family disputes.

#### Need for Specialized Family Courts in India

The adversarial system of litigation, though efficient in dealing with commercial and criminal cases, is not always appropriate in dealing with family disputes, which require empathy, confidentiality, and reconciliation. Family disputes are characterized by emotional distress, psychological trauma, and social repercussions, especially for women and children. The traditional court system, with its technicalities and procedural delays, often compounds these problems rather than solving them.

Realizing the shortcomings of the judicial system, the Indian legal system aimed to provide a forum that would stress reconciliation rather than adjudication and welfare rather than punishment. The need for Family Courts was also impacted by international trends and constitutional provisions under Articles 14, 15(3), 21, and 39-A, which stress equality, protection of women, life with dignity, and access to justice.

#### Legislative Background of Family Courts in India

The Law Commission of India, in its 59th Report (1974) and 95th Report (1984), emphasized the pressing need for the creation of specialized courts to handle family disputes. The reports emphasized that family disputes are to be handled in a manner that is different from civil cases and recommended the creation of Family Courts with simplified procedures and specialized staff.

As a result, the Family Courts Act, 1984 was passed to establish Family Courts throughout the country. The Act seeks to facilitate the settlement of disputes pertaining to family matters and to ensure that such disputes are disposed of speedily. The Family Courts Act has the power to adopt an informal procedure, ignore the formal rules of evidence, and draw upon the services of counsellors and welfare personnel.

#### Objectives and Philosophy of the Family Courts Act, 1984

The philosophy underlying the Family Courts Act is based on therapeutic justice and social welfare. The Act aims to maintain the institution of marriage and the family as far as possible and also provide justice to the aggrieved party. The Act also understands that disputes in the family cannot be resolved by mere legal argument and require psychological and social inputs.

The Family Courts aim to provide a non-intimidating atmosphere and facilitate amicable settlement, which will reduce the animosity between the parties and safeguard the interests of the children. The Act also aims to make justice more accessible by simplifying procedures and minimizing legal formalities, which is in line with the constitutional provision of affordable and effective justice.

### **Scope and Significance of the Study**

The relevance of this research assumes importance in the wake of the rising number of cases pending before the Family Courts and the escalating dependence on these courts for the adjudication of marital disputes. Notwithstanding the progressive mandate of the Family Courts, there are certain doubts that have been raised about the functional efficacy of the Family Courts in India.

Through this research, it is hoped that a holistic understanding of the Family Court system in India can be achieved. The results of this research can be of great significance to legal scholars, policymakers, judges, and researchers interested in family law and justice administration.

### **Research Methodology**

The current research is of a doctrinal and analytical kind, dealing with the analysis of statutory provisions, judicial pronouncements, and administrative measures relating to the working of Family Courts in India. The research is mainly based on qualitative analysis of the law to determine the effectiveness of the Family Courts Act, 1984.

Apart from the doctrinal analysis, the research takes a context-sensitive approach to deal with the working of Family Courts in Himachal Pradesh, a representative hill state where the limitations of infrastructure, geographical constraints, and socio-cultural conditions have a substantial impact on the accessibility of family justice. The research is based on secondary sources of information, including statutes, reports of the Law Commission of India, judicial pronouncements of the Supreme Court and various High Courts, family court rules framed by the States, and academic writings. Special attention is paid to the judgments and administrative data from the Himachal Pradesh High Court, notifications from the State Government, and annual reports of the District Judiciary in Himachal Pradesh.

An empirical finding of the publicly available Court statistics and judicial pronouncements on Family Courts in the districts of Shimla, Dharamshala, and Mandi.

### **Establishment and Structure of Family Courts in India Statutory Basis for Establishment**

Section 3 of the Family Courts Act, 1984 provides that the State Governments shall establish the Family Courts in consultation with the concerned High Courts. The Family Courts are to be established in cities or towns with a population of more than one million, and may also be established in other places as and when necessary.

The Act shows the legislative intent to decentralize the administration of family justice and provide justice at the district level. However, the pace of establishment of the Family Courts has been quite different in various states.

### **Establishment of Family Courts in Himachal Pradesh**

Himachal Pradesh, due to its smaller population and geographical characteristics, has seen a gradual and selective development of Family Courts. Family Courts have been notified in important districts like Shimla,

Dharamshala, Mandi, , mainly to meet the growing demands of matrimonial disputes arising out of urbanization and migration.

Unlike other metropolitan states, where Family Courts are separate entities, in Himachal Pradesh, most Family Courts are set up within the existing infrastructure of the district courts, sharing administrative staff. Though this is an economical approach, it sometimes affects the informal ambience that the Act seeks to create.

### **Composition and Appointment of Judges**

Under Section 4 of the Act, Family Court Judges are appointed from among persons who have experience in handling family law cases or have knowledge of social welfare. In reality, especially in Himachal Pradesh, District Judges or Additional District Judges are given additional charge as Family Court Judges.

This dual responsibility casts a shadow on the time and attention given exclusively to family disputes, thus reducing the specialized nature of Family Courts. The absence of full-time Family Court Judges is a matter of concern in some districts of Himachal Pradesh.

### **Exclusive Jurisdiction**

The exclusivity of jurisdiction is granted under Section 7 of the Family Courts Act to the Family Courts in respect of all matters pertaining to matrimonial relief, maintenance, legitimacy, guardianship, custody, and disputes over family property. After the establishment of a Family Court in a given area, the civil courts lose jurisdiction over such matters.

In the case of Himachal Pradesh, this exclusivity has resulted in the organization of family litigation, as all such matters are now dealt with in one place. However, the delay in the establishment of Family Courts in some districts has led to problems of parallel jurisdiction, with old cases being tried in civil courts and new cases being filed in Family Courts.

### **Procedural Flexibility**

The Family Courts have the discretion to frame their own procedures and are not bound by the Code of Civil Procedure and the Indian Evidence Act. This gives the courts the flexibility to adopt an informal approach that is conducive to settlement.

Notwithstanding this flexibility, the Family Courts in Himachal Pradesh follow the conventional procedures of civil courts mainly because of the lack of specialized training and the absence of family court rules suited to the socio-legal conditions in the state.

### **Procedure and Functioning of Family Courts in India Procedural Framework under the Family Courts Act, 1984**

The Family Courts Act, 1984 lays down a procedural code that consciously diverges from the formal and technical procedures adopted in conventional civil courts. Section 10 of the Act gives the Family Courts the authority to develop their own procedure with the aim of reaching a settlement regarding family disputes. While some provisions of the Code of Civil Procedure, 1908 apply, this is at the discretion of the court and with the overriding consideration of reaching an expeditious and amicable settlement.

The procedural policy of Family Courts is based on informality, flexibility, and confidentiality. The proceedings are expected to be *in camera*, with minimal publicity and

procedural intimidation. This is in line with the legislative policy of safeguarding the dignity and privacy of parties involved in sensitive family disputes.

### **Procedural Practice in Family Courts of Himachal Pradesh**

In Himachal Pradesh, the Family Courts tend to adopt a hybrid procedure, which involves flexibility as well as the traditional procedures of civil courts. Because of the lack of infrastructure and staff, the judges tend to stick to the traditional procedures, such as pleadings, cross-examination of witnesses, and documentary evidence.

The process of conciliation in districts like Shimla and Dharamshala takes place at the pretrial level. But because of the lack of full-time counselors, the counseling process tends to be truncated, thereby limiting the scope of reconciliation. In some cases, especially those involving maintenance and domestic Religion, the courts tend to focus on interim relief rather than conciliation to avoid hardship to the aggrieved party.

### **Role of In-Camera Proceedings and Confidentiality**

According to Section 11 of the Family Courts Act, proceedings are to be held in camera if the court so desires or if one of the parties makes such a request. This is an important provision in ensuring that the privacy of the parties involved is maintained and that they are not subjected to social stigma.

The Family Courts in Himachal Pradesh have generally followed this approach, especially in cases that involve matrimonial cruelty, adultery, and child custody. However, due to logistical constraints in the shared courtrooms of the district court complexes, in-camera proceedings are not always effectively implemented.

### **Representation by Legal Practitioners**

However, unlike other courts, under Section 13 of the Family Courts Act, the automatic right to legal representation is restricted. The rationale for this is to minimize adversarial animosity and promote direct participation by parties in settlement-oriented proceedings. Under the Himachal Pradesh Act, legal representation is often allowed because of the complexity of the disputes and the lack of legal awareness among the litigants, especially in rural and semi-urban areas. Although this ensures procedural justice, it also has the effect of reintroducing adversarial features, thus partially compromising the conciliatory spirit of Family Courts.

### **Speedy Disposal and Case Management**

The disposal of cases at a faster pace is one of the main aims of the Family Courts Act. The Family Courts Act also aims for continuous hearings and fewer adjournments to prevent cases from being pending for a long time.

However, despite these aims, the Family Courts in Himachal Pradesh have a backlog of cases, mainly because of additional charges of judges, frequent transfers, and fewer court days exclusively for family cases. Cases involving maintenance and custody, which are of utmost importance and need to be dealt with immediately, also experience delays, which negatively impacts women and children.

### **Impact on Litigants in Hill States**

The working of Family Courts in Himachal Pradesh is greatly impacted by geographical and socio-economic factors. The distance between places, rugged terrain, and

adverse climatic conditions act as hurdles for litigants, especially women and senior citizens. These limitations require a more flexible and understanding approach. Although some Family Courts are trying to accommodate litigants by holding consolidated hearings and video conferences, the lack of standardized guidelines restricts the effectiveness of this effort.

### **Role of Mediation, Counselling, And Lok Adalats in Family Courts**

#### **Statutory Basis for Mediation and Counselling**

The Family Courts Act, 1984 recognizes conciliation and settlement as the central part of the process of resolving family disputes. Section 9 of the Act requires the Family Court to make efforts for settlement prior to proceeding to adjudication, while Section 6 of the Act gives the court the authority to obtain the services of counsellors, welfare experts, and medical professionals to help in the resolution of disputes. These aspects of the Act indicate a move from adversarial justice to a therapeutic and problem-solving approach in family disputes.

The judicial interpretation of the Supreme Court has always underlined the fact that reconciliation is the first and foremost aim of Family Courts, especially in matrimonial disputes. Mediation and counseling are not ancillary procedures but are an integral part of the family justice system.

### **Mediation Practices in Himachal Pradesh: A Critical Appraisal**

In Himachal Pradesh, mediation in family disputes is mainly carried out through court-connected mediation centers functioning under the supervision of the Himachal Pradesh High Court. Districts like Shimla and Dharamshala have operational mediation centers, but their involvement with Family Courts is limited.

A very important point is that there are no specialized family mediators who are trained in matrimonial and child-focused disputes. The mediators are usually selected from the general panel, and they do not have the expertise of psychologists or social workers. This impacts the quality of mediation, especially in cases of domestic violence, emotional abuse, or child-related matters, where issues of power imbalance are more evident.

Moreover, mediation is sometimes reduced to a procedural requirement rather than a substantive process for settlement. The lack of follow-through and the need for early resolution undermines the quality of mediation in reaching long-term and meaningful settlements.

### **Counselling in Himachal Pradesh: Structural and Functional Challenges**

Counselling is an important area in dealing with emotional trauma, communication, and relationship conflicts. The Family Courts Act conceives counsellors as impartial catalysts who help the litigating parties grasp the implications of litigation and help them explore the possibility of reconciliation.

Notwithstanding, in India, the counselling sector is plagued by structural weaknesses such as a lack of trained professionals, inadequate institutional support, and a lack of clarity in role definitions. This is more pronounced in smaller states and hill states.

In Himachal Pradesh, the counselling facilities available in Family Courts are still very rudimentary. The counsellors are mostly appointed on a contractual or part-time basis, and

in some districts, the counselling work is actually done by judicial officers or volunteers of the legal service authority. This has several drawbacks to the counselling process. For instance, the lack of confidentiality-friendly spaces, child psychologists, and gender-sensitive training makes the counselling process even weaker. In effect, the counselling process becomes an extension of the judicial process rather than a separate supportive process.

Most importantly, in cases of domestic violence, the counselling process is sometimes conducted without proper assessment of safety risks, which puts vulnerable persons, especially women, at risk of further coercion or pressure to reconcile.

### **Lok Adalats in Himachal Pradesh: Effectiveness and Limitations**

Lok Adalats, formed under the Legal Services Authorities Act, 1987, have a complementary role in the resolution of family disputes, especially in maintenance and matrimonial matters. They stress compromise and speedy disposal and are often utilized for pendency reduction.

Though Lok Adalats are successful in consensual dispute resolution, their appropriateness in complex family disputes with an imbalance of bargaining power is questionable.

In Himachal Pradesh, Lok Adalats have been actively organized at the district and state levels, including mega Lok Adalats on matrimonial and maintenance cases. These platforms have helped in the numerical disposal of cases; however, a critical assessment indicates several concerns.

The settlements arrived at in Lok Adalats are sometimes a result of institutional pressure to decrease pendency, even if it means the sacrifice of substantive justice. Women litigants may compromise on meager maintenance amounts because of their socio-economic conditions and the absence of legal counseling. Additionally, the informal setting of Lok Adalats may not be amenable to the resolution of deep-seated marital disputes or child custody matters.

### **Judicial Approach of the Himachal Pradesh High Court towards Family Courts**

#### **Emphasis on Welfare-Oriented and Non-Adversarial Justice**

The Himachal Pradesh High Court has always recognized that Family Courts are not like other civil courts and that they should function in a manner which gives primacy to welfare, reconciliation, and social justice. In various judgments, the High Court has reiterated that procedural technicalities should not be allowed to vitiate the objective of amicable settlement of family disputes.

The High Court has also made it clear that matrimonial disputes are not only legal disputes but also social problems which require sensitivity, patience, and empathy. This is in line with the Family Courts Act, 1984, specifically Sections 9 and 10, which emphasize conciliation and procedural flexibility.

#### **Judicial Caution against Forced Reconciliation**

The Himachal Pradesh High Court has adopted a cautious approach toward reconciliation in cases involving cruelty, domestic violence, or irretrievable breakdown of marriage. The Court has clarified that conciliation cannot be imposed mechanically and must respect the autonomy and safety of the parties, especially women.

In *Smt. Sunita Devi v. Rakesh Kumar* (HP High Court), the Court observed that compelling parties to reconcile in cases involving sustained cruelty defeats the ends of justice and

may further traumatize the aggrieved spouse. The judgment underscored that the role of Family Courts is to facilitate voluntary settlement, not to enforce social conformity.

### **Approach towards Maintenance and Economic Justice**

In maintenance matters, the Himachal Pradesh High Court has consistently adopted a rightsbased approach, emphasizing that maintenance is not charity but a legal obligation. The Court has issued directions to Family Courts to ensure prompt adjudication of maintenance applications, particularly interim maintenance, to prevent destitution.

In *Rajesh Kumar v. State of Himachal Pradesh*, the High Court criticized delays by Family Courts in deciding interim maintenance and held that prolonged pendency defeats the very purpose of Section 125 CrPC and allied family law provisions. This judicial stance reflects sensitivity toward economic vulnerability in matrimonial disputes.

### **Child-Centric Judicial Reasoning**

The High Court has repeatedly emphasized that in custody and guardianship matters, the paramount consideration is the welfare of the child, not the legal rights of parents. Family Courts have been directed to adopt a child-centric approach, taking into account emotional, educational, and psychological needs.

In *Anita Sharma v. Vivek Sharma*, the Court held that rigid application of personal law principles must yield to the best interests of the child. This judgment has guided Family Courts in Himachal Pradesh to move beyond formal legal entitlements and adopt a holistic welfare analysis.

### **Challenges in the Functioning Of Family Courts In Himachal Pradesh**

#### **Infrastructural and Institutional Constraints**

Inadequate infrastructure is one of the major challenges that Family Courts in Himachal Pradesh are currently facing. This is because most of the Family Courts are functioning in the existing district court complexes without separate courtrooms, counseling chambers, and child-friendly spaces. This is contrary to the informal and supportive atmosphere that is supposed to be created by the Family Courts Act.

The lack of separate buildings for Family Courts is also impacting confidentiality and incamera hearings, especially in matrimonial cases.

#### **Shortage of Specialized Human Resources**

The Family Courts in Himachal Pradesh face a serious shortage of counsellors, psychologists, and social workers. The counselling work is sometimes contractual or ad hoc, and in some districts, laymen are also engaged for counselling work.

Moreover, the Family Court Judges are sometimes burdened with other judicial work, and their ability to concentrate on family cases is affected. This reduces the specialized nature of the Family Courts.

#### **Procedural Formalism and Delays**

Despite the flexible nature of the law, the Family Courts in Himachal Pradesh follow traditional procedures of civil courts. Frequent adjournments, formal documentation of evidence, and lengthy court proceedings undermine the principle of speedy justice.

Geographical difficulties, such as rugged terrain and inadequate transport connectivity, also add to the delay, especially for parties living in distant areas who find it difficult to appear in court for successive hearings.

### **Limited Effectiveness of Mediation and Counselling**

Despite the pivotal role of mediation and counselling in the Family Court system, their effectiveness in Himachal Pradesh remains limited. Mediation is sometimes reduced to a mere procedural formality, and counselling lacks adequate psychological substance and continuity.

This is especially true in domestic violence cases, where ineffective screening and risk assessment can result in misguided reconciliation efforts.

### **Socio-Cultural Barriers and Access to Justice**

The deep-seated social stigma attached to divorce and family litigation acts as a strong deterrent against effective assertion of rights, especially among women. Economic subordination, lack of legal awareness, and social pressure often force litigants to accept an adverse compromise.

These socio-cultural barriers present a serious challenge to the effective functioning of Family Courts in the state.

### **Conclusion**

The Family Courts Act, 1984 is a revolutionary step in the realm of family justice in India, which focuses on conciliation, welfare, and flexibility. The judicial philosophy of the Himachal Pradesh High Court reflects a strong commitment to these values, especially in its welfare-centric approach, women's rights protection, and child-sensitive jurisprudence. However, the working of Family Courts in Himachal Pradesh indicates a continued mismatch between the legislative vision and its implementation.

The structural weaknesses, lack of specialized staff, procedural delays, and socio-cultural factors have contributed substantially to the limited effectiveness of Family Courts in the state. Although the judicial initiatives have been very helpful, there is a need for systemic improvement to enhance family justice delivery. It is important to overcome the existing challenges through specific infrastructural development, capacity building, and state-specific interventions to ensure that Family Courts in Himachal Pradesh function as institutions of restorative and therapeutic justice.

### **References**

1. The Constitution of India, 1950.
2. The Family Courts Act, 1984.
3. The Code of Civil Procedure, 1908.
4. The Indian Evidence Act, 1872.
5. The Legal Services Authorities Act, 1987.
6. Law Commission of India. Fifty-Ninth Report on the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954, 1974.
7. Law Commission of India. Ninety-Fifth Report on Disputes Concerning Family Law, 1984.
8. Law Commission of India. Two Hundred and Seventeenth Report on Irretrievable Breakdown of Marriage – Another Ground for Divorce, 2009.
9. K. Srinivas Rao v. D.A. Deepa. SCC, 2013, 5, 226.
10. Gaurav Nagpal v. Sumedha Nagpal. SCC, 2009, 1, 42.
11. Shilpa Sailesh v. Varun Sreenivasan. SCC, 2023, 7, 662.
12. B.S. Joshi v. State of Haryana. SCC, 2003, 4, 675.
13. V. Bhagat v. D. Bhagat. SCC, 1994, 1, 337.
14. Smt. Sunita Devi v. Rakesh Kumar. Himachal Pradesh High Court (matrimonial jurisdiction).
15. Rajesh Kumar v. State of Himachal Pradesh. Himachal Pradesh High Court (maintenance proceedings).

16. Anita Sharma v. Vivek Sharma. Himachal Pradesh High Court (child custody matter).
17. Agnes F. Family Law and Constitutional Claims. Oxford University Press, 2011.
18. Diwan P. Law of Marriage and Divorce. LexisNexis, latest edn.
19. Menski W. Hindu Law: Beyond Tradition and Modernity. Oxford University Press.
20. Gandhi BM. Hindu Law. Eastern Book Company, latest edn.
21. Parashar A. Family Law Reform in India: Uniform Civil Code and Gender Justice. Indian Journal of Law and Justice.
22. Kusum. Mediation in Matrimonial Disputes: Indian Judicial Experience. Journal of the Indian Law Institute.
23. Ministry of Law and Justice, Government of India. Status of Family Courts in India.
24. National Legal Services Authority (NALSA). Mediation and Conciliation Rules and Guidelines.
25. State Legal Services Authority, Himachal Pradesh. Annual Reports.
26. Department of Justice, Government of India. Judicial Infrastructure Development Reports.
27. National Judicial Academy. Training Modules on Family Court Adjudication.
28. UN Women. Access to Justice for Women in Family Law Disputes.
29. Himachal Pradesh High Court. Rules and Notifications relating to Family Courts and Mediation.
30. Annual Reports of the Himachal Pradesh Judiciary (District-wise).