

Need of Family Courts in Chandigarh

Abstract

The matrimonial disputes are increasing steadily in recent times. Among other reasons of the dispute, ego seems to be the major reason that prompts couples to approach to the court. In such scenario, instead of pushing the couple to fall for lengthy, complicated and traumatic procedure of traditional courts, the court should adopt a therapeutic approach where the couple is given correct guidance through counseling and other methods. The family courts have been established with the above mentioned purpose and a duty has been cast on the them to adopt conciliation method and provide non- intimidating environment to the parties to the dispute so that dispute could be resolved speedily and amicably. The research paper presents a conceptual framework for the need and purpose behind the establishment of family courts under the Family Courts Act, 1984.

Keywords: Family Courts, Financial problems, Family Matters, Lack of Communication

Introduction

Family is the basic unit of any society. A happy family makes a prosperous nation. In India, it is believed that the marriage takes place not only between two individuals but between the two families. Therefore, it is considered as a sacred institution in India. A recent study shows that the divorce rate is increasing at an alarming rate in India. Financial problems, lack of communication, infidelity, domestic violence, mental, physical and sexual abuse are some of the major reasons for divorce in India. As divorce in itself is a stress for a party to the dispute, the cumbersome procedure of the ordinary courts in obtaining the relief in matrimonial proceedings makes it more stressful. The Law Commission of India for the first time in its 59th report recommended for the adoption of a simple procedure with respect to family disputes so that parties could get speedy redressal. In compliance of the above report, Code of Civil Procedure, 1908 was amended incorporating Order XXXII-A in 1976. The newly inserted Order provided for a special procedure to be followed in matrimonial disputes by the ordinary courts. Unfortunately, the courts continued to deal the family matters in a regular manner like an ordinary civil dispute. Thus, the purpose behind the amendment could not be fulfilled. For this reason, a need was felt for the enactment of a special law establishing a special court for the amicable and speedy settlement of matrimonial disputes and family matters connected therewith.

Aim of Study

The purpose of research paper is to observe that how and in what manner the parties to the matrimonial dispute are affected in the absence of family courts in the Union Territory of Chandigarh which has the population of more than one million. Since matrimonial disputes are rising every year, thus, it becomes important that the territory must have its own family court so that parties to the disputes are able to take complete benefit of the unique features of this special court and could resolve their dispute speedily and amicably.

Main Text of the Study

The need to establish the family court was first emphasized by late Smt. DurgabaiDeshmukh in 1953 after her return from China where she had the opportunity to study the working of family courts. After her visit, she discussed the subject with Justice M.C. Chagla and Justice P.B. Gajendragadkar, the then judges of Bombay High Court and Pt. JawaharLal Nehru, the then Prime Minister of India for the establishment of family courts. Later, there was mounting pressure from several women associations, women organizations and individuals also for the establishment of family courts to provide speedy settlement of family disputes.¹ Consequently the parliament passed the Family Courts Act in the year 1984 which came into force on September 14, 1984. The Act was

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made applicable to all the matrimonial disputes and the matters connected therewith such as child custody, guardianship etc. The Act was passed with the purpose of providing a congenial and non-intimidating atmosphere to the estranged family members who could settle their disputes through conciliation and not by confrontation.² The preamble of the Act lays down stress on the adoption of conciliation method by the court for the speedy and amicable settlement of matrimonial disputes and family matters.

In India, as there is no uniform civil code except in the state of Goa, thus, one is governed by one's own personal laws on the subjects of marriage, divorce, custody and guardianship etc. The Family Courts Act, 1984 is applicable to all the individuals involved in matrimonial dispute irrespective of his caste, creed and religion which means that all the laws relating to matrimonial matters including personal laws are covered under the Act. This indicates that the Family Courts Act, 1984 is a step towards the uniformity of procedure to be followed by the courts in dealing with matrimonial disputes.

The Act makes it obligatory for the State Government to establish a family court in all the areas having population more than one million. While for the areas having population less than one million, it is at the discretion of the state government to establish the family court. The discretionary power to be exercised by the state government for the establishment of family courts on the basis of population was upheld to be constitutionally valid by the Bombay High Court.³ The state government shall establish the family courts only after consultation with respective High Court which means the family courts are subordinate to High Court. High Court shall have supervisory jurisdiction over the judicial as well as administrative matters of family court.

The Act prescribes certain qualification for the appointment of one or more persons as judge/judges of family court. As mentioned above that marriage is a sacred institution in India where it establishes a relationship not only between two individuals but between two families, therefore, keeping in the mindset of the Indian society, the Act gives preference for the appointment of those persons as judges of family court who are committed to protect and preserve the institution of marriage and to consider the welfare of children. It also gives preference to appointment of women as presiding officers so that the women litigants could feel safe and share her grievances openly and fearlessly.

The Act confers an exclusive jurisdiction on family courts to try all the matters pertaining to matrimonial disputes such as nullity of marriage, restitution of conjugal rights, divorce, judicial separation, maintenance under Chapter IX of Code of Criminal Procedure, 1973, decree as to validity of marriage or declaration as to the matrimonial status of any person. The family court also has jurisdiction over the issues relating to property of parties to dispute or either of them. It may also pass a declaration as to the legitimacy of any person. Though regarding the guardianship of minor, the jurisdiction of family court

is limited only to the custody or guardianship of the person of minor. The Act does not confer any jurisdiction on family court relating to the appointment of guardian for the property of minor. The adoption matters have also been kept outside the jurisdiction of family courts.⁴ To determine if the family court has jurisdiction in a dispute is to ensure that the dispute is between husband and wife, in the absence of such dispute, the family court will have no jurisdiction.⁵ The Act explicitly states that family court shall be Deemed to be either as civil court while determining the disputes of civil nature or as criminal court i.e. the court of Judicial Magistrate while exercising its jurisdiction under Chapter IX of Code of Criminal Procedure, 1973.

The Act excludes the jurisdiction of district court or subordinate courts or the court of Judicial Magistrate where the family courts have been established for the subject matters enumerated in the Act. In case of pending matters before the regular courts, the same shall stand automatically transferred to the family court on the very first day of its establishment. The original jurisdiction of High Court is not excluded by any of the provisions of the Act. Likewise, the jurisdiction of civil courts in relation to the appointment of guardian as to minor's property has been kept intact.

The Act casts a duty on the presiding officers of family court that it should make all the efforts in assisting and persuading the parties to arrive at settlement. And if the court is satisfied that there exists a reasonable possibility of settlement between parties, the court may adjourn the proceedings for such period as it thinks fit. While dealing with the disputes, the Act provides that the family court may follow civil procedure in deciding civil disputes and criminal procedure while dealing with the criminal cases. The most unique feature of the Act is that in spite of the prescribed civil and criminal procedures, the family court may lay down its own procedure for the resolution of disputes. The court is further authorized to settle the family disputes speedily and amicably with the combination of its own procedure and other statutory procedures. Therefore, family courts are free from the chains of rigid rules of procedure by which the ordinary courts are bound to follow.⁶

In addition the family courts are further not bound to apply the principles of law of evidence in a strict manner thereby making the settlement procedure less formal and less complicated. It gives relaxation to the litigants in relation to rules of production of evidence in the court. It does not insist on the strict proof of documentary evidence, examination and lengthy cross examination of witnesses, relevancy and admissibility of evidence as per the strict rules of Indian Evidence Act, 1872. The court may receive any report, statement, document or information in evidence which could help the parties in speedy and effective settlement of disputes. The court may further record the memorandum of substance in spite of lengthy evidence. Provided such evidence is signed by the judge and the witnesses. The Act also empowers the court to take the evidence on affidavit

which must be of formal character. If the evidence is of contested nature or includes the matters of serious consequences and significance then it should not be given on affidavit.⁷

The Act entitles the parties to dispute to hold their proceedings in-camera in the family court. The in-camera proceedings can be held by the court itself also. The statistics show that very few litigants are aware of their right to in-camera proceedings and generally their case is heard in the open court only.

There are various other provisions in the Act that makes it obligatory for the court to settle the dispute through mediation or conciliation at the first instance. The Act casts a duty on the presiding officer of a family court to act more as a mediator and well-wisher than the role of a judge being played by the courts in any of the legal dispute. For this purpose, the Act authorizes the court to take assistance of counselors and other employees of the family court. The social welfare institutions or organizations or the professionals or individuals working in the field of social welfare can also be associated with the family courts to achieve the object of the Act by the state government after consultation with High Court. The Act also entitles the court to secure the services of medical experts or any other person who is related to parties in Personal capacity and who could assist the court in discharging its function effectively.

However, the provisions of the Act restrict the right of parties to dispute to engage an advocate in the family disputes in order to avoid the framing of false allegations and delay in settlement of disputes. But, in the interests of justice the court has been given discretionary power to appoint an advocate as *amicus curiae* so as to render assistance to the court as and when required. The Act does not put an absolute restriction on the parties to be represented by advocate in proceedings before family court as with the prior permission of the court the parties may be represented by advocates.⁸ A study on family courts reveals that generally the courts grant permission to parties to dispute to be represented by advocates in a routine manner. But such permission should be withdrawn by the court whenever the court considers the presence of advocates against the interests of parties. If in any case one party is allowed to be represented by lawyer then denial of permission to the other party to dispute will be in the violation of principles of natural justice.⁹

A judgment to be passed by the family court should be precise unlike that of civil court because the purpose of family court is to settle the matrimonial disputes expeditiously.¹⁰ The judgment must contain a brief statement of the case, the points of determination, and the decision taken by the court along with its reasons. The framing of issues in all the disputes are not mandatory for the family courts, therefore, if in any matter the issues are not framed by the court, it would not be illegal per se.¹¹ The Act empowers the family court to execute its own decree and orders passed under Chapter IX of Code of Criminal Procedure, 1973 in the same manner as mentioned in the Code of Civil Procedure, 1908 and Code of Criminal Procedure, 1973. The decree or

order can also be transferred to the other competent family court or ordinary civil court where the family court is not established for its execution.

The Act also provides the remedies of appeal and revision against the orders or judgment of family court. However, the Act specifically excludes the remedy of appeal and revision against the interlocutory orders and any decree or order passed by the court with the consent of parties. An appeal from orders or judgment of family court shall lie to the division bench of High Court and must be filed within 30 days from the date of judgment or order of the court. The Act also confers the revisional jurisdiction on High Court where the High Court may either *suomotu* or otherwise call for the record of proceeding under Chapter IX of Code of Criminal Procedure, 1973 to ascertain the correctness and legality of the order or proceedings. An appeal against the interlocutory orders of family court granting maintenance to the wife during the pendency of suit was held to be not maintainable.¹² An *ex parte* judgment or decree was upheld to be an original judgment under the Act, therefore, appealable under the Act.¹³ Orders passed by the family court under Section 24 of Hindu Marriage Act, 1955 were declared to be interim in nature, therefore not appealable under the Act. However, the writ jurisdiction under Article 227 may be availed by the aggrieved party to the dispute.¹⁴ All the orders or judgments of family court are appealable only under the provisions of the Act and to the exclusion of any other provisions under different laws such as under Code of Civil Procedure, 1973.¹⁵

The Act further gives an overriding effect to the provisions of the Act. Whenever there will be inconsistency between the provisions of the Act and the provisions contained in any other law, the former shall prevail over the latter. All the features of the Act discussed above evidently makes the family courts a unique forum providing a congenial and non-intimidating environment to the harassed litigants of family disputes. The extraordinary features of the Act ensure that family courts function smoothly and able to dispose of the family matters speedily by adopting the conciliatory methods.

Since family courts are the special courts with a special and simple procedure for the settlement of matrimonial disputes, thus, it becomes necessary that such courts should be established in all the districts/areas irrespective the population of the district/area exceeds one million or not. The parties who are outside the scope of family courts and their matters being tried by the ordinary courts are in a disadvantageous position as compared to litigants of family court. For e.g., In an ordinary court, a party to the family dispute has to submit his evidence as per the strict laws of evidence while in family courts, any form of evidence can be accepted by the family court if it assists in effective settlement of dispute. Citing another example in which the litigants of ordinary courts are in a disadvantageous position is that in ordinary courts, a party to the dispute is compelled to file his divorce petition before the district judge while for the application of maintenance he has to appear or

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defend the case in the court of Judicial magistrate thereby compelling the parties to dispute to pursue the matter between same parties in different courts. On the other hand, family court is one single integrated forum which entitles the parties to dispute to file all the different petitions of matrimonial dispute under one roof and with one single court resulting in the protection of parties from undue harassment and saving the time and money of the court as well as of litigants. Moreover, with the establishment of family courts in all the districts/areas, all the family disputes and the matters connected therewith shall be dealt with a uniform approach and the same remedy will be available against the judgment or orders of the court to the parties to the dispute.

Conclusion

Now, discussing the position of union territory of Chandigarh, it is evident that the population of Chandigarh is more than one million but till date it does not have a single family court in the district. A study shows that the matrimonial disputes are increasing in the city every year and resultantly the pendency of matrimonial matters has increased as compared to its disposal rate. Despite having a special and unique central piece of legislation specifically enacted for the harassed litigants of matrimonial disputes, the litigants have been made miserable and helpless. Such as because of lengthy and complicated procedures of the ordinary courts, parties to the dispute are left with no choice but to engage the services of lawyer for filing and pursuing the case which is not required under the Act. The beneficial provisions that have been contemplated under the Act are of no use for the litigants of Chandigarh who are involved in matrimonial proceedings leaving them to disadvantageous position. Thus, without any further delay the family courts should be established in Chandigarh where all

the disputes relating to family matters could be tried with a uniform approach by one single court only thereby saving the time and money of litigants as well as of the court and providing the litigants of matrimonial disputes a friendly and non-intimidating environment unlike the threatening environment of the ordinary courts to settle their dispute speedily and amicably.

References

1. The Family Courts Act, 1984
2. njdg.ecourts.gov.in

Endnotes

1. <https://districts.ecourts.gov.in/india/delhi/delhi-family-court>
2. *Ibid.*
3. *Smt. Lata Pimple v. Union of India AIR 1993 Bom 255*
4. *Udhayabhanuv. Ranganayaki and another AIR 2009 Mad 91*
5. *P.Srihariv. P.Sukunda AIR 2001 AP 169*
6. *Basant Kumar Jhav. Mithilesh Jha AIR 2007 Raj 243*
7. *Saraswati Sarkarv. Lalit Chandra Sarkar AIR 2010 Gau 142*
8. *R.Durga Prasad v. Union of India AIR 1998 AP 290*
9. *Mrs. Komal S. Padukonav. Principal Judge, Family Court AIR 1999 Kant 427*
10. *Shashi Shahv. Kiran Kumar Shah 1999 (2) Civil LJ 65 (All).*
11. *(1989) 1 HLR 626*
12. *R.S.Prasadv. Rashmi Singh, AIR 2001 All 227.*
13. *Mala Kumariv. Vijay Kumar AIR 2015 Jhar 31*
14. *Neelam Kumari Sinhav. Shree Prasant Kumar AIR 2010 Pat 184*
15. *Jineevv. Sherly Mathew 2011 (4) Civil LJ 411 (Ker).*