

A CRITICAL ANALYSIS ON THE IMPLEMENTATION OF ALTERNATIVE DISPUTE RESOLUTION (ADR) IN FAMILY COURTS

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Abstract

Alternative Dispute Resolution (hereinafter ADR) in its most pristine form refers to resolving disputes without going to litigation. ADR was implemented in India via enactment of the Family Courts Act, 1984 to resolve family disputes (hereinafter FCA). ADR has been encouraged to resolve family disputes because of the prevailing social therapeutic problems and emotional involvement of the parties. Family Courts (hereinafter FC) were established with a view to promote conciliation regarding family disputes. This was a welcome initiative by the Indian government but has failed to remedy the faults of the formal legal system.

FCA aches with the absence of gender justice. It doesn't recognize the unequal status of women prevailing in the Indian society. It neglects the criminal offences committed within the institution of marriage as well. FC further suffers with indifferent counselling and conciliation, lack in qualification and orientation of judges and lack of uniform rules and procedures for implementation.

This paper critically analyses the implementation of ADR in FC with prime focus on the possible reasons which prevent its successful implementation. It discusses in detail the obstacles ADR faces in FC. The authors' further aim to suggest reforms for the issues identified in the paper in order to utilize ADR to its maximum potential in FC.

Introduction

The paper discusses as to what situations prevailing in the society and in the Family Courts has proven to be an obstacle in the optimal utilization of ADR in Family Courts. Patriarchal

domination prevailing in the society leads to *Gender Injustice* in the society and also to the accessibility of Family Courts. Furthermore, lack of uniform guidelines for the uniform implementation of the Act in all the states, lack of trained personnel in the field of family counselling and patriarchal approach of judges in settling family disputes also contribute to gender injustice within the walls of the Family Courts. The paper along with critically analyzing the above mentioned situation, also suggests reforms to help improve the prevailing circumstance and gender justice in family disputes.

The research work is largely based upon secondary sources – including scholarly articles and books, official reports and evaluations issued by their sponsoring organizations and articles in newspapers and on the internet.

Limited Access to Family Courts due to Conditions Prevailing in the Society

Family is the smallest unit of the society and has helped man survive in the society from time immemorial. It provides for an environment of love, belongingness and security which guarantees marital peace, growth and development of its every member. However, living within a family setup does not mean that there won't be any difference or provocation between its members. Traditionally it was believed that these differences should be amicably settled without any outside interference.

Today's scenarios far different from what family was traditionally explained to be. Women today are being tortured as wife, discriminated as a daughter and neglected as a widow. Traditional values give men propriety rights over women within families. Thus violence against women is more prevalent across the length and breadth of the country. Powerlessness against women is seen to be directly proportional to intensity of violence against women. Furthermore, it is believed in traditional societies that interference in domestic privacy of an individual is a social evil.

According to a survey conducted by National Family Health Survey (NHFS-III) in 29 states, "37 per cent of the married women in the country have been victims of physical violence or sexual abuse by their husbands. Rural women face more violence (40.2 per cent) as compared to those in urban areas (30.4 per cent)." Many women are not aware of the law and legal procedures to address their ordeals and others try to justify the violence they face. Shame, lack

of confidence, lack of support, accessibility of family courts by rural population are a few amongst the many reasons which prevent women from seeking legal help.

The Family Courts Act, 1984 in Section 3(1) (a) says that a Family Court should be established in every city or town whose population exceeds one million.¹ There are 439 functional family courts as of May, 2016.² In a country having a population of 1.37 billion with nearly 70 per cent of the population living in rural India, the accessibility of Family Court is denied to many. The traditional value of patriarchal domination is still staunchly propagated amongst rural population than urban population and thus there is little or no access or awareness of institutions like ADR for family dispute resolution. For millions of people living in rural India, attending court is a nightmare.³ The daily wage earners have to lose their daily income and travel miles to attend a court proceeding. It becomes all the more difficult for a female residing in rural India loaded with responsibilities and trying to embrace high ideals of feminine behavior to set aside her household chores and duties and go to a court miles away to report her ordeals, especially when she has little or no support from her family members.

In many societies it is still believed that discussing family disputes outside the four walls of the house damages the reputation of the family in the society. Women are expected to keep quiet and suffer the hardships assuming that they are destined for it. In some cases, the elders of the family try to intervene and resolve the dispute when it has already reached its zenith. These elders coming from the same background and having the same patriarchal thinking believe that it is only the duty of the female to sacrifice and suffer in silence for the peaceful functioning of the household and for the honor of the family. She in all circumstances is expected to uphold the dignity of the household, even at cost of sacrificing hers. For example, where a dispute involves legal action vis-à-vis male members of her same community, rural women seeking to assert their rights may be subject to pressure from their families and communities, which in turn may lead to domestic violence or social exclusion.⁴ Frequently, when a dispute arises, women choose to seek protection of their rights through customary justice systems. Customary

¹ Sec 3(1)(a), The Family Courts Act, 1984.

² OGD PMU Team, FUNCTIONAL FAMILY COURTS AS OF MAY 2016, available at <https://community.data.gov.in/functional-family-courts-as-of-may-2016/> (visited on May 18, 2019).

³ Jitendra, WHERE ARE RURAL COURTS?, available at <https://www.downtoearth.org.in/coverage/where-are-rural-courts-44754> (visited on May 18, 2019).

⁴ Chiongson, R.A. and al., 2011. *Rule of Law and Justice in Achieving Gender Equality*. World Development Report 2012. Background paper.

justice mechanisms are often more affordable than the formal ones, and may be easier for women to access than formal justice systems. Moreover they are more likely to provide women with more space for dispute resolution that is acceptable to the men and the broader community. However, the rules applied by customary institutions do not necessarily comply with the standards of equality and non-discrimination.⁵ on the other hand, formal courts or other, alternative formal dispute resolution bodies (human rights commissions, ombudsperson or other) are often distant from rural areas, and women's lack of childcare support facilities or the prevailing social practices in use may limit their ability to travel in order to reach these institutions.⁶ This is particularly important in rural areas, where customary legal systems have a more prominent value. Such a pitiful situation exists for women, where she can neither seek legal help for the sake of her family's reputation nor the members or the elders of the family are ready to weigh her ordeals on an even scale.

The lack of confidence and lack of legal awareness is another major reason why women in rural India are not able to enforce their rights. Rural women often have limited or no access to education, public services as well as decision-making and protection from violence. There is also implementation gap linked to inadequacy of institutions to implement changes at the local level, antagonism to women's equal rights, and lack of will and resources to address gender bias.⁷ These obstacles derive from the vulnerability of the rural poor in general, and women in particular, their sub-ordinate position in a society, and the lack of information and knowledge about their rights and the ways to claim their protection.⁸ In rural areas, most women do not think about their every-day conflicts from a rights-based point of view. They also often have less confidence in themselves as claimants of rights and resources. Therefore, most often they do not even consider the possibility of filing a complaint before concerned authority. Many societies still believe that a girl once married ought to live in her marital home till the day she dies. Despite the violence women experience, very few women opt to live outside of their marital family. Rather, many women fight to retain their marital space and stake out their claims.⁹ Lack of financial independence forces them to live in stressful conditions with the bare

⁵ FAO, 2013 *Rural Women and Access to Justice*

⁶*Id.*

⁷ FAO, 2010 *Gender in Agricultural Sourcebook*

⁸ FAO, 2013 *Rural Women and Access to Justice*.

⁹ Suneetha, A. and Nagaraj, V., 2005. Adjudicating (un) domestic battles. *Economic and political weekly*, pp.4101-4103.

minimum supply they get. Further, the stringent procedures followed in a court to file a case and the delay in pronouncing judgments are other cumbersome factors not very attractive to the eyes of an uneducated women residing in the villages. Law and justice mechanisms should be made less complex and accessible to all women and men, including the most vulnerable amongst them.¹⁰ In many situations, the authorities turn hostile towards the victim. Access to justice also means that relevant authorities respect laws and regulations, and that everyone has an understanding of their rights, together with the ability and the power to claim those rights and to seek remedy when such rights are infringed.¹¹

The popularisation of Family Courts as an institution has yet not been achieved. Seeking legal help for family disputes is still an unheard practice in many interior parts of rural India. In rural India, the 'panchayats' decided nearly all the disputes between the residents of the village, while disputes between the members of a clan continued to be decided by the elders of the clan.¹²The Gram Nyayalya Act, which was enacted by Parliament in 2008 and came into effect in October 2009, mandates setting up of village courts. The Act aims at making justice easily accessible to the rural population and dealing with the backlog of cases. Till December 2010, 280 million cases were pending in courts across India.¹³ Implementation of the Act, which has been left to the states, has been dismal across the country. The Act mandated setting up of 5,000 village courts till 2012. But only 172 have been set up. Of these, 152 are functional. Only nine states have notified gram nyayalaya's and of these nine states, only four have functional courts.¹⁴

Despite the existence of an organized, well regulated and established hierarchy of judicial courts in India, there are still unrecognized parallel community and religious courts in existence whose interference has been deprecated by the judicial courts since such unauthorized and unwarranted bodies work without the authority of law and are not parts of the judicial system.¹⁵Khaph Panchayats were responsible for amicable resolution of disputes, but with the

¹⁰FAO, 2013 *Rural Women and Access to Justice*.

¹¹*Id.*

¹²*Id.*

¹³Jitendra, WHERE ARE RURAL COURTS?, available at <https://www.downtoearth.org.in/coverage/where-are-rural-courts-44754> (visited on May 19, 2019).

¹⁴*Id.*

¹⁵Malhotra, A. and Malhotra, R., 2010. Alternative Dispute Resolution in Indian Family Law-Realities, Practicalities and Necessities. *Int'l Surv. Fam. L.*, p.189.

establishment of nationwide rule of law, many lost their relevance.¹⁶ They have been criticized in the recent times for their irrational judgments and pronouncing someone guilty for breaking the so-called tradition. The untrammelled power that the Khap Panchayats wield without any legal basis to it, the obstructionist and dogmatic attitude of people at large in villages, the shocking inaction of the police, the reluctance of the state government to catch the proverbial bull by the horns shows that Haryana and other states where Khap Panchayats have their presence still have a long way to go in jettisoning outdated beliefs of caste marriage and gender base violence.¹⁷ The main criticism of Khap Panchayats is that rights of women are not respected. Khaps adhere to impose outdated concept of women's submissiveness to men on the ground of patriarchal domination. Women are abused and their issues are never addressed. Most of the Khap rules are against law. Rule of men rather than rule of law prevails.¹⁸ To make matters worse, the Khaps even have the political support of their regional leaders,¹⁹ just to keep the count of their votes intact. The police and the administrative machinery also tend to stand by the perpetrators against the victims or at best play the role of mute spectators in cases of offender-caste marriage, violence on women and caste atrocities.²⁰ In 2004, in Bhawanipur village in Moradabad, Uttar Pradesh, 20-year-old Chetan eloped with Pinky, the daughter of an influential Yadav family. The boy belonged to the barber caste. The Tevatia Khap ordered that while the couple should be traced, Chetan's mother, should be raped turn-after-turn by the members of the Yadav family, since her son had dishonoured the Yadavs and later she was burned alive. The police knew about it but did nothing. Only after activists intervened were some arrests made but everyone was later released on bail.²¹

With such oppressing conditions existing in the society how can we expect a woman to get access to Family Court to get her dispute resolved? The situation and the patriarchal domination

¹⁶Gurtoo64, R., 2016. KHAP PANCHAYATS IN RELATION TO WOMEN'S HUMAN RIGHTS: INDIAN PERSPECTIVE.

¹⁷"*Khaphs Call the Shots*", THE TRIBUNE, Chandigarh, Thursday, August 13, 2009.

¹⁸JagmatiSangwan, "KhapPanchayat: Signs of Desperation?", THE HINDU, Monday, May 10, 2010.

¹⁹DeepshikhaGhosh, "KhapPanchayats are NGOs, says Haryana Chief Minister BhupinderHooda", NDTV, India, Friday, February 7, 2014.

²⁰K Sangwan, (2008): "*KhapPanchayats in Haryana: Sites of Legal Pluralism*" in KalpanaKannabiran and RanbirSingh (ed.), *Challenging the Rule(s) of Law: Colonialism, Criminology and Human Rights in India* (Sage: New Delhi).

²¹TarunSehrawat, *A Taliban Of Our Very Own*, Tehelka Magazine, Vol 6, Issue 32, Dated August 15, 2009

existing at the grass root level need to be worked upon first so that the potential of ADR in solving family disputes can be availed to as many people as possible.

Factors Contributing to Gender Injustice within Family Courts

The institution of Family Courts till recent times is plagued with gender injustice. Women find it difficult to get weighed on an even scale with men within the four walls of judiciary which runs on the principle of equality and justice for all.

Family Courts put too much emphasis on preservation of institution of marriage and welfare of children. In Hinduism, marriage is considered as a 'sacred union' between man and wife which supposedly lasts for seven lives. Across states, counsellors reported that the aim of the counselling was aimed more at reconciliation of the dispute.²² In the case of *Balvinder Kaur v. Hardeep Singh*, it was said by the Supreme Court that stress should always be on the preserving the institution of marriage. That is the requirement of law.²³ In the process of trying to save the institution of marriage, the stronger party ends up dominating. The woman is inevitably placed in a less advantageous position. This leads to a situation whereby the woman is often forced into compromises much against her wishes. She stands in danger of entering not only into unwanted compromises but even into compromises which menace her own safety and interests.²⁴

There are no strict rules which need to be adhered to in the implementation of the Act. It is left at the discretion of the States. This brings in discrepancy in the implementation of the Act in various states across the country. Further, the Department of Justice, under the Ministry of Law and Justice has little or no role to play in the administration of the Act. This has led to significant differences between States on the effective implementation of the Act.²⁵ There was considerable variation that emerged across states with regard to recruitment, eligibility requirement and composition of workforce in family courts across states.²⁶

²²Sriram, S. and Duggal, C., 2016. The Family Courts Act in India: Perspectives from marriage counsellors. *Indian Journal of Socio Legal Studies*, 4(1), pp.97-103.

²³*Balvinder Kaur v. Hardeep Singh*, AIR 1998 SC 764.

²⁴Nagasaila, D., 1992. Family courts: A critique. *Economic and Political Weekly*, pp.1735-1737.

²⁵Sriram, S. and Duggal, C., 2016. The Family Courts Act in India: Perspectives from marriage counsellors. *Indian Journal of Socio Legal Studies*, 4(1), pp.97-103.

²⁶*Id.*

Lack of trained counsellor in the field of family mediation and their inexperienced approach in settling the dispute is also a major contention that drives clients away from their chambers in Family Courts. They lack the skill, awareness and training required in the field of family mediation. While only Maharashtra and Kerala had detailed rules in place pertaining to the Act, and roles and responsibilities of the counsellors, other states did not have similar provisions in place.²⁷ Lack of clear guidelines for the counsellors to adhere to while adjudicating upon a case compels them to follow their inexperienced intellect which might not always result in fair play towards both the disputing parties. Lacking clear guidelines, there is a danger that any settlement effort may become counterproductive.²⁸

What is happening today is that personnel of voluntary organisations are called to function as counsellors and very often these people have no clue as to the role of a counsellor.²⁹ People working in the field of women rights or in NGO workers who encounter disputes while working at the local level are called in to work as counsellors in the formal institution of Family Courts. These people are not formally trained and the mere knowledge they have about family dispute resolution is from their experience they have gathered while working at the local level. In Family Courts in Kolkata, most counsellors are appointed because of their experience in women's wings of the ruling Left party (the Communist Party of India [Marxist]) and its coalitional allies, are active party workers and proudly cast their work in the courts as an apt extension of their skills of negotiation and their network of contacts.³⁰ The counsellors due to lack of formal training in family dispute resolution are accused of intimidating or painting an incorrect picture as to the cost, time and possibilities involved in arriving at a litigated solution, to quickly resolve or settle disputes. Such an approach instead of helping often misleads the parties and forces them to settle for something ordinarily they wouldn't have to. Adoption of such tactics generates suspicion in the minds of disputing parties against the counsellor and sometimes against the institution as a whole.³¹

²⁷*Id.*

²⁸Mathew, D., 2014. Arriving at a Settlement Under Family Court Act, 1984: Deconstructing the Role of the Judge of the Family Court and Counsellor. *Journal of Indian Law Institute*, 56(3), pp.376-385.

²⁹Nagasaila, D., 1992. Family courts: A critique. *Economic and Political Weekly*, pp.1735-1737.

³⁰Basu, S., 2012. Judges of normality: mediating marriage in the family courts of Kolkata, India. *Signs: Journal of Women in Culture and Society*, 37(2), pp.469-492.

³¹Mathew, D., 2014. Arriving at a Settlement Under Family Court Act, 1984: Deconstructing the Role of the Judge of the Family Court and Counsellor. *Journal of Indian Law Institute*, 56(3), pp.376-385.

The counsellors working in the Family Courts are appointed temporarily on an *ad hoc* basis and sometimes at the discretion of the Family Court judge. In Kerala, the Principal Marriage Counsellors in the court were supported by contractual employees, who were hired at the discretion of the Judge.³² In most other states, the counsellors were employed on contract basis, for a certain fixed number of cases.³³ The temporary appointment of counsellors creates chaos and delays the settlement of the case. There are cases where a counsellor has to leave in the middle of the settlement due to completion of his/her term. The case is presented before a new counsellor when appointed who has to understand the details of the case from the scratch. This delays the settlement between the parties. The counsellors are often transferred to different Family Courts across the country which again causes the same problem.

The salary or remunerations the counsellors get is also quite low, making this job unattractive to apply for. The counsellors do not get any promotion on the basis of their experience or seniority as well. The remuneration in most cases was low, offered as an honorarium instead of a salary, and was not paid on time, adding to the frustration of the counsellor's role.³⁴ Their pay scale is not decided by years of experience or seniority. Instead they are paid on case to case basis. There is a poor growth scale in this profession, both in terms of salary and career ladder.

In many Family Courts operating in different states across the country, there is no mandatory session required to be attended with the counsellor prior to approaching the Bench. The litigants in many cases are directed to have sessions with the counsellor at the discretion of the judge. There is also no mandatory number of sessions required to be attended by the litigants with the counsellor before approaching the Bench. The role of the counsellors is not very clear whether they are to counsel litigants prior to the filing of the cases or after, and whether the judge and the counsellor counsel the parties simultaneously.³⁵

The Family Courts today suffer from lack of infrastructural facilities. Due to lack of space, there is no proper counselling room. Inadequate seating arrangements cause people other than

³²Sriram, S. and Duggal, C., 2016. The Family Courts Act in India: Perspectives from marriage counsellors. *Indian Journal of Socio Legal Studies*, 4(1), pp.97-103.

³³*Id.*

³⁴Sriram, S. and Duggal, C., 2016. The Family Courts Act in India: Perspectives from marriage counsellors. *Indian Journal of Socio Legal Studies*, 4(1), pp.97-103.

³⁵Nagasaila, D., 1992. Family courts: A critique. *Economic and Political Weekly*, pp.1735-1737.

the disputing parties to sit in the counselling rooms as well. This chaos causes a hindrance in the peaceful counselling and positive interaction between the parties. There is usually no separate space to work with children or proper toilet facilities available.

The time given to a counsellor to deal with a case is also very limited. Counsellors have to deal with tens of cases every day. It gives them very little time to focus into the details of ever case that comes on their table. There is a paucity in the number of courts that deal with family disputes. This leads to work overload on both counsellors and concerned authorities. A recent report published in Bangalore highlighted that there were more than 8,600 cases pending at the Bangalore Family Courts.³⁶

The qualification required to be a Family Court judge is not very specific and follows the pattern more or less of that of a civil court judge. The Act specifies that "every endeavour shall be made to ensure that persons committed to the need to protect and preserve the institution of marriage and to promote the welfare of children... are selected". However, these are subjective qualities which cannot be assessed in any person by any kind of test. Judges appointed in the Family Court due to lack of any formal training or experience in any family dispute resolution setup are more accustomed to the working of civil courts in the country. They end up treating cases which involve a lot more of emotional and psychological investment, as routine cases of civil courts. In the case of *State of Punjab v. Jalour Singh*³⁷ it was observed that the sitting or retired judges who conduct the proceedings Lok Adalats tend to get carried away and impose their view according to what is just and equitable. They pass orders on the merits of the case instead of going for consensus or settlement. One is likely to witness such problems in the context of family courts in instances where the judge of the family court attempts to arrive at a broad consent based solution to the entire matter.³⁸

In certain Family Courts, due to absence or shortage of counsellors the judge assumes the dual role. When the same person acts as conciliation officer as well as adjudication officer, then biasness is bound to creep in. When a judge who is in a position of power and, following the guidelines in the act, has been chosen as a person committed to the cause of preserving the

³⁶Mukherjee, S., 2014.8,600 cases pending in family court. *Times of India*, 25.

³⁷*State of Punjab v. Jalour Singh*, AIR 2008 SC 1209.

³⁸Mathew, D., 2014. Arriving at a Settlement Under Family Court Act, 1984: Deconstructing the Role of the Judge of the Family Court and Counsellor. *Journal of Indian Law Institute*, 56(3), pp.376-385.

institution of marriage, there can be a strong temptation to settle as many cases as possible. This could often result in compromising the interests of the parties and more so that of women.³⁹

We cannot ignore the fact that judges come from the same society infested with the idea of patriarchal domination. Womanhood, wifehood and motherhood is seen in association with sacrifice and tolerance. This has been iterated in judgments given.

In *P. V. Prasada Sarma v. P. Seshalakshmi*,⁴⁰ the wife's choice to live with the husband during vacations was not entertained by the court. The court held that "the wife cannot insist on continuing in service from a distant place from her husband and it amounted to withdrawing from his society without just and sufficient cause."

In *Deepa Suyal vs. P.C. Suyal*,⁴¹ the wife took up a job to end her financial insecurity. With the money, she wanted to put an end to the dowry demand of her husband. The court rejected her contention and granted a restitution decree in favour of the husband.

In *Rameshwari vs. Kripashankar*,⁴² husband's gambling and physical violence was not considered as a valid ground for the wife to withdraw from his society and the husband was granted a restitution petition.

In *Kalpna Srivastava vs. S.N. Srivastava*,⁴³ court granted divorce to the husband because the wife had refused to make him tea. The court observed "where a wife refuses to prepare tea for the friends of the husband, she not only hurts his ego but causes him humiliation before his friends."

"I witnessed one case where a woman had left her husband and was living with another man and another case in which there were numerous reports (and evidence presented in court) of a woman's querulous and erratic nature. In both cases the judges were annoyed by these women, who were clearly not models of ideal feminine behaviour (in the latter case the woman was

³⁹Nagasaila, D., 1992. Family courts: A critique. *Economic and Political Weekly*, pp.1735-1737.

⁴⁰*P. V. Prasada Sarma v. P. Seshalakshmi*, AIR 1975 AP 239.

⁴¹*Deepa Suyal vs. P.C. Suyal*, AIR 1993 All 244.

⁴²*Rameshwari vs. Kripashankar*, AIR 1975 Raj 28.

⁴³*Kalpna Srivastava vs. S.N. Srivastava*, AIR 1985 All 253.

even removed from the courtroom) but always insisted that the bottom line was providing the women with liveable allowances as part of the solution.”⁴⁴

These judgments give us a clear idea of the mind-set of the judges sitting in the courts. They expect women to exhibit high ideals of feminine behaviour. Without any specialization or formal training in the area of family dispute resolution, the judges cannot be expected to be done away with this mentality.

Recording of oral proceeding, rule of evidence and procedure are necessary to establish a case when appealing. There is a right to appeal against all orders of Family Courts but this right goes in vain when no recording is maintained in the Family Court. Thus in the hierarchy of judiciary, when one tier is made informal, the rights of the part is not protected well.

Absence of lawyers gives unilateral power in the hands of the judges. This system in spite of being informal, is still alien to many. This proves to be a serious issue when people who are approaching the court tend to suffer from mental and emotional breakdowns. In such a situation it becomes essential that a person with legal knowledge is there to protect the rights of the clients. The lawyer in this case can act as a buffer between the parties. Feminist organizations have, in fact, targeted the lack of lawyers and the disproportionate reliance on judges and counsellors as being the core problem when it comes to advocacy related to questions of violence.⁴⁵ This system thus has fewer checks and balances.

Reforms Suggested

The establishment of Family courts from the viewpoint of dispute resolution is a step in the positive direction, *i.e.* by creating a distinct institution imbued with different procedural needs than that of an ordinary court system. In most of the states, lack of lucid guidelines has hampered in its significant translation into implementation *i.e.* of the obligation to strive a settlement between the parties prior to adjudicating the matter. Absence of clear guidelines instigates a potential danger regarding the discharge of this duty. There is a need for rules in place, which can specify the procedures for the dispute resolution process and the appointment

⁴⁴Basu, S., 2012. Judges of normality: mediating marriage in the family courts of Kolkata, India. *Signs: Journal of Women in Culture and Society*, 37(2), pp.469-492.

⁴⁵*Id.*

of the office-bearers. There is a need for synergy and uniformity among different states regarding the practice in Family Courts. Counselling should be made obligatory for all the litigants, which is currently left to the discretion of the judges in most of the family courts across the country.

The provisions of the Family Court Act, 1984 has been proved inadequate to safeguard the interests of the women. Family Courts try to strike a settlement between the parties but for there to be a fair settlement any party should not be in a dominant position, which is clearly not the case in Indian society. Hence the Family Courts Act needs to acknowledge the unequal status of women in the institution of marriage. The Act doesn't recognize the inequality between the two genders thus failing to provide justice. Statutory safeguards should be made with regards to protection of rights of women in reference to matrimonial home, and preference as primary caretakers in matters relating to custody of children. For example, the Act could provide rights to woman for residing in her matrimonial home in cases of proven cruelty, judicial separation and divorce. Amendments should also be made to the provisions relating to maintenance, for instance interim maintenance should be provided mandatorily in matters pending before the court. Family courts should function in a manner which promotes parity between the two genders.

At the rural level, individuals from the same rural background should be trained and made accustomed with ADR. These individuals can act as mediators between the parties and the counsellors or the judges who are not in many cases accustomed with the beliefs and practice of the society, the disputing parties come from. This will help the judges or the counsellors in approaching the settlement with a better understanding of the situation.

Increased number of judges and courts are required for adjudicating marriage and family related cases, which are currently inadequate and highly disproportionate with the population and the number of cases being filed. Also there is a dire need for trained counsellors who could function as the agents of the system. Need for separate judges to hear family related disputes are also pressed. The rationale behind this suggestion is that the criminal cases and family cases are of different nature all together and demand a different set of skills for handling each of them.

Family courts should be ensured with a proportionate number of counsellors keeping the caseload in mind. At the same time, uniform rules and criteria for the qualification of a marriage counsellors across the nation is also required. Uniformity in job profile and description of counsellors is called for to institute regularity across states regarding remuneration, service condition and infrastructural requirements. In order to enhance the coordination between the judges, lawyers and counsellors, a code of conduct should be evolved which dictates certain rules and regulations to be followed by all the states. Marriage counsellors should be centrally accredited and licensed for a better regulation and a growth in professionalism. Currently, other than Kerala and Maharashtra no other state has prescribed requirements in place regarding who can be a marriage counsellor. Counsellors should be trained through collaborations with academic institutions for better outcomes. Visits to other courts in other states, refresher courses and exchange programs etc. should be encouraged, which will help counsellors position themselves better about the best practices being pursued somewhere else. Gender sensitization sessions is a must for all the court functionaries – counsellors, judges and lawyers, for family courts to fulfill their purpose mentioned in the preamble of the Family Courts Act, 1984.

Various Aspects of practice and content should be thoroughly researched upon for the success of the profession. The data obtained in the sessions held till date is not analysed by most of the counsellors currently. Analysing the data would provide practical understanding at a micro level regarding important psychological subjects concerned with families in the context of Indian society, which is currently not easily available. In-house journals, seminars and conferences could be used to circulate the resultant research.

Awareness and sensitization programs should be organized on a regular basis on local and regional cultural issues. It is very important for the counsellors to understand the changing psychological contexts with needs, situations, and dilemmas confronting families.

Instituting a network of marriage counsellor and having regular conferences would also help in allowing discussions on practice across settings. This can provide inestimable opportunities for sharing and learning.