

CHALLENGES AND SOLUTIONS IN ESTABLISHING FUNCTIONAL FAMILY COURTS IN DIFFERENT STATES

Under the scheme for Action Research and Studies on Judicial Reforms

Submitted to



Department of Justice, Ministry of Law & Justice, Government of India

Final Report

Submitted by



Administrative Staff College of India (ASCI)

Hyderabad

February 2022

Contents

Executive Summary	1
Chapter 1: Introduction, Family Courts: Nature, Concept and Methodology.....	4
1.1 Family Courts in India.....	2
1.2 Salient Features of Family Courts Act, 1984.....	3
1.3 Critique of the Family Courts Act, 1984	9
1.4 Creating a Framework for Assessment of the Functioning of Family Courts in India.....	13
1.5 Methodology	15
Chapter 2: Evolution of Family Court System in the World.....	19
2.1 Concept of Family Courts: Origin and Development.....	19
2.2 Theoretical Framework.....	21
2.3 Family Court Systems in the World: Some Case Studies	22
2.4 Measuring Effectiveness of Family Courts.....	32
Chapter 3: Comparison of Family Court Rules Across Different States in India	36
3.1 Judges.....	36
3.2 Counsellors	38
Chapter 4: Qualitative Research on Challenges in Establishing Functional Family Courts.....	43
4.1 Focus Group Discussions	43
4.1.1 FGD1: Gender Justice & Family Courts – Expectations vs Reality.....	43
4.1.2 FGD 2: Family Court Counselling - Existing Gaps and Way Forward.....	54
4.1.3 FGD 3: Family Court Procedure: Making Courts More Accessible to People.....	62
4.1.4 FGD 4: Making Family Courts Effective: Much Needed Reforms.....	66
Chapter 5: Sampling Framework and Field Survey.....	74
5.1 Quantitative Research: Sampling Framework.....	74
5.1.1 Sampling Framework: Kerala	84
5.1.2 Sample Selection in Telangana.....	91
5.1.3 Sample Selection for the State of Andhra Pradesh.....	99
5.2 Quantitative Research: Field Survey.....	103
5.2.1 Field Survey - Kerala	103
5.2.2 Field Survey - Telangana.....	131
5.2.3 Field Survey – Andhra Pradesh	167
Chapter 6: Summary of Findings and Recommendations	210
6.1 Based on Secondary Research.....	210
6.2 Based on Qualitative Research	213
6.3 Based on Field Observations.....	220
6.4 Policy Recommendations	232
Conclusion	245
Annexure I.....	247
Annexure II.....	269

List of Tables

Table 1 Court Based Unification and Coordination Models for Family Cases	32
Table 2 Determinants for Evaluation of Family Courts	34
Table 3 District wise Statistics of Family Court Cases- Kerala	83
Table 4 Ranking of Districts based on Court Performance Statistics	84
Table 5 Court-Wise Family Court Statistics–Filing, Disposal, Pendency for 2017, 2018 & 2019	85
Table 6 The District Level Picture of Central Kerala.....	87
Table 7 Comparison of North Kerala Districts.....	89
Table 8 Final Courts Selected for the Study.....	90
Table 9 District wise Distribution of Family Courts in Telangana	91
Table 10 Zonal-wise Family Courts Present in Telangana	94
Table 11 District wise Population	95
Table 12 Districts with Family Courts which have very High Percentage of Urbanization	96
Table 13 Districts with Family Courts which have High Percentage of Urbanization.....	96
Table 14 Districts with Family Courts which have Moderate Percentage of Urbanization.....	96
Table 15 Districts with Family Courts which have moderate percentage of urbanization.....	96
Table 16 Court Wise Data: Filing, Disposal and Congestion Rate	97
Table 17 Final Courts Selected for the Study	98
Table 18 Urban Population	100
Table 19 Very Highly Populated Cities and Districts in AP	101
Table 20 Highly Populated Cities and Districts in AP	101
Table 21 Moderate Populated Cities and Districts.....	101
Table 22 Low Populated Cities and Districts.....	101
Table 23 Final Court Selection	102
Table 24 Staff.....	121
Table 25 Litigant’s perception of family court functionaries.....	122
Table 26 Family Court Perception Analysis –Kerala	123
Table 27 Timelines	128
Table 28 Overview of Family Courts in Telangana.....	131
Table 29 Litigant Profile Summary	157
Table 30 Litigant Satisfaction	161
Table 31 No. of postings and time taken in each stage of case proceeding	162
Table 32 Stage-Wise Duration Mapping of Family Case – Telangana	166
Table 33 Litigant Satisfaction	198
Table 34 Family Court Perception Analysis.....	199
Table 35 Stage-Wise Duration Mapping of Family Case – Andhra Pradesh.....	206
Table 36 Family Court Infrastructure - Kerala.....	220
Table 37 Family Court Infrastructure – Telangana	222
Table 38 Family Court Infrastructure – Andhra Pradesh.....	225
Table 39 Consolidated Findings and Recommendations: Telangana.....	226
Table 40 Field Study Recommendations – Andhra Pradesh	228
Table 41 Field Study Recommendations - Kerala.....	230
Table 42: Family Court Process as Per Kerala Civil Court (Case Management) Guidelines.....	240

List of Figures

Figure 1: Family Support System (Developed by the Research Team)	1
Figure 2: Family Court Process: A Figurative Representation - I	4
Figure 3: Family Court Process: Figurative Representation – 2.....	5
Figure 4 Key Stakeholders	18

List of Charts

Chart 1 Judges Perception of Family Court Functioning - Kerala	125
Chart 2 Lawyers Perception of Family Court Functioning - Kerala	125
Chart 3 Counsellors' Perception of Family Court Functioning - Kerala.....	126
Chart 4 Mediators Perception of Family Court Functioning - Kerala.....	126
Chart 5 Court Officers Perception of Family Court Functioning - Kerala	127
Chart 6 Litigants Perception of Family Court Functioning - Kerala	127
Chart 7 Do's and don'ts when it comes to mediation in family cases	146
Chart 8 Judges Perception of Family Court Functioning (Family Court at City Civil Courts Hyderabad).....	148
Chart 9 Judges Perception of Family Court (Family Court at Warangal District Court)	149
Chart 10 Judges Perception of Family Court (Family Court Medak District Court at Sangareddy)	149
Chart 11 Judges Perception of Family Court (Family Court at Karimnagar District Court)	150
Chart 12: Lawyers Perception of Family Courts (Family Court at City Civil Courts Hyderabad)	150
Chart 13: Lawyers Perception of Family Courts (Family Court at Warangal District Court)....	151
Chart 14: Lawyers Perception of Family Courts (Family Court at Medak District Court at Sangareddy)	151
Chart 15: Family Court at Karimnagar District Court, Ranking of various things.....	152
Chart 16: Court Officers Perception of Family Courts (Family Court at City Civil Courts Hyderabad).....	152
Chart 17: Court Officers Perception of Family Courts (Family Court at Warangal District Court).....	153
Chart 18: Court Officers Perception of Family Courts (Family Court at Medak District Court at Sangareddy)	153
Chart 19: Court Officers Perception of Family Courts (Family Court at Karimnagar District Court).....	154
Chart 20: Litigants Perception of Family Courts (Family Court at City Civil Courts Hyderabad)	154
Chart 21 Litigant Perception of Family Courts (Family Court at Warangal District Court)	155
Chart 22: Litigant Perception of Family Courts (Family Court at Medak District Court at Sangareddy)	155
Chart 23: Litigant Perception of Family Courts (Family Court at Karimnagar District Court)..	156
Chart 24: Will you approach the Family Court without a lawyer or recommend any one to appear before Family Court without a Lawyer?.....	159
Chart 25 Judges Perception Analysis of Family Court – Andhra Pradesh.....	201
Chart 26 Lawyers Perception Analysis of Family Court – Andhra Pradesh.....	202
Chart 27 Mediators Perception Analysis of Family Court – Andhra Pradesh.....	202
Chart 28 Court Officers Perception Analysis of Family Court – Andhra Pradesh.....	203
Chart 29 Litigants Perception Analysis of Family Court – Andhra Pradesh.....	203

List of Abbreviations

AP	:	Andhra Pradesh
CCC	:	City Civil Court
CPC	:	Code of Civil Procedure
CrI.	:	Criminal
CrPC	:	Code of Criminal Procedure
Dist.	:	District
DLSA	:	District Legal Services Authority
DV	:	Domestic Violence
EP	:	Execution Petition
FCOP	:	Family Court Original Petition
Govt.	:	Government
GWOP	:	Guardian & Wards Original Petition
HMOP	:	Hindu Marriage Original Petition
ICSD	:	Integrated Client Service Delivery
Jr.	:	Junior
Km	:	kilometer
MC	:	Maintenance Case
MP	:	Maintenance Petition
MSJ	:	Metropolitan Sessions Judge
OP	:	Original Petition
OS	:	Original Suit
RRDC	:	Ranga Reddy District Court
S.	:	Section
SCC	:	Supreme Court Cases
Sq. Ft.	:	Square feet
Sr.	:	Senior
TMMC	:	Telangana Minority Mediation Centre
WCD	:	Department of Women & Child Development

Study Team from

Administrative Staff College of India (ASCI), Hyderabad

S. No.	Name (Prof./ Dr./ Adv.)	Designation
1.	Dr. Shahaida P. (M.B.A., M.Phil., Ph.D.) <i>(Team Leader)</i>	Professor, Centre for Managerial Communication and Marketing, ASCI
2.	Dr. Nuzzat Parveen Khan (B. Sc (Hons.), LL.B. (Hons.), LL.M., Ph.D.) <i>(Advisor)</i>	Professor, Bennett University, New Delhi
3.	Ms. Noor Ameena (BA., LL.B., (Hons.), MA Development Studies, LLM) <i>(Research Associate)</i>	Research Fellow, NALSAR University of Law, Hyderabad
4.	Adv. Sandhya Raju, (B.A., LL.B., (Hons.), LL.M.) <i>(Field Investigator)</i>	Director, Centre for Constitutional Rights, Research & Advocacy, Kochi, Kerala
5.	Adv. Aamir Hussain, (B.A., LL.B., LL.M.) <i>(Field Investigator)</i>	Advocate, High Court of Telangana
6.	Adv. Aparajitha Mannava (B.A., LL.B., Hons.) <i>(Field Investigator)</i>	Advocate, High Court of Andhra Pradesh

Acknowledgment

The Study Team, Administrative Staff College of India (ASCI) acknowledges the wholehearted support of the Department of Justice, Ministry of Law and Justice, Government of India towards the project.

We thank the High Court of Kerala, the High Court of Telangana and the High Court of Andhra Pradesh for their valuable support and cooperation, without which this project could not have been possible. We thank the officers and staff of all these High Courts for providing all the necessary support to us.

We thank Hon'ble Justice Mohammed Mushtaque, Judge, High Court of Kerala, P.S. Antony, Former Judge, Family Court and Retd. District & Sessions Judge, Kerala, Dr. Neelam Tyagi, Assistant Professor, Delhi University, Dr. Srimati Basu, Professor, University of Kentucky, Dr. Aparna Joshi, Assistant Professor, Tata Institute of Social Sciences, Mumbai, Dr. Sarfaraz Ahmed Khan, Director, Symbiosis Law School, Hyderabad, Dr. Faizanur Rahman, Assistant Professor, Jamia Milia Islamia, Dr. Jaisy, Assistant Professor, CSI College of Legal Studies, Kottayam, Adv. P. Noor Zameer, Adv. Iyalpari, Adv. Poongkhulali Balasubramanian, Adv. Mariam Nasir Alavi, Adv. Sandhya Raju, Director, Centre for Constitutional Rights, Research and Advocacy, Ms. Zakia Soman, Founder, Bharatiya Muslim Mahila Andolan, Ms. Vyjayanti Vasanta Mogli, Founder Member, Telangana Hijra, Intersex and Transgender Samiti, Mr. Fasalul Rahman, Principal Counsellor, Family Court, Kerala, Dr. Ruksheda Syeda, Psychiatrist & Psychotherapist, Mumbai and Ms. Afrah Saleem, Researcher, Hyderabad Central University for their active participation in our Focus Group Discussions and guidance for further research.

We thank all the Judges, Lawyers, Counsellors, Mediators, Court Officers and Court Staff who guided us by sharing their valuable experience and for providing inputs for research.

We thank all the litigants who cooperated with us through the entire process of research.

Executive Summary

Introduction

This project titled “Challenges and Solutions in Establishing Functional Family Courts in Different States” is a multi-state empirical study with particular focus on three South-Indian States, Andhra Pradesh, Kerala and Telangana.

Statement of Purpose

Family Courts in India, having its origin in 1980s, is a relatively recent addition to the long history of colonial courts in India. While the Central Government enacted the Family Courts Act in 1984, the Act got implemented in different states at several points in time. The family courts vary in their number, design, infrastructure and procedures in different states. The high pendency rate in states also differ, for reasons beyond population density or court density. Changing socio-cultural conditions, change in value systems, increasing levels of education and urbanization could all possibly affect the family eco-system and disturbances may ensue. While family courts were originally designed as specialized courts to create a shift from adversarial litigation in regular courts to a conciliatory approach, to create a support system involving counsellors, mediators and social welfare agencies, relaxed procedures to create a congenial atmosphere and to aid reconciliation of parties wherever possible, and last but not the least, to avoid multiple litigation in multiple fora and to provide speedy redressal of family disputes. There is a need to study the effectiveness of family courts, or in other words, whether family courts have lived upto its expectations, where has it failed, and ways to address the same.

Methodology

This project examines the family court system through the perspectives of major stakeholders- judges, lawyers, counsellors, mediators and litigants, and through an evaluation of existing systems using court records. The sample comprises three South Indian states – Andhra Pradesh, Telangana and Kerala. A detailed study of four family courts each from all these states were selected on the basis of congestion rate (ratio of cases pending and cases filed to cases disposed in a given year) and clearance rate (ratio of cases disposed to cases filed in a given year), urban-rural population characteristics. The sample courts are a representative of the geography of the sample state. The courts were evaluated on the parameters of infrastructure, personnel, timeliness, process/ procedure and public trust & confidence.

Practitioners and experts in the field from across the country and states were consulted using focus group discussions and interviews to study the challenges in the functioning of family courts, to document the changes in family court practices over time across different states, and to seek proposals to improve the functioning of family courts – within the existing system/ through calls for a system change in terms of family court structure, design, procedures as well as applicable law. The best practices in different states in India as well as international best practices in the domain of family courts have been documented.

Through a thorough study employing multi-pronged approach, a list of recommendations is put forth based on secondary research, as well as primary research, both qualitative and quantitative.

Key Findings

Of the three sample states selected, the Family Courts in Kerala are found to be in a later stage of development when compared to Andhra Pradesh & Telangana. Family Courts in Kerala have exclusive jurisdiction of matters relating to family, unlike AP & Telangana where most family courts are family courts only in the name- they handle civil and criminal jurisdiction apart from family jurisdiction. This creates a situation highly non-conducive for family dispute resolution and goes against the very idea of institution of family courts itself. Moreover, the territorial jurisdiction of family courts in AP & Telangana are limited to municipalities and corporations. The rest of the population in these states still depend on the regular civil courts for family dispute resolution. It is a matter of great concern that even after three decades of institution of family courts, the entire population in the country is not covered within the jurisdiction of either family court.

While the Family Courts were envisaged as courts where parties can approach without the lawyer, there is a near consensus among the key stakeholders that it is impossible for a layman to navigate the court proceedings without the assistance of a lawyer. The family court procedure is not very different from other civil courts and attempts to simplify the family court procedure is hardly noticeable. The Kerala High Court has recently come up with New Case Management Guidelines introducing some promising changes – by instituting a post of Chief Ministerial Officer (CMO), the Guidelines seek to bifurcate the functions between the Family Court Judge and CMO, wherein the regular roll calls, adjournments, routine ministerial postings will be held before the CMO thereby ceding a major portion of ministerial work performed by the judges giving space for more judicial work. The cases for counselling and mediation will be called directly before the counsellor or mediator. Though the new guidelines are still at infancy and the time is not ripe to judge the efficacy of the same, the guidelines indeed seem more time saving and amounts to better management. With the use of technology, there is great potential to further improve the court as well as case management.

The Family Court System is a unique system which give due emphasis on mediation and conciliation. There is a pressing opinion that the preservation of family approach adopted by the Family Courts Act, runs counter to the gender justice; Family Courts Act do not list out 'securing gender justice' as one of its objectives. The lack of gender sensitivity among the key stakeholders in family court is a major concern which needs to be addressed by introducing periodical gender sensitization drives in family courts. The judges, mediators and counselors should shed patronizing behavior; steps may also be taken to create training modules for judges, mediators and lawyers who wishes to specialize in family dispute resolution. While the Family Courts Act mentions the role of a counsellor, the meaning of counselling is not clearly laid down in the Act. While the role of counsellor is set 'to secure reconciliation between parties', there needs to be a clarification that reconciliation does not necessarily mean preservation of marital union. Further, the psychological function of counselling apart from reconciliation is missing. Further, it is to be noted that in two out of three sample states

chosen, i.e. AP and Telangana, there are no court appointed counsellors. Kerala has created permanent post for counsellors where people qualified with a degree in psychology or social work preferably having experience dealing with family related issues is appointed. The suggestions emanated from Kerala included appointment of additional counselors, counselors specialized in dealing with children, and to have additional services like de-addiction, rehabilitation and psychological testing and therapy be made available within the court premises. Periodic sessions to manage counsellor burn outs, and to sharpen the skills of counsellors are proposed.

Infrastructural limitations are common to family courts across the states, which requires close consideration on a court-to-court basis. The absence of secure space for child visitation within court premises was pointed out as a major flaw.

Family court design requires a big change and outlook to create a more congenial environment for family and children. The introduction of children's playing area or park in a Model Family Court in Telangana is a welcome development. Reimagining family court rooms distinct from regular court rooms, and to redesign the family courts in such a way that the court proceedings of a particular case will be heard by the parties and their counsels alone needs to be mooted among legal fraternity. A separate wing can be created in the same premises exclusively for family court, where ever space is available or separate premises may be considered. In the current state of events, the court room experience tends to further the divide between the parties making the joint child care responsibilities difficult. Appropriate law reforms including introduction of no-fault divorces may also be considered.

Scope for Further Research

This is not a cross-sectional study of the society to examine the factors triggering the use or disuse of family courts, nor does it study the impact of multiple family dispute resolution forums in place at the societal level. A study of family courts conducted in the select family courts in three southern states as in this case give an overview of the functioning of family courts in India. There is a need to conduct similar research in other states as well, as the issues of family courts at each state may differ considering the diversity of population, perception of family courts, availability of resources or the differences in court management strategies. Further, child inclusive dispute redressal mechanism is at its infancy in India; there is a need to make a dedicated study on children in court rooms with particular focus on family courts. Rethinking family court design is another area of study through the tools of law, psychology and architecture.

Chapter I: Introduction, Family Courts: Nature, Concept and Methodology

The world over, the realization is stronger today that the idea of success and failure as applied in regular civil litigation is unsuited to deal with matters relating to family, whether it be divorce, custody, maintenance, visitation rights or anything connected therewith; family matters deserve a different treatment recognizing it as a 'social therapeutic problem requiring solution'¹. The resolution of family disputes requires special procedures, trained Judges and associated machinery that can deal with matters through a psycho-social approach, rather than a formalist approach to legal text and process. Family courts, or Unified Family Courts envisioned to bring together all matters, civil and criminal, in relation to a family dispute within the jurisdiction of a single court thereby saving the trouble of multiple litigation before several forums for the parties. Several matters that come within the domain of family courts include divorce, maintenance, custody and guardianship, property disputes between spouses, among others. Family courts, also referred to as 'Women's court' is also a product of the wave of women friendly laws developed in 1980s with the object to secure gender justice and equity through legislative measures, both in India and abroad.

'Specialized court services' is a broadly prescribed reform initiative for the efficient administration of justice. Specialized tribunals have been created on a variety of issues – administrative tribunals, motor vehicles, consumer, insolvency or environment, juveniles among others. While there is a tendency to bring in specialized systems in almost all sectors, the fulfilment of these primary conditions is to be central consideration in establishment of a specialized court system: (a) complex legal requirements and specialty knowledge, (b) need for additional services and/ or separate processes, (c) case type volume, and (d) external demand². Family matters squarely falls into these criteria; the need for a different treatment of family matters, supplement legal knowledge with the lessons of social work or social sciences (inter-disciplinary approach), auxiliary services like conciliation and counseling services, growing number of cases and excessive delay in regular court system as time is fatal in relationships, and consistent demands from women's movements for establishment of a family court system. The system of family courts was already in existence in countries like United States, Japan and China among others when the concept was first introduced in India. Specialized courts take different forms depending on the requirement of the subject matter- (i) establishment of a separate court or a separate court system, (ii) creation of separate court division or bench within a court (iii) developing specially trained Judges to serve on ad-hoc established court panels to process cases that require special expertise that the courts may occasionally receive³. The family courts are bound to follow the first approach whereby a separate court system is established- which includes separate courts preferably situated outside the regular court complex, relaxed rules of procedure, administrative processes and internal court rules to reflect the special needs of the family cases- whether divorce,

¹ Paras Diwan, "The Family Courts," *Journal of the Indian Law Institute* 27, no. 1 (1985): 101–9.

² Peter Coffey and Robert Riley, "Developing Specialized Court Services: International Experiences and Lessons Learnt," Working Paper (Edward Elgar Publishing, 2006), <https://doi.org/10.4337/9781847202888>.

³ *Ibid.*

maintenance, custody or guardianship or the like and in-built conciliation and counselling system and assistance of social welfare agencies. The second approach, say, setting up of a separate court division or bench within a court is best suited to appeals in High Court. This is not yet materialized in India.

The specialized family court services as is established in India hence serve the following objects:

Shift from adversarial to conciliatory approach: The principal object of the family courts is to treat matters relating to family in a manner distinct from the regular court system. The adversarial approach followed in the common law courts are unsuitable for family affairs. Rather a conciliatory approach is to be adopted in the best interests of the family.

Unified Family Courts: Prior to the establishment of family courts, several matters related to family courts were spread across different courts adding to the hassles of the litigants. By bringing several family related issues under one umbrella, the litigants are spared the difficulty to run from court to court in multiple litigation.

Specialized Supporting Agencies: Family Courts are allied with specialized supporting agencies including counselling services, mediation, and agencies engaged in social welfare and well-being of families.

Best interests and well-being of children: Children in family disputes often face mental, physical and psychological distress owing to the disturbances in the family, often resulting in juvenile delinquency or develop social adjustment problems. The courts and the supporting agencies should endeavor to protect the best interests of children.

Relaxation of rules: Procedural rigidity of regular court system does not augur well for the peaceful settlement of family disputes. Hence, family courts are conceived to have procedural flexibility, by providing discretionary powers to the presiding Judges.

Preservation of marriage in the interest of state: Families constitute the society, and the state is built upon society. The societal notions have for a long time been in favor of preservation of marital ties, and the state often fall into the trope of preserving societal morality. The family courts in its design all over, promotes reconciliation of the parties.

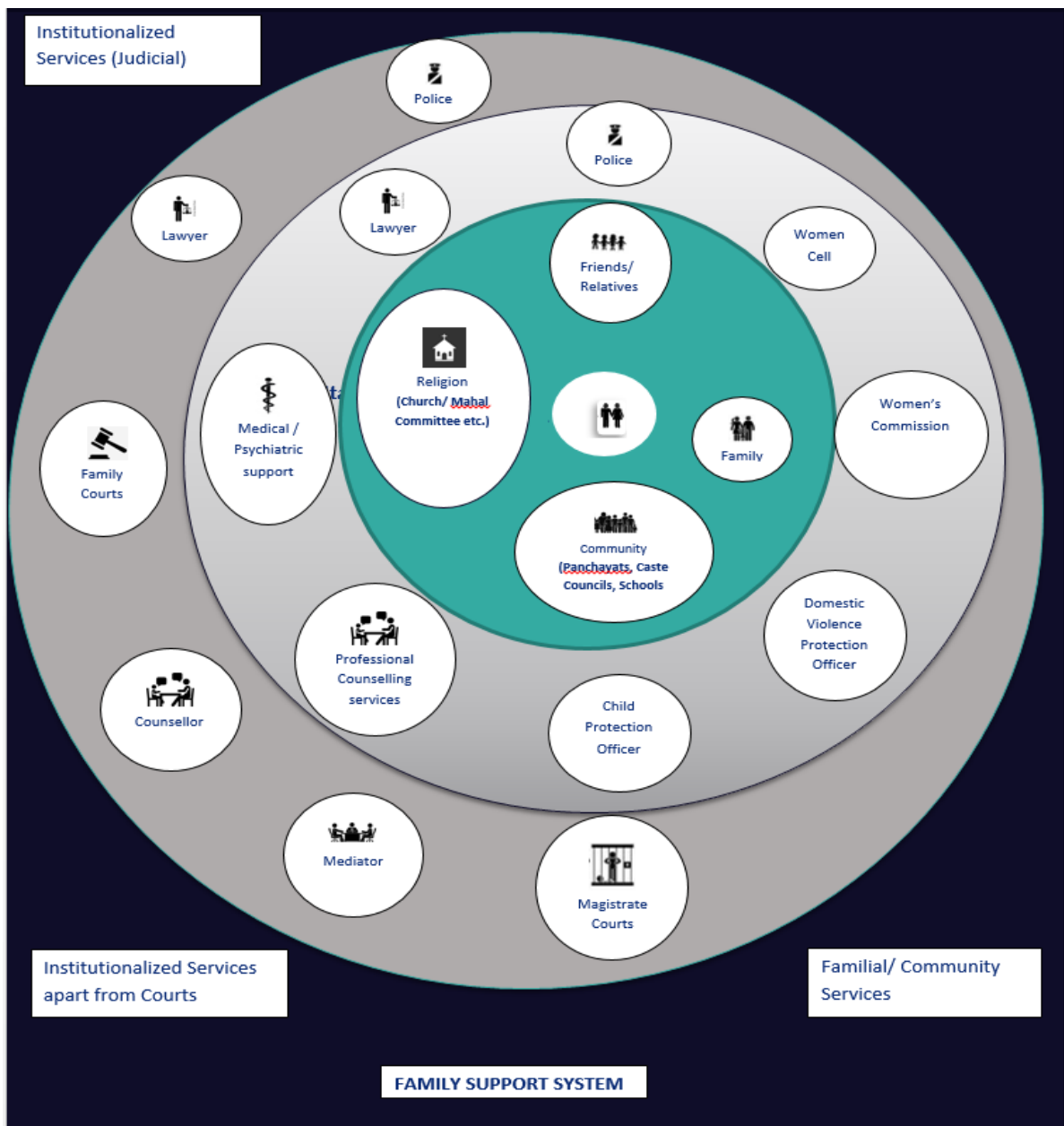


Figure 1: Family Support System (Developed by the Research Team)

Note: An elaborate system of individual, familial, community and institutional measures are in-built in a family ecosystem which works 'to aid a disrupted family. A family which undergoes a rupture navigates through any or all of these, before it finally reaches the court. Family court in the ordinary course is perceived as a last resort, which again is a detailed system consisting of Lawyers, Judges, counsellors, mediators, and police and criminal courts where necessary.

1.1 Family Courts in India

Family Courts in India were a result of sustained demands of women's rights movements which became stronger in 1970s and 1980s. "Towards Equality" (Committee on the Status of Women in India 1974), the comprehensive documentation and policy analysis on women's status produced in preparation for the 1980 UN conference on women, makes a strong case for establishment of family courts which will adopt conciliatory methods and informal procedure with the aim of achieving socially desirable results, thereby abandoning the established adversary system for settlement of family disputes⁴. Family being the core institution that constitutes the society and societal norms that privilege preservation of marriages, conciliatory efforts often begin way before the case finally reach the court, including familial, religious and societal. The emphasis on informal procedure over formal, and conciliation over accusatory/ adversarial process is triggered by the exhaustion of family matters in the regular courts with long pendency rates, together with the wave of campaigns that call for promotion of Alternative Dispute Resolution (ADR) mechanisms that got strengthened in 1970s. The Law Commission in its 59th Report (1974) also recommended a radical shift in the approach towards family matters, thereby making reasonable efforts for settlement before the commencement of the trial.⁵ Together with this, the organization of UN Decade for Women (1976-85) and Convention on Elimination of All forms of Discrimination against Women (CEDAW) (1986) **emphasizes** on improving women's access to justice by making legal systems more accessible to women, and family courts was conceived of as a step in the right direction.

The family courts in India are established *via* the Family Courts Act, 1984. The family law in India is a complex set of rules and regulations- the substantive element of family law that governs the individual rights in marriage, divorce, maintenance, adoption, custody and guardianship are dealt with by the personal law of parties that exist in both codified wholly as well as in part. Family Court is a unique blend of civil as well as criminal jurisdiction, in an effort to bring together all matters that arise out of a family dispute in a single forum. It is the procedural element of family law – that is governed by the Family Courts Act, 1984. While the codes of civil and criminal procedure generally apply to matters before the family courts, the rules of which can be relaxed in the exercise of judicial discretion.

Family Courts Act is a Central legislation. Personal law and matters relating to family being an entry in the concurrent list, both Centre and States are empowered to make rules under the Act. The High Court, in its administrative and supervisory capacity, may also create rules in relation to the functioning of family courts in India. Family courts may also devise its own procedure depending on the cases at hand. Different states and High Courts have issued rules under the Family Courts Act, 1984. The implementation of Family Courts Act, hence varies across the states as the date of coming into force of the Act ranges from as early as 1986 to the latest being Jammu Kashmir, in 2020. The funding of family courts is also divided among

⁴ Gol, Ministry of Education and Social Welfare, "Towards Equality" (Government of India, December, 1974).

⁵ Statement of Objects and Reasons, Family Courts Act, 1984.

centre and states, which explains the differences in the family court infrastructure and operationalization across states.

1.2 Salient Features of Family Courts Act, 1984

Family Courts Act was established with a view to promote conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs and matters connected therewith.⁶ The Act clearly provides that the Family Court shall in the first instance endeavour to persuade the parties in arriving at a settlement, where it is possible and consistent with the facts and circumstances of the case⁷. The Act provides for establishment of Family Courts in all towns or cities or other parts of the state where the population exceeds one million by State Government in consultation with High Courts⁸. As of March 2009, there are 604 functional family courts across different states and Union Territories in India⁹.

1 Jurisdiction

The Act provides for the exclusive jurisdiction of matters such as¹⁰:

- a) Suit for declaration of nullity of marriage/ restitution of conjugal rights/ judicial separation/ dissolution of marriage
- b) Suit for declaration as to the marital status/ validity of marriage
- c) Suit for property disputes arising out of and between parties to marriage
- d) Suit for injunction in any matter related to family dispute
- e) Suit for declaration of legitimacy of a person
- f) Suit for maintenance
- g) Custody, guardianship or access to minors
- h) And such other matters connected.

⁶ Preamble, Family Courts Act, 1984.

⁷ S.9, Family Courts Act, 1984.

⁸ S.3, Family Courts Act, 1984.

⁹ Lok Sabha Unstarred Question, Accessed on loksabha.nic.in

¹⁰ S.7, Family Courts Act, 1984.

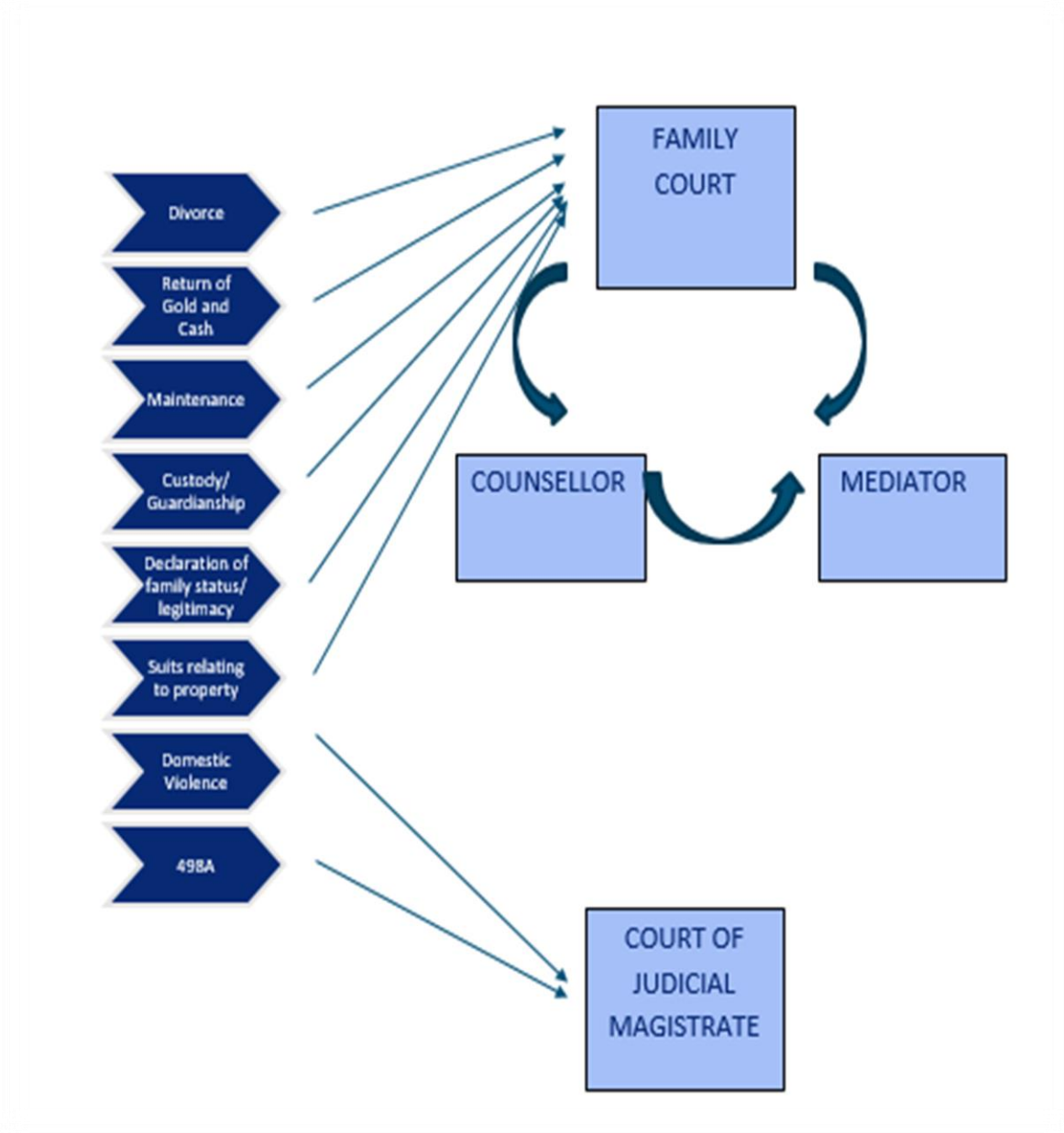


Figure 2: Family Court Process: A Figurative Representation - I

Note: A family dispute may involve multiple issues often resulting in multiple cases filed before the same or different forums. The matters like divorce, maintenance, custody or guardianship of children, declaration of family status or legitimacy, suits relating to property arising from marriage, return of gold and money etc are filed in family courts, and the family courts have exclusive jurisdiction in dealing with these matters. Where domestic violence is involved, the aggrieved party may file a S.498A petition (cruelty by husband or relatives of husband) or domestic violence petition seeking protection orders or residence orders, etc. before the Court of Judicial Magistrate. The domestic violence petition may be filed before the Family Court or the Court of Judicial Magistrate at the option of the parties. In the family court, the parties are sent to counselling as well as mediation for settlement.

II Procedure

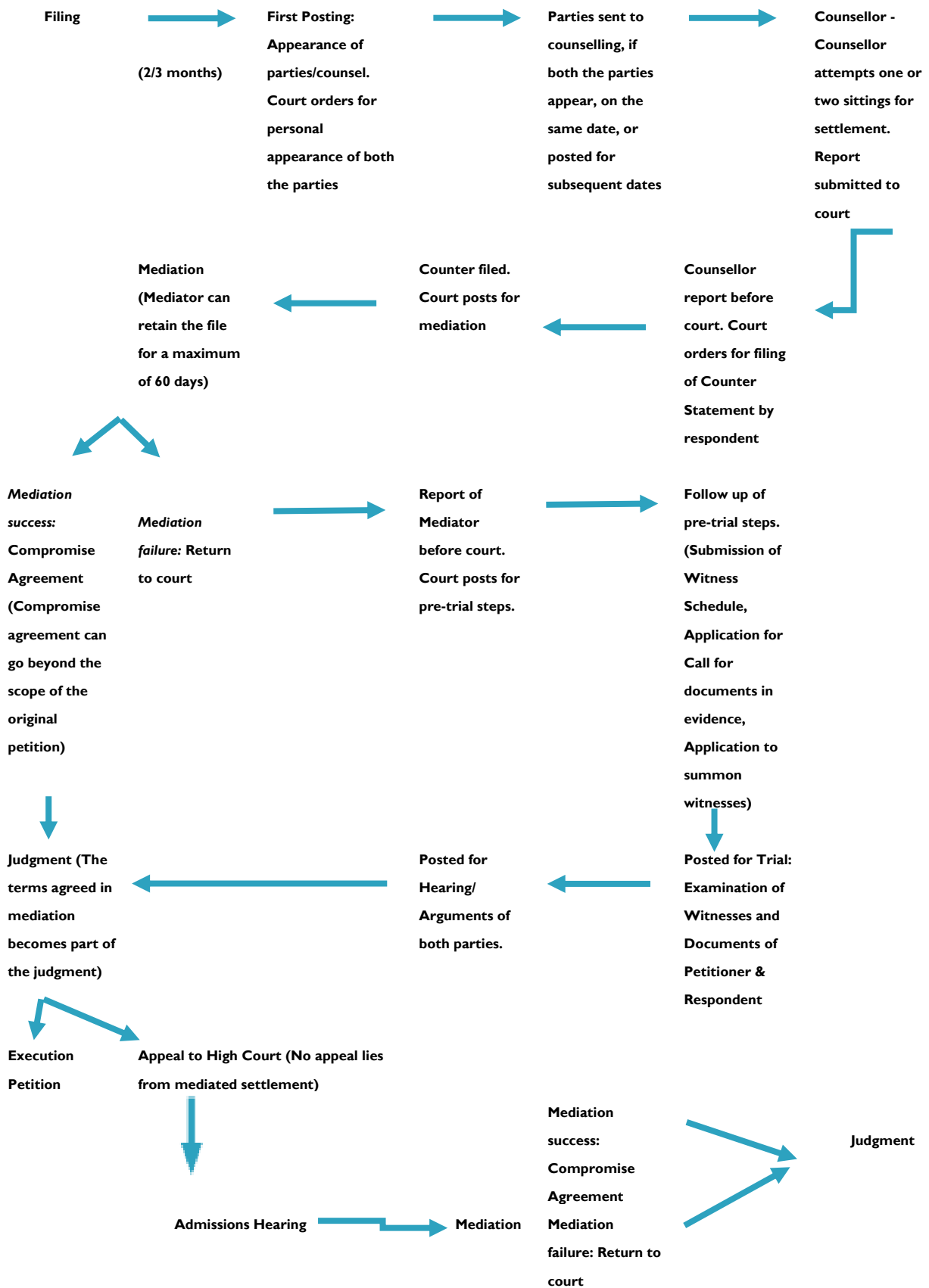


Figure 3: Family Court Process: Figurative Representation – 2

NOTE 1: The figure **does not take into account** adjournments or interim applications. The Family courts process begins with the filing of petition by a party. Upon filing of a case, the court send summons to opposite party to the court. Any case filed before the Family Court us automatically sent to counsellor, which happens once the opposite party present themselves in the court on the same posting or the next posting. The counsellor will send the file back to the court with their report. The next stage is written statement by the respondent. Once the written statement is filed, parties are sent to mediation to attempt settlement. The mediator/s may retain the file for a maximum of 60 days after which the file goes back to the court, with their report. If the parties arrive at a settlement, the settlement agreement becomes part of the judgment. If they do not arrive at a settlement, the case will then proceed for trial. The court then posts for pre-trial steps, and follow up of pre-trial steps including submission of witness schedule, application for call for documents in evidence, application to summon witnesses etc. The court may at any time during this whole process send the case for mediation at its will, or upon request of the parties. The case will then be posted for hearing/ arguments of both the parties, followed by judgment. Once the judgment is issued, separate case is to be filed for execution of judgment where necessary. The aggrieved party may file an appeal before the High Court before the expiry of limitation period. There again, the case will be referred to mediation, and in the absence of settlement, will conclude as a regular appeal case. This is an excruciatingly long process and gap between each postings is roughly a month (which is a minimum, and possibly much more in cities). Unless the parties settle the case by mediation, a family dispute which matures to trial, followed by judgment and execution will take a minimum of one year. Moreover, family disputes are characterised by multiple petitions before the court. Often, the petitions arising from the same parties are clubbed at the time of hearing, at the instance of the court.

The Family Court has the powers of a District Court, as well as Judicial (Class I) Magistrate in dealing with maintenance proceedings under S.125, CrPC. Appeals from a Family Court shall lie to High Court, to be filed within a period of 30 days from the date of judgement of the Family Court¹¹. No appeal shall lie from an interlocutory order issued by Family Court or an order arrived at with the consent of parties or a maintenance order passed under Chapter IX, CrPC¹². The procedure as laid in Civil and Criminal Procedure Codes generally applies to Family Courts; family courts can also lay down its own procedure. In the latter event, the rules devised by the Family Courts override the provisions of CPC & CrPC. The Act also provides for a simplified set of rules of evidence, thereby allowing the Court to receive in evidence any document, information, report or statement or any other matter that may assist the court to deal effectually with the dispute, irrespective of whether the same may be admissible under the general rules of evidence under Indian Evidence Act. This is also because of the fact that, the courts having designed for laymen to practice without the aid of Lawyers, the parties who are not experts in law cannot be expected to be well versed in the complex rules of procedures or technical relevancy, admissibility or proof of evidence¹³. The

¹¹ S.19, Family Courts Act, 1984.

¹² *Ibid*.

¹³ *Deepti Kapur v. Kunal Julka* (30.06.2020 - DELHC): MANU/DE/1314/2020.

proceedings may be held in camera, if the court so desires or either of the parties request to that effect.¹⁴

III Role of Judges, Counsellors, Social Welfare Agencies, Mediators and Legal Practitioners

The Family Courts shall be presided over by judges who has served a minimum of seven years judicial office in India or as a member of a Tribunal or any post under Union or state Government requiring special knowledge of law. The lawyers with an experience of seven years practice in the High Court or two or more courts together may also be considered for the post. Where there are more than one judge, one of the judges may be designated as Principal Family Court Judge and the rest as Additional Principal Family Court Judges. It is also prescribed that efforts shall be made in the appointment to select individuals 'with commitment to protect and preserve the institution of marriage and to promote the welfare of children'. Preference shall be given to those individuals with specific experience and expertise in stelement of disputes by conciliation and counselling and to women¹⁵. Central Government or State Government may provide for additional qualifications for appointment of judges in concurrence with the Chief Justice of India, or Chief Justice of the respective High Courts. In practice, Family Court Judges are appointed by way of deputation from other departments, retired officers who fulfill the above conditions or via direct appointment. The process of direct appointment varies in different states, some states conduct competitive examinations followed by interview¹⁶, some states conduct direct interview process¹⁷, at the instance of the High Court. Under no circustances shall the judges of the Family Courts cross the age bar of 62.

The Family Courts Act also provides for the enagement of social welfare agencies and counsellors to support the courts in discharge of its functions. The State Governments in consulation with High Courts may devise rules to engage social welfare agencies or its representatives, persons professionally engaged in promoting the welfare of the family, persons working in the field of social welfare, or any other person whose association with Family Courts would enable it to exercise its jurisdiction more effectively in accordance with the purpose of the Act¹⁸. State Governments in consultation with High Courts, may also determine, the number and categories of counsellors, and other staff, to be instituted to assist the Family Courts in discharge of its functions.

The Family Courts shall make all efforts to settle disputes through mediation. Even if the counsellors submit a failure report, the court can, with the consent of parties, refer the matter to mediation centre. The courts shall also set a reasonable time limit for completion of the process of mediation, to prevent undue delay of the proceedings. The courts can always extend the time limit, if there is a good chance for settlement between parties¹⁹.

¹⁴ S.11, Family Courts Act, 1984.

¹⁵ S.4, Family Courts Act, 1984.

¹⁶ UP Family Court Rules, 1995.

¹⁷ Rajasthan Family Court Rules, 1991.

¹⁸ S.5, Family Courts Act, 1984.

¹⁹ *K Srinivasa Rao v. DA Deepa*, AIR 2013 SC 2176.

The Family Courts are designed to restrict the role of lawyers in the Family Courts. The Act lays down that no party to the proceedings before a Family Court can claim to be represented by a legal practitioner as a matter of right; however, the Court may in the interest of justice seek the assistance of an *amicus curae* or friend of court²⁰. While this provision has been added with an object to make legal process less formal, and enabling parties to represent themselves, and to an extent to avenge the negative image associated with the lawyers that they would unnecessarily prolong the proceedings for personal benefit, the experience has been otherwise. The experience shows that the Family Courts in its application of laws is hardly free from legalese or procedural difficulties, despite obvious efforts to make it otherwise; the uneducated and poor persons are being totally handicapped in the conduct of their cases for want of legal assistance²¹. It is also observed that when the lawyers are not permitted to appear, it is the women who suffer more,²² resulting in a possible miscarriage of justice, not to mention delays and the attendant problem of having to take the matter in appeal to the High Court²³.

The courts have categorically held that the legal representation shall not be routinely denied in Family Courts, which would be nothing but unconstitutional. S.13 does not prohibit legal representation in Family Courts; on the contrary, the representation of Lawyers is only restricted to certain events. The following guidelines were created by the High Court in reliance of the provisions of the Act and previous judgments of High Courts.

- a) “If the Presiding Officer feels that any party, more particularly, the woman, is unable to prepare her case in a proper manner due to reason of illiteracy or otherwise, it shall be the duty of the Presiding Officer and the Counsellor to permit the woman is permitted to engage a counsel of her choice or to provide a legal aid counsel if she, due to poverty, is unable to engage a lawyer.
- b) In case, the Family Court feels that a lawyer should not be appointed to assist the woman, then the Counsellor must aid and advise the woman as to how she should deal with the case.
- c) Section 13 of the Act does not totally prohibit a party of a Family Court from being represented by a legal practitioner, which bar would itself to unconstitutional; the section itself makes a provision for a situation whereby the Court may seek the assistance of a legal expert as *amicus curiae*.
- d) It would be a healthy practice for the Family Court at the scrutiny stage itself, to ascertain as to whether the parties desire to be represented by their Lawyers and if such a desire is expressed at that stage or at the subsequent stage of the proceedings, permission may be granted by the Family Court if it is satisfied that the party requires such assistance and would be handicapped if legal representation is not permitted.

²⁰ S.13, Family Courts Act, 1984.

²¹ *Leela Mahadeo Joshi v. Dr. Mahadeo Sitaram Joshi*, MANU/MH/0021/1991 : AIR 1991 BOMBAY 105.

²² *Smt. Anjana Dey (Mandal) v. Shri Subal Mandal*,

²³ *Leela Mahadeo Joshi v. Dr. Mahadeo Sitaram Joshi*, MANU/MH/0021/1991 : AIR 1991 BOMBAY 105.

- e) If the case involves complicated questions of law or fact, and the Court is of the view that the party in person will not be in a position to conduct his or her case adequately or for any other reason, the Court may permit the parties to be represented by a lawyer in Court.
- f) The right of cross-examination is a very important right; the parties should invariably be allowed to cross-examine the witnesses produced by either of the parties; this is where representation by counsel could be indispensable.
- g) In case, the parties before a Family Court are unrepresented by counsel, then the Family Court as well as the Counsellor attached to that Court must at the first instance try to arrive at an amicable settlement of the case, but if such efforts fail, they shall aid and advise the parties as to how they should proceed in the matter²⁴.

However, these guidelines having issued by a High Court, is only binding on the Family Courts within the jurisdiction of the same High Court, and has only persuasive value upon Family Courts in other states. These guidelines are not uniformly applied across the Family Courts in different states.

1.3 Critique of the Family Courts Act, 1984

The Family Courts despite being a product of concerted demands of women's organisations and an endeavour to simplify the court system for the parties in distress, whether the Family Courts that has now come into effect, in its design, as well as its functioning, delivered a satisfactory performance is a question that needs scrutiny. Several Judges, practitioners and legal scholars have commented on the functioning of Family Courts in India, its drawbacks and recommendations for improvement.

1. The very premise in which Family Courts Act was enacted has been forgotten by the time the design of the Act was finalised. While the primary objective of the women's movement was to secure gender justice and equity in access to justice, these elements failed to appear in the *Statement of Objects and Reasons* or *Preamble* of the Act. The objects and reasons as well as the Preamble aims to promote conciliation and speedy settlement of family disputes. The Act confers a duty upon the Court to persuade the parties to arrive at a settlement, and emphasis is laid solely on 'preservation of the institution of marriage' and 'welfare of the children', without recognition of the power imbalance within the families per se. It is undisputed that marriage and families are the areas where women are most oppressed and denied the basic rights of self protection. Dowry deaths, domestic violence are part of the scheme of marital families, particularly relevant in a culture where most men and few women believe beating wives by husband are not per se bad. Undue emphasis on preservation of marriage could effect

²⁴ Anita Deb v. Kartik Nandi (19.01.2017 - Tripura) : MANU/TR/0018/2017.

prejudicially to women²⁵. Similarly, the emphasis on welfare of children shall not marginalise the interest of spouses; the informal nature of judgements delivered in the interest of welfare of children may even hide the legitimate interests of the spouses particularly women effectively silencing the parties²⁶.

2. The structure of the Act in the present form only amounts to further disempowerment of women; in order to fulfill the purpose of the Act, not only the structure, but above all, the underlying presumptions of the Act needs to be remedied²⁷. The Act should begin with the acknowledgment of the unequal status of women within the establishment of marriage. Same as how Industrial Disputes Act provides statutory safeguards to workers in the events of lay offs, retrenchment and closure, Family Courts should devise special safeguards for women, like rights over matrimonial homes in the events of proven cruelty or judicial separation, preferential rights in custody of children, provision of interim maintenance during pendency of case, and automatic execution of cases without having to make separate execution application each time etc²⁸.
3. The family courts suffer from chronic lack of infrastructure. Overcrowded courtrooms and insufficient space for conciliation, and visitation of children are characteristic of most family courts in India. The family court structures routinely lack basic infrastructure like toilets, rest rooms or lactation/ breastfeeding rooms for women. The family courts are designed mostly in like the regular courts, whether the family courts are to be set up within or away from the regular court complex, and whether an informal conduct to be employed similar to consumer courts or juveniles' boards need to be studied.
4. The absence of Lawyers in courts often prejudice the poor and less privileged, particularly women. The parties who are non-experts in law cannot be expected to handle the complex questions of law, rules of procedure and evidence, preparation of briefs laying down one's rights and averments, cross examination of witnesses among others²⁹. While several High Courts have laid down that application for legal representation cannot be routinely denied, this is not uniformly implemented across the Family Courts in India.
5. The counsellors in Family Courts many a times are effected in cursory manner seeking the possibility for settlement. While Family Court Rules in several states provide elaborate role of counsellors, due to heavy workload and absence of sufficient manpower or otherwise, the role of counsellors seems effectively limited.
 - a. In some states, the number of sittings per case are limited by rules.

²⁵ Anne Bottemly, "What Is Happening to Family Law? A Feminist Critique of Con- Ciliation," in *Women-in-Law: Explorations in Law, Family, and Sexuality*, ed. Carol Smart and Julia Brophy (London ; Boston: Routledge & Kegan Paul, 1985).

²⁶ *Ibid.*

²⁷ D. Nagasaila, "Family Courts: A Critique," *Economic and Political Weekly* 27, no. 33 (1992): 1735–37.

²⁸ *Ibid.*

²⁹ *Leela Mahadeo Joshi v. Dr. Mahadeo Sitaram Joshi*, MANU/MH/0021/1991 : AIR 1991 BOMBAY 105.

- b. The appointment of counsellors is mostly short-term and contractual. This results in frequent changing of counsellors, creating adjustment issues for parties. Permanent posts of Counsellors should be created wherever possible.
 - c. The payment of Counsellors in most states are made as honorarium, on a per case basis per sitting basis. The honorarium so set are mostly inadequate to retain the best minds in the Family Courts.
 - d. Counsellors are routinely accused of painting a false picture in relation to costs, time and possibilities involved in a litigated solution to quickly arrive at a settlement. The efforts to reconcile shall not result in forcing parties to settlement as against their wishes³⁰.
 - e. The Counselling Services should be offered three tiered: (a) premarital counselling (b) re-conciliation and conciliation counselling (c) post-adjudicatory counselling³¹.
 - i. Pre-marital counselling should be outside of the family court system, a community service easily accessible to parties in need of it.
 - ii. Reconciliation and conciliation counselling shall be available to parties before they have gone to court as well as when they are in the court. This is very important. In the current form, counselling services are mostly referred to after a plaint has been filed before the Family Court. Since it is the basic rule that the averments once made, new facts cannot be added nor withdrawn. This results in parties before Family Courts making exaggerated facts and averments, often filled with untruths or semi-truths. This has the effect of worsening the already existing differences. Hence, the parties shall be given an option to seek counselling services before the court proceedings actually begin, by simply filling out a form to that effect. Such application for pre-court counselling may be filed by mutual consent or at the instance of either of the parties. The counsellors should be given the power to summon the opposite parties to initiate a conciliation counselling. The main role of such counselling shall be to promote reconciliation wherever possible. Where such reconciliation is not possible or undesirable, to secure amicable settlement of those issues which need solution when the marriage has broken down.
 - iii. Post-adjudicatory counselling aims at settlement of post-divorce disputes and problems.
6. The excessive push for Alternative Dispute Resolution mechanisms and the mandate to promote settlement upon Judges could have a deleterious effect on parties. The Judges, mediators often have a tendency to consider an ADR proceeding in the same manner as an ordinary legal proceeding, imposing their views on parties as to what is just and equitable on parties, or proceeding to pass orders on merits in the absence of a consensus or settlement. Guidelines should be framed to assist the functioning of Judges,

³⁰ *Ibid.*

³¹ Diwan, "THE FAMILY COURTS."

counsellors and mediators in Family Courts. “The Judges of family courts and counsellors when attempting a settlement,

- (i) Should assist parties in an impartial and independent manner to reach an amicable settlement of their dispute.
 - (ii) Be guided by the principles of objectivity, fairness and justice, giving due consideration to the rights and obligations of the parties and the circumstances surrounding the dispute while assisting the parties.
 - (iii) Were of the opinion that a settlement seems likely, at any stage of the proceedings may suggest possible areas/ issues for agreement, and encourage discussions on settlement.
 - (iv) As regards matters expressed during attempts of settlements, they cannot be used as evidence in adversarial proceedings in Family Court.
 - (v) At no point should any pressure, threat, force or coercion be visited on the litigant to settle their dispute against their wishes.
 - (vi) Must clearly desist from finding fault with a particular litigant if the matter is not conciliated, so as not to prejudice themselves when they adjudicate the matter”³².
7. The appointment of Judges in Family Courts many a times are routine transfers or deputation, having no specialised expertise, experience or interest in the matters relating to family. While the age bracket of judicial officers now range right from 23-24, the age range of family court Judges begin from 40 and above, as laid down in the rules of various family courts. The philosophy behind the preference for older Judges in family courts needs re-testing. Many a times, the Judges opt family courts as their last posting before retirement, to get the benefit of 2 years of extra service. Efforts shall be made to bring in persons with genuine interest in matters related to family, and those dutybound to secure gender justice, as family court Judges; at the very least, rules shall be so formulated to avoid disinterested persons from sitting in family courts/ opting for family courts for personal benefits.
8. The personnel of family court system including Judges, counsellors, mediators, Lawyers and other support staff should be provided training and continuing education at regular intervals. The training modules should cover certain elements of sociology, psychology, and social welfare apart from legal materials. At present, the training modeules of mediators as well as entry level judicial officers are highly generic, and insufficient to deal with matters specifically related to families.

³² Daniel Mathew, “Arriving At A Settlement Under Family Courts Act, 1984: Deconstructing The Role Of The Judge Of The Family Court And Counsellor,” *Journal of the Indian Law Institute* 56, no. 3 (2014): 376–85.

I.4 Creating a Framework for Assessment of the Functioning of Family Courts in India

The defining features of Family Court include (i) organization of an autonomous system distinct from regular courts, (ii) unified jurisdiction of family related matters (iii) specialist Judges whose qualifications are laid well in advance (not simply rotation) and having legal and sociological training and experience, character and personality well suited to the dealing kindly and constructively with individuals and families in trouble; and a well-trained judiciary, and if not, at least elimination of disinterested individuals be eliminated, by selection or nomination, (v) trained staff with demonstrated professional competence in the art of social investigation, social interviewing, counseling and casework and (vi) mandatory counseling services that precede every family case³³.

Beyond the concentration of jurisdiction, 4 'P's define a real family court: (i) 'Power', (ii) 'Purpose', (iii) 'People' and (iv) 'Plant'. 'Power' stands for ample legal jurisdiction and authorization. Power must be ungirded by purpose and implemented by people. 'Purpose' is to supplement legal science with other social sciences to help the court's clients with the kind of help they need. 'People' includes specially trained staff and skilled experts in various social sciences and disciplines, and 'Plant' stands for the place where people have to work to create desired results³⁴.

The essential tenets of family court procedure as explained in re Japanese Family Courts: "In regular court procedure, whether criminal or civil, it is the aim of the court to establish a certain fact which happened in the past, and apply laws thereto, while, in the procedure of the Family Court, whether it involves a family case or juvenile, the Court attaches more importance upon how to maintain the peace and happiness of the family involved or how to adapt juvenile delinquents to normal social life than upon how to simply establish past fact. For this reason, its procedure has following characteristics:

- (i) The procedure is held informally, those concerned sitting around the table and the whole procedure is conducted in a free and congenial atmosphere.
- (ii) The procedure being held in closed session, is not open to the public and the private affairs of the parties and other persons are kept strictly secret.
- (iii) The parties and other persons involved must personally appear in the court for this procedure. Most of the cases are handled without the intervention of attorneys.
- (iv) It emphasizes social investigation, physical and mental examinations rather than legal technicalities."

While informality of procedure is lauded in family court jurisprudence, the over-emphasis on conciliation vis-à-vis settlement of family disputes may have the tendency to enforce patriarchal values upon women through agents of courts. Many a times, counsellors, Judges and other stakeholders in family court system considers re-unification of family/ preservation

³³ Charles Chute, "Divorce and the Family Court," *Law and Contemporary Problems* 18, no. 1 (January 1, 1953): 49–65.

³⁴ Paul W. Alexander, "The Family Court - An Obstacle Race," *University of Pittsburgh Law Review* 19 (1958 1957): 602.

of marriage a success; this in turn may be deleterious to women being forced to compromise, losing of agency, and even normalize violence. This is a rather complex position in view of the peculiar social-cultural-economic-emotional bondages that comes with marriage. The trainings of family court personnel should be able to undo the prejudices within, and to lay down foundational values of family court, which can be out of tune with societal morality.

The family courts, despite its establishment over two decades, suffer from severe bottlenecks. The effectiveness of family courts in its current design needs testing, and the best practices of family courts to be documented. Apart from the difficulties peculiar to family courts in terms of jurisdiction, specialized training, lack of sufficient infrastructure, and adequate manpower, these courts also face the same challenges that engulf the regular court system – backlogs, high pendency rates, poor physical infrastructure, and unfilled vacancies of Judges, along with the complex legal framework that governs the family laws in India.

The family courts in India needs to be systematically examined over the following points:

- (i)** Jurisdiction: While the family courts are conceived as systems that unify the multiple cases arising out of a family dispute, such unification is far from complete. Multiple legal proceedings in different fora are prevalent even today. Several issues like adoption, protection of senior citizens, surrogacy, juvenile cases which are matters connected with family, but remain outside of the family courts in India.
- (ii)** Infrastructure: The family courts infrastructure needs to be revisited. The points of whether family courts need to be situated in proximity to courts or in separate structures need evaluation. Unlike many foreign jurisdictions, family courts in India do not deal with the juvenile offenders; it needs consideration whether the court infrastructure adopted in juvenile courts in India better suited to family courts.
- (iii)** Personnel: The qualifications, appointment and continuous training of various personnel associated with family courts: Judges, counsellors, mediators and other support staff in sociological, psychological and behavioral sciences/ practices above legal technicalities need thorough examination. The average term of the Judges and family counsellors, the age factor of family court Judges and counsellors (older persons preferred by rules), the temporary/ permanent character of appointment of family court personnel needs to be studied.
- (iv)** Process: The procedures in family courts as is seen today is a blend of adversarial and conciliatory methods. The questions relating to informality of courts, in-camera proceedings whether rule or exception, representation of legal practitioners whether rule or exception etc. needs to be asked.
- (v)** Case management: The management of cases in family courts needs to be carefully studied: average time taken for a newly filed case to come before the judge, average lifespan of a family case, average number of cases filed by parties, pendency rate, feasibility of one judge, one family approach.
- (vi)** Legal Reforms: The family law in India is a colonial artefact, which needs updation at several levels. The family courts are conventionally designed with a singular idea of

family, i.e. heterosexual married couple. The new legal developments in family law domain like recognition of living relationships, repealing of S.377 IPC and consideration of recognition of gay marriages, the family laws need to be updated in tune with the changing realities. The family law relating to divorce, custody and guardianship can be further simplified, the demands for which have always been strong, thereby reducing the hassles of the parties and at least halve the time spent languishing in courts. For example, several Law Commission Reports have recommended a shifting towards 'no-fault' divorces away from the fault-based divorces which only strengthens the accusatory form of the process, and worsens the relationship between parties even further, making saner arrangements of child care even difficult. Similarly, there are other domains of family practice that needs reforms.

1.5 Methodology

Objectives of the Study

1. Critically Analyse the Functioning of Family Courts in India
2. Identify the procedures, infrastructure, personnel and other factors essential for establishing sustainable and effective Family Courts through analysis of well-functioning Family Courts.
3. To identify the bottlenecks and factors common to non-functional or ineffective Family Courts.
4. Determining structural, procedural and infrastructural solutions for establishing Functional Family Courts,
5. Identify National and International best practices for establishing effective Family Court Systems.

Scope of the Study

To critically analyse the functioning of Family Courts in India, the scope of the study was territorially limited to three southern states – Kerala, Andhra Pradesh & Telangana. It was felt appropriate to study three territorially and culturally proximate states in South India for a better analysis of Family Court Functioning. 4 Districts were selected from each state and Family Courts of these particular districts were studied in detail.

To identify the family courts for the study based on performance, rural-urban differentials and geographic spread, the family court statistics (data relating to backlog, pendency and disposal of cases in select family courts) of years 2017, 2018 and 2019 were used. 2020 being the year in which the global pandemic struck, the court functioning was disrupted and major changes happened in the way courts function in general. In the later stage of research, questions on the impact of pandemic on the functioning of family courts were incorporated. However, that forms the ancillary and not central part of the current research.

The parameters selected to study the family courts include: (a) Infrastructure (b) personnel (c) process/ procedure (d) timeliness and (e) public trust/ accountability.

The study does not delve deep into the social or cultural factors affecting marriages or the changing values pertaining to marriages. The study also does not deal with the different forums of family dispute resolution that exist at the societal level. The current study has family courts

as its focus area and it is limited to the identifying the challenges in the existing family court system and to collate suggestions for improvement of the functioning of family courts in India.

For national best practices, the three select states were studied in detail. For international best practices, legal systems similar as well as different from Indian legal system was studied.

Methodology

The methodology adopted to identify the major bottlenecks and challenges of Functional Family Courts is empirical study. Data is collected through empirical study from different categories of cases from three states. Infrastructure check of each family court selected was performed by personal visits. Case histories, practice and procedures, judge's, lawyer's, counsellor's, mediator's and litigant's perception of court functioning and suggestions for improvement have been collected through physical verification of case records and personal interviews.

Efforts were made on choosing Family Courts functioning in urban and rural areas to study differentiated impact and challenges.

The study conducted an in-depth analysis based on extensive field research on functioning of Family Courts. Focus was on identifying key gaps and challenges in the functioning of Family Courts in India. Diverse functioning, rules and regulations governing Family Courts in three states were subjected to study.

The focus of the study was on identifying Family Court Acts at the state level, their number, structure, jurisdiction, rules & procedures, through an in-depth research through use of both primary and secondary data.

A comparative analysis on functioning of Family Courts of 3 states was done to identify best practices, effective systems and processes and rules, and to identify the existing bottlenecks and necessary interventions.

Qualitative assessment was done based on getting inputs from Judges, Lawyers, Litigants, Prosecutors, Counsellors and Social Activists through interviews and Focus Group Discussions.

Research tools used to collect primary data from the field included questionnaires, in-depth Interviews and focused group discussions.

Project Inception and Formation of the Team: Study started within a month of award of the project. Selection of competent research team, time lines and detailed plan of action was prepared.

Literature Review: Family Courts have a wide jurisdiction covering a number of issues related to women and children. The core areas of focus of the study were identified by an extensive literature review. National and International best practices, inputs on adjudication and resolution procedure were researched for broader understanding. Examination of Judicial Committee Reports, Law Commission Reports, and discussions with Jurists were conducted.

Detailing plan of action and selecting field study Locations: The criteria for choosing the Family Courts for field study were determined, and accordingly Family Courts were chosen in the states of Telangana, Andhra Pradesh and Kerala.

Interviews with legal experts: Judges, litigants, lawyers, councilors, social activists, jurists, and non-governmental/ civil society organizations provided inputs for identifying gaps and challenges in the system of family courts.

Field Study: Intensive 8 months fieldwork was conducted in three states. The fieldwork of each state was coordinated by the team leader, conducted along with the research associates and field researchers. Rules and procedures, socio-cultural environment, institutional support, effectiveness of family courts and perception of stakeholders about functioning of family courts were focused upon in the field study. In the initial stage, the fieldwork got affected because of the outbreak of Covid-19 and subsequent lockdown, and thereafter the courts continued to function in a controlled manner.

Sample Selection: Three south Indian states were selected to showcase differences in functioning in contiguous or states with similar socio-cultural background.

The selection of courts was done on the basis of the following criteria:

- Geographical spread of the state
- Urban/ Rural
- Court Performance Statistics
 - Number of cases registered in family courts
 - Number of cases pending in family courts
 - Backlog of cases in family courts

Courts were ranked in these criteria and 4 courts were selected in such a way that samples cover the entire geography of the state, includes urban and rural regions, and good performing and bad performing courts considering filing, pendency and backlog of cases. Some courts were selected based on peculiar characteristics of particular region or courts.

Random sampling of cases/ stakeholders/ litigants selected for field study.

Sample size: Study was conducted in three states of Telangana, Andhra Pradesh, and Kerala in South India. Four Family Courts per-state were selected for the study. 20 case records of each Family Court selected ($20 \times 4 \times 3 = 240$ case records) were studied. (Initial plan was to select 50 cases each from three courts per state. But in order to increase the geographical spread, we the number of sample courts from each state was increased to four, and the number of cases per court studied was accordingly modified to 20 case records per court).

Stakeholders

Stakeholders of the study include:

- Judges
- Litigants
- Counsellors
- Lawyers
- Social Activists

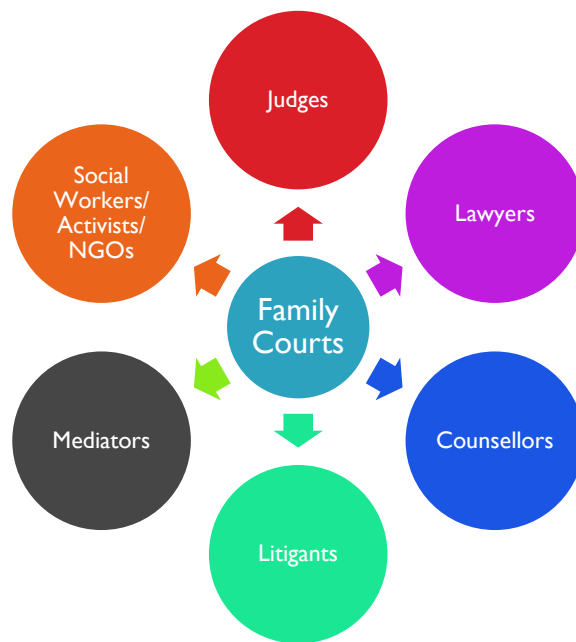


Figure 4 Key Stakeholders

Data Collection and Analysis

Primary data was collected on the select family courts on the following:

- Infrastructure check of the courts were done by conducting personal visits to each select court and noting down the particulars.
- The day to day court process was examined by spending at least one day in the select sample court and noting down the proceedings, nature of court process, and time spent on different activities on a regular court day.
- Interviews of different stakeholders – judges, lawyers, counsellors, mediators, court officers and litigants were taken.
- Perception of family court functioning on different criteria were taken from all stakeholders – judges, lawyers, counsellors, mediators, court officers and litigants.
- Court records were examined from all select courts to examine the timeliness – total time spent on a family court matter and the time spent on different stages of a family court proceeding.

Analysis of Findings

Data collected was analyzed to identify the major challenges, differences in practices and procedures across select family courts, and best practices. Methodology fulfills all the objectives of the research. Suggestions and recommendations including policy recommendations and court specific recommendations were made with the inputs generated through secondary and primary research, both qualitative and quantitative.

Chapter 2: Evolution of Family Court System in the World

2.1 Concept of Family Courts: Origin and Development

The development of family laws in courts is primarily a development of 20th century. 19th century saw the development of women-centric and child friendly laws followed by the recognition of individual rights of women and children. At common law, family unit was recognized through male head of the family; married women lost her individual legal personality, and women and children were recognized as mere chattels to be managed by the owner of the household. According to Sir William Blackstone, “husbands and wives were one and the husband was the one. The legal personality and the very existence of the wife during marriage were submerged and incorporated into that of the husband”³⁵. Women rights movements qua civil rights movement resulted in improved status of women in family, market as well as state. This in turn resulted in the development of greater demands for more responsive laws and effective judicial system to most effectively resolve their disputes. Court reform movements to formalize juvenile court processes and family disputes have a common history³⁶. Uniform family court movement emerged with an object to consolidate fragmented and conflicting court systems, avoid multiple and repetitive litigation and spiraling legal costs, the emergence of which paralleled with the increased status of courts in dealing with interfamilial disputes³⁷.

Family courts were first established in the United States in 1910, when they were called domestic relations courts. The idea itself is much older. In the 19th century, the Court for Divorce and Matrimonial Causes was established in England with primary object to relieve ecclesiastical courts of the burden of such cases;³⁸ Ecclesiastical courts are courts that deal with spiritual/religious law, later developed as courts of equity. The earlier domestic relations courts had their jurisdiction in domestic violence and custody cases, and not divorce matters. In 1914, the first family court was established in Hamilton County, (Cincinnati) Ohio. The

³⁵ Richard W. Bartke and Lori A. Zurvalec, “Wisconsin, Illinois, Ontario - Three Roads to Marital Property Law Reform,” *Loyola University of Chicago Law Journal* 12, no. 1 (1981 1980): 1–42.

³⁶ “The history of the Family Court, however, really begins in 1908 when a group of citizens organized as the Juvenile Court and Probation Association. As a result of their efforts a Juvenile Court for the City of Wilmington was created by act of the General Assembly in 1911. Further efforts extended the court's services to cover New Castle County. The Association, however, became increasingly dissatisfied with the inadequacies and limitations of the juvenile court and began a long struggle to achieve a family court. Beginning in 1929 with a compilation of all Delaware laws relative to children, a bill based on these laws was presented to the Assembly. It failed to come to a vote. In May 1940, another group of interested citizens, organized as the Family Court Committee, took the responsibility of furthering the family court idea in cooperation with the Juvenile Court and Probation Association. Finally, in 1945, after a succession of defeats, the Committee's efforts were successful and the Family Court became a reality. At the request of the Honorable Elwood F. Melson, judge of the Juvenile Court and appointed as judge of the Family Court, the Family Court Committee and the Juvenile Court and Probation Association merged into the Family Court Association”. History of the Family Court Note,” *Juvenile Court Judges Journal* 2, no. 3 (1951 1950): 21–21.

³⁷ “Chapter 1: History of Family Disputes in Court and the Family Court Movement - 1993 - Juvenile and Family Court Journal - Wiley Online Library,” accessed December 11, 2020, <https://www.onlinelibrary.wiley.com/doi/abs/10.1111/j.1755-6988.1993.tb00908.x>.

³⁸ “Family Court | Law,” *Encyclopedia Britannica*, accessed December 12, 2020, <https://www.britannica.com/topic/family-court>.

State of Rhode Island began the first statewide comprehensive family court in 1961³⁹. In 1965, Hawaii passed a family court act which at that time set forth the most comprehensive jurisdiction in US. Thereafter, family courts were established in many states in US, Delaware (1971), 25 South Carolina (1968), District of Columbia (1970), Louisiana (1979), New Jersey (1984) and Vermont (1990) etc. Apart from US, several countries had a Family Court System, the earliest forms include Canada, New Zealand, Japan, China, Australia, Pakistan, among others. Most family courts originate through enactment of a legislation.

Historically, “the concept of a family court is one of a separate court or division of state court of general jurisdiction that has subject-matter jurisdiction over all legal issues related to families and children”⁴⁰. The general goal of a family court, as proposed in the 1959 Standard Family Court Act⁴¹ is, “..... to protect and safeguard family life in general, and family units in particular, by affording to family members all possible help in resolving their justiciable problems and conflicts arising from their inter-personal relationships, in a single court with one specially-qualified staff, under one leadership, with a common philosophy and purpose, working as a unit, with one set of family records all in one place, under the direction of one or more specially-qualified Judges”, to be achieved by joining legal areas directly involving family functioning⁴². Such consolidation recognizes the direct link between court proceedings *directly* involving family or its members (divorce, separation, custody or neglect of children, assault or battery between family members) as well as proceedings where family may have an indirect responsibility or a role in the future (juvenile delinquency, truancy etc.)⁴³.

According to Barbara Babb, the goal of family justice system is to provide “comprehensive resolution of a case tailored to the individual family’s legal, personal, emotional and social needs” accomplished through judicial action, informal court proceedings, and alternative dispute resolution and appropriate social services⁴⁴. The objective of family courts are/ ought not to be limited to resolving the particular issues before the parties; rather, such resolution should enable them to acquire such skills and support services necessary to resolve subsequent disputes if arise, with minimum legal intervention⁴⁵. The major, predominantly informal, postulates that govern the family courts are as follows⁴⁶:

³⁹ “Chapter I: History of Family Disputes in Court and the Family Court Movement - 1993 - Juvenile and Family Court Journal - Wiley Online Library.”

⁴⁰ Barbara A. Babb, “Family Courts Are Here to Stay, So Let’s Improve Them: Family Courts Are Here to Stay, So Let’s Improve Them,” *Family Court Review* 52, no. 4 (October 2014): 642–47, <https://doi.org/10.1111/fcre.12115>.

⁴¹ The Standard Family Court Act is model legislation proposed in 1959 by the National Probation and Parole Association (later the National Council on Crime and Delinquency), the National Council of Juvenile Court Judges (later the National Council of Juvenile and Family Court Judges) and the U.S. Children’s Bureau.

⁴² William C. Gordon, “Establishing a Family Court System,” *Juvenile Justice* 28, no. 4 (1977): 9–14.

⁴³ Gordon.

⁴⁴ Barbara A. Babb, “Where We Stand: An Analysis of America’s Family Law Adjudicatory Systems and the Mandate to Establish Unified Family Courts,” *Family Law Quarterly* 32, no. 1 (1998): 31–65.

⁴⁵ “Final Report, Recommendations and Procedures for Establishing a Family Court in Maryland” (Governor’s Task Force on Family Law, Family Courts and Court Services Committee, October 1992); Carol R. Flango, Victor E. Flango, and H. Ted Rubin, “How Are Courts Coordinating Family Cases?” (National Center for State Courts & State Justice Institute, 1999).

⁴⁶ Alexander, “The Family Court - An Obstacle Race.”

- 1) Parties to family discord, whether involved in divorce litigation or not, are in need of guidance in addition to the punitive processes of law.
- 2) Such persons many a times are unaware of the various kinds of services available to them, in courts and otherwise.
- 3) Most ostensible divorce seekers in the last analysis do not desire divorce.
- 4) Reuniting the estranged couple, upon discovery and treatment of true causal factors, is always a desirable goal.
- 5) The parties in dispute would have had their share of accusatory process; parties should be placed in a non-adversarial conference type procedure.
- 6) No party shall be permitted to benefit from their own wrong
- 7) Parties seeking help should be referred appropriate services, unless there is grave danger to the client, where the client will not accept such referral.

However, it is also said that the standards and limitations of family courts should be well defined. Since the family courts address a mainstream social problem, edging the questions of societal morality or family mores, it is likely to define the role of family courts 'to help'/'assist' the parties before it; the Judges who are also products of the same society is much likely to step into the zone of bypassing the 'ritual of law' in exercise of their discretion, and 'doing what is best to the individual' could be destructive to the court system as a whole. The Judges in family courts should acknowledge its inherent limitations and must ultimately function as a court that meets all procedural and substantive standards in determining its power to act and the course of action to follow⁴⁷.

2.2 Theoretical Framework

Barbara Babb proposes a theoretical framework that can govern the family courts merging the concepts of therapeutic jurisprudence and ecological human development. Therapeutic jurisprudence is defined as "...the study of the role of law as a therapeutic agent. It looks at the law as a social force that, like it or not, may produce therapeutic or anti-therapeutic consequences. Such consequences may flow from substantive rules, legal procedures, or from the behavior of legal actors (Lawyers and Judges). The task of therapeutic jurisprudence is to identify—and ultimately to examine empirically—relationships between legal arrangements and therapeutic outcomes. The research task is a cooperative and thoroughly interdisciplinary one."⁴⁸

Therapeutic jurisprudence applied in the family law context means that courts must focus on achieving outcomes that positively affect and even improve the lives of individuals, children, and families involved in family law proceedings, i.e., to strive to protect families and children from present and future harms, to reduce emotional turmoil, to promote family harmony or preservation, and to provide individualized and efficient, effective justice⁴⁹.

⁴⁷ Edward P. Mulvey, "Family Courts: The Issue of Reasonable Goals.," *Law and Human Behavior* 6, no. 1 (1982): 49–64, <https://doi.org/10.1007/BF01049314>.

⁴⁸ David Wexler, "Two Decades of Therapeutic Jurisprudence," *Touro Law Review* 24 (January 1, 2008).

⁴⁹ Babb, "Family Courts Are Here to Stay, So Let's Improve Them."

2.3 Family Court Systems in the World: Some Case Studies

I Family Court System in Pakistan

Family Court System in Pakistan was established via Family Courts Act, 1964 during the period of General Ayub Khan, the legitimacy of whose governance is often questioned. The Muslim Family Laws Ordinance 1961 and Family Courts Act 1964 were both products of the recommendations of the Commission established to study the laws relating to families and marriages⁵⁰. The Act simplified the procedure and sought for speedy disposal of family matters; and provided for reconciliation proceedings, before and after the trial, which came to be known as 'pre-trial' and 'post trial' conciliation⁵¹.

The family courts in Pakistan are organized in such a way that District, Additional District and Civil Judges may be appointed as Family Court Judges. The District Judges having both administrative and judicial capacity, either appoint one or more courts to exclusively deal with family matters, or the senior civil judge assigns every civil judge with family jurisdiction. Family Courts can regulate its own procedure as laid down under the Family Courts Act, and the general procedures under Civil Procedure Code and *Qanun-e-Shahadat*⁵² do not apply to family courts. While family courts can review its own interim orders, no appeals shall lie against the same. The family courts are devoid of any monetary limits on jurisdiction. These courts fall under the administrative control of High Courts.

In 1994, an amendment to Family Courts necessitated appointment of one or more female Judges for family courts in every district, or one female judge for more than one districts. While the incorporation of women Judges in judiciary evinced multiple controversies, the Supreme Court of Pakistan has clarified once and for all that there shall be no limitations on appointment of women Judges in courts.⁵³ Such appointments were to be made within a period of six months, extendable upon request by provincial government. Despite a legislative mandate, the female judge participation in family courts continues to be low.

The Courts shall attempt to effect a compromise or reconciliation between parties; if reconciliation is not possible, the court shall frame the issues and fix dates for recording evidence. If the case is for dissolution of marriage, the decision shall be effected forthwith, if the parties cannot come to settlement. After the close of evidence, the court shall make another effort to effect a compromise or conciliation within fifteen days. If a compromise cannot be effected, the court shall announce its judgment and give decree. The post-trial reconciliation applies to all cases except cases for dissolution of marriage. Appeals from Family Courts lie to High Court, which shall conclude the cases within 4 months. The right to appeal is not applicable in cases like dissolution of marriage, dower or dowry not exceeding

⁵⁰ "Family Courts in Pakistan in Search of 'Better Remedies' for Women and Children by Muhammad Amir Munir :: SSRN," accessed December 19, 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1922837.

⁵¹ "Family Laws and Judicial Protection," accessed December 18, 2020, <http://www.delhihighcourt.nic.in/library/articles/family%20court/family%20law%20and%20judicial%20protection.pdf>.

⁵² *Qanun-e-Shahadat* Order was made law by President Zia-ul-Haq in 1984. It governs the law related with evidence in all law courts of Pakistan.

⁵³ "Family Laws and Judicial Protection."

Rs.50000/- or maintenance not exceeding Rs.1000/- per month. There shall be no second appeal and writ petitions are permissible only in extraordinary circumstances⁵⁴.

II Family Court System in Bangladesh

Bangladesh, the earlier East Pakistan, became an independent country in 1974. While the family courts were introduced by Ayub Khan regime in 1961 in Pakistan, these developments were not extended to the then East Pakistan or today's Bangladesh. Family courts were established for the first time in Bangladesh by the Family Courts Ordinance, 1985. The object of family courts was to facilitate effective and speedy disposal of family related disputes, by providing a congenial environment for disposal of family matters by taking away them from the often-intimidating regular civil courts. The ordinance provides that subject to provisions of Muslim Family Laws Ordinance, 1961, family court jurisdiction shall have exclusive jurisdiction in suits arising from/ for dissolution of marriage, restoration of conjugal rights, custody of children, recovery of dower money and maintenance. The clause 'subject to provisions of Muslim Family Laws Ordinance' reignited confusions as regards the applicability of the Family Courts Ordinance 1985 on non-Muslims, which was later clarified by the apex court in the affirmative⁵⁵.

Under the Muslim Family Laws Ordinance (MFLO) 1961, there was a provision to settle family disputes among couples through quasi formal local bodies called Arbitration Council. This facility was limited to Muslims⁵⁶. Through the Family Court Ordinance, the opportunity to mediate settlements in family cases was extended to all, irrespective of religion. The Ordinance conceives the exercise of mediation in suits pending before the family courts at (a) pre-trial stage, and (b) after the closure of evidence following the framing of issues, and fixing the date of preliminary hearing, similar to the family court system in Pakistan.⁵⁷ If the parties are willing to mediate, the judge usually takes the parties to the chamber. However, most of the times, Judges refuse to let the Lawyers into the chamber.⁵⁸ However, experience shows that family courts have largely been reluctant to apply these provisions to effectively mediate the disputes in suits pending before them.

In 1999, the Bangladesh Legal Studies Group (BLSG) formed under the leadership of Justice Mustafa Kamal and several renowned Judges, decried the absence of resourceful alternatives to full trial and recommended an immediate pilot project on mediation, a non-mandatory consensual dispute resolution system, using the provisions for conciliation provided for in the

⁵⁴ "Family Courts in Pakistan in Search of 'Better Remedies' for Women and Children by Muhammad Amir Munir :: SSRN."

⁵⁵ *Pachan rishi Das v. Khuku rani Das*, 5(1997) BLT(HCD)174.

⁵⁶ Sefat Ullah, "Application of ADR in Family Court_A Critical Analysis Under Legal Framework and Practice in Bangladesh" 04, no. 01 (n.d.): 14.

⁵⁷ Where family court pronounces a judgment on dissolution of a marriage solemnized under Muslim law, such judgment will only be seen as an intimation of talaq. The dissolution shall not become effective unless (a) 90 days are passed without any success in the reconciliation efforts made post judgment; (b) no conciliation is effected as per the provisions of Muslim Family Laws Ordinance by constitution of Arbitration Council or otherwise. S.23, Family Courts Ordinance.

⁵⁸ Chowdhury, J. A. (2013). *ADR Theories and Practices: A Glimpse on Access to Justice and ADR in Bangladesh*. Dhaka: London College of Legal Studies (LCLS).

Ordinance⁵⁹. Family Court Judges have made several innovations, in the terms of the settlements wherever possible. One interesting development is that the family courts often make the Lawyers representing the litigants to draft the language of the judicial order, whereby the Judges can spend more time judging than drafting compromise decrees, which Lawyers are adept at. How this works in practice and the merits of such practice is questionable.

Family courts are also characterized by provisions for in-camera proceedings upon request for both parties, non-application of civil procedure code except seminal provisions (which has its own complications) and a minimal court fees pecked at Rs.25 taka⁶⁰. Appeals from Family Courts shall lie to the District Courts; no appeal shall lie in cases where dissolution of marriage is for dissolution of marriage, except in the case of dissolution for reasons specified in section 2(viii)(d) of the Dissolution of Muslim Marriages Act, 1939 or when the dower do not exceed 5000 taka.

III Family Court System in Singapore

Singapore is a pioneer in Alternative Dispute Resolution. Any study of court system in Singapore must keep in mind the extraordinary feat achieved by the Singapore in ADR. Family Court System in Singapore was introduced in 1996 via amendment to the Women's Charter 1961. The courts were then empowered to refer the parties for mediation with the consent of the parties; mediation was not mandatory⁶¹. The court may, in the interest of parties, may also refer parties to mediation, counselling or family support programmes at any stage of court proceedings; non-compliance with such direction was not conceived as contempt of court. In 2011, amendments were introduced to make mandatory mediation or counselling or both as the case may be, where the parties involve such class of persons (divorcing parties with child/children below 8 years)⁶². This age was later increased to 13 in 2013 and subsequently increased to 21 since 2014. The court may make any further orders, or stay proceedings⁶³ until such mediation or counselling is attended, or impose costs⁶⁴ in the events of non-compliance of such direction of the court.

Mediation today is widely accepted among legal practitioners as the first step in a divorce. The mediation settlement rate in Family Justice Courts in 2017 is no less than 86%. A simplified track has also been introduced for uncontested divorces – the percentage of cases decided under simplified track with no contested issues has increased from 24% in 2015 to 49% in 2017. The percentage of disputes with contestations on a ground of divorce or ancillary

⁵⁹ Ullah, "Application of ADR in Family Court_A Critical Analysis Under Legal Framework and Practice in Bangladesh."

⁶⁰ M. Shahnewas Monir, "The Family Court Ordinance, 1985: An Appraisal from Practical Point of View," accessed January 24, 2021, https://www.academia.edu/33424958/The_Family_Court_Ordinance_1985_An_appraisal_from_practical_point_of_view.

⁶¹ Women's Charter (Cap 353, 2009 Rev Ed) S.50

⁶² Women's Charter S.50, 3A, 3B (Act 7 of 2016 wef 01/07/2016); Family Justice Court Practice Regulations, Part V, para 12.

⁶³ Women's Charter S.50, 3 E (Act 7 of 2016 wef 01/07/2016)

⁶⁴ Women's Charter S.50, 3E (2/2011 wef 01/06/2011)

matters has also decreased over years; in 2016, this percentage was hardly 7%⁶⁵. A judge-led approach has been adopted to mitigate some of the adversarial litigation. Studies suggest that the success rate in judge led mediation is proportionately higher⁶⁶. In 2009, a pool of mediators at state courts and Family Justice Courts have been further extended with addition of volunteer mediators, qualified individuals with minimum three years post qualification experience and training at Singapore Mediation Centre, social workers, court interpreters and other lay persons trained in counselling and mediation. A number of family court practitioners have also willingly participated and continue to participate in multi-disciplinary training, enabling them to be trained family mediators, child representatives or parenting coordinators⁶⁷.

Several innovative proposals were implemented to reduce the hostility of disputes, say, Child-Inclusive Dispute Resolution process, Parenting Coordination Scheme and Private Mediation Scheme. 'An online dispute resolution system for non-litigious resolution for child maintenance claims is also in the pipeline. It will include a simulator to help parties understand the possible outcome of a maintenance claim, and a forum for both parties to negotiate. If negotiation fails, online mediation of the claims will be provided.

It is envisaged that ODR will help parties to resolve their child maintenance claims earlier and with less costs, ultimately benefiting the children'⁶⁸

IV Family Court System in Australia

Family Courts in Australia were established under the Family Courts Act, 1975. Having the status of the superior court, the Family Courts are presided over by the Chief Justice of Family Court.

- *Information Session:* Applications for final orders is filed, the applicant and respondent are provided a date to attend an Information Session, conducted by the Registrar or Counsellor or both. The Registrar explains the legal procedures that follow, options for settlement, general legal information, and estimate of costs. Counsellor prepares the parties for the emotional struggles then and ahead.

⁶⁵ In addition, there has been a significant reduction in the time taken to obtain judgments – the average time for the grant of Interim Judgment has decreased from just over 68 days in 2012 to about 53 days in 2016, while the average time for the grant of Final Judgment has decreased from about 155 days in 2012 to about 114 days in 2016. <https://www.supremecourt.gov.sg/Data/Editor/Documents/Use%20of%20Mediation-65Within%20the%20Courts.pdf#:~:text=There%20are%20two%20main%20types%20of%20family%20mediation,and%20mediation%20services%20are%20provided%20free-of-charge%20for%20parties> accessed on 14.12.2020.

⁶⁶ D. Ong, "The Singapore Family Court: Family Law in Practice," *International Journal of Law, Policy and the Family* 13, no. 3 (December 1, 1999): 328–49, <https://doi.org/10.1093/lawfam/13.3.328>.

⁶⁷ *Supra* n.60 [https://www.supremecourt.gov.sg/Data/Editor/Documents/Response%20by%20Chief%20Justice%20%20\(Checked%20against%20Delivery%20version%20-%200080118\).pdf](https://www.supremecourt.gov.sg/Data/Editor/Documents/Response%20by%20Chief%20Justice%20%20(Checked%20against%20Delivery%20version%20-%200080118).pdf) accessed on 14.12.2020.

⁶⁸ Debbie Ong J, Opening Address at the Family Justice Courts Workplan 2018 (28 February 2018) <https://www.supremecourt.gov.sg/Data/Editor/Documents/Use%20of%20Mediation-Within%20the%20Courts.pdf#:~:text=There%20are%20two%20main%20types%20of%20family%20mediation,an d%20mediation%20services%20are%20provided%20free-of-charge%20for%20parties> accessed on 14.12.2020.

- *Conciliation Counselling*: Conciliation counselling is conducted by court counsellors to help parties arrive at a settlement regarding children's arrangements and to cope with the breakdown of marriage.
- *Directions Hearing*: Heard on the first return date of application, usually 6 weeks from date of filing of application. Registrar hears the matter, facilitates settlement, or give directions on the case progression and management thereon.
- *Mediation*: Parties may attempt settlement via mediation at any stage in the process of the case; mediation is handled by Registrar, Counsellor or both.
- *Conciliation Conference*: Mediation is followed by a Conciliation Conference if disputes involving property and maintenance and a Joint Conciliation Conference if matters relate to children.
- *Hearing Conference*: This conference takes place when the last option to settlement also expires. The Registrar conducts the conference in preparation for hearing, including list of witnesses, exchange of expert reports, and examining possibilities of settlement.
- *Final Hearing*: Parties present the case and courts arrive at a decision.
- *Appeals*: Appeals from single Judges or Circuit Judges lie to the Full Court of Family Courts of Australia.

Australian Family Courts have an impressive list of innovative projects to improve the family court experience of people. A well-detailed Family Court Website⁶⁹ consisting of all the necessary information relating to filing of various applications, simplified forms for applications instead of detailed written applications, periodic user satisfaction survey of courts⁷⁰.

Lighthouse Project

An innovative pilot project, 'Lighthouse Project' to address domestic abuse is currently in operational stage in Australia. Lighthouse Project involves early risk screening through secure online platform, classification of risk cases are high risk, medium risk and low risk and early identification and management of safety concerns, assessment and triage of cases by specialized team who will provide resources and safe and suitable case management, and referral of high-risk cases to a dedicated court list.⁷¹

Integrated Client Service Delivery (ICSD)

The Integrated Client Service Delivery Program (ICSD)⁷² was implemented across family courts in Australia in 2006, with object to better support the clients recognizing the emotional state of family court clients, by providing them with access to resources, counseling and

⁶⁹ Home - Family Court of Australia accessed on 12.12.2020

⁷⁰ Court User Satisfaction Survey - 2015 - Family Court of Australia accessed on 12.12.2020

⁷¹ Light house project, <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/reports-and-publications/publications/lighthouse-project/> accessed on 13.12.2020.

⁷² Integrated Client Service Delivery featuring Mental Health Support - January 2009 - Family Court of Australia accessed on 13.12.2020

support that is not provided in courts, which is necessary to ensure their mental health and general well-being. A secondary goal, in recognition of the many challenges faced by parties in family law situations, was to improve the overall client services. The courts created a comprehensive referral network involving partnerships with service providers making counselling and mental health support service accessible to clients, developing self-help brochures to independently access the necessary services, introducing protocols laying down standard expectations of staff behavior in a range of client service situations, including emergencies, implementing national integrated client service training program for staff covering mental health, family violence, diversity, special client needs and non-judgmental communication, improving the registry support to staff to better understand client needs and the support available to them in a range of situations etc. The ICSD program seeks to incorporate the best practice client-focused principles in the service delivery of courts, which is the first of its kind in the Australian court history, and perhaps novel approach in most jurisdictions.

V Family Court System in Japan

The family court system in Japan is one of the earliest in the world. The mired history of juvenile justice and domestic relations cases dates back to 1923. The first specialized juvenile court was established in Tokyo in 1923, which was later expanded across the county. The first domestic relations court was established via Domestic Relations Trial Act, 1948. Initially established as specialized branches of district courts, separate courts for domestic relations came into effect from Jan 1949. Later, the family court jurisdiction was further expanded to include litigation involving husband and wife, as well as parent child relations by Personal Status Litigation Act in 2004. In 2013, Family Court Procedure Act came into effect completely revising the Domestic Relations Trial Act acknowledging that the contents of law should better match the demands of modern society, to make family courts more accessible, by providing procedural guarantees for parties and simplifying procedure.

The family court system in Japan pursues an inter-disciplinary approach with a two-tier model consisting of (a) Family Court Investigation System and (b) Conciliation System. Family Court Investigating Officers serve as experts in domestic relations and delinquency problems, who are assigned to family courts and high courts. The family court investigating officers undergo a mandatory two years in-service training which centers on behavioral science, law and other fields of practice. The role of these officials in the court is to investigate facts through Interviews with parties in domestic disputes and children (including juveniles) to consider ways to resolve their problems, by applying their knowledge and methods in behavioral sciences, say sociology, psychology and pedagogy among others. In disputes involving children, the investigators try to ascertain what kind of solution would be desirable for happiness of children, by making Interviews with parties or children, making home visits, studying the interactions between parents and children, and reports to judge their opinion. Where the children are 15 years or above, family court is required to hear the opinion of the child.

The conciliation system, distinct from arbitration and mediation, is a dispute settlement means with a judicial function. Conciliation proceedings are carried out in courts, either by a

conciliation committee consisting of one judge and two conciliation commissioners or one judge. As a matter of principle, domestic relations conciliation proceedings are carried out before a conciliation committee. A conciliation-first principle is the rule in domestic relations, wherein the parties must undergo conciliation proceedings before an action is filed for them.

Domestic relations cases are further divided into domestic relations adjudication cases and domestic relations conciliation cases. Domestic relations adjudication cases are further subdivided into 'Appended Table 1' and 'Appended Table 2' cases. In the former, parties are not in an adversarial relationship (permission to change a child's surname, renunciation of inheritance, commencement of guardianship, permission for adoption etc.); considering the public welfare nature of these cases, the court intervenes directly from a guardian standpoint. In the latter, the parties are in an adversarial relationship (division of estate, child custody, application for child support, sharing of expenses in marriage etc.), which are handled either through adjudicatory or conciliatory procedure. Apart from this, matters subject to personal status litigation, like divorce must mandatorily undergo conciliation proceedings before an action is filed, as aforementioned. The family court may refer an Appended Table 2 case to conciliation ex-officio at any time.

A petition before the family court is decided by the family court judge considering the written submission, report of investigating officer, and hearings before the court. The family court may have a counsellor attend the adjudicatory proceedings to refer to the counsellor's opinion for reference. The proceedings, whether adjudicatory or conciliatory, may be carried out by a television/ telephonic conference, without making the parties attend the court in person. The family court should pre-decide the date for concluding the proceedings and date for rendering adjudication after giving a reasonable grace period. When a case is referred to conciliation, it is not prohibited for the judge who is in charge of the adjudication to take charge of the conciliation proceedings as well. The court seeks assistance of domestic relations investigating officer for collection of necessary information, as well as to offer mental support to the parties in the process, especially where children are involved. The court can also call for experts (eg. Medical expert) as and when necessary. When a conciliation fails, the case automatically moves to adjudication; however, if it is an Appended Table 2 case, and if the officer deems it appropriate and reasonable, it may make necessary adjudication for resolving the case ex-officio. If the parties file no objection within two weeks from such adjudication, such adjudication shall become binding as any other adjudication.

The parties aggrieved by an adjudication may file an appeal before the High Court within two weeks (period depends on the nature of case) from the judgment⁷³.

VI Family Court System in Canada

The object of Family Courts in Canada as best articulated by David Lametti, Minister of Justice and Attorney General of Canada as follows: "the goal of Unified Family Courts is to help to

⁷³ Family Court Systems, https://www.courts.go.jp/english/vc-files/courts-en/file/Guide_to_the_Family_Court_of_Japan2018.pdf#:~:text=JAPANESE%20FAMILY%20COURT%20SYSTEM%20A%20family%20court%20specially,nature%20from%20ordinary%20civil%20and%20criminal%20cases%2C%20through accessed on 13.12.2020.

decrease conflict, encourage early resolutions, and reduce costs for Canadians caught up in the family justice system. By providing specialized Judges and a wide range of family justice and community support services, this expansion will enhance access to justice, particularly for women, children and members of diverse communities”.⁷⁴ Unified Family Courts allow families to resolve legal issues in a single court rather than in two separate court systems, and create a user-friendly environment with Judges specialized in family law. Being a federal system, the responsibilities of federal and provincial governments are divided accordingly. Provincial governments establish the court structure and are responsible for the administrative costs associated with Unified Family Courts. The federal government appoints and pays the Judges in these courts. Federal judicial appointments are made by the Governor General, acting on the advice of the federal Cabinet and recommendations from the Minister of Justice.⁷⁵

Pertinent in the Canadian Family Court System is the attention to details. The website of Canadian Family Court provides a dedicated platform to aid the litigants to navigate the court process, whether represented or unrepresented by a lawyer – the details incorporated include minor details like what to expect from a court, how to present themselves in court including manners, etiquette, and tips for careful and effective case presentation⁷⁶. Detailed guidelines and best practices have been laid down in family court scheduling and case management⁷⁷.

Guidelines for Effective Case Management (verbatim)

1. Findings (for example: Statutory findings under the Child, Youth and Family Services Act and parentage findings) should be made early in the process.
2. If the parties cannot agree that a child needs protection, the Case Management Judge shall move the issue quickly toward resolution or trial.
3. Every appearance should be a meaningful appearance. It should have a specific purpose and should result in some advancement towards resolving issues in the case. During the appearance, Judges should indicate the issues that will be dealt with on the next date and the amount of time allocated for the next appearance in their Endorsements. Parties should be encouraged to appear on time and be prepared.
4. Child Protection adjournments should be proactively judicially managed and reasons should be provided to ensure that unnecessary adjournments are not made.
5. Parties should use emails, conference calls, and fax machines for those matters that can be dealt with by consent, whenever possible.

⁷⁴ The honourable David Lametti PC, M.P Minister of Justice and Attorney of Canada quoted from (accessed Jan 2021)

<https://www.canada.ca/en/department-justice/news/2019/04/government-of-canada-announces-unified-family-court-appointments-in-the-province-of-ontario.html>

⁷⁵ Department of Justice Canada, “Government of Canada Announces Unified Family Court Appointments in the Province of Ontario,” news releases, gcnews, April 11, 2019, <https://www.canada.ca/en/department-justice/news/2019/04/government-of-canada-announces-unified-family-court-appointments-in-the-province-of-ontario.html>.

⁷⁶ Maintained by the Judges’ Library Ontario Courts, “What to Expect in Family Court – Guide | Ontario Court of Justice,” accessed December 21, 2020, <https://www.ontariocourts.ca/ocj/family-court/courtroom/>.

⁷⁷ Maintained by the Judges’ Library Ontario Courts, “Family Scheduling Policy | Ontario Court of Justice,” accessed December 21, 2020, <https://www.ontariocourts.ca/ocj/family-court/family-scheduling-policy/>.

6. All of the services and supports available at the court for family matters should be utilized to resolve matters, including Duty counsel, First Appearance Court, Family Law Information Centres, and mediation.
7. Effective case management should involve assigning a single judge to a case, whenever possible.
8. Family bench/bar/family resources meetings should be held on a regular basis. For family scheduling issues, bench/bar/family resources meetings should be held at least twice a year. The judiciary should use this opportunity to consult with representatives of the professional users and support-services providers of the court.
9. Audit or Update courts before trials should be encouraged in court Locations where it would further the timeliness of the court process.
10. Effective trial management by the judiciary is important. Trial Management Conferences should either resolve issues or move the issues in a case towards resolution.
11. For long trials which have been scheduled for more than ten (10) days, Judges should ensure that counsel files a day-by-day plan to ensure that the trials are completed in a timely fashion.

Guidelines for Case Scheduling (verbatim)

1. Contested family law and child protection matters whose outcome would affect the well-being and day-to-day physical, emotional and/or mental health of children should be considered matters where time is of the essence. Scheduling of these matters should reflect this. Judicial time should be made available so these matters will be completed in a timely fashion. Family and child protection schedules should reflect this principle as much as possible. However, geographical and local limitations to scheduling of family and child protection matters should also be recognized.
2. The Family and Child Protection court schedules need to be transparent, available and reflect accessibility to the public and the professional users of the Court. The schedules should indicate the day of the week, the type of court (eg Child Protection, Domestic) and the judge(s) who will be presiding. Ideally, the schedules should be available six (6) months in advance of the matter.
3. Every Court Appearance should advance the case in some way towards resolution of issues.
4. Child Protection adjournments must be judicially managed and reasons should be provided to ensure that unnecessary adjournments are not made.
5. The Bar and the public have a right to expect that the Family Law Rules will be respected and applied on a consistent basis.
6. When necessary, trial management Judges should address all purposes as outlined in rule 17 of the Family Law Rules regarding trial management.
7. When a Child Protection trial is set, it should be set for continuous days.
8. If the dates set for Child Protection trials are insufficient, dates for continuation must be given priority.

VII Family Court System in New Zealand

New Zealand is one of the pioneers in unified family court system. The Family Court, here, is a division of District Court, with jurisdiction over a wide range of family relationships, ‘from children yet to be born to older persons’, covering adoption, child abduction, separation, relationship property, wills, domestic violence, mental health, surrogacy and child support⁷⁸. The court aims to resolve the disputes, wherever possible, by counselling, conciliation and mediation. A series of reforms initiated in New Zealand in 2014 is notable, for the changes it effected, the consequent changes in the family court system, and evaluation and reconsideration of the same. The major changes brought in 2014 included incorporation of a Family Dispute Resolution service, which support the separating parents to meet parenting agreements out of court. FDR Services consist of three major components: (a) assessment of whether a case is appropriate for mediation, (b) prepare the parties for mediation, and (c) mediation process which typically consist of meetings with each parent individually and both parents together in a joint mediation session. The Family Dispute Resolution service within the court system is outsourced to three private players. The FDR service as well as Family Legal Advice Services are available free of cost to low income people, who are eligible for legal aid. The services are provided for cost for other litigants.

Another feature of the new reforms is the mandatory self-representation i.e. parties who take their mediated settlement for court recognition, or require a judge to reach an agreement are not allowed to use a lawyer for filing documents in courts, or during meetings with Judges in the early stages of court process. The cases are broadly classified into ‘urgent’ and ‘non-urgent’ – a case is classified as urgent when there is an allegation of domestic abuse/ violence. The 2014 reforms made self-representation mandatory in all cases except ‘urgent’ cases. Data suggest that the number of ‘urgent’ (also called ‘without notice’ applications) cases filed in the family courts have multiplied post reforms. Prior to reforms, the non-urgent cases constituted 70 percent of the total cases, while urgent cases constituted only 30 percent; the 2014 reforms have almost reversed this statistic⁷⁹. The prime reasons for this reversal include the desire for legal representation, urgent and time sensitive issues, and to initiate action towards a decision. The New Zealand Family Court clearly lays down that *“Legislative change in 2014 has produced a significant increase in defended cases which use more judicial resource”*⁸⁰. This finding makes New Zealand a much-needed case study for all countries considering family court reforms in the immediate future.

In an interesting development, the family court ‘consumers’ frustrated or aggrieved by their experience in family court system came up with an alternative to family courts, in the name ‘Parents 4 Justice’ to resolve disagreements in a timely and cost-effective manner. The average costs to have a typical family issue heard before courts (defended hearing) is \$30,000/- per party, adding to it the excessive delay in petitions leaving parties with issues to wait years

⁷⁸ “Family Jurisdiction | The District Court of New Zealand,” accessed December 19, 2020, <https://www.districtcourts.govt.nz/family-court/family-jurisdiction/>.

⁷⁹ “Report Shows Family Court Systems Are Failing,” RNZ, May 1, 2018, <https://www.rnz.co.nz/news/national/356354/report-shows-family-court-systems-are-failing>.

⁸⁰ “Family Court Statistics | The District Court of New Zealand,” accessed December 19, 2020, <https://www.districtcourts.govt.nz/reports-publications-and-statistics/statistics-2018/family-court/>.

together, makes the family system infructuous, according to the proprietors⁸¹. Ironically, this happened at around the same time the new reforms were introduced in 2014.

Table I Court Based Unification and Coordination Models for Family Cases⁸²

1.	Unified Family Court System- Court has broad jurisdiction over all matters affecting family; Court functions as co-equal to civil and criminal divisions.
2.	One Judicial Officer/ Staff, One Family- Once family assigned to judicial officer, all subsequent proceedings assigned to same judicial officer; One staff (e.g. social worker, attorney) handles all proceedings for a family.
3.	One Court Facility for related proceedings- Proceedings involving children or families relocated to separate facility; Regional facilities could co-locate proceedings courthouse or portion of courthouse.
4.	Court-based intake - Intake coordinator brings together interested parties to develop single- family plan regardless of number of proceedings. Plan addresses variety of family needs (e.g., medical, financial, transportation, safety, etc. Advocate acts as liaison to service agencies.
5.	Information Technology - Computer cross-references cases and provides updates on compliance with orders and case plan.
6.	One File/ One Family - Once family is assigned number in system, all subsequent cases involving family assigned to same file.
7.	Court appointed counsel - Single attorney to handle all proceedings in which party entitled to court-appointed attorney. Assignment secretary cross-references new requests and assign to appropriate attorney; judicial officer determines need and appoints counsel.

2.4 Measuring Effectiveness of Family Courts

While unified family courts today are a global trend, there has not been sufficient studies to ascertain the effectiveness of family courts per se. Certain studies in this domain distinguishes efficiency and effectiveness of family courts. Efficiency of courts is determined by parameters of jurisdiction, judicial consistency and social services⁸³ while effectiveness of the courts question the very rationale of existence of family courts. The family court reforms over a period of time has majorly focused on improving the efficiency of the courts, with absolute disregard to effectiveness of family courts per se. The ultimate question is whether the family courts are actually effective in regulating family dis-function.⁸⁴ However, this level of effectiveness is hard to study. In the present examination, effectiveness essentially means efficiency.

⁸¹ Tuesday, 1 April 2014, and 5:32 pm Press Release: Parents 4 Justice, "Family Court Consumers Launch Their Own Justice System | Scoop News," accessed December 19, 2020, <https://www.scoop.co.nz/stories/PO1404/S00024/family-court-consumers-launch-their-own-justice-system.htm>.

⁸² Flango, Flango, and Rubin, "How Are Courts Coordinating Family Cases?"

⁸³ Mulvey, "Family Courts."

⁸⁴ *Ibid.*

Any reform in family law system should be preceded by a comprehensive analysis of its existing family law adjudicatory systems. The study should examine indicators like (a) volume of family law cases, (b) length of time between initial pleadings and obtaining temporary and permanent hearings (c) the interest, sensitivity and expertise of Judges in family law matters (d) number of Judges involved in a domestic legal matter, for a single case or for recurrent cases (e) coordination of court system and support services, in court or otherwise, (f) examination of docket assignment practices, (g) assignment and selection of judicial and non-judicial staff, (h) effectiveness of registry and staff system and (i) uniformity of procedures across jurisdiction among others⁸⁵. The reformers should examine the fundamental principles operating within the existing courts as a means to guide court reform efforts after conducting the comprehensive family law adjudicatory system analysis.

The general goals of unified family courts are consistent with the fundamental values that underlie the Trial Court Performance Standards, which provides the basic principles by which any court can measure its effectiveness.

- a) Access to Justice
- b) Expeditious and Timely disposition
- c) Equality, fairness and integrity of process
- d) Independence and accountability
- e) Public trust and confidence⁸⁶.

Access to justice includes physical access to courts (accessibility to physically challenged, mothers and children – disabled friendly infrastructure, breastfeeding rooms, toilets, and child care centres, accessibility of Location, accessibility of time – evening courts/ week end sittings); economic access (costs due to delays and loss of work due to enforced presence in courts); and legal access (complexity of court procedures - user friendly information kiosks, ease of process via preset forms to substitute written statements/ applications etc.).

Expeditious and timeliness – (use of case management strategies, written standard procedure for case managers to expedite litigation and improve user satisfaction, single point of contact for family members at intake, with referral to appropriate court/ community services, clearly set time goals for each class of cases, simplified procedure, perfection in scheduling of dates, reduce waiting time etc).

Equality, fairness and integrity of process – ((a) access to all relevant information for the Judges, inter-court coordination to acquire relevant information regarding family disputes, avoid conflicting judgments of different courts, (b) long tenure of Judges and counsellors to avoid repetition of processes or loss of continuity and to get rid of the hardships arise there from, (c) qualified Judges, counsellors and community service providers).

Independence and accountability – courts work in tandem with external service agencies/ community services in family courts; this shall not preclude the Judges from independently

⁸⁵ BABB, “Where We Stand.”

⁸⁶ Flango, Flango, and Rubin, “How Are Courts Coordinating Family Cases?”

evaluating the case, and protect the interests of the parties particularly when the parties are in conflict with the service agencies and to protect the individual rights of parties before them. The publications of family court cases to be effected without compromising the confidentiality of the parties.

Public trust and confidence in courts are natural consequence of the accessibility of courts, timely and efficient functioning, good demeanor of court and court staff to clients, ease of process and quality of services.

Table 2 Determinants for Evaluation of Family Courts

Determinants	Characteristics/Components	Measures
Infrastructure	<ul style="list-style-type: none"> - Child-friendly - Disabled friendly - Women friendly - Litigant friendly - Sufficiency - Periodical updation 	<ul style="list-style-type: none"> - Child care centers/ playrooms - Disabled friendly architecture - Waiting rooms, toilets, lactation/ breastfeeding areas - Court Location, general organization of courts, attire of Judges and Lawyers - Independent building/ part - No. of family courts per population - Funds disbursed vs utilized
Personnel	<ul style="list-style-type: none"> - Judges - Counsellors - Mediators - Staff - Lawyers - Appointment - Qualifications - Training/Skill Development - Sufficiency (in numbers) - Efficiency - Sensitivity 	<ul style="list-style-type: none"> - Variations in Appointment and Qualifications (law and social sciences) across states - Inter-disciplinarity of in-service training- (law, social sciences, behavioral sciences etc. - Number of family court Judges/ population - Number of women Judges - Average number of cases per day (Judge) - Number of cases per day (Counsellor) - Average number of sittings per case - Percentage of settlement - Case disposal rate - Friendly demeanor of Judges, Lawyers, mediators and counsellors – (client’s perspective) - Confidential feedback

Timeliness	<ul style="list-style-type: none"> - Court timings - Scheduling (posting of dates) - Case Management - Coordination of connected cases - Standard procedures / forms 	<ul style="list-style-type: none"> - No. of working days, morning/ evening courts - Time taken for first posting - No. of adjournments - No. of postings in a case - Average gap between two posting dates - Average timespan between date of filing and date of settlement - Organization of case files- file keeping (to be studied) - Use of Information Technology
Process	<ul style="list-style-type: none"> - Informality - Costs - Ease of navigation - Complexity of procedure - Repetition of procedure - Confidentiality 	<ul style="list-style-type: none"> - Innovations in court procedure (legal) - Innovations in court procedure (administrative) - Average costs of a family court litigation - Information centres/ sessions - Multiplicity of petitions- no. of connected cases - Time spent in service alone where parties are same. - Ability to hold in-camera proceedings, publication of court judgments
Accountability / Public Trust and Confidence	<ul style="list-style-type: none"> - Perspective of key stakeholders 	<ul style="list-style-type: none"> - User reviews (Clients) - Perspective study of Lawyers, Judges, mediators

NOTE 1: Family Courts are evaluated for its accessibility and effectiveness, with the help of determinants identified from literature. Accessibility is defined from the litigant perspective, includes availability of family court services and adequate judicial resources considering the geography and population, affordability of family court services, physical access in terms of infrastructure and amenities as well as legal access in terms of simplified procedure and understandability of court processes that enable a litigant to navigate the processes even without the help of a lawyer. Effectiveness of family courts means, for the purpose of this study, that the family court services and procedures are so designed as to make each court attendance is necessary, meaningful, timely and as comprehensive as possible.

NOTE 2: Not all determinants are susceptible to strictly objective measures either because there are no associative standards against which to measure or degree of achievement is a matter of perception.

Chapter 3: Comparison of Family Court Rules Across Different States in India

As per the Family Courts Act, 1984, the Central Government, State Government and the High Courts of each state may issue rules on different matters concerning family court governance. Common themes in the Family Court Rules applicable in different states is studied.

3.1 Judges

Qualifications of judge

The Family Courts Act lays down the basic qualifications of a Family Court Judge as (a) 7 years' experience in a judicial office/Tribunal, or (b) 7 years' experience as advocate in HC/ 2 or more courts in succession, or (c) any other qualifications as Central Government in consultation with CJI prescribe. The State Governments are free to prescribe additional qualifications for a family court judge in the respective states.

The Central government, in its rules The Family Courts (Other Qualifications for appointment of Judges) Rules, 1984 lays down that in the absence of fulfilling conditions (a) and (b) above, a person who possess the following qualifications may also be considered as a Judge, Family Court. (a) a post-graduation in Law with specialization in Personal Laws, or a post graduate degree in Social Science such as Master of Social Welfare, Sociology, Psychology, with a degree in Law; and (b) at least seven years' experience in fieldwork/ research/ teaching in a Government Department or in a College or University or a comparable academic institute, with special reference to the problem of women and children, or seven years' experience in the examination and/ or application of Central Laws relating to marriage, divorce, maintenance, guardianship, adoption, and other family disputes.

The State of Manipur lays down a few criteria which needs to be considered for appointment as a family court judge: (a) Number and nature of matrimonial cases decided, (b) extent of involvement in Lok Adalats and experience in well and conciliatory works, (c) degree/ diploma in social works/ sociology/psychology, (d) knowledge of Manipuri language and (e) the person shall not be part of matrimonial dispute. The proficiency in local language and prescription of a degree in social sciences are a welcome addition. The prescription that the person sitting in judgment over a matrimonial dispute shall not themselves be part of a matrimonial dispute is an interesting addition to the list. It is not clear if a subsequent rupture in family life post the appointment as a family court judge would amount to disqualification and removal from the post of judge.

UP Family Court Rules prescribe that the family court Judges shall be of good character, and to have good mental and physical fitness to be approved by the Medical Board. The Rules also provides for reservation for candidates belonging to Scheduled Castes and Scheduled Tribes.

Appointment of Judges

The appointment of Judges to the Family Court usually takes three forms: (a) by deputation from other judicial offices, (b) post retirement office or (c) by direct recruitment.

The States of Rajasthan and Bihar provides for all three of these modes of appointment in the Rules – (a) deputation from Higher Judicial Service or any person who has held seven years office in a Tribunal or any other posts under the Central or State Government requiring special knowledge in law; (b) reappointment of a retired member or any person mentioned above; or (c) direct recruitment by the High Court. The High Court may call for applications and tender recommendations to the State Government after scrutiny of applications followed by interview by a Committee of Judges, who shall then be appointed by the State Government. Jharkhand Rules go one step further in terms of the discretionary powers of the High Court thereby allowing the High Court may recommend an eligible person for appointment even if such person has not submitted the application for appointment.

The State of UP also provides for all three modes of appointment- deputation, post-retirement or superannuation of any person having a minimum of 7 years of judicial office in India, or by direct recruitment from persons eligible under S.4 of the Family Courts Act by the High Court. The UP-State Rules are pertinent in its prescription that for direct recruitment, the High Court conducts competitive examination for the purpose of direct appointment of family court Judges. The rules specifically disqualify persons in bigamous relationships, persons dismissed from government service (Central/State or Local) or those convicted for offences involving moral turpitude.

The State of Manipur prescribes that the appointment of family court Judges shall be by deputation from Grade I officers under Manipur Judicial Service Rules.

In State of Kerala, the appointment of family court Judges are by general transfers of the Judges on the basis of vacancy. While experienced Judges are normally preferred, there is no particular rule regarding the necessary/ additional training or qualifications for the judge.

Age of Retirement

The Central Government prescribes that no persons above the age of 62 shall remain in the service of a family court as a judge. Several states set the ideal age of retirement at 58, extendable up to 2 years and that the service shall not be extended beyond 62 under any circumstances. Eg: Manipur and Assam.

Some states also prescribe a minimum age limit for appointment as family court judge. However, one cannot miss the fact that the difference in the minimum age limits set by different states are backed by different philosophies or value systems. While Madhya Pradesh sets the minimum age at 35, Manipur and Rajasthan set the minimum age limit at 48 and 50 respectively. UP Government lays that the persons at the time of appointment as family court Judges shall be between 45 and 50.

Term of service

The term of service for family court Judges is laid down as 5 years in States of Karnataka, Orissa, Kerala and Manipur. In State of UP, the term of office for deputation Judges is three years or until the age of 62 whichever is earlier, and until the age of 62 for direct appointments.

3.2 Counsellors

The number and category of counsellors in each state are to be determined by respective State Government, in consultation with the respective High Court.

Duties of Counsellor

Assam Family Court Rules 1990 defines a counsellor as a person having suitable legal knowledge and working experience of social and family welfare appointed so as to assist the Family Court in the matters of law and in making conciliation etc. and to tender legal advice to the parties of litigation before the Family Court. It shall be the duty of the counsellor to help the Family Court in matters of law and facts so that the Family Court may make a legal, practical and permanent conciliation or may arrive at a right legal settlement of disputes and proceedings.

Bihar Family Court Rules 2011 and Jharkhand Family Court Rules 2018 sets the duties and functions of a family court counsellor as to assist the court and advise the parties for settling their disputes and to do the best for reconciliation of the parties. The counsellor shall submit the report regarding their efforts of reconciliation for peaceful settlement of the dispute. The report shall be objective without blaming either of the parties in case of failure of reconciliation. The counsellors shall not give evidence in court in respect of the information or materials collected in pursuance of their duty, act or plead for any of the parties or collect fees from any of the parties. The counsellors shall respect the confidentiality of the information received by them and shall not divulge this information to a third party except with the previous consent of both the parties followed by the leave of the Family Court. The copy of the report submitted to the Judge shall be made available to the parties on request, and that the parties shall have the right to submission on any such report. In performance of this duty, the counsellors may do all or any of the following.

- a) Home visits to interview the relatives, friends, acquaintances, or employees in connection with the settlement of disputes between parties; no home visits where the party in the house of a lone female except with prior permission of the Court.
- b) Submit report to the Family Court in relation to the environment of the house, relationship of spouses and their children, income and standard of living of the concerned family, if required by the Court.
- c) Advise, guide and assist the reconciled parties even after peaceful settlement arrived between them.

Chhattisgarh Family Court Rules 2007 and Rajasthan Family Court Rules 1991 lays down that the functions of a family court counsellor include:

- a) Attend the court as and when required by the judge of the Family Court.
- b) Aid and advice the parties regarding settlement of the subject matter of the dispute, or any other matter thereof.
- c) Help the parties in reconciliation.

- d) Submit the report, or interim report, as the case may be fixed by the Court.
- e) Perform such other duties as may be assigned by the Family Courts from time to time.

Kerala Family Court Rules 1989 lays down that the duties and functions of the counsellor shall include: to assist and advise the parties regarding the settlement of the subject matter of dispute between parties or any part thereof. The counsellor shall also help the parties in arriving at reconciliation. The counsellor, in discharge of his duties, is entitled to pay home visits to homes of either parties, interview friends or acquaintances of either parties, seek information from employer of either parties, or refer the parties to an expert in any other area such as medicine or psychiatry.

The Rules permit that, the court may in consultation with the counsellor, direct the parties to consult the specified counsellor for the purpose of counselling, taking into account the convenience of parties, special requirement and other attendant circumstances, when there is more than one counsellor in courts.

The Judge in consultation with the principal Counsellor of family Court shall prepare a panel of such experts, institutions, organizations or agencies working in the field of family welfare, child guidance, employment or any other field, and also lay down the manner in which and the conditions under which such institutions, organizations or agencies may associate with Family Court. The counsellors may seek assistance of such institutions in discharge of their duties.

If the parties arrive at a settlement before the counsellor relating to the dispute or any part thereof, such settlement shall be reduced to writing and shall be signed by the parties, and the counsellor; and the court shall pronounce a decree or order in those terms, unless the terms of settlement are unlawful or unconscionable.

The counsellors shall be entitled to supervise the placement of children in custody of a party and shall for reasons to be recorded in writing, shall be entitled to pay surprise visits to the homes in which child resides, and shall propose any alterations in custody arrangement by a report to the court.

The counsellors also have the right to supervise, guide or assist reconciled couples even though the matter is no longer pending before the court.

Cohabitation between parties during the course of conciliation proceedings before a counsellor shall not be deemed to be condonation of the matrimonial offences.

In the State of Telangana, at present there are no court appointed Counsellor. However, as per the High Court of AP Family Courts Rules 2005, the Counsellor appointed to counsel the parties shall fix time and date of appointment the parties shall be bound to attend the counsellor on the date and at the time so fixed. If either of the parties fails to attend the counsellor on the date and time so fixed, the counsellor may fix another date and shall communicate the same to the absentee party by registered post in case if default by either of the parties on adjourned date, the counsellor shall submit a report to the court and on receipt of such report, the court may proceed with the matter without prejudice to other powers of the court to take action against the defaulting parties. The counsellor entrusted with any

petition on appearance of the parties before him/her shall assist and advise the parties regarding the settlement of the subject matter of dispute and shall endeavor to help the parties in arriving at conciliation. The counsellor may, in discharge of his or her duties visit the home of either of the parties and interview the relative and friends and acquaintances of either of the parties. The counsellor in discharge of duties may also seek information as she or he deems fit from the employer of either of the parties and such requisition for information shall be made through the court, the counsellor may take the assistance of any organization, institution or agency in discharge of duties. A list of institutions may be created by Family Court in consultation with counsellors in the month of January each year working in the area of family welfare, child guidance, employment or any other area that the court may deem fit, in order to enable the counsellor or parties to obtain the assistance of such institution, organization or agency or submit it to the High Court for approval, which may endeavor to resurrect family bond and assist and supervise parties even after the disposal of the court. .

The counsellor shall submit a report to the court as and when called for to assist the court in deciding the case on hand. The report may inter alia contain the following points:

- a. Living environment of the parties concerned
- b. Personalities
- c. Relationship
- d. Income and standard of living
- e. Educational status of the parties
- f. Status in society
- g. Counsellor's findings

The counsellor may also supervise the child if and when called upon by the court.

Location of Counselling Centre

The Jharkhand and Manipur Family Court Rules lay down that that Counselling Centres as far as possible should be near the court premises. On the other hand, Maharashtra and UP Rules prescribe that the Counselling Centre may be divided into several units and may be located in Family Court premises or such other places as HC may direct.

Qualifications of Counsellors

The qualifications of counsellors vary from state to state. Some states like Assam prescribe generic qualifications say, suitable legal knowledge and working experience in social and family welfare. In the alternative, Grade II/III Officers of Assam Judicial Service shall also be eligible for appointment as a family court counsellor. In this case, one may see that the judicial officer is presumed to have the qualities of a counsellor.

Some states specify the academic qualifications required for a family court counsellor. States like Jharkhand, Chhattisgarh and Madhya Pradesh prescribe any degree from recognized university preferably social sciences or psychology as one of the subjects with minimum two years' experience in social work, child psychiatry and family counselling. In these states, preference is given to women, candidates who are Judges, or candidates who have experience in family counselling.

In some states like Maharashtra and Uttar Pradesh, Masters in Social Work and a minimum of two years' experience in family counselling constitute the necessary qualifications.

In Kerala, persons above 35 years who have a Master Degree in Social Work or persons above the age of 35 working in the field of social service and welfare activities and engaged in promoting the welfare of family and child care or who by their education and experience are considered competent by the government, shall be eligible for appointment as counsellors. Preference shall be given to women.

In Orissa, Masters in Social Science preferably Sociology/ Psychology with minimum three years' experience in family counselling constitute the basic qualifications. In the absence of such candidates, persons above 35 years working in the field of social service and welfare activities and engaged in promoting family welfare and child care with degree in social science preferably sociology/ psychology are preferred.

As per AP Family Court Rules, the person shall be above the age of 35 years and shall possess the following qualification:

1. Degree in social sciences such as social welfare, sociology, clinical psychiatry, psychology, philosophy, preferably with a degree in law.
2. At least 2 years of experience as field worker, researcher or teaching in Government department, educational institute, with special reference to problems of women and children.
3. Retired Judges/Legal practitioners with at least 10 years of experience and Expert or other professional with 15 years of standing or retired bureaucrat or senior executive.

In Rajasthan and Delhi, a degree in social sciences such as social welfare, sociology, clinical psychiatry, psychology or philosophy preferably with a degree in laws in addition to 5 years' experience in fieldwork/ research/ teaching in Govt. department/ College/ University/a comparable academic institute, with special reference to problems of women and children; OR five years' experience in examination/ application of Central/ State laws relating to marriage, divorce, maintenance, guardianship, adoption and other family disputes is prescribed. Here again, candidates who are women, or Judges, or those with experience in family counselling may be preferred.

Appointment of Counsellors

In Kerala, counsellors are appointed from a panel prepared by the High Court in consultation with one or more professionally qualified experts in the family and child welfare, preferably working with a recognized institution of social science or social work.

In Jharkhand and Manipur, the counsellors are appointed by the State Government from a Panel of Counsellors prepared by the Principal Family Court Judge and approved by the High Court.

In Karnataka, the Family Court nominates any person/ persons out of the list it prepared from persons engaged in social welfare and approved by the High Court to assist the court in its functions. The list is renewed every year.

In UP, Maharashtra, the counsellors are appointed by High Court in consultation with one/ more professionally qualified experts in family and child welfare, preferably working with a recognized institution of social science or social work.

In Orissa, the counsellors are appointed by the State Government in consultation with professionally qualified expert in family and child welfare.

In Rajasthan, the counsellors are appointed by the High Court from persons engaged in social welfare or welfare of the families.

Salary/ Honorarium

In most states, counsellors are appointed on contract, and on honorarium basis, which varies from state to state, and to be determined by State Governments from time to time. State of Bihar set Rs.750 per case. State of Jharkhand sets the honorarium/ salary at par with the mediators as per Jharkhand Legal Service Authority Regulations. State of Karnataka has set the honorarium or sitting fee of Rs.500 per day.

The State of Chhattisgarh lays down a minimum of Rs.200 per sitting per case, and sets a maximum of Rs.600 per day. The number of sittings per case is limited to a maximum of four. State of Madhya Pradesh sets Rs.75 per case per sitting, with the number of sittings per case limited to four. The total honorarium payable per day not to exceed Rs.300. Orissa sets the honorarium at Rs.200 per day of actual work.

Age in Service

The states like Bihar and Jharkhand sets the minimum age of counsellor at 30 and 35 respectively. State of Chhattisgarh Rules only sets the upper limit at 65. Madhya Pradesh Rules prescribe that the counsellors shall be in the age range of 35 to 60, extendable upto 65. Kerala also sets a minimum age limit of 35. Manipur on the other hand prescribes an older ranger of 45 to 60 for a family counsellor, and also prescribes that only married people need apply for the post of family counsellor.

Term of Service

The term of service of a family court counsellor in UP is set at two years.

Chapter 4: Qualitative Research on Challenges in Establishing Functional Family Courts

4.1 Focus Group Discussions

One of the tools designed to collect information regarding the challenges in establishing functional family courts was focus group discussions. Considering the ongoing pandemic situation, the focus group discussions were conducted in online mode, via zoom. Online Focus Group Discussion (FGD) was conducted on the generic theme on the challenges in the functioning of family courts and the ways forward were conducted. Participants in FGD included professors from India and abroad from law and social sciences, family court Judges, Lawyers, counsellors and mediators. Four sub-themes were created with varied objectives for the purpose of FGD, and were conducted between 27th February and March 6th 2021. Each FGD had 5-7 participants and lasted for a duration of 1.5 hours each.

The themes chosen for each FGD are as follows:

1. Gender Justice & Family Courts: Expectations vs Reality
2. Family Court Counselling: Existing Gaps and Way Forward
3. Family Court Procedure: Making Courts more Accessible to People.
4. Making Family Courts Effective: Much Needed Reforms

4.1.1 FGD1: Gender Justice & Family Courts – Expectations vs Reality

Objectives

- a) To understand the expectations of different sections of society from family courts.
- b) To understand multiple perspectives on whether the family courts as an institution augments gender justice.

(Key Points: Interactions between Law, Gender and Judiciary - Law as Text and Law in Practice; Written Law and Unwritten biases)

Discussant I

After starting practice in 1985, I can say that 20 years ago, I saw how gender has been evolving as a topic in itself. I understood gender intuitively though it was not a topic of discussion or part of the curriculum then. Family law as a specialisation was rare. Family law used to be treated as soft law, and family law was practised along with a range of other areas. Before the family court was established, the family matters were dealt with by a district judge who had a range of different subject matters before them. The real change was seen from 2005 when the Domestic Violence Act 2005 was established, and the Family Courts became operational in Delhi. She remembered two pioneers in family law practice in Delhi,

In 2005, when Mahila Courts were set up, the statute required that the judges be women. I have a problem with that. Later, family courts were instituted, the law required that the Judges be of the rank of the district judge, therefore senior Judges. Strategically also, I prefer filing

cases in the family courts, and if I want to avail of the provisions of the Domestic Violence Act, I use S.26 of the Act to plug in the proceedings. The benefit of this is that I get to present my cases before senior Judges who are more experienced than entry-level officers, who might be women. When it comes to Judges, it is the personality and sensitivity that matter, and it does not come de-facto with a person's biology. Another advantage of filing in family courts is that I can move to the High Court directly afterwards as a MAT Appeal or Section 227 under supervisory jurisdiction.

Magistrate Court- Family Court (District Level)- High Court (Family Division)- Supreme Court

There are primarily two issues in a divorce matter, (a) finance and (b) custody.

In the context of a liberal trilogy – Puttuswamy, Joseph Shine and Navtej Johar- When talking about autonomy, one should see the individual as a unit- within the family, one should know the power dynamics within.

We still subscribe to the fault theory, wherein we are in a weird position wherein a person cannot divorce if they are unhappy in a relationship because the other person is not cruel enough.

Courts respond invariably in a pro-family way as recommended by the statute, which laws down reconciliation as one of its objects. I keep insisting that the word mediation be used instead of reconciliation. We need to resolve the dispute and parties arrive at a decent settlement and not necessarily reconciliation of the relationship per se. In other words, the resolution could mean divorce and a proper arrangement concerning finance and custody.

Moral Approach Responses of the Judges

The principled approach of the Judges is that they try to be pro-family. They make sure that they are not pro-man but pro-family. In this process, the nicer among the lot end up patronising, and not so nicer among the long becomes aggressive. Patronising element of the Judges is as much part of the patriarchy, and being friendly and gentle by themselves would not contribute to the effective dispensation of rights and entitlements.

Finance

Finance in this matter is invariable. I know at least three cases where three empowered women paid better alimony to their husbands than any of them would have given to their wives. That hardly ever happens with a man. This is the traction of the litigant. In this scenario, I don't find the problem with the attitude of Judges.

Separate v. Community Property Regime

We still subscribe to a different property regime against the community property regime. There is a problem with that.

The concept of the 'lifestyle' route is also not close to wealth equalization or, at the minimum equitable distribution of wealth.

Interim Maintenance

She needs to establish that she is unable to maintain herself; additionally, some essential support for housing or residence. It takes care of needs, not reasonable wants. Those reasonable wants not being met would result in children being subjected to 'inducement strategies' as I call it, as time spent with women will be fraught with money tightness; even if she makes efforts to supplement the same, she is not accessible enough. On the contrary, her weapon becomes children though she might not in a good sense want to weaponise children. Intuitively it becomes an emotional aspect to keep someone closer to her, ending up being children.

From a financial angle, the difficulty comes from the non-recognition of separate property, absence of community property and equalisation of wealth. Patronisation and tokenism in maintenance decrees (akin to meal tickets). Some generous decisions are coming in dissecting lifestyle into several units (car, housing, rent etc. etc.) and most recent being a judgment of Justice Indu Malhotra. She analysed and supported the 'forensic analysis of finances of the parties. This started to some extent in *Hegde v. Hegde*. In the case of business people, Income Tax Returns are hardly a true reflection of their capacity, but lifestyle is a more authentic reflection. With this, we are getting better interim maintenance. But we are not getting judgments on alimony where the equalization of wealth is truly tested.

There is more jurisprudence on interim maintenance than alimony. Alimony is not a well-developed concept; broadly, it is compensation for cruelty etc. which is a token amount.

Transnational Divorces

In transnational cases where women return after being subjected to domestic violence, fathers file habeas corpus for return. Till recently, mothers were being sent back until Nitya Anand Raghavan case⁸⁷. Here is the issue: the mother gets reduced to the chattel to the family. In the name of child-centric jurisprudence, they are disempowering the maternal rights of women who have not broken the traditional socialisation; she is being de-maternalised. For that reason, she is not in a position to say that the child can go back; Personally, I cannot; what would be the social consequence of that!

In Nitya Anand Raghavan⁸⁸ & Kanika Goel⁸⁹ cases, court held that it is the maternal preference and mother need not go back.

In the name of the Committee of Courts, the foreign jurisdictions pass orders that children shall be sent back, and mothers may choose to go or not to go. That is a serious issue.

The most recent case is *Perry Kansagra*⁹⁰, presided by Justice Indu Malhotra, based on the interview with a ten-year-old child, the child was sent back to Africa. Ten years, the mother has brought up the child with no financial support from the father- the only difference being that the father is a multi-billionaire. Thoroughly disappointed. Gender (biology) does not necessarily mean that one would be sensitized to issues of gender. This is a classic example of the same.

⁸⁷ *Nitya Anand Raghavan v. State (NCT of Delhi) & Others.*, (2017) 8 SCC 454.

⁸⁸ *Ibid*

⁸⁹ *Kanika Goel v. State (NCT of Delhi)*, (2018) 9 SCC 578.

⁹⁰ *Smriti Madan Kansagra v. Perry Kansagra*, Civil Appeal No. 3559 of 2020.

Discussant 2

As a family court judge, I never thought of gender justice. It was a question of rendering justice. Family courts Act 1984 was the culmination of long-standing demand from several women associations and other organizations for setting up the family courts exclusively for settlement of dispute relating to the family. It was urged that in such courts, emphasis shall be given for conciliation, and adherence to rigid rules of procedure shall be eliminated. In 1974, the 59th Law Commission of India proposed that courts in dealing with matters relating to a family shall adopt an approach radically different from the regular matters and reasonable efforts for settlement shall be made. In 1976, CPC was amended to provide a special procedure for family disputes. It wasn't very effective, as proceedings were followed like any civil proceeding. Therefore, there was a pressing need for family courts with provisions for early conciliation and settlement of disputes.

In the Preamble of the Act establishing Family Court, Object says ' to promote conciliation and speedy settlement'. The word adjudication is conspicuously absent from the object.

The act made it obligatory for the State Governments to set up family courts with cities exceeding 1 million in population. Increasingly states are setting up family courts; the count has reached 43 in Kerala. That mandate is being implemented by Government. Now courts are sufficient in number.

Reconciliation or settlement of parties was emphasized. The Association of medical and welfare experts, though proposed, was only used to a limited extent.

Simplification of evidence and procedure though mentioned, in my experience, there is no simplification of procedure at all.

The expectation of litigant was in consonant with objectives mentioned that there would be an expeditious settlement of family disputes and inexpensive. But the reality is that family courts have proved to be just like other civil courts; proceedings are lengthy, tiresome and expensive. S.13 is against representation by legal practitioners as of right, but judicial decisions in effect nullified the embargo in S.13. Judicial decisions looked into the rights of Advocates to practice in any forum as against the bar for advocates in family courts. This decision, according to him, is against the mandate in S.20 of the Act, which provides that notwithstanding any other provisions in any other law for the time being in force, the provisions of the Family Courts Act will apply. This is a severe blow against the objectives of the Act.

There are allegations that advocates do not encourage speedy settlement and ask for exorbitant fees. The advocates file petitions with exaggerated injuries, which provoke the opposite party to raise counter allegations with equal force. The result is that the rift between parties widens, they harden their positions, and a possible amicable settlement becomes impossible. When the judge finds that the parties are not amenable to compromise and the case is posted for evidence, it will be too late because the family court is flooded with cases. Efforts could be made for reconciliation. In trial procedure is delayed. CPC provides the commissioner's appointment to record the evidence; the case is further delayed.

Experience shows that when one of the parties comes with a family dispute, multiple cases arise at various multiple forums. This is why galloping increase in several subjects in family court and other courts involving family disputes. For example, if a party comes to an advocate, say the husband files for the divorce, the wife may file a case for restitution of conjugal rights, maintenance, return of money or ornaments, guardianship of the wife. The wife may also file a criminal lawsuit against the husband and in-laws under S.498A. She may also press for remedies under the Domestic Violence Act. There is no need to further say about multiplication of cases in family courts.

There is severe misuse of family courts and provisions in family law. In an attempt for maintaining gender equality, some Judges may be compassionate to women, and then men are aggrieved. In a case known to me, a woman judge in all matters before her asked the women to go and live with their husband, and the High Court changed her after two months. Personal experiences might play a part. Women may not necessarily be compassionate to women. What requires is a sensitization of everyone involved in the process- practicing Lawyers and adjudicating officers. In my experience, I was never given training in the matter of disposal of family courts. I served in two centres- Thrissur and Attingal, and during my tenure, I was never called for training. Judicial officers are appointed according to the vacancies. Most of the time, it is seen that experienced Judges are posted. But there is no strict rule.

I know a judge, who is not ready to hear parties in the chamber. He would say, you file a petition, and I will give an order. If the Family Court Judge is willing to listen to the parties in Chamber, without a long-drawn process- counselling, mediation, Adalat, a settlement may be drawn – either reconciliation or an amicable settlement could be arrived at on the key disputes. This depends very much on the personality of the Judges. Gender sensitization is lacking. There is no attempt to maintain gender equality in courts. The enactments like PWDVA, Protection of Muslim Women's Right on Marriage Act, S.498A IPC are thoroughly misused. Police also often use these tools like vengeance. There are complaints that they often remain idle in the most deserving cases and commit excesses in the most frivolous cases. Police are least sensitive about gender justice.

Also, the family court reflects society. Indian society is patriarchal, which reflects in family courts. Through conscious efforts of the family court advocates, Judges, and gender sensitisation, we might be successful in imparting gender justice.

Discussant 3

Women, Matrimonial Litigation and ADR – interaction between matrimonial disputes and ADR.

We all know ADR in marital disputes is very relevant in long battles fought. If we look at the aim of the family courts act, it is saying we are going to settle the disputes in a manner reconciliatory, speedy and in an informal & non-adversarial environment and by a simple procedure.

Preamble aims to provide congenial space to women and to preserve marriage. When we say preservation of marriage, it should not be given priority over gender justice. Gender justice should remain supreme.

Early marriage, poor education, economic dependence- women have insufficient bargaining capacity. Taking this account, it is essential to see how law and that dispenses respond to help women attain benefits. Women are consistently asked to adjust or tolerate for family sake dismissing all the wrongs committed against them.

Several factors are hampering the effectiveness of family courts

- a) A limited number of courts
- b) Poor infrastructure
- c) The jurisdiction aspect is not delineated etc.
- d) Marital property is not recognized in India. Division of property acquired at the time of marriage – under Hindu Law – is the only thing taken care of. Women, for all their sacrifices, provided with any remuneration. If she is not well educated, she will get petty maintenance. Lifestyle as against income tax returns needs to be considered.
- e) Overemphasis on reconciliation of marriage (particularly when histories of drug abuse, alcoholism and excessive violence are noted) to be discouraged
- f) Apathetic and insensitive approach to litigant women by people supposed to provide justice – questions like what went wrong? What did you do wrong? You are economically dependent; He is the provider etc.
- g) Paternalistic attitude of those dispensing justice- taking away women's agency and coercing decisions upon women. ADR Practitioners, counsellors or Judges have the power to control the process. They should give complete control to the battered women, and women should not be told that their rightful place is within the marital relationship.
- h) Neutrality i.e., equidistance from parties. But because of various factors, men are in a better negotiating position with a better financial situation, more vocal about rights, better capital etc. The people who are in the position of dispensing justice shall keep in mind the psychological or social position of women owing to several factors, particularly in rural locations. In such a situation, neutrality is no virtue; more sensitivity towards women should be shown.
- i) The delay in approaching the court should not be taken as a point against the party approaching. Particularly women in Indian society try all means possible before approaching any institution.
- j) There should be sensitivity developed about gender.
- k) Power imbalance and past violence should be considered as two essential factors in each case. If there is any severe power imbalance, the cases to be considered on a case to case basis, the case should not be pushed for reconciliation. If such a decision is pushed for, then it should be an informed decision by the women understanding all pros and cons.

On an occasion, a man was found slapping his wife in the court premises. The quality of such a relationship behind closed doors can easily be imagined.

Certain instruments need to be developed to see power imbalance and past violence, and then only it has to be decided whether the case is fit for reference.

Proper screening guidelines to be laid down in this regard before pushing the women into similar settings.

Discussant 4

I am trying to look at what happens to women's movements when they hit the court or when people begin to use law in a particular setting. This can also be called the law and society approach. I have worked on the Hindu Succession Act. Despite the wording of the Act, the women seemed to be availing little that they are entitled to. I was curious to see what had happened with the institution of Family Courts. It was a significant movement in the Indian women's movement; it was an important moment in the feminist movement as well.

Among family courts globally, there are two different types of courts: (a) set aside courts (e.g., US, Australia & Hongkong). While it is often said that the family court provides speedy settlement, usually only a quarter of the city is covered by the family court and hence speedy is not always true. (b) mediation and informal settlement. (Japan). India has combined both these models.

The design of family courts is a contradiction in itself: it emphasises speedy settlement and reconciliation. While the Parliamentary Bill laid down the object as preservation of marriage and protection of the interests of children. Both these are not compatible with each other. Preservation of the institution of marriage is not consistent with the speedy settlement. The bottom line of a process in family courts boils down to the point that women need money to survive.

There is a significant dispute about what conciliation means: Bombay Courts counsellors broadly perceived it as non-adversarial. Calcutta Courts and many other places understood the same as reconciliation. There is a need to clarify the term's meaning in that sense.

What the role of counsellors is- also need to be clarified as it also varies from place to place.

It is also dependent on the space, training and emoluments provided to the counsellors in different regions. The infrastructure support and emoluments for counsellors in Calcutta are too poor as against the same in say Delhi or Mumbai.

Many a time, the counsellors in Calcutta courts perceived themselves as the only help available to hapless women. Calcutta courts began as lawyer free courts; it is lesser lawyer free today. Women are also generally discouraged to appear themselves by the Judges.

The discussion runs around maintenance and alimony and less about recognising marital property.

We cannot fall to the theory of misuse of domestic violence cannot be taken as domestic violence is the everyday reality of women in India.

The patronizing attitude of the Judges- why do you file domestic violence etc.

What is a divorce with dignity and respect? This is a question that needs consideration.

Discussant 5

I would like to share the ground realities of Women's Rights in India based on my fieldwork in the city of Hyderabad since August 2019. Given that the prior speakers have already covered many grounds, I will focus particularly on Muslim women. I tracked 57 Muslim female litigants embroiled in marital disputes as they moved between multiple forums to seek resolution. I asked the straightforward yet complex question of what it is that they want, where do they go and at the end of the day, what do they get? Of the 57, not a single one approached just one forum. The minimum was two to three. These included the Qazi offices, the seminaries such as Jamia Nizamia and Jamiatul Mominath, Darul Qazas, Sharia Councils, Mahila Mandals, NGO's-secular, feminist and religious, Family Courts, Police Stations, State-run counselling centres, the State DV Cell and the District Legal Services Authority.

What emerges from my research fairly conclusively is the fact that there is a stubborn refusal on the part of state authorities and other stakeholders to accept the asymmetry between Muslim men and women when it comes to divorce in particular, and this can be pretty dangerous, no matter how well-intentioned or unintentional because it makes already vulnerable Muslim women and children even more susceptible.

A refusal on the part of state authorities to recognize the widespread socially and religiously accepted valid forms of divorce and their persistence in insisting such divorces have no consequence invites more trouble for Muslim women.

Those divorced orally without witnesses or any documentary evidence are unable to have a divorce certificate issued by the Waqf Board, and this has severe consequences for their ability to claim government pension for divorcees, remarry, claiming child custody or secure valid documents such as passports and Aadhar cards for themselves and their children.

What happens then in such cases is that the women are left hanging, which the Quran expressly prohibits. The failure of the Indian state to set up religious authorities or councils with the power of Fasqh Nikah, ie., to dissolve a Muslim marriage leaves Muslim women with no option but to negotiate a Khula. This is problematic for three reasons.

One, unlike a Fasq Nikah, a Khula requires the consent and signature of the husband to be valid and therefore vests absolute power to dissolve a marriage in the hands of the husband.

Two, a Khula has financial consequences. A woman has to forfeit her mahr and iddat maintenance to secure one in addition to offering some form of monetary exchange. This when unregulated is tantamount to extortion, especially when no authority sees to it that Islamic Law and principles are being strictly observed. What is alarming is the routine occurrence of filing and then withdrawing cases of maintenance and domestic violence in exchange for a khula. This no doubt increases the burden on courts.

Three, the existing system does not ensure gender justice because Muslim men are free to marry three more wives. At the same time, the women are unable to move on and remarry till they secure a valid divorce certificate. This needs to be urgently remedied.

A remarkable finding during my fieldwork was the effective and speedy justice that Qazi offices were able to secure for a majority of Muslim women, especially when negotiating Khulas across national boundaries at a nominal cost and settling issues of child custody and maintenance. I found this truly impressive given the expense and delays involved in approaching family courts.

In contrast to the state-run one-stop crisis and counselling centres that were all female and mostly upper-caste Hindu- not a single Muslim was on board, the Government of Telangana Minorities Marriage Counselling Centre (TMMC) set up by executive order of the government in 2015 is all members are Muslim. It has a Mufti and a Qazi on board and Muslim female Lawyers and counsellors and can negotiate khula successfully.

Most state-run institutions stigmatize divorce and tend to view only 'reconciliation' as success stories. In contrast, in reality, a Muslim woman securing a valid divorce with documentary evidence counts as success!

In conclusion, I would like to strongly recommend the setting up and strengthening of bodies such as the TMMC by other state governments across India. The Government of Telangana deserves praise for initiating such a novel and progressive experiment that has proved to be marvelously effective.

Formally linking such counselling centres to the Family Courts would undoubtedly go a long way in reducing the burden on courts and securing affordable, accessible and speedy justice for some of the most vulnerable Indian citizens.

Any project of Family Court Reform ought to seriously consider developing centres such as the TMMC into proper centres of religious Alternative Dispute Resolution (ADR) – authorized, recognized, accredited, licensed and confirmed by the state, subject of course to state regulation and oversight.

In line with international best practice, agreements arrived at with the consent of both parties at such centres would then be duly considered and enforced by the courts. It goes without saying that Family courts and Judges would not be mere rubber stamps but would actively scrutinize settlements arrived at through the offices of such an arbitration council or centre before issuing, ratifying or enforcing an order or award. This would ensure that the processes and decisions of religious ADR bodies do not run contrary to public policy and the principles of natural justice.

Discussant 6

We all know that despite some advancements; progressive judgments in NALSA, Puttuswamy, de-criminalization of S.377 (Navtej Singh), all of it set the ground for the progressive realization of rights. Rights cannot be taken back (non-retrogression) and progressively realized.

Justice Ramanathan of Madurai HC delivered a verdict recently that transgender women can seek protection under existing marriage law.

A week ago, Delhi HC heard a petition about marriage equality for the LGBTIQ community, and the Solicitor General filed an absolutely regressive affidavit. An Indian family is only man and woman, and marriage laws can never be expanded to LGBTIQ; that would be absolute chaos. This is complete bigotry, totally against constitutional morality, but dictated by public or social morality dictated by religion, blind faith and supervision.

If we as groups of people who could be romantically faithful to and in love with each other in abiding relationships, if we are not taken into cognisance, how could there be socio-legal recognition for our family structure?

There are a few judgments on inheritance, particularly within the hijra community- *Preeti v Uol* and others. Hijra and many other socio-cultural, socio-religious communities, every state has

its own socio-cultural socio-religious identity to transgender people. There is a respectful reference to transgender people in Ramayana and Abrahamic religions.

It is high time that we include transgender people into consideration.

Key Points emerged

1. Gender Sensitization of Family Court Judges, Lawyers, Police is absolutely necessary. While women representation in courts is essential, women representation is no alternative to gender sensitisation. We all are products of a patriarchal society, and everyone involved in handling family disputes (including women) must be given mandatory training sessions on gender sensitisation.
2. The Preamble of the Family Courts Act gives undue importance to reconciliation vis a vis preservation of marriage. Gender justice and amicable settlement between parties should be given more emphasis. The term reconciliation is understood differently in different parts of the country- in some parts, it is understood as a non-adversarial process; in contrast, in other regions, it is understood as reconciliation between parties and restoration of marital union.
3. Pre-litigation mediation (DMC) may be made mandatory. The issues can be crystallized in this process. If we allow this process, if the matter is not settled and it goes to litigation, the positions taken by the parties will not prejudice them in the litigation stage.
4. Pro-forma petitions: Brief discussion – if we have a dispute in the family, we usually call for the intervention of the family court. That is not enough. The effective intervention of counsellors and mediators should be availed. There is no need to spell out all the allegations. Once the allegations are spelt out, the opposite parties might harden their positions further, and any possibility of the amicable settlement will be closed. (just like form for maintenance). Instead of the petition, they can come with a prayer that requesting the courts to intervene. It may lead to an amicable settlement or amicable separation, giving their dues.
5. Simplify filing process: Proforma in English and Local Language. Women can seek help from those sitting in legal service authorities.
6. Time limit to be prescribed for the settlement of each and every case, like mediation.
7. Case management programmes can be initiated: we need to prioritize which cases are simple or complex and make a priority list. More complex cases can be posted post-lunch.
8. A: Introduction of irretrievable ground for marriage as a ground for dissolution.
B: Contrary, the institution of break-down of marriage will prove disastrous if it is not brought in along with marital property. Men will run away without payment of alimony.
A: I am proposing that if the irretrievable breakdown of marriage is brought in, ancillary matters come to the center. Divorce can still not be granted unless alimony and other matters are settled. Ancillary relief shall come to the centre.
B: Irretrievable breakdown of marriage will be counter-productive given the peculiar condition of women in India.

A: If the not irretrievable breakdown of marriage, the threshold of cruelty be lowered. Adequate cruelty. Irretrievable breakdown of marriage is a later development even in English courts after *Owens v. Owens*. . The position was that if you are not granted a divorce on the ground of cruelty, you may go back to court after five years citing non-resumption of cohabitation. Here we are stuck in the middle because male Judges often find certain acts 'not cruel enough to grant a divorce. There has to be a balance between that.

9. Muslim women are at an unequal pedestal when it comes to divorce as regards Muslim men. There are different modes of divorce recognized by Islam, where divorce can be initiated at the instance of women. It is unfortunate that fasq, a mode of divorce at the instance of Muslim women where divorce is effected before a Council, is not recognized in India. No initiative has been taken from the Government to set up religious councils with the power to effect fast. Another mode of divorce is Khula, while recognized, the finality of divorce is contingent on the husband's consent.
10. Further, women have to forfeit their financial rights, including iddat maintenance and mahr, in addition to making a financial exchange from their side to the husband. In the current state, the women who are divorced by way of talaq orally, without sufficient witnesses, find it impossible to secure a divorce certificate from the Waqf Board, which leaves the women hanging between marriage and divorce. Telangana Minority Marriage Counselling Centre, set up with Muslim clerics, advocates, retired justices, professional counsellors, etc., is an excellent example of securing Muslim women's rights by processing Muslim divorces at the instance of men and women, albeit equitably. Formally linking such counselling centres to the Family Courts would undoubtedly go a long way in reducing the burden on courts and securing affordable, accessible and speedy justice for some of the most vulnerable Indian citizens. Any project of Family Court Reform ought to seriously consider developing centres such as the TMMC into proper centres of religious Alternative Dispute Resolution (ADR) – authorized, recognized, accredited, licensed and approved by the state, subject, of course, to state regulation and oversight. In line with international best practice, agreements arrived at with the consent of both parties at such centres would then be duly considered and enforced by the courts.
11. Maintenance should be awarded after a forensic examination of the lifestyle of the parties as against plainly accepting the Income-Tax Returns. The maintenance and alimony awards should consider the wife's needs and reasonable wants. They should consider the wealth equalization or reasonable, equitable distribution of wealth among parties. In the absence of wealth equalization by proper awards, children are often subjected to inducement strategies leading to women losing custody of children.
12. The counsellors, Judges and Lawyers should shed patronizing behavior and let the women decide what is best for them. The language of the court, counselling and mediation should be controlled accordingly. It is common for women to hear 'why don't you tolerate', 'after all, he is the provider for the family', etc., in courts and otherwise. The delay in approaching family court shall not be considered an incriminating factor as the parties in Indian settings try all means possible before approaching the court.

13. Steps shall be taken to recognize matrimonial property. Often, there is no record or recognition of gifts obtained at the time of marriage. Further, jurisprudence needs to be evolved to recognize the actual contributions of women in the family. The recent Supreme Court judgment elevating women in families from 'housewives' to 'home makers' is a significant breakthrough.
14. Steps to introduce 'no fault' divorces or to recognize 'irretrievable break down of marriage as a valid ground of divorce was called for. The contrary opinion in the discussion was that such recognition would be detrimental to women, particularly in rural India, given the prevailing socio-cultural context. The suggestion was then made that, at the minimum, the level of cruelty that is necessary for awarding a divorce must be toned down. In certain unhappy marriages, it is often seen that the divorce is not awarded because one of the parties is not found to be 'cruel enough' in the eyes of the law/ Judges.
15. The Judges and counsellors should have set guidelines to record the power imbalance and past violence of the parties.
16. Steps to duly recognize the rights of transgender in family law need to be done, in line with the NALSA judgment. The confusions regarding the rights of transgender persons regarding marriage and succession need to be cleared by proper legislative actions; the transgender, queer, LGBT unions should be recognized as valid unions, and all laws for the protection of women shall be duly applied to the case of transgender people as well. Currently, the laws in place do not provide sufficient remedies for the violence faced by transgender people from the transgender community itself. The reluctance of Lawyers to take such cases also was addressed.
17. The discussions about the mandatory pre-marital counselling and recognition of pre-nuptial agreements were called for, but contrary opinions emerged as these could be counter-productive. The current laws could be terrorising the inter-faith couple, and more laws could mean more trouble. However, setting up pre-marital counselling centres and encouraging the people to use such facilities by awareness generations and campaigns may be considered. Further, due information is to be given to Muslim women regarding how to elaborate their rights in nikahnama.

4.1.2 FGD 2: Family Court Counselling - Existing Gaps and Way Forward

Objectives

- To understand the role of counselling in the family court system.
- To understand the role, responsibilities and challenges faced by the counsellors in the family court system.
- To understand the gaps in the family court counselling system currently in place.
- To understand how the existing gaps can be overcome/ ways to make the family court counselling more effective.

(Key points: object of counselling, the role of counsellors, limitations of court counselling, counsellor-judge/counsellor lawyer interactions, necessary reforms)

Discussant I

Role of Family Court Counsellor

Whatever case filed in the Family Court, all the cases invariably come to the Counsellor. Whenever a case is referred to counselling, advocates and parties come to the room. Generally, for all clients, at least 2-3 sessions are conducted in each case.

- Couple Session: 30-45 minutes
- Individual Session
- Family Session

We get 5-10 cases each day. Avg 7 cases a day

Even in joint petitions, there is a scope of counselling. Multiple compromise meetings are conducted at family level. Due to political party interference especially in North Kerala they refer to Family Court. People generally ask if there is any scope for counselling. In many cases especially in North Malabar, the role of women in compromise meetings is limited. Those people interestingly come for counselling and exhibit their feeling. Ventilation happens. 2-3 sessions for joint petitions also. There is a need to understand what is happening in their marital life. Generally, parties come within 5-10 years of marriage, so if corrections are to be made, at the very least, they can rectify in the subsequent marriage. The role of a counsellor in the family system is vital.

Challenges

- Law prescribes that family courts in a separate building, informal atmosphere etc.
- Infrastructure constraint is too high. All we have is a counselling room. If we have to send the couple for a peaceful discussion, there is no place there. Mainly when there are children, to consider them with all their rights, this is no space. In a custody battle, they are now being forced to sit in a counselling room, in an atmosphere ridden with Lawyers, people with problems etc.
- Time Constraint. In this month, I have confronted 110 sessions, 1 hour per session amounts to 110 hours. If it is 7 cases per day and 1 and 1 and a half sessions, it means 10-11 hours a day. If the case number increases, the sessions cannot be practical.
- Problems in dealing with child custody matters.

How it can be tackled

1. Ranchi Declaration on Family Court Settings is a valuable reference.
2. More than 1 or 2 counsellors should be appointed in family courts
3. If we want a therapeutic, psychiatric or de-addiction referral, such facility should be available in court premises itself.

No of the cases come with alcoholism and drug addiction are high and Judge would refer then to a general Hospital or Deaddiction Treatment Centre. Parties require early disposal; they are not willing for treatment. Counsellors can convince that they have this addiction issue, which leads to the marriage breakdown.

Discussant 2

Project Sukoon

Sukoon is a field action project undertaken by the Tata Institute of Social Sciences. I have served as an expert psychotherapist in Bandra Family Court from 2005-2010. This was a new experiment adding value-added mental health services based on a judgment given by a High Court Judge. This had to be shut down, but we restarted in the name Sukoon. Currently, we have our post-litigation centres in 5 courts, including Bombay High Court and 2 Family Courts. We are not substituting marriage counsellors but supplementing them. Additional counselling services, mental health and psychotherapeutic sessions in individual, couple and group format, art-based format etc. We adhere to:

- Direct Service Provision - mental health and psychotherapeutic sessions in individual, couple and group format, art-based format etc.
- Maharashtra Statewide Research to understand the statewide perspective of counselling and litigant perspective counselling. The objective is to strengthen the counselling system in Maharashtra
- Training, Capacity Building and Sensitization session to introduce a Right Based Mental Health Perspective within Family Courts.

Areas of Concern

- Lack of uniformity – qualifications, the process of appointment of counsellors vary in states. Personal biases and lack of skills counsellor can bring negative impact
- Marriage is considered as a private institution; moving to a public institution, which is a court, counsellor becomes only the humane face in the system.
- Preservation of marriage/ amicable settlement either option can be looked into by counsellors which would save economic, psychological and time cost.
- Arresting inter-generational trauma and violence

Challenges

1. Time constraints make the counsellor's session more transactional. Counsellors cannot delve deeper into narratives even if they wish. Many counsellors are made to cover 20-25 sessions a day which is humanly impossible. Maharashtra has a lot of single courts-one judge, one counsellor-
2. Lack of Training- Just based on MSW, they cannot be expected to handle cases involving couple or relational aspects. Not all courses provide inputs into the same. Plus, the learnings, if any, need to be adapted to the legal system. We are advocating that there should be a training curriculum for counsellors. Sukoon has already created that curriculum. It cannot be a one-time activity. Counselling is a skill-based activity. Counsellors need to be given an exemption for at least three hours. We used to run a project whereby 3 hours of skill updation programme for counsellors were planned every month. The counsellors were also not trained because this used to happen during their work hours within courts, and we were paying for that. The court does not have money for counselling updation.
3. Many counsellors struggle to define the roles themselves. Typically, when Judges mainly coming after a criminal court posting might often work to determine the

definite roles of counsellors. The Court system needs to highlight that counsellor is an essential element in the system. The system must talk the same language.

4. It should be displayed somewhere the role of counsellors and benefits of counselling
5. The self of the counsellor is an essential element in the change process. This being, not an area where one can remain detached
6. Counsellor handholding and burnout prevention – it is essential. Counsellors handle multiple cases a day, which might create job related anxiety and stress, which need to be addressed.
7. Provision of expert services to supplement the counselling within the court campus to increase follow up rate Also psychiatrist, gynecologist, child specialist, substance abuse experts. Many a times people do not have time to visit an additional expert- having these services in the court campus would increase the follow-up and reduce the stigma around these services. Sukoon is a good example; they have been running these services for three years.
8. Couple distress and conflict is complex issue, and there has to be advocacy to include these value-added services. Mental health is an essential aspect that requires consideration in the court process.
9. Many counsellors are not trained in dealing with children. Specific training has to be giving in dealing with children. Maharashtra has a Childrens' Complex. Children cannot be perceived as a part of the parental conflict; they are tiny people with significant rights. By addressing their concerns specifically, we are preventing inter-generational transmission of trauma.
10. Counsellors are not trained to handle cases involving violence. They should have a directory of referral services, including women's organizations, to seek support on day one of their services to feel supportive.

Gaps and Possibilities from Client's Perspective

Litigant expectations are gendered ie. women's expectations are markedly different from men's expectations. Women want reconciliation despite violence; we know why. Women apart from counselling also require resources in terms of financial aid, vocational services, training to be independent. Perhaps family courts single-handedly cannot perform all these. Women often want to know how they can hold men and their families accountable for the violence they inflicted. Studies are to be made

Discussant 3

There is no protocol for counsellors working in family courts. I am practicing privately at charity-based trust. I see people facing family trouble, post-divorce trouble, or children from families who have overcome breakdown. Bandra court has eight floors with two counsellors each on each floor.

No set protocol for family counsellors to follow. There is clear absence of training for counsellors.

Counsellors get a lot of expressed emotions, disappointments, expressly when there is trauma and violence.

If you have decided to separate, probably it's the right thing to do. Also, make referrals to Lawyers.

Counselling sessions often get relegated to information gathering, and a helpful directive to judge on, say, irreconcilable differences. There might be some amount of ventilation expressed. There is no privacy or conducive atmosphere for a therapeutic angle. There might be ten other couples sitting outside, and how am I supposed to open up deep dark secrets of my family life. It is very tough. Getting rapport and a therapeutic angle is difficult. To give an assignment to a couple that spends this much time together etc., also become extremely difficult in these circumstances.

There is no understanding of mental health and psychiatric illness. This lack of understanding the science behind this trauma (psychopathology) mental health and psychiatry of varied nature which people are hesitant to share like anxiety, depressive symptoms, postpartum or perinatal depression, sexual, incestual trauma.

Mental health literacy or psycho-education of everybody involved in the court process is important.

Access to Health

Young people are much better off in the care of mental health. Sheer lack of access to mental health in terms of expenditure is crucial, particularly concerning children. When one thinks about separation, you have to relearn parenting skills. How do we co-parent while not attached is something to be looked upon. Even those having amicable divorces, children who underwent counselling during the process also suffer trauma.

Policy intervention or Suggestions to Government

- No legal compulsion for the family court to provide support to families/ parents. There are indeed gaps. It has to be area and population dependent. The government (Central or State) has to step up.
- Training for Counsellors- no set protocol in terms of the amount of time spent or number of sessions etc., all of which is decided randomly. Cross/ counter-transference of data might have come, and one might not even be able to be objective.
- Expert services within the court premises and additional counsellor support.
- Improve Mental Health Literacy of All people involved in the family court process.

Discussant 4

An excellent initiative of Telangana Govt. trying to cater to the needs of minorities which revolves around region and religion. The Panel has experienced counsellors and Lawyers chaired by a retired Judge and a religious leader or mufti who is present to convince men to give women their due rights. One of the critical issues found on the ground is the lack of comprehension of marriage. Family courts are trained to look at marriage through the lens of Hindu law. Hindu law treats marriage as a sacrament, while Muslim law treats marriage as a contract, and hence solutions to issues should differ accordingly.

The misguided belief of the police officers in dealing with 498A is an issue needs addressal. Police refuse to file FIRs in cases involving domestic violence cases. Instead, they are sent for counselling not once but thrice in a gap of 15 days between each session. Even in cases where physical abuse is evident, the same practice is followed. Women's stay in the same household during this counselling period cannot be said to be safe. This, according to them, is the guideline issued as per a Supreme Court Judgment (2014). But a cursory reading of the Supreme Court judgment shows that it makes no mention of such counselling. Guidelines only prohibit immediate arrest in cases involving domestic violence. This forced counselling removes the fear of the law in culprit and allows men to be calculative about it.

In the NRI divorces, the process itself is too lengthy. One of the spouses living abroad leads to the abandonment of wife and children. They are neglected and abandoned for years together. The lengthy process of bringing them back and the process so on and so forth.

Family courts should actively dispel the stigma around divorce. The over-emphasis on reconciliation to be controlled. When there is no love or respect and in an abusive relationship, the relationship is far from ideal and not suitable for children even if they live together for the benefit of children. So, if marriage is failed beyond repair, it is in the interest of children to separate. Don't deny them access to other parents and custody to be done fairly. Hence, two parents should part ways with dignity.

Lack of diversity in region, religion and gender needs to be looked into. In addition to mental health counselling, spiritual counselling has proved useful.

Follow up strategy for parties who have amicably settled before the court should be part of the system.

How to strengthen the counselling process?

1. The approach of judicial officers- counselling has some influence on parties and can help disposal cases. The judicial officers should consider this factor.
2. Post-divorce counselling- if reunion happens in a court counselling, we send them to follow their life. After having a reunion, if there is no follow up session, these cases will come back to us in the next six months.
3. Health perspective- not only health of the individual, but family, society should be looked into.
4. Health Budget and Mental Health Budget should be considered. (No suitable on all Locations)
5. Mental Health Care Act- if any institution can set up under the same and collaboration with Family Court would be good. We cannot keep adding to the list of people in the system; we need more personnel.
6. Initiated by Bombay HC, we have started pre-litigation centres in different districts in Maharashtra within the court structure. This avoids the clogging of the family court system; we appoint counsellors having local background.

7. People get to know about the pre-litigation centres through police or NGOs where women usually report marital conflict.
8. District Mental Health Programme can tie with Family Courts
9. Inter-departmental Coordination and tie-ups with WCD is important. Women asking for schemes in since children are part of WCD shall also be looked into. Violence is a huge issue, and the WCDs mandate lies there.
10. In family courts, if there are panels including clinical psychologists with Lawyers, spiritual counsellors who can talk about moral values along the lines of TMMC would be helpful.
11. Relationship with Lawyers and Judges- I have worked in two stations in Kerala; in both courts, advocates and judicial officers were very cooperative in the counselling process. Advocates inform beforehand that there is a chance for settlement, and please do needful. Counsellor often refers to chamber counselling with the judge, providing better results.

Working with the system: It involves a lot of convincing and re-convincing with each changing officer before we are integrated into the system. When the system is rigid, Judges may be given a flavour of psychotherapy or whatever we are proposing to them- which might encourage them to support the endeavour and even put financial support to the programme. That can be a good strategy in terms of working with the system.

Key Takeaways

1. There is a lack of uniformity in the qualifications and appointment of counsellors across the state. Advocates, retired Judges, those with degrees in social sciences or/ and law, social work, psychology, those doing voluntary work etc., all come within the net of counsellors depending on the state to state. Steps shall be taken to ensure that all counsellors appointed possess basic minimum training.
2. The counsellors struggle with caseload so much that the counsellor's session becomes almost transactional. Counsellors take up 5-25 cases per day, differing from place to place.
3. The appointment of more full-time counsellors to cater to the need of the court should be considered. More than one counsellor, trained in different areas including child psychology, de-addiction etc. shall be appointed. The cases may then be allotted to the concerned counsellor with expertise in the relevant field. In the absence of more specialised counsellors, reference shall also be made to counsellors outside the court system.
4. A comprehensive list of referral services proximate to the court shall be available to the counsellors. As far as possible, steps shall be taken to provide these services within the court premises.
5. Different value-added services, including psycho-social support, de-addiction, specialists in child psychology, etc., might be made available within the court premises.

6. The court infrastructure for counselling needs improvement.
 - The counselling process necessitates sending the couple for a discussion or spending some time together. This is impossible in a court environment crowded with Lawyers, police, other couples in conflict etc.
 - The counselling process involves personal interactions with each spouse individually, where the party can express freely with the confidence that no other person is listening (particularly the opposite party/ spouse). However, in courts with smaller counselling rooms, the other party who sits a screen away can easily listen to whatever is conversed between the counsellor and the party. This is not congenial for counselling.
 - In custody matters involving children, it is unjust to make them languish in courtrooms ridden with conflict. Child care centres/ Children complex need to be established; a model has already been based in Maharashtra.
 - Where visitation is allowed for either party in court premises, a friendly atmosphere also needs to be provided.
7. Clarifying the meaning of conciliation- it has been observed that many conceive conciliation as reconciliation/ reunion, while some conceive it as non-adversarial. This needs clarification, and all stakeholders need to be educated about this difference.
8. The introduction of pre-litigation counselling centres may be a valuable addition to the system. This has been tried by Project Sukoon in Maharashtra and has been largely successful. The first points of contact for family issues say police stations etc., may direct the parties for pre-litigation counselling in appropriate cases.
9. Steps to expand the counselling services in cases where the parties were reunited in court, as well as post-divorce counselling, may be considered. In the absence of proper follow-up, the parties who got reunited in the court are likely to come back to court
10. Periodic skill up-gradation sessions for family court counsellors to be conducted. Project Sukoon in Maharashtra has successfully run such training sessions for three hours every month for the last three years. This was done within the work hours of the counsellors, which made it easier for the counsellors.
11. Periodic sessions to address counsellor burn-outs need to be conducted. Such sessions shall also be extended to family court Judges.

Inter – department Coordination

12. Making the court infrastructure children and women-friendly – collaborations may be effected with the Ministry of Women and Child Development, and convergence of funds could be considered.
13. Making collaborations with District Mental Health Centres and Family Courts to provide Mental Health Literacy to Judges, Lawyers, mediators and staff of each court. The Family court counsellors may coordinate this program. The budget from Health Ministry for Mental Health programmes may be channelised for this effect. Steps may

be taken to de-stigmatize mental health and family counselling services. Mental Health Literacy Sessions for everyone involved in the family court process.

4.1.3 FGD 3: Family Court Procedure: Making Courts More Accessible to People

Objectives

- (a) To understand the in-built mechanisms in Family Courts Act and Rules to create a system sensitive to the nature of issues before family courts.
- (b) To understand whether these mechanisms are effective in simplifying the court procedure and creating an informal atmosphere.
- (c) To understand the innovations in family court processes and administration attempted in different family courts to make the family courts more accessible to people.
- (d) To understand the possible ways to improve the family court process. (court organisation/ infrastructure/ court procedures/ use of standard forms etc.....)

(Key points: family court process – complexity, multiplicity/ repetitive procedure, formality v informality, systemic flaws and innovative practices, challenges of Lawyers, litigant expectations vs reality - elusive justice)

Discussant I

Family court functions in different ways in different places- there is no uniformity of procedures. Designed as an informal system, the focus of family courts was on reconciliation. After filing, it goes immediately for reconciliation. The family courts act was enacted when the concept of mediation was not well developed. The conciliation system so introduced was revolutionary in that sense.

The load of family courts has increased considerably. In many cases, domestic violence orders are also passed by the Family Court. Delay is tremendous. Family court orders can be further revised and appealed, which takes time. Enforcement of family court orders is another hassle in itself.

Time taken from court to court is different. Posting dates are only coming after a long time. It's the volume of the cases that matter.

If we make the family court system more successful, conciliation should not be the only measure to reach the other end. It should not become a typical court system with some alternative mechanism. Many innovations are made at the individual level.

Emphasis was made on the need to develop other support services around family courts. The role of legal aid clinics by law schools and colleges and the role of paralegal volunteers to strive to secure more awareness about filing cases, rights of women in marriage and to make courts more accessible to people was emphasised upon. Informal mechanisms around the court need to be strengthened.

Family courts are situated close to the regular courts. Infrastructure is low in most cases. Child-friendly corners/family meeting corners should be in or around family courts.

Discussant 2

Kerala has 28 courts in 14 districts. Family Court was first established in Kerala in 1992. Family courts were designed to maintain the family's welfare by using a multidisciplinary approach to resolve family problems with the aid of the law. The challenges faced by the existing family courts are many.

No of the cases are high and courts are crowding. The primary purpose of family courts is to promote conciliation and speedy disposal. With the massive increase in matrimonial dispute, the main objective has not materialized. Inadequate infrastructure, Judges, staff need to be addressed, and an adequate number of family courts must be established. Counselling and mediation are also not so effective due to a large number of cases.

Though family courts aim to protect and preserve family, divorce is increasing. In family disputes, divorce is an often-sought alternative today.

Family being a social institution, family courts were designed to be different from regular courts. But in practice, it is not so different. Collective responsibility should be there in family courts. A humane approach is needed.

The procedure needs to be simplified, and Judges should be sensitized. The case management system is not so effective in family court. It is desirable to have a collegium consisting of 3-4 people, including women, to prioritize the cases that need early hearing and redressal. Use of technology should be expanded. Digital technology to be used effectively

Discussant 3

On an examination of Filing and disposal data in Coimbatore for the last five years, certain information is shocking. Coimbatore has two family courts and 20-30 per cent of cases are filed in ordinary civil courts due to restrictions in certain rules. Jurisdiction of family courts is limited to the corporation/ urban townships. Infrastructure is lacking and about 25 per cent of the family court Judges are vacant.

Tamil Nadu has 38 districts. Many districts do not have family courts, even where there are family courts, courts are vacant. Much of the population are ousted from jurisdiction because of the various regulations. This is the scenario in TN, which is considered one of the most urbanised states in India.

Infrastructure of family courts should not be associated with the regular civil courts.

During a pandemic a 60-year-old lady tried seeking a divorce from her husband. Lawyers were limited because of a pandemic. Lady was not able to present herself the entire courtroom was unfriendly. 100-200 cases are posted every day. There is no privacy. No scope for any discussion or conciliation to happen within the four walls of family courts.

Like the consumer forum, we should have separate Matrimonial Dispute Redressal forums away from civil courts at Taluk, District, State and National Levels and to Supreme Court. The cases should be heard by more than judicial members and should be including counsellors and therapists. Considering the unique character of family courts, criminalization should be considered.

Therapy and counselling should be provided during pre-filing and post-filing. Si that the social fabric of the country is protected. 40 per cent of the population is not included in the preview of family courts after three decades.

In my limited experience in dealing with family, Lawyers' roles should be limited. A limited part of Lawyers would aid in conciliation and settlement. The kind of allegations brought about

regarding spouses, lead to creating a lot of distress and destroying the lives of both parties. At least till conciliation, till other measures are exhausted – the lawyer's role should be limited.

Though the family court was envisaged to operate outside, we see a civil court system developing within a family court system. Family court as a forum should be outside the combined court complex. We need to have a system outside the present civil court system. Hence, in terms of location and process, family courts should be separated from civil courts.

Discussant 4

We need to look at cases in different broad categories

- (i) Those who have made up their mind to part ways, just need a seal of approval for their decision, ie. Mutual divorce. This is made difficult, by requiring parties at every stage, mainly when parties have already decided. In these cases, relief lies in speeding up the process. Video-conferencing rules are in place though each judge uses it in different ways. Judges should be trained to use this technology effectively. However, caution should be made in implementing video-conferencing rules as a significant country population may not own a smartphone or do not know how to navigate the process.
- (ii) Cases where individuals' esp. women, come to courts after being victims of severe violence, there is a deadlock between parties; most likely to happen in an adversarial manner. In these cases, the role of conciliatory bodies is to be reconsidered. Parties, when coming to court, need some relief or some interim order, ie., to say to them that 'you must go for mandatory conciliation with someone who is assaulting you ' is violence against the victim. Sometimes parties require immediate relief.

We have to look at how family courts function in conjunction with the criminal court system. Many police stations have counselling built into the system. This has resulted in a situation where victims are made to sit against their oppressor time and again continuously.

Role of Interim Orders

When one party has been kept out completely, conciliation talk can happen only when bargaining power is balanced in a certain way. Here lies the role of interim orders.

The physical presence of parties

Cases may be split into parts where the litigant's presence is mandatory and those not required. We can dispense with the presence of litigants in places where it is unnecessary.

People are forced to undergo mediation

Consent of parties should be taken before being pushed to ADR. There would not be any relief at the end of the day. Stages in which family courts can employ mediation and ADR mechanisms may be laid out.

A shorter adjournment may be made. Judges routinely make orders within four weeks.

Delineation of family courts from civil courts shall be considered.

Case Management

Calling and pass over: Some courts have a system of roll call and pass over. 60-70 cases are listed for hearing every day – 30-40 cases get adjourned during calls. Thirty points passed over time-slots may be fixed for all these cases in advance. Counselling cases can directly go to a

counsellor. At the notice stage, where it is determined to service of notice or to see if service is completed etc., can be handled by court officer- no need for Judges to sit through the same. They can divide the cases into different slots, stage-wise and fix time slots. Judges need not be involved in all these stages.

Pass system is in place in major courts like Supreme Court, Chennai High Court etc.- entering and accessing the court by making pass itself takes a lot of time. The disposal can be made more efficient by intelligent management of cases. A co-discussant added that a vigilance commission needs to be set up to analyse the influx and rate of disposal.

Key Takeaways

Family courts today, though designed as a system away from civil courts, has developed a civil court system within itself. The procedure in family courts today is hardly different from regular civil courts.

In states like Tamil Nadu, 30-40 per cent of the population is ousted from family court jurisdiction due to the absence of jurisdiction. Efforts may be taken to bring the entire population within the jurisdiction of family courts.

It was proposed that family courts need to be redesigned as Matrimonial Dispute Redressal Forums with presiding members consisting of judicial members and non-judicial members. Non-judicial members may include counsellors, therapists etc.

Service of counsellors and therapists may be provided pre-litigation and post-litigation.

Family Courts may be made more efficient by intelligent management of cases. The use of good case management techniques needs to be employed.

1. A collegium of 3-4 members, including women, maybe set up to create a priority list of cases, ie cases requiring immediate hearing etc.
2. The adjournments should be made shorter depending on the case. The duration between two posting dates should be reduced in appropriate cases.
3. The cases shall be divided into different stages and the presence of parties may not be made mandatory in all phases of the case. The requirement of the presence of parties may be dispensed within appropriate cases, including mutual divorce petitions.
4. The interim orders shall not be made pending till the completion of counselling, mediation or the final hearing. Some parties need immediate relief, which may be made urgently. The interim relief is also an efficient tool to secure the balance of power between parties at the time of mediation. The interim maintenance, custody or visitation of power may be issued to shift the balance of power between parties. Conciliation talks cannot happen effectively when one parent is kept out of the children completely; similarly, when interim maintenance is not awarded, the power is shifted against women.
5. Time slots may be fixed before the cases, and the parties and Lawyers may be present only during the specific time allotted.
6. The long process of roll call needs to be dispensed with.
7. The process whereby all cases are brought before the judge must be discontinued. The cases posted for counselling and mediation may directly go to the counsellor and mediator, respectively. The cases at the notice stage, serving of notice/ summons, questions on completion of service of notice etc. may be handled at the level of a court officer.

8. The counselling and reconciliation efforts happen at several levels. At the level of police, counsellor, mediation and Lok Adalat. At least in cases that involve violence of different kinds, the victim should have the option to stay out of the reconciliation efforts. The process of forcing the party to sit against the person who inflicted violence multiple times is not recommended.
9. The use of digital technology for the efficient management of courts need to be studied.
10. Law Clinics and Para-Legal Services, and other informal mechanisms should be employed to make more extensive awareness of rights, entitlements and processes, and to make family courts more accessible to people. Law Schools and Colleges should be encouraged to open Legal Aid Clinics in Family Law and Family Courts to provide awareness about the rights and the availability of different forums for dispute resolution.

4.1.4 FGD 4: Making Family Courts Effective: Much Needed Reforms

Objectives

- (a) To understand the significant bottlenecks in the family laws which makes our family court process long and tiring.
- (b) To study the possible ways to envision our family laws and family courts differently.
- (c) To study the possible/ necessary reforms to make the family courts more effective.

(Key points: rethinking family courts, family laws, and court processes)

Discussant I

Lawyers and Judges are trained in adversary litigation. Though the family court is conceived as conciliatory, hardly happen that way, active involvement of family court Judges are happening despite the challenges. The marital disputes increase in the nuclear family setup irrespective of socialization and education.

Family court cases can be broadly divided into three categories

1. Property
2. Custody of children- sometimes treated as children
3. Divorce

In disputes on property, adversarial litigation to be followed. It requires evidence before the family court

The cases involving Custody shall be entirely relooked where the role of the judge is more inquisitorial. Objective element is the welfare of the children. Accusations levelled against each other are brought before are looked into. Co-parenting is a concern. In matters of custody, the approach of court should be inquisitorial, like that of Domestic Violence Protection Office, who can bring all information before court and pass orders accordingly. Adversarial litigation has given away within custody matters

In the matters of Divorce, Cultural aspects are involved. Divorce petitions depend on the lawyer's imagination based what kind of society we are expecting, what would happen to parties if the court declined to grant a decree. The notion of justice should be consistent with values we imbibe. The court should not be a platform for levelling accusations like this. Courts role in divorce should be to have a collaborative effort.

Extra-judicial divorce is allowed for Muslim couples. But where is the platform to ensure that they have undergone conciliation. It is suggested that even for Muslims, the regular family court system with an in-built system for counselling, mediation reconciliation is as Islamic as it could be; hence a uniform divorce code is called for.

There is no scope for raising unwarranted accusations against each other. It is time to think about a collaborative approach in settling disputes.

Discussant 2

Matrimonial jurisdiction is the most challenging area for Judges. The object of the Act is conciliation. What comes before the court is human problems, not legal problems and there lies the challenge.

The object of the family court was for speedy settlement. Act provided for special procedures for conciliation and speedy settlement. The word adjudication is conspicuously absent.

The act clarified that the family court is not prevented from laying down its procedure (S.10). The vigour of the Evidence act also does not apply S.14.

Family court experience has become like any other Court now.

Embargo in S.13 has gone, and advocates are now the norm. Very few advocates encourage early settlement.

Suggestions for Reforms

1. Pre-litigation counselling, mediation and settlement: Counseling, mediation and settlement are simple forms before the litigation. During the counselling itself, there shall be no legal representation. Assistance will be given by social welfare agencies, legal aid, etc. If the parties fail to settle, parties shall be at liberty to go to court. The position taken by parties during this shall not prejudicially affect the parties when the matter goes to the litigation stage. Only during litigation of family dispute, legal representation shall be allowed.
2. Infrastructure: Sufficient infrastructure and staff to cater to the needs of spouses and children need to be provided.
3. Continuing Education & Training: There should be training and continuing education for officers presiding in family courts and staff. Necessary training for Judges appointed by State Judicial Academy.
4. Over-emphasis on reconciliation should be avoided, and counselling and other proceedings should be dispensed accordingly. In cases where there is no love or compatibility and when the marital relationship is broken irretrievably, cases should be disposed of at the earliest.
5. Rules are to be suitably amended to promote conciliation and speedy settlement

Discussant 3

1. Family dispute Registration and Pre-court mediation

A provision for registration of family disputes may be introduced. It can be in the form of an incident report. Such process shall be voluntary, for parties do not wish to proceed to a case forthwith. Each court may create a panel of mediators for providing service to the parties who have applied for pre-court mediation. Such mediators may be appointed by fixing an honorarium per sitting. The court shall have the power to summon the opposite party for a pre-court mediation. Modern forms of communication may be

utilized for the same. The non-appearance of the opposite party shall not create any adverse inference if the matter proceeds to a case at a later stage.

This has been successfully tested in Mumbai and Delhi.

II. Training and Gender Sensitization

- Training for District Judges who are interested in posting in Family Courts. In the current scenario, the appointment of Judges is generally made on general transfers based on vacancy, and the judge concerned may not have any training whatsoever before such appointment. Such training may be voluntary, but only such Judges who have undergone the necessary basic training be considered for the position in the Family Court.

➤ Training for Practicing Lawyers

The practicing Lawyers in family courts need to be given training organized by Bar Council or High Court or the National/ State Judicial Academy as the case may be, on a paid or subsidy basis depending on the available funds. Such training should cover a minimum of family laws, gender sensitization, steps that can be done before filing a case, training for pre-trial settlements etc.

- Training for Counsellors: Pre-service and in-service training are to be devised for family court counsellors to develop and learn proven techniques in marriage counselling and to deal with children.
- Training of Mediators interested in Family Matters can also be specifically designed.
- Training and Gender Sensitization of Police is vital. There are complaints that the police behave in the most insensitive manner in several cases, remain inactive in most deserving cases, and make excuses in innocent matters. In Telangana, it was found that police proposed counselling for the women approaching the police station with complaints on domestic violence three times at an interval of 15 days each. Such practice is said to pursue the Guidelines issued to make the Supreme Court (2014). However, this is a serious misinterpretation, and all the Supreme Court suggested was to avoid immediate arrest. This police-initiated counselling inflicts further violence upon the aggrieved women; no complaint filed, forced counselling with the oppressor, and the women have to go back to the same shared household where the possibility of further violence cannot be avoided.

III. Simplification of Court Procedure and Avoid Multiplicity of Petitions

- All the matters in divorce, maintenance, custody, guardianship, and property can be clubbed in a single petition with a single Pro-forma application, as is used in the case of maintenance today.
- The application of CPC shall be given away wherever possible.
- The court should not adhere to technicalities. Procedural irregularities should not vitiate the intention of the parties.
- The submissions in an open court may be considered for interim relief in appropriate cases even without an affidavit or petition. Say, for example, a matter of temporary custody or visitation may be allowed by request so made in an open court without a petition plus affidavit, another posting for the counter, another for hearing, so and so.

IV. Informal and Child-Friendly atmosphere in courts

- Family Court design today follows a pattern that open court is the rule, and in-camera, the proceeding is an exception. It needs to be thought of whether a Chamber hearing can be made a rule in matters relating to marriage.
- As far as possible, attempts shall be made to create an informal atmosphere in family courts. The requirement of robes for Lawyers and Judges should be given away altogether in family courts. Children living in environments of marital conflicts are made to languish in court premises ridden with conflicts, in the presence of police, Lawyers etc. It is a matter of deep concern that a juvenile or even a consumer in the present system has the privilege of being in an informal court atmosphere in which children in marital conflicts are denied.
- A Court organisation with a combination of Judge, Psychologist or/ and Social Worker with the Judge as President in the lines of Consumer Fora may be considered.

V. Liberal Approach in Divorce Cases

- No marriage can exist if either party does not want to continue in the marital relationship. Court order of restitution of conjugal rights or non-granting of divorce will not by itself result in the resumption of cohabitation, marital relationship. As the age goes up, the chance of remarriage becomes less.
- In cases where the family court grants the divorce, there shall be no appeal. The appeal should be limited to ancillary matters and cases denied divorce.
- A Panel of Counsellors trained in different areas, including child psychology, may be appointed for the service of the court in family disputes.

Discussant 4

We are discriminatory towards have-nots in our realisation. Dalits, Muslims, and the poor face challenges within the state institutions, including the judiciary. Within a marriage, men and women should be equal. However, the dominant understanding remains that women have to be subservient to the husband. This understanding persists at several levels including the police. A recent instance of the Supreme Court suggesting the accused in a case of repeatedly raping a minor if he would marry her is terrible.

Family courts can continue to have a conciliatory approach in the spirit of resolution of disputes. However, Family courts need to have a rights-based system. In a marriage, the woman is an unequal party and this point of view need to be looked at seriously.

Community outreach is vital, i.e., most women are not even aware that divorce courts are an option.

Police officers often asks, "If your husband will not beat you, who will beat you" and that is the approach. Setting up of Women Police Stations and sensitisation of officers is necessary. There is a need to empathise with the already marginalised, including women.

Poor literacy, education and income levels of Muslims and Dalits aggravate their situation.

Taking a detour, Women go to family court for maintenance and custody and when it comes to the majority community, they have a range of laws concerned with family and divorce and these are all codified laws. Crying need for reforms in Muslim personal law since the religion gives rights is difficult to transact into reality.

The rule is of Access ie In North India, the living pattern is extremely ghettoised. The most accessible place available at her doorstep is Shariat court, which is entirely male-dominated. She cannot go to Shariat court without a mahram.

Considerations of puberty cannot guide consent in the age of marriage in 2021. Justice should be made available in a time-bound manner- e.g. Maintenance petitions themselves often take 2-3 years. Measures to bring accountability in working of family courts also needs to be considered.

Discussant 5

There should be a major shift in understanding family and family conflicts. The romantic notion of family needs to be given away with. In many cases where reconciliation is not desired, it would be an injustice to force reconciliation upon them.

Courts are interpreters of family law. Dissatisfaction from the family court comes from the reality that there is a gap between intended object and reality. There is a Cognitive dissonance between what is portrayed in the file and what they want. Cases are often filed to hold the other party at ransom.

The absence of unilateral or No-fault divorces is a significant area for reform.

Simplifying the procedure for couples who do not wish to continue is essential. Lengthy procedures incentivize the parties to make allegations against each other.

Infrastructural bottlenecks contribute to making access to information difficult. The old buildings, dingy smell- it is mentally and emotionally overwhelming to get into that sad building. Talking from experience, Junior civil court complex- Medchal has no female toilet on the premises.

Reforms Suggested

1. The focus should be made on reforms that simplify the existing case load
2. The state government needs to ensure family courts are neat, clean and airy.
3. Time slots can be given for parties for presenting themselves before the court.
4. The canteen, drinking water, creches should be made available.
5. Revisit the pool of availability counsellor. Counsellors must be available full time and must be of varied backgrounds.
6. The therapist is missing from the family court setup.
7. Legal advice needs monitoring. The presumption that the litigant lawyer will appraise them of rights is not correct. The judge may evaluate legal advice to the parties in his own merit.
8. Use of legal aid centres of colleges and universities to be employed.
9. Family court Judges are under pressure themselves - sensitisation and psychological workshop for Judges would assist well.
10. The representation of women Judges should be improved.
11. Winding up matrimonial matters is vital. The Introduction of the Telangana Minority Marriage Counseling Centre has resulted in a marked reduction in marital disputes in Muslim personal law.
12. Family court functioning in Varanasi may be used as reference methodology.

Discussant 6

After examining the functioning of family courts in UP, expectations are not yet achieved. The system gave rise to frustration. Gender justice which was the underlying compulsion in introducing family courts is missing. The main objective in seeking the establishment of a family court was to split matrimonial litigation from civil court, making it less formal and less intimidating. However, the experience of family courts to date has shown that this has been broadly not achieved. Reference was made to:

- a. *KA Abdul Jaleel v. Shahida*
- b. Justice Lahoti Guidelines

Discussant 7

Considering the conditions of family court, family court designed to make it informal for women is increasingly turning to legal set up. It has become more of an adversarial litigation field and this benefits none of the parties.

The mode of dealing with the family court should be not in a regular legal frame.

Cases pending just because notice is not served - just for the return of summons and paper publication is most common.

A maintenance order may be achieved but she has to come to court again for adjudication by filing an executive petition. This is very serious.

While mediation and counselling have been set out as a romantic notion, when we do all that, we forget what women would have gone through. If the counsellor is not trained in legal aspects, women will miss out on legal rights for the sake of settling matters. Thus, critical legal rights and entitlements for women are foregone mainly in settlement cases.

Just for divorce, she might file mutual consent. Family court structure should be in a way that understands the ego, hurt or injuries each party would have undergone.

Family Court Infrastructure

Family court setup should be made more child friendly. It is not an accused and complainant setting. More spacious family court is sought for. Parties need to come only at the time when the case is called.

Unfortunate incidents during custody battles is that no area to enable access for children. Road or court complex for visitation of children is grossly improper.

The initial concept of family court was to make it separate from court complexes, and the family courts are increasingly finding their way back to regular court structures.

Parties are forced to constantly appear in court. They need not come at every hearing. It's emotionally traumatic. It acts more like an emotionally draining situation than strengthening.

General Discussion

- ✓ A family court complex may set up with separate area for child care access.
- ✓ The romantic notion of a family may be kept away with.
- ✓ Gender Justice may be added as one of the objectives in the Preamble to the Act.
- ✓ The system does not understand why people have come to court.
- ✓ Evidence taking in family courts happen in the common framework though there are certain concessions given in the family court framework.

- ✓ Appointment of advocate commissioners has to be given away with- the judge himself should take evidence briefly. This suggestion was broadly accepted. The Advocate Commissioners often are junior advocates and will be forced to write whatever senior Lawyers ask them to. It is also problematic because the court wants parties to meet at an appropriate place and time, which would also be contingent on the availability and convenience of the Commissioner concerned.

Key Takeaways

1. The need for streamlining the right of Muslim women in line with other women was contemplated. The possibility of a uniform code for divorce was also conceived. It was opined that the existing family court system with inbuilt conciliation and mediation provisions is as Islamic as possible. It hence should be the recognized forum for divorce of Muslim men as well.
2. In custody matters, the court should play an inquisitorial function rather than an adversarial function. The court can collect all necessary information before issuing an order.
3. Introduction of Pre-litigation Counseling and Mediation was emphasized upon. The materials shared during this session will be confidential. The positions taken during this stage will not adversely affect the parties if the parties subsequently move to the litigation stage. No legal representation shall be allowed at this stage.
4. All matters in divorce, ie maintenance, guardianship, custody and property, may be clubbed together in a single petition with a single Pro-forma application.
5. Continuing legal education and training, including gender sensitization, shall be made available to all Judges, Lawyers and family court staff.
6. All the ancillary litigation shall be heard and disposed of together. However, the contrary opinion is that if divorce is delayed, the possibility of remarriage of the parties may be affected. This may be decided on a case to case basis.
7. The procedure of filing separate execution petitions for maintenance decrees may be dispensed altogether. The execution of maintenance decree should automatically be said to be open at the time of issue of the maintenance order.
8. The family courts today are no different from regular civil courts in terms of procedure or evidence. The use of CPC as regards family courts may be avoided entirely.
9. An informal atmosphere may be maintained in family courts as far as possible. Robes of Lawyers and Judges may be avoided. Submissions in open courts may be taken as petitions to award interim relief wherever possible.
10. The call for better infrastructure for family courts was vehemently stressed: it was noted that the initial idea was to have family courts outside of the regular court structures. However, the family courts are increasingly getting back to regular court complexes. Separate family court complexes which are neat, clean, spacious and airy, with facilities of toilet, canteen, and children's lounge, crèche, family space/ space for visitation etc. was emphasized.
11. The practice of assigning advocate commissioners may be dispensed with.
12. Undue emphasis on reconciliation may be given away, and divorce should be made more liberal.

13. Better case management strategies like advance time fixing for each case and dispensing the personal appearance of parties at each posting was contemplated.
14. Gender Justice should be incorporated within the Objectives of the Act.
15. Steps may be taken to ensure time-bound justice.
16. Legal service centres may recruit law students, or legal aid clinics attached with colleges and universities may initiate awareness and sensitization drives on legal rights and remedies in marital relations.

Chapter 5: Sampling Framework and Field Survey

5.1 Quantitative Research: Sampling Framework

A sampling framework is created for identification of four family courts in three selected states for the purpose of study.

Background

There are multiple sources to collect the data concerning family courts – (a) Lok Sabha and Rajya Sabha websites (b) E-Courts website and National Judicial Data Grid. The information as is available from the Lok Sabha and Rajya Sabha websites as answers to parliamentary questions are limited to state level. The information from e-courts and NJDG are elaborate, but yet limited by the search functions. The E-courts, designed from a practitioner's perspective, is a reservoir of data, if worked through with the help of a practitioner, can be proved useful. The data is collated in terms of district as well as court establishment. Hence, the primary task is to identify the court establishment in which family court is located; where family court is located in separate court establishment, information is readily available. The information so available includes the specific data relating to cases – important dates include date of filing, date in which service to respondent is completed, date in which written statement is filed, posting dates for report of mediation, steps, evidence of both parties, arguments, final hearing and judgment. However, the updation of records is not consistent across states/ courts. Further, the data uploaded is incomplete. Final orders/ judgment is not uploaded in most cases. The NJDG, while provides state and district level data pertaining to civil and criminal cases, family court specific data is not available. The necessary data needs to be obtained by directly writing to the respective courts, NJDG Repository or by application under Right to Information Act.

The data to be obtained include the following:

1. Filing of cases
 - a. District wise filing of cases for the years 2017, 2018, 2019
 - b. Court wise filing of cases for the years 2017, 2018, 2019
 - c. Average filing of cases for the years 2017, 2018, 2019
2. Disposal of cases
 - a. District wise disposal of cases for the years 2017, 2018, 2019
 - b. Court wise disposal of cases for the years 2017, 2018, 2019
 - c. Average disposal of cases for 2017, 2018, 2019
3. Pendency of cases
 - a. District wise pendency of cases for the years 2017, 2018, 2019
 - b. Court wise pendency of cases for the years 2017, 2018, 2019
 - c. Average pendency of cases for the years 2017, 2018, 2019

Once the necessary data is obtained, the districts as well as courts may be ranked on the basis of,

- (i) Disposal/ clearance rate (ratio of cases disposed to cases filed in a given year)
- (ii) Congestion rate (ratio of cases pending and cases filed to cases disposed in a given year)

Disposal rate is indicative of the efficiency of the court in disposing the matters on a regular basis. The congestion rate, on the other hand, presents a better picture of the state of affairs of the court given the backlog of cases.

After the ranking is created, four courts may be selected as samples for the purpose of the study. The courts with highest clearance rate, lowest clearance rate, highest congestion rate, and lowest congestion rate may be marked.

The selection may be so adjusted such that,

- a) The sample should be representative of the entire geography of the state.
- b) Not more than one court shall be selected from the same district.
- c) The sample selected should include both urban and rural regions (if regions are not clearly demarked as urban or rural, predominantly urban and predominantly rural).

The final selection of the sample was done considering following factors: average number of cases filed in a year, disposal rate, congestion rate, percentage of urban population, regional particularities and the geographical spread.

Table 3 District wise Statistics of Family Court Cases- Kerala

DISTRICT WISE STATISTICS OF FAMILY COURT CASES – FILING, DISPOSAL AND PENDENCY FOR THE YEARS 2017, 2018 & 2019										
District	Total Filing (2017, 2018, 2019)	Avg filing	Total Disposal (2017, 2018, 2019)	Avg Disposal	Disposal Rate (Disposal / Filing)	Total Backlog	Avg Backlog	Filing + Backlog	Congestion Rate	% of Urban Popln ⁹¹
TVM	28421	9474	23796	7932	0.837268	37268	12422.67	21896	2.760506	53.8
Kollam	20969	6990	18500	6166.667	0.882255	28813	9604.333	16594	2.690919	45.1
Pathanamthitta	9065	3022	7989	2663	0.881302	9725	3241.667	6263	2.351984	11
Kottayam	9809	3270	8576	2858.667	0.874299	9685	3228.333	6498	2.273088	28.6
Alappuzha	11051	3684	10058	3352.667	0.910144	10553	3517.667	7201	2.147942	54.1
Idukki	4989	1663	4803	1601	0.962718	4677	1559	3222	2.012492	4.7
Ernakulam	15382	5127	14040	4680	0.912755	17708	5902.667	11030	2.356838	68.1
Thrissur	19440	6480	16925	5641.667	0.870628	17756	5918.667	12399	2.197696	67.2
Palakkad	10330	3443	9316	3105.333	0.901839	13408	4469.333	7913	2.548089	24.1
Kozhikode	12346	4115	11284	3761.333	0.91398	9971	3323.667	7439	1.977756	67.2
Malappuram	13283	4428	11459	3819.667	0.862682	14413	4804.333	9232	2.416965	44.2
Waynadu	2919	973	2703	901	0.926002	1752	584	1557	1.72808	3.9
Kannur	15655	5218	14756	4918.667	0.942574	11269	3756.333	8975	1.824614	65
Kasargod	3153	1051	3201	1067	1.015224	3063	1021	2072	1.941893	38.8

⁹¹ State Urbanization Report, 2012 prepared by the Department of Town & Country Planning, Government of Kerala

5.1.1 Sampling Framework: Kerala

Table 4 Ranking of Districts based on Court Performance Statistics

Highest in Average Cases filed per year				Lowest in Average Cases filed per year			
South Kerala	Central Kerala	North Kerala	All Kerala	South Kerala	Central Kerala	North Kerala	All Kerala
TVM	Thrissur	Kannur	TVM	Pathanamthitta	Idukki	Waynadu	Waynadu
Highest Congestion Rate				Lowest Congestion Rate			
TVM	Ernakulam	Malappuram	TVM	Alappuzha	Idukki	Waynadu	Waynadu
Highest Disposal Rate				Lowest Disposal Rate			
Alappuzha	Idukki	Kasargode	Kasargode	Thiruvananthapuram	Thrissur	Malappuram	Thiruvananthapuram

Once the four districts are selected considering the geographical coverage, urban/rural population and court performance statistics, one court from each such district is selected using the court-wise family court statistics. The largest court in each district, based on average filing per year is selected for the study. The details of court-wise family court statistics- filing, disposal and pendency for the years 2017, 2018 and 2019 are given below:

Table 5 Court-Wise Family Court Statistics—Filing, Disposal, Pendency for 2017, 2018 & 2019

Family Court		Total Filing	Mean Filing	Total Disposal	Mean Disposal	Disposal Rate	Total Backlog	Mean Backlog	Mean Backlog + Mean Filing	Congestion Rate
		(2017+2018+2019)	(2017+2018+2019) / 3	(2017+2018+2019)	(2017+2018+2019) / 3	(Average Disposal / Average Filing)	(2017+2018+2019)	(2017+2018+2019) / 3		(Mean Backlog + Mean Filing) / Mean Disposal
TVM		12397	4132	10379	3459.667	0.837219	18812	6270.667	10403	3.006937
Nedu mangad		7728	2576	6710	2236.667	0.868271	9799	3266.333	5842	2.612072
Attingal		8296	2765	6707	2235.667	0.808462	8657	2885.667	5651	2.527658
	TVM	28421	9474	23796	7932	0.837268	37268	12422.67	21896	2.760506
Kollam		8319	2773	7372	2457.333	0.886164	10893	3631	6404	2.606077
Kottarakkara		7589	2530	6357	2119	0.83766	12016	4005.333	6535	3.084002
Chavara	Kollam	5061	1687	4771	1590.333	0.942699	5904	1968	3655	2.29826
	Kollam	20969	6990	18500	6166.667	0.882255	28813	9604.333	16594	2.690919
Thiruvalla		3082	1027	2894	964.6667	0.939001	2746	915.3333	1943	2.013822
Pathanamthitta	Pathanamthitta	5983	1994	5095	1698.333	0.851579	6979	2326.333	4321	2.544063
	Pathanamthitta	9065	3022	7989	2663	0.881302	9725	3241.667	6263	2.351984
Ettumanoor		6431	2144	5636	1878.667	0.87638	6516	2172	4316	2.297197
Pala	Kottayam	3378	1126	2940	980	0.870337	3169	1056.333	2182	2.226871
	Kottayam	9809	3270	8576	2858.667	0.874299	9685	3228.333	6498	2.273088
Alappuzha		4573	1524	4124	1374.667	0.901815	3666	1222	2746	1.997818
Mavelikara	Alappuzha	6478	2159	5934	1978	0.916023	6887	2295.667	4455	2.252275
	Alappuzha	11051	3684	10058	3352.667	0.910144	10553	3517.667	7201	2.147942
Thodupuzha		2323	774	2470	823.3333	1.06328	1737	579	1353	1.643725
Kattappana	Idukki	2666	889	2333	777.6667	0.875094	2940	980	1869	2.402915

	Idukki	4989	1663	4803	1601	0.962718	4677	1559	3222	2.012492
Ernakulam		11666	3889	10875	3625	0.932196	15052	5017.333	8906	2.456828
Muvattupuzha	Ernakulam	3716	1239	3165	1055	0.851722	2656	885.3333	2124	2.01327
	Ernakulam	15382	5127	14040	4680	0.912755	17708	5902.667	11030	2.356838
Thrissur		13995	4665	12146	4048.667	0.867881	10637	3545.667	8211	2.027993
Irinjalakuda	Thrissur	5445	1815	4779	1593	0.877686	7119	2373	4188	2.629002
	Thrissur	19440	6480	16925	5641.667	0.870628	17756	5918.667	12399	2.197696
Palakkad		6274	2091	5417	1805.667	0.863405	8089	2696.333	4788	2.651468
Ottappalam	Palakkad	4056	1352	3899	1299.667	0.961292	5319	1773	3125	2.404463
	Palakkad	10330	3443	9316	3105.333	0.901839	13408	4469.333	7913	2.548089
Kozhikode		7626	2542	6961	2320.333	0.912798	6575	2191.667	4734	2.04008
Vatakara	Kozhikode	4720	1573	4323	1441	0.91589	3396	1132	2705	1.8774
	Kozhikode	12346	4115	11284	3761.333	0.91398	9971	3323.667	7439	1.977756
Malappuram		6410	2137	5350	1783.333	0.834633	6699	2233	4370	2.45028
Tirur	Malappuram	6873	2291	6109	2036.333	0.88884	7714	2571.333	4862	2.387789
	Malappuram	13283	4428	11459	3819.667	0.862682	14413	4804.333	9232	2.416965
Kalpetta	Waynadu	2919	973	2703	901	0.926002	1752	584	1557	1.72808
Kannur		7949	2650	7486	2495.333	0.941754	6793	2264.333	4914	1.969276
Thalassery	Kannur	7706	2569	7270	2423.333	0.943421	4476	1492	4061	1.675653
	Kannur	15655	5218	14756	4918.667	0.942574	11269	3756.333	8975	1.824614
Kasaragod	Kasargod	3153	1051	3201	1067	1.015224	3063	1021	2072	1.941893
	All-Kerala	176812	58937	157406	52468.67	0.890245	190061	63353.67	122291	2.330743

Sample Districts Chosen and Rationale for Selection:

South Kerala (Thiruvananthapuram, Kollam, Pathanamthitta, Kottayam, Alappuzha)

I Thiruvananthapuram

There are multiple reasons for choosing Thiruvananthapuram district for the study. Thiruvananthapuram district has the highest number of cases filed per year among the 14 districts in Kerala. The average cases filed per year in this district is way higher than the other districts. Thiruvananthapuram files on an average 9474 cases in the family court, followed by Kollam district which files an average of 6990 cases per year. The gap between the highest and second highest district in terms of the average number of cases filed is 2484 cases. One should also note that the state average per district in terms of number of cases filed is 4209.78. There are three family courts set up in this district.

Thiruvananthapuram also has the highest congestion ratio (2.76), and the lowest disposal ratio (0.83). This shows the poor state of the district in terms of family court functioning. The backlogs contribute to the congestion and also affect the regular functioning of the court.

Since, Thiruvananthapuram finds itself as the highest in cases filed, congestion rate and lowest disposal rate in Sothern Kerala as well as in All-Kerala ranking, no other district from South Kerala is considered for the purpose of the study.

There are three family courts set up in Thiruvananthapuram – Thiruvananthapuram, Nedumangad and Attingal. With a congestion rate of 3.00 and with highest average cases filed in the district at 4132, Thiruvananthapuram Family Court is the clear choice. (Nedumangad and Attingal has a congestion rate of 2.61 and 2.52 and the average cases filed at 2236 and 2235 respectively.)

Thiruvananthapuram family court, located in the state capital, is also a major city in Kerala. With 53 percent of urban population, Thiruvananthapuram district is classified as high level of urbanisation.

II. Central Kerala (Idukki, Ernakulam, Thrissur, Palakkad)

The district level picture of Central Kerala is represented in the tabular form below:

Table 6 The District Level Picture of Central Kerala

Level of Urbanization	Avg. number of cases filed	Congestion Rate	Disposal Rate
Ernakulam (68.1) – HIGH	Thrissur (6480)	Palakkad (2.54)	Idukki (0.96)
Thrissur (67.2) – HIGH	Ernakulam (5127)	Ernakulam (2.35)	Ernakulam (0.90)
Palakkad (24.1) – MEDIUM	Palakkad (3443)	Thrissur (2.19)	Palakkad (0.91)
Idukki (4.7) – LOW	Idukki (1663)	Idukki (2.0)	Thrissur (0.87)

Since District-specific data do not point to a clear direction, we move on to analyze the court specific data. Notable courts are Ernakulam, Thrissur, Thodupuzha (Idukki) and Palakkad.

1. Let us put Ernakulam and Thrissur family courts on a comparative matrix. (Here, reference is to court and not district)
 - a. Both Thrissur and Ernakulam are predominantly urban. Court Location is also urban. (Urban population level of both districts are almost the same – 68 and 67 percent respectively).
 - b. Thrissur has the highest average cases filed per year (4665) followed by Ernakulam (3888).
 - c. Ernakulam has the highest average backlog per year (5017) followed by Thrissur (3546).
 - d. Congestion rate of Ernakulam is 2.45 and that of Thrissur is 2.02.
 - e. Disposal rate of Ernakulam is 0.93 and that of Thrissur is 0.86.

An interesting point to be noted here is that contrary to the general trend of higher congestion rate and lower disposal ratio, Ernakulam has a relatively better disposal rate despite the heaviest backlogs and a high congestion ratio.

2. Thodupuzha is a best performing court in the state with a disposal rate of 1.06 (Highest in Kerala) and congestion rate of 1.64 (Lowest in Kerala). This is partly attributable to the lower number of average cases filed per year, which is also the lowest in Kerala.
3. Irinjalakkuda (Thrissur) and Palakkad are also interesting cases in point as both these courts have higher congestion ratio of 2.62 and 2.65 and among the lowest disposal ratios (0.87, 0.86) despite relatively low annual filing of cases (1815, 2091).

Here, based on the peculiarity of relatively better performance of Ernakulam despite heavy backlog, Ernakulam is chosen for the study. Also, Ernakulam is the major city with highest level of urbanization in Kerala, home to the High Court of Kerala, and the accessibility to Lawyers and Judges is maximum. It is therefore decided that Ernakulam family court shall constitute the sample from Central Kerala.

III. North Kerala (Kozhikode, Malappuram, Waynadu, Kannur, Kasargode)

1. The highest average number of cases filed in Central Kerala is in the order of Kannur, Malappuram, Kozhikode, Kasargode, Waynadu.
2. The highest congestion rate in Central Kerala is in the order of Malappuram, Kozhikode, Kasargode, Kannur, Waynadu.
3. The highest disposal rate is in the order of Kasargode, Kannur, Waynadu, Kozhikode, Malappuram.

Within North-Kerala, Waynadu and Kasargode are two districts with special characteristics.

- Waynadu has the highest tribal population in Kerala (18.5 percent)⁹² and the urban population is limited to 3.9 percent.
- Kasargode is a border district (bordering Karnataka) with a different culture, and is home to many linguistic minorities. 29.53⁹³ percent population in Kasargode speak languages other than Malayalam, the most commonly spoken language in Kerala. Urban population in the district is 38.8 percent. The filings in these family courts are among the lowest in Kerala.

The selection of either of these districts cannot be said to be representative of the North Kerala. One of these districts may be selected for detailed study given its peculiar characteristics.

A Comparative study of the rest of the districts in North- Kerala is warranted. The court-wise data analysis is made necessary in this case as well.

1. Kozhikode and Kannur have urban population of 67.2 and 65 percent respectively. Malappuram has an urban population of 44.2.
2. Highest average number of cases are filed in Kannur; highest congestion ratio is in Malappuram; and highest disposal ratio among the lot is Kannur. This statistic requires further scrutiny via court-wise evaluation.

Kozhikode, Kannur and Malappuram have two courts each. The comparable courts from each district are subjected to analysis.

Table 7 Comparison of North Kerala Districts

Court	Avg. Filing	Avg. Disposal	Avg. Pendency	Avg. Backlog	Clearance/Disposal Rate	Congestion Rate
Manjeri (Malappuram)	2136.6	1783	2233	4370	0.83	2.45
Kannur	2649	2495	2264	4914	0.94	1.96
Kozhikode	2542	2320	2192	4734	0.91	2.04

From the above statistics, it is clear that Kannur is a better performing court, and Manjeri (Malappuram) is a poor performing family court in Central Kerala. Either of these may be selected for the purpose of our study.

Given the fact that the other two courts selected from South Kerala and Central Kerala being predominantly urban (level of urbanization- high), it is proposed that Malappuram district with medium level of urbanization (44.2) be chosen for the study. Within Malappuram, Manjeri family court having higher number of cases is selected for the study.

District Chosen for Its Peculiar Characteristics

As explained above, Waynadu and Kasargode are two districts in Kerala with special characteristics.

⁹²Census, 2011

⁹³ *Ibid.*

- Waynadu has the highest tribal population in Kerala (18.5 percent) and the urban population is limited to 3.9 percent.
- Kasargode is a border district (bordering Karnataka) with a different culture, and is home to many linguistic minorities. 29.53 percent population in Kasargod speak languages other than Malayalam, the most commonly spoken language in Kerala. Urban population in the district is 38.8 percent. The filings in these family courts are among the lowest in Kerala.

One of these districts may be selected for detailed study given its peculiar characteristics.

Both these districts are not comparable on its peculiarities. Kasargod is medium level urban (38.8%) and at 3.9 % Waynad is the lowest in terms of urbanization in Kerala. However, given the fact that Waynad is the lowest in Kerala in terms of number of cases filed and congestion ratio (possibly attributable to the lower population of the region), this is a relevant statistic for the purpose of the study.

Hence, it is proposed that Waynad be selected for the purpose of our study. There is only one family court in Waynad, at Kalpetta.

Table 8 Final Courts Selected for the Study

Geographical Coverage	Level of Urbanization	District	Court
North Kerala	High	Thiruvananthapuram	Thiruvananthapuram
Central Kerala	High	Ernakulam	Ernakulam
South Kerala	Medium	Malappuram	Manjeri
Based on Peculiar Characteristics	Low	Waynad	Kalpetta

5.1.2 Sample Selection in Telangana

Family Courts in the State of Telangana

At present there are 16 Family Courts in the State of Telangana, their District wise distribution is as follows:

Table 9 District wise Distribution of Family Courts in Telangana

S.No	Name of the Court	District	Erstwhile Dist
1	Family Court Hyderabad - CCC ⁹⁴	Hyderabad	Hyderabad
2	Addl. Family Court Hyderabad – CCC	Hyderabad	Hyderabad
3	Addl. Family Court Hyderabad - MSJ ⁹⁵	Hyderabad	Hyderabad
4	Family Court Secunderabad – CCC	Hyderabad	Hyderabad
5	Family Court L.B Nagar -RRDC ⁹⁶	RR District	RR District
6	Addl.Family Court L.B Nagar –RRDC	RR District	RR District
7	Addl.Family Court Kukatpally -RRDC	Medchal- Malkajiri	RR District
8	Addl.Family Court Malkajiri –RRDC	Medchal- Malkajiri	RR District
9	Family Court Adilabad Dist Court	Adilabad	Adilabad
10	Family Court Karimnagar Dist Court	Karimnagar	Karimnagar
11	Family Court Khammam Dist Court	Khammam	Khammam
12	Family Court Mahabubnagar Dist Court	Mahabubnagar	Mahabubnagar
13	Family Court Medak Dist Court	Medak	Medak
14	Family Court Nalgonda Dist Court	Nalgonda	Nalgonda
15	Family Court Nizamabad Dist Court	Nizamabad	Nizamabad
16	Family Court Warangal Dist Court	Warangal Urban	Warangal

As the present study requires that the research be carried out at Family Courts, therefore it becomes important to evolve a methodology where District which are selected for the present research have an existing Family Court situated at the selected District. From the above table it can be observed that certain districts have more than one Family Court and most of the District do not have either a Family Court or a District Court, but have some Additional Courts of varying levels.

Administrative Divisions within the State

Earlier the State of Telangana had eight 8 District which were later subdivided into 31 Districts. The erstwhile eight (8) District at least had one Family Court at the District level but with the subsequent subdivision only eleven (11) Districts have one or more Family Court.

⁹⁴ City Civil Court.

⁹⁵ Metropolitan Session Judge.

⁹⁶ Ranga Reddy District Court.

Zones within the State

At present the Central Government has cleared the proposal of the the Telangana Government to reorganize the zones for TSPSC in to new seven zones. The seven zones are Kaleshwaram (Zone 1), Basara (Zone 2), Rajanna (Zone 3), Bhadradri (Zone 4), Yadadri (Zone 5), Charminar (Zone 6) and Jogulamba (Zone 7). While zones 1, 2, 3 and 4 would be part of the first Multi-Zone, the remaining three zones would be part of the second Multi-Zone.

Multi-Zone-1

Kaleshwaram (Zone 1): Asifabad-Komarambheem, Mancherial, Peddapalli, Jayashankar-Bhupalapalli, Mulugu districts

Basara (Zone 2): Adilabad, Nirmal, Nizamabad, Jagitial districts

Rajanna (Zone 3): Karimnagar, Sircilla-Rajanna, Siddipet, Medak, Kamareddy districts

Bhadradri (Zone 4): Kothagudem-Bhadradri, Khammam, Mahabubabad, Warangal Rural, Warangal Urban districts

Multi-Zone-2

Yadadri (Zone 5): Suryapet, Nalgonda, Bhongir-Yadadri, Jangaon districts.

Charminar (Zone 6): Medchal-Malkajgiri, Hyderabad, Rangareddy, Sangareddy, Vikarabad districts.

Jogulamba (Zone 7): Mahabubnagar, Narayanpet, Jogulamba-Gadwal, Wanaparthy, Nagarkurnool districts

For Police Department

Multi-Zone-1

Kaleshwaram (Zone 1): Asifabad-Komarambheem, Jayashankar-Bhupalapalli, Mulugu Districts and Ramagundam Police Commissionerate

Basara (Zone 2): Adilabad, Nirmal, Jagitial Districts and Nizamabad Police Commissionerate

Rajanna (Zone 3): Karimnagar Police Commissionerate and Siddipet Police Commissionerate, Sircilla-Rajanna, Medak and Kamareddy Districts

Bhadradri (Zone 4): Kothagudem Bhadradri, Khammam Police Commissionerate, Mahabubabad and Warangal Police Commissionerate

Multi-Zone-2

Yadadri (Zone 5): Suryapet, Nalgonda, Rachakonda Police Commissionerate

Charminar (Zone 6): Hyderabad police commissionerate, Cyberabad Police Commissionerate, Sangareddy and Vikarabad Districts

Jogulamba (Zone 7): Mahabubnagar, Narayanpet, Jogulamba-Gadwal, Wanaparthy, Nagarkurnool Districts.

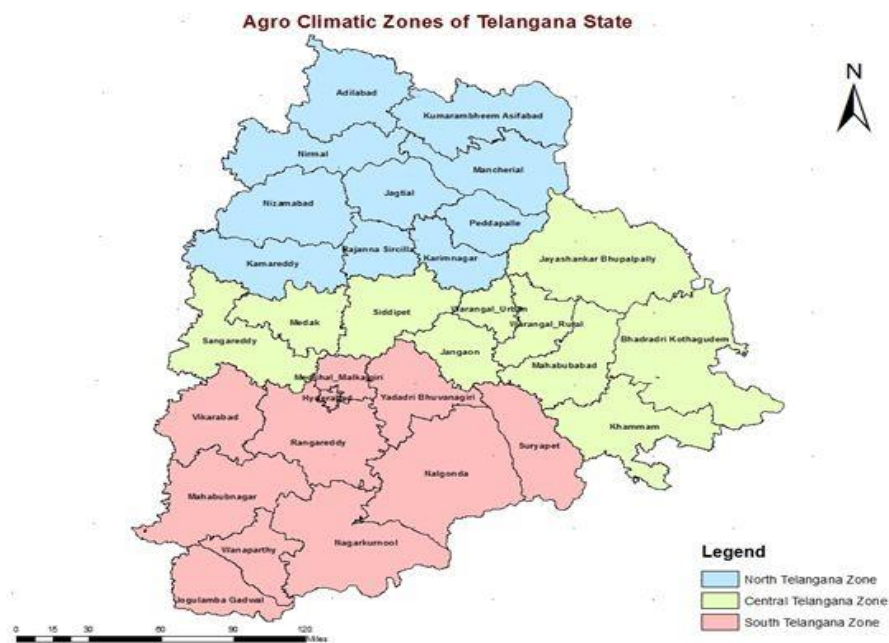
The above-mentioned zones are not useful for the present study as they are divided for the purpose of recruitment and are recently formed. As only four (4) Family Courts are required for the purpose of the present study three of the zones would be missed.

Geographical Regions

There are no particular geographical divisions in the State of Telangana. But the State can be divided into agro-climatic zones based on the geographical characteristics such as rainfall, temperature, nature of soils etc. as follows:

1. North Telangana Zone
2. Central Telangana Zone
3. South Telangana Zone

Agro Climatic Zones of Telangana State⁹⁷



The following Districts of Telangana State come under North Zone:

- 1) Adilabad 2) Komurambheem Asifabad 3) Nirmal 4) Mancherial 5) Nizamabad 6) Jagtial 7) Peddapalli 8) Kamareddy 9) Rajanna Sircilla 10) Karimnagar

Central Zone

The following Districts of Telangana State come under Central Zone:

- 1) Sangareddy 2) Medak 3) Siddipet 4) Jangaon 5) Warangal Urban 6) Warangal Rural 7) Jayashankar Bhupalpally 8) Mahabubabad 9) Bhadradi Kothagudem 10) Khammam.

⁹⁷ <https://www.pjtsau.edu.in/agro-climatic-zones.html>

South Zone

The following Districts of Telangana State come under South Zone:

1) Vikarabad 2) Rangareddy 3) Medchal Malkajgiri 4) Hyderabad 5) Yadadri Bhuvanagiri 6) Suryapet 7) Nalgonda 8) Nagarkurnool 9) Mahabubnagar 10) Wanaparty 11) Jogulamba Gadwal.

Dividing the State into the above three zones is helpful as it would cover the Family Courts across the state. At least one Family Court would be covered in each Zone for collection of primary data.

Table 10 Zonal-wise Family Courts Present in Telangana

S.No	Name of the Court	District	Erstwhile Dist
NORTH ZONE			
1	Family Court Adilabad Dist Court	Adilabad	Adilabad
2	Family Court Nizamabad Dist Court	Nizamabad	Nizamabad
3	Family Court Karimnagar Dist Court	Karimnagar	Karimnagar
CENTRAL ZONE			
1	Family Court Medak Dist Court	Medak	Medak
2	Family Court Khammam Dist Court	Khammam	Khammam
3	Family Court Warangal Dist Court	Warangal Urban	Warangal
SOUTH ZONE			
1	Family Court Hyderabad – CCC	Hyderabad	Hyderabad
2	Addl. Family Court Hyderabad - CCC	Hyderabad	Hyderabad
3	Addl. Family Court Hyderabad - MSJ	Hyderabad	Hyderabad
4	Family Court Secunderabad – CCC	Hyderabad	Hyderabad
5	Family Court L.B Nagar –RRDC	RR District	RR District
6	Addl.Family Court L.B Nagar –RRDC	RR District	RR District
7	Addl.Family Court Kukatpally -RRDC	Medchal- Malkajgiri	RR District
8	Addl.Family Court Malkajgiri -RRDC	Medchal- Malkajgiri	RR District
9	Family Court Mahabubnagar Dist Court	Mahabubnagar	Mahabubnagar
10	Family Court Nalgonda Dist Court	Nalgonda	Nalgonda

Table II District wise Population

S. No.	Name	Headquarters	Population	Density	Urban (%)
			(2011 census)	(per km ²)	
1	Adilabad	Adilabad	708,972	171	23.66
2	Bhadradri Kothagudem	Kothagudem	1,069,261	143	31.71
3	Hyderabad	Hyderabad	3,943,323	18172	100
4	Jagtial	Jagtial	985,417	407	22.46
5	Jangaon	Jangaon	566,376	259	12.6
6	Jayashankar Bhupalpally	Bhupalpally	416,763	180	7.57
7	Jogulamba Gadwal	Gadwal	609,990	208	10.36
8	Kamareddy	Kamareddy	972,625	266	12.71
9	Karimnagar	Karimnagar	1,005,711	473	30.72
10	Khammam	Khammam	1,401,639	321	22.6
11	Komaram Bheem	Asifabad	515,812	106	16.86
12	Mahabubabad	Mahabubabad	774,549	269	9.86
13	Mahabubnagar	Mahabubnagar	919,903	340	20.73
14	Mancherial	Mancherial	807,037	201	43.85
15	Medak	Medak	767,428	275	7.67
16	Medchal–Malkajgiri	Shamirpet	2,440,073	2251	91.4
17	Mulugu	Mulugu	257,744	66	5
18	Nagarkurnool	Nagarkurnool	893,308	142	10.19
19	Narayanpet	Narayanpet	566,874	240	7.36
20	Nalgonda	Nalgonda	1,618,416	227	22.76
21	Nirmal	Nirmal	709,418	185	21.38
22	Nizamabad	Nizamabad	1,571,022	366	29.58
23	Peddapalli	Peddapalli	795,332	356	38.22
24	Rajanna Sircilla	Sircilla	552,037	273	21.17
25	Ranga Reddy	Shamshabad	2,446,265	486	58.05
26	Sangareddy	Sangareddy	1,527,628	347	34.69
27	Siddipet	Siddipet	1,012,065	279	13.74
28	Suryapet	Suryapet	1,099,560	305	15.56
29	Vikarabad	Vikarabad	927,140	274	13.48
30	Wanaparthy	Wanaparthy	577,758	268	15.97
31	Warangal Rural	Warangal	718,537	330	6.99
32	Warangal Urban	Warangal	1,080,858	826	68.51
33	Yadadri Bhuvanagiri	Bhongir	739,448	239	16.66
Total			35,003,674	312	38.88

From the above table we can extract percentage of urbanization of Districts which have Family Courts and segregate the courts and districts by classifying the Districts on the basis of urban population being Very High i.e. > 90%, High i.e. >50%, Moderate i.e. > 30% but < 50% and Low being <30%. The four Courts could be selected from four level of urbanization from very high to low.

Table 12 Districts with Family Courts which have very High Percentage of Urbanization

S. No	District	Urban (%)
1	Hyderabad	100%
2	Medchal-Malkagiri	91.40%

Table 13 Districts with Family Courts which have High Percentage of Urbanization

S. No	District	Urban (%)
1	Warangal Urban	68.51%
2	Ranga Reddy	58.05%

Table 14 Districts with Family Courts which have Moderate Percentage of Urbanization

S. No	District	Urban (%)
1	Karimnagar	30.72%

Table 15 Districts with Family Courts which have moderate percentage of urbanization

S. No	District	Urban (%)
1	Nizamabad	24.50%
2	Adilabad	23.66%
3	Nalgonda	22.72%
4	Khammam	22.60%
5	Mahbubnagar	20.73
6	Medak	7.67%

As for the present study only four courts are to be selected, each category of urbanization of districts, only one court shall be selected from each category from very high to low. Based on the data provided by the Hon'ble High Court for the State of Telangana, the following table is prepared showing the average number of cases filed, disposal rate and congestion rate.

Table 16 Court Wise Data: Filing, Disposal and Congestion Rate

S. No	Court Name	Average filing 2017-18-19	Disposal rate 2017-18-19	Congestion rate 2017-18-19
1	Family Court Hyderabad - CCC ⁹⁸	2463	1.15768814	2.09961417
2	Family Court – Mahbubnagar	103	0.935324675	2.23508772
3	Addl. Family Court Hyderabad - MSJ ⁹⁹	589	0.889014723	2.92038216
4	Family Court – Medak	46	0.760869565	2.07619048
5	Family Court L.B Nagar -RRDC ¹⁰⁰	5095	0.874967286	2.22410818
6	Family Court – Nalgonda	154	0.728850325	2.87797619
7	Family Court – Nizamabad	177	0.828947368	2.2585034
8	Family Court – Warangal	656	0.908583037	2.58133035
9	Family Court Adilabad Dist Court	57	0.930232558	2.36250001
10	Family Court Karimnagar Dist Court	154	1.02164502	2.5911017
11	Family Court Khammam Dist Court	362	0.929032258	2.30257937

Sample Courts Chosen and Rationale for Selection

Telangana South Zone

Family Court at Hyderabad City Civil Court

The South Zone has Ten Family Courts situated in Five Districts, each district has varying population and urbanization. There are multiple reasons for choosing Hyderabad District and Family Court at Hyderabad City Civil Court. The Hyderabad city being the Capital of Telangana State has the highest Urban Population in the State and has the second highest filing of cases at average at the Family Court. The Family Court CCC Hyderabad also has the Highest Disposal Rate and second lowest Congestion rate in Telangana State. There also exists an Additional Family Court.

Telangana Central Zone

Family Court at Warangal District Court

The Central Zone has Three Family Courts situated in Three Districts, each district has varying population and urbanization and the Central Zone has the highest difference among the districts when it comes to urbanization. The Family Court at Warangal District is selected as it has high urban population, third highest in terms of percentage and has the highest filling average of cases in the Central Zone.

⁹⁸ City Civil Court.

⁹⁹ Metropolitan Session Judge.

¹⁰⁰ Ranga Reddy District Court.

Telangana North Zone

Family Court at Karimnagar District Court

The North Zone has Three Family Courts situated in Three Districts, each district has similar percentage of urban population. The Karimnagar District has the highest urban population percentage in the North zone among the districts which has Family Courts. The Family Court at Karimnagar District is selected as it has medium urban population percentage and it is the only district in Telangana which had moderate level of urbanization and has a Family Court. The Family Court at Karimnagar District Court has the Second Highest Disposal Rate in Telangana State.

District Chosen for its Peculiar Characteristics

Family Court at Medak District Court

The Family Court at Medak District stands out as a peculiar case. It has the lowest percentage of urban population among the Districts which have Family Courts. It has the lowest filing average among all the Family Courts of Telangana State and it also has the lowest Disposal Rate and lowest Congestion rate among all the Family Courts of Telangana State

Table 17 Final Courts Selected for the Study

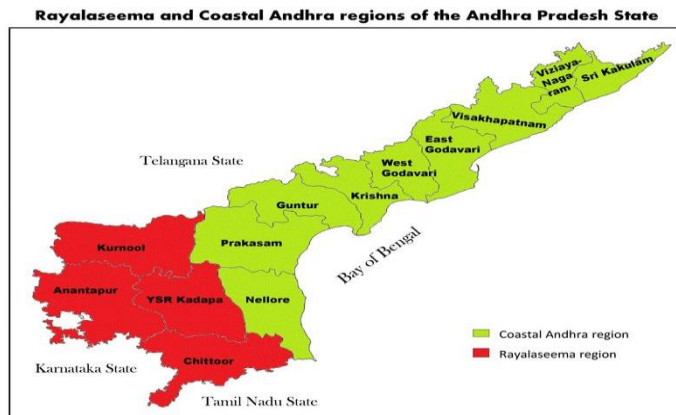
Geographical Coverage	Level of Urbanization	District	Court
South Zone	Very High	Hyderabad	Hyderabad CCC
Central Zone	High	Warangal Urban	Warangal District Court
North Zone	Medium	Karimnagar	Karimnagar District Court
Based on Peculiar Characteristics	Low	Medak/ Sangareddy	Medak District Court/ Family Court at Sangareddy.

5.1.3 Sample Selection for the State of Andhra Pradesh

Geographical Regions

The state of AP has 13 districts and the districts are divided into two regions

- 1) Rayalaseema
- 2) Coastal Andhra



101

The region of Rayalaseema contains the following four districts:

- 1) Anantapur
- 2) Chittoor
- 3) YSR Kadapa
- 4) Kurnool.

The region of Coastal Andhra contains the following nine districts:

- 1) East Godavari
- 2) Guntur
- 3) Krishna
- 4) SPS Nellore
- 5) Prakasam
- 6) West Godavari
- 7) Srikakulam
- 8) Visakhapatnam
- 9) Vizianagaram

The Coastal Andhra region is further divided into Uttarandhra and remaining Coastal Andhra, based on historical context. The following three districts of Coastal Andhra fall under Uttarandhra region:

- 1) Srikakulam
- 2) Vizianagaram
- 3) Visakhapatnam.



The remaining Coastal Andhra districts can be subdivided into Central Coastal Andhra and Southern Coastal Andhra for the purpose of the present study.

¹⁰¹ Figure taken from - Assessment of Feed Resources Availability for Livestock in the Semi Arid Region of Andhra Pradesh, India- January 2018 Indian Journal of Animal Nutrition 35(1):59 - Authors Poonooru Ravi Kanth Reddy, Raju Jakkula, A. Nagarjuna Reddy, Iqbal Hyder, D. Srinivasa Kumar, R. K. Sowjanya Lakshmi



The following four districts of Coastal Andhra region shall fall under Central Coastal Andhra:

- 1) East Godavari
- 2) West Godavari
- 3) Krishna
- 4) Guntur.

The following two districts of Coastal Andhra shall fall under Southern Coastal Andhra:

- 1) Prakasam
- 2) SPS Nellore



It is important that atleast one Family Court shall be selected from each region and subdivided regions. Therefore, atleast one family court shall be selected from Rayalseema, Uttarandhra, Central Coastal Andhra, and Southern Coastal Andhra regions.

Population and Urban Population

There is a lack of district wise urban population data for the State of AP, but, data is available for urban agglomerations for the State of AP. The following are the urban agglomerations population wise in AP. Only those cities which have Family Courts are shown. It appears from the e-courts website that the District of Srikakulam does not have a Family Court.

Table 18 Urban Population

S. No	Name	District	Population (2011)
1	Visakhapatnam	Visakhapatnam	2,035,922
2	Vijayawada	Krishna	1,476,931
3	Guntur	Guntur	670,073
4	Nellore	SPSR Nellore	558,548
5	Kurnool	Kurnool	484,327
6	Rajamahendravaram	East Godavari	476,873
7	Tirupati	Chittoor	461,900
8	Kadapa	YSR Kadapa	344,893
9	Anantapur	Anantapur	340,613
10	Eluru	West Godavari	250,834
11	Vizianagaram	Vizianagaram	239,909
12	Ongole	Prakasam	208,344

From the above table we can extract population of urban agglomerations of districts and segregate the districts by classifying the districts on the basis of population of urban agglomerations as being Very High i.e. > 1,000,000, High i.e. >500,000, but < 1,000,000. Moderate being > 250,000, but, < 500,000 and Low being < 250,000. The four Courts could be selected from four level of urbanization from very high to low.

Cities and Districts which have very high population

Table 19 Very Highly Populated Cities and Districts in AP

S. No	Name	District	Population (2011)
1	Visakhapatnam	Visakhapatnam	2,035,922
2	Vijayawada	Krishna	1,476,931

Table 20 Highly Populated Cities and Districts in AP

S. No	Name	District	Population (2011)
1	Guntur	Guntur	670,073
2	Nellore	SPSR Nellore	558,548

Table 21 Moderate Populated Cities and Districts

S. No	Name	District	Population (2011)
1	Kurnool	Kurnool	484,327
2	Rajamahendravaram	East Godavari	476,873
3	Tirupati	Chittoor	461,900
4	Kadapa	YSR Kadapa	344,893
5	Anantapur	Anantapur	340,613
6	Eluru	West Godavari	250,834

Table 22 Low Populated Cities and Districts

S. No.	Name	District	Population (2011)
1	Vizianagaram	Vizianagaram	239,909
2	Ongole	Prakasam	208,344

Sample Court Chosen and Rationale for Selection

Uttarandhra Region

Family Court at Visakhapatnam District Court

The Uttarandhra region of AP has three districts, but, only two districts have Family Courts. The Visakhapatnam District is selected as the Visakhapatnam City has the highest number of population among the urban agglomerations in the state of AP the other district of Uttarandhra, Vizianagaram has low urban population. The Visakhapatnam District Court has a Family Court and an Additional Family Court.

Central Region of Coastal Andhra

Family Court at Guntur District Court

The Coastal Andhra Region of AP is further divided into central and southern region of Coastal Andhra, apart from Uttarandhra region. For the purpose of this study the central region contains four districts. The Guntur District is selected as it has the capital city of AP, Amravati City, but, the district court and family court is situated at Guntur City. The Guntur City falls under the category of high population in urban agglomeration and as the capital of AP is situated in Guntur District, it is better positioned to represent the central region of Coastal Andhra.

Rayalaseema Region

Family Court at Kurnool District Court

The Rayalaseema region of AP has four districts. The Kurnool City falls under the category of moderate population in urban agglomeration and has the highest urban population among the urban agglomeration in the Rayalaseema region of AP, as it has the highest population in Rayalaseema, Kurnool is better positioned to represent the Rayalseema region.

Southern Region of Coastal Andhra

Family Court at Prakasam District Court

The Southern region of coastal Andhra has two districts. The Prakasam district is selected as it has the lowest population in all the urban agglomeration in AP which contains District and Family Court. The other district of SPS Nellore falls under the category of high among urban agglomerations. For the purpose of this study it is required that a family court is selected from each region and selection of Prakasam District fulfills this criteria.

Table 23 Final Court Selection

Geographical Coverage	Urban Population	District	Court
Uttarandhra	Very High	Visakhapatnam District	Visakhapatnam District Court
Central region of Coastal Andhra	High	Guntur District	Guntur District Court
Rayalaseema region	Medium	Kurnool District	Kurnool District Court
Southern region of Coastal Andhra	Low	Prakasam District	Prakasam District Court

5.2 Quantitative Research: Field Survey

5.2.1 Field Survey - Kerala

Overview of Family Courts in Kerala

There are 28 family courts in Kerala and more in the offing. Larger districts have two or more family courts depending on the population and increase in the caseload. Though Kerala has only 14 districts, it is commendable that there are 28 family courts. The Home Department has recently approved the proposal by the Registrar (Subordinate Judiciary) for starting seven more family courts in the state¹⁰². Further each court has their own counsellors. Family Courts in Kerala reports the highest number of pending cases in family courts, next only to UP¹⁰³. On an average, more than 50,000 cases are filed and disposed of every year in family courts in Kerala¹⁰⁴. The number of family cases, particularly divorce and custody cases are on the rise, and the pandemic has also altered the family dynamics of people. Increasing workload of courts with the increase in the family cases filed every year owing to multiple factors including the change in socio-cultural values, and pendency of cases has a crippling effect on judiciary, which includes family courts. There is an urgent need to study the existing family court infrastructure, and impending rules and evaluate the possibilities of improvement. Here, the courts in Kerala are evaluated on the basis of infrastructure, personnel and processes, and possible reforms are deliberated upon through field visits, Interviews, and evaluation of court records.

¹⁰² "Ernakulam District to Get Two More Family Courts," The New Indian Express, accessed October 22, 2021, <https://www.newindianexpress.com/cities/kochi/2021/oct/01/ernakulam-district-to-get-two-more-family-courts-2366029.html>.

¹⁰³ Government of India, Department of Law and Justice, Lok Sabha Unstarred Question No. 4022 by Dr. Umesh G. Jadhav answered on 17th July 2019. As on 17th July 2019, a total of 71,829 cases are pending in family courts for Kerala and Lakshadweep combined.

¹⁰⁴ The average filing of cases in family courts in Kerala for the years 2017, 2018 and 2019 is 58,937. Average disposal of cases in family courts in Kerala for the years for the years 2017, 2018 and 2019 is 52,468. Average backlog of cases for the years 2017, 2018 and 2019 is 63,354. Backlog of cases refers to the total number of cases carried forward from the previous years to be disposed in the present year.

<http://hdl.handle.net/10603/166330>

Infrastructure Check

Ernakulam

District Profiling of Family Court



The District of Ernakulam has 2 family courts situated at Ernakulam and Muvattupuzha. It further organizes camp sittings at Paravoor and Kochi. The proposal for two additional courts at North Paravoor and Aluva has been approved by the Home Ministry on September 2021.

About the Court

Name of the court: Ernakulam Family court

Longest distance from which litigants come to this court (also estimated time taken for such journey given the terrain plus availability of public transport):- The Ernakulam Family court is situated in the District court complex which comprises of the District and Sessions court Ernakulam, the other additional district courts, sub courts, munsif courts, magistrate courts. The Ernakulam family court is situated in the city center and easily accessible via bus. The Private bus stops just in front of the court complex. The KSRTC bus stop is around 500 meters. The metro station is a kilometer away. The Ernakulam family court has jurisdiction of cases that come under the Kanyannur taluk, Kochi taluk, camp sittings are held in Paravoor and Kochi to cater to Aluva taluk and Paravoor taluk. On account of the Pandemic the same has been suspended for the past two years.

Infrastructure Check

Location

The Ernakulam Family court is situated in the city center within the District Court Complex. The Location has travel connectivity through bus.

- a) The Family court building though separate also hosts the MP/MLA court and office of the Public Prosecutors.
- b) It is a separate building within the regular court structure

Accessibility by Public Transport

It is Accessible by Public Transport

History of Family Court Infrastructure

The Ernakulum Family court was initially located at a rented building. It occupied the first floor of a commercial space. Family court was long hall where the Court Hall was separated through wooden boards. The Hall was divided into sections which divided the office and the Court Hall which was approximately 500 sq. ft. As the cases increased the space was bursting at its seams. The Mediation Room was separated by curtains. It was in the year 2014, the family court shifted to Kaloor. The space in Kaloor was used exclusively for the family court. It was a wide-open spacious area with a large compound. It also housed the District Mediation centre and the NIA court. This was a welcome change from the earlier cramped spaces. There was a larger Court Hall, separate room for counselling. The filing section and record rooms had designated rooms and the advocates had a separate room for themselves. Though not perfect, this was a space which could have been developed further as an exclusive effective family court complex. It was in this scenario that hardly five years passed that the family court was shifted to the district court complex. With the funds allocated for modernization of courts the old district court was shifted to the new court complex and the building which housed the chief judicial magistrate's court became the family court complex. Presently it also houses the MP/MLA Court which has been refurbished.

Court Hall

- a) The Position of the Judge is at a higher Level from the ground within a separate closet.
- b) The Court Hall is a 500 sq. feet hall with a raised platform for the judge. There is witness box on the right-hand side of the judge after the judge's box. The bench clerk and his/her assistant sit below the platform to assist the judge for calling cases. Thereafter there are chairs for the use of advocates. Initially there were long wooden tables as seating arrangements. Recently chairs have been acquired for the Lawyers to sit. At a time around 20 to 25 Lawyers can sit. The rest are standing. The clients answer the roll call through the two doors on the right-hand side of the judge. These two narrow doors are jampacked during roll call.
- c) The general atmosphere of the court is a jampacked court with Lawyers, court clerks and clients waiting for the roll call. It could be suffocating on extra heavy days. It's a separate room but due to the heavy load of cases there is a sense of suffocation.
- d) In camera proceedings are employed rarely. Only in cases of extreme sensitivity on specific request. Most of the cases are delegated for evidence taking through appointment of Advocate commissioners.
- e) The in-camera proceedings when taken up are conducted by asking the people in the court to step outside till the hearing of in camera proceedings.

- f) There is no exclusive sitting area for Lawyers besides the court room. The family court Lawyers also form part of the District court bar association and they use the same room.
- g) There is no exclusive sitting area for Parties of witnesses. They all wait outside the court room.
- h) The space outside the court room which is the veranda acts as the waiting room for parties/witnesses/Lawyers.

Counselling Centre/Room

- a) The counselling Room is within the building. It is located on the first floor of the building.
- b) There is one permanent counsellor. Presently vacant on account of demise during the pandemic. There are part time counsellors from NGOS coming during specified weekdays to assist the Principal Counsellor. The arrangement is on honorarium basis
- c) The Counselling room is 250 sq feet spacious room. The counsellor sits in the centre at the table with two chairs for the parties.
- d) There are no facilities as such in the room. There is an attached toilet. The parties wait outside on the veranda for their case to be called.
- e) Children are asked to wait outside with person accompanying the parties usually.
- f) The general atmosphere of the counselling room is satisfactory. It is spacious.
- g) The privacy of the parties/ confidentiality of conversation can be protected in the given set up. The conversation between the counsellor and the party cannot be heard outside. The counselling center does not have adequate facilities for employing techniques like spending time together /discussion between the spouses in conflict in privacy. It is merely a room with a verandah which also acts as the waiting room for parties for counselling.

Mediation Room

Till recently there was no separate Mediation Room. All cases for mediation are sent to the District Mediation centre in Kaloor. The District Mediation Centre is around 5 kms Away from the District court complex. Consequently, the parties have to take the notice for mediation and report to the mediation centre in Kaloor. Presently there is a Regular Lok Adalat set up within the court premises on the first floor of the 'N' building which also acts a mediation centre. The Lok Adalat is headed by a retired family court Judge who mediates between the parties to arrive at a reasonable settlement and conclusion of disputes.

The mediators are from a pool of trained mediators at the District mediation Centre. The Mediators are available on all 6 days of the week.

The mediators have an exclusive room to themselves. There is a table and chairs sufficient for both parties and their Lawyers. There is a waiting room outside for the parties to wait.

The Mediation centre has 6 Mediation Rooms. There is a huge hall which acts as the waiting

area for parties. The mediation centre is not an exclusive center for family court cases. It deals with other cases too. The Mediation Centre clerk has a register who allocates the mediator according to the roster available with him/her. The mediators are not specifically trained for being family court mediators.

The general atmosphere in the mediation centre is pleasant. Since it is a newly constructed building, it is bright and spacious. It is preferable that specifically sensitized family court mediators be appointed to deal with cases involving family court matters.

The Privacy of Parties and confidentiality of conversation can be protected. The conversation between the mediator and the party cannot be heard by the opposite party sitting outside. There is no separate room for discussion. If any of the mediator's room is empty that can be used as a discussion room for spending time together or discussion between the spouses in conflict. The waiting area of parties is a big hall where there are number of chairs. There is water can for drinking water facility.

Usually children are not brought during mediation unless they are very young. In certain cases, the children accompany their parent inside the Mediation Room. In other cases, they wait outside with the accompanying relative.

Other Amenities (remarks on availability, accessibility, usability)

- a) The family court building has one toilet which is used by the staff. The counselling room has a toilet but the door of the toilet is damaged which cannot be locked. The clients have to use the toilet in the main court complex.
- b) There are no retiring rooms
- c) No lactation or breastfeeding area
- d) No children's lounge/praying area
- e) No separate waiting area
- f) Drinking water facility is wanting in the family court area.
- g) There is a court canteen. There is also a tea stall in the complex. Recently a stall also has been started by the Prison administration as an outlet for food products produced in the jail.
- h) Cleanliness requires much to be wanted. There is a superficial cleaning. The ceilings are covered with cobwebs and the ceiling fans are covered with dust and requires cleaning.
- i) The Accessibility for physically challenged is limited. Though it has a ramp it cannot be accessed by a wheelchair user, the ramp is steep and cannot be navigated by a wheel chair user both as a lawyer or a client. For a Lawyer entry into the Court Hall will be a humongous task; for a client, his or her lawyer may represent.
- j) The court room building and court room are both inaccessible to a visually challenged lawyer /client.

Wayanadu

District Profiling of Family Court



1. There is only one family court in the district,

The Territorial Jurisdiction covers the entire district. There are camp sittings organized to cater to people living in the distant areas.

About the Court

1. Name of the court: - Family Court Wayanadu
2. The Longest distance from Kalpetta is Thirunelli 50 km, periya 58.7km (sub district Mananthawadi) and Muthanga 37.9 km (Sub district Sulthanbatheri) from Kalpetta. The estimated time would be approximately an hour to two. The terrain is hilly hence narrow and longwinding. Public transport is available but there are stretches which do not have public transport on account of the hilly terrain and inadequate roads.
3. There are camp sittings organized in Manathwadi and Sultan Batheri once a month each. The case load is relatively less hence the camp sittings are adequate in the general opinion.



Infrastructure Check

Location

Kalpetta is the District headquarters. It is in the southern part of Wayanadu.

- a) There is a separate building for family court
- b) It is a separate building within the regular court structure

Accessibility by Public Transport

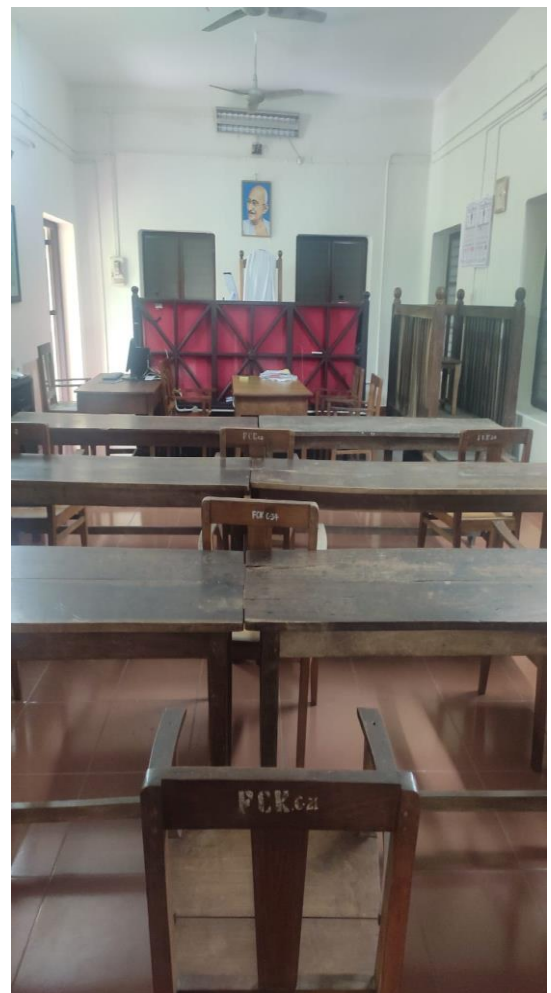
It is accessible by public transport.

History of Family Court Infrastructure

It was situated in a rented building initially and now it has been shifted to the district court complex.

Court Hall

- a) The Position of the judge is at a higher level from the ground within a separate closet
- b) The Court Hall is an elongated room of around 500 sq feet. There is a witness box to the right of the Judge. The bench clerk sits below. The entrance for the litigants and the Lawyers is from the same door facing the judge.
- c) The general atmosphere of the court is lit, it gives a feeling of spaciousness. It is a new building. Since the case load is less there is a satisfactory environment.
- d) In camera proceedings are applied only in very specific cases.
- e) In camera proceedings are effected by asking the people in court to step outside till the hearing of in camera proceeding.
- f) There is sitting area for Lawyers
- g) No sitting area for parties/witnesses.
- h) There is a verandah which acts as a waiting area.



Counselling Centre/Room

- a) The Counselling Centre is within the court complex.
- b) There is only one counsellor

- c) The counsellor's room is a 250 sq feet room. Open and spacious. Well ventilated. The room has a pleasant feel to it. The entrance to the counselling room faces the counsellor.
- d) There are no extra facilities. The counsellor has a small spacious room to meet with the clients in confidentiality.
- e) The general atmosphere of the Counselling Centre is a lit room, spacious, newly painted. It's a separate independent room and has a satisfactory environment.
- f) The children if they are brought to the court complex wait outside with the accompanying relative.
- g) The Privacy and confidentiality of conversation can be protected in the given set up. The conversation between the counsellor and party cannot be heard by opposite party sitting outside. There is a vacant room in the family court complex adjacent to the counselling room which is often used for parties intending to speak to each other in a private. There is no waiting area. Its an open verandah where people wait.

Mediation Room



The cases for mediation are sent to the district mediation centre which forms part of the main court complex. The Mediators are under the district legal services authority. As and when cases are referred the mediators are appointed. The mediation centre offers privacy for discussion.

Other Amenities

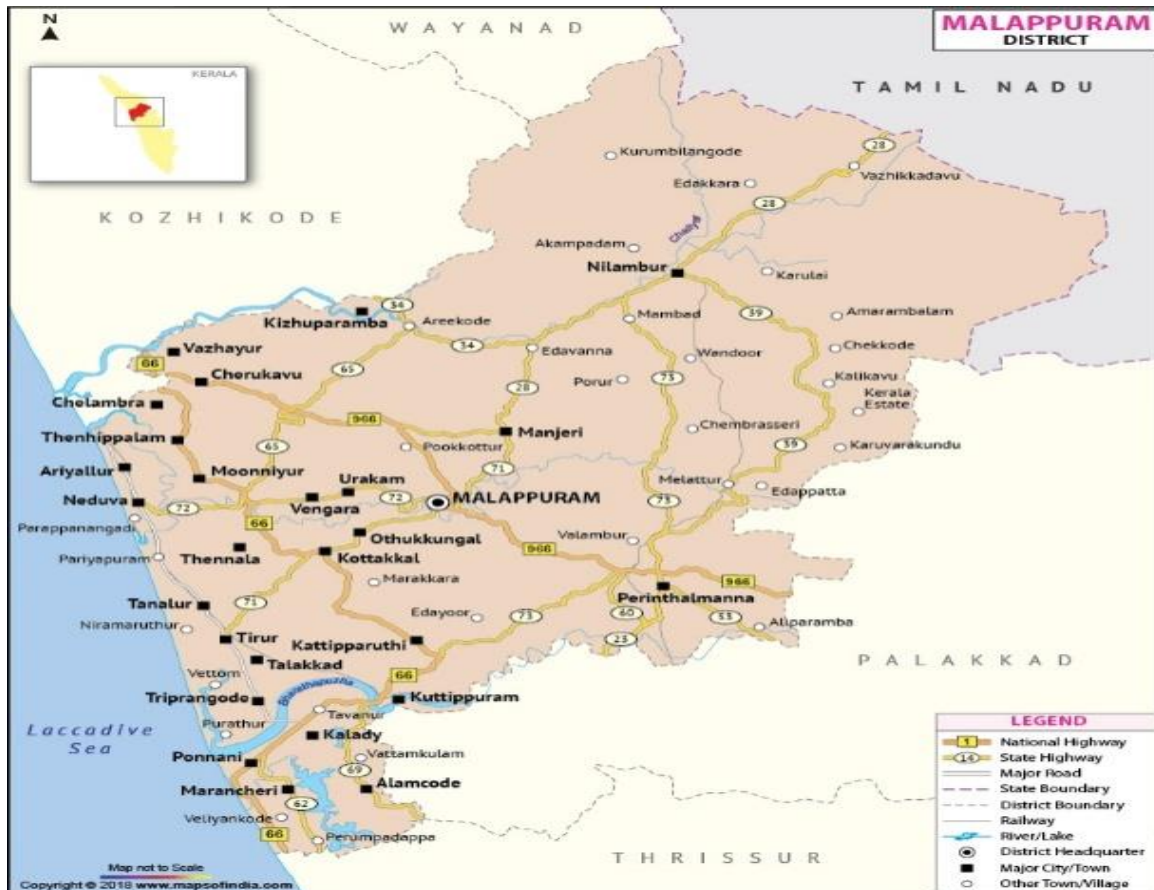
- a) There is no toilet facility
- b) No retiring room facility
- c) The spare room used as discussion room turns over as breastfeeding room in exigent cases
- d) There is no children's lounge/Playing area
- e) There is no waiting area
- f) There is a drinking water facility
- g) No canteen
- h) The family court projects a clean environment.

- i) The Family court is not accessible for the physically challenged.
- j) It is not accessible to the visually challenged

Though the family court premises give an open and friendly appearance the facilities need wanting. The absence of a lactation or breastfeeding area or children’s play area/lounge reflect the non-women and child friendly nature of the family court setting.

Mallapuram

District Profiling of Family Court



- There are Two family courts in Malapuram district, Tirur and Malapuram
- The Territorial jurisdiction of the Malapuram family court comprises of the Ernadu Taluk, Ponmala village in Tirur Taluk, Perinthalmanna taluk, kondotty Taluk and Nilambur Taluk.

About the court

1. Name of the court: - Mallapuram Family court
2. Longest distance from which the litigants come to court is from Nilambur taluk. The distance is approximately 40 kilometers and could take approximately an hour. At present there are no alternate arrangements. There is a suggestion for another court in the Nilambur Taluk.

Infrastructure Check

Location

The Malapuram family court is located in a separate building and compound within other offices / institutional complexes. It is in an extreme corner.

Accessibility by Public Transport

The family court premises are accessible by public transport. There is almost a kilometer to walk from the entrance to reach the family court.

History of Family Court Infrastructure

The family court was initially situated at Manjeri which is the district headquarters and had shifted to Malapuram in 2006. This is again a temporary space. An area has been identified in the vicinity for the construction of family court complex.



Court Hall

- The Position of the Judge is at a higher level from the ground within a separate closet. It is an elongated room of approximately 700 sq feet.
- It is spacious. There are two doors through which the Lawyers /parties and witnesses enter.
- The general atmosphere in the court is bright and lit. There is a long hall just outside the court room which also acts as the waiting room for witnesses and parties. There is a verandha outside the hall which also doubles as a waiting room.
- In camera proceedings are applied only in few cases,
- The in-camera proceedings are effected by asking the people in the court to step outside till the hearing of in camera proceedings in completed.
- There is a room in the building which acts as the association room for Lawyers.
- The sitting area for parties/witnesses are the verandah and the long hall just outside the court room.
- There is no separate waiting area for parties/witnesses

Counselling Centre /Room



- a. The Position of the Counselling Centre is within the court complex.
- b. There is only one counsellor
- c. The counsellor's room is divided in two sections. There is a waiting room outside the counsellor's room which is a common hall. The counsellor sits in her room which is approximately 250 sq. ft.
- d. The Counselling Centre is spacious. There are no extra facilities in the Counselling Centre.
- e. The Counselling Centre is spacious, lit and has a satisfactory environment

f. The privacy of the parties/confidentiality of the conversations can be protected in the given set up. The conversation between the counsellor and the party cannot be heard by the opposite party. The Counselling Centre premises does not have a separate room for employing techniques like spending time together or discussion between the spouse in conflict. They will have to go outside into the hall or the family court premises. The waiting area for the parties is a long hall with a long bench on either side.

Mediation Centre

There is a mediation centre within the court complex. It is a small room. Cases referred for mediation are handled by trained mediators.

Other Amenities

- a) There is no toilet facility
- b) No retiring room facility
- c) No breastfeeding area
- d) No children's lounge/playing area
- e) There is a waiting area
- f) Drinking water facility is limited
- g) The canteen is slightly far
- h) There is a general cleanliness.
- i) Not accessible for physically challenged. Though there is a ramp there are raised platforms which cannot be navigated by a wheelchair bounded person.
- j) Accessibility for visually challenged is also restricted.



Thiruvananthapuram

District Profiling of Family Court



There are three family courts in the District. Vanchiyoor, Attingal, Nedumangadu. It was relocated to the current complex in 2010 from Sreekaryam. The proposal for an additional court at Neyyattinkara has been approved by the Home Ministry in September 2021.

About the Court

1. The Name of the Court: Vanchiyoor Family court
2. The Longest distance from which the litigants come to this court is from Neyyattinkara which is a coastal area.
3. There is a proposal to set up an additional family court at Neyyattinkara.

Infrastructure Check

Location

The Family court Vanchiyoor is centrally located within the District court complex in a separate building within the regular court structure.

Accessibility by Public Transport

It is accessible by public transport.

History of Family Court Infrastructure

The family court was situated outside in a rental building in sreekaryam and shifted to the current district court complex in 2010.

Court Hall



- a) The Position of the judge is at the higher level from the ground within a separate closet.
- b) The Court Hall is in a corner of the building. It has four doors.
- c) It is reasonably spacious in an approximately 500 sq. feet hall. There is a heavy load of cases so this is usually extremely crowded. It has a lit environment. It could be suffocating when the Court Hall is crowded.
- d) In camera proceedings are employed in exceptional cases only. It is held by asking the People in the court to step outside till the hearing of the in camera proceeding.
- e) The Lawyers sit inside the court too, there is no separate sitting area.
- f) The parties/witnesses wait outside in the verandah
- g) There is no separate waiting area for parties /witnesses.

Counselling Centre

- a) The Counselling Centre is just next to the court room.
- b) There is a principal counsellor and two other counsellors.
- c) The rooms are partitioned in cubicles.
- d) The Counselling Centre also acts as a record room. There are no separate facilities in the Counselling Centre room. It is divided into cubicles and also doubles as a room to store documents, packets etc.
- e) The general atmosphere is a crowded room with not much space.
- f) The privacy of the Parties can be protected if the other party is sent outside the counselling room. A person outside the Counselling Centre may not hear the conversation. The Counselling Centre is not congenial for employing techniques like spending time together or discussion.
- g) There is no separate waiting area. The long hall between the court room and the counsellor's room acts as the waiting area for both court and counselling.

Mediation Room

The mediation centre is in the court complex. It is under the District legal service authority. The Mediators are empanelled.

The Mediators are available on all days. They are referred for mediation by the court if both parties agree. Counselling and Mediation are two different processes. Counselling is mandatory whereas mediation is employed only if the court feels that there is a possibility of settlement.

Other Amenities

- a) There is no Toilet facility. A She Toilet facility had been recently set up to cater to the needs of the visiting parties.
- b) There is no retiring Room
- c) There is no lactation or breastfeeding area
- d) There is no children's lounge.
- e) There is no waiting area
- f) The Drinking water facility is limited
- g) There is a canteen with the main court premises.
- h) The cleanliness requires much to be desired.
- i) There is no accessibility for Physically challenged
- j) There is no accessibility for Visually challenged

A Day in Family Court

The Period of data collection can be divided in pre-pandemic and post pandemic. In a pre-pandemic period regular sittings were held in the family court. A regular day would have 70 to 80 cases listed per day. The Execution Petition cases, MP in Maintenance cases and the OPs (divorce, recovery of gold and money, guardian and wards cases) are called chronologically. The roll call starts at 11 and continue till around 12.30 -1.00 pm approximately. During roll call short matters are dealt with. Cases which require detailed explanation or hearing of interim applications are passed over and taken after roll call. Cases for evidence are allotted to advocate commissioners. Post lunch the hall is filled with advocate commissioner taking evidence. Cases for counselling are referred for counselling. During the pandemic the court went into online sitting with restricted case lists, consequently most of the cases were notified for adjournment and only urgent cases were taken up for listing. Presently as per the new case management system a restricted cause list is called over videoconferencing. The rest of the listed cases for the day are called before the chief ministerial officer who posts it to another day. These cases are those notified for filing proof affidavits, written statements etc. The new case management system which has been started is still in its infancy and its effectiveness will be known only in the days to come.

In Ernakulam, on a random post-Covid day, 190 cases were listed. No cases were heard. Around 35 cases were notified and adjourned. All other cases were adjourned with

instructions. These cases were held through video conferencing. Some cases were sent for counselling through video conferencing. The court started through video conferencing at 11 am.

In Malappuram, around 114 cases were called physically. All cases were given adjourned after instructions. The Sitting was physical. Parties belonging to Mutual consent Petitions and Maintenance cases came to court.

In Thiruvananthapuram, a weekly list was published which notified the cases. There was a separate list known as the CMO list or the list before the Chief Ministerial officer to deal with cases of first Posting, return of notice etc.

On the contrary, in Waynadu, on a post-Covid day, only 36 cases were listed.

Interviews

The number of Interviews conducted overall

- Judges: 4
- Advocates: 15
- Counsellors: 4
- Mediators: 2
- Court Officers: 4

Judges

Personnel

The number of sitting Judges interviewed were 2 ie Wayanadu and Malappuram. 2 retired judges from the Family court Ernakulum were also interviewed.

Appointment: Section 4 of Family Courts Act 1984 clearly lays down the process of appointment of judges wherein the state government appoints judges based on the qualifications namely - having held a judicial office for at least 7 years ,or the office of a judicial tribunal , or any post under the union or a state requiring special knowledge of law or has for at least 7 years been an advocate of the High court or of two or more courts in succession or possess such other qualification as the central government may, with the concurrence of the Chief Justice prescribe .

Currently the appointment is by selecting the judges from the common pool of the judiciary. There is no particular factors considered. It is as per the transfers and promotions of judicial officers. There is no particular criteria. The judges we spoke to did not highlight any problems. It was felt that family court judges should be part of the common pool of the judges. There should be regular training and sensitization on topics relevant to the family court on a regular basis. There was no consensus for having a regular family court cadre of judges. In fact, there was opposition to the suggestion.

The statute prescribed a minimum of 7 years of judicial experience. The qualities which they were looking for was of people who would work towards ensuring that the protection of the

institution of marriage and promote the welfare of children and experts in the field of reconciliation. Age limit was fixed at 62 years.

Trainings: Regular Trainings are provided as a judicial member. There is no specific training with particular focus on family court. The Trainings are uniform with both induction training as a judge into the judicial system and in-service regular trainings on various aspects/topic. Training modules can be developed on current family law developments within the national and international contexts.

Procedure

Family courts have a flexible approach with respect to procedure. There is a relaxation on the technicalities compared to the civil court procedures. Maximum effort is taken to ensure that the procedures are in conformity with the objectives of setting up of the family courts. The overall opinion was that the current court room organization was appropriate. Further restructuring of family courts with non-judicial members was opined to be counter-productive.

Suggested Reforms

Family court processes and administration have been evolving as per the needs and requirements. There is greater flexibility of approach. There need to be corresponding infrastructural support which is wanting and often ties the hands of family court administration. The recent introduction of the case management system in the courts is an effort on the part of the judicial administration to streamline the case management to ensure quicker disposal. But it is still in its infancy.

The Pandemic compelled the courts to look into the use of digital technology for ensuring continuity of the legal process and access to justice. There needs to be focused training, sensitization and up gradation of infrastructure to ensure that justice administration runs smoothly.

Lawyers

Personnel

Around 20 Lawyers were interviewed at various stages of their practice. Though within the traditional setting Lawyers are seen as those representing the clients' interests in an adversarial set up, when it comes to family court practice most of them felt that in a family court litigation, patience, diplomacy and flexibility was seen to be an important attribute required while practicing in the family courts. The Lawyers were mostly exclusively practicing in the family courts or family related issues hence were sensitive to the needs and objectives of the family court objectives and needs of their clients. There was a basic understanding of the family court objectives and an understanding that people approached family courts only as a last resort.

Procedure

There was a general agreement that delay in the disposal of cases were a major cause of concern. None of the lawyers believed that there were exaggerations in the complaints. According to them only those what were stated by the party was presented.

With respect to the multiplicity of cases it was felt that invariably on account of various reasons several petitions were filed as the reliefs were separate.

Delay was one major stumbling block in access to justice. The pendency of cases ranged from 6 months to 20 years. It was seen that if parties belonged to different jurisdictions invariably a Transfer Petition is filed in the High court for transfer of the case which would further contribute to the delay. It is further submitted that in the event there was an adverse order in any of the interim applications filed in any of the case there was sure to be an appeal which would further add to the delay of the case.

There was a unanimous opinion that application of CPC should be retained as it maintains a system.

Pandemic & Family Courts: The pandemic revealed the lack of infrastructure to handle. At the initial stages of lockdown there was complete lockdown and physical sittings were followed with restricted cause lists. With the gradual adoption of virtual hearing slow steps were taken to ensure that there was no sudden stop in the justice delivery system. This required a major collaboration with the lawyers and well as the court to work together to evolve a system to ensure court functioning. There was a streamlining of proceedings within the family court. But cases involving custody and visitation rights of children as well as cases which involved maintenance proceedings suffered the most.

There was no effective means to address the issues arising out of the fall out of refusal /denial of maintenance. Many times, notices returned unserved, there were occasions when the respondent failed to pay maintenance and was willing to go to jail for it.

Suggested Reforms

It was felt that the infrastructure was sorely inadequate. In cases involving visitation right there is an absence of a child care lounge which could serve as a visitation area. The non-custodial parent usually takes visitation of the child under a tree, the verandah of the court or steps of the court. This does not enable proper visitation rights. The entire process of child visitation right also amounts to child rights violation as the child is an innocent bystander having no say in the proceedings. In a strange environment he/she is given to the non-custodial parent and visitation rights are complied with in name. The existing family court environment does not cater to a child friendly environment and adds to the trauma of a child at a very young age which is aggravated by the conflict between the parents.

The absence of gender sensitivity among the Judges was seen as a great deterrent. As most Judges were taken in from the general pool it was felt that the sensitization should start when a judge is inducted into service and not at a later stage. Many a times a subjective approach was taken while dealing with cases.

There were no takers for a separate family court cadre but preferred Judges who are not at their twilight of service.

Innovations in family court process and family court administrations over the years: There have been gradual changes in the administration of the family court system. There has been much more sensitivity in the proceedings. The appointment of permanent family court counsellors has

been a great initiative. The involvement of mediators in attempting to settle issues also have been a notable innovation within the family court administration. The setting of regular Adalats and referring matters which are likely to be settled by the Judges has prompted a move towards mediation and faster settlement of cases.

Counsellors

Personnel

Roles and Responsibilities of Counsellor; Challenges: All the courts had regular permanent counsellors appointed. The 3 permanent counsellors of Malapuram, Trivandrum and Wayanadu were interviewed and two Part time counsellors of the Family court Ernakulam. The roles and responsibilities mentioned were that highlighted in the rules which is extracted herein namely assisting and advising the parties regarding the settlement of the subject matter of dispute between the parties and if reconciliation is possible enable the same. If during the counselling it was felt that home visits were required that could also be done. During the course of counselling they could meet with anyone who could aid in the holistic understanding of the issues. Further if it was felt that an assistance of a psychiatrist or psychologist was required, they could also be referred. Usually this was done in consultation with the Presiding officer.

Appointment, Qualifications, Training: The appointment of the counsellors were by the High court. The Counsellors were directly recruited. Depending on the number of counsellors required, the manner of selection would be an interview and an examination. The qualification sought for in the counsellor was a master's degree in social work, or a postgraduate degree in psychology or a minimum period of 2 years' experience in family counselling. This could be relaxed if there was an outstanding candidate. There was an induction training at the time of appointment. There have been regular trainings conducted.

Process

Counselling Process: Both parties are called and spoken to. Depending upon the complexity and need intervention is made. At least 4-5 sessions required for settlement.

Limitations/Challenges: Some of the challenges they feel is the unnecessary intervention of parents in their children's life. Also, the clients come with the training from Lawyers so they might not be entirely honest with the counsellor.

There was a general opinion among the counsellors about the absence of child friendly and women friendly nature of the family court set up. Issues relating to custody of the child was a major worry among all the family court counsellors. They felt that in the family court setting there needs to be an area separate for children which would enable the child to have access to the non-custodial parent. Presently none of the family court set up provided for that. Consequently, most of the visitation rights were being carried out in the court premises which was not at all child friendly.

Relationship between the Lawyers and Judges were good. Generally, there was a cooperative approach among the Lawyers.

During the Pandemic initially, there was no counselling. Thereafter online counsellings were carried out. There was no infrastructure from the court. The device used were the personal phones of the counsellor concerned.

Mediators

Personnel

There are no dedicated Mediators attached to the family court. In the event a case is required to go for mediation, the Hon'ble court shall direct the parties to the mediation centre where the available mediator deals with the cases.

Trainings – There are trainings but these trainings are not family court based. These are general trainings given to all mediators on the manner of mediation. Trainings specific to family courts are not provided.

Court Officers

Personnel

The workload is immense with no commensurate staff and infrastructure. New case management module has been instituted giving more duties and powers to Court Officer. A system of dual list is instituted – Cause list I and Cause list II.

Table 24 Staff

Sl. No.	Name of the Post	No. of Posts	Scale of Pay
(1)	(1)	(2)	(3)
1.	Family Court Judge	1	5100-5700
2.	Principal Counsellor	1	2200-3500
3.	Sheristadar	1	2200-3500
4.	U.D Clerk	3	1200-2040
5.	Confidential Assistant Grade II	1	1125-1720
6.	LD Typists	4	950-1500
7.	LD Clerks	3	950-1500
8.	Amins	2	950-1500
9.	Attender	1	800-1200
10.	Duffadar	1	800-1200
11.	Process Server	4	800-1200
12.	Peons	3	775-1065
13.	Court Keeper	1	800-1200
14.	Sweeper (Part-time)	1	460

Procedure

There have been changes in the family court process and family court management over years. The numbering system is based on the nature of petition filed with year. There is no way of knowing if two cases are connected unless the party specifically mentions while the case is

being filed. In the alternative when the case is called in the court the fact that there are connected case is mentioned and all posted together.

Numbering system: The maintenance cases are numbered as mc/21 and numbered serially. The divorce and recovery cases are numbered as op again serially.

The Pandemic revealed the difficulties on account of lack of infrastructure and digitalization.

Litigants

Most of the Litigants interviewed were women. Most were in the age group of 35- 50. 50% of the women interviewed did not have a job. The rest were working on a daily wage basis, clerks etc.

The Litigants felt that it was not possible to navigate the family court without a lawyer. Many them would not understand the day’s proceedings and would have to wait for the lawyer to explain the day’s proceedings.

It was also felt that there was extraordinary delay and a lot of time was wasted in court. Many of them having jobs would lose their workdays on account of the same.

The Role of the counsellor according to them was very limited. Many of them had only one or two sittings with the counsellor. Some felt that the counsellors were ineffective presumably on account of the non-matching of the expectations of the litigant.

Some litigants had approached the Legal Service authorities and having had a bad experience shifted to private lawyers who eventually helped them navigate them through their cases. High Litigation cost was a major concern among the litigants especially among the male litigants. The litigants were more or less satisfied with their lawyer but felt that court procedures were extremely lengthy and time consuming. None of the litigants interviewed had approached an NGO. Most had an engagement with the police at least once. For many the first point of contact was the lawyer.

Due to the pandemic mediations and counselling’s had come to a standstill. So consequently, there was nil result no account of it. It is submitted that cases were sent for counselling at the first stage. It was only if there was a hope for an attempt at reconciliation a further attempt was taken by the counsellor.

Table 25 Litigant’s perception of family court functionaries

Stakeholder	Bad	Neither bad, nor good	Good	Very Good
Judge			4	
Lawyer			4	
Counsellor		3		
Mediator		3		
Court Staff		3		

Most litigants rated ‘good’ for judges and lawyers. Counsellors, mediators and court staff were rated as neither good nor bad.

Family Court Perception Analysis

The different stakeholders in the family court system were asked to rate the family courts based on the following criteria: (a) Informality (b) Accessibility (c) Infrastructure (d) Digital Infrastructure (e) Complexity of Procedures (f) Repetition of Processes and (g) Ability of Litigants to navigate the Court Process without a Lawyer. The stakeholders were asked to rank in the order of 0-3.

Table 26 Family Court Perception Analysis –Kerala

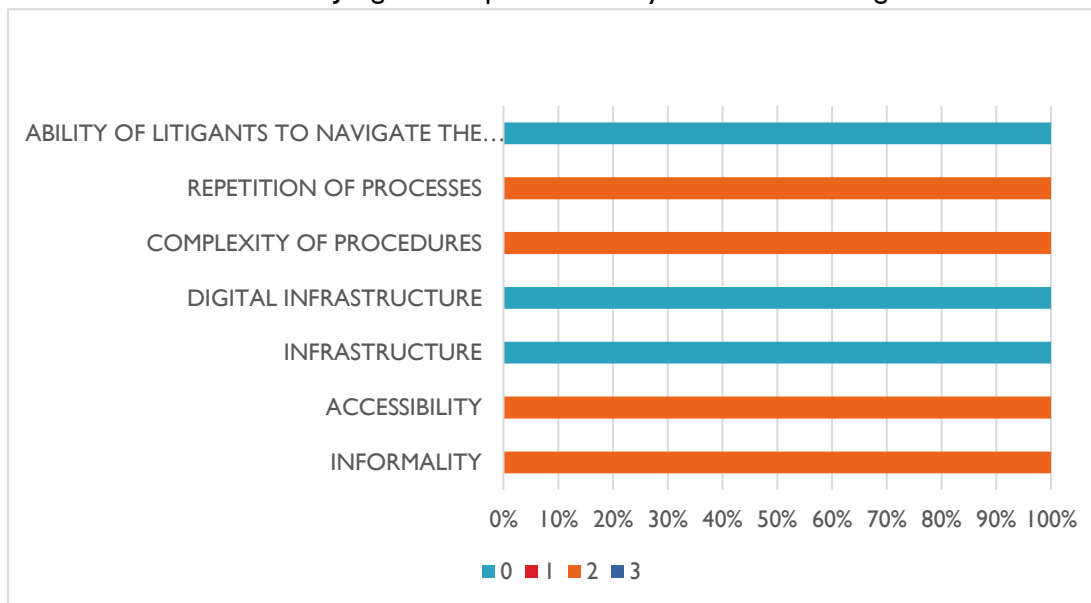
JUDGES' PERCEPTION OF FAMILY COURT FUNCTIONING				
Grading	0	1	2	3
Informality			4	
Accessibility			4	
Infrastructure	4			
Digital infrastructure	4			
Complexity of procedures			4	
Repetition of processes			4	
Ability of litigants to navigate the court process without a lawyer	4			
LAWYERS' PERCEPTION OF FAMILY COURT FUNCTIONING				
Grading	0	1	2	3
Informality		15		
Accessibility		15		
Infrastructure	15			
Digital infrastructure	15			
Complexity of procedures		15		
Repetition of processes	15			
Ability of litigants to navigate the court process without a lawyer	15			
COUNSELLOR'S PERCEPTION OF FAMILY COURT FUNCTIONING				
Grading	0	1	2	3
Informality		4		
Accessibility		4		
Infrastructure	4			
Digital infrastructure	4			
Complexity of procedures			4	
Repetition of processes			4	
Ability of litigants to navigate the court process without a lawyer	4			

MEDIATOR'S PERCEPTION OF FAMILY COURT FUNCTIONING				
Grading	0	1	2	3
Informality	2			
Accessibility		2		
Infrastructure		2		
Digital infrastructure	2			
Complexity of procedures		2		
Repetition of processes		2		
Ability of litigants to navigate the court process without a lawyer	2			
COURT OFFICERS PERCEPTION OF FAMILY COURT FUNCTIONING				
Grading	0	1	2	3
Informality		4		
Accessibility		4		
Infrastructure	4			
Digital infrastructure	4			
Complexity of procedures		4		
Repetition of processes		4		
Ability of litigants to navigate the court process without a lawyer	4			
LITIGANT'S PERCEPTION OF FAMILY COURT FUNCTIONING				
Grading	0	1	2	3
Informality		15		
Accessibility		15		
Infrastructure	15			
Digital infrastructure	15			
Complexity of procedures			15	
Repetition of processes			15	
Ability of litigants to navigate the court process without a lawyer	15			

- There is consensus among lawyers, judges, counsellors, mediators, court officers and litigants that the parties cannot navigate the family court system without a lawyer. Every stakeholder invariably ranked the courts on 'ability to navigate without a lawyer' at 0.
- There is consensus among all stakeholders that the infrastructure of family courts, including digital infrastructure is at a sorry state. Every stakeholder ranked the court for 'infrastructure' and 'digital infrastructure' at 0.

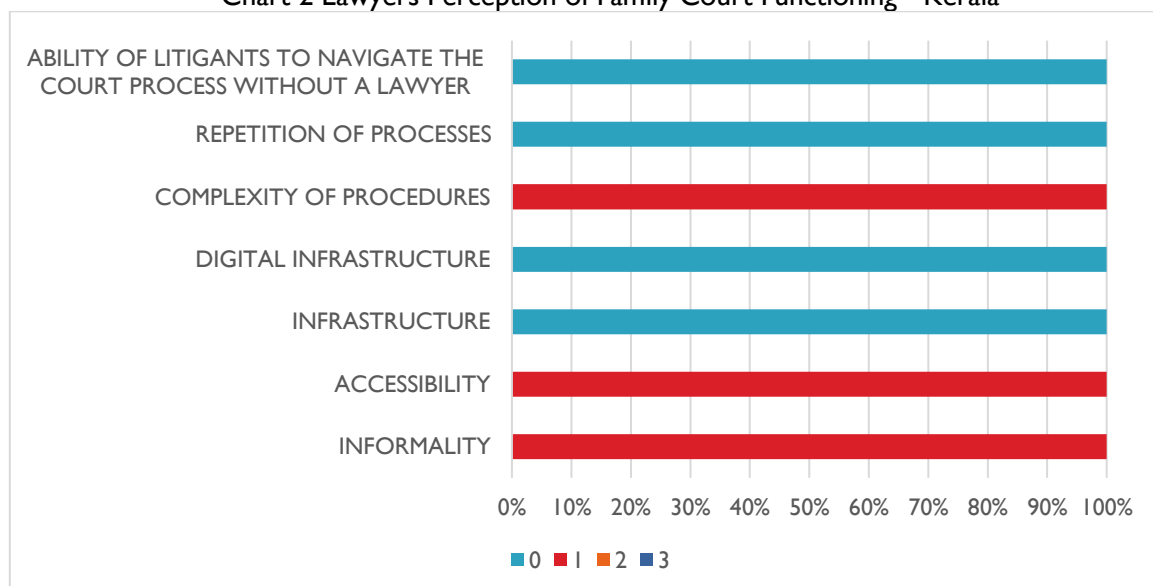
- Most stakeholders ranked the informality and accessibility of family courts at 1. This is an important aspect considering the fact that family courts were conceived as informal courts. Most judges ranked family courts for informality and accessibility at 2, while other stakeholders ranked at 0 or 1. This shows that judges perceive family courts are more informal and accessible as against other stakeholders.
- Most judges and counsellors ranked complexity and repetition of process at 2 while lawyers, mediators and court officers marked at 1. Litigants have also marked complexity of procedures at 2.

Chart 1 Judges Perception of Family Court Functioning - Kerala



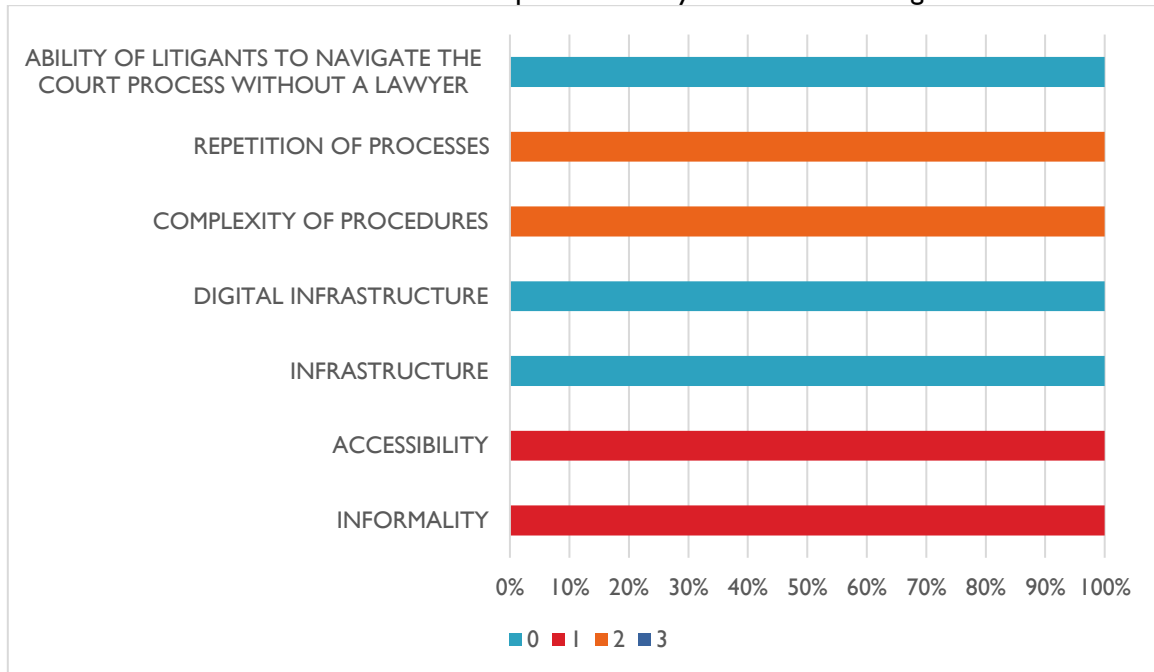
On a matrix of 0-3, all lawyers graded the ability of litigants to navigate court proceedings without a lawyer at 0, informality and accessibility at 2, infrastructure and digital infrastructure at 0, complexity of procedures and repetition of processes at 2.

Chart 2 Lawyers Perception of Family Court Functioning - Kerala



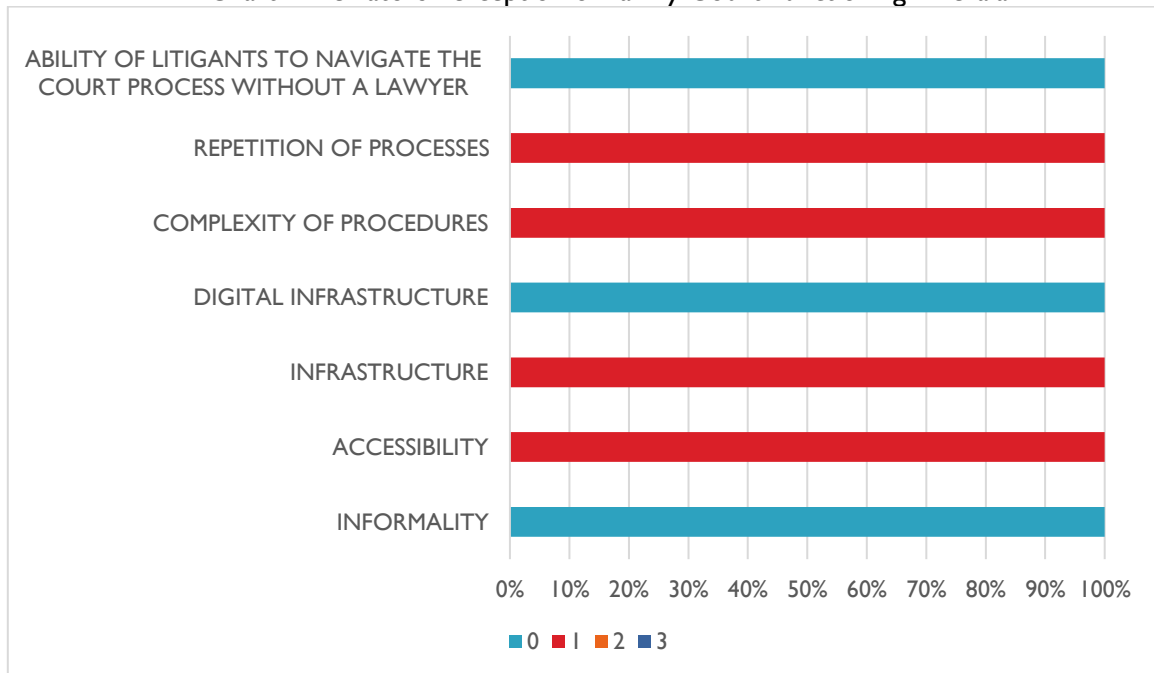
On a matrix of 0-3, all lawyers graded the ability of litigants to navigate court proceedings without a lawyer at 0, informality and accessibility at 1, infrastructure and digital infrastructure at 0, complexity of procedures at 1 and repetition of processes at 0.

Chart 3 Counsellors' Perception of Family Court Functioning - Kerala



On a matrix of 0-3, all mediators graded the ability of litigants to navigate court proceedings without a lawyer at 0, informality and accessibility at 1, infrastructure and digital infrastructure at 0, complexity and repetition of processes at 2.

Chart 4 Mediators Perception of Family Court Functioning - Kerala



On a matrix of 0-3, mediators graded the ability of litigants to navigate the court proceedings without a lawyer at 0, informality at 0, accessibility at 1, infrastructure at 1, digital infrastructure at 0, and complexity of procedures and repetition of processes at 1.

Chart 5 Court Officers Perception of Family Court Functioning - Kerala

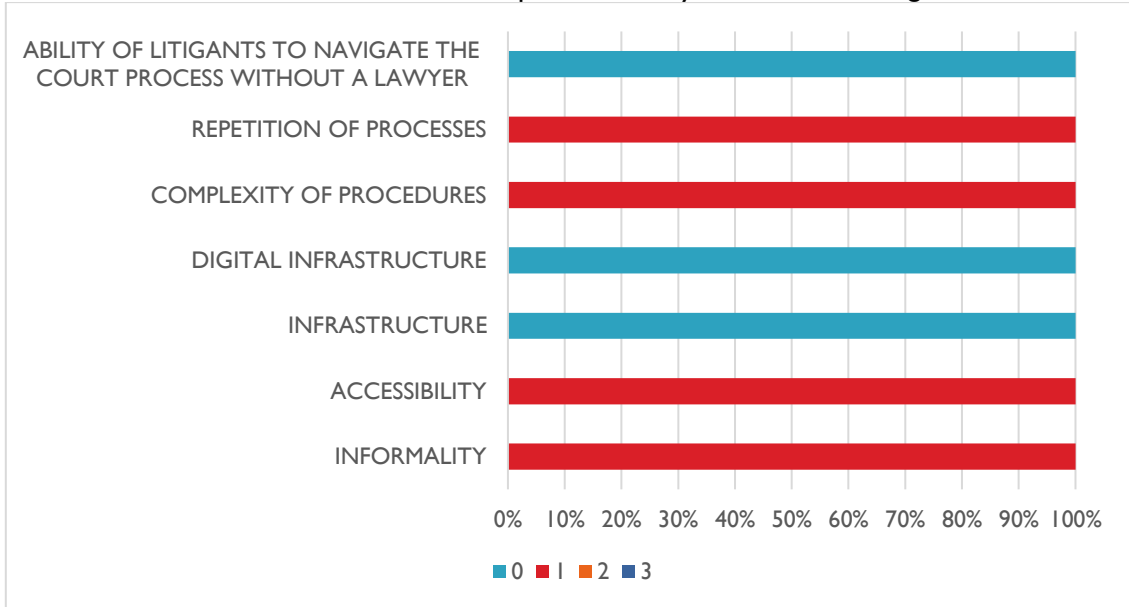
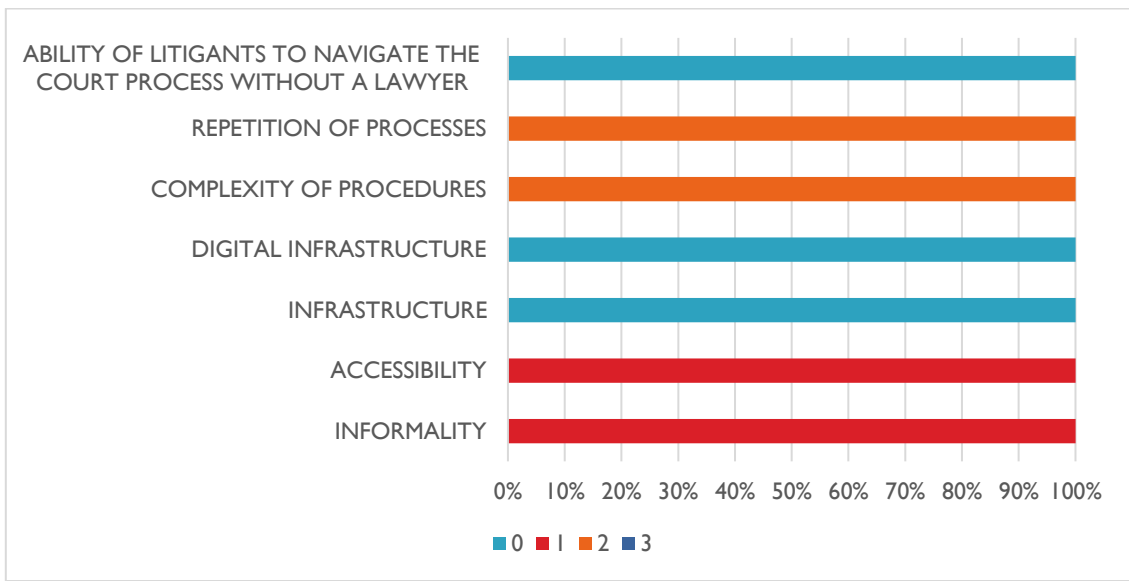


Chart 6 Litigants Perception of Family Court Functioning - Kerala



On a matrix of 0-3, litigants graded the informality and accessibility at 1, infrastructure and digital infrastructure at 0, repetition of processes and complexity of procedure at 2 and ability of litigants to navigate the court proceedings without a lawyer at 0.

Court Records Evaluation

20 individual cases of each district are selected for the study. This would total to 20*4 a minimum of 80 files from the state. I collected disposed matters for the purpose of the study.

This consists of two parts.

- Timeliness
- Content Analysis

Timeliness

Table 27 Timelines

	Time taken for first posting (Min-Max)	Time period between date of filing and date of disposal (Min-Max)
WAYANAD	7-68 days	67 days- 2 years & 6 months
MALAPPURAM	30-121 days	60 days-4 years
ERNAKULAM	25 days-6 months	9 months-3 years &5 months
THIRUVANATHAPURAM	32 days-9 months	98 days -3 years &10 months

Time between date of filing and date of disposal	Time taken at the stage of summons	Time taken at the stage of written statement	Time taken at the stage of mediation	Time taken at the stage of steps	Time taken at the stage of hearing	Time taken for judgment	Time taken for order of ex-parte
WAYANAD							
3 months to 26 months	0 days to 23 months	1-20 days	18-19 days	5 days to 75 months	33 days to 303 days	3 days to 411 days	15 days to 9 months
The table details the time duration taken in in stage of a family court matter in Wayanad.							
MALAPPURAM							
80 days to 4 years	0 days to 27 months	10 days to 17 months	52-53 days	28 days to 18 months		1-7 days	
The table details the time duration taken in in stage of a family court matter in Malappuram.							
ERNAKULAM							
8 months to 27 months	1 day to 25 months		2 months to 8 months	11 days to 46 months	5 days to 4 months	4 days to 11 days	11 days to 9 months
The table details the time duration taken in in stage of a family court matter in Ernakulam.							
THIRUVANTHAPURAM							
10 months -52 months	1 day to 45 months	14 days to 7 months	5 days to 21 months	18 days to 40 months	47 days to 47 months	7 days to 46 days	40 days to 50 months
The table details the time duration taken in in stage of a family court matter in Thiruvananthapuram.							

STAGE-WISE DURATION MAPPING OF FAMILY CASE – KERALA	
Range of Days taken for first posting	7 days to 9 months
Range of Days taken at the stage of summons	0 days to 45 months
Range of Days taken at the stage of appearance	
Range of Days taken at the stage of counseling & mediation	5 days to 21 months
Range of Days taken at the stage of written statement/ counter	1 day to 17 months
Range of Days taken at the stage of steps	5 days to 75 months
Range of Days taken at the stage of hearing	5 days to 47 months
Range of Days taken for judgment	7 days to 411 days
Range of Days taken for order if ex-parte	11 days to 50 months
Range of Total Days between date of filing and date of disposal	3 months to 4 years 4 months

The table summarizes the stage wise duration at each stage of a family court proceeding in Family Courts in Kerala.

An overview of the mapping of the stage's cases reveal that many cases there are repetition of summons/notice as the notice may not have reached or the acknowledgment card may not have reached the court.

In instances where the court received the acknowledgment card the cases are usually set *ex parte* if parties do not appear.

Secondly there is an overarching reliance on counselling and mediation to settle the matter. The counselling and mediation are used interchangeably. Maximum time is provided for if the settlement process is going on.

An overview of the random cases selected in Wayanadu reveals that the matters are disposed of after settlement. There seemed to be a concerted effort to give sufficient time to the opposite side to appear to prevent an *ex parte* order. This is revealed by the several dates the case has been adjourned for return of notice. This could possibly be on account of the physical terrain of the place.

In Maintenance cases one finds that very often the Proceeding are generally set *ex parte* and the Wife will have to file for execution petitions for realization of her arrears.

Further it is seen that most cases are examined through a commissioner. If cases do not settle through mediation then the case proceeds towards evidence and the parties are asked to complete their pleadings and produce relevant evidence.

Thus, one finds that there is no compulsion to file a written statement till the settlement fails.

In Guardianship matters and maintenance matters where parties appear the norm is to settle through out of court.

Content Analysis

Different case files were analyzed for its content to identify the possibility of a standard form for family court petitions and the inference from the analysis is laid down below.

Litigation in Family court is adversarial. Consequently, invariably there is a move towards allegations and counter allegations. With emphasis on evidence in trial it may not be possible to limit in a standard format. In specific cases like Guardian ship Petitions and Maintenance there is a possibility of introducing formats. In the former Best interest is the key factor and in the latter examination whether the Maintenance is deserved and the quantum of maintenance.

Lawyers attempt to approach the Family Petitions in a strategic manner depending on the needs of the client concerned. There are some lawyers who would prefer the totally technical approach as in a civil court but majority would try to use the settlement approach to close the case if there are multiple litigations. Due to the legal technicalities there could be a divergence of opinion between the mediators, counsellors and the lawyers while dealing with a particular case.

Guardianship Petitions are extremely sensitive and cannot be dealt in a mechanical manner. Often children are used as a tool to settle differences between the warring couples. This should be carefully evaluated before a decision is made. While Preparing a Format in a guardianship Petition the columns which could be mandatory are: -

- The number of children, age of children, place of residence of children
- The custodial parent of the children
- Reasons for the non-custodial parent approaching the court
- The period of absence of the non-custodial parent
- Explanation of the Best Interest and welfare of the children concerned

In cases involving Return of Money/property the dispute involves the issue is with respect to the property hence all aspects related to the giving and taking of property has to be clearly highlighted. The circumstances which led to the giving and taking is extremely crucial. In a matter involving family very often the exact proof is absent and a lot depends on the circumstantial evidence. With courts going technical in this issue it becomes extremely important that all aspects relating to the return of money and property are highlighted which is extremely subjective and individual. It could be a travesty of a justice if a format is relied upon.

In cases involving Maintenance a format is advisable as the issue is relating to grant of maintenance. A brief detail of the dispute is needed for determining maintenance as the issue would be whether the wife left the house voluntarily or not, whether there is adultery, the period of marriage, the number of children etc. So even if there was a format a brief description is always necessary.

Field Observations and Suggestions for Improvement

1. Family court is a space where warring parties with emotions are high. A crowded atmosphere does not help in healing or reconciliation. It is essential that family court settings are in places with wide open spaces.
2. It is not required for parties to come for all posting dates except in cases of counselling /mediation/Lok Adalat.
3. There should be spaces for child visitation areas. In cases where access to children are provided in the court setting it is essential that the same is provided in atmosphere which is child friendly and away from the warring spaces.
4. Counselling/mediation should be attempted at the initial stages and thereafter the cases should be proceeded as per law.
5. In some cases, there are several posting dates given for appearance. That can be avoided by using the option of substituted service /paper publication as the case maybe.

5.2.2 Field Survey - Telangana

Overview of Family Courts in Telangana

The first Family Court in the present state of Telangana was established in the year 1994 at City Civil Court Hyderabad and the newest Family Court came into being this year 2021 at Nizamabad, at present there are 16 Family Courts in the State of Telangana, their District wise distribution is as follows:

Table 28 Overview of Family Courts in Telangana

S.No	Name of the Court	District	Erstwhile Dist
1	Family Court Hyderabad - CCC ¹⁰⁵	Hyderabad	Hyderabad
2	Addl. Family Court Hyderabad – CCC	Hyderabad	Hyderabad
3	Addl. Family Court Hyderabad - MSJ ¹⁰⁶	Hyderabad	Hyderabad
4	Family Court Secunderabad – CCC	Hyderabad	Hyderabad
5	Family Court L.B Nagar -RRDC ¹⁰⁷	RR District	RR District
6	Addl.Family Court L.B Nagar –RRDC	RR District	RR District
7	Addl.Family Court Kukatpally –RRDC	Medchal- Malkajgiri	RR District
8	Addl.Family Court Malkajgiri –RRDC	Medchal- Malkajgiri	RR District
9	Family Court Adilabad Dist Court	Adilabad	Adilabad
10	Family Court Karimnagar Dist Court	Karimnagar	Karimnagar
11	Family Court Khammam Dist Court	Khammam	Khammam
12	Family Court Mahabubnagar Dist Court	Mahabubnagar	Mahabubnagar
13	Family Court Medak Dist Court	Medak	Medak
14	Family Court Nalgonda Dist Court	Nalgonda	Nalgonda
15	Family Court Nizamabad Dist Court	Nizamabad	Nizamabad
16	Family Court Warangal Dist Court	Warangal Urban	Warangal

As the present study required that the research be carried out at Family Courts, therefore it became important to evolve a methodology where District which are selected for the present research have an existing Family Court situated at the selected District. From the above table it can be observed that certain districts have more than one Family Court and most of the District do not have either a Family Court or a District Court, but have some Additional Courts of varying levels.

Unique Features of Family Courts in Telangana

Earlier the State of Telangana had eight 8 Districts which was later subdivided into 31 Districts. The erstwhile eight (8) District at least had one Family Court at the District level but with the subsequent subdivision, only eleven (11) Districts have one or more Family Courts. Another feature and disadvantage of Family Courts in Telangana is that most of the Family

¹⁰⁵ City Civil Court.

¹⁰⁶ Metropolitan Session Judge.

¹⁰⁷ Ranga Reddy District Court.

Courts only have territorial jurisdiction over areas belonging to local municipality, corporation and in some instances only over a few Mandals. This territorial limitation, even when not all districts have an existing Family Courts further narrows the role of Family Courts functioning in Telangana. In many Districts, the Family Court Judges do not have the sole charge of dealing with Family Law cases but also deal with various civil and criminal cases.

Infrastructure Check

Hyderabad

District profiling of Family Courts

The Family Court at City Civil Court at Hyderabad was established in the year 1994 and today it serves as the Principle Family Court for the City of Hyderabad.

No. of family courts in the districts:

At the time of the field visit for the present study there were only four Family Courts for the Twin Cities of Hyderabad and Secunderabad and they were:

- i. Principal Family Court, at City Civil Court, Hyderabad.
- ii. Additional Family Court, at City Civil Court, Hyderabad.
- iii. Family Court, at City Civil Court, Secunderabad.
- iv. Family Court, at Metropolitan Session Courts, Hyderabad

Recently two new Additional Family Courts have been sanctioned and there has been a change in nomenclature of the Courts, the new courts sanctioned are:

- i. II Additional Family Court, at City Civil Court, Hyderabad.
- ii. I Additional Family Court, at City Civil Court, Secunderabad.

After the sanctioning of the two new additional family courts, the Twin cities of Hyderabad and Secunderabad has two Principal Family Courts and two Additional Family Courts and one Additional Family Court at Hyderabad and Secunderabad respectively and Hyderabad has Family Court, at Metropolitan Session Courts.

Territorial Jurisdiction of each Family Court:

The following Courts have Jurisdiction over the city of Hyderabad:

- i. Principal Family Court, at City Civil Court, Hyderabad.
- ii. I Additional Family Court, at City Civil Court, Hyderabad.
- iii. II Additional Family Court, at City Civil Court, Hyderabad.
- iv. Family Court, at Metropolitan Session Courts, Hyderabad.

The following Courts have Jurisdiction over the city of Secunderabad:

- i. Principal Family Court, at City Civil Court, Secunderabad. And
- ii. I Additional Family Court, at City Civil Court, Secunderabad.

Both the twin cities of Hyderabad and Secunderabad together form the District or Capital Region of Hyderabad.

Areas not covered by jurisdiction of Family Courts:

There is no area which is not covered by the Family Courts in Hyderabad District.

About the Court

Name of the Court: The court at which the present study was conducted is Family Court at City Civil Court Hyderabad.

Infrastructure Check

Location

The location of the Court is in the heart of Old City of Hyderabad. The Family Courts at City Civil Courts Hyderabad are part of the regular court structure.

Accessibility by Public Transport

- a. Accessibility by Public Transport: Yes.
- b. Longest distance for litigants: The Longest distance would not be more than 15 km

History of Family Court Infrastructure

The Family Courts at City Civil Courts Hyderabad, ever since it was established is a part of the regular court structure and the I Additional Family Court which was established and the newly sanctioned II Additional Family Court is also part of the existing building with in the court complex.

Court Hall

- a. Position of Judge: The position of the Judge is at a higher level from the ground, within a separate closet.
- b. Court Hall arrangement: The Court hall is having all the modern technology, space for typist, court clerks, a well-shaped table for advocates and chairs for litigants at the end.
- c. General atmosphere in Court: The court is well lit and ventilated, it is not congested and is spacious.
- d. In camera proceeding: In camera proceedings occur rarely in this Family Court. In camera proceeding effected by asking all parsons except the Judge and the party to step outside till the hearing of the in camera proceeding.
- e. Sitting Area for lawyers: The sitting area for lawyers is available within the Court hall in the form of a well-shaped table.
- f. Sitting Area for parties/witnesses: Sitting Area for parties/witnesses is available within the court hall and outside the court hall in the corridors.
- g. Waiting Area for parties/witnesses: Waiting area for parties/witnesses is available outside the court hall in the corridors.

Counselling Centre

There is no counselling centre, however there is a mediation centre where parties are referred. At present there are no court appointed Counsellor, this was observed when all the four Family Courts were visited by the field investigator. However, the Hon'ble High Court for the State of Telangana has recently issued norms for appointments of counsellor in each family counselling centre attached to Family Courts in each city or town or other area for assisting Family Courts in settling disputes. As per the norms the appointment of the counsellors is to be made by the Hon'ble High Court in consultation with the State

Government. In this regard all the Family Court Judges have forwarded the list of prospective counsellors to the Hon'ble High Court and the same is pending with the High Court.

Mediation Room

- a. Position of mediation centre: The mediation centre is situated within the Court compound but has a separate building.
- b. No. of mediators: There are no separate mediator for Family Court and the mediator are attached State Legal Services Authority.
- c. Timings: The timing of the mediators are same as that of the Court.
- d. Room arrangements: The room arrangements are made by the State Legal Services Authority, there is a separate building in with the mediation centre is situated and there is a spacious hall and cabins for mediators and parties.
- e. All modern facilities are available at the mediation centre.
- f. General atmosphere in Mediation centre: The mediation centre is spacious and has all the modern facilities it has separate cabins.
- g. Privacy and Confidentiality: Conversations between the mediator and other parties cannot be heard as the mediator has separate cabin.
- h. Waiting areas for parties: Waiting areas for parties is available.

Other Amenities

- a. There are no separate toilets available for the Family Courts, toilets available with the Court Complex in which the Family Court is situated.
- b. Retiring room is not available.
- c. Lactation or breastfeeding area is provided.
- d. Children's lounge/playing area is not available.
- e. Waiting area is available in the corridor of the court complex and at the entrance to court complex.
- f. Drinking water and canteen is available.
- g. The Court is relatively clean compared to other courts of Hyderabad.
- h. Accessibility for physically challenged: The Family Court is accessible by wheel chair and the wheel chair is provided by the court.
- i. Accessibility for visually challenged: A guide is arranged at request of the party.

A Day in Court

The Court begins with call work and the cases are called after which some cases are passed over and case are heard at length in the afternoon till the end of the day. As per the Covid-19 protocol no one apart from Judge, Court staff and parties and advocates whose case was call were allowed in the court as such no notes could be taken for any case posted for the day during the field visit.

Summary of a day in court:

- No of cases posted for a day: 60 to 70
- No of cases adjourned: 35.
- No of cases called on: 60 to 70.
- No of cases where instructions were given: --
- No of cases heard: 7 to 8

Classification of activities and timings:

- Commencement of court: 10.30 AM
- Commencement of call work: 10.30 AM to 11.15 AM
- Commencement of trial: 1.00 PM to 2.00 PM
- Lunch Break: 2.00 PM to 2.30 PM
- Commencement of hearing Trial: 2.30 PM to 4.00 PM
- Commencement of Augments, hearing, pronouncement of Judgment: 4.00 PM to 5.00 PM

Interviews

No. of Interviews:

Hon'ble Judges - 4 sitting Hon'ble Judges from the sample courts = 4

Advocates - 2 lawyers each from the sample court + 3 = 11

Mediators – 1 mediator from sample court + 2 others = 6

Counsellors – NA

Court Managers – 1 from each sample court = 4

Litigants = 2 from each sample court + 1 other = 9

Judges

Personnel

Appointment

Current Process of Appointment: All the Family Court Judges interviewed for the present study have answered the query by stating that the appointment of a Family Court Judge is made as a general transfer against vacancies. The Family Court Judges are from the same cadre as the rest of the Judges in the subordinate Judiciary. The Family Court Judges are initially recruited either as an Additional District rank Judge directly after having a minimum of seven years of standing as Advocate at Court or in some instances they are promoted or transferred to District rank Judge from some other Government post with Court background and Court work as experience. Some are recruited as Junior Civil Judge and then promoted to Senior Civil Judge and later promoted to the rank of Additional District Judge, in some instances,

they are promoted or transferred to Junior Civil Judge from some other Government post with Court background and Court work as experience.

A vacancy in the Family Court arises when a Family Court Judge retires, is transferred or is elevated. In a District Court or City Civil Court, the senior most Judge after the Principal District Judge or Chief Judge in seniority is appointed as the Family Court Judge, the next promotion of a Family Court Judge is usually as Principle District Judges/ Chief Judge or as Registrar / Assistant Registrar in High Court for elevation Judge of High Court. The principle of seniority is followed in appointment of Family Court Judge and it acts as a stepping stone for further higher posts in the Judiciary.

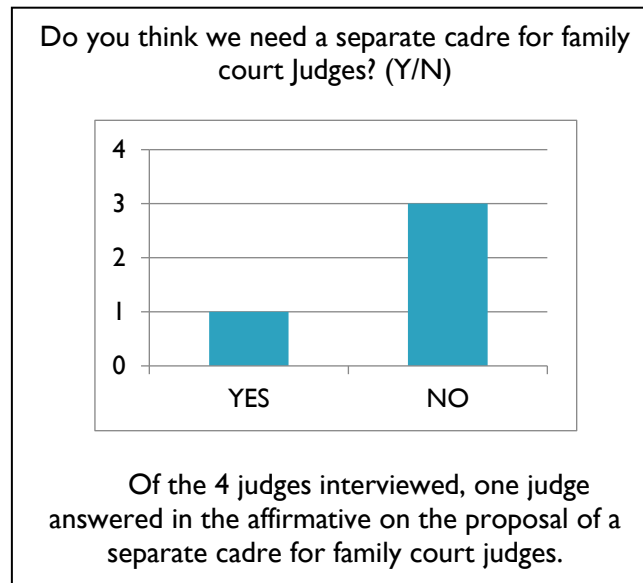
In addition to the post of Family Court Judge, there is also a post called Additional Family Court Judge. The Judges to Additional Family Court are also based on seniority but they are not as senior as the Family Court Judge who is the second senior most Judge in the District.

Factors considered before assignment of a Family Court Judge: The assignment of a Family Court Judge, as discussed above is done as a general transfer against vacancy, the senior most Judicial Officer of the District Judge Cadre at a District Court is appointed as a Family Court Judge. It goes without saying that this seniority is reached by a mix of years of experience as a Judge of various Subordinate Courts and good performance as a Judicial Officer. Only the best and the senior most Judicial Officers of the District Judge cadre reach the position of Family Court Judge and are promoted further.

Problems with the current process: However, the current process does not give any emphasis to the fact that the Judge of a Family Court deals with different law apart from regular civil and criminal cases and that the Litigants and parties before the court are unlike parties in other cases. The process makes the position of a Family Court Judge as any other post of Judiciary which may hinder in the best person suitable for being a Judge of Family Court being denied an opportunity to render his/her services as a Family Court Judge based on seniority. All the Judges answered no to the query whether Family Court Judge have additional qualification and suggested that regular qualification is sufficient to become a Family Court Judge.

Suggestions for improvement: On the proposal of a separate cadre for Family Courts Judges, of the 4 judges interviewed, only one answered in the affirmative.

It was stated that the Hon'ble Judges who had dealt with Protection of Children from Sexual Offences cases and Juvenile Justice cases are better positioned to understand the psyche of children as they have already dealt with them in other courts. It was also observed that the infrastructure for Protection of Children from Sexual Offences Court could be shared as both need to have child friendly environment, including waiting rooms, play area and etc.



Qualifications

Mandatory Qualifications as per current system: At present the minimum qualification for becoming a Judicial Officer of JCJ rank is Bachelor of Law/LLB and for becoming Judicial Officer of District Judge rank is either seven years as advocate in Subordinate Judiciary or through promotion from Junior Civil Judge to Senior Civil Judge and then to Additional District Judge. In the Indian Judiciary having Bachelor of Law/LLB degree is sufficient even to become Chief Justice of India provided he/she has required experience as mandated by the Constitution of India¹⁰⁸.

Section 4 (3) of the Family Courts Act 1984 deals with the qualification of Family Court Judge, as follows:

“A person shall not be qualified for appointment as a Judge unless he- (a) has for at least seven years held a judicial office in India or the office of a Member of a Tribunal or any post under the Union or a State requiring special knowledge of law; or (b) has for at least seven years been an advocate of a High Court or of two or more such Courts in succession; or (c) possesses such other qualifications as the Central Government may, with the concurrence of the Chief Justice of India, prescribe.”

Section 4 (4)¹⁰⁹ deals with selecting persons for appointment as Judges, it is as follows:

“(a) 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 and qualified by reason of their experience and expertise to promote the settlement of disputes by conciliation and counselling are selected; and

(b) Preference shall be given to women”

It is not clear whether every condition in the clause (a) of the act is being complied, especially expertise to promote settlement of disputes by conciliation and counselling. The Judges who

¹⁰⁸ Article 124 & 270 The Constitution of India 1950

¹⁰⁹ Section 4 (4) of the Family Courts Act 1984

are appointed as Family Court Judges are not different from any other Judge of the same rank and experience. As far as clause (b) is concerned, one Judge at the Family Court selected for the present study was male.

Training

According to all the Judges interviewed for the present study, regular training is offered to the Family Court Judges at State Judicial Academy and National Judicial Academy. All the newly appointed Family Court Judges are first sent for training including in family law and functioning of Family Courts at National Judicial Academy. The training for Family Court Judges is being done from time to time in their service also at Judicial Academies. According to all the Hon'ble Judges interviewed for the present study, the training provided for the Family is sufficient. The areas covered in the training are as follows: 1) resolving disputes and settlements of family cases, 2) encouraging counselling, and conciliation among parties.

Procedure

As per the Family Courts Act 1984, the Family Court Judge has wide discretionary power when it comes to using and evolving procedure, all of the Judges stated that they have to rely on Code of Civil Procedure for day to day functioning of the Family Court, however all of the Hon'ble Judges also stated that they may skip some procedures of the Code,¹¹⁰ whenever they deem it unnecessary for a particular case. The Family Courts are different from other courts as they have a different procedure laid in the Family Courts Act, a clear example of this is that the counselling and conciliation are emphasized in the act and the court too adopts this approach and sends the parties of a Family case time and against for reconciliation, counselling and mediation. Parties are encouraged to settle the case cordially even at later stages of the case.

In most of the Cities and Towns the Judges of Family Court also has additional charge of dealing with other civil and criminal cases. It was observed that where the Family Court Judge held additional charge of criminal cases, an assistant or additional Public Prosecutor was assigned to the court who sits regularly in the court hall and has to go out when in camera proceedings are conducted. Moreover, criminals are made to sit and attend their criminal cases in Family Courts which is not a conducive for a child and family friendly Family Court. Therefore, the environment of many Family Courts becomes like other regular courts due to the fact that Family Court Judge's also have additional charge of dealing with other civil and criminal cases. This is the first major challenge faced by the Family Courts in Telangana.

Duplicity of procedures, delay in stages: The procedure followed in the Family Court is mostly from the Code of Civil Procedure apart from some procedure elaborated in the Family Courts Act. As one Judge opined, Family Courts functioned in a quasi-judicial manner as settlement of the dispute through, counselling, mediation and reconciliation is promoted by the court to save the institution of family. According to another Judge replicating and following the Code of Civil Procedure is better and useful instead of evolving new procedure as they may not stand the challenges of an appeal before the appellate court.

¹¹⁰ Civil Procedure Code (CPC) 1908

When asked whether it is possible to get rid of Code of Civil Procedure altogether, all the Judges answered negatively and stated that Code of Civil Procedure is needed as guiding book for day to day proceeding of the Family Court.

According to one Judge, delay is caused due to prolonged and repeated counselling and at the stage of recording evidence and according to other there is no delay at any stage.

Simplifying service of summons: All Judges interviewed stated that there is no delay in service of summons in family cases as the parties know each other's residences and whereabouts and the regular problem of service of summons which is faced in cases where parties are stranger does not occur in family cases.

Challenges in custody of children cases: According to all the Judges executing the Court's order in child custody cases becomes difficult due to non-cooperation by minor children and the parent with whom the child already lives, despite court orders the child grows affinity to one parent and would not come to visit or meet other parent.

Interim petitions: The interim petitions are, if maintainable are posted at the earliest for hearing and are disposed of by keeping a day to day hearing, in many cases the interim orders are passed quickly without much opposition from the opposite party, opined the Judges.

In-camera proceedings: In camera proceedings are held rarely in Family Courts, but when they are held it causes in convenience to the Litigants and Prosecutor where the Family Court Judge is given additional charge of other civil and criminal cases.

Referral system: At present only referrals that are made are to the mediators at the mediation centre. There is no presence of court counsellors or any other expert in the state of Telangana. Recently there has been a notification for the appointment of Counsellor at the Family Courts and the Hon'ble Judges of the Family Courts have forwarded a list of Court Counsellor for appointment and the same is pending with the concerned authority. Even after over three decades of enactment of Family Courts Act basic professional like counsellors are missing from the Family Courts.

Execution proceedings and court orders: According to all the Judges there are plethora of problems faced in the execution of proceedings and court orders due to non-cooperation of the parties. In cases of maintenance the husband or the father as the case may be avoids payment on the ground of unemployment or underemployment, in such cases punishment does not serve the purpose as wife and children continue to face poverty even when husband or father is punished by the courts.

It was proposed that the mechanism of paying allowance to widow, single women and children under Muslim law through wakfs be replicated for women and children of other communities either through their Endowments department or Church or some budget may be allotted to the Family Court to pay allowances to women and children where husbands or fathers are unable to pay maintenance despite court orders. In cases involving children the child grows affinity to one parent and would not come to visit or meet other parent despite court orders.

Legal Aid: The District Legal Service Authority helps underprivileged litigants with legal aid counsels; the infrastructure of Legal Service Authority is used for mediation in family cases.

Sometimes amicus curiae are appointed from the legal aid counsels. The Legal Service Authority organizes Lok Adalath throughout the year for settlement of cases. The legal aid provided by the legal service authority is useful in giving representation to the underprivileged parties who cannot afford a private advocate for their cases. The mediation conducted at the legal services building is also very effective in reaching a resolution. Lok Adalath has proved to be an effective platform to settle family cases.

Pandemic & Family Courts: Pandemic had put a hold on all the physical court proceeding in the state including the court proceeding of Family Courts. This led to using digital process for filing of cases in courts as well as having online hearing of cases through video conferencing. All the Hon'ble Judges stated that there was no hindrance in holding virtual court or in filing of cases. All the hon'ble Judges are in favor of holding virtual courts where physical hearing is not possible.

Suggested Reforms

Changes in Family Courts across Time: The issues before the Family Courts has remained the same, apart from changes and developments in laws from time to time, which gave rise to new issues in cases. While many laws have been issued for the protection of women within family, men have their respective rights in disputes and equal rights when it comes to cases involving children, opined all the Judges. Changes in laws have occurred, leading to changes in processes, with the advent of lok adalaths a lot of disputes are being resolved outside the court. Over the years the Family Courts are close to be treated as a separate unit with separate building and infrastructure in many places, they also have some distinct staff like lady home guard at least one Family Court.

Court Organization: On the question whether the current court room organization of Family Court be altered in the likes of Consumer Redressal Forum or Juvenile Board, all the Judges except one stated that the current court room organization of Family Court cannot be altered like Consumer Redressal Forum or Juvenile Board as the Family Court functions like a Civil Court.

Role of Lawyers in Family Court: S.13 of the Family Courts Act which states that: “Notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner: Provided that if the Family Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as amicus curiae.” This section is similar to that of general practice in Consumer Forums where a party can directly approach the forum for dispute resolution, but in case of consumer rights there is a campaign by the Government to make consumers aware about their rights, whereas most of the parties are to a case in family court are not aware how to file their case let alone the procedure and functioning of the Family Court. It was also proposed that the section 13 of the Act has become obsolete and should be done away with as there is no use when all the cases in Family Courts are being presented by Advocates.

Maintenance Fund for Family Court: It was proposed that Family Courts may constitute a Maintenance Fund like religious or community institutions providing compensation and

maintenance to women and children where the husband/father is unable to provide compensation and maintenance.

Awareness of Family Laws & Family Court Process: Steps may be taken to create awareness to the parties to a dispute about their rights, procedure of Family Courts and Family Laws. The efforts taken by the Government to create awareness on consumer rights is an example before us. In the same lines, Government should run campaigns to create awareness on Family Laws and Family Courts

Final Comments: Most of the Judges stated that they require Law Clerk cum Research Assistants for help in legal research and Judgment writing as present in High Court.

Lawyers

Personnel

Experience as Family Court Lawyer: Different advocates had different experience as Family Court lawyer. Some of the lawyers interviewed for the present study did not see any difference in their experience in Family Courts and treated Family Courts as any other court. The Family Courts where the Hon'ble Judge of Family Court had additional charge as a District or Session Judge, the lawyers did not treat the Family Court as a different court, whereas the Family Court which solely dealt with family cases the lawyers experience was different and some had evolved good practice specializing in family law cases. Most of the lawyers stated that family law cases are emotional and stressful due to clients.

Stages at which parties' approach: Most of the lawyers stated that the parties approach them at the time of filing of cases, i.e. when they have decided to pursue legal case against the other party. Only few lawyers stated that the parties approached them at the early stage of dispute, usually for counselling and settlement of dispute.

Client Requirement: As the parties to a dispute are closely related, they usually had made their mind up on some goal whether it be seeking justice only through court, seeking revenge, to prove themselves right, agonize the other party etc, in this regard family cases clients are different from clients in other cases. Most of the advocates stated that the client requires immediate relief as the stress of the case take toll on their mental health other stated that the client required them to win the case anyhow.

Multiple cases and Forum of dispute: Most of the parties to a dispute in a family case file multiple cases against each other, either as counter cases or in pursuance of multiple remedies. In situation where both the parties are native of same City, Town or District, multiple cases are filed in the same district but where the parties belong to different areas the parties are inclined to file cases in their local courts so as to frustrate the opposite party. To resolve the issue of cases pending before different family courts the party having inconvenience in attending the court files a transfer petition in High Court in hopes of getting it transferred to his or her local court.

Duration of case and lawyers experience: Most of the lawyers answered that the duration of the case could not be predicted and different cases within Family Court follow different timeline. Most of the lawyers experienced delays due to Covid-19 and related restrictions.

Difficulties faced by clients in Family Courts: Most of the clients of family cases are for the first time facing the courts of law, they are rather intimidated by the courts as they do not understand the proceedings, moreover not having separate building for Family Court puts the criminals and other bad elements who visit criminal courts on the same premises which is unhealthy environment for the kids and families. The parties to a family case are often desperate and get disillusioned due to delays in getting justice.

Lawyer criticized for exaggerating facts: Most of the lawyers answered in negative to the question that they exaggerate the facts as they can always be corrected by the opposing counsel. Most of the lawyers stated that it is their duty to present the case and provide best possible remedy to their client. Some lawyers also stated that it is the clients who exaggerate their version of the story. Some of the lawyers declined to comment.

Limited role of advocates in Family Court, restriction under S.13:

Most of the lawyers stated that their role is as usual in Family Courts as it is in any other court and only some of the lawyers stated that their role is more than a lawyer as they themselves counsel the parties to resolve the dispute. Most of the lawyers stated that S.13 of the Family Courts Act is not useful as there is hardly any party to a dispute that does not engages an advocate. Whereas some of the lawyers stated that the procedure should be simplified for the parties to argue their own case.

Caution in filing criminal cases: All the advocates answered no to the query that if lawyers exercised particular caution in filing criminal cases in family matters.

Appointment of Family Court Judge and Separate Cadre: Most of the lawyers stated that the current process of appointment is not appropriate as the Family Court Judge is transferred quickly to other courts after being appointed as Family Court Judge, other lawyers stated that it is appropriate as usually the senior most Judge after the Principal District Judge is appointed as Family Court Judge. As far as separate cadre is concerned most of the lawyers are in favour as this would make the Family Court Judges expert in family law as they would be posted as only Family Court Judge.

Procedure

Discretionary Powers and its affects on parties: As far as discretionary power of a Family Court Judge is concerned it is derived from the Family Courts Act. The opinion of the lawyer was split on this question half of the lawyers stated that the Family Court Judges followed Code of Civil Procedure and not discretion and other half of lawyer are of the opinion that discretionary power are used arbitrarily by the Family Courts Judges and this adversely affects the parties.

Duplicity of Procedure: All the lawyers answered no to this question and some stated that procedure even if repeated is necessary to meet the ends of justice.

Delay at different stages and measures to reduce delay: Most of the lawyers are of the opinion that the most delay is caused at conciliation and mediation stage and this is done at the beginning of the case, there are many instances where parties go for mediation and conciliation even at later stages, some with the hope of frustating the case, as the present practice requires

compulsory conciliation, the same has to be changed where there is no hope of parties resolving the dispute out of court.

Simplified procedure for Family Courts: The opinion of the lawyers was split in this regard, as some lawyers are of the opinion that Code of Civil Procedure should be strictly followed and following the code would make the Family Courts predictable, consistent and less arbitrary. The other half of the lawyers stated that the Family Courts should evolve its own procedure and the procedure so evolved should be simple and even understood by the parties.

Role of CPC: When proposed if CPC can be done away with in operation of Family Court, all the lawyers answered no. Code of Civil Procedure is considered a guiding light for day to day proceedings.

Reconstitution of Family Court Bench with Counsellor/Psychologist: Almost all of the lawyer answered no to this query as the bench belongs to a Judge who has knowledge of substantive and procedural law. Only one lawyer stated in the interview that Family Court Judge should have background in psychology as an additional qualification or Court counsellors may be promoted in future as Family Court Judge, if they are qualified with law degree and experience.

Chamber hearing and in camera proceedings: Chamber hearing and in camera proceedings are identical in that both exclude the public and persons not related to the case. Chamber hearing and in camera proceedings provide a sense of safety and privacy to the parties and make the court environment conducive. The court may hold hearing in chamber or in camera at the request of the parties. Most of the lawyers are of the opinion that Chamber hearing and in camera proceeding will help in settlement of the cases, only some disagreed and stated that chamber hearing is time consuming. Most of the lawyers are of the opinion that in camera proceedings should not be the norm as they are time consuming, the in-camera proceeding can be held when the parties request the court for the same.

Men's right campaign and Family Courts: Most of the Lawyers are of the opinion that the men's rights campaign is due to the fact that law in general and family law in particular is tilted in favour of women. They cited that most of the Family Court Judges appointed are women as there is a provision in the Family Court Act for the same. Whereas the women lawyers who were interviewed for the present study stated that family law is anti-patriarchal and gives equal importance to women and children, moreover men's right campaign are a result of men not getting away with what they want in Family Courts.

Often repeated statement in Family Court which are inappropriate: Most of the lawyers are of the opinion that statement questioning the legitimacy of a child and using the word bastard in this regard is inappropriate and should not be used. Other statements which are usually inappropriate are pertaining to personal attacks by the parties and name calling, especially when questioning the character of the parties, fidelity of the parties, sometimes ugly words are used which are inappropriate.

Legal Aid: The District Legal Service Authority helps underprivileged litigants with legal aid counsels, the infrastructure of Legal Service Authority is used for mediation in family cases. Sometimes amicus curiae are appointed from the legal aid counsels. The Legal Service Authority organizes Lok Adalat throughout the year for settlement of cases. The legal aid

provided by the legal service authority is useful in giving representation to the underprivileged parties who cannot afford a private advocate for their cases. The mediation conducted at the legal services building is also very effective in reaching a resolution. Lok Adalat has proved to be an effective platform to settle family cases.

Pandemic & Family Courts: According to all the lawyers the pandemic had an adverse effect on the courts and lawyers, as the courts were closed for a long time and reopening of the courts was done in systematic manner with limited physical hearing and limited cases per day on the roster. There are no major changes in the family court as the video conferencing and other use of technology were already being used in the Family Court in limited manner, where required.

All the lawyers were in favour of e filings as an effective and time saving way to file cases, the only challenge to e-filing would be lack of access to smart devices which is not an issue and access to internet which may be a challenge if there are any connectivity issues and server issues with the courts. Not all lawyers are in favour of e hearings as it limits the presentation of the lawyer in the court and deprives the courts of having a public hearing, which is essential part of conducting court proceedings. There are multiple challenges of conducting court hearing through electronic means, such as connectivity issues, parties not having smart devices, disturbance during e – hearings and etc. At present the courts have shifted back to physical filing and physical hearing in a phased manner, only occasional where physical hearing is not possible, e – hearings are being conducted.

Suggested Reforms

Difference in Family Court Cases over years: The family law has evolved over the course of years and as such the family cases have also evolved. More emphasis is given for counselling to the parties and mediation is conducted to resolve the cases. Separate courts have come in place to deal with the family cases.

Changes in law, court procedure and administration: Most of the lawyers stated that mandatory counselling and mediation should be done away with in cases where there is prima facie no chance of settlement of dispute outside the court. Sometimes the Judges appointed for Family Courts are transferred quickly and this leaves vacancy in the family court.

Strengthening Digital Infrastructure and Reducing Digital Divide: Efforts shall be made to reduce the digital divide of litigants and lawyers by setting up alternate arrangements in courts, city centres and other public spaces to secure digital access when the courts are being shifted to virtual mode.

Counsellors

In the State of Telangana, at present there are no court appointed Counsellor, this was observed when all the four Family Courts were visited by the field investigator. However, the Hon'ble High Court for the State of Telangana has recently issued norms for appointments of counsellor in each family counselling centre attached to Family Courts in each city or town or other area for assisting Family Courts in settling disputes. As per the norms the appointment of the counsellors is to be made by the Hon'ble High Court in consultation with the State Government. In this regard all the Family Court Judges have forwarded the list of

prospective counsellors to the Hon'ble High Court and the same is pending with the High Court.

Mediators

Personnel

Arrangement in relation to mediators in each court: The mediators are appointed by the court for each Court complex and not specifically for the Family Court, the mediators at all the Court Complexes are using the infrastructure of Legal Service Authority for conducting mediation and all the mediation centre are located with the Legal Service Authority building.

Availability of mediators: All the mediators stated that the mediator is available on all week days and some also stated that they are available is any certain date is fixed by the court as due date for mediation.

Process

Types of cases: All types of civil cases are referred to mediation including cases pertaining to Family Courts, cases that are referred by the courts are those which can be resolved out of the court and where the parties know each other. Certain criminal cases are also referred, especially those pertaining to family.

Approach in family cases: Most of the mediators stated that there is no special approach when family cases are referred to them but they also stated that family cases have more likelihood of resolving the dispute as the parties are known to each other.

Number of mediation sittings: Most of the mediators have answered that up to five sittings of mediation is done in family matter, and some have stated that mediation can be referred at any stage of the case.

Interval between each session: Some of the mediators answered that mediation session are done day by day and others stated that mediation is done over time spanning across a week or two as parties need time to think after each mediation session, to arrive at any decision.

Stages when cases are referred to mediation: All the mediators stated that as a matter of rule all the family cases are referred for mediation at the initial stage of the case and in between if the courts feel that there is a chance for compromise or when the parties request for mediation.

Mediation sitting before filing of written statement: The opinion of the mediators was split on this issue as half of them stated that mediation can be done at any stage and even before filing of written statements and other half of the mediators are of the opinion that parties take advantage of the mediation before filing their written statement, the party filing written statement gets further facts and knowledge about the case in an informal setting of mediation and the same is being used as advantage while filing of written statement.

Certain cases not appropriate for mediation: Half of the mediators answered yes to the question whether they think that certain cases are not appropriate for mediation and other half believed that in all cases there is a chance for mediation and mediation is the way forward.

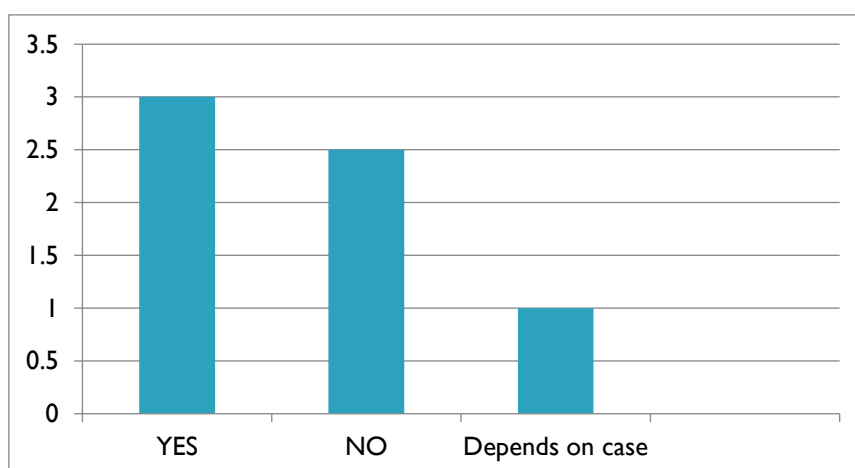
However, all the mediator interviewed for the present study stated that family cases are appropriate for mediation.

Change in approach in cases with domestic violence: All the mediators stated that there is a change in approach in cases involving domestic violence as it is an criminal offence and the mediation is approached carefully so as to safeguard the rights of the victim in most cases of domestic violence, it is the victim who decides whether to proceed with the mediation or not and if the mediation is successful the case is either settled in Lok Adalath or Quashed at the request of victim before the Hon'ble High Court.

Expectation of different type of litigants from Court: Most of the mediators stated that as the parties in a family case know each other they have various underlying issues even before approaching the court and expect more than the relief is sought from the courts. The mediators stated that most women seek some form of justice from the court and punishment for the opposite party and most of the men seek to frustrate the opposite party by using delay tactics, in cases where the parties have personal grudge they are not even ready to come for mediation.

Do's and don'ts when it come to mediation in family cases: Three of the mediators stated that in the cases involving family there should be do's and don'ts in mediation and they stated that special attention should be given to preserve the institution of family and where children are involved their interest should be given utmost importance. Two of the mediators stated no and said that the mediation process already has various guidelines for all cases, as such there is no need for separate do's and don'ts. One mediator was of the opinion that do's and don'ts depend on the case.

Chart 7 Do's and don'ts when it comes to mediation in family cases



When asked if there should be certain do's and don'ts in relation to mediation in family cases, 3 mediators responded in the affirmative, 2 responded in the negative and 1 responded saying it depends on facts and circumstances of each case.

Special training for Mediators: According to all the mediators interviewed for the present study there is no special training required for the mediators. Some of the reasons stated for not requiring training are as follows: mediator have at the least 15 years of standing as Advocates at the respective court complexes where they are appointed as mediators¹¹¹, the mediator have sufficient experience in dealing with family cases.

Caution in preparing settlement agreement: According to the mediators interviewed for the present study where an agreement is reached for settlement it should be reduced in writing and signed by parties, power of attorney if any, and if there are advocates representing the parties the advocate shall attest the signature of their respective clients after which the mediator shall prepare a covering letter signed by him and forward the same to the Court where the case is pending.

Pandemic and Family Courts

According to the mediators the pandemic had adverse effect on the mediators as there were no cases for mediation and it adversely affected. The changes brought by the system was that some mediation was done online but it was unsuccessful and the major challenges were infrastructure and lack of proper internet connectivity.

Court Officers

Functions of Court Manager: The functions of Court Manager are Human Resource Management, Budgetary Management, Case flow management, preparation of budget for five years an any other administrative work given by the Principal District Judge. There is only one Court Manager per District or Court Complex and they are in no way particularly concerned with family court. This question is not applicable. As Court Managers are in no way particularly concerned with Family Court, they are in no position to assess the Family Courts. One of the court managers stated that there are guidelines by the Hon'ble Supreme Court for early disposal of the cases.

Numbering system followed in courts: Family Cases in City Civil Courts is numbered as O.P, Family Cases in Warangal District Courts is numbered as F.C.O.P. Family Cases in Medak District Courts is also numbered as F.C.O.P. Family Cases in Karimnagar District Courts is also numbered as O.P. According to all the Court managers there is no separate numbering system for connected cases between same parties. The connected cases between the same parties are marked differently as relief sought in different cases are different from each other as such they cannot be marked same or similar.

Challenges faced by a Court Manager:

- i. No service rules are framed.
- ii. Contract Job.
- iii. No Fixed job Description and Job specification.
- iv. Lack of office space in some Courts.

Number of staff: According to all the Court Managers they have adequate number of staff at Family Courts.

¹¹¹ Civil Procedure Mediation Rules 2005

Number of counsellors available at Family Court: There are no counsellors available at any family courts in Telangana, the counsellors are yet to be appointed by the Hon'ble High Court.

Number of mediators available at Family Courts: According to all the Court Managers there are no mediator available at Family Courts.

Current arrangement of mediators: According to all the Court Managers the mediator available at legal services authority building.

Family Courts response to pandemic: According to all the Court Managers the Family Courts were functioning virtually during pandemic as per the direction of the Hon'ble High Court.

Family Court Perception Analysis

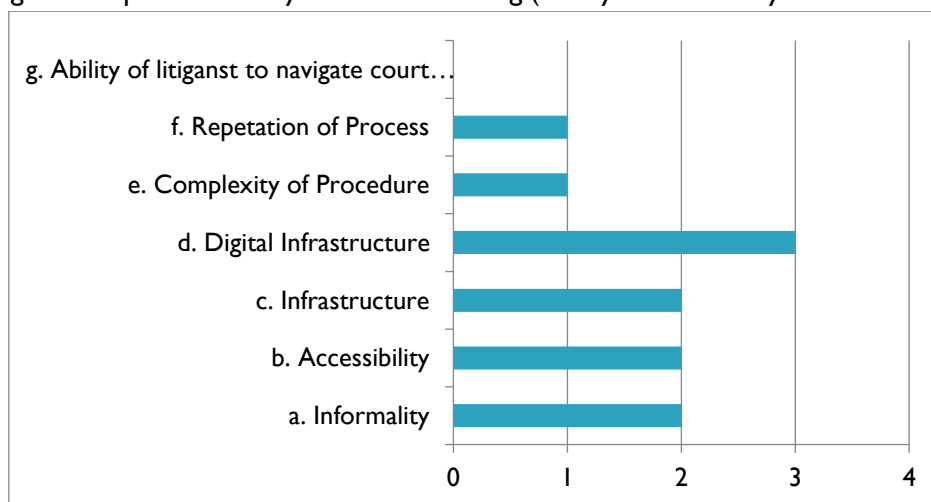
Family Court Perception Analysis is a segment to mark the perception of the different stakeholders on family court functioning. This is a segment purely on the judgement of the individuals associated with the Family Court. This segment is further classified into two parts: i) Stakeholders' Perception Analysis and ii) Litigant Perception Survey.

Stakeholders' Perception Analysis

All the stakeholders interviewed were asked to grade the family courts on the following criteria: a) Informality b) accessibility c) infrastructure d) digital infrastructure e) complexity of procedure f) repetition of processes and g) ability of litigants to navigate court proceedings without a lawyer on a matrix of 0-3 (zero being the least and three being highest).

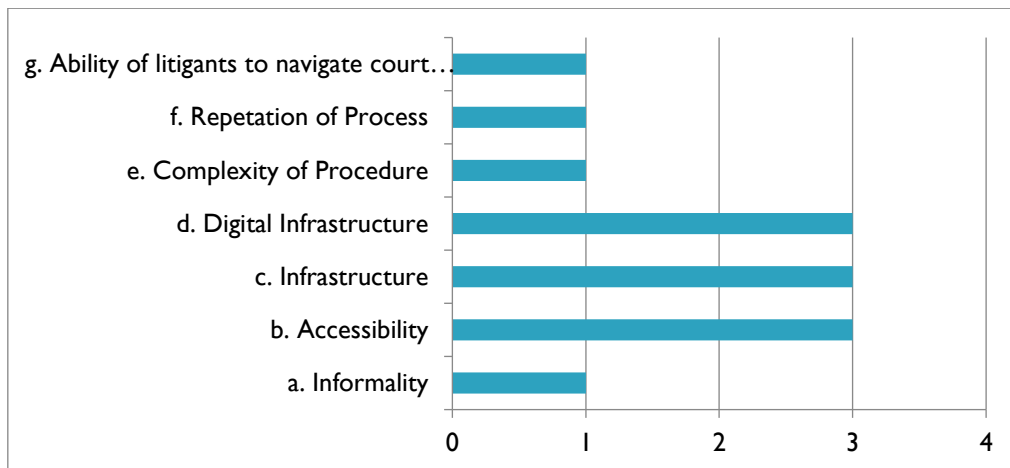
Judges Perception of Family Court Functioning

Chart 8 Judges Perception of Family Court Functioning (Family Court at City Civil Courts Hyderabad)



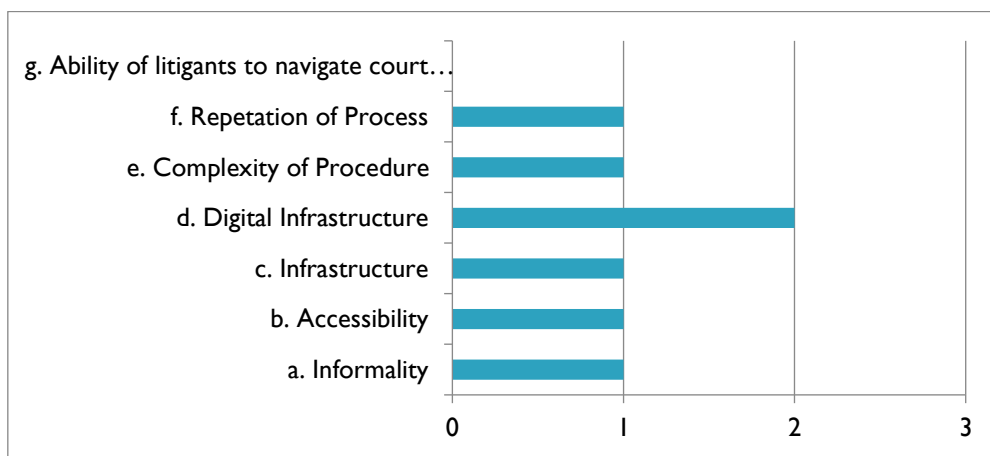
On a matrix of 0-4 (0 being least and 4 being highest, Family Court at City Civil Courts Hyderabad was graded by the Judge for informality, accessibility and infrastructure at 2, Complexity of procedure and repetition of process at 1, Digital infrastructure was marked at 3 and Ability of litigants to navigate court proceedings was graded at 0.

Chart 9 Judges Perception of Family Court (Family Court at Warangal District Court)



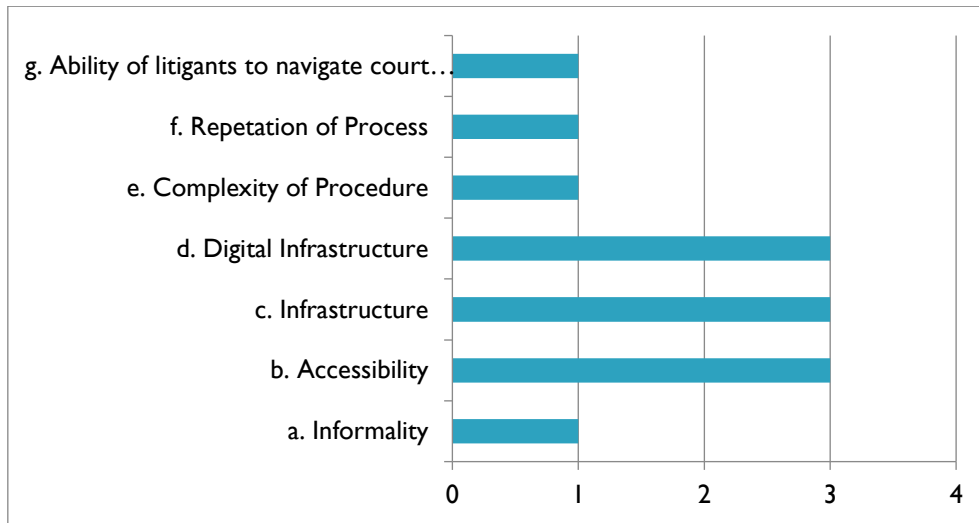
On a matrix of 0-4 (0 being least and 4 being highest), Family Court Warangal was graded by the Judge for informality at 1, Accessibility, Infrastructure and Digital Infrastructure at 3 each, Complexity of procedure and repetition of processes at 1, and ability of litigants to navigate court process without a lawyer at 1.

Chart 10 Judges Perception of Family Court (Family Court Medak District Court at Sangareddy)



On a matrix of 0-4 (0 being least and 4 being highest), Family Court Medak District at Sangareddy was graded by the Judge for informality, accessibility, infrastructure at 1, Digital infrastructure was graded at 2, Complexity of procedure and repetition of process was graded at 1 and Ability of litigants to navigate court process was graded at 0.

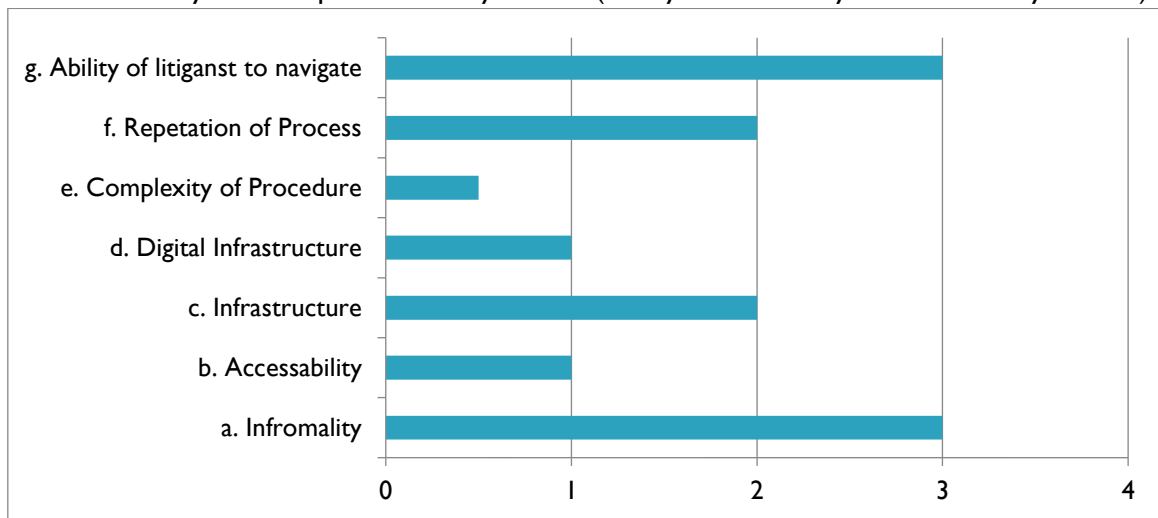
Chart 11 Judges Perception of Family Court (Family Court at Karimnagar District Court)



On a matrix of 0-4 (0 being least and 4 being highest), Family Court Karimnagar was graded by the Judge for informality at 1, accessibility at 3, infrastructure and digital infrastructure at 3, complexity of procedure and repetition of process at 1, ability of litigants to navigate court proceedings at 1.

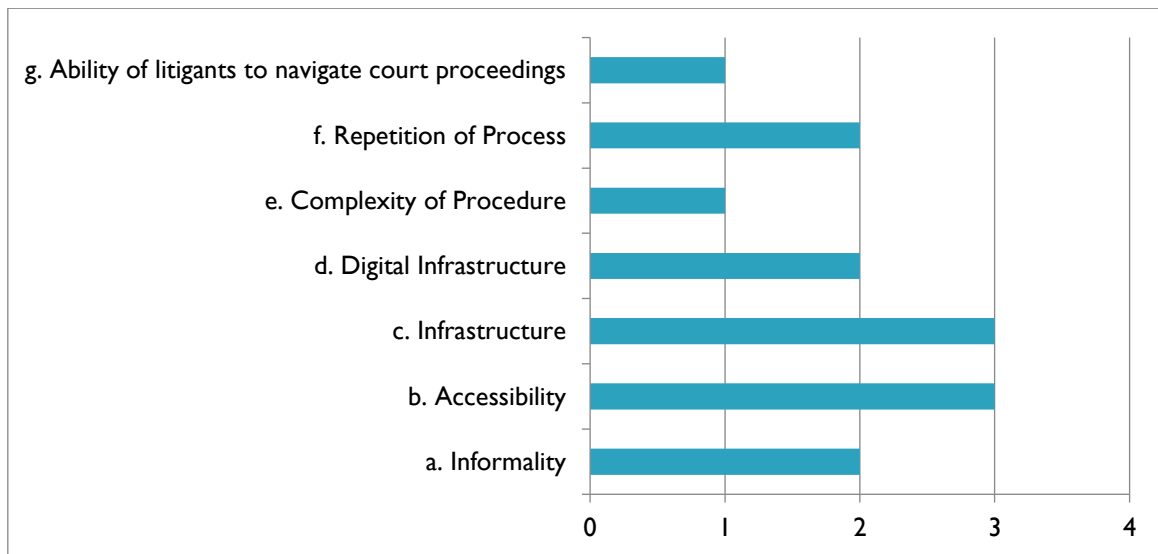
Lawyers' Perception of Family Court Functioning

Chart 12: Lawyers Perception of Family Courts (Family Court at City Civil Courts Hyderabad)



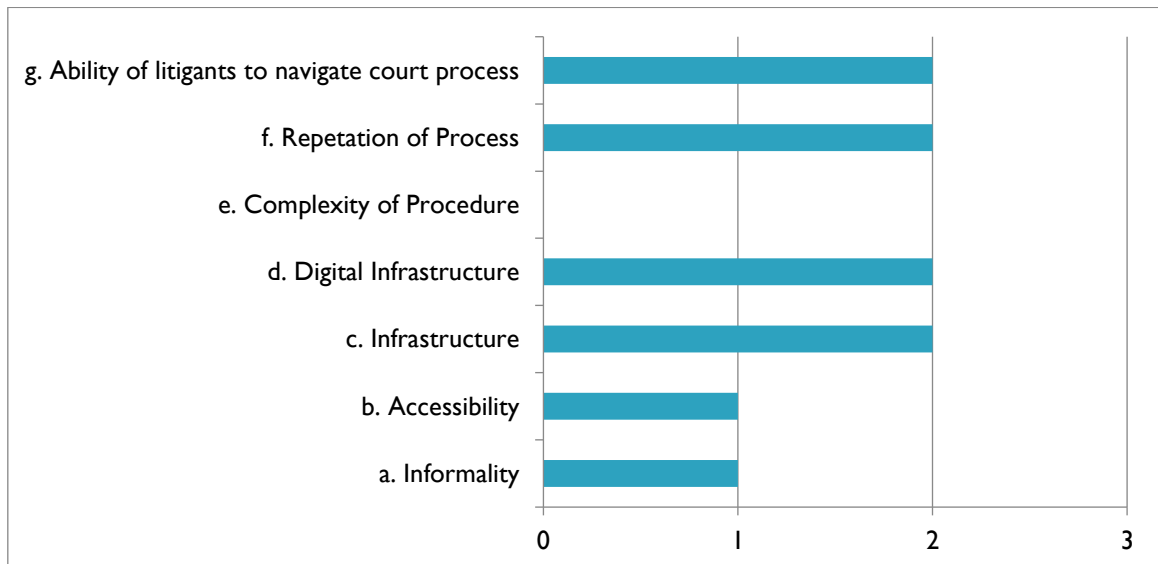
On a matrix of 0-4, Family Court Hyderabad was graded by the lawyers on informality at 3, accessibility at 1, infrastructure at 2, complexity of procedure It 0.5, repetition of processes at 2 and ability of litigants to navigate court proceedings at 3.

Chart 13: Lawyers Perception of Family Courts (Family Court at Warangal District Court)



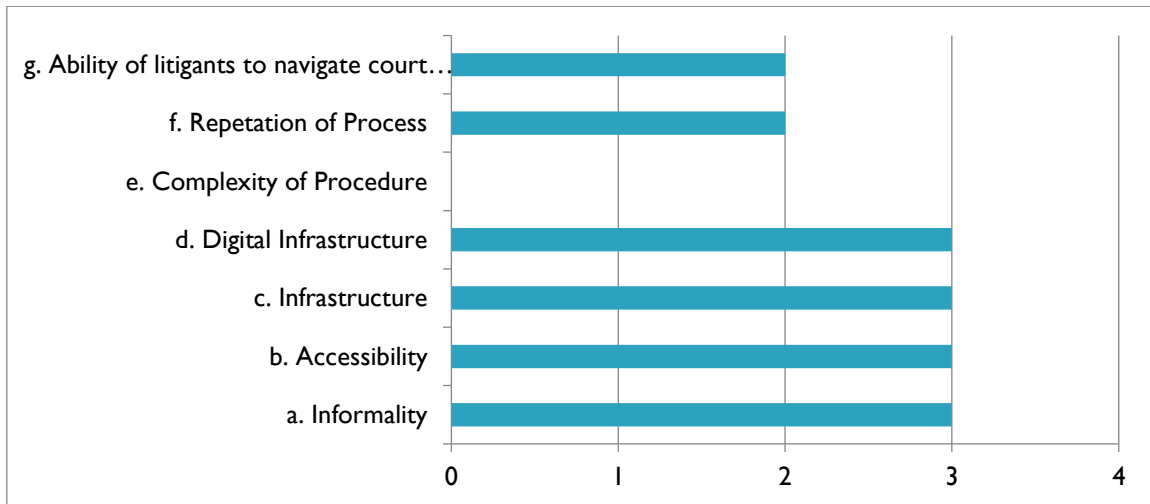
On a matrix of 0-4, the lawyers graded the Family Court Warangal on informality at 2, accessibility at 3, infrastructure at 3, digital infrastructure at 2, complexity of procedure at 1, repetition of processes at 2 and ability of litigants to navigate court proceedings at 1.

Chart 14: Lawyers Perception of Family Courts (Family Court at Medak District Court at Sangareddy)



On a matrix of 0-4, lawyers graded the Family Court Medak at Sangareddy for informality and accessibility at 1, infrastructure and digital infrastructure at 2, complexity of procedure at 0, repetition of process at 2, and ability of litigants to navigate court proceedings at 2.

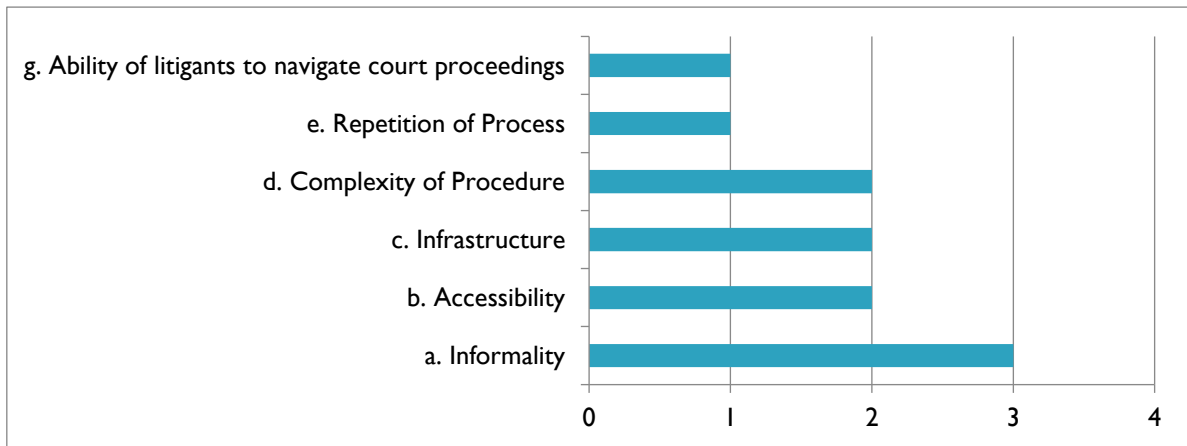
Chart 15: Family Court at Karimnagar District Court, Ranking of various things



On a matrix of 0-4, lawyers graded the Family Court Karimnagar for informality and accessibility at 3, infrastructure and digital infrastructure at 3, complexity of procedure at 2, repetition of process at 2 and the ability of litigants to navigate court proceedings at 2.

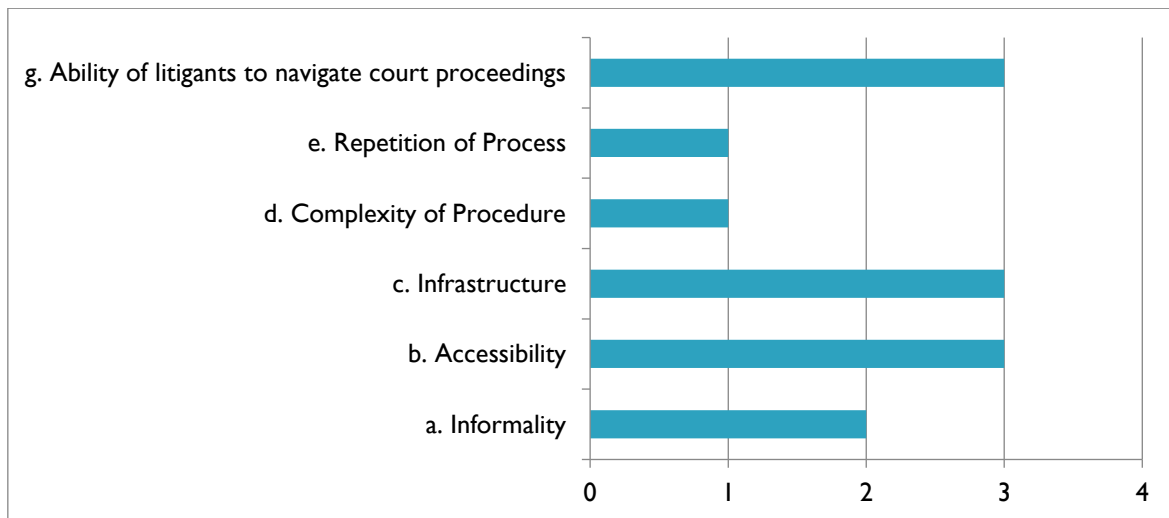
Court Officers' Perception of Family Court Functioning

Chart 16: Court Officers Perception of Family Courts (Family Court at City Civil Courts Hyderabad)



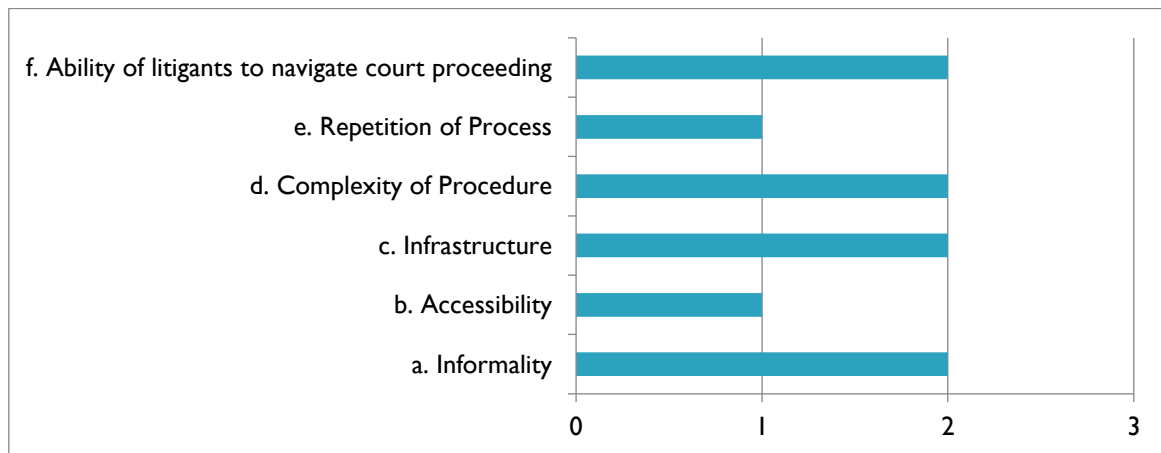
On a matrix of 0-3, court officers graded the Family Court at City Civil Courts Hyderabad for informality at 3, accessibility at 2, infrastructure at 2, complexity of procedures at 2, repetition of process at 1 and ability of litigants to navigate court proceedings.

Chart 17: Court Officers Perception of Family Courts (Family Court at Warangal District Court)



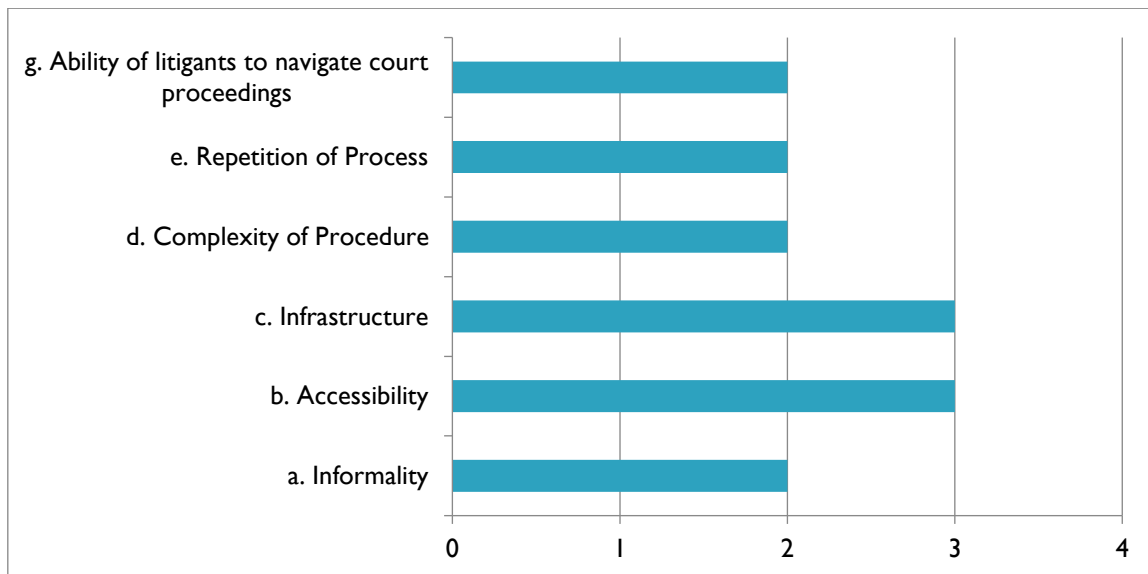
On a matrix of 0-3, the Court Officer Warangal graded the Family Courts for informality at 2, accessibility at 3, infrastructure at 3, complexity of procedure and repetition of process at 1 and the ability of litigants to navigate court proceedings at 1.

Chart 18: Court Officers Perception of Family Courts (Family Court at Medak District Court at Sangareddy)



On a matrix of 0-3, the Court Officer Medak graded the Family Courts for informality at 2, accessibility at 1, infrastructure at 2, complexity of procedure at 2, repetition of process at 1 and the ability of litigants to navigate court proceedings at 2.

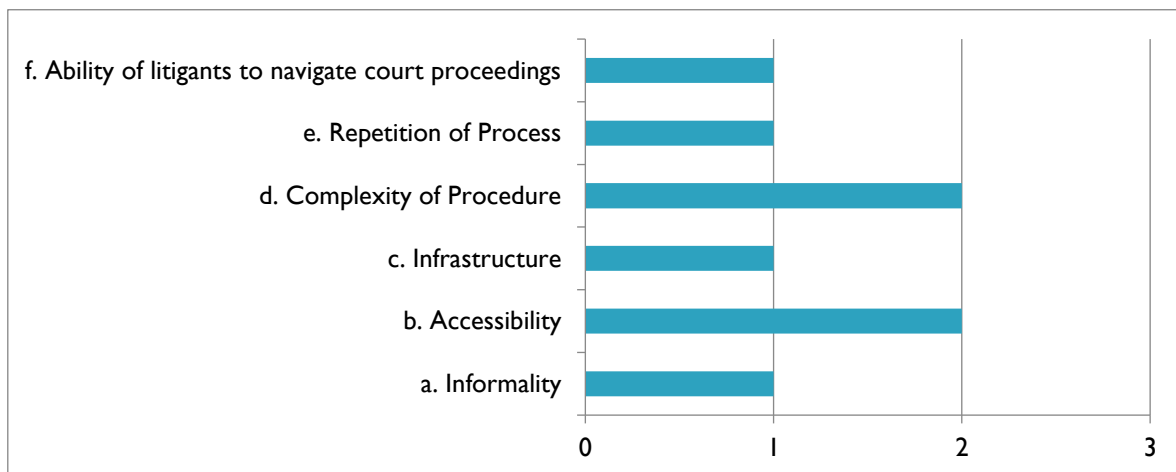
Chart 19: Court Officers Perception of Family Courts (Family Court at Karimnagar District Court)



On a matrix of 0-3, the Court Officer Karimnagar graded the Family Courts for informality at 2, accessibility at 3, infrastructure at 3, complexity of procedure and repetition of process at 2 and the ability of litigants to navigate court proceedings at 2.

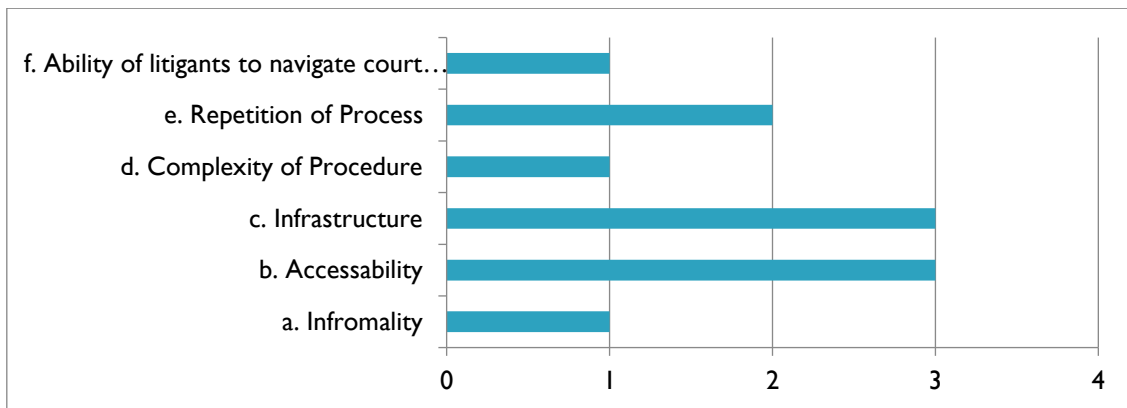
Litigants' Perception of Family Court Functioning

Chart 20: Litigants Perception of Family Courts (Family Court at City Civil Courts Hyderabad)



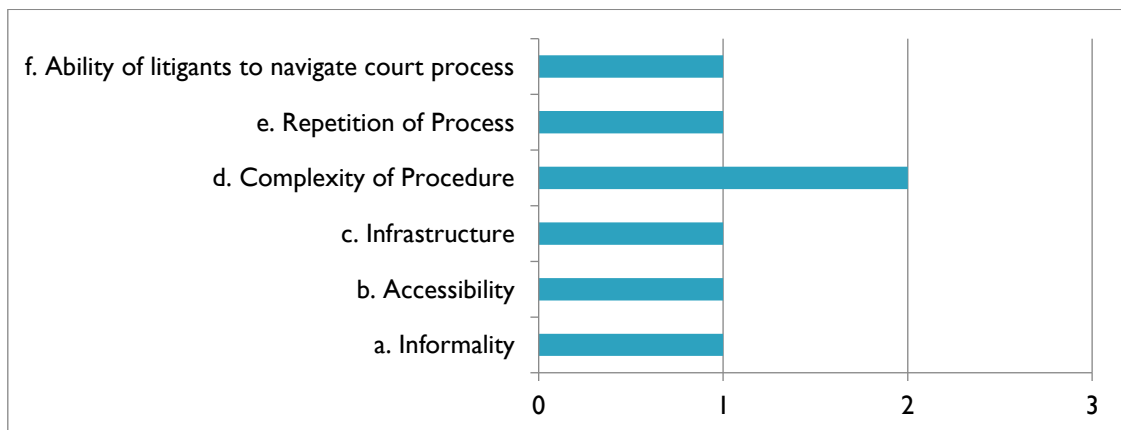
On a matrix of 0-3, litigants graded the Family Court Hyderabad for informality at 1, accessibility at 2, infrastructure at 1, complexity of procedure at 2, repetition of process at 1 and ability of litigants to navigate court proceedings at 1.

Chart 21 Litigant Perception of Family Courts (Family Court at Warangal District Court)



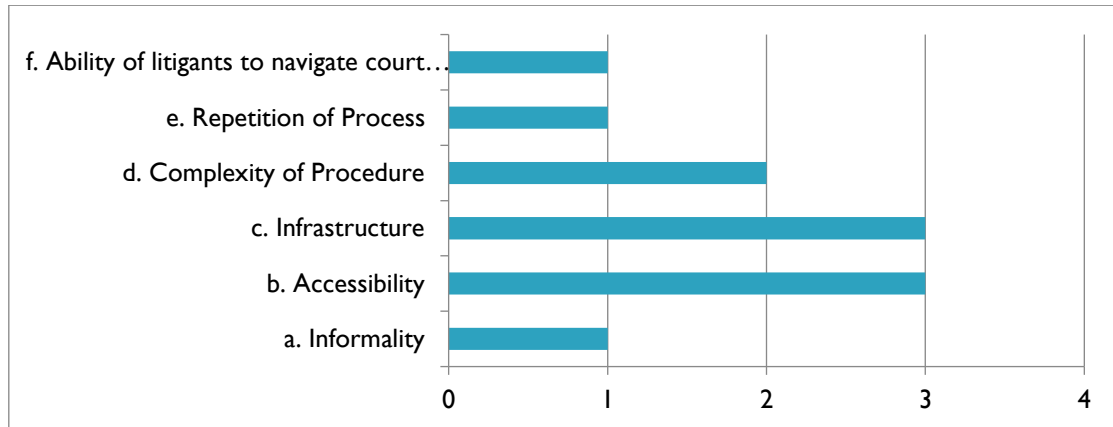
On a matrix of 0-3, litigants graded the Family Court Warangal for informality at 1, accessibility at 3. Infrastructure at 3, complexity of procedure at 1, repetition of process at 2 and ability of litigants to navigate court proceedings at 1.

Chart 22: Litigant Perception of Family Courts (Family Court at Medak District Court at Sangareddy)



On a matrix of 0-3, litigants graded the Family Court Medak at Sangareddy for informality at 1, accessibility at 1. Infrastructure at 1, complexity of procedure at 2, repetition of process at 1 and ability of litigants to navigate court proceedings at 1.

Chart 23: Litigant Perception of Family Courts (Family Court at Karimnagar District Court)



On a matrix of 0-3, litigants graded the Family Court Karimnagar for informality at 1, accessibility at 3. Infrastructure at 3, complexity of procedure at 2, repetition of process at 1 and ability of litigants to navigate court proceedings at 1.

Litigant Perception Survey

Litigants were interviewed in detail to understand their experience with family court, processes underwent with different institutions before Family Court, and the experience with different stakeholders in Family Court.

About the Interviewees:

Socio-demographic data & Gender profile of the interviewees: A total number of nine litigants were interviewed for the present study from four Family Courts, at least one women litigant was interviewed from each Family Court that was visited for the present study, out of the nine interviewed four were women litigants, therefore 44.44% of the litigants that were interviewed were women.

Age profile of the interviewees: The ages of the litigants interviewed for the present study were between 28 years to 47 years old, as such none of the litigants interviewed were below the age of 25 years, whereas, seven out of nine litigants that were interviewed were between the ages of 25 to 35 years of age, as such 77.77% of the litigants are in the age group of above 25 and below 35. Only two litigants are above the age of 35 but they are below 45 years of age and none of the litigants interviewed were above the age of 45 years.

Occupational profile of the interviewees: The interviewees gave one-word answer to the question pertaining to their profession, out of the nine litigants interviewed three stated that they are housewives and two stated that they are private employees among which one was women litigant, two stated that they are businessmen and two other stated that they are Government employees.

Table 29 Litigant Profile Summary

Occupation	Housewife	Pvt Employee	Businessmen	Govt Employee
Nos:	3	2	2	2
Gender:	All women	One woman and one man	Both men	Both men
Age:	>25<35	>25<35	>25<35	>35<45
Age at marriage:	1) 23 2) 25 3) 26	1. 24-Women 2. 29	1. 28 2. 30	1. 25 2. 27
Years of marriage:	1) 4 2) 3 3) 2	1) 5 2) 3	1) 2 2) 5	1) 19 2) 20
No. of Children:	1) 2 2) 1 3) 1	1) 2 2) 1	1) 1 2) 3	1) 2 2) 4
Problem:	1. Custody 2. Divorce. 3. Divorce	1. Custody 2. Divorce	1. Conjugal Rights 2. Divorce	1. Maintenance 2. Divorce.
Domestic Violence	1. Not disclosed 2. No 3. Not disclosed	1. No 2. No	1. No 2. No	1. No 2. No
Religion:	One Muslim, rest Hindu	Both Hindu	Both Hindu	Both Hindu
Income:	None	1. 2.4 lakh (Women) 2. 3 lakh	Not disclosed	Not disclosed

Experience prior to Family Court

Number of conciliations attempts prior to Family Court: Most of the Litigants stated that few attempts were made at conciliations between the parties and some of them stated that they made many attempts at conciliation including involving elders. However, the Family Court Judge refers the cases for mediation and almost all the cases are referred initially and at any other stage where the Judge feels that there is a chance of compromise and at the request of parties. As per all the litigants interviewed, all of them were referred to mediation and in all the courts the mediation occurs at the District Legal Services Authority and at Hyderabad at State Legal Services Authority. The Family Courts at Warangal and Karimnagar have a sections where conciliation may occur. On an average 3 conciliation attempts were made by the Family Court to resolve the dispute before trial.

Forum in which pre-court efforts were made: Most of the women litigants approached Mahila Mandals and women's organization and some approached their family elders. The men on other hand did not approach any forum apart from their family members to mediate.

Police support: Some of the women litigants did not wish to provide answer to the question if police support was availed and others answered no, whereas some men litigants stated that police favored women and interfered in family issues.

Support of NGO/Social Workers: As stated earlier some women had approached Mahila Mandal, but they received limited support and they had to approach the court.

Support of Domestic Violence Protection Officer: The women litigants either answered in negative or were not ready to disclose the any details regarding domestic violence. However, all the Family Courts visited for this study did not take domestic violence cases and domestic violence cases were dealt by the concerned magistrate.

Support of Legal Services Authority: In one case of custody where the women litigant was a respondent she had availed the services of legal aid counsel through Legal Services Authority. As stated earlier all the litigants interviewed, all of them were referred to mediation and in all the courts the mediation occurs at the District Legal Services Authority and at Hyderabad at State Legal Services Authority.

Legal Aid: Except for one women litigant all the litigants interviewed for the present study were aware of the Lok Adalat conducted by the Legal Services Authorities. One women litigant had availed the services of legal aid counsel through Legal Services Authority.

Family Court Experience

Cases pending/completed: According all the litigants interviewed for the present study case were only pending at Family Courts.

Number appearance/connected cases: Almost all the litigants interviewed for the present study had filed or were facing cases before pandemic as such they had a number of appearance and they did not keep a count, however one litigant stated that he has appeared more than two dozen time.

Working days lost due to family dispute: Three of the litigants interviewed for the present study were housewives who did not lose working day but lost time to do other important things, whereas others stated that they lost a lot of days and many times nothing happened on a given date in Family Court and their case was adjourned due to other stakeholders' fault.

Other difficulties: Almost all the litigants interviewed for the present study stated that travelling to Court is difficult and housewives' litigants stated that travelling between courts is also very difficult.

Experience with different stakeholders in Family Court

Counsellors: In the State of Telangana, at present there are no court appointed Counsellor, this was observed when all the four Family Courts were visited by the field investigator. However, the Hon'ble High Court for the State of Telangana has recently issued norms for appointments of counsellor in each family counselling centre attached to Family Courts in each city or town or other area for assisting Family Courts in settling disputes. As per the norms the appointment of the counsellors is to be made by the Hon'ble High Court in consultation with the State Government. In this regard all the Family Court Judges have forwarded the list of

prospective counsellors to the Hon'ble High Court and the same is pending with the High Court.

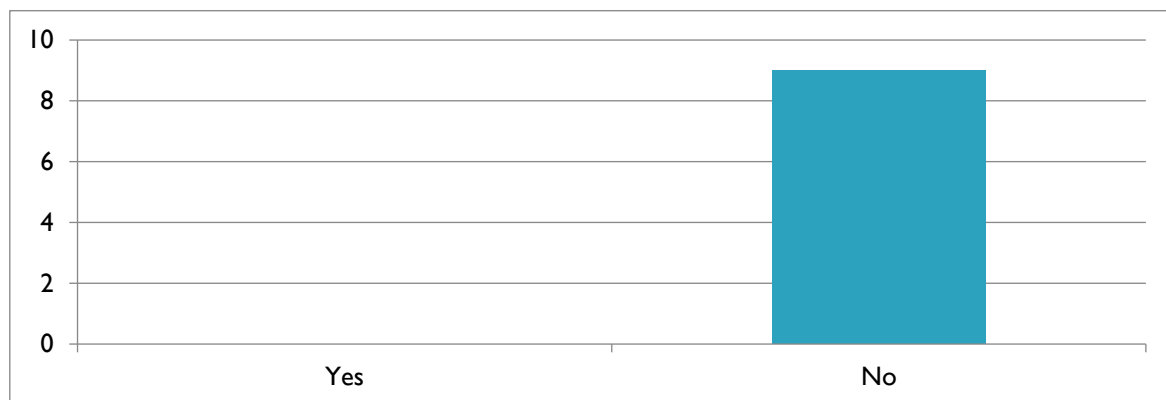
Mediator: There are no separate mediators for family court and the regular mediators who are attached to the Legal Services Authority are referred. The experience of the litigants was frustrating where the litigants were petitioner and plaintiff whereas the litigants who were respondent were glad to have the mediators. On an average 3 conciliation session were attended by the litigants before trial at Family Court.

Judges: The litigants interviewed for the present study gave vague answers as to the role of Family Court Judge some of them stated that the role of the Family Court Judge is to deliver justice whereas others stated that his/her role is to save the family institutions and others were of the opinion that Judge performs duties assigned to him/her.

Advocate: The litigants interviewed for the present study stated that they consulted lawyer when the dispute was irresolvable even after making several attempts others stated that they consulted lawyer when they received notice regarding the case. None of the litigants interviewed for the present study had changed their lawyer. Some of the litigants interviewed for the present study stated that their lawyer approached the case based on fee received from them, other stated that the lawyer approached carefully and some stated that his approached was like any other case.

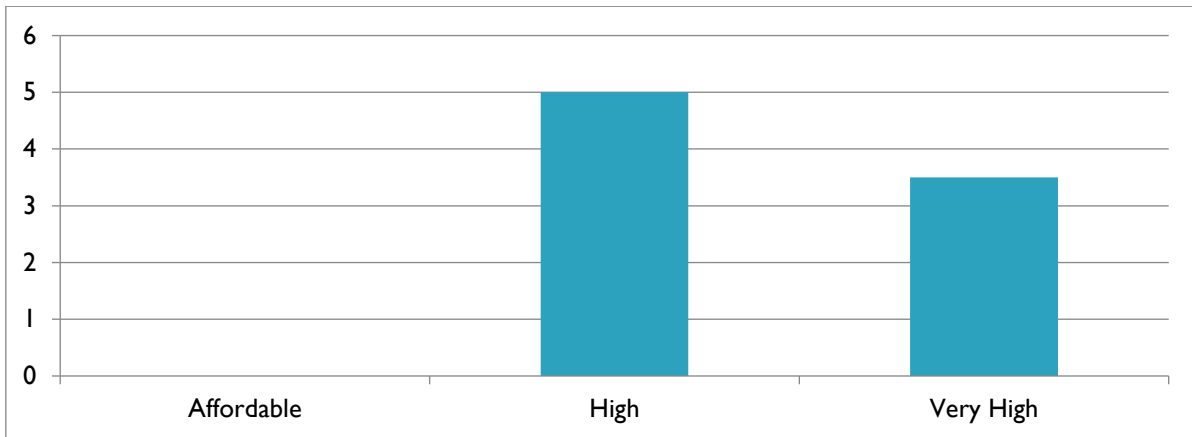
Ability of Litigants to Navigate Court Proceedings without Lawyer: All the litigants interviewed for the present study answered "NO" to the question if they can appear before court on their own without lawyer, some of them thought that they can only appear when their lawyer doesn't appear for some reason. On the question, will you appear the Family Court without a lawyer, everyone answered in the negative. On a follow up question, will you recommend anyone to appear the Family Court without a lawyer, everyone answered in the negative.

Chart 24: Will you approach the Family Court without a lawyer or recommend any one to appear before Family Court without a Lawyer?



Advocates' Fee: One women litigant is provided with legal aid counsel rest all have hired private advocates and none of them have stated affordable as the answer.

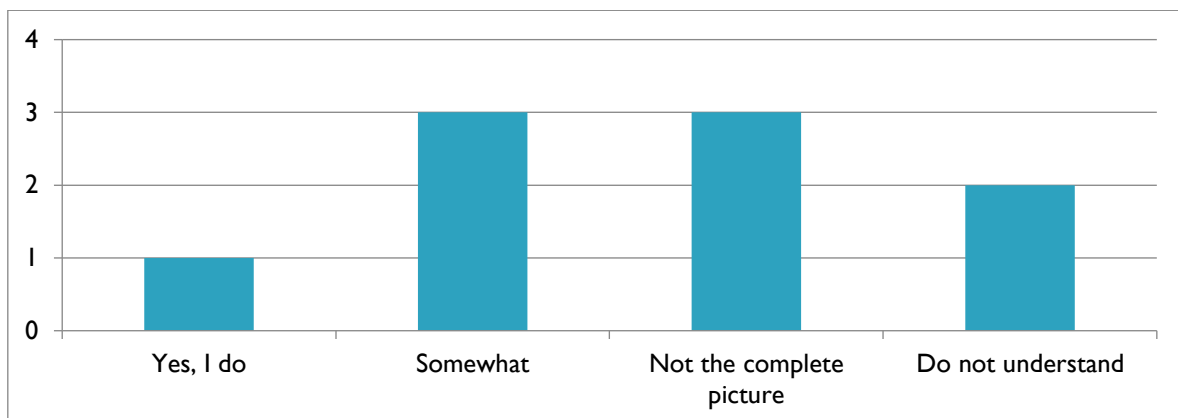
Chart 16: Collection of fees by Advocates



All litigants interviewed marked the advocates' fee as high or very huge.

Court room experience: All the litigants answered negatively when describing the Court room experience and stated they would like to avoid the court.

Chart 17: Do you understand court proceedings?



On the question if they understand court proceedings, only person answered in the affirmative. 3 responded somewhat understand, 3 said not the complete picture and 2 marked do not understand at all.

Language Use in Family Courts: Similar to lawyers the litigants are of the opinion that statement questioning the legitimacy of a child and using the word bastard in this regard is inappropriate and should not be used. Other statements which are usually inappropriate are pertaining to personal attacks by the parties and name calling, especially when questioning the character of the parties, fidelity of the parties, sometimes ugly word is used which are inappropriate.

Major difficulties in Family Court: According to the litigants the major difficulties of Family Court are:

- i. Time consumption.
- ii. Adjournments.
- iii. Not understand language and process, procedure.

Pandemic & Family Courts: According to the litigants Family Courts were not functioning during the pandemic and long date were being given, post lock down the courts opened slowly and few cases were being listed.

Table 30 Litigant Satisfaction

Stakeholder	Bad	Neither bad, nor good	Good	Very Good
Hon'ble Judge	4	4	1	0
Lawyer	3	1	3	1
Counsellor	NA	NA	NA	NA
Mediator	0	5	2	2
Court Staff	NA	NA	NA	NA

4 litigants graded the experience dealing with family court judge as bad, 4 graded the experience with judge as neither bad nor good and 1 graded the experience as good.

3 litigants graded the experience with lawyers as bad, 1 graded neither bad nor good, 3 graded good and 1 graded very good.

Most litigants (5) graded the experience with mediators as neither good nor bad, 2 graded the experience as good and 1 graded very good.

Court Records Evaluation

20 individual cases of each district are selected for the study. This would total to 20*4 a minimum of 80 files from the state. I collected disposed matters for the purpose of the study. In some courts, where the number of family matters is minimal, matters not disposed were also subjected to evaluation for timeliness – at the level of individual as well as connected cases.

At the level of individual cases

HYDERABAD

20 cases from the Hyderabad Civil Court was subjected to analysis. The cases disposed of in the years 2016, 2017, 2018 and 2019 were taken in a random selection. The cases which were decided ex-parte or by mutual settlement was excluded from the selection.

Table detailing the time taken for first posting, total duration of a case and time taken for disposal of interim applications.

Time taken for first posting (Min-Max)	Time period between date of filing and date of disposal (Min-Max)	Time period for disposal of Interim Applications (Min-Max)
43-126 days	9 months to 72 months	22 days to 664 days

The time taken for first posting ranges from 1 and a half months to 6 months. Total time taken for a disposal ranges from 9 months to 5 years in the court records examined. Interim Applications are also disposed in less than a month to two years depending on the case.

Table 31 No. of postings and time taken in each stage of case proceeding

Stage of Proceeding	Summons	Appearance of Parties	Counter	Reconciliation	Enquiry	Evidence	Arguments	Order
No. of postings (Min-Max)	1-12	1-5	1-13	1-7	1-14	3-15	1-7	1-7
No. of days taken (Min-Max)	6-54	4-76	15-43	3-48	3-130	10-41	6-21	1-20

The table clearly shows that there is no clear pattern as to what stage the time of court is spent maximum. More number of postings is seen to be made on stages of summons, enquiry and evidence; Adjournments are sought in each stage.

From among the four family courts selected for the study, Hyderabad is the only court having exclusive family jurisdiction. The rest of the courts – Karimnagar, Warangal and Sangareddy have both criminal and civil jurisdiction alongside family jurisdiction.

In the above description, it is clear that there is no pattern emerging from the data as such. There is no specific standard or estimate possible as to how long a case can take.

Delay was observable at each stage and multiple postings were made at each stage.

The data also shows that interim applications are not disposed of immediately. The time taken for disposal of interim applications ranged from less than a month to more than two years. This is a serious issue that needs consideration. Particularly in cases of maintenance, a basic minimum maintenance may be allowed interim.

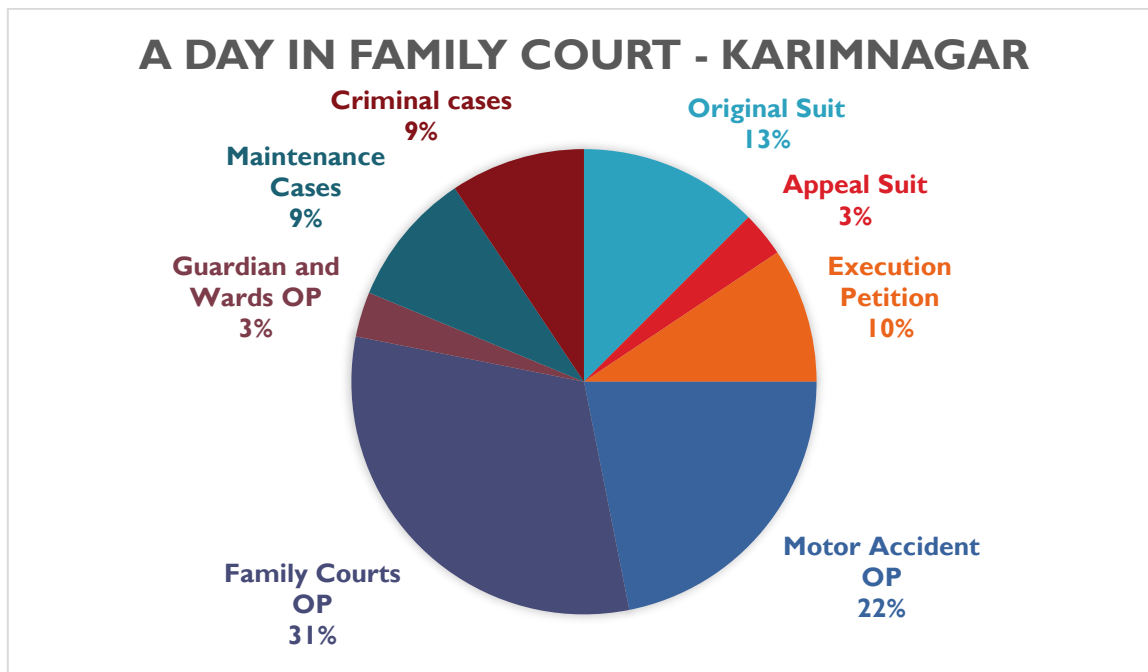
Adjournments should be cautiously given. The time taken at the stage of summons and appearance of parties for want of procedures like paper publication etc. is long. The possibility of considering instantaneous modes of communication as against paper publication may be considered in appropriate cases. However, this cannot be the general rule and the discretion of the judge need to be exercised considering the facts and circumstances of each case, considering the wide digital divide in the country. Fine may be imposed on the plaintiffs if orders are passed on misrepresentation of facts.

Composition of Cases in Family Court

The courts having multiple jurisdictions, identification of family court cases for evaluation for the study was a difficult task. The cause list of a random date was evaluated for nature of cases dealt with by the family courts concerned¹¹².

¹¹² The cause lists for the particular dates were obtained by the field investigators by direct sourcing from the court.

- For Karimnagar, on December 31, 2021, 26 civil cases and 6 criminal cases were listed before the Family Court cum Additional District and Sessions Judge. On further classification, it can be seen that only a total of 43 percent comes within the domain of family jurisdiction – (Family OP: 31%, Guardian & Wards: 3% & Maintenance: 9%). Other matters dealt by Family Court included Original Suit: 13%, Appeal Suit: 3%, Execution Petition: 10%, Motor Accidents: 22%, Other Criminal matters: 9%).
- For Family Court Medak at Sangareddy, on September 9, 2021, only 14 % of cases comes within the family jurisdiction (Family OP: 7%, Guardian & Wards: 3%, Maintenance: 4%). Other matters included Original Suit: 42%, Appeal Suit: 5%, Execution Petition: 22%, Insolvency: 2%, Motor Accidents: 11%, Arbitration: 2% & Land Acquisition: 2%).
- For Family Court Warangal, on September 8, 2021, 93 % of cases are within the Family Court jurisdiction and 7 % of cases are others (Appeal Suit: 3%, Motor Vehicles: 4%).

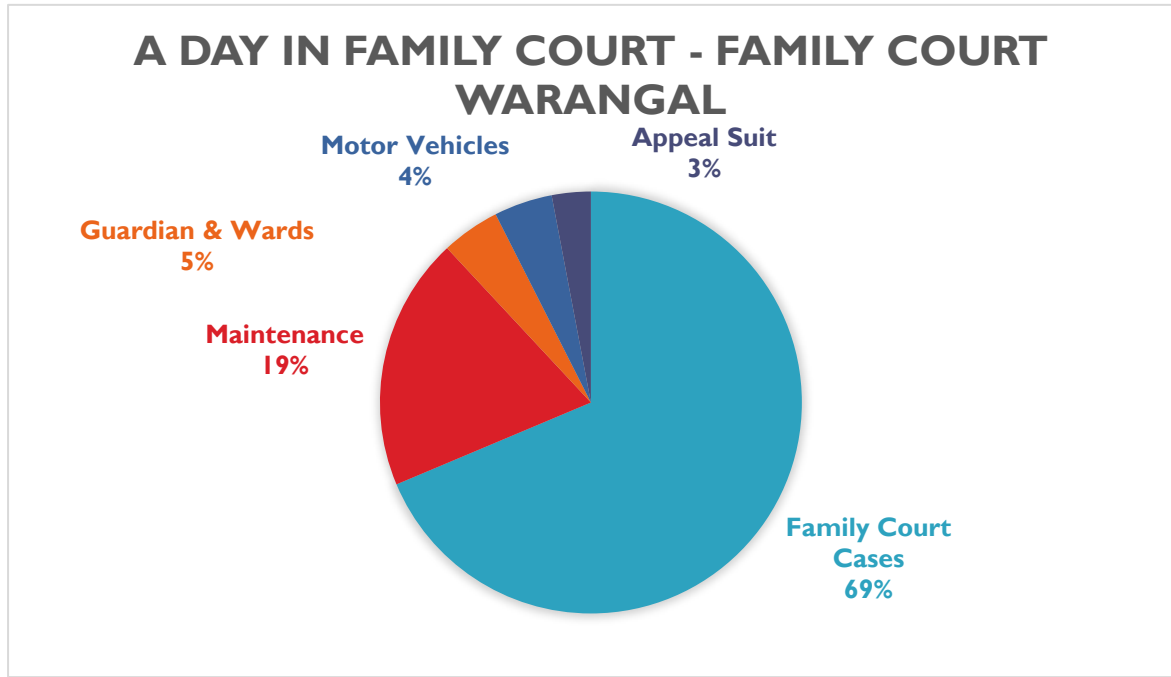


From the table, it is clear that 43 percent of the total cases posted in the select day are within the family court jurisdiction; 9 percent criminal cases and 47 percent other civil matters.

In Karimnagar Family Court, more than 50 percent of the subject matter is matters other than family jurisdiction. It is difficult to identify family court matters from the e-courts website as the website is designed only from practitioners' point of view. The cases can only be identified by clicking through the Court Complex, and by subsequent classification through Acts, say for example, Hindu Marriage Act. Several petitions including petitions concerning Muslim Divorces do not come within any of these classifications and therefore are not identifiable unless one knows the respective case number. This limitation in the website makes it difficult for a researcher to make a macro analysis of the court cases.

On further scrutiny of the cases, it was found that the cases which were disposed of by mutual settlement or ex-parte got disposed faster. In those cases, the stage wise analysis is not possible. Other cases which went on to trial took much longer, upto two years or more.

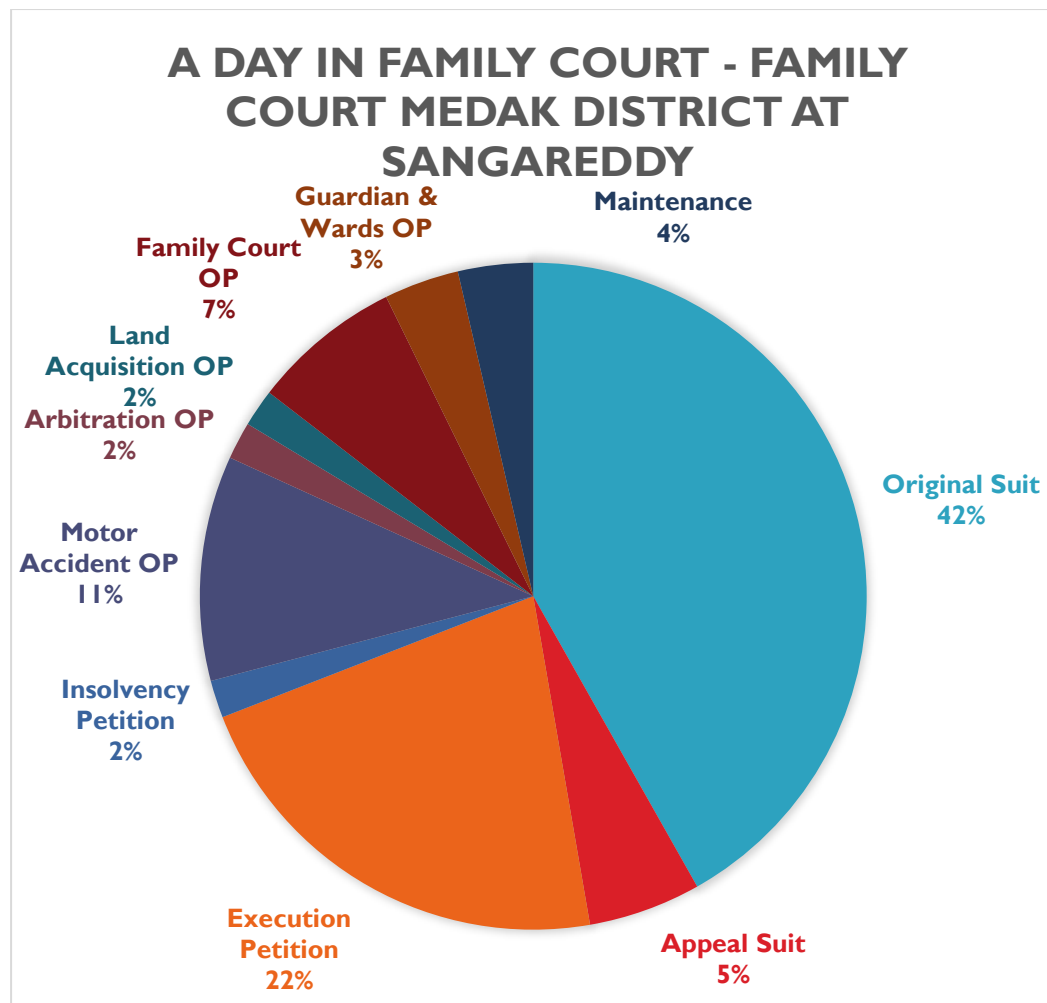
It is to be noted that all cases before the Family Court Karimnagar are from the Karim Nagar Municipal Corporation. Other areas in the Karimnagar District are not covered by any Family Court and the litigants file matters in the District Court. The idea of limiting Family Courts to urban population do not find any credence in this period.



From the table, it is clear that 93 percent of cases on the select day was within the family court jurisdiction (Family Court OP: 69%, Maintenance: 19 % and Guardian & Wards: 5 %)

In Warangal, most cases posted was from Family Jurisdiction except a small 7 percent of other matters. The closer evaluation of the court records data points out that where cases are either mutual settlement or ex-parte, cases get disposed of faster. Other cases took a long time spanning over 2 years.

It is to be noted that all the family matters before the Family Court Warangal comes from Greater Warangal Municipal Corporation. Vast areas in newly formed Hanamkonda district and Warangal district not covered by any Family Court, and family cases in these regions go to District Courts.



From the figure, it is clear that only 14 percent of the actual matters dealt with in the Family Court Medak on the select day is within the family jurisdiction.

In Family Court Medak at Sangareddy, the number of family cases are too minimal. The interesting thing is that the Family Court Medak is situated at Sangareddy which is a part of Sangareddy District. On evaluation of cases, it was seen that cases which are mutual settlement or ex-parte got disposed faster, while those which proceeded to trial took very long time, some extending to 3-4 years. It is wrong to call Family Court Medak a Family Court. The small number of cases is also attributable to the limited jurisdiction of the court itself. The Family Jurisdiction of Medak district is limited to towns and municipalities. Only Sangareddy Municipality is covered in the jurisdiction of Family Court Medak. A vast area of the Sangareddy district and that of erstwhile Medak district is not covered by the Family Court.

At the level of connected cases

It was observed that maintenance petitions are filed in the Family Courts in select Family Courts. However, Domestic Violence Petitions are routinely filed in Magistrate Courts, despite the fact that family court can have jurisdiction of domestic violence petitions as well. It is proposed that where family cases are already pending before the Family Court, Domestic

Violence Petitions may be filed before the same forum. The filing of DV petitions before Family Courts shall not be discouraged.

Transfer petitions take a long time. In most cases parties file transfer petitions to transfer the cases to their native place, in matters where husband and wife are from different jurisdiction.

Table 32 Stage-Wise Duration Mapping of Family Case – Telangana

		Avg. Days taken for first posting:	43 days to 175 days
Avg. No. of postings for summons/ notice	1-12	Avg. Days taken at the stage of summons	6 days to 54 days
Avg. No. of postings for appearance of party	1-5	Range of Days taken at the stage of appearance	4 days to 76 days
Avg. No. of postings for counter	1-13	Range of Days taken at the stage of counter	15 days to 43 days months
Avg. No. of postings for reconciliation	1-7	Avg, Days taken at the stage of reconciliation	3 days to 48 days
Avg. No. of postings for enquiry	1-14	Range of Days taken at the stage of steps	3 days to 130 days
Avg. No. of postings for evidence	3-15	Range of Days taken at the stage of hearing	10 days to 41 days
Avg. No. of postings for judgment	1-7	Range of Days taken for judgment	6 days to 21 days
Avg. No. of postings for judgment	1-7	Range of Days taken for order if ex-parte	1 day to 20 days
Avg. duration between each posting	8 days to 42 days	Range of Total Days between date of filing and date of disposal	9 months 4.5 years

The above table summarizes the stage wise duration of a family matter in Telangana.

Findings from the Field & Suggestions for Improvement

1. Expand the territorial jurisdiction of Family Courts in Telangana. At present, the jurisdiction of family courts in Telangana are limited to towns, corporations and a few mandals.
2. Family Courts are routinely given civil and criminal jurisdictions as well. Family Courts should have exclusive jurisdiction on matrimonial issues and the tendency of giving additional charge of civil and criminal matters to family court judges shall be discontinued.
3. Family Courts in Telangana do not have court appointed counsellors. This needs to be addressed at the earliest.
4. Execution of Maintenance Petitions is a major Challenge. Creation of a separate Fund for Maintenance at the disposal of Family Court Judge in the lines of Waqf Board for disbursal in the deserving cases needs to be considered.

5.2.3 Field Survey – Andhra Pradesh

Overview of Family Courts in Andhra Pradesh

The State of Andhra Pradesh has 13 districts and 15 Family Courts. Larger districts like Visakhapatnam and Krishna have two Family Courts depending on the population and increase in the caseload.

The number of family cases, particularly divorce and maintenance cases have rapidly increased over the years. The pandemic has also altered the family dynamics of people. The filing of cases has increased even during the Covid period. Most of these Family Courts deal with civil and criminal matters, in addition to the matrimonial matters.

Increase in workload of courts with the increase in the family cases filed every year owing to multiple factors including the change in socio-cultural values, and pendency of cases has a crippling effect on judiciary, which includes Family Courts. There is an urgent need to study the existing Family Court infrastructure, and impending rules and evaluate the possibilities of improvement.

For this study, it is decided that the research be carried out in Family Courts located at 4 different districts. Thus, it is important to evolve a methodology where Districts which are selected for the present research have an existing Family Court situated at the selected District. The State of Andhra Pradesh has at least one Family Court established in every district.

Unique Features and challenges faced by the Family Courts in Andhra Pradesh

The State of Andhra Pradesh has 13 Districts. All the districts have at least one Family Court. In some overly populated areas like Vijayawada, Visakhapatnam, two Family Courts have been established.

One of the features and disadvantages of Family Courts in Andhra Pradesh is that most of the Family Courts only have territorial jurisdiction over areas belonging to local municipality, corporation and in some instances only over a few Mandals. This territorial limitation narrows the role of Family Courts functioning in Andhra Pradesh.

It is to be noted that besides Family Courts, other courts like Senior Civil Judge Courts also deal with matrimonial matters. Often, there is confusion as to where the case has to be filed. In case of cities which have two Family Courts, this confusion only increases.

Another challenge faced by the Family Courts is that in many Districts, the Family Court Judges do not have the sole charge of dealing with Family Law cases but also deal with various civil and criminal cases. This increases the burden on the Judge and the staff. It would be better if Family Courts exclusively deal with Matrimonial matters.

For the purpose of this research, the courts in Andhra Pradesh are evaluated on the basis of infrastructure, personnel and processes, and possible reforms are deliberated upon through field visits, interviews, and evaluation of court records.

Infrastructure Check

Location

The Family Court, Guntur is situated in the city center within the District Court Complex. The location has travel connectivity through bus. The Family Court building is a separate building within the regular court structure.

Accessibility by Public Transport

It is Accessible by Public Transport

History of Family Court Infrastructure

The Principal District Judge Court, Guntur consists of old and new buildings. Old building is constructed in the year 1912. Later, new buildings were constructed for 4 district courts, labour court and 3 Sr. Civil Judges Courts and 3 Jr. Civil Judge Courts. Later, another new building was constructed. All the remaining courts including the Family Court are situated in the old buildings.

The Family Court, from the beginning, is within the District Court Complex. It is situated in a separate building within the complex. The Court Hall is situated in ground floor.

Court Hall

- a) The Position of the Judge is at a higher Level from the ground within a separate closet.
- b) The court hall is a 500 sq. feet hall with a raised platform for the judge. The bench clerk and his/her assistant sit below the platform to assist the judge for calling cases. Thereafter there are chairs for the use of advocates. There is one long wooden tables and chairs around it for the lawyers to sit. Besides, there are chairs too. At a time around 20 to 25 lawyers can sit. The rest can stand. The clients answer the roll call through the two doors on either side of the judge. These two doors are jam-packed during roll call.
- c) The general atmosphere of the court is a jam-packed court with lawyers, court clerks and clients waiting for the roll call. It could be suffocating on extra heavy days. It's a separate room but due to the heavy load of cases there is a sense of suffocation.
- d) In camera proceedings are employed rarely. Only in cases of extreme sensitivity. When a lawyer specially requests for in-camera proceedings or when the Judge deems the case fit for in-camera proceedings. Most of the cases are delegated for evidence taking through appointment of Advocate commissioners.
- e) The in-camera proceedings when taken up are conducted by asking the people in the court to step outside till the hearing of in camera proceedings.
- f) There is no exclusive sitting area for lawyers besides the court room. The Family Court lawyers also form part of the District court bar association and they use the same room.
- g) There is no exclusive sitting area for Parties of witnesses. They all wait outside the court room.
- h) The space outside the court room which is the veranda acts as the waiting room for parties/witnesses/lawyers. Benches are also available outside the Court.

Photos of the Family Court, Guntur are attached hereunder:



Counselling Centre or Room

Basically, the cases in the Family Court are mostly in relation to human relations and emotions. Most of the time, parties take a decision in the spur of the moment and thus, there is great scope for counselling which in turn helps the parties understand each other in a different point of view. Therefore, counselling plays a crucial role in Family Court. It is important for a person to have a particular qualification for undertaking the role of counsellors. They should also have special training so that they can professionally handle such cases.

Unfortunately, the Family Court, Guntur does not have Counsellors appointed by the State Government.

The sitting Judge acts as a Counsellor and has the power to provide counselling to the parties as and when he deems fit. The judge can also provide counselling to the parties at any stage of the case.

Mediation Centre

- a. The Family Court and the District Mediation Centre are located inside the District

Court complex. The District Mediation Centre is walkable distance from the Family Court. The District Mediation Centre along with Lok Adalat and Permanent Lok Adalat is headed by the District Legal Services Authority. The District Legal Services and the Mediation Centre are in the same building. Presently, there is a Regular Lok Adalat set up within the court premises. The mediation centre is not an exclusive center for Family Court cases. It deals with other cases too.

- b. The Mediation Centre clerk has a register who allocates the mediator according to the roster available with him/her. The mediators are not specifically trained for being Family Court mediators.
- c. The District Mediation Centre consists of a number of Mediators who take up the cases for mediation. These mediators are advocates who receive special training for 40 hours in a span of 8 days. This training is mandatory for advocates to act as a mediator. Once the mediation becomes success, these mediators are given salary on case to case basis depending up on the type of case.
- d. All cases for mediation are sent to District Mediation Centre under the direction of the sitting Judge, if he deems fit. Once a case is assigned to the District Mediation Centre, they appoint a mediator, whoever is available at that time.
- e. After the case is assigned to the District Mediation Centre, the parties approach the District Mediation Centre and get in touch with the assigned mediator. Then, the time and place for mediation are set by the mediator and the parties as per the preference of the mediators. There is no separate room for mediation. In general, the mediation may take place in the District Mediation Centre, or the Family Court premises, or office of the mediators or any other place.
- f. There is a huge hall which acts as the waiting area for parties. The general atmosphere in the mediation centre is pleasant. Since it is a newly constructed building, it is bright and spacious. It is preferable that specifically sensitized Family Court mediators be appointed to deal with cases involving Family Court matters.
- g. The Privacy of Parties and confidentiality of conversation cannot be protected. The conversation between the mediator and the party can be heard by the opposite party sitting outside.
- h. There is no separate room for discussion.
- i. The waiting area of parties is a big hall where there are number of chairs. There is water can for drinking water facility.
- j. Usually children are not brought during mediation unless they are very young. In certain cases, the children accompany their parent to the mediation. In other cases, they wait outside with the accompanying relative.



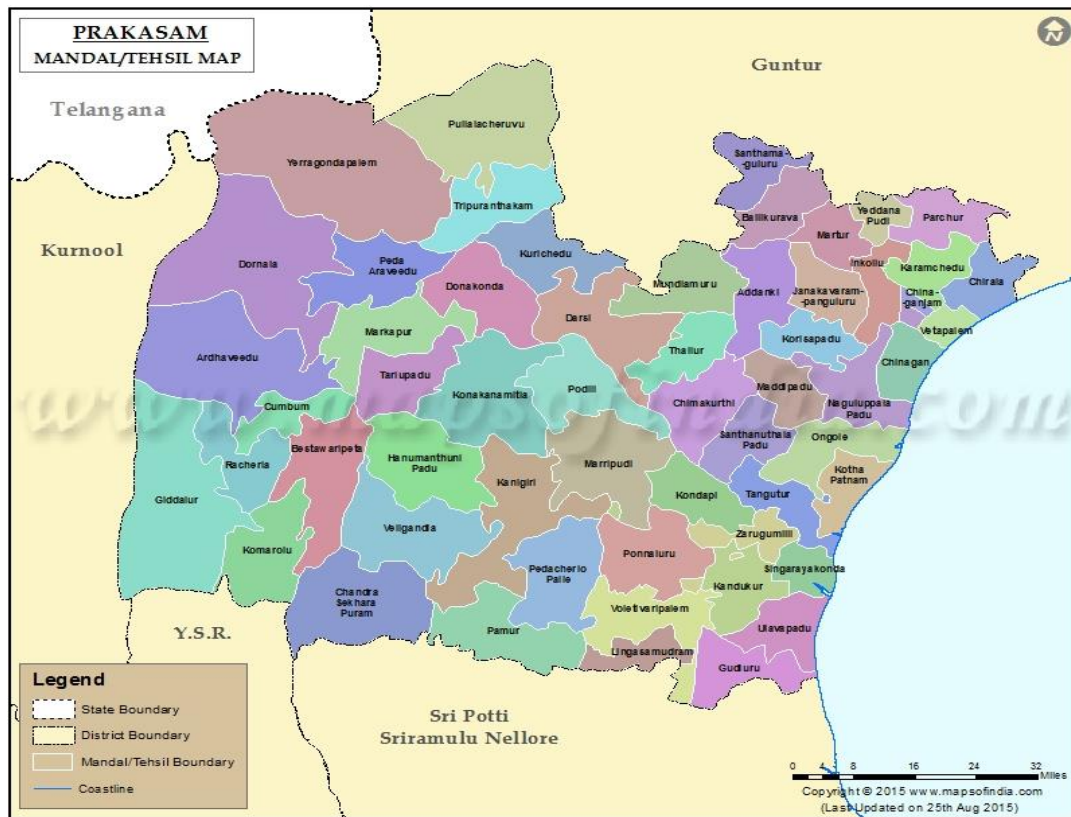
District Mediation Centre, Guntur

Other Amenities (remarks on availability, accessibility, usability)

- a) The Family Court building does not have toilets. The clients have to use the toilet in the main court complex.
- b) There are no retiring rooms
- c) No lactation or breastfeeding area
- d) No children's lounge/praying area
- e) No separate waiting area
- f) Drinking water facility is wanting in the Family Court area.
- g) There is a court canteen. There is also a tea stall in the complex.
- h) Cleanliness to be maintained. There is a superficial cleaning. The ceilings are covered with cobwebs and the ceiling fans are covered with dust and requires cleaning.
- i) The Accessibility for physically challenged is limited. Though it has a ramp it cannot be accessed by a wheelchair user, the ramp is steep and cannot be navigated by a wheel chair user both as a lawyer or a client. For a Lawyer entry into the court hall will be a humongous task; for a client, his or her lawyer may represent.
- j) The court room building and court room are both inaccessible to a visually challenged lawyer /client.

Prakasam

District Profiling of Family Courts



Area of Prakasam district is 17,626 sq km and the population is 36, 22, 070 in 2021.

The area of the district is much more in size when compared to other coastal districts of Andhra Pradesh. This district has 102 KMs. of coastline spread over in 10 Mandals. There are as many as 1,093 villages exist in the district.

The District comprises three Revenue divisions viz., Ongole, Kandukur and Markapur. As many as 56 Mandals were formed separately for Revenue and Panchayat Raj with effect from 25.05.1985 in place of 14 erstwhile Taluks and 17 Panchayat Samithies with the objective of bringing the administration to the doorsteps of the people. They started functioning from 15.01.1987. Besides, there are 4 Municipalities are in the District viz., Ongole, Kandukur, Chirala and Markapur. The district comprises three revenue divisions namely Ongole, Kandukur and Markapur. Ongole division consists of 20 mandals and Kandukur division with 24 mandals and apart from Markapur division with 12 mandals. Thus, a total of 56 mandals besides 4 municipalities exist in the district. As many as 1002 Inhabited Revenue villages exist in the district. They have been constituted into 1043 Gram Panchayats duly classifying them into 62 and 981 Gram Panchayats as Notified and non- Notified respectively.

The District of Prakasam has 1 Family Court which is situated at Ongole. The Territorial Jurisdiction covers the entire district.

About the Court

Name of the court: - Family Court-Cum-VIII-Addl.Dist. Judge, Ongole

In addition to the matrimonial matters, civil matters are also dealt by this court. Therefore, burden is high.

Infrastructure Check

Location

Ongole is the District headquarters. The Family Court is located in the District Court Complex. There is no separate building for Family Court. It is located on the second floor of the building located at the entrance of the District Court complex.

Accessibility by Public Transport

It is accessible by public transport.

History of Family Court Infrastructure

It is located within the district court complex from the beginning.

Court Hall



- The Position of the judge is at a higher level from the ground within a separate closet.
- The Court hall is an elongated room of around 500 sq feet. There is a witness box to the right of the Judge. The bench clerk sits below. There are two doors for entrance of the litigants and the lawyers on either side of the judge.
- The general atmosphere of the court is a jam-packed court with lawyers, court clerks and clients waiting for the roll call. It could be suffocating on extra heavy days. It's a separate room but due to the heavy load of cases there is a sense of suffocation.
- In camera proceedings are employed rarely. Only in cases of extreme sensitivity. When a lawyer specially requests for in-camera proceedings or when the Judge deems the case fit for in-camera proceedings.

- e) The in-camera proceedings when taken up are conducted by asking the people in the court to step outside till the hearing of in camera proceedings.
- f) There is no exclusive sitting area for lawyers besides the court room. The Family Court lawyers also form part of the District court bar association and they use the same room.
- g) There is no exclusive sitting area for Parties of witnesses. They all wait outside the court room.
- h) The space outside the court room which is the veranda acts as the waiting room for parties/witnesses/lawyers. Benches are also available outside the Court.

Counselling Centre/Room

Basically, the cases in the Family Court are mostly in relation to human relations and emotions. Most of the time, parties take a decision in the spur of the moment and thus, there is great scope for counselling which in turn helps the parties understand each other in a different point of view. Therefore, counselling plays a crucial role in Family Court. It is important for a person to have a particular qualification for undertaking the role of counsellors. They should also have special training so that they can professionally handle such cases.

Unfortunately, the Family Court, Guntur does not have Counsellors appointed by the State Government.

The sitting Judge acts as a Counsellor and has the power to provide counselling to the parties as and when he deems fit. The judge can also provide counselling to the parties at any stage of the case.

Mediation Centre/ Room

The cases for mediation are sent to the district mediation centre which forms part of the main court complex. The Mediators are under the district legal services authority. As and when cases are referred the mediators are appointed. The mediation centre offers privacy for discussion.

Mediation Centre, Ongole



Other Amenities

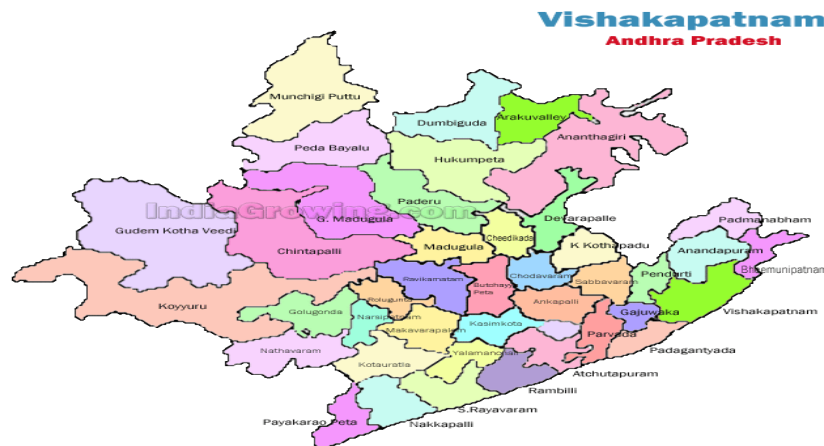
- a. There is no toilet facility within the Family Court.
- b. No retiring room facility
- c. The spare room used as discussion room turns over as breastfeeding room in exigent cases
- d. There is no children's lounge/Playing area
- e. There is no waiting area
- f. There is a drinking water facility
- g. No canteen
- h. The Family Court projects a clean environment.
- i. The Family Court is not accessible for the physically challenged.
- j. It is not accessible to the visually challenged
- k. Though the Family Court premises gives an open and friendly appearance the facilities need wanting. The absence of a lactation or breastfeeding area or children's play area/lounge reflect the non-women and child friendly nature of the Family Court setting.

Visakhapatnam

District Profiling of Family Court

The population of the district is 22,25,906 and the Geographical area of the District is 11161 Sq. KM. which is only 4.1% of the area of the State.

The District presents two distinct Geographic divisions. The strip of the land along the coast and the interior called the plains division and hilly area of the Eastern Ghats flanking it on the North and West called the Agency Division.



- There are two Family Courts in Visakhapatnam district. Both are located within the District Court Complex. They are V Addl. District and Sessions-Cum-Family Judge and Addl. Family Judge

About the Court

Name of the court: - V Addl. District and Sessions-Cum-Family Judge

Infrastructure Check

Location

The V Addl. District and Sessions-Cum-Family Judge Court is located in a separate building and compound within other offices / institutional complexes. It is at the centre of the main court complex.

Accessibility by Public Transport

The Family Court accessible by public transport. The Family Court is the first building from the entrance.

History of Family Court Infrastructure

The Family Court is situated in the said building from its establishment.

Court Hall

- a. The Position of the judge is at a higher level from the ground within a separate closet.
- b. The Court hall is an elongated room of around 500 sq feet. There is a witness box to the right of the Judge. The bench clerk sits below. There are two doors for entrance of the litigants and the lawyers on either side of the judge.

- c. The general atmosphere of the court is a jampacked court with lawyers, court clerks and clients waiting for the roll call. It could be suffocating on extra heavy days. It's a separate room but due to the heavy load of cases there is a sense of suffocation.
- d. In camera proceedings are employed rarely. Only in cases of extreme sensitivity. When a lawyer specially requests for in-camera proceedings or when the Judge deems the case fit for in-camera proceedings.
- e. The in-camera proceedings when taken up are conducted by asking the people in the court to step outside till the hearing of in camera proceedings.
- f. There is no exclusive sitting area for lawyers besides the court room. The Family Court lawyers also form part of the District court bar association and they use the same room.
- g. There is no exclusive sitting area for Parties of witnesses. They all wait outside the court room.
- h. The space outside the court room which is the veranda acts as the waiting room for parties/witnesses/lawyers. Benches are also available outside the Court.

Counselling Centre/Room

Basically, the cases in the Family Court are mostly in relation to human relations and emotions. Most of the time, parties take a decision in the spur of the moment and thus, there is great scope for counselling which in turn helps the parties understand each other in a different point of view. Therefore, counselling plays a crucial role in Family Court. It is important for a person to have a particular qualification for undertaking the role of counsellors. They should also have special training so that they can professionally handle such cases.

Unfortunately, the Family Court, Guntur does not have Counsellors appointed by the State Government.

The sitting Judge acts as a Counsellor and has the power to provide counselling to the parties as and when he deems fit. The judge can also provide counselling to the parties at any stage of the case.

Mediation Centre/ Room

There is a mediation centre within the court complex. It is a small room. Cases referred for mediation are handled by trained mediators. The photo of Mediation Centre, Visakhapatnam is attached hereunder:



Other Amenities

- a. There is no toilet facility
- b. No retiring room facility
- c. No lactation or breastfeeding area
- d. No children’s lounge/playing area
- e. There is a waiting area.
- f. Drinking water facility is limited
- g. The canteen is slightly far
- h. There is a general cleanliness.
- i. Not accessible for physically challenged.
- j. Accessibility for visually challenged is also restricted.

Kurnool

District Profiling of Family Court



Kurnool is a city and the proposed judicial capital of Andhra Pradesh, India. It formerly served as the capital of Andhra State (1953–1956). The city is often referred to as "The Gateway of Rayalaseema". It also serves as the district headquarters of its Kurnool district. The population of Kurnool district is around 35.29 lakhs and the area of the district is 17,658 sq. kms.

The Family Court, Kurnool is situated within the District Court complex.

About the Court

The Name of the Court: Family Court, Kurnool

Family Court Kurnool



Infrastructure Check

Location

The Family Court, Kurnool is located in a corner of the District Court complex and is near to the entrance.

Accessibility by Public Transport

It is accessible by public transport.

History of Family Court Infrastructure

The Family Court is situated in the current district court complex in 2007. In the year 2009, there were floods and most of the files till that year were lost.

Court Hall

- a. The Position of the judge is at a higher level from the ground within a separate closet.
- b. The Court hall is an elongated room of around 500 sq. feet. There is a witness box to the right of the Judge. The bench clerk sits below. There are two doors for entrance of the litigants and the lawyers on either side of the judge.
- c. The general atmosphere of the court is a jam-packed court with lawyers, court clerks and clients waiting for the roll call. It could be suffocating on extra heavy days. It's a separate room but due to the heavy load of cases there is a sense of suffocation.
- d. In camera proceedings are employed rarely. Only in cases of extreme sensitivity. When a lawyer specially requests for in-camera proceedings or when the Judge deems the case fit for in-camera proceedings.
- e. The in-camera proceedings when taken up are conducted by asking the people in the court to step outside till the hearing of in camera proceedings.

- f. There is no exclusive sitting area for lawyers besides the court room. The Family Court lawyers also form part of the District court bar association and they use the same room.
- g. There is no exclusive sitting area for Parties of witnesses. They all wait outside the court room.
- h. The space outside the court room which is the veranda acts as the waiting room for parties/witnesses/lawyers. Benches are also available outside the Court.

Counselling Centre/Room

Basically, the cases in the Family Court are mostly in relation to human relations and emotions. Most of the time, parties take a decision in the spur of the moment and thus, there is great scope for counselling which in turn helps the parties understand each other in a different point of view. Therefore, counselling plays a crucial role in Family Court. It is important for a person to have a particular qualification for undertaking the role of counsellors. They should also have special training so that they can professionally handle such cases.

Unfortunately, the Family Court, Guntur does not have Counsellors appointed by the State Government.

The sitting Judge acts as a Counsellor and has the power to provide counselling to the parties as and when he deems fit. The judge can also provide counselling to the parties at any stage of the case.

Mediation Centre/ Room

The Family Court and the District Mediation Centre are situated side by side in the District Court complex.

The District Mediation Centre has a big Hall and a separate room for staff. Cases referred for mediation are handled by trained mediators.

District Mediation Centre, Kurnool



Other Amenities

- a. There is no toilet facility
- b. No retiring room facility
- c. No lactation or breastfeeding area

- d. No children's lounge/playing area
- e. There is a waiting area.
- f. Drinking water facility is limited
- g. The canteen is slightly far
- h. There is a general cleanliness.
- i. Not accessible for physically challenged. Though there is a ramp there are raised platforms which cannot be navigated by a wheelchair bounded person.
- j. Accessibility for visually challenged is also restricted.

Day in Family Court

In general, 80-100 cases are posted before the Family Court daily.

The Court begins at 10:30 AM with call work. The bench clerk calls up all the matters posted on that day. Advocates representing the clients appear for the call work and the parties also appear when required. The parties shall wait outside the court hall and can only appear when their respective names are called.

During this call work, most of the cases are adjourned on request of counsels of either of the parties and in some cases, the counsel may request pass over, which means that the said case shall be called once again after all the posted cases are called. This is how a day in Family Court looks like.

Court Procedure

As per the provisions of the Family Courts Act, a case should be filed by the party in person without any assistance of advocates. However, laymen do not have knowledge of Family Courts Act, Hindu Marriage Act, etc., and cannot draft a petition by themselves. Therefore, they seek assistance of the advocates.

Since the matrimonial matters are personal matters and involve emotions, the advocates try to settle the case out of court by counselling both the parties. If that does not work out, the advocates then prepare case drafts and hand over the same to the parties. The parties then file the cases before the Family Court. After the case is filed, it shall be numbered by next day.

However, the numbering of cases take time if the required procedural aspects are not met. For instance, there are many requirements for filing a divorce case, viz., wedding photo, wedding card, etc. In case of love marriages, there will not be a wedding card and in such cases, even after explaining the situation, the cases are not being numbered.

After numbering of cases, notices will be sent to the respondents stating that a case was filed against them and they should appear before the court on so and so date. This process takes at least one month. Then on the given date, both parties shall appear before the Family Court and the Judge will confirm the names and asks the reason for filing the petition, etc., and adjourns the matter for filing of counter by the respondent. As per CPC, counter should be filed within 90 days from this date of posting.

After filing counter, the matter will be sent for reconciliation. Counsellors shall try to reconcile the parties and settle the matter out of court. In Andhra Pradesh, there are no State nominated Counsellors. Therefore, the matter will be sent to District Mediation Center which appoints a mediator to the said case. The mediator tries to settle the matter. This

process takes a lot of time. In general, mediation will be conducted in 2 or 3 sittings and 95% of them are failures.

After that, the case shall be returned to court and the matter will be posted for enquiry. Here, the petitioner counsel shall file chief affidavit on behalf of the petitioner and then the respondent counsel will cross examine the petitioner. Later, the documents will be marked and cross examination will be conducted again if necessary. In case of further evidence, the matter will once again be adjourned.

After that, the court shall adjourn the matter for enquiry and the respondent counsel shall file chief affidavit on behalf of the respondent and then the petitioner counsel will cross examine the respondent. Later, the documents will be marked and cross examination will be conducted again if necessary. In case of further evidence, the matter will once again be adjourned.

After all the above process, the case will be posted for hearing and after hearing both the parties, judgment will be given.

During this process, in many cases, there will be long adjournments. There is also emotional exchange between parties and other side counsel. In some cases, the parties also use abusive language in the court and in such cases, the Court is forced to use police support.

This is the court procedure before the pandemic.

During the pandemic, not many cases were posted per day. Only urgent cases were posted for hearing. All the other cases were adjourned till the physical courts started.

Summary of a Day in Court

1. No of case posted for the day: 80
2. No of cases adjourned: almost all the cases. They are adjourned when the counsel for the petitioner / respondent requests the same.

Eg. Total number of cases adjourned: 72

Pass over: 6

Lawyer absent: 2

Petitioner not present: 5

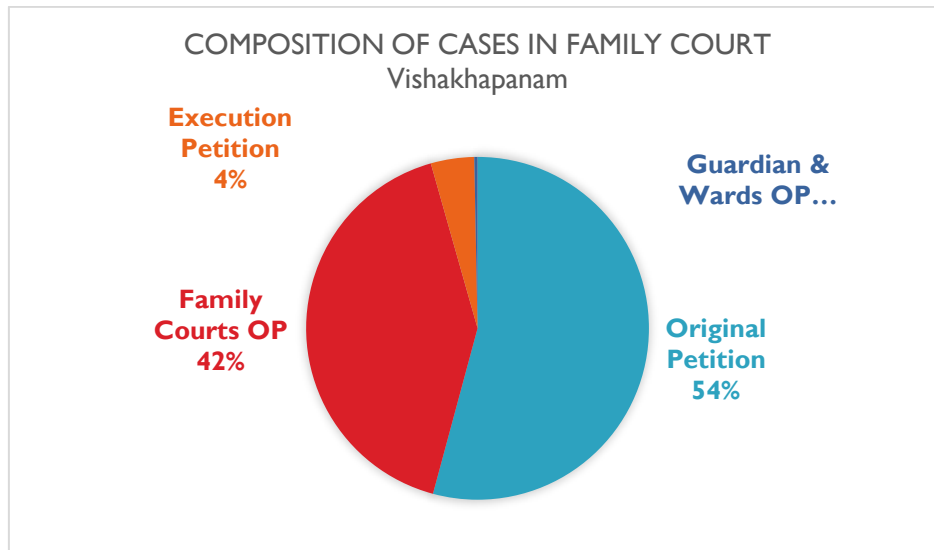
Lawyer not yet engaged by the party: 1

3. No of cases called on: 80
4. No of cases where instructions were given: 80
5. No of cases heard: 2

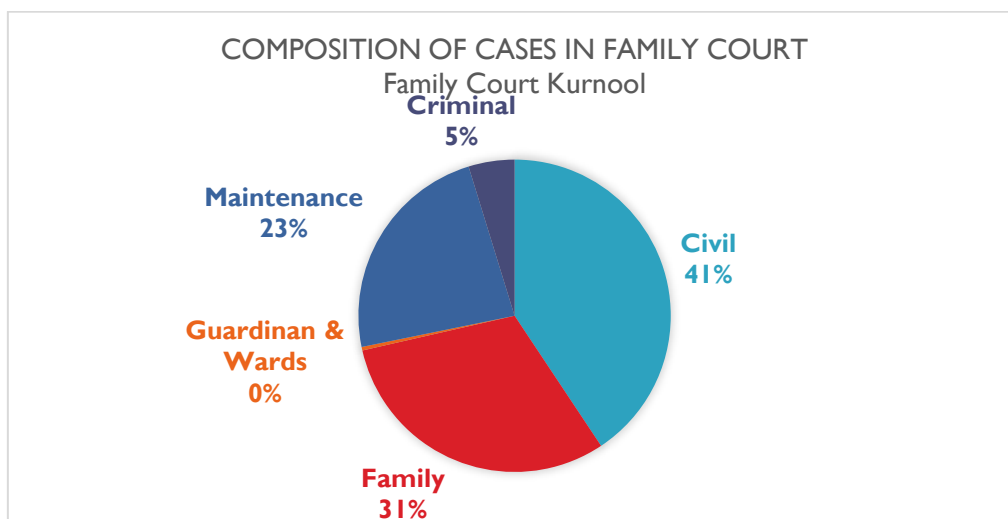
The Court starts at 10:30 AM with call work. The Bench Clerk calls the cases category wise and year wise. For instance, in the Guntur Family Court, FCOPs are called first. Almost all the cases will be adjourned and the next date will be given by the Judge for the next step. In most of the cases, the party, i.e., the petitioner and respondent and either of them will be called upon by the Judge for identification and to check the facts of the case. During this call work, the advocates either request for adjournment, where next date will be given or request for pass over in which case, the matter will be called up on once the call work is done. In general, call work takes 30-40 minutes. After the call work, pass over matters, if any, will be called up on once again. After that, hearings will take place.

Composition of Cases in Family Court

Through interviews and field visits, it was clear that all the Family Courts in Andhra Pradesh has civil and criminal jurisdiction apart from Family jurisdiction. Weekly postings of each court were examined to study the share of family matters covered in a Family Court. Accordingly, postings scheduled for 3rd to 9th January 2022 was examined¹¹³. The cause lists for the respective dates were sourced from –courts website.

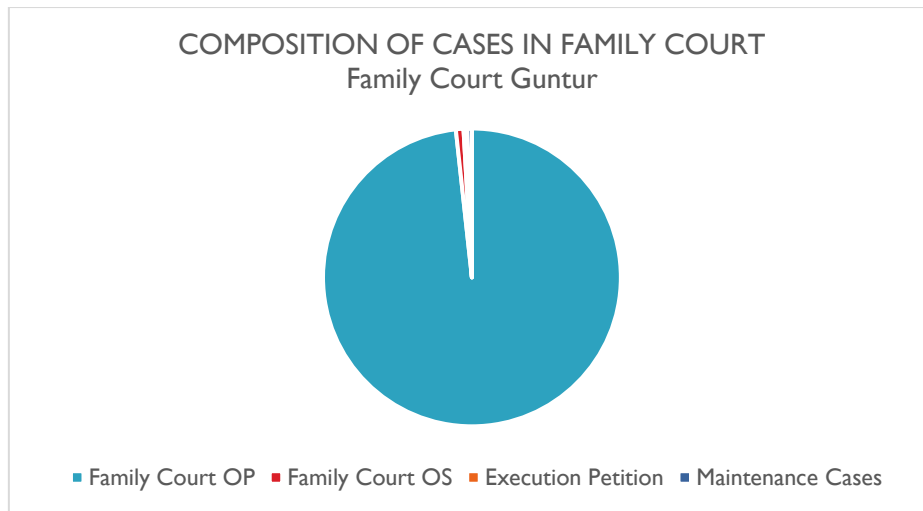


In Vishakhapatnam, only 42 percent of the total cases were found to be family court matter, in addition to a tiny percentage of Guardian & Wards OP. It is to be noted that the impugned court has criminal jurisdiction as well, however, on the week considered for evaluation, no criminal cases were listed.

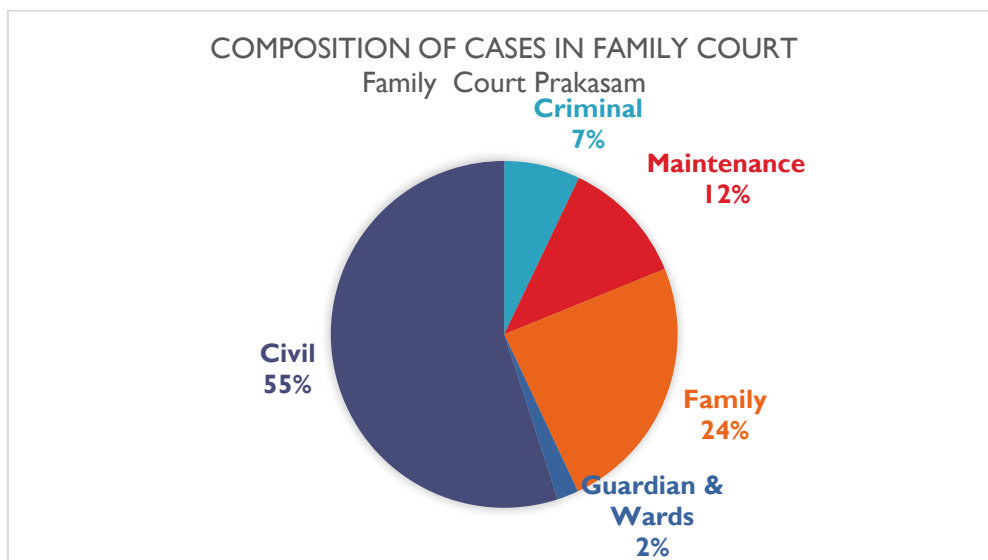


In Family Court Kurnool, it can be observed that only 31 percent of cases dealt with by Family Court are limited to the family jurisdiction. All kinds of civil and criminal cases are dealt with in this court just like any other regular court – original suit, other OP, Civil Miscellaneous Application, Execution Petition, Motor Vehicles OP, Arbitration OP, Sessions Case, Criminal Appeal, Criminal Revision and Criminal Miscellaneous Petitions apart from family matters.

¹¹³ The cause lists for a week were sourced from E-Courts Website.



In the week selected for evaluation, majority of cases listed in Family Court Guntur was within the family jurisdiction. However, it is to be noted that the Family Court Guntur ordinarily possess civil and criminal jurisdiction. On the chosen week, mostly family matters were listed.



In Family Court Prakasam, 38 percent of the cases dealt with were within Family Courts Jurisdiction, of which 2 percent were Guardian & Wards OP and 12 percent were maintenance cases. All kinds of civil and criminal cases are dealt with in this court just like any other regular court – original suit, other OP, Civil Miscellaneous Application, Execution Petition, Motor Vehicles OP, Arbitration OP, Sessions Case, Criminal Appeal, Criminal Revision and Criminal Miscellaneous Petitions apart from family matters.

Interviews

Number of interviews conducted overall

Judges - 4 sitting Judges from the sample courts = 4

Advocates - 4 lawyers each from the sample court + 2 others = 18

Mediators – 1 mediator from sample court + 2 others = 6

Counsellors – No Counsellors

Court Officers = 1 from each sample court = 4

Litigants = 2 from each sample court + 1 other = 9

Judges

Personnel

Roles and responsibilities of Family Court Judge, Major Challenges, Experience in Family Court: The roles and responsibilities of a Family Court judge are specified under section 4 of the Family Courts Act 1984. Section 4 clearly lays down the process of appointment wherein the state government appoints based on the qualifications in section 4 namely having held a judicial office for at least 7 years, or the office of a judicial tribunal, or any post under the union or a state requiring special knowledge of law or has for at least 7 years been an advocate of eth high court or of two or more courts in succession or possess such other qualification as the central government may with the concurrence of the chief justice prescribe. The main duty of a Family Court Judge is to resolve the matters through conciliation and settlement.

However, there are no counsellors in Andhra Pradesh and therefore, the matters are sent to Mediation Centre. Here, the mediators, who do not have special training to mediate family matters conduct mediation and the success rate is very low. Lack of counsellors is the major challenge faced by the Family Court Judge.

Appointment: All the four Family Court Judges interviewed for the present study have answered the query by stating that the appointment of a Family Court Judge is made as a general transfer against vacancies. The Family Court Judges are from the same cadre as the rest of the Judges in the subordinate Judiciary. The Family Court Judges are initially recruited either as an Additional District rank Judge directly after having a minimum of seven years of standing as Advocate at Court or in some instances they are promoted or transferred to District rank Judge from some other Government post with Court background and Court work as experience. Some are recruited as Junior Civil Judge and then promoted to Senior Civil Judge and later promoted to the rank of Additional District Judge, in some instances, they are promoted or transferred to Junior Civil Judge from some other Government post with Court background and Court work as experience.

A vacancy in the Family Court arises when a Family Court Judge retires, is transferred or is elevated. In a District Court or City Civil Court, the senior most Judge after the Principle District Judge or Chief Judge in seniority is appointed as the Family Court Judge, the next promotion of a Family Court Judge is usually as Principle District Judges/ Chief Judge or as Registrar / Assistant Registrar in High Court for elevation Judge of High Court. The principle of seniority is followed in appointment of Family Court Judge and it acts as a stepping stone for further higher posts in the Judiciary. In some cities, in addition to the post of Family Court Judge, there is also a post called Additional Family Court Judge. The Judges of the Additional Family Court are also appointed based on seniority but they are not as experienced as the Principal Family Court Judge who is the second senior most Judge in the District.

The Judges who are appointed as Family Court Judges are not different from any other Judge of the same rank and experience. The current process as discussed above is one which gives emphasis to seniority among the Judicial Officer of the District Judges cadre. This process does not give any emphasis to the fact that the Judge of a Family Court deals with different law apart from regular civil and criminal cases and that the Litigants and parties before the

court are unlike parties in other cases. The process makes the position of a Family Court Judge as any other post of Judiciary which may hinder the best person suitable for being a Judge of Family Court being denied an opportunity to render his/her services as a Family Court Judge based on seniority.

Of the four judges interviewed, one judge suggested that Family Court Judges should have additional qualifications. It was suggested that the Judges who have experience in dealing with dealing with Family matters, should be assigned to Family Courts. Others opined that the regular qualification with experience and maturity is sufficient to become a Family Court Judge. It was also proposed that special training must be given to Family Court Judges to conduct reconciliation.

Of the four judges interviewed, one judge answered the proposal for separate cadre for family judge in the affirmative.

All the Judges have stated that matured and experienced Judge should be assigned to the Family Courts. In addition to that, they have also stated that they have certain experience dealing with HMOPs, i.e., matrimonial matters in the district courts.

A major change necessary for Family Courts to function well is that a Family Court Judge should not be given any additional charge of dealing with other civil and criminal cases. It was observed that all the Family Courts visited for the present study had additional charge of civil and criminal cases. According to the Judges, giving additional charge of civil and criminal cases to Family Court Judge should be done away with and they should solely deal with cases pertaining to Family Law.

Training: According to all the Judges interviewed for the present study, regular training is offered to the Family Court Judges at State Judicial Academy and National Judicial Academy. The training offered at State Judicial Academy and National Judicial Academy are especially made for the Family Court Judges. Regular training is offered to Family Judges as any other District Judge and no special training for Family Court Judges is being offered. The training provided for the Family is sufficient. The areas covered in the training are as follows: 1) resolving disputes and settlements of family cases, 2) encouraging counselling and conciliation among parties.

The High Court used to conduct training programs for Judicial Officers including the cadre of District Judge. In that process, the Hon'ble High Court selects some of the officers to impart special training conducted at State/ National Judicial academy on various subjects. This training is not limited to Family Court Judges.

Appointment of Counsellors and Mediators: Major challenge faced by the Family Courts in Andhra Pradesh is that the Family Court does not have its own counsellors and mediators. Counselling is given by the Judge and Mediation is being referred to the District Mediation Centre who then appoints a mediator to conduct mediation. No proper remuneration is being given to the mediators. The Judges have opined that the primary duty of the Family Court Judge is to encourage reconciliation or settlements between the parties and the same is impossible without trained counsellors.

2 Judges have suggested appointment of counsellors on pay roll by the State Government and that Mediators should also be given proper salary for conducting mediation.

Procedure

Family Courts have a flexible approach with respect to procedure. There is a relaxation on the technicalities compared to the civil court procedures. Maximum effort is taken to make

sure that the procedures are in conformity with the objectives of setting up of the Family Courts.

In regular Family Courts, in general matters are between two different families. However, in Family Court matters, the disputes are in between a family and are very sensitive in nature. They should be dealt on humanitarian grounds. As per the Family Courts Act, the Judge has discretionary powers while handling a case. The judges also counsel the parties whenever they deem fit, i.e., at any stage.

As per the Family Courts Act 1984, the Family Court Judge has wide discretionary powers when it comes to using and evolving procedure. All of the judges stated that they have to rely on Code of Civil Procedure for day to day functioning of the Family Court, however all the Judges also stated that they may skip some procedures of the Code,¹¹⁴ whenever they deem it unnecessary for a particular case.

The Family Courts are different from other courts as they have a different procedure laid in the Family Courts Act, a clear example of this is that the counselling and conciliation are emphasized in the Act and the court too adopts this approach and sends the parties of a Family case time and again for reconciliation, counselling and mediation. Parties are encouraged to settle the case cordially even at later stages of the case.

When asked whether it is possible to get rid of Code of Civil Procedure altogether, the Judges answered in the negative and stated that Code of Civil Procedure is needed as guiding book for day to day proceeding of the Family Court.

Duplicity of procedures, delay in stages: According to the Judges, duplicity exists but only as per the procedure followed in the Family Court is mostly from the Code of Civil Procedure apart from some procedure elaborated in the Family Courts Act, according to one Judge some time Family Courts functioned in Quasi-Judicial manner as settlement of the dispute through, counselling, mediation and reconciliation is promoted by the court to save the institution of family. According to another Judge replicating and following the Code of Civil Procedure is better and useful instead of evolving new procedure as they may not stand the challenges of an appeal before the appellate court.

However, all the Judges of Family Court opined that the delay is caused due to prolonged and repeated adjournments being requested by either the parties or the advocates at any stage.

In-camera proceedings: In camera proceedings are held rarely in Family Courts. It is conducted only in cases which the Judge deems fit and in cases where it is requested by the party or their lawyer.

Referral system: At present only referrals that are made are to the mediators at the mediation centre. There is no presence of court counsellors or any other expert in the state of Andhra Pradesh. Even after over three decades of enactment of the Family Courts Act basic and professional posts like counsellors are vacant in the Family Courts.

¹¹⁴ Civil Procedure Code (CPC) 1908

Legal Aid: The District Legal Service Authority helps underprivileged litigants with legal aid counsels. The infrastructure of Legal Service Authority is used for mediation in family cases. Sometimes amicus curiae are appointed from the legal aid counsels. The Legal Service Authority organizes Lok Adalat throughout the year for settlement of cases. The legal aid provided by the legal service authority is useful in giving representation to the underprivileged parties who cannot afford a private advocate for their cases. The mediation conducted at the legal services building is also very effective in reaching a resolution. Lok Adalat has proved to be an effective platform to settle family cases.

Pandemic, Digitalization of filing and online court hearing: Pandemic had put a hold on all the physical court proceeding in the state including the court proceeding of Family Courts. This led to using digital process for filing of cases in courts as well as having online hearing of cases through video conferencing. All the judges stated that there was no hindrance in holding virtual court or in filing of cases. All the Judges are in favor of holding virtual courts where physical hearing is not possible.

Suggested Reforms

Family Court processes and administration have been evolving as per the needs and requirements. There is greater flexibility of approach. However, there is a need for corresponding infrastructural support which is wanting and often ties the hands of Family Court administration.

The Pandemic compelled the courts to look into the use of digital technology for ensuring continuity of the legal process and access to justice. There needs to be focused training, sensitization and up gradation of infrastructure to ensure that justice administration runs smoothly.

With the advent of Lok Adalats a lot of disputes are being resolved outside the court.

Over the years the Family Courts are close to be treated as a separate unit with separate building and infrastructure in many places, they also have some distinct staff like lady home guard in at least one Family Court.

The overall opinion was that the current court room organization was appropriate.

Change in Court Timings: Regular Courts function only from Monday to Fridays and the Family Court functions second Saturday and Sunday, too. This is an important innovation in Family Court Process which is replicable.

Some possible reforms suggested are:

- There is no adequate digital infrastructure. Updating of infrastructure should also be accompanied by proper sensitization and training for familiarizing with the new system.
- A platform should be created so that the parties can file cases online, without physically coming to the courts. This saves a lot of time to the parties.
- Counsellors need to be appointed in the Family Court. If proper reconciliation can be done in early stages of litigation or prior to filing a case, the burden on the Judges will decrease and also the relationships among the parties will be saved.
- Currently, the Family Courts handle civil and criminal matters along with family matters. The people living in the urban areas file cases before the Family Court and the people

living in rural areas file cases before other courts. This should be changed and the Family Courts should deal with family matters or matrimonial matters exclusively.

- The practice of giving additional charge of criminal and civil cases to Family Court Judges should be discontinued. It was observed that an assistant or additional Public Prosecutor was assigned to the court who sits regularly in the court hall and has to go out when in camera proceedings are conducted, moreover criminals are made to sit and attend their criminal cases in Family Courts which is not conducive for a child and family friendly Family Court. This practice should be discontinued forthwith.

Lawyers

Personnel

Roles and Responsibilities of Lawyers in Family Court; Major Challenges; Experience in Family Court:

Around 18 lawyers were interviewed at various stages of their practice. The lawyers were mostly exclusively practicing in the Family Courts or family related issues hence were sensitive to the needs and objectives of the family court and needs of their clients.

As per the provisions of the Family Courts Act, the client should file a case in person and an advocate comes in to the picture only after the client files a petition to engage an advocate. But in practice, clients do not have legal knowledge. They do not know provisions of various Acts and they cannot draft a petition. They also do not know procedural aspects to be followed while filing a case. Thus, they request for the assistance of an advocate immediately after deciding to file a case or in case of respondent, after receiving notice from the Petitioner.

The major challenge is that there are no counsellors in the Family Courts. This is a very big drawback. Currently, only the judge is counselling the couple whenever he deems fit. But a proper counsellor who has received training in such matters helps the parties a lot and many cases may be reconciled without affecting either of the parties.

Though there is mediation available to the parties, there is no proper platform to conduct the same. The Mediation Centre does not have a separate room to conduct mediation. Currently, mediation is being conducted in the Mediation Centre where all the staff works. The privacy of the parties is being compromised. A separate mediation room should be provided so that the parties can brief their problems without any disturbance.

Experience as Family Court Lawyer: Different advocates had different experience as Family Court lawyer. Some of the lawyers interviewed for the present study did not see any difference in their experience in Family Courts and treated Family Courts as any other court. The Family Courts where the Hon'ble Judge of Family Court had additional charge as a District or Session Judge, the lawyers did not treat the Family Court as a different court, whereas the Family Court which solely dealt with family cases the lawyers experience was different and some had evolved good practice specializing in family law cases. Most of the lawyers stated that family law cases are emotional and stressful due to clients.

Stages at which parties' approach: Most of the lawyers stated that in case of Petitioner, the parties approach them at the time of filing of cases, i.e. when they have decided to pursue legal case against the other party or at the early stage of dispute, usually for counselling and

settlement of dispute and in case of respondents, the parties approach them after receiving notice from the Court.

Client Requirement: As the parties to a dispute are closely related, they usually had made their mind up on some goal whether it be seeking justice only through court, seeking revenge, to prove themselves right, agonize the other party etc., In this regard family cases clients are different from clients in other cases. Most of the advocates stated that the client requires immediate relief as the stress of the case take toll on their mental health while another lawyer stated that the client required them to win the case anyhow.

Procedure

Multiplicity of cases, repetition of processes, ways to simplify: The present system encourages multiplicity of cases as for each relief one needed to file a separate petition. Since it is an adversarial litigation there are more of allegations and counter allegations. This is inevitable. Further the reliefs claimed are on the basis of need at the time of filing and it is not necessary that multiple petitions co-exist at the same time.

There was a general agreement that delay in the disposal of cases were a major cause of concern. Some of the lawyers believed that there were exaggerations in the complaints and some denied the same stating that the complaint is filed from the point of view of the client and only states the grievance of the petitioner.

Duration of case and lawyers experience: Most of the lawyers answered that the duration of the case could not be predicted and different cases within Family Court follow different timeline. Most of the lawyers experienced delays due to Covid-19 and related restrictions.

Difficulties faced by clients in Family Courts: Most of the clients of family cases are for the first time facing the courts of law, they are rather intimidated by the courts as they do not understand the proceedings, moreover not having exclusive jurisdiction for Family Court puts the criminals and other bad elements who visit criminal courts on the same premises which is unhealthy environment for the kids and families. The parties to a family case are often desperate and get disillusioned due to delays in getting justice.

Lawyer criticized for exaggerating facts: Most of the lawyers answered in negative to the question if they exaggerate the facts as they can always be corrected by the opposing counsel. Most of the lawyers stated that it is their duty to present the case and provide best possible remedy to their client. Some lawyers also stated that it is the clients who exaggerate their version of the story. Some of the lawyers declined to comment.

Role of Lawyers under S.13 Family Courts Act: Most of the lawyers stated that their role is as usual in Family Courts as it is in any other court and only some of the lawyers stated that their role is more than a lawyer as they themselves counsel the parties to resolve the dispute. Most of the lawyers stated that section 13 of the Family Courts Act is not useful as there is hardly any party to a dispute that does not engages an advocate. Whereas some of the lawyers stated that the procedure should be simplified for the parties to argue their own case.

Caution in filing criminal cases: Almost all the advocates answered that they exercise caution while filing criminal cases since the accused is the family of the petitioner and the goal is to resolve the family dispute.

Discretionary Powers and its affects on parties: As far as discretionary power of a Family Court Judge is concerned it is derived from the Family Courts Act. All the lawyers stated that the Family Court Judges followed Code of Civil Procedure and in very rare cases, discretion.

Duplicity of Procedure: All the lawyers answered yes to this question and stated that it is necessary to meet the ends of justice.

Delay at Stage and reducing the same: Most of the lawyers are of the opinion that the most delay is caused at conciliation and mediation stage and this is done at the beginning of the case, there are many instances where parties go for mediation and conciliation even at later stages, some with the hope of frustating the case, as the present practice requires compulsory conciliation, the same has to be changed where there is no hope of parties resolving the dispute out of court.

Where parties belong to different jurisdictions, transfer petitions are filed by either of the party which takes a long time. Execution of maintenance decree is also a major challenge.

With regard to maintenance cases, justice is not served properly. In many cases, the respondent is unable to provide maintenance on time and the court is not taking any kind of action against the same. They just adjourn the matter to next month directing them to give maintenance by the next adjournment. This has caused severe distress among the petitioners. They feel that if maintenance is not granted on time, there is no use in appearing before the Court once a month till the disposal which takes years together.

Simplified procedure for Family Courts: The opinion of the lawyers was same in this regard. All the lawyers are of the opinion that Code of Civil Procedure should be strictly followed and following the code would make the Family Courts predictable, consistant and less arbitrary. All the lawyers answered no to the query whether CPC can be given away with in Family Courts.

Chamber hearing and in camera proceedings: Chamber hearing and in camera proceedings are identical in that both exclude the public and persons not related to the case. Chamber hearing and in camera proceedings provide a sense of safety and privacy to the parties and make the court environment conducive. The court may hold hearing in chamber or in camera at the request of the parties. Most of the lawyers are of the opinion that Chamber hearing and in camera proceeding will help in settlement of the cases, only some disagreed and stated that chamber hearing is time consuming. Most of the lawyers are of the opinion that in camera proceedings should not be the norm as they are time consuming. The in-camera proceeding can be held when the parties request the court for the same.

Men's right campaign and Family Courts: Most of the Lawyers are of the opinion that the men's rights campaign is due to the fact that law in general and family law in particular is tilted in favour of women, they cited that most of the Family Court Judges appointed are women as there is a provision in the Family Court Act for the same. However, they have stated that

laws may be in favour of women, but the Family Court does not show such favour and treats all the parties equally.

Whereas the women lawyers who were interviewed for the present study stated that family law is anti-patriarchal and gives equal importance to women and children, moreover men's right campaign are a result of men not getting away with what they want in Family Courts.

Pandemic & Family Courts: According to all the lawyers the pandemic had an adverse effect on the courts and lawyers, as the courts were closed for a long time and reopening of the courts was done in systematic manner with limited physical hearing and limited cases per day on the roster. There are no major changes in the Family Court as the video conferencing and other use of technology were already being used in the Family Court in limited manner, where required. While e-filings and e-hearings have already been set into action, the digital divide in the country is a major lacuna. Many litigants and lawyers struggle with lack of access to digital resources and good internet connectivity which affect the future of their case. Alternate arrangements need to be thought out to bridge the digital divide.

Suggested Reforms

Innovations in Family Court process and Family Court administrations over the years: There have been gradual changes in the administration of the Family Court system. There has been much more sensitivity in the proceedings. The involvement of mediators in attempting to settle issues also have been a notable innovation within the Family Court administration. The setting of regular Lok Adalats and referring matters which are likely to be settled by the judges has prompted a move towards mediation and faster settlement of cases.

Functioning days of the Court have also been extended to second Saturdays and Sundays since the many parties who are working will be available for mediation or counselling during these days which is a significant development.

Changes in law, court procedure and administration: Most of the lawyers stated that mandatory counselling and mediation should be done away with in cases where there is prima facie no chance of settlement of dispute outside the court. Sometimes the Judges appointed for Family Courts are transferred quickly and this leaves vacancy in the Family Court.

- It was felt that the infrastructure was sorely inadequate.
- In cases involving visitation, there is an absence of a child care lounge which could serve as a visitation area. The non-custodial parent usually takes visitation of the child under a tree, the verandah of the court or steps of the court
- Many of the advocates agreed that there is gender sensitivity among the judges and that the cases were handled in a judicious way without any bias.
- Many advocates opined that currently the Family Courts are not handling matrimonial matters exclusively. They also handle civil and criminal matters as the Family Court Judge is a District Court Judge cadre. They felt that this causes increase in burden on the Family Court Judge and also time available to deal each and every case affectively also decreases. They felt that the Family Court should exclusively handle matrimonial matters like divorce, maintenance, child custody, etc., but criminal matters like 498A and

Domestic violence should be handled by a different court.

Counsellors

There are no State appointed permanent counsellors in the Family Court. This was observed when all the four Family Courts were visited by the field investigator. This is the major drawback and requires immediate attention. Since conciliation plays a crucial role in Family Courts, counsellors play a predominant role.

Mediators

Personnel

The Family Courts do not have its own mediators. Whenever the need for mediation arises, the Court shall refer the case to District Mediation Centre and direct the parties to the mediation centre where the available mediator deals with the cases. The District Mediation Centre appoints a mediator to that particular case. These mediators use the infrastructure of Legal Service Authority for conducting mediation and all the mediation centres are located with the Legal Service Authority building which is located in the District Court complex.

There are general trainings given to all mediators on the manner of mediation. Trainings specific to Family Court Practice are not available.

All the mediators stated that the mediator is available on all week days and some also stated that they are available if any certain date is fixed by the court as due date for mediation.

Procedure

Types of cases: All types of civil cases are referred to mediation including cases pertaining to Family Courts, cases that are referred by the courts are those which can be resolved out of the court and where the parties know each other. Certain criminal cases are also referred, especially those pertaining to family.

Approach in family cases: Most of the mediators stated that there is no special approach when family cases are referred to them but they also stated that family cases have more likelihood of resolving the dispute as the parties are known to each other. They have further stated that, as in any other cases, they first inform them the benefits of mediation and disadvantages of court litigation. The mediators only inform them of these advantages and disadvantages. The parties shall decide which one is in their favour, i.e., whether to settle or continue litigation.

Number of mediation sittings: Most of the mediators have answered that up to five sittings of mediation is done in family matter, and some have stated that mediation can be referred at any stage of the case.

Duration between Sessions: Some of the mediators answered that mediation session are done day by day and others stated that mediation is done over time spanning across a week or two as parties need time to think after each mediation session, to arrive at any decision.

Stages when cases referred to mediation: All the mediators stated that as a matter of rule all the family cases are referred for mediation at the initial stage of the case and in between if the courts feel that there is a chance for compromise or when the parties request for mediation.

Certain cases not appropriate for mediation: Half of the mediators answered yes to the question whether they think that certain cases are not appropriate for mediation and other half believed that in all cases there is a chance for mediation and mediation is the way forward. However, all the mediator interviewed for the present study stated that family cases are appropriate for mediation. Some of the mediators stated that child custody is not appropriate for mediation since it is the duty of the Court to decide the same. It is also stated that, in some batch cases, parties settle the matter by entering in to an agreement which states that if the wife withdraws 498A petition, husband shall withdraw divorce petition. This is not correct and it should not happen in mediation.

Change in approach in domestic violence: All the mediators stated that there is a change in approach in cases involving domestic violence as it is an criminal offence and the mediation is approached carefully so as to safeguard the rights of the victim in most cases of domestic violence, it is the victim who decides whether to proceed with the mediation or not and if the mediation is successful the case is either settled in Lok Adalat or quashed at the request of victim before the High Court.

Expectation of different type of litigants from Court: Most of the mediators stated that as the parties in a family case know each other they have various underlying issues even before approaching the court and expect more than the relief is sought from the courts. The mediators stated that most women seek some form of justice from the court and punishment for the opposite party and most of the men seek to frustrate the opposite party by using delay tactics, in cases where the parties have personal grudge they are not even ready to come for mediation.

Special training for mediators: According to two of the mediators interviewed for the present study special training is required. One mediator stated that no special training is required, however, peaceful atmosphere should be created to conduct mediation.

The mediator stated for not requiring training are as follows: mediator have at the least 15 years of standing as Advocates at the respective court complexes where they are appointed as mediators¹¹⁵, the mediator have sufficient experience in dealing with family cases.

Preparation of Settlement Agreement: According to the mediators interviewed for the present study where an agreement is reached for settlement it should be reduced in writing and signed by parties, power of attorney if any, and if there are advocates representing the parties the advocate shall attest the signature of their respective clients after which the mediator shall prepare a covering letter signed by him and forward the same to the Court where the case is pending.

As per the mediators, the Settlement Agreement is drafted in such a way that both the parties are benefitted and neither party's interest is affected and as agreed by both of them during the mediation.

Effect of pandemic on mediators: According to the mediators the pandemic had adverse effect on the mediators as there were no cases for mediation and it adversely affected. The changes

¹¹⁵ Civil Procedure Mediation Rules 2005

brought by the system was that some mediation was done online but it was unsuccessful and the major challenges were infrastructure and lack of proper internet connectivity.

Court Officers

Personnel

Every District Court has one Court Manager/ Officer.

Nature of work

1. The Court Manager shall assist the Registrar General in the High Court and the District Judge, in the District, in the Administrative functioning of the Courts to enhance the efficiency of the Court Management.
2. The administrative functions of the District Judge may be entrusted to the Court Manager and the latter shall assist the District Judge in exercising general control over the Courts and in the inspection of the Subordinate Courts.
3. The Court Manager may be entrusted with any of the following responsibilities

Policies and Standards

- a. Based on applicable directives of superior courts, establish the performance standards applicable to the court (including on timeliness, efficiency; quality of court performance; infrastructure; and human resources; access to justice; as well as for systems for court management and case management).
- b. Carry out an evaluation of the compliance of the court with such standards; Identify deficiencies and deviations; identify steps required to achieve compliance, maintain such an evaluation on a current basis through annual updates.

Planning

- c. In consultation with the stakeholders of a court (including the Bar, ministerial staff, Executive Agencies supporting judicial functions such as prosecutors/police/process serving agencies and court users), prepare and update annually a 5-year court wise Court Development Plan (CDP).
- d. Monitor the implementation of the CDP and report to superior authorities on progress.

Information and Statistics

- e. Ensure that statistics on all aspects of the functioning of the court are compiled and reported accurately and promptly in accordance with systems established by the High Court.
- f. Ensure that reports on statistics are duly completed and provided as required;

Court Management

- g. Ensure that the processes and procedures of the court (including for filing, scheduling, conduct of adjudication, access to information and documents and grievance redressal) are fully compliant with the policies and standards established

by the High Court for court management and that they safeguard quality, ensure efficiency and timeliness, and minimize costs to litigants and to the State; and enhance access to justice, (Note:- standard systems for court management should be developed at the High Court Level).

These Court Managers are in no way related to Family Courts and therefore, do not have much knowledge on the legal and procedural aspects of the Family Court.

Procedure

All the select family courts in AP handle civil and criminal jurisdiction apart from matrimonial matters. Maintenance cases and Guardian & Wards Act cases are also handled by the Family Courts. (Previously in Vishakhapatnam, Guardian & Wards matters were heard by the Principal District Judge, which is now shifted to Family Court).

Numbering system

The numbering system is based on the nature of petition filed with year. There is no way of knowing if two cases are connected unless the party specifically mentions while the case is being filed. In the alternative when the case is called in the court the fact that there are connected cases is mentioned and all posted together.

The Basic Numbering system followed by the Family Courts is similar to other courts wherein the numbers are assigned to a case in numerical order. For instance, first case filed in the year 2021 will be numbered as 1/2021, next one as 2/2021, etc.

However, the category or the case type is different in various Family Courts.

In Family Court, Guntur and Kurnool, all the matrimonial related matters are listed as FCOP and in Family Court, Ongole and Visakhapatnam, the matrimonial matters are listed as OP. Maintenance Cases are numbered as MCs.

Limitations of Family Court Websites

Since the matrimonial issues are personal, data of Family Courts is not totally visible online on websites, like e-courts and National Judicial Data Grid.

Cause list and case status can be checked online on e-courts website.

National Judicial Data Grid does not have data on all the Family Courts. It is not accurate, too.

The major drawback is that the many Family Courts have other names by which they are known, such as V Additional District Judge, VI Additional District and Sessions Judge, etc. Therefore, it is difficult to identify the specific Family Court.

E-courts and case sync are the only apps available regarding Family Courts. The drawback is that you cannot check total number of cases filed, disposed or category wise, etc. You can only check status of a case if you know the number of that particular case.

Litigants

Most of the Litigants interviewed were women. Most were in the age group of 35- 45. Most of the women interviewed are house wives.

The Litigants felt that it was not possible to navigate the Family Court without a lawyer. Many then would not understand the day's proceedings and would have to wait for the lawyer to explain the same.

It was also felt that there was extraordinary delay and a lot of time was wasted in court. Many of them having jobs would lose their workdays on account of the same.

Some of the litigants were not referred to mediation either because there was no hope for settlement and in other cases, divorce was filed through mutual consent.

The Role of the mediator according to them was limited. Many of them had only one or two sittings with the mediator. Some felt that the mediators were ineffective presumably on account of the non-matching of the expectations of the litigant.

Many of the litigants received police support and felt that initially, police were supportive but later, there was no required result from the police. Therefore, they approached an advocate and filed a case in the Family Court.

None of the litigants had approached the Legal Service authorities.

Many of the litigants said that the advocate fee was affordable. The litigants were satisfied with their lawyer but felt that court procedures were extremely lengthy and time consuming. None of the litigants interviewed had approached an NGO.

Most had an engagement with the police at least once.

For many the first point of contact was the lawyer.

Due to the pandemic, mediations and court proceedings had come to a standstill. So consequently, there was nil result no account of it.

It is submitted that cases were sent for mediation after written statement is submitted. And it was only if there was a hope for an attempt at settlement a further attempt was taken by the mediator.

Table 33 Litigant Satisfaction

Stakeholder	Bad	Neither bad, nor good	Good	Very Good
Judge		5	4	
Lawyer		2	7	
Counsellor		-		
Mediator		4	5	
Court Staff		3	6	

Most litigants graded the judges as neither good nor bad. 4 litigants graded the judge as good. Most litigants graded the lawyers as good. Most litigants graded the mediators as good. Most litigants graded the court staff as good.

Family Court Perception Analysis

Family Court Perception analysis is a tool developed to study the perception of different stakeholders of family courts on the functioning of family courts. Each stakeholder was asked to grade the family courts on a matrix of 0-3 (zero being least and 3 being highest) on the following criteria: (a) Informality (b) Accessibility (c) Infrastructure (d) Digital Infrastructure (e) Complexity of procedure (f) Repetition of processes and (g) ability of litigants to navigate the court proceedings without the help of a lawyer.

Table 34 Family Court Perception Analysis

JUDGES' PERCEPTION OF FAMILY COURT FUNCTIONING				
Grading	0	1	2	3
Informality	2	1	1	
Accessibility		3	2	
Infrastructure			4	
Digital infrastructure			4	
Complexity of procedures		1	1	2
Repetition of processes		2		2
Ability of litigants to navigate the court process without a lawyer	2		2	
LAWYERS' PERCEPTION OF FAMILY COURT FUNCTIONING				
Grading	0	1	2	3
Informality	10	6	2	
Accessibility		5	5	8
Infrastructure	8	10		
Digital infrastructure	8	10		
Complexity of procedures			7	11
Repetition of processes			3	15
Ability of litigants to navigate the court process without a lawyer	8	10		
COUNSELLOR'S PERCEPTION OF FAMILY COURT FUNCTIONING				
Grading	0	1	2	3
Informality	-	-	-	-
Accessibility	-	-	-	-
Infrastructure	-	-	-	-
Digital infrastructure	-	-	-	-
Complexity of procedures	-	-	-	-
Repetition of processes	-	-	-	-

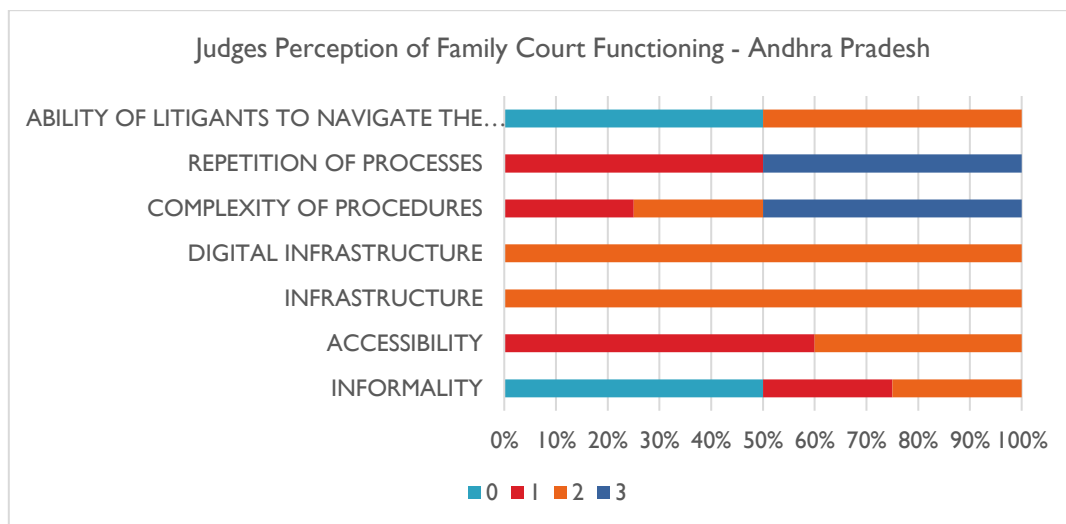
Ability of litigants to navigate the court process without a lawyer	-	-	-	-
MEDIATOR'S PERCEPTION OF FAMILY COURT FUNCTIONING				
Grading	0	1	2	3
Informality	1	3	1	
Accessibility			2	3
Infrastructure	2	1	2	
Digital infrastructure	2	1	2	
Complexity of procedures		1	2	2
Repetition of processes			2	3
Ability of litigants to navigate the court process without a lawyer		3	2	
COURT OFFICER'S PERCEPTION OF FAMILY COURT FUNCTIONING				
Grading	0	1	2	3
Informality	1	1	1	1
Accessibility		1	1	2
Infrastructure	1		2	1
Digital infrastructure	1		2	1
Complexity of procedures		1	2	1
Repetition of processes	1	1	1	1
Ability of litigants to navigate the court process without a lawyer				
LITIGANT'S PERCEPTION OF FAMILY COURT FUNCTIONING				
Grading	0	1	2	3
Informality		4	5	
Accessibility		5	4	
Infrastructure		4	3	2
Digital infrastructure	5	4		
Complexity of procedures		5	4	
Repetition of processes		3	6	
Ability of litigants to navigate the court process without a lawyer	7	2		

- There is near consensus on the point that litigants cannot navigate the court process without a lawyer. Most stakeholders graded this entry at 0.
- While most lawyers graded the infrastructure and digital infrastructure at 0 or 1, all judges graded the infrastructure and digital infrastructure at 2. Most litigants also marked the digital infrastructure at 0 or 1. This shows the digital divide between the lawyers, litigants and judges.

- While most judges, lawyers, mediators graded the complexity of procedure and repetition of processes at 2 or 3, litigants graded the same at 1 and 2.
- Most judges and lawyers graded the informality at 0. Most mediators graded the informality at 1. Litigants graded informality at 1 or 2.
- Most judges graded accessibility at 1. Most lawyers graded accessibility at 3. Mediators graded informality at 2 or 3. Litigants graded informality at 1 or 2.
- Most lawyers graded complexity of procedures and repetition of processes at 3. Half the judges interviewed graded complexity of procedures at 3. Most litigants graded the complexity of processes at 1 and repetition of processes at 2.

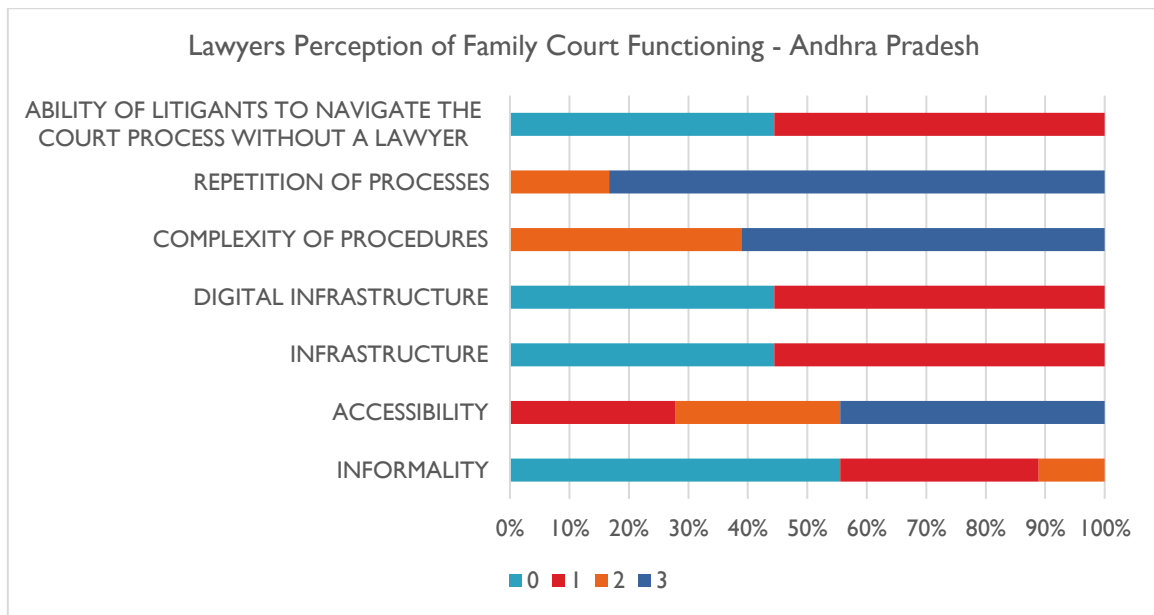
Family Court Perception Analysis – Andhra Pradesh

Chart 25 Judges Perception Analysis of Family Court – Andhra Pradesh



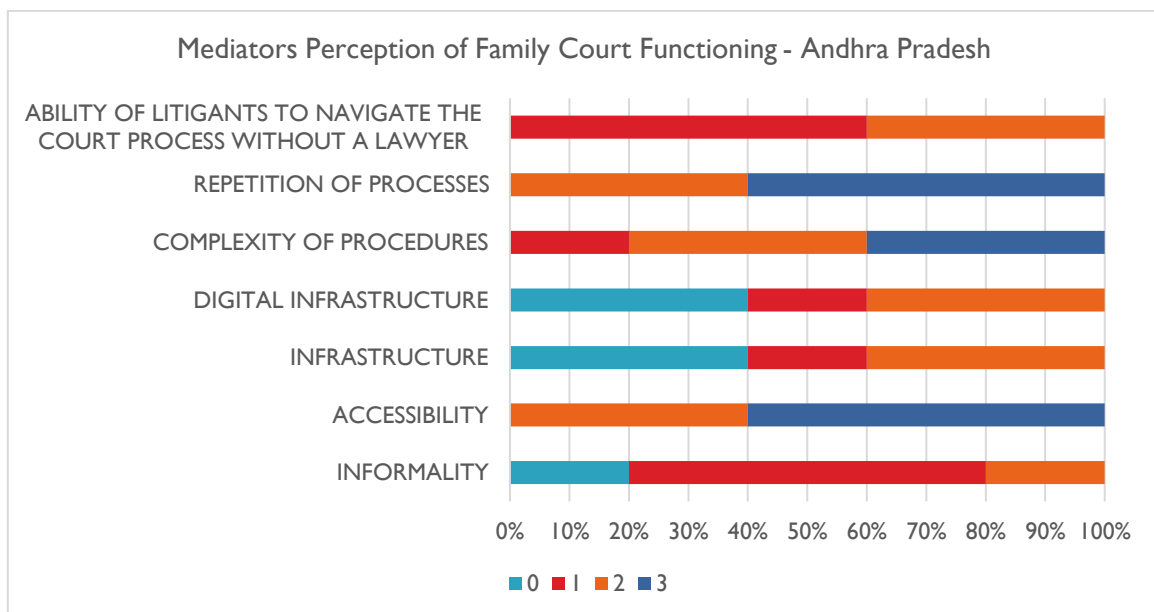
On a matrix of 0-3, 50 percent of Judges interviewed graded the Family Courts of AP for informality at 2. 60 percent of judges graded the courts for accessibility at 1. All judges graded the family courts for infrastructure at 2. 50 percent of judges graded the family courts for complexity of procedure and repetition of processes at 3. While 50 percent of judges graded the ability of litigants to navigate family courts without a lawyer at 0, the other 50 percent graded the same at 2.

Chart 26 Lawyers Perception Analysis of Family Court – Andhra Pradesh



On a matrix of 0-3, 50 percent of the lawyers graded the family courts in AP for informality at 0. 50 percent of lawyers graded the family courts for accessibility at 3, 25 percent graded at 2 and 1 respectively. All lawyers graded the family court infrastructure and digital infrastructure at 0 or 1. 60 percent of lawyers graded the complexity of processes at 3, while 80 percent of lawyers graded the repetition of processes at 3. All lawyers graded the ability of lawyers to navigate the court proceedings at 0 or 1.

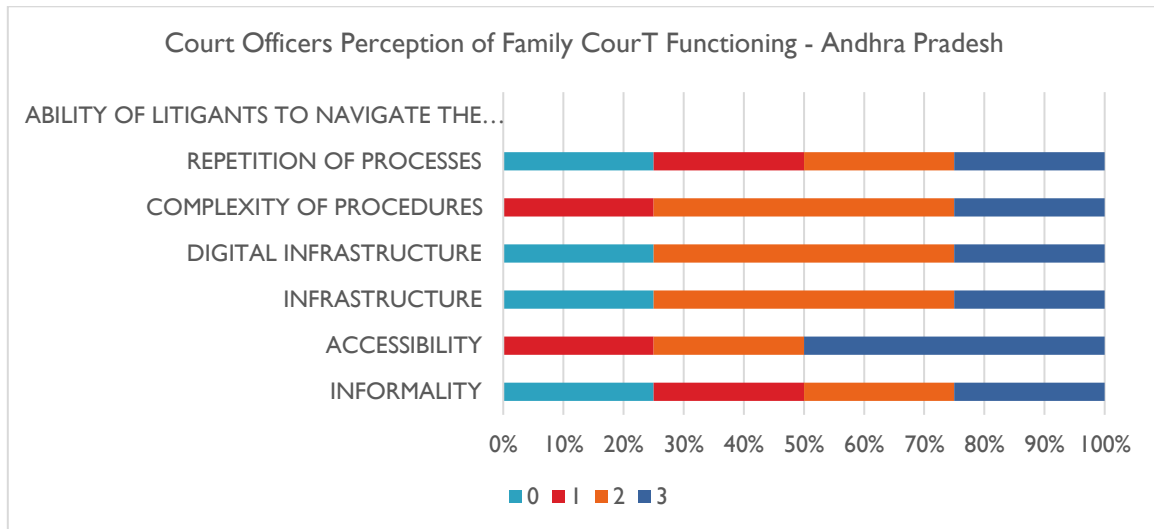
Chart 27 Mediators Perception Analysis of Family Court – Andhra Pradesh



On a matrix of 0-3, 60 percent of the mediators graded the family courts in AP for informality at 1. 60 percent mediators graded the courts for accessibility at 3 while the other 40 percent graded at 1. 40 percent mediators graded infrastructure and digital infrastructure at 0 while another 40 percent mediators graded the infrastructure including digital infrastructure at 2.

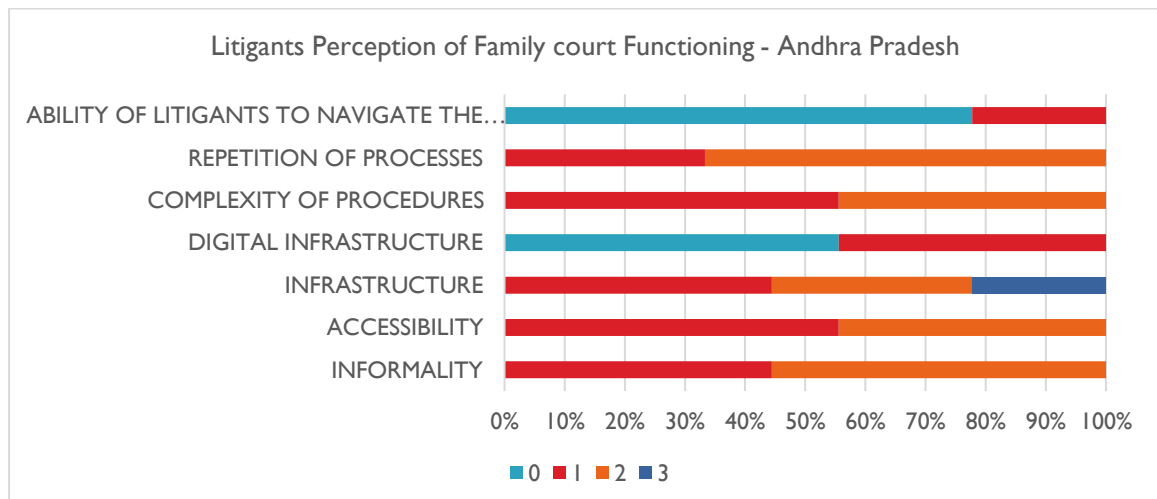
80 percent mediators graded the courts for complexity of procedures at 2 or 3. All mediators graded the courts for repetition of processes at 2 or 3. 60 percent of mediators graded the ability of litigants to navigate the court proceedings at 1.

Chart 28 Court Officers Perception Analysis of Family Court – Andhra Pradesh



On a matrix of 0-3, court officers differed in their perception as to family courts on informality between 0-3. 50 percent of court officers graded the courts for accessibility at 3. 50 percent of the court officers graded the courts for infrastructure and digital infrastructure at 1 each. All court officers graded the courts for digital infrastructure at 0 or 1. 50 percent court officers graded the courts for complexity of procedures at 2. Court officers differed widely in their perception on repetition of processes in family court. All court officers graded the courts for ability of litigants to navigate the court proceedings without a lawyer at 0.

Chart 29 Litigants Perception Analysis of Family Court – Andhra Pradesh



On a matrix of 0-3, 55 percent of the litigants graded the family courts in AP for informality at 2. 55 percent of litigants graded the courts for accessibility at 1. 40 percent graded the courts for infrastructure at 1. All litigants interviewed graded the courts for digital infrastructure at 0 or 1. 55 percent graded the courts for complexity of procedures at 1. 65

percent litigants graded the courts for repetition of processes at 2. 80 percent litigants graded the courts for ability of litigants to navigate the court proceedings without a lawyer at 0.

Court Records Evaluation

20 individual cases of each district are selected for the study. This would total to 20*4 a minimum of 80 files from the state. I collected disposed matters for the purpose of the study. This consists of two parts. The matters were studied to evaluate timeliness – the time taken at each stage of court proceedings and the total time taken for disposal of a case.

At the level of individual cases

The common procedure of handling the cases is as follows: After a case is filed, a notice is sent to the respondents which is posted as Summons/ Notice. Once summons is issued, next posting is made for appearance of parties. After this stage, the respondent requests time for filing Written Statement and the matters is then posted under for ‘Counter/Written Statement’. The case is then posted for reconciliation. If reconciliation succeeds, the next posting is made for orders. The clauses of the settlement agreement made during mediation becomes part of the judgment. If the reconciliation fails, the case is then posted for Enquiry/ Pre-trial Steps. During this period, steps like preparation of Witness Schedule, Calling of Documents, and Summons to the Witnesses etc. are done. The matter is then posted for evidence and later for Hearing/ Arguments and then for Orders. At all these stages, adjournments are requested by the parties and lawyers which are allowed.

Guntur

Table Detailing Average No. of Postings in each stage of Case Proceeding

Notice	Appearance of Parties	Counter	Reconciliation	Enquiry	Evidence	Arguments	Order
4	2	3	5	5	3	2	1

From the above table, one can see that notice, reconciliation, and enquiry constitute more postings and therefore more time.

Table Detailing Average Time Spent in Each Stage of Case Proceeding

Notice	Appearance of Parties	Counter	Reconciliation	Enquiry	Evidence	Arguments	Order
100-130	40-60	75-90	100-150	100	30-45	10	1

From the above table, one can see that maximum time is spent on notice/summons, reconciliation and enquiry.

Prakasam

Table Detailing Average No. of Postings in Each Stage of Case Proceeding

Notice	Appearance of Parties	Counter	Reconciliation	Enquiry	Evidence	Arguments	Order
3	0	3	5	2	3	2	1

From the above table, one can see that maximum number of postings is made at the stage of reconciliation.

Table Detailing Average Time Spent in Each Stage of Case Proceeding

Notice	Appearance of Parties	Counter	Reconciliation	Enquiry	Evidence	Arguments	Order
80-100	0	60-90	100-150	60	3045	10	1

From the above table, one can see that maximum time is spent at the stages of notice and reconciliation.

Visakhapatnam

Table Detailing Average No. of Postings in Each Stage of Case Proceeding

Notice	Appearance of Parties	Counter	Reconciliation	Enquiry	Evidence	Arguments	Order
4	5	4	4	4	3	2	1

From the above table, one can observe that maximum number of postings are being made on appearance, summons/ notice, reconciliation as well as enquiry.

Table Detailing Average Time Spent in Each Stage of Case Proceeding

Notice	Appearance of Parties	Counter	Reconciliation	Enquiry	Evidence	Arguments	Order
90-120	120-150	90-120	120-150	120	30-45	7	40-60

Kurnool

Table Detailing Average No. of Postings in Each Stage of Case Proceeding

Notice	Appearance of Parties	Counter	Reconciliation	Enquiry	Evidence	Arguments	Order
3	0	4	5	4	4	4	1

From the table, one can see that higher number of postings happened at the stage reconciliation. It is hard to identify a particular pattern as more postings are observed at each stage,

Table Detailing Average Time Spent in Each Stage of Case Proceeding & Remarks

Notice	Appearance of Parties	Counter	Reconciliation	Enquiry	Evidence	Arguments	Order
100-130	0	150-200	120-150	120	90-105	50-90	4

In the above table, one can see that time spent at every stage has been at a higher end-whether it is conciliation, notice, counter or enquiry.

On a general analysis, most of the cases, except for divorce through mutual consent, are being disposed in a span of 1-2 years. Mutual consent cases are disposed in 6 months period.

Many adjournments are being given even in cases where it is not necessary. For instance, reconciliation is taking up most of the adjournments, i.e., up to 5 adjournments with 25 days'

time being given per adjournment. The Family Courts of Andhra Pradesh do not have their own Counsellors. Therefore, time period for reconciliation can be shortened.

Another instance is that, in many cases, the husband lives in one place and the wife's parent live in one place. After separation, husband files for divorce or restitution of conjugal rights in his own place whereas the wife files in her place. Later, one of the spouse's files transfer petition and one of the courts transfers the case to the other court. The disposal of transfer petition is also taking up a lot of time. The transfer petitions can be disposed of quickly.

In case of maintenance petitions, the matters are disposed of quickly but the execution is taking forever.

Table 35 Stage-Wise Duration Mapping of Family Case – Andhra Pradesh

		Avg. Days taken for first posting:	30-120
Avg. No. of postings for summons/ notice	3	Avg. Days taken at the stage of summons	100-120
Avg. No. of postings for appearance of party	3	Avg. Days taken at the stage of appearance of parties	80-100
Avg. No. of postings for counselling	5	Avg. Days taken at the stage of counselling & mediation	120-150
Avg. No. of postings for written statement/ counter	2	Avg. Days taken at the stage of written statement/ counter	90-120
Avg. No. of postings for steps	1	Avg. Days taken at the stage of steps	10
Avg. No. of postings for hearing	2	Avg. Days taken at the stage of hearing	10
Avg. No. of postings for judgment	1	Avg. Days taken for judgment	7
Average Duration between each posting	20	Avg. Total Days between date of filing and date of disposal	15 months

The above table summarizes the number of postings and days taken at each stage of a family court proceeding and the total time spent in a family matter in court.

At the level of connected cases

3 batch cases are selected for the study. This would total to 7 cases from the state. I collected disposed matters for the purpose of the study.

In general, batch matter in relation to matrimonial matters consists of following type of cases:

- Divorce
- Maintenance
- Guardianship
- Domestic Violence
- 498A

General procedure for filing the above cases is as mentioned hereunder:

Divorce, maintenance and Guardianship related matters are filed before the Family Court as per the standard procedure.

In case of domestic violence cases, government provides free legal aid for women in filing a case through DLSA. Domestic violence cases are filed before Family Court in General but in

some districts like Guntur, they were filed before Mobile Court since Domestic Violence cases are filed under separate Act. But now, in Guntur, the domestic violence cases are also handled by the Family Court.

498A is a criminal case. In this matter, firstly wife files a complaint against her husband and in-laws in a Police station. FIR is registered against them. Then, after following the required procedure, finally a case is filed before a Magistrate.

Each of these cases take its own due course, making multiple court appearances for each posting. There is no system in place to club the

After evaluation of the different batches of cases, it is felt that the procedure of filing all the petitions can be simplified by setting up a standard form for all the cases. Basic entries can include names of the parties, date of their wedding, children if any, issue, relief being sought, etc. By filling up the said details and writing their issue briefly in a single page, the matter can be taken for reconciliation. If reconciliation does not succeed, the litigants may engage an advocate and proceed legally. This procedure can save lot of time of litigants, advocates and court.

Field Observations & Suggestions for Improvement

1. *Exclusive Jurisdiction for Matrimonial Cases:* All the sample courts visited deal with civil and criminal matters including matrimonial matters. Besides Judge to a Family Court, he or she is also a Judge of District and Sessions Court. This only increases burden on the Court. Besides, the privacy of the parties is also being compromised. Family Courts should have exclusive jurisdiction of matrimonial cases.
2. *Expand the population coverage of Family Courts:* In addition to the Family Courts, other courts such as Senior Civil Judge Courts also deal with Matrimonial matters. The Family Courts have jurisdiction over the urban area, i.e., cities in which the Family Court is located, whereas the other courts have jurisdiction over the rural areas, i.e., all other villages. One or more courts dealing with family matters only leads to confusion among the parties as to where to file the case. To remove this confusion, Family Courts should be given exclusively matrimonial cases.
3. *Help Desk at Family Court:* In the Family Courts, the parties file petitions in person, without the help of their advocate. Therefore, the procedural aspects should be followed liberally and not strictly. Furthermore, a help desk can be maintained at the place where the petitions are filed so that the parties can file the petitions without any doubts and while following the required procedure. It may also educate the parties regarding the various services available including legal aid services.
4. *Requirements while filing a petition before the Family Court:*
 - a. While filing a divorce petition or restitution of conjugal rights, it is mandatory for the petitioner to submit their wedding photos and wedding invitation card as proof of their marriage. In some cases where parties are married in Register Office, wedding card is not available with the parties and they cannot submit the same.

However, their version is neither being heard nor understood and they are being forced to comply with the same if they want to file a case before the Family Court

- b. The requirement of separate application for appointing a lawyer may be dispensed with.
5. *Adjournments and Time-Wasting Strategies in Transfer Petitions:* As per the provisions of the Family Courts Act, a petition can be filed in a court which has jurisdiction over the place where either the husband or the wife resides. Therefore, in many of the cases, both the parties are filing cases at their respective places and then one of them is filing a transfer petition to transfer the case to the other court. Even while handling this transfer petition, many adjournments are being given and a lot of time is being wasted of clients, advocates and the Court. This can be avoided.
6. *Improvements in Basic Infrastructure:* Basic amenities are limited in all of the Family Courts visited for this Research. There is no drinking water facility, no washrooms, no retiring area for litigants, no children play room. The basic idea behind establishing Family Courts is that they can be family or children friendly. Thus, all these are very essential in a Family Court and only with these amenities, Family Court shall be differentiated from other regular courts.
7. *Appointment of Family Court Counsellors:* The Family Courts in the State of Andhra Pradesh does not have court appointed counsellors. It is high time the State Government realizes the need for counsellors and appoints them so that the burden on the Family Courts also decreases. *Counselling Centre:* A separate Counselling centre with required paraphernalia to be assigned to the Family Courts so that the parties can be referred to reconciliation either before or immediately after filing a case. The importance of pre-marital counseling also needs.
8. *Mediation:* Mediators should be trained to deal with family court matters. It is found that in cases where mediation is referred, some of the parties are trying to evade the same by giving some excuse and the matter is returned to the Family Court. Steps may be taken to encourage mediation among the parties of the case.
9. *Option for Pre-Court Conciliation:* The major reason behind the provision of Family Courts Act that the party should file case in person is that they can resolve the issue with reconciliation and without involvement of advocates. However, if a petition is to be filed by the clients with all the legal provisions and case laws, it is impossible and gives wrong notion. But, if the client can submit a letter stating their reason behind their dispute in a nutshell and then if the matter is first referred to reconciliation, most of the matters can be solved before reaching the Court. This can save a lot of families and the Courts' time. If the reconciliation fails, then the client can get permission from the court and engage an advocate to file a petition on his or her behalf and proceed legally.
10. Reconciliation should be given utmost importance and should be conducted before filing written statement.

11. In case of maintenance, the cases are being disposed of quickly. However, the execution is taking up a lot of time. The Respondent asks for adjournment saying that he does not have money or some other excuse and the Judge does not have any power except to adjourn the matter and to direct the respondent to pay the maintenance by the next date. Steps may be taken for augmenting the execution process.

Chapter 6: Summary of Findings and Recommendations

The objective of this project was to study the functioning of family courts in India. Three South Indian states – Kerala, Andhra Pradesh & Telangana were selected for the study. The study was conducted using primary and secondary data. Secondary Research was conducted based on the literature review, Law Commission Reports, National & International Best Practices. Multiple Focus Group Discussions were conducted to understand the challenges in the functioning of family courts in India with the participation of key stakeholders and experts in the field. A Field Study was conducted in four select Family Courts in each of the three sample states. As part of the study, different tools were designed.

- i. Infrastructure Check to map the infrastructural characteristics of select family courts,
- ii. A Day in Family Court – to understand the day to day functioning of family courts and to map the effective time spent in court.
- iii. Key Informant Interviews with all stakeholders - judges, lawyers, counsellors, mediators, court officers and litigants to study the different challenges and bottlenecks in the functioning of family courts,
- iv. Family Court Perception Analysis – to study the perception of different stakeholders on the functioning of family courts. Each stakeholder was asked to grade the Family Court on different criteria selected.
- v. Court Record Evaluation – to map the element of timeliness – total time spent for filing and disposal of a family court case and time spent at each stage of family court.

Recommendations are based on the findings emerged from secondary research, qualitative research (FGDs) and quantitative/ field research.

6.1 Based on Secondary Research

- I. *'Preservation of family' approach vs. individual liberty and Right to Privacy*: Since the beginning of 21st century, family law jurisprudence seems to have heavily relied on 'preservation of family' approach while dealing with family disputes. It essentially meant that family as a social unit must be preserved and only in extreme situations should people be allowed to sever ties. Hence, courts remained reluctant in granting relief of divorce and encouraged efforts towards mutual settlement. For this reason, unhappy parties had no option but to continue living in the relationship. This can become a cause of adverse effects on parties' physical, mental and social well-being. Filing petitions against one's spouse or other family members, even on justified grounds, is still looked down upon in the society we live in. However, in recent years, many landmark judgments were delivered by the Hon'ble Supreme Court that acknowledged 'right to privacy' as a fundamental right and strong emphasis was made on individual autonomy. In this light, it can be argued that family law jurisprudence too ought to evolve and possibly shift towards giving parties a freer hand in making choices for their own good. However, at

the same time, the socio-cultural scenario also needs to be considered while making a decision as India is a diverse country.

2. *Mental Health Awareness:* The awareness on Mental Health and Mental Health Services is very limited in India. A Mental Health Awareness and Support Drive may be initiated in collaboration with the Family Courts and National Health Mission and District Mental Health Committees. Such collaborations may be initiated around the Mental Health Day (October 10) by celebrating a Mental Health Week. There is a need to normalize the mental health problems and create access to mental health services. Mental Health Awareness Sessions with expert Psychologists or Family Counsellors, Wall posters on quotes and pictures depicting the importance of mental health, Self Help Brochures to independently access necessary services and Help Desks to aid the parties, and most importantly by creating a comprehensive referral network involving partnership with service providers making counselling and mental health support services accessible to clients. All the stakeholders in the family court process may be provided with Mental Health Awareness Sessions or Workshops to help themselves and help others in the process, and to improve the family court experience¹¹⁶.
3. *Clarifying the concept of Counselling:* There is a lack of clarity in the concept of counselling as used in the Family Courts. The Family Courts Act conceives counselling as an attempt for reconciliation of parties. With the emphasis on preservation of marital union on the Act as well as the prevailing social mores, any attempt to reconciliation or settlement between parties is automatically translated as retention of marital union. In a previous research, counsellors from different regions claimed the object of counselling to be to join the parties in marriage. In practice, this amounts to undue pressure on parties particularly women to go back to an unhappy and often toxic relationship. The therapeutic angle of counseling is also not emphasized in the Act. The success of a counselling is not to be judgment is not to be made in the number of settlements made, there are mediators who perform that function. Family disputes are essentially traumatic for the parties who are going through it and the counselling process should serve as an opportunity to prepare the parties to handle this phase more effectively, both emotionally and otherwise and to reduce the hostility between parties.
4. *Child Inclusive Dispute Resolution Policy:* Every stakeholder in the Family Court Process finds it difficult to handle family issues involving children – judges, counsellors and mediators alike. Several Governments have tried to innovate on this area by bringing a Child-Inclusive Dispute Resolution Policy. Child Inclusive Dispute Resolution involves a process whereby the children get a chance to express what they are going through before an experienced Child Consultant. Singapore Government has released a new Scheme ‘Parenting Coordination Scheme’ to aid high conflict families to engage in co-parenting with the help of a mentor/ parenting coordinator. Child Inclusive Dispute

¹¹⁶ Integrated Client Service Delivery is a model developed in Australia combining best practice client focused principle with services and mental health support. See p.25 for details.

Resolution as a concept is at its infancy in India, and many a times protecting the interests of children is culturally another way of saying women to compromise; however, it is time that we invest our research and energy to study and develop this further to suit our system. As a beginning, a child psychologist or counsellor with significant experience in dealing with children may be made available at each family court on honorarium or referral services. Periodic trainings and workshops may be made available to family court judges, mediators and counsellors on child-inclusive dispute resolution to effectively handle child custody matters.

5. *Mediators' Training:* The training programmes for mediators are more focused on generic disputes. Specialized training for mediators interested to practice in family matters may be devised in collaboration with the universities and pioneers in the field of mediation like Delhi Mediation Centre and Singapore Mediation Centre. Modules may be designed incorporating gender sensitization, study of different kinds of family arrangements, and to handle issues involving children including child custody effectively. The trainings may be organized in the format of workshops blending theoretical and practical approaches.
6. *Qualification and Appointment of judges in Family courts:* The qualification set by various state should give more importance to the person who is having more experience in the field of child psychology, social welfare, clinical psychiatrist etc. apart from legal knowledge because the role of Judges is very crucial to bring parties at a peaceful settlement and sometimes for the best interest of the child. There should be training sessions of judges before recruiting them in the family court like sensitization, testing them on their counselling and listening abilities. A special training of around 3-6 months should be conducted for better and a smoother functioning of family courts. Certificate should be given after such training sessions, if they qualify all the tests in these training sessions. Training modules could include:
 - i. *In-depth interviews:* In-depth interviews are one-to-one encounters in which the interviewer makes use of an unstructured or semi-structured set of issues/topics to guide the discussion. The object of the exercises is to explore and uncover deep-seated emotions, motivations and attitudes. They are most often employed when dealing with sensitive matters and respondents are likely to give evasive or even misleading answers when directly questioned. Most of the techniques used in the conduct of depth interviews have been borrowed from the field of psychoanalysis.
 - ii. *Research work/moot problem activity on family issues:* Such activities could help to understand the state of mind of judges and their approach in solving family matters. Training shall be provided to perceive the cases without inherent biases.
 - iii. *Personal visits to police stations, women police stations, counselling centres, NGOs working in the field of women and family relations to sensitize the judges about various issues that props up in families as a part of their test and training to be qualified for the position of family court judge, etc.*

This model could be built up on the same notion as SSB training for Army and JAG (Judge Advocate General) recruits.

6.2 Based on Qualitative Research

Jurisdiction

1. *Territorial Jurisdiction:* Efforts shall be made to bring in the entire population of each state within the family court jurisdiction. In states like Tamil Nadu, 30-40 percent of population do not fall within family court jurisdiction due to absence of jurisdiction. Efforts may be taken to bring the entire population within the jurisdiction of family courts. The same is the case with Telangana and Andhra Pradesh, where the jurisdiction is limited to municipality and corporation areas and few mandals.

Infrastructure

1. *Family Court Design:* It was proposed that family courts may be redesigned as Matrimonial Dispute Redressal Forums with presiding members consisting of judicial members and non-judicial members. Non-judicial members may consist of counsellors, therapists, social workers, lawyers with long standing experience in family matters or law teachers or researchers with experience in matters relating to family law/ family courts. Considering the unique characteristics of the family court, tribunalisation should be considered. This suggestion was proposed to different lawyers and judges interviewed as part of the field study, however, there were not enough takers for the suggestion. One reason could possibly be resistance to change¹¹⁷.
2. *Basic Amenities:* The call for better infrastructure for family courts were vehemently stressed upon: it was noted that the initial idea was to have family courts outside of the regular court structures, however, the family courts are increasingly finding their way back to regular court complexes. Separate family court complexes which are neat, clean, spacious and airy, with facilities of toilet, canteen, and children's lounge, crèche, family space/ space for visitation etc. was emphasized.

Counselling and Allied Services

1. There is lack of uniformity in the qualifications and appointment of counsellors across the states. Advocates, retired judges, those with degree in social sciences or/ and law, social work, psychology, those doing voluntary work etc. all comes within the net of counsellors depending on the state to state. Steps shall be taken to ensure that all counsellors appointed possess basic minimum training.
2. The counsellors struggle with caseload so much so that the counsellor's session becomes almost transactional. Counsellors take up 5-25 cases per day differing from place to place. It was found that the counselling services is not yet introduced in Telangana and Andhra Pradesh, which needs to be corrected at the earliest.

¹¹⁷ A more detailed exposition is provided in 7.4 Policy Recommendations, p. 249.

3. Appointment of more full-time counsellors to cater to the need of the court should be considered. More than one counsellor, trained in different areas including child psychology, de-addiction etc. be appointed. The cases may then be allotted to the concerned counsellor with expertise in the relevant field. In the absence of more specialized counsellors, reference shall also be made to counsellors outside the court system.
4. A comprehensive list of referral services proximate to the court shall be made available to the counsellors. As far as possible, steps shall be taken to provide these services within the court premises.
5. Different value-added service including psycho-social support, de-addiction, specialists in child psychology, etc. may be made available within the court premises.
6. The court infrastructure for counselling needs improvement.
 - a. The process of counselling necessitates sending the couple for a discussion, or to spend some time together. This is impossible in a court environment crowded with lawyers, police, other couples in conflict etc.
 - b. The counselling process involves personal interactions with each spouse individually, where the party can express freely with confidence that no other person is listening (particularly the opposite party/ spouse). However, in courts with smaller counselling rooms, the other party who sits a screen away can easily listen to whatever is conversed between the counsellor and the party. This is not congenial for counselling.
 - c. In custody matters where children are involved, it is injustice upon children to make them languish in court rooms ridden with conflict. Child care centres/ Children complex need to be established, a model has already been established in Maharashtra.
 - d. Where visitation is allowed for either party in court premises, a congenial atmosphere for the same also need to be provided.
7. Clarifying the meaning of conciliation- it has been observed that many conceive conciliation as reconciliation/ reunion, while some conceive it as non-adversarial. This needs clarification, and all stakeholders need to be educated about this difference.
8. The counselling and reconciliation efforts happen at several levels- at the level of police, counsellor, mediation, Lok Adalat – at least in cases which involves violence of different kinds, the victim should have the option to stay out of the reconciliation efforts. The process of forcing the party to sit against the person who inflicted violence multiple times is not recommended.
9. Introduction of pre-litigation counselling centres may be a useful addition to the system. This has been tried by Project Sukoon in Maharashtra and has been largely successful. The first points of contacts for family issues say police stations etc. may direct the parties for pre-litigation counselling in appropriate cases.

10. Steps to expand the counselling services in cases where the parties were reunited in court, as well as post-divorce counselling may be considered. In the absence of proper follow up, the parties who got reunited in the court are likely to come back to court.
11. The powers, duties and responsibilities elaborated incorporated include provision for home visits, the power to call for meeting with employers, other relatives etc. However, it is crystal clear that this is impractical with the current state of affairs. NGOs or social workers may be assigned the same function as against the counsellors.
12. Periodic skill up-gradation sessions for family court counsellors to be conducted. Project Sukoon in Maharashtra successfully run such training sessions in the order of three hours every month for last three years. This was done within the work hours of the counsellors which made it easier for the counsellors.
13. Periodic sessions to address counsellor burn-outs need to be conducted. Such sessions shall also be extended to family court judges.
14. Making the court infrastructure children and women friendly – collaborations may be effected with Ministry of Women and Child Development, and convergence of funds could be considered.
15. Making collaborations with District Mental Health Centres and Family Courts to provide Mental Health Literacy to judges, lawyers, mediators and staff of each court. The Family court counsellors may coordinate this program. The budget from Health Ministry for Mental Health programmes may be channelized for this effect.
 - a. Steps may be taken to de-stigmatize mental health and family counselling services.
 - b. Mental Health Literacy Sessions for everyone involved in family court process.

Procedure

1. Family courts today, though designed as a system away from civil courts, has developed a civil court system within itself. The procedure in family courts today is hardly different from regular civil courts.
2. Introduction of Pre-litigation Counselling and Mediation was emphasized upon. The materials shared during this session will be confidential and the positions taken during this stage will not adversely affect the parties if the parties subsequently move to the litigation stage. No legal representation shall be allowed at this stage. This has been effectively tried and tested in Delhi and has been found effective.
3. All matters in divorce- maintenance, guardianship, custody and property, may be clubbed together in a single petition with a single pro-forma application.
4. In custody matters, the court should play an inquisitorial function rather than adversarial function. The court can collect all necessary information before issuing an order.

5. All the ancillary litigation shall be heard and disposed of together. However, the contrary opinion is that if divorce is delayed, the possibility of remarriage of the parties may be affected. This may be decided on a case to case basis.
6. The procedure of filing separate execution petition for maintenance decrees may be dispensed with altogether. The execution of maintenance decree should automatically be said to be open at the time of issue of maintenance order.
7. The family courts today are no different from regular civil courts in terms of procedure or evidence. The use of CPC as regards family courts may be completely avoided. This proposition was mooted among the interviews conducted among judges and lawyers as part of the field study, however, most opined that CPC be retained as it gives a structure; however, the need for simplified procedure was emphasized upon.
8. An informal atmosphere may be maintained in family courts as far as possible. Robes of lawyers and judges may be avoided. Submissions in open courts may be taken as petitions to award interim relief wherever possible.
9. Practice of assigning advocate commissioners may be dispensed with.
10. Undue emphasis on reconciliation may be given away, and divorce should be made more liberal.
11. Steps may be taken to ensure time-bound justice.

Case Management

1. Family Courts may be made more efficient by intelligent management of cases. The use of good case management techniques needs to be employed.
2. A collegium of 3-4 members including women may be set up to create a priority list of cases i.e, cases requiring immediate hearing.
3. The adjournments should be made shorter depending on the case. The duration between two posting dates should be reduced in appropriate cases.
4. The cases shall be divided into different stages- and presence of parties may not be made mandatory in all stages of the case. The requirement of presence of parties may be dispensed with in appropriate cases, including mutual divorce petitions.
5. Cases shall also be classified based on complexity and a list be so created. More complex cases may be posted post lunch (or any appropriate arrangement).
6. Time limit to be prescribed for the settlement of each and every case, like mediation.
7. The interim orders shall not be made pending till the completion of counselling, mediation or the final hearing. Some parties need immediate relief, which may be made on an urgent basis. The interim relief is also an efficient tool to secure balance of power between parties at the time of mediation. The interim maintenance, custody or visitation of power may be so issued to shift the balance of power between parties. Conciliation talk cannot happen effectively when one parent is kept out of the children completely; similarly, when interim maintenance is not awarded, the power is shifted against women.

8. *Advance Time Fixing*: Time slots may be fixed prior for the cases, and the parties and lawyers may be present only during the specific time fixed for them.
9. Personal appearance of parties at each postings may be dispensed with and parties' presence may be mandated only in cases where presence is absolutely necessary.
10. The long process of roll call needs to be dispensed with.
11. The process whereby all cases are brought before the judge need to be discontinued with. The cases posted for counselling and mediation may directly go the counsellor and mediator respectively. The cases at the notice stage- serving of notice/ summons, questions on completion of service of notice etc may be handled at the level of court officer.
12. Use of digital technology for efficient management of courts need to be studied.

It was a matter of great satisfaction to the researchers that most of these directions which emerged on setting up of case management guidelines was implemented by the Kerala High Court in the Family Courts in Kerala¹¹⁸.

Law/ Judicial Reforms

1. Gender Sensitization of Family Court Judges, Lawyers, Police is absolutely necessary. While women representation in courts is necessary, women representation is no alternative to gender sensitization. We all are products of a patriarchal society, and everyone involved in handling with family disputes (including women) must be given mandatory training sessions on gender sensitization.
2. Gender Justice should be incorporated within the Objectives of the Act. The Preamble of the Family Courts Act gives undue importance to reconciliation vis a vis preservation of marriage. Gender justice and amicable settlement between parties should be given more emphasis. The term reconciliation is understood differently in different parts of the country- in some part, it is understood as non-adversarial process, while in other parts, it is understood as reconciliation between parties and restoration of marital union.
3. Pre-litigation mediation may be made mandatory. The issues can be crystallized in this process. If we allow this process, if the matter is not settled and it go to litigation, the positions taken by the parties shall not prejudice them in the litigation stage.
4. *Pro-forma petitions*: Each petition may be limited to a small brief limited to the fact that there is a dispute in the family and that the intervention of the court is called for. The effective intervention of counsellors and mediators should be availed. There is no need to spell out all the allegations. Once the allegations are spelled out, that will make the opposite parties harden their positions further and any possibility of amicable settlement will be closed. Standard forms may be designed in the lines of maintenance petitions. As prayer, one may just seek the intervention of the court, which in turn may lead to amicable settlement or amicable separation giving their dues.

¹¹⁸ The details of the case management guidelines introduced in Kerala are detailed in p. 254.

5. *Minority Mediation Centres*: In the current state, the women who are divorced by way of *talaq* orally, without sufficient witnesses, find it impossible to secure a divorce certificate from the Waqf Board, which leave the women hanging between marriage and divorce. Telangana Minority Marriage Counselling Centre, set up with Muslim clerics, advocates, retired justices, professional counsellors, etc. is a good example in securing rights of Muslim women by processing Muslim divorces at the instance of men and women albeit equitably. Formally linking such counselling centers to the Family Courts would certainly go a long way in reducing the burden on courts as well as securing affordable, accessible and speedy justice for some of the most vulnerable Indian citizens. Any project of Family Court Reform ought to seriously consider developing centers such as the TMMC into proper centers of religious Alternative Dispute Resolution (ADR) – authorized, recognized, accredited, licensed and authorized by the state, subject of course to state regulation and oversight. In line with International best practice, agreements arrived at with the consent of both parties at such centers would then be duly considered and enforced by the courts.
6. Maintenance should be awarded after a forensic examination of life-style of the parties as against plainly accepting the Income-Tax Returns. The maintenance and alimony awards should consider the needs of the wife as well as reasonable wants, and should consider the wealth equalization or reasonable equitable distribution of wealth among parties. In the absence of wealth equalization by proper awards, children often are being subjected to inducement strategies leading to women losing custody of children.
7. The counsellors, judges and lawyers should shed patronizing behavior and let the women decide what is best for her. The language of the court, counselling and mediation should be controlled accordingly. It is common for women to hear ‘why don’t you tolerate’, ‘after-all he is the provider for the family’, etc. in courts and otherwise. The delay in approaching family court shall not be considered as an incriminating factor as the parties in Indian settings try all means possible before approaching the court.
8. The judges and counsellors should have set guidelines to record the power imbalance and past violence of the parties.
9. Steps shall be taken to recognize matrimonial property. Often, there is no record or recognition of gifts obtained at the time of marriage. Further, the jurisprudence needs to be evolved to recognize the real contributions of women in the family. The recent Supreme Court judgment elevating women in families from ‘housewives’ to ‘home makers’ is an important breakthrough.
10. Steps to introduce ‘no fault’ divorces or to recognize ‘irretrievable break down of marriage’ as a valid ground of divorce was called for. The contrary opinion that arose in the discussion was that such recognition would be detrimental to the women particularly in rural India, given the prevailing socio-cultural context. The suggestion was then made that at the minimum the level of cruelty that is necessary for awarding a divorce must be toned down. In certain unhappy marriages, it is often seen that the

divorce is not awarded because one of the parties is not found to be 'cruel enough' in the eyes of law/ judges.

11. "In the context of family court negotiations, women are regularly encouraged to drop criminal charges they may have filed against their husbands, to withdraw or reduce property, maintenance or custody demands, and even to resume living with men who may have subjected them to longstanding abuse in the past. A legal discourse of 'rights' is thus transformed into a discourse of 'welfare' whose defining terms are set, not by the woman herself, but by her counsellor, her advocate, the judge, and in the last analysis, by the realities imposed by the society within which she lives"¹¹⁹. This is a reality and this needs to be kept in mind by all parties involved in the family dispute resolution. Acknowledgment of imbalance of power between both the parties shall be kept in mind while proposing settlement terms, and caution shall be exercised to avoid the routine waiver of women's rights in favor of the adamancy of opposite party.
12. Steps to duly recognize the rights of transgenders in family law need to be done, in lines of the NALSA judgment. The confusions regarding the rights of transgender persons regarding marriage and succession needs to be cleared by proper legislative actions; the transgender, queer, LGBT unions should be recognized as valid unions and all laws for protection of women shall be duly applied to the case of transgenders as well. Currently, the laws in place do not provide sufficient remedies for the violence faced by the transgenders from the transgender community itself. The reluctance of lawyers to take such cases also was addressed.
13. The discussions about the mandatory pre-marital counselling and recognition of pre-nuptial agreements was called for, but contrary opinions emerged as these could be counter-productive. The current laws itself terrorize the inter-faith couple and more laws could mean more trouble. However, the setting up of pre-marital counselling centres and encouraging the people use such facility by awareness generations and campaigns may be considered. Further, due information to be given to Muslim women as regards the ways to elaborate their rights in *nikahnama*.

Information Dissemination and Continuing Legal Education

1. Law Clinics and Para-Legal Services, and other informal mechanisms should be employed to make larger awareness of rights, entitlements and processes, and to make family courts more accessible to people. Law Schools and Colleges should be encouraged to open f Clinics in Family Law and Family Courts to provide awareness about the rights and the availability of different forums for dispute resolution. Legal service centres may recruit law students or legal aid clinics attached with colleges and universities to initiate awareness and sensitization drives on legal rights and remedies in marital relations.
2. Continuing legal education and training including gender sensitization shall be made available to all judges, lawyers and family court staff.

¹¹⁹ *Id.*

6.3 Based on Field Observations

Table 36 Family Court Infrastructure - Kerala

	Ernakulam	Trivandrum	Malappuram	Wayanadu
Location	Within District Court Complex-building also houses MP/ MLA Court. Prior arrangement of family court in Kaloor was decent arrangement with much space, longer court halls, designated rooms for counselling, filing and record section. The scope of developing the space at Kaloor as family court complex should have been seriously considered.	Within District Court Complex as a separate building (shifted from rented space)	Separate building and compound within other offices/ institutional complexes; rented space – land identified for construction of family court complex.	Separate building within the district court complex. (shifted from rented building)
Accessibility by Public Transport	Accessible by public transport	Accessible by public transport	Accessible by public transport	Accessible by public transport. Hilly terrain, public transport not available in certain stretches.
Court Organisation	500 sq. feet room; Position of judge at a higher level from ground in a separate closet with witness box on right side	Position of judge at a higher level from ground in a separate closet with witness box on right side	700 sq feet elongated room; judge at a higher level in separate closet.	500 sq feet elongated room; judge at a higher level in separate closet. With witness box.
Court room	Crowded and suffocating due to heavy caseload. Room can seat 20-25 lawyers (limited due to Covid) but inadequate for both litigants and lawyers.	Reasonably spacious, lit, crowded; may turn suffocating on busy days.	Spacious, bright, lit, long hall outside court hall plus long verandha acting as waiting area for litigants and witnesses.	New building; lit, spacious, satisfactory environment. Verandah acts as waiting area.
Counselling Room/ Centre	1 principal counsellor plus part-time counsellors from NGOs; 250 sq feet spacious room, with attached toilet; verandah acts as waiting area; Atmosphere is generally satisfactory. No other facility.	1 Prl Counsellor + 2 other counsellors; crowded room; no waiting area; counselling room is same as record room.; no other facility	1 counsellor; spacious, lit, satisfactory environment; there is a waiting room; no other facility	1 counsellor; 250 sq feet room; open, spacious, newly painted, ventilated with pleasant feel; a vacant room adjacent to counselling room used by parties to speak in private. Open veranda where people wait.

Mediation Room	District mediation centre is an elaborate establishment 5 km away from regular court complex; 6 mediation rooms – not exclusive for family matters, bright and spacious room; big hall with chairs for waiting; pleasant atmosphere.	In the court complex under LSA	A small room within court complex	At District Mediation Centre within main court complex
Toilet	Yes, Not properly maintained; one toilet is restricted to staff.	No. She toilet recently launched.	No	No
Retiring Room	No	No	No	No
Lactation/ Breastfeeding Area	No	No	No	Spare room used as discussion room cum feeding room
Children's lounge/ playing area	No	No	No	No
Waiting Area	No	No	Yes	No
Drinking Water	No	Limited	Limited	Yes
Canteen	Yes	Yes (in the main court premises)	Yes (slightly far)	No
Cleanliness	Bad	Average	Good	Good
Accessibility to physically challenged	Not accessible; ramp constructed, but unusable for wheel chair user.	Not Accessible	Not Accessible	Not Accessible
Accessibility to visually challenged	Not accessible	Not Accessible	Not Accessible	Not Accessible
Longest distance travelled by litigants	From Aluva and Paravoor. Camp sittings are held at both these places. A proposal to set up additional family courts in Aluva and North Paravoor has been approved by the Home Ministry.	From Neyyattinkara. An additional family court at Neyyattinkara is approved.	From Nilambur (40 km/ 1-hour travel). Proposal for additional court at Nilambur pending.	From Thirunelli (50km) and Muthanga (37.9 km); Camp sittings at Mananthawadi and Sulthanbatheri once a month each.

Table 37 Family Court Infrastructure – Telangana

	Hyderabad	Warangal	Sangareddy	Karimnagar
Location	Part of the regular court structure	Earlier, FC was part of regular court structure; recently a separate structure was allotted within the same compound, but with a separate entry.	Normal court hall within the building and structure of Medak District Court Complex at Sangareddy there is no separate structure from the main building.	Semi-separate structure from main building, but within the District Court Compound. Gradually developed into a separate structure with counselling room and a separate garden.
Accessibility by Public Transport	Accessible by public transport	Accessible by public transport	Accessible by public transport	Accessible by public transport.
Court Organisation	Position of judge at a higher level from ground in a separate closet (no witness box); court has all modern technology, space for typist, court clerks. A well-shaped table for advocates and chairs for litigants at the end. Parties can wait inside or outside courthall in corridors.	Position of judge at a higher level from ground in a separate closet (no witness box); court has all modern technology, space for typist, court clerks. A well-shaped table for advocates; Chairs for litigants removed due to Covid-19. Sitting areas for parties/lawyers available outside the court at the entrance of the Court Hall; Parties wait outside the court in corridors. There is a garden at the entrance.	Position of judge at a higher level from ground in a separate closet (no witness box); court has all modern technology, space for typist, court clerks. A well-shaped table for advocates; Chairs for litigants removed due to Covid-19.	Position of judge at a higher level from ground in a separate closet (no witness box); Lights, fans, benches, U typed table for advocates. Lawyers may also wait in the area provided at the entrance of the court; parties wait in corridors.
Court room	Well lit and ventilated, not congested. Spacious	Well ventilated and lit, spacious; not congested; there is a garden at the entrance.	Well ventilated and lit; not spacious enough to fit a lot of litigants, get congested once the litigants are allowed in court hall. Hall has two doors for advocates and litigants, and outside either doors, there are chairs for sitting.	General atmosphere is satisfactory.
Counselling Room/ Centre	No court appointed counsellors in FCs in Telangana	No court appointed counsellors; There is an area in the court waiting room for children to play and two cabins where counselling can occur. Children's toys and	No counselling centre.	No court appointed counsellors. Counselling area available adjacent to the court hall. A separate room with table, chair and fans, with attached

		cycle are provided presenting a good atmosphere. However, counselling can be easily heard by other party sitting in the waiting hall. Parties can wait in the children's area or garden outside.		washroom. Sufficient area for waiting available within court premises.
Mediation Room	Mediation centre is situated within the court compound but has a separate building; Spacious halls and cabins for mediators and parties; Room arrangements made by SLSA; Mediators for FC are common	Mediation centre is within the court compound but has a separate building. Mediators not specific to FC. Timings same as the court; spacious room with all modern facilities. Waiting areas for parties available	Mediation centre is a room at the DLSA which has a separate structure adjacent to District Court Complex. Has its own compound and boundaries. Basic small room, not with many facilities; DLSA structure also in poor shape. Conversations with parties can be easily heard by those sitting outside the mediation room as room is tiny and waiting area is the corridor just outside the mediation room.	Mediators attached to DLSA- not specific to FC, Privacy of parties protected inside the room.
Toilet	Yes, Not separate for FCs. Available within the Court Complex in which the FC is situated	Yes, Within the court complex in which FC is located.	Yes, Not separate for FCs. Available within the Court Complex in which the FC is situated	Yes
Retiring Room	No	Waiting hall may be treated as retiring room	No	Yes
Lactation/ Breastfeeding Area	Yes	Yes	No	Yes
Children's lounge/ playing area	No	Yes. Children's area within the waiting area with toys and cycle etc. An outdoor play area with swings are also provided	A Children's playing area is available outdoor with swings, slides etc. in the compound of District Court Complex; it is away from FC, near the Juvenile Board.	Yes
Waiting Area	At corridor and entrance of the court	Yes	No. Parties wait outside in the corridor	Yes
Drinking Water	Yes	Yes	Yes	Yes
Canteen	Yes	Yes	Yes	Yes

Cleanliness	Comparatively clean	Very clean. It is a model court	Very clean	Clean; Housekeeping contracts allotted.
Accessibility to physically challenged	Accessible by wheel chair; wheel chair provided by the court	Accessible by wheel chair; wheel chair provided by the court	Accessible by wheel chair, even though the court is on the first floor a large lift which can be accessed by the physically challenged.	Not Accessible; parties attend with the help of family or assistants.
Accessibility to visually challenged	A guide is arranged at the request of the party	A guide is arranged at the request of the party	A guide is arranged at request of the party.	Not Accessible; parties attend with the help of family or assistants.
Longest distance travelled by litigants	Longest distance to court cannot be more than 15 kms.	Not more than 15 km.	Not more than 15 km.	Not more than 12 km
Areas not covered by Family Court	All of Hyderabad District is covered by 6 Family Courts- 4 in Hyderabad and 2 in Secunderabad	All areas except the Greater Warangal Municipal Corporation, Warangal not covered. Vast areas in newly formed Hanamkonda district and Warangal district not covered by any FC	All the areas apart from the Sangareddy Municipality, Sangareddy. A vast area of the Sangareddy district and that of erstwhile Medak district is not covered by the Family Court.	All the areas apart from the Karimnagar Municipal Corporation, Karimnagar. A vast area of Karimnagar District is not covered by the Family Court.

Table 38 Family Court Infrastructure – Andhra Pradesh

	Guntur	Prakasam	Visakhapatnam	Kurnool
Location	Within District Court Complex- Separate building within regular court structure	Within District Court Complex. No separate building (On the second floor of a building in the District Court Complex)	Separate building and compound within other offices/ institutional complexes. Located at the centre of the main court complex. Two Family Courts for Visakapatnam District, both located in District Court Complex	Within the district court complex. A Separate Building at the Corner of the Complex.
Accessibility by Public Transport	Accessible by public transport	Accessible by public transport	Accessible by public transport	Accessible by public transport. Hilly terrain, public transport not available in certain stretches.
Court organization	500 sq. feet room; Position of judge at a higher level from ground in a separate closet.	500 sq. ft. room; Position of judge at a higher level from ground in a separate closet with witness box on right side	500 sq ft. elongated room; judge at a higher level in separate closet with witness box on right side	500 sq. ft. elongated room; judge at a higher level in separate closet. With witness box.
Court room	Crowded and suffocating due to heavy caseload. Room can seat 20-25 lawyers (limited due to Covid) but inadequate for both litigants and lawyers.	Jam-packed atmosphere. Overcrowded and suffocating due to heavy caseload. Veranda outside acts as the waiting area for the parties	Crowded atmosphere. Verandha acts as waiting area for litigants and witnesses. Suffocating on extra heavy days.	Crowded Court Room. Suffocating environment on extra heavy days. Verandah acts as waiting area.
Counselling Room/ Centre	The court does not have Counsellors appointed by the State Govt. Does not have counselling room	No Counselling Facility	No Counselling Facility	No Counselling Facility
Mediation Room	District mediation centre is established in walkable distance from regular court complex; A huge hall which acts as a waiting area with no separate room for mediation – not exclusive for family matters. Pleasant atmosphere.	In the court complex under LSA. With separate rooms, it offers Privacy for the parties.	A small room within court complex	At District Mediation Centre located near the Family Court. A big Hall and a separate room for staff

Toilet	The Family Court building does not have toilets. The clients have to use the toilet in the main court complex	No separate Toilet Facility for Family Court	No	No
Retiring Room	No	No	No	No
Lactation/ Breastfeeding Area	No	No. Spare room used as discussion room turns over as breastfeeding room in exigent cases	No	No
Children's lounge/ playing area	No	No	No	No
Waiting Area	No	No	Yes	No
Drinking Water	No	Yes	Limited	Yes
Canteen	Yes	No	Yes (slightly far)	Yes (slightly far)
Cleanliness	Bad	Good	Good	Good
Accessibility to physically challenged	Not accessible; ramp constructed, but unusable for wheel chair user.	Not Accessible	Not Accessible	Not Accessible
Accessibility to visually challenged	Not accessible	Not Accessible	Not Accessible	Not Accessible

Table 39 Consolidated Findings and Recommendations: Telangana

FINDINGS AND RECOMMENDATIONS: TELANGANA	
JURISDICTION	<ul style="list-style-type: none"> ▪ Expand the territorial jurisdiction of the existing family courts to cover the entire population in a phased manner without causing undue difficulty to the litigants. Currently, the jurisdiction of family courts are limited to towns, cities and a few mandals. New courts shall be established where it is necessary with a mission of at least one family court per district. Where the population is limited to establish an entire court infrastructure and the distance to the nearest family court is high, holding of camp sittings may be considered as an ad-hoc measure. ▪ Provide exclusive jurisdiction of matrimonial matters to family courts. The current practice of giving additional charge of civil and criminal matters to family court judge needs to be dispensed with altogether. ▪ Having criminal jurisdiction to family courts effectively means that the families in conflict with children are made to sit against the accused in criminal cases and a regular prosecutor. Such an environment is not conducive to family courts.

INFRASTRUCTURE	<ul style="list-style-type: none"> ▪ Most family courts are accessible by public transport. ▪ Basic infrastructure is relatively better in certain courts. ▪ Presence of child play areas and parks for children in some family courts is a welcome development. ▪ The shifting of family courts to separate buildings with separate entry is a welcome change. ▪ In one out of four select courts studies, the mediators' room courts do not protect the privacy of parties as conversation can be easily heard by parties waiting outside. ▪ Three out of four select courts had wheel chair access and have guide arranged on request.
PERSONNEL	<p>JUDGES</p> <ul style="list-style-type: none"> ▪ <i>Appointment:</i> Current appointment process for family court judges is general transfer against vacancy. Usually, the senior most judge after the Principal District Judge/ Chief Judge is appointed as the Family Court Judge. Judicial Officers having prior experience in POCSCO and Juvenile Courts may be considered for appointment of Family Court Judges. Judges having a background in psychology or counselling may be considered for appointment as family court judge. ▪ Three out of four family court judges interviewed in Telangana are women. ▪ Frequent transfers of the family court judges detrimentally affect the family court justice delivery. The appointment as family courts may be so made such that a minimum of two years is available for the sitting judge. ▪ When a proposition was made as to create a separate cadre for family court judge, most judges answered in the negative, while most lawyers answered in the affirmative. ▪ <i>Training:</i> The training for the newly recruited judges provided by the National Judicial Academy was suggested as adequate. However, the need for gender sensitization training at the level of recruitment as well as periodically was suggested. ▪ The practice of giving additional charge of civil and criminal nature to family court judges shall be done away with. Family court judges should exclusively deal family matters. <p>COUNSELLORS</p> <ul style="list-style-type: none"> ▪ No counsellors have been appointed so far in family courts in Telangana even after three decades of Family Courts Act. Appoint counsellors for family courts as early as possible from a pool of qualified social workers, counselling psychologists or allied degrees. ▪ The AP High Court Rules 2005 provides for a set of criteria for appointment as counsellors- a degree in social welfare, sociology, clinical psychiatry, philosophy preferably with a degree in law, legal practitioners or retired judges with minimum 10 years' experience or any other bureaucratic service with minimum 15 years' experience etc. The appointment of counsellors shall only be from candidates with Masters in Social Work or Masters in Clinical or Counselling Psychology or any other course which provides specialized training in counselling services plus/ minus experience. The courses listed other than these should be done away with, and the provision to appoint legal practitioners or retired judges as counsellors shall also be discouraged. AP High Court Rules, in its application to Telangana, may be amended accordingly ▪ Organize periodic trainings for counsellors for skill up-gradation and for relieving stress. <p>MEDIATORS</p> <ul style="list-style-type: none"> ▪ Advocates with more than 10 years of service are accredited as mediators after completion of training under the aegis of Mediation and Conciliation Project Committee, Supreme Court of India. Mediators are currently seated at the Legal Services Authority building and handle all civil cases including family disputes. No concern regarding shortage of mediators was expressed. Periodic workshops for mediators interested in family dispute resolution may be organized at the behest of National or State Judicial Academy to better equip the mediators in dealing with family and children. <p>COURT OFFICERS</p> <ul style="list-style-type: none"> ▪ At the moment, the court managers are appointed for a Court Complex, with ambiguous job description and absence of service rules. Appointment of designated court officers for Family Courts may be considered to assist the Family Court.

PROCEDURE	<ul style="list-style-type: none"> ▪ In camera proceedings are not regular; but when conducted is conducted by advising everyone in the courtroom to step outside. Chamber hearings may be considered as an alternate option. Chamber hearings aid settlement of cases, while some opined that the process is time consuming. ▪ In cases involving children, efforts shall be made to create and maintain affinity with both the parents by providing generous visitation rights to the non-custodial parent. ▪ Execution of maintenance awards are a major challenge, particularly when the party concerned have no means to provide. A small fund may be allotted for family courts to provide relief to the parties in deserving cases. ▪ The procedure of the Family Courts may be simplified in a manner understandable even by the parties.
TIMELINESS	<ul style="list-style-type: none"> ▪ Where the matters are settled ex-parte or by mutual settlement, cases get disposed faster. In cases that goes to trial, the disposal of the matter takes a long time taking upto 2 years or more. ▪ Execution Petitions of maintenance takes very long time, and often the process comes to an impasse when the respondent claims to have no money to pay maintenance. ▪ Transfer petitions take a long time in the family court process. Steps may be taken to reduce this time span. ▪ Many a times, interim petitions are seen to be disposed of only after very long time – often spanning to 8-10 months or more.

Table 40 Field Study Recommendations – Andhra Pradesh

FIELD STUDY FINDINGS & RECOMMENDATIONS – ANDHRA PRADESH	
JURISDICTION	<ul style="list-style-type: none"> ▪ Most family courts in Andhra Pradesh are family courts only in the name. All/Most family courts have both civil and criminal jurisdiction. Family Courts should have exclusive jurisdiction to matrimonial matters – divorce, maintenance, custody and guardianship. S.498A and DV cases may be handled in other courts as well. ▪ Expand the territorial jurisdiction of the existing family courts to cover the entire population in a phased manner without causing undue difficulty to the litigants. Where the population is limited to establish an entire court infrastructure and the distance to the nearest family court is high, holding of camp sittings may be considered as an ad-hoc measure.
INFRASTRUCTURE	<ul style="list-style-type: none"> ▪ Almost all the Family Courts are located in the centre of the respective cities. The parties can travel to the Family Court by Public Transport ▪ Infrastructure of the Family Court is bare minimum. Basic amenities like drinking water facility, child play area, child friendly atmosphere, rest rooms, etc., are not available in many of the Family Courts. ▪ Mediation is being conducted at the mediation centre where all the staff works; the privacy of the parties is not taken care of, nor is the environment suitable for family dispute settlement. ▪ Pandemic has compelled the Courts to start using the digital infrastructure. Digital infrastructure and digital literacy are lacking for staff. Digital literacy sessions may be organised for court staff, lawyers and judges. A post for IT Administrator may be set up in all courts. ▪ Provision shall be made for online filing of cases.
PERSONNEL	<p>JUDGES</p> <ul style="list-style-type: none"> ▪ <i>Appointment:</i> Current appointment process for family court judges is general transfer against vacancy. ▪ <i>Training:</i> Regular trainings are provided (both induction and in-service) to judicial officers, however, there are no trainings specific to family court judges. There shall be regular trainings and sensitization on topics relevant to Family Courts, including current family law developments within national and international context. <p>COUNSELLORS</p>

	<ul style="list-style-type: none"> ▪ No court-appointed permanent counsellors in family courts in Andhra Pradesh – needs immediate attention. Appoint counsellors for family courts as early as possible from a pool of qualified social workers, counselling psychologists or allied degrees. ▪ The AP High Court Rules 2005 provides for a set of criteria for appointment as counsellors- a degree in social welfare, sociology, clinical psychiatry, philosophy preferably with a degree in law, legal practitioners or retired judges with minimum 10 years’ experience or any other bureaucratic service with minimum 15 years’ experience etc. The appointment of counsellors shall only be from candidates with Masters in Social Work or Masters in Clinical or Counselling Psychology or any other course which provides specialized training in counselling services plus/ minus experience. The courses listed other than these should be done away with, and the provision to appoint legal practitioners or retired judges as counsellors shall also be discouraged. AP High Court Rules, in its application to Telangana, may be amended accordingly ▪ Organize periodic trainings for counsellors for skill up-gradation and for relieving stress. <p>MEDIATORS</p> <ul style="list-style-type: none"> ▪ Mediators are not trained to deal with family matters. No dedicated mediation room and success rate of mediations are remarkably low. ▪ Most mediators struggle in dealing with child custody cases. Special workshops or trainings may be designed with the help of expert child psychologists and other experts in the field to deal with matters involving children in family conflict. <p>COURT OFFICERS</p> <ul style="list-style-type: none"> ▪ Court Managers, as per policy, are duty-bound to create performance standards applicable to the court (including on timeliness, efficiency; quality of court performance; infrastructure; and human resources; access to justice; as well as for systems for court management and case management; evaluate the compliance of court with such standards; create a 5 year Court Development Plan and monitor implementation of the same; <i>Information & Statistics</i>: put together all kinds of statistics on the functioning of the courts and routinely report it to the higher authorities; and <i>Court Management</i>: Ensure that the processes and procedures of the court (including for filing, scheduling, conduct of adjudication, access to information and documents and grievance redressal) are fully compliant with the policies and standards established by the High Court for court management and that they safeguard quality, ensure efficiency and timeliness, and minimize costs to litigants and to the State; and enhance access to justice. ▪ Court Managers, currently have no relation to the Family Courts. A Court Manager shall be appointed for a Family Court and the Court Functions can be divested in such a way that Roll Calls, Appearance, and Fixing of Dates can be done before the Court Officer/ Manager and the Judge/ Court can focus on the hearing, evidence and judgment.
PROCEDURE	<ul style="list-style-type: none"> ▪ In camera proceedings are not regular; but when conducted is conducted by advising everyone in the courtroom to step outside. Chamber hearings may be considered as an alternate option. Chamber hearings aid settlement of cases, while some opined that the process is time consuming. ▪ In cases involving children, efforts shall be made to create and maintain affinity with both the parents by providing generous visitation rights to the non-custodial parent. ▪ Execution of maintenance awards are a major challenge, particularly when the party concerned have no means to provide. A small fund may be allotted for family courts to provide relief in the deserving cases. ▪ The procedure of the Family Courts may be simplified in a manner understandable even by the parties. A Help Desk may be maintained at the reception of the court to enable parties to file the cases without procedural hurdles. ▪ The litigant has to file a separate petition for permission of appointment of a counsel for the case, which should be given away with. There is clear agreement on the point that the procedure in family courts are not easy for laymen. ▪ The mandatory requirement of wedding photos or invitation card may be given away. In love marriages or marriages under Special Marriage Act, wedding photos may not be available. There could also be instances where wedding pictures are simply not available/ got destroyed. At present, the cases are not numbered until the wedding picture/ invitation is submitted, in the absence of which the petition is considered as defective.

	<ul style="list-style-type: none"> ▪ When case is posted for mediation, parties try to evade participation in mediation, and case gets posted back in court. Steps shall be taken to promote mediation through awareness drives and helpdesks. ▪ A provision shall be made in every new case filed to disclose the connected cases between the same parties before the same or different court. ▪ Written statement may be insisted only after reconciliation attempts are failed.
TIMELINESS	<ul style="list-style-type: none"> • Most of the cases, except for divorce through mutual consent, are being disposed in a span of 1-2 years. Mutual consent cases are disposed in 6 months period. ▪ Transfer Petitions are taking long time. Both parties file the cases at their own place, and transfer petitions are taking long time. Steps may be taken to reduce this time gap. ▪ Maintenance petitions are disposed of at a reasonable time. But execution of maintenance petitions takes too long. ▪ Mediation procedure is taking a long time, and is largely ineffective according to different stakeholders.
LAW REFORMS	<ul style="list-style-type: none"> ▪ S.13 Family Courts Act not permitting lawyers for appearance in Family Courts is obsolete and may be repealed. ▪ Extension of functioning of family courts to second Saturdays and Sundays is a welcome change, as it allows parties to attend mediation and counselling without losing workdays.

Table 41 Field Study Recommendations - Kerala

FIELD STUDY RECOMMENDATIONS –KERALA	
JURISDICTION	<ul style="list-style-type: none"> ▪ All of Kerala is covered within the jurisdiction of Family Courts. Where distance of litigants towards Family Courts are longer, camp sittings are organized. ▪ The Family Cases in Lakshadweep are also brought within Kerala Courts. It is an immediate need to establish Family Courts in Lakshadweep.
INFRASTRUCTURE	<ul style="list-style-type: none"> ▪ Almost all the Family Courts are located in the centre of the respective cities. The parties can travel to the Family Court by Public Transport ▪ Infrastructure of the Family Court is bare minimum. Basic amenities like drinking water facility, child play area, child friendly atmosphere, rest rooms, etc., are not available in many Family Courts. ▪ There is no child- care lounge or demarcated areas for visitation. At the moment, visitation is done in court premises, under the tree, or steps of court etc. ▪ Digital infrastructure needs improvement – alternative arrangements to cater to the digital gap of lawyers and litigants need to be devised. ▪ Many family courts are increasingly being pushed back to regular court complex from separate court complexes. This needs to be considered. ▪ Even the newly built courts are not accessible to physically or visually challenged. The Court Infrastructures shall be subjected to a Disability Audit and necessary alterations be made. Steps shall be taken to ensure that all newly constructed courts are accessible to differently abled.

PERSONNEL	<p>JUDGES</p> <ul style="list-style-type: none"> ▪ <i>Appointment:</i> Current appointment process for family court judges is general transfer against vacancy. ▪ The proposal for a separate cadre for Family Court Judges were not taken positively. ▪ <i>Training:</i> Regular trainings are provided (both induction and in-service) to judicial officers, however, there are no trainings specific to family court judges. There shall be regular trainings and sensitization on topics relevant to Family Courts, including current family law developments within national and international context. ▪ The lack of gender sensitivity among judges is a major concern. Sensitization programmes should be initiated at the time of induction itself. ▪ The appointment of judges in the twilight of their service in family courts need to be discouraged. <p>COUNSELLORS</p> <ul style="list-style-type: none"> ▪ Permanent Family Court Counsellors are appointed. ▪ <i>Qualifications:</i> Master's degree in social work, or a post-graduate degree in psychology or a minimum period of 2 years' experience in family counselling. ▪ Assistance of psychiatrist or psychologist is sought in appropriate cases in consultation with the Presiding Officer. ▪ Induction training and regular trainings done. ▪ Organize periodic trainings for counsellors for skill up-gradation and for relieving stress. ▪ Absence of child –friendly or women friendly atmosphere in courts is an observation of most counsellors. ▪ Special training for dealing issues with child custody and other matters relating to children may be provided. ▪ Counselling infrastructure inadequate to cater to children. ▪ Ranchi Declaration on Family Court Settings is a valuable reference. ▪ More than 1 or 2 counsellors should be appointed in family courts. ▪ If we want a therapeutic, psychiatric or de-addiction referral, such facility should be available in court premises itself. <p>MEDIATORS</p> <ul style="list-style-type: none"> ▪ No dedicated mediators for family court. ▪ Mediators are not trained to deal with family matters. ▪ Special Trainings and Sensitization drives may be done for mediators who intends to specialize in family matters. <p>COURT OFFICERS</p> <ul style="list-style-type: none"> ▪ A dedicated court manager is appointed for each Family Court. As per the new Case Management Module, the Court Functions are divested in such a way that Roll Calls, Appearance, and Fixing of Dates can be done before the Court Officer/ Manager and the Judge/ Court can focus on the hearing, evidence and judgment.
PROCEDURE	<ul style="list-style-type: none"> ▪ New Case Management System is instituted divesting the earlier system of roll calls, and by creating a system of dual Lists. List I is a list of cases that comes before the Family Court Judge and List II consist of cases for appearance or written statement or routine postings which is posted before the Court Officer. ▪ It is observed that the courts very often attempt reconciliation through mediation and counselling and written statement is called upon only when all reconciliation efforts fail. It is stated that the possibility of settlement gets reduced when allegations are written down in paper.

TIMELINESS

- Time is taken at all stages of proceedings.
- The date of first posting itself span between 7 days to 9 months.
- Total time taken for disposal span across 2 months (joint petitions) to 4 years.
- Transfer petitions take long time.
- Execution of maintenance petitions is a major challenge. Women are left in lurch even in cases they get a favourable order.

6.4 Policy Recommendations

I. Amendment of the Preamble of Family Courts Act

The primary objective of the women's movement which eventually resulted in the enactment of Family Courts Act 1984 was to secure gender justice and equity in access to justice, these elements failed to appear in the *Statement of Objects and Reasons* or *Preamble* of the Act.

The Preamble of the Family Courts Act, 1984 reads: "*An Act to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith.*"

"S.9. Duty of Family Court to make efforts for settlement.—(1) In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit. (2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a settlement. (3) The power conferred by sub-section (2) shall be in addition to, and not in derogation of, any other power of the Family Court to adjourn the proceedings."

"S.4. Appointment of Judges. - (4) In selecting persons for appointment as Judges, — (a) **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** and qualified by reason of their experience and expertise to promote the settlement of disputes by conciliation and counselling are selected;"

The cumulative effect of these three clauses is that the stakeholders involved in the matrimonial dispute resolution tend to perceive their role as promotion of settlement/preservation of marriage. The objects and reasons as well as the Preamble aims to promote conciliation and speedy settlement of family disputes. The Act confers a duty upon the Court to persuade the parties to arrive at a settlement, and emphasis is laid solely on 'preservation of the institution of marriage' and 'welfare of the children', without recognition of the power imbalance within the families per se. It is undisputed that marriage and families are the areas where women are most oppressed and denied the basic rights of self protection. Dowry deaths, domestic violence are part of the scheme of marital families, particularly relevant in a

culture where most men and few women believe beating wives by husband are not per se bad. Undue emphasis on preservation of marriage could effect prejudicially to women¹²⁰. Similarly, the emphasis on welfare of children shall not marginalise the interest of spouses; the informal nature of judgements delivered in the interest of welfare of children may even hide the legitimate interests of the spouses particularly women effectively silencing the parties¹²¹. The testimonies of the stakeholders involved in the process and the past researches uphold this view. The personal predelictions on the moral aspects of divorce also could be a reason to force settlement in favor of preservation of marriage.

It is therefore proposed that the following amendments be introduced in the Family Courts Act 1984.

- i. In the Preamble of the Act, 1984, after view, the clause 'to secure gender justice,' may be added.
- ii. In S.4. Appointment of Judges - after persons, the clause 'committed to the need to protect and preserve the institution of marriage and to promote the welfare of children and' shall be deleted.
- iii. In S.9.Duty of Family Courts to make efforts for settlement, after clause (1), the following proviso shall be added.

“Provided that settlement does not necessarily mean preservation of marital union”.

2. Family Court Research Database

National Judicial Data Grid compiles large scale data on court cases and presents the same in different forms. NJDG is a great reservoir of information with varieties of data compiled and made available at the district and state level on various counts: age wise pendency (pending for how many years), stage wise pendency, reasons for delay, data in terms of institution as well as disposal etc. The NJDG, while provides state and district level data pertaining to civil and criminal cases, family court specific data is not available. Such crucial data on family courts can enable policy making by conducting routine as well as long term researches which is not possible at the moment as NJDG as is currently designed does not specifically treat family cases; family cases are only marked as part of the civil and criminal cases.

The information from e-courts and NJDG are elaborate, but yet limited by the search functions. The E-courts, designed from a practitioner's perspective, is a reservoir of data, if worked through with the help of a practitioner, can be proved useful. The data is collated in terms of district as well as court establishment. Hence, the primary task is to identify the court establishment in which family court is located; where family court is located in separate court establishment, information is readily available. The information so available includes the specific data relating to cases – important dates include date of filing, date in which service to respondent is completed, date in which written statement is filed, posting dates for report of mediation, steps, evidence of both parties, arguments, final hearing and judgment. However,

¹²⁰ Anne Bottemly, *What Is Happening To Family Law? A Feminist Critique Of Con- Ciliation*, In *WOMEN-IN-LAW: EXPLORATIONS IN LAW, FAMILY, AND SEXUALITY* (Carol Smart & Julia Brophy eds., 1985).

¹²¹ *Id.*

the updation of records is not consistent across states/ courts. Further, the data uploaded is incomplete. Final orders/ judgment is not uploaded in most cases.

While the orders/ judgments of family courts are not uploaded for reasons of privacy, steps may be taken to upload family cases with available search functions, without disclosing the personal information of the parties.

3. Family Court Organization/ Design

A proposal to redesign family courts as Matrimonial Dispute Redressal Forum was raised multiple times in the focus group discussion, which was taken further to quantitative research. Matrimonial Dispute Redressal Forum, like consumer forum, may consist of judicial and non-judicial members, with judge as President. Non-judicial members may consist of counsellors, therapists, social workers, lawyers with long standing experience in family matters or law teachers or researchers with experience in matters relating to family law/ family courts. Considering the unique characteristics of the family court, tribunalisation should be considered. This suggestion was proposed to different lawyers and judges interviewed as part of the field study, however, there were not enough takers for the suggestion. One reason could possibly be resistance to change. One of the reasons suggested was that the current system is working, and not worthy to make complications; another reason detailed was that the governments do not invest to create awareness about matrimonial rights akin to consumer rights.

It should be noted that the Family Court was conceived as a system wherein parties can approach family courts without the help of the lawyer. However, everyone agrees that in the present system, navigating the court without the help of a lawyer is not possible, but rather could be counter-productive. S.13 of the Family Courts Act prohibiting lawyers from appearing in Family Courts have turned obsolete and most cases are presented by the lawyers. The system is complex and ridden with procedure that it is impossible for a layman to navigate its proceedings.

The need to create an informal atmosphere in family courts is something that needs serious consideration. In the present situation, family courts are no different from any civil or criminal court and has a very intimidating and unfriendly atmosphere. As far as possible attempt shall be made to create an informal atmosphere in family courts. The requirement of robes for lawyers as well as judges should be given away with altogether in family courts, and the use of non-white/sober color casuals may also be mooted. Children living in environments of matrimonial conflicts are made to languish in court premises ridden with conflicts, in presence of police, lawyers etc. It is a matter of deep concern that a juvenile or even a consumer in present system has the privilege of being in an informal court atmosphere which children in matrimonial conflicts are denied.

Family Court design today follows a pattern that open court is the rule, and in camera proceedings is an exception. It needs to be thought of, whether Chamber hearing can be made a rule in matters relating to marriage. There were no two opinions on the efficacy of Chamber hearings in settlement of cases, though some suggested it to be time consuming, lawyers were

unsure of conceiving chamber hearing as a rule over exception. There is an opportunity cost involved for lawyers as it would divest them an opportunity for presentation in open courts, which can also attract clients, the criss-cross of arguments on marital life is clearly of no good to the parties involved. Like the matters before Income Tax Officer, family matters may be presented before the family court judge, in the presence of parties and their lawyers. Family disputes shall be drifted away from adversarial mode of litigation with heated arguments and shaming in open court. The emotional quotient in getting into the witness box is one major reason for prolonged personal disputes. The detailing of allegations in open court or written statement frustrates the existing relationship and reduce the future possibilities of settlement. If this proposal is accepted in this form or any altered form, the current court rooms may be reconstituted as large waiting areas for parties and lawyers; where advocate commissioners are appointed for collection of evidence, they may do so in this room.

In other words, ***the family matters shall be heard in a set up where only the judge, parties and their lawyers are present and a Clerk/ Family Court Assistant as may be called if necessary. Any other person including children shall be brought in only when called.*** The proceedings shall not be heard by any other strangers, lawyers or litigants.

The current family courts which look like a typical courtroom stands in complete contrast to the modern approach in family law jurisprudence that focuses on amicable resolution of disputes. For the said purpose, the courtroom setup ought to be more ‘people-friendly’ and conducive for mediation. For example, instead of segregated sitting arrangement, all stakeholders can sit together on a round table and take the discussion forward. This will make the parties feel included and their voices heard in the justice delivery process. It is also important to ensure that children do not feel intimidated in the courtroom and court premises in the presence of judges, advocates, police personnel, etc. For the time being, this suggestion must be considered in the light of applicable COVID related protocols.

The waiting area may be designed wherein, rather than row of chairs, different kinds of seating arrangements with tables and chairs, café-like cubicles, where parties can use laptop, or read if they wish, to allow parties to choose an area which suits their circumstance and temporal needs¹²².

Slots for charging points for phone or laptops shall also be made available in the waiting room.

Gardens, indoor plants and wall hangings or quotes, paintings etc. shall be tried out in family courts to improve the overall experience of family court and to project a positive environment.

In a report published by Vidhi Centre for Legal Policy in February 2021, titled “Re-imagining Consumer Forums: Introducing a Spatial Design Approach to Court Infrastructure, an attempt is made to present a very elaborate and detailed presentation of how court infrastructure for consumer forums be designed. A similar project for family courts is wanting and may be commissioned. The importance of court infrastructure and court room design in the

¹²² The proposal of waiting area in this form is adapted from a proposal made by Vidhi Centre for Legal Policy in respect of Consumer Forum. Re-Imagining Consumer Forums, VIDHI CENTRE FOR LEGAL POLICY , <https://vidhilegalpolicy.in/research/re-imagining-consumer-forums/> (last visited Nov 4, 2021).

experience of justice is an area that has been seriously studied¹²³ elsewhere, but such researches are scarce and wanting in India. Routine adaptation of British Indian courts to all set ups may not be the best of the approaches. The importance of seating arrangement in a mediation or arbitration setting and its impact on possible results of mediation is also well documented. While it is necessary that the parties to a legal process, say, litigants do not feel unwelcome or marginalized in a court atmosphere, it is all the more important where the matter involved is a marital dispute which are deeply personal, but the recourse of law is sought in a peculiar situation. It is not fair if people with family disputes are treated at par with people in conflict with laws.

4. Location of Family Court

It has been the policy to establish family courts disconnected from the regular court complex. The idea was to provide a smooth and cordial environment for parties in a less intimidating manner, away from criminals, police and other institutional arrangements. However, what is currently observed is that with funds being disbursed for new court infrastructure, these family courts are increasingly proposed back to the regular court structure. Most of the family courts also functioned in rented buildings in the centre of the city before being taken to the district court complex, and the vigour to transfer all court structures to own buildings could also be a factor. However, this routine transfer of family court infrastructure back to the court complex is something to be reconsidered.

From the lawyer's point of view, it could be more convenient to house all the courts within the same complex to run between different courts, but from a litigant's point of view, it could be different. Each court should moot this idea with different stakeholders before taking the court back to the regular court structure. When the court is housed in a state or municipal building otherwise perfect in terms of location and general atmosphere for families, being in a rental arrangement should not by itself act as a limitation. Other lease arrangements may be mooted before deciding the shift of family courts way back to the regular court complex.

5. Infrastructure

- i. Court arrangement at the moment is similar to any criminal or civil court with an elevated dias for judges, witness boxes, and benches/ chairs for lawyers and litigants. A different court arrangement of a more informal nature may be considered.
- ii. Counselling Centres also most often faced severe space constraints. Each court need to ensure that their counselling centre and mediation centre are designed in such a way that the conversation between parties and the counsellor/ mediator are not compromised. Very often, the counselling area and waiting area are demarcated by a simple screen where the conversation inside becomes audible to persons in the waiting area, which could detrimentally affect the settlement. Also, certain space shall be

¹²³ Linda Mulcahy, *Architects of Justice: the Politics of Courtroom Design*, 16 *SOCIAL & LEGAL STUDIES* 383–403 (2007). Keith J. Bybee, *Judging in Place: Architecture, Design, and the Operation of Courts*, 37 *LAW & SOCIAL INQUIRY* 1014–1028 (2012).

available for parties to have a peaceful conversation or to perform any exercise so proposed by the counsellor.

- iii. Efforts shall be made to make the family courts more child friendly. A children's lounge or playing area needs to be considered. In addition, most courts do not have spaces where visitation rights of non-custodial parents can be exercised. It may not necessarily be conceived as a distinct or dedicated room. Each court should examine its infrastructural limitations and make adaptations accordingly. Presence of spacious cafeterias or like spaces, empty rooms, open spaces etc. should be studied. Availability of two or three vacant rooms without earmarked purpose with tables and chairs, and positive ambience set with indoor plants, and good ventilation could serve the purpose. In addition to or in alternative, gardens outside the family court complex may be designed with a playing area for children with swings, slides etc.
- iv. Making Family Courts more Child- Friendly: Schemes may be developed converging the funds earmarked for women by Ministry of Law and Justice and Department of Women and Child Welfare. The absence of child care centers or children's lounge, dedicated lactation/ breastfeeding areas and rest rooms for women is fact in most of the courtrooms.
- v. The Family Courts should be subjected to a Disability Audit and a detailed plan to make the infrastructure friendly for differently abled. It is found that the courts today, including the newly constructed are not accessible to differently abled. Guidelines shall be issued to all courts to mandatorily make all new construction differently abled friendly, and to improve the accessibility of the existing buildings.
- vi. Family Courts face severe infrastructural limitations. Absence of basic amenities like toilets, retiring rooms, lactation/ breastfeeding areas, drinking water facility or canteen either due to complete absence or improper maintenance needs to be addressed. The tendency to limit the existing facility to court staff where alternate arrangement is not available for litigants and lawyers (including outstation lawyers) is to be discouraged.

6. Case Flow Management

The Supreme Court of India in *Salem Advocate Bar Association v. Union of India (2002)*¹²⁴, appointed a Committee headed by Mr. Justice M. Jagannadha Rao to devise a model case management formula with the objective of achieving more disposal of cases. The Committee filed its report and thereafter the Supreme Court directed the High Courts, vide Judgment dated 2-8-2005 in the said case, to adopt the said report with or without modification, so as to provide a fair, speedy and inexpensive justice to the litigant public. Accordingly, the High Court of Kerala has considered the matter and framed Kerala Civil Court (Case Flow Management) Rules, 2015. The corresponding rules were created by High Court of Andhra Pradesh and Telangana titled Case Flow Management in Subordinate Courts Rules, 2012. Case

¹²⁴ WP (C) No. 496/2002; Judgement dated 25-10-2002.

flow management rules consists of a set of practices and rules that ensures that a judge or an officer of the court creates, adheres and implements the time frame for the lifecycle of a case.

The High Court of Kerala issued the Kerala Civil Courts (Case Flow Management) Rules 2015 dated 10 March 2015, in exercise of S.122 of the Code of Civil Procedure, for the better management of subordinate courts in Kerala. The Rules provides for the classification of civil cases into Track I, Track II and Track III. Most proceedings in a Family Court – matters relating to maintenance, guardianship or custody of children, visitation rights, and all summary suits comes under Track I. Matters relating to matrimonial disputes not falling under Track I falls in Track II. The Presiding Officers shall endeavor to dispose of the Track I cases within 6 months from the date of institution of proceedings, and Track II cases within 12 months from the date of institution of proceedings.

Service of Summons

The service of summons or notices issued in suit, appeal or original proceedings shall indicate maximum 30 days for filing written statement from the date of service of summons or notice. The petitioner shall file copies of plaint or appeal or interlocutory application, with the list of documents for service on the respondent, at the time of institution of proceedings itself. The petitioner shall furnish details of postal address including PIN for service of summons.

- i. It is to be noted that the service of summons in the Case Flow Management Rules does not incorporate other instantaneous modes of communication. In times where instantaneous modes of communication like telephone, mobile phones, email, and other instantaneous modes, it is imperative that the Case Flow Management Rules be amended to incorporate instantaneous modes of communication. All new forms of instantaneous communications shall be employed for service of summons. Service via email or whatsapp should also be considered valid in appropriate cases. However, caution should be exercised in this process as the digital literacy of people cannot be assured. The court or the officer-in-charge should make a judgment keeping in mind, the nature of education, job and the social location of the respondents as could be assessed from the submissions of the petitioner. If an ex-parte order is passed against the respondent relying on the information furnished by the petitioner, and subsequently finds out to be based on false information, the petitioner shall be liable to pay fine for misleading the court.
- ii. The Case Flow Management Rules clearly provides that where the respondent is Government, service to public prosecutor shall be considered valid service. Similarly, when there is already a case pending before the family court in which a lawyer has been engaged (vakalatnama filed), service of summons shall be deemed complete if the same is served to the lawyer at the court or their office. At the moment, if a case for return of gold and money is already pending in the family court, and subsequently a case is filed for maintenance in the same court, the service of the summons shall be made separately. This looks like a fair thing, but many a times, parties involved in a case tries to evade the summons in multiple ways. This results in unnecessary

prolongation of the case, particularly if the matter is urgent. Hence, it is only appropriate that a service to a lawyer be deemed equivalent to service to the party.

Court Officer/ Chief Ministerial Officer

The Rules, 2015 provide for institution of a new post of 'Court Officer' and details the roles and functions of Court Officer.

Cause Lists

The Rules 2015 provides for publication of two types of Cause Lists per day – Cause List I and Cause List II. The case at the stage of hearing of interlocutory applications, consideration of Alternate Dispute Resolution mechanisms, framing of issues, pre-trial steps, evidence including the examination in chief, cross examination and re-examination of witnesses, arguments and judgment or order shall be listed in Cause List-I. Execution matters shall also be listed in Cause List I. The cases listed in Cause List I shall be heard by the Presiding Officer/ Judge in the Open Court. The case at the stage of return of summons or notices, appearance of parties, filing of written statement, counter statement or objections shall be listed in Cause List II. The case at the stage of appearance of parties and steps be posted in Cause List-I for necessary orders, if requested for, by the Advocate or Party. The cases listed in Cause List II shall be attended by the Court Officer.

The High Court of Kerala took cognizance of the inordinate delay in disposal of matters in the Family Courts and Justice Mohammed Mushtaque and Justice C. S. Dias issued an elaborate set of Guidelines for Speedy Disposal of Cases in Family Courts in their Judgment dated March 2021¹²⁵. The primary step prescribed was to notify for the post of Chief Ministerial Officer and to activate the Kerala Civil Court (Case Flow Management) Rules 2015 in respect of family courts.

The Guidelines customized the application of Civil Court Rules in relation to Family Courts. Accordingly, a new list system was devised for Family Courts was instituted. Apart from Cause List I and Cause List II as mentioned above, two other lists – cases posted for counselling, cases posted for mediation is also listed. This is a ludicrous move to channelize the wastage of precious judicious time spent on administrative matters by dispensing with the system of roll calls altogether in favor of new system.

¹²⁵ *Shyju George v. Nisha & Others*, OP (FC) 352/ 2020 dated 23 March 2021.

Table 42: Family Court Process as Per Kerala Civil Court (Case Management) Guidelines

FAMILY COURT PROCESS AS PER KERALA CIVIL COURT (CASE MANAGEMENT) GUIDELINES AND LATEST GUIDELINES OF THE HIGH COURT OF KERALA			
Cause List II/ Court Officer	Counsellor	Mediator	Judicial Officer/ Cause List I
<ol style="list-style-type: none"> 1. Fix the date of appearance of the respondent 2. On appearance of respondent, parties be referred for counselling. 3. Matters if uncontested/ ex-parte, matter is immediately placed before Judge. 4. Joint petitions for divorce by mutual consent may also be placed before court. 	<p>Suits or proceedings posted for counselling.</p> <ul style="list-style-type: none"> • decrees of nullity • dissolution of marriage • judicial separation • restitution of conjugal rights, maintenance, • Guardianship, • custody and access to minors <p>In every other matter, cases may be referred to counselling if the presiding officer thinks it appropriate.</p>	<p>Cases fit for mediation in the first instance.</p> <ul style="list-style-type: none"> • Declaration as to validity of marriage • Injunction • Property • Legitimacy of a person <p>In all the above cases, parties will be directly referred to mediation.</p>	<p>Cases posted before the Judge.</p> <ul style="list-style-type: none"> • Execution Proceedings • Interlocutory Applications requiring urgent orders • Cases listed for trial and hearing in the special list. • <i>Special List</i>.- A minimum of 2 -4 cases per day shall be listed for trial; A minimum of 2-4 cases per day shall be listed for final arguments.
	<p>CMO fixes a time slot which is allotted for each party. If counselling is adjourned, the new time slot is allotted by the CMO.</p>		<p>Presiding Officer shall strive to arrive at a settlement by meeting parties in Chambers before or during the trial proceedings.</p>
	<p>A cap of a maximum of 10 cases is set for each counsellor.</p>		
	<p>In the course of counselling, if the counsellor is of the view that expert's assistance is required, parties shall be referred to an expert from the Panel formed by the Presiding Officer.</p>		<p><i>Evidence:</i> Evidence may be collected through Advocate Commissioners if both parties agree.</p> <p>Evidence through video-conferencing or affidavit may also be allowed.</p>
<p>Execution petitions which need not be sent to court:</p> <ul style="list-style-type: none"> • Criminal Execution Petitions where hearing is not necessary • Execution of maintenance decrees where bank details are already furnished. Parties need only file memos evidencing and acknowledging payment. 	<p>Matters if not settled in counselling, be placed for mediation.</p>	<p>Matters if not settled in mediation, CMO can call for a meeting of parties and a date shall be fixed for hearing.</p>	<p>Application for advance hearing may be made before the family court, which may be disposed of within 2 weeks.</p>

The matter will go to court in the event of default.			
Connected Cases: A memo of connected cases shall be produced before CMO at the time of filing. The cases will be clubbed			Wherever possible, consolidation and joint trial of all cases between the same parties is ordered.

7. Free Post-Divorce services to divorced couple and family members

All divorced couple, children of such distressed family and other family members should be provided regular free home counselling sessions to check on their mental health and mediation sessions on application. This could be done for a span of 1 year post the final decree of divorce.

8. Interim Applications

In petitions for visitation and interim maintenance, preliminary orders shall be passed before the conclusion of counselling and mediation processes. A basic minimum maintenance may be fixed which may be awarded subject to alterations with the final judgement. It is likely that that minimal allowance would be crucial for the women even for the continuance of this case.

As far as petitions for visitation is concerned, it is the violation of human rights of the parent and child to be denied of thier opportunity to meet each other. Hence, permission shall be granted for visitation at least in the court premises, without waiting for the completion of counselling and mediation, the processes in itself may take a minimum of three months in the given state of affairs. As far as practicable, interim orders shall be disposed within a period of one month.

9. Execution Petitions

The amount of time spent on maintenance execution petitions are very high, which is not acceptable. Many a times, parties get fed up by the process and give up. Some provision shall be created wherein the execution proceedings begin suo moto once the payment become due. The maintenance petitions will be automatically reviewed after a period of two years.

10. Emergency Maintenance Fund

The instances wherein the parties responsible to pay maintenance claim inability is high in number. Some emergency fund may be provided to the courts – could be the funds earmarked for that purpose, funds availed through fines/ voluntary contributions etc. – whereby the judges can provide an immediate relief to the parties before them in cases of extreme distress.

11. Making Courts Women friendly and access to Legal Aid

The court design structure has to consider the sentisitive nature of domestic cases including divorce petitions and arrangements should be made to provide privacy for women litigants,

such as separate room with drinking water and toilet facility, child-friendly room (for diaper changing, feeding etc).

A separate fund has to be provided for free Legal Aid to women to enable them to avail the services of the legal system. A mechanism can be evolved utilizing contributions from central Government/state governments/multi-lateral agencies/CSR funds from corporate sector and NGOs. This can provide a sustainable system for continuing litigation.

12. Technology

- i. Digitalization of courts have been in the offing for several years, however the onset of SARS Covid-19 has been an eye opener to make the courts digitally equipped. Most cases had to shift to virtual hearing and as of today, a mix of online and offline hearing is conducted in courts. When it comes to technology, absence of digital equipment like smart phones may act as a barrier. The Delhi High Court comment to lawyers not to log in from cars etc. was much criticized as elitist. If this situation is to continue, IT Centres may be attached to Bar Association from where the lawyers can log in for virtual hearing.
- ii. The use of technology may be applied in case-management. Use of technology may be employed to generate cause lists, set time slots for each case (if not specific, a range of time) and the message intimating the cause list and time slots may be sent to all phone numbers furnished, say, lawyers and litigants. So, if I have my case posted for tomorrow at 11:30 am, I will get an intimation of the same via text message and email. Similarly, cases posted for counselling and mediation shall also be considered.
- iii. An application for Family Courts may be developed for navigation of cause lists. The requirements of the application may include the following and any other features necessary.

13. Similar Research to be conducted in other states too

Similar research to be conducted in other states as well to help the society at large, not limited to Telangana, Andhra Pradesh and Kerala. In fact, separate research should be conducted in each state as every state has different category of issues faced by families due to topographical, geographical, and cultural variation. Another Research should also be conducted on a matter concerning presence of child/children in the courtrooms. Result of research may vary as per the age-group of children and cultural difference and transparency between parents and kids.

14. Court Specific Recommendations:

Kerala

Expansion of territorial jurisdiction: At the moment, family jurisdiction for Lakshadweep is vested in the family courts in Kerala. The District Courts of Lakshadweep has been divested from family jurisdiction, no family court has yet been established in Lakshadweep. All these years, people from Lakshadweep having family disputes have been travelling all the way by ship or

air to Ernakulam or Calicut where the camp sittings for family cases from Lakshadweep are held. This often results in cases being disposed for default. This creates great inconvenience to the people of Lakshadweep. It is an urgent need to establish family court in Kavarathi, Lakshadweep.

Telangana

Expansion of territorial jurisdiction: It is a matter of great concern that even after more than three decades of passing of Family Courts Act, the jurisdiction of family courts is limited to certain Municipalities, Corporations and few Mandals. The rest of the population is still dependent on District Courts for family dispute resolution. It is high time that the jurisdiction of family courts be expanded to cover the entire population of the state. However, the same shall be done phase wise. Any attempt to expand the jurisdiction of existing family courts to cover the rest of the population would only be counterproductive, as it would mean people have to travel longer distance to file matters in the family court. New family courts shall be established, at least one per each district to begin with. Later the number of courts shall be expanded for larger districts. The maximum distance from which people might have to travel to approach the family courts shall be a major criteria in slowly divesting the family jurisdiction from District Courts to family courts. Camp sittings may be organized for remote areas, or to cover distant areas from family courts.

Subject matter jurisdiction: The idea of family courts itself was to bring in all matters relating to family before the same forum. Family courts assimilate civil and criminal jurisdiction, despite this, the practice of resorting to multiple courts for different remedies is still prevalent. For example, petitions under Domestic Violence Act are routinely filed in Magistrate Courts in Telangana, despite the fact that family courts have jurisdiction on the same. Maintenance petitions are seen to be filed in both Magistrate and Family Courts. This is not to say that the Magistrates shall be divested from maintenance or DV petitions, on the other hand, the proposition is that the option of filing of these petitions in the Family Courts should be utilized and not to be discouraged.

Additionally, the practice of giving additional charge of civil and criminal jurisdiction to family court judges should be discontinued. Family Courts dealt with all kinds of cases including civil, criminal (sessions, criminal appeal, and criminal revision), motor vehicles, land acquisition and arbitration. On analysis of cases posted on a random day, Karimnagar Family Court dealt only 13% of matters within family jurisdiction (including maintenance & Guardian & Wards OP), Family Court Medak at Sangareddy dealt with only 14 % cases within the family court jurisdiction, while Family Court Warangal dealt with 93% of cases that fall within family court jurisdiction.

Andhra Pradesh

Subject Matter Jurisdiction: Most family courts in Andhra Pradesh are family courts only in the name. Most family courts have both civil and criminal jurisdiction. On the analysis of cause lists for a week, it was observed that Family Court, Vishakhapatnam dealt with 42 percent of cases that fall within actual family court jurisdiction (including maintenance and Guardian & Wards OP), Family Court, Kurnool handled 31 percent and Family Court, Prakasam handled 38 percent cases that fall within family court jurisdiction. On the select week, 99 percent of cases handled by Family Court, Guntur was within family court jurisdiction. Family Courts

should have exclusive jurisdiction to matrimonial matters – divorce, maintenance, custody and guardianship. S.498A and DV cases may be handled in other courts as well.

Territorial Jurisdiction: Expand the territorial jurisdiction of the existing family courts to cover the entire population in a phased manner without causing undue difficulty to the litigants. Where the population is limited to establish an entire court infrastructure and the distance to the nearest family court is longer, camp sittings may be considered as an ad-hoc measure.

Conclusion

Family Courts were envisaged as courts where parties can approach without the lawyer. There is a near consensus among the key stakeholders that it is impossible for a layman to navigate the court proceedings without the assistance of a lawyer.

The family court procedure is not very different from other civil courts and attempts to simplify the family court procedure is hardly noticeable. The Kerala High Court has recently come up with New Case Management Guidelines introducing some promising changes – by instituting a post of Chief Ministerial Officer (CMO), the Guidelines seek to bifurcate the functions between the Family Court Judge and CMO, wherein the regular roll calls, adjournments, routine ministerial postings will be held before the CMO thereby ceding a major portion of ministerial work performed by the judges giving space for more judicial work.

The cases for counselling and mediation will be called directly before the counsellor or mediator. Though the new guidelines are still at infancy and the time is not ripe to judge the efficacy of the same, the guidelines indeed seem more time saving and amounts to better management. With the use of technology, there is great potential to further improve the court as well as case management.

Of the three sample states selected, the Family Courts in Kerala are found to be in a later stage of development when compared to Andhra Pradesh & Telangana. Family Courts in Kerala have exclusive jurisdiction of matters relating to family, unlike AP & Telangana where most family courts are family courts only in the name- they handle civil and criminal jurisdiction apart from family jurisdiction.

This creates a situation highly non-conducive for family dispute resolution and goes against the very idea of institution of family courts itself. Moreover, the territorial jurisdiction of family courts in AP & Telangana are limited to municipalities and corporations. The rest of the population in these states still depend on the regular civil courts for family dispute resolution. It is a matter of great concern that even after three decades of institution of family courts, the entire population in the country is not covered within the jurisdiction of either family court.

The Family Court System is a unique system which give due emphasis on mediation and conciliation. There is a pressing opinion that the preservation of family approach adopted by the Family Courts Act, runs counter to the gender justice; Family Courts Act do not list out 'securing gender justice' as one of its objectives. The lack of gender sensitivity among the key stakeholders in family court is a major concern which needs to be addressed by introducing periodical gender sensitization drives in family courts. The judges, mediators and counselors should shed patronizing behavior; steps may also be taken to create training modules for judges, mediators and lawyers who wishes to specialize in family dispute resolution. While the Family Courts Act mentions the role of a counsellor, the meaning of counselling is not clearly laid down in the Act.

While the role of counsellor is set 'to secure reconciliation between parties', there needs to be a clarification that reconciliation does not necessarily mean preservation of marital union. Further, the psychological function of counselling apart from reconciliation is missing. Further, it is to be noted that in two out of three sample states chosen, i.e. AP and Telangana, there are no court appointed counsellors. Kerala has created permanent post for counsellors where people qualified with a degree in psychology or social work preferably having experience dealing with family related issues is appointed.

The suggestions emanated from Kerala included appointment of additional counselors, counselors specialized in dealing with children, and to have additional services like de-addiction, rehabilitation and psychological testing and therapy be made available within the court premises. Periodic sessions to manage counsellor burn outs, and to sharpen the skills of counsellors are proposed.

Infrastructural limitations are common to family courts across the states, which requires close consideration on a court-to-court basis. The absence of secure space for child visitation within court premises was pointed out as a major flaw.

The family courts must be made women friendly especially by creating a safe and private area for women and children having diaper changing and feeding section, drinking water and toilet facility. Women who require legal aid to pursue their cases must have access to it and a new mechanism must be created for this.

Family court design requires a big change and outlook to create a more congenial environment for family and children. The introduction of children's playing area or park in a Model Family Court in Telangana is a welcome development. Reimagining family court rooms distinct from regular court rooms, and to redesign the family courts in such a way that the court proceedings of a particular case will be heard by the parties and their counsels alone needs to be mooted among legal fraternity. A separate wing can be created in the same premises exclusively for family court, where ever space is available or separate premises may be considered. In the current state of events, the court room experience tends to further the divide between the parties making the joint child care responsibilities difficult. Appropriate law reforms including introduction of no-fault divorces may also be considered.

Annexure I

INTERVIEW SCHEDULES

Judges:

Objectives

- a. To understand the different challenges faced by family court system in India from the perspective of judicial officers
- b. To understand the processes of appointment/ assignment of family court judges and the various pre and post trainings offered to judicial officers to handle with the family court cases in the current system.
- c. To understand the steps taken by the family courts as a system, as well as by judicial officers at the individual level, to make these courts more accessible to people.
- d. To understand the innovations that has happened in the family court processes over a period of time.

To understand the perspective of the judicial officers about the reforms that should be brought in to the family laws as well as the family courts.

Preliminary Info:

No: <FC><Judge J><No. of Respondent> Eg: Medchal JI ; For retired judges add state instead of Family Court Eg: TEL JI/ KER JI / AP JI (TO BE FILLED BY ENUMBERATOR)

Sitting Judge/ Retired:

Years of service in Judiciary:

Years/ months of service in family court:

Name of the court, if sitting judge in family court:

1. What are the major challenges faced by a judicial officer of the Family Courts in India?
2. What is the current procedure in appointment/ designation of a family court judge?
 - i. General Transfer against vacancies
 - ii. Direct Appointment
 - iii. Deputation
 - iv. Others, pls specify
3. What are the factors taken into consideration before assignment of a family court judge?
4. Do you think that Family Court judges should have additional qualifications, apart from the regular qualifications for a judicial officer?
5. What are the different kind of trainings offered to a Family Court judge? Whether this is adequate? What kind of changes do you envisage?

6. In the course of your service as a family court judge, have you received any training in relation to the same? If yes, details thereof.
7. The family courts were designed as separate from regular courts. How different are family courts from regular courts in actual, in your experience?
8. At what stage of proceeding of the case do you think the delay is maximum? (Mark more than one if necessary)
 - Institution of case
 - Service of summons
 - Appearance of parties
 - Counselling
 - Filing of Written statement
 - Mediation
 - Steps
 - Hearing
 - Cross Examination
 - Judgment
 - Review of judgment/ appeal
 - Execution of judgment
9. Can we get rid of CPC altogether in family courts? How do you think can the court process be made more simple and informal?
10. Family Court Act provides wide discretionary powers to the judge. (Eg.S.10, Family Courts Act which allows family courts to devise its own procedure). Could you explain how these powers are used in the best interest of the parties?
11. Family Court Act provides for different types of referral systems –medical/ psychiatric/welfare experts. How often are these systems utilized?
12. Family Court Act provides for in-camera proceedings on the basis of request. How often is it used and what are the challenges in the same?
13. Do you think a different type of court room organization would better suit the family court (eg: juvenile board, consumer forum etc.)?

14. Do you think S.498A proceedings and domestic violence be brought under the exclusive jurisdiction of family courts? If yes, what are the challenges in the same?
15. Do you think the family court procedures as it is today involves duplicity of procedures at several levels? Should there be any changes in the current procedures in family court?
16. What are the specific challenges in relation to matters involving custody of children?
17. Do you think our family laws are out of tune with the changing values of the society? What kind of changes do you envisage in the substantive family laws in India?
18. Is there any visible change or any pattern that you see in terms of the nature of issues before the court over the years?
19. These days we see campaigns for men's rights raised in at least some platforms. Do you think that family courts are tilted more in favor of women?
20. Can you briefly explain the innovations in Family Court over the years?
 - a. Procedure.....
 - i. *Standard Form Applications*.....
 - ii. *Any other*.....
 - b. Court Administration.....
 - i. *Filing*
 - ii. *Numbering*.....
 - iii. *Scheduling*.....
 - iv. *Operational timings of court*.....
 - v. *Any other*.....
21. Have there been any demands to change the operational timings of the court?
22. Whether the family courts get due share of the budget allotted for subordinate judiciary? Any comments? (on demands addressed or repeated unmet demands)
23. Any final comments on the changes that may be prescribed
 - a. In the family laws in general
 - b. In family court procedures
 - c. In family court administration

24. Rank the current family courts in the following matrices: (0 for the least and 3 for max)

a.	Informality	(0)	(1)	(2)	(3)
b.	Accessibility	(0)	(1)	(2)	(3)
c.	Infrastructure	(0)	(1)	(2)	(3)
d.	Complexity of procedures	(0)	(1)	(2)	(3)
e.	Repetition of Processes	(0)	(1)	(2)	(3)
f.	Ability of litigants to navigate the court process without a lawyer	(0)	(1)	(2)	(3)
g.	Any other comments:				

Counsellors:

Objectives

- a. To understand the different roles performed by a counsellor in the family court system.
- b. To understand the processes of appointment/ assignment of family court counsellors and the various pre and post trainings offered to counsellors to handle with the family court cases in the current system.
- c. To understand the different challenges faced by the counsellors in the family court system.
- d. To understand the recommendations of counsellors or best practices to make the family court system more effective.

Preliminary Info:

No: <FC><Counsellor C><No of respondent>: Medchal CI

Name of the Court:

Years of Service in Family Court:

- 1. What exactly is the role of a family court counsellor?
 - a. Can you briefly explain the roles and responsibilities performed by a family court counsellor?
 - b. Are the roles of a family court counsellor clearly defined? Is there a code, set standards or regulations?

2. Qualifications, Appointment and Training

- a. *Basic Qualifications of Counsellor*.....
- b. *Process of Appointment*.....
- c. *Nature of Appointment*..... (permanent/ contract)
- d. *Period of Service*.....

- e. *Current month or year of service*.....
 - f. *Pre-Appointment trainings (Mark those provided by government/ HC and private)*
.....
 - g. *Post appointment trainings (Mark those provided by government/ HC and private)*
.....
 - h. *Remarks on adequacy of training*.....
 - i. *Remarks on appointment and terms of service*.....
3. What are the challenges that you face in performing the role of a family court counsellor in the family court system?
 4. Can you briefly explain what transpires in a counselling session?
 5. How much time do you get to spend with each family?
 - a. Average number of sessions per family
 - b. Average duration per session per family
 - c. Average number of cases handled per day
 - d. Average number of cases handled per week
 6. How often does a session lead to a settlement or peace between parties?
 7. What goes inside a Counsellor's report to the judge? Is there a set standard for the same?
 8. How would you like to differentiate the services of a family court counsellor and a mediator?
 9. What differences do you see in a Family Court Counsellor and a professional marriage counsellor who works outside the system?
 10. What are the major limitations of a family court counsellor?
 11. Can you briefly describe your relationship/interactions with the judge?
 12. Can you briefly describe your relationship/ interactions with the lawyers?
 13. What are the specific challenges you face in cases involving children?

14. Is there a list of referral services including psychiatrists, child psychologists, therapists, de-addiction specialists, other service providers which are maintained in the court for the benefit of litigants?

15. Do you find any patterns in the nature of issues brought before you/ clustering of age groups, gender, class, caste or religion or any notable point in the approach towards dispute settlement of people?

16. As a person who is closely engaged with the system, how do you think the current family court system be made better?

17. Rank the current family courts in the following matrices: (0 for the least and 3 for max)

a. Informality	(0)	(1)	(2)	(3)
b. Accessibility	(0)	(1)	(2)	(3)
c. Infrastructure	(0)	(1)	(2)	(3)
d. Complexity of procedures	(0)	(1)	(2)	(3)
e. Repetition of Processes	(0)	(1)	(2)	(3)
f. Ability of litigants to navigate the court process without a lawyer	(0)	(1)	(2)	(3)
g. Any other comments:				

Advocates

Objectives

- a. To understand the role of lawyers in the family court system.
- b. To understand the gaps in the family court practices.
- c. To understand the innovations in family court processes across time.
- d. To understand the recommendations of the lawyers/ best practices to improve the functioning of family courts.

Preliminary Info:

No: <FC><Advocate A><No of respondent> Eg: Medchal AI

About the Advocate:

Name of the Family Courts practiced:

No. of years of practice:

- I. Can you briefly describe your experience as a family court lawyer?

2. What are the different stages at which parties come before you? What does the client state as their requirements?
3. A family dispute effectively means multiple cases filed in the same or different forums. How do you decide what case to be filed when?
4. How long does a family case ordinarily last? Can you share some of your experience?
5. What do you think are the major difficulties faced by the clients who approach the family court?
6. Lawyers are often criticized for giving an exaggerated versions of the facts. Would you like to comment on that?
7. The Family Courts Act conceives a limited role of advocates in family matters. How do you see that restriction (S.13, Family Courts Act)? What exactly happens in practice?
8. While family issues necessitates filing of criminal petitions, is there any caution that is exercised in filing of criminal petitions?
9. Do you think the family court jurisdiction should be expanded to include criminal petitions like S.498A proceedings as well?
10. Have you ever felt that the discretionary powers of the family court affects the interest of either of the parties?
11. Do you think the family court procedures as it is today involves duplicity of procedures at several levels? How can we address the same?
12. How do you think the procedure in family courts be further simplified?
13. Can we give away with the CPC altogether in family courts?
14. These days we see campaigns for men's rights raised in at least some platforms. Do you think that family courts are tilted more in favor of women?

15. Can you share an often-repeated statement in family court (hearing, mediation/ counselling) which you think is inappropriate, and should not be used in a family court at all?

16. What are the differences in the Family Court cases over the years?

- Nature of issues.....
- Procedure.....
-
- Filing/ numbering of cases.....
- Scheduling of cases.....
- Use of standard form applications etc.....
- Operational days or timings of court.....
- Any other.....
- Any other.....

17. As a person who closely engage with the family court system, from within as well as outside, what do you think is wrong with the system? Would you like to suggest any changes

- a. In the family laws in general
- b. In family court procedures
- c. In family court administration

18. Rank the current family courts in the following matrices: (0 for the least and 3 for max)

- | | | | | |
|--|-----|-----|-----|-----|
| a. Informality | (0) | (1) | (2) | (3) |
| b. Accessibility | (0) | (1) | (2) | (3) |
| c. Infrastructure | (0) | (1) | (2) | (3) |
| d. Complexity of procedures | (0) | (1) | (2) | (3) |
| e. Repetition of Processes | (0) | (1) | (2) | (3) |
| f. Ability of litigants to navigate the court process without a lawyer | (0) | (1) | (2) | (3) |
| g. Any other comments: | | | | |

Litigants

Objectives

- a. To understand the challenges faced by litigants in the family court system.
- b. To understand the constraints in accessing the various institutional support available to the family court litigants.
- c. To understand the experience of the litigants with the judge, lawyers and counsellor.
- d. To understand the perspective of the litigants on how to improve the family court system

Preliminary Info: (to be filled by enumerator)

Name of the Family Court:

Give a number (<Family Court Name><Litigant L><No. of respondent> eg: Medchal LI

I. Socio-demographic Data

Age:

Gender:

Occupation:

Religion

Income:

Age at the time of marriage:

Number of years of marriage:

Number of children

Nature of Problems in Marriage

Whether domestic violence is involved?

2. Institutional Support

2.1 No of conciliation attempts made before coming to Family Court:

2.2 Forums in which pre-conciliation efforts were made:

2.3 Whether police support was called for? What was the experience with police, if received?

2.4 Whether the support of any NGO/ Social Workers received? What was the experience, if secured

2.5 Whether the support of Domestic Violence Protection Officers were availed (only if domestic violence is involved)?

2.6 Whether the support of Legal Service Authority were availed? What was the experience, if secured?

3. About the case

3.1 Period of time involved in family dispute in court:

3.2 Courts in which cases are pending/ completed:

3.3 Number of times appearance was made in courts in relation to this case/
connected cases:

3.4 Number of work days lost on account of on-going family case:

3.5 Other difficulties faced due to the on-going family case:

4. Family Court Experience

4.1 *Counsellor*

4.1.1 What do you think the role of a family court counsellor is?

4.1.2 What was your experience with the counsellor?

4.1.3 How many sessions with counsellors did you attend?

4.1.4 Do you think the counselling session was fruitful?

- i. Not helpful at all
- ii. Somewhat helpful
- iii. Very helpful

4.2 *Mediator*

4.2.1 What do you think the role of a family court mediator is?

4.2.2 What was your experience with the mediator?

- i. Bad
- ii. Satisfactory
- iii. Good
- iv. Very Good

4.2.3 How many sessions with mediator did you attend?

4.2.4 Do you think the mediation session was fruitful?

- i. Not helpful at all
- ii. Somewhat helpful
- iii. Very helpful

4.3 Judges

4.3.1 What do you think the role of the family court judge is?

4.3.2 How supportive was the family court judge?

- i. Very supportive
- ii. Supportive
- iii. No comments
- iv. Insensitive/ Not supportive at all

4.4 Advocate

4.4.1 At what stage of your marital discord did you consult a lawyer?

4.4.2 How would you like to describe the experience with your lawyer?

What is it about your lawyer that you appreciate?

What is it about your lawyer that you do not appreciate?

4.4.3 Have you had occasions to change the lawyers in the process?

- i. Yes
- ii. No
- iii. If yes, Reasons
.....
.....

4.4.4 Could you please explain the approach of your advocate in brief?

4.4.5 Do you know you can appear before the Family Court on your own, without the help of a lawyer?

- i. Yes
- ii. No

4.4.6 Do you think you could have navigated the court proceedings without the help of a lawyer?

- i. Yes
- ii. No

4.4.7 Would you recommend anyone to approach Family Court without a lawyer?

- i. Yes
- ii. No

4.4.8 What do you think about the fees collected by the Advocate?

- i. Affordable ii. High iii. Very High

4.5 Court – Room Experience

4.5.1 How would you like to describe your court room experience?

4.5.2 Do you understand the court proceedings?

- i. Yes, I do understand the court proceedings
ii. Somewhat understand
iii. I do not get the complete picture until my lawyer explains it to me.
iv. I do not understand the court proceedings at all.

4.5.3 Can you share an often-repeated statement in family court (hearing, mediation/ counselling) which you think is inappropriate, and should not be used in a family court at all?

4.5.4 How would you like to describe your experience with family court in general?

4.5.5 What were the major difficulties you faced in the Family Court?

4.5.6 How do you think your experience with family court could have been improved? / What would be that one thing which could have completely changed your family court experience?

5 Rank the current family courts in the following matrices: (0 for the least and 3 for max)

- | | | | | |
|--|-----|-----|-----|-----|
| 5.1 Informality | (0) | (1) | (2) | (3) |
| 5.2 Accessibility | (0) | (1) | (2) | (3) |
| 5.3 Infrastructure | (0) | (1) | (2) | (3) |
| 5.4 Complexity of procedures | (0) | (1) | (2) | (3) |
| 5.5 Repetition of Processes | (0) | (1) | (2) | (3) |
| 5.6 Ability of litigants to navigate
the court process without a lawyer | (0) | (1) | (2) | (3) |
| 5.7 Any other comments: | | | | |

MEDIATOR

No. (Eg: Medchal MI/ TEL MI)

1. What is the arrangement in relation to mediators in the present court?
2. Are mediators available all days a week or on definite timings? Pls. specify.
3. What are the different types of cases do you handle in mediation?
4. What is your approach when a family court case is before you?
5. How many mediation sittings are usually made in a family matter, approximately?
6. In what intervals are the next session posted in general?
7. What are the different stages in which cases are referred to mediation?
8. Do you think a mediation sitting be allowed before filing of the written statement, where all kinds of counter-allegations are made?
9. Do you think certain cases are not appropriate for mediation?
10. Whether there is any change in approach in cases involving domestic violence?
11. In your assessment, can you describe the expectations of different types of litigants from the court? (General pattern of expectations of men vs women)
12. Do you think there should be certain do's and don'ts when it comes to mediation in family matters? If yes, specify.
13. Do you think the mediators handling family law matters require special training?
14. Whether any steps are taken to ensure that the minimum dues of both parties are protected?
15. What are the cautions that need to be taken, in your opinion, in preparing a settlement agreement in a family matter?

16. What are the differences in the Family Court cases over the years?

- *Nature of issues*.....
- *Procedure*.....
- *Filing/ numbering of cases*.....
- *Scheduling of cases*.....
- *Use of standard form applications etc*.....
- *Operational days or timings of court*.....
- *Any other*.....

17. As a person who closely engage with the family court system, from within as well as outside, what do you think is wrong with the system? Would you like to suggest any changes?

- a. In the family laws in general
- b. In family court procedures
- c. In family court administration

18. Rank the current family courts in the following matrices: (0 for the least and 3 for max)

- | | | | | |
|--|-----|-----|-----|-----|
| a. Informality | (0) | (1) | (2) | (3) |
| b. Accessibility | (0) | (1) | (2) | (3) |
| c. Infrastructure | (0) | (1) | (2) | (3) |
| d. Complexity of procedures | (0) | (1) | (2) | (3) |
| e. Repetition of Processes | (0) | (1) | (2) | (3) |
| f. Ability of litigants to navigate the court process without a lawyer | (0) | (1) | (2) | (3) |
| g. Any other comments: | | | | |

COURT MANAGER

No: (Eg: Medchal CMI)

1. What are the functions of a court manager?
2. Have the roles and functions of court managers in family courts changed in the recent past/ over the years? Whether any roles previously exercised by judges transferred to court manager? If yes, details.
3. What are the major constraints in the family court system, in your assessment?

4. How do you think can the current family court system be improved?

5. A brief on the numbering system followed in courts:
 - a. What is the numbering system followed by the family courts?
 - b. Whether the numbering system accounts for the already pending cases between the same parties, if any?
 - c. Whether the connected cases between same parties are numbered/ marked differently?
 - i. If yes, how?
 - ii. If No, would such a system be beneficial? What are the practical difficulties in the same?

6. What are the challenges faced by a court manager?

7. Whether the court has adequate number of staff?

8. Number of counsellors available in service of the family court? What is the current arrangement regarding the mediators' and what are the challenges/ difficulties in relation to the same?

9. Number of mediators available in service of the family court? What is the current arrangement regarding the mediators' and what are the challenges/ difficulties in relation to the same?

10. What are the differences in the Family Court cases over the years?
 - *Nature of issues*.....
 - *Procedure*.....
 - *Filing/ numbering of cases*.....
 - *Scheduling of cases*.....
 - *Use of standard form applications etc.*.....
 - *Operational days or timings of court*.....
 - *Any other*.....
 - *Any other*.....

11. Rank the current family courts in the following matrices: (0 for the least and 3 for max)
 - a. Informality (0) (1) (2) (3)

- b. Accessibility (0) (1) (2) (3)
- c. Infrastructure (0) (1) (2) (3)
- d. Complexity of procedures (0) (1) (2) (3)
- e. Repetition of Processes (0) (1) (2) (3)
- f. Ability of litigants to navigate the court process without a lawyer (0) (1) (2) (3)
- g. Any other comments:

12. Details of the different staff working at the court: (Data if available in e-courts in RTI Disclosures, may be filled in accordingly)

Name of the Post	Sanctioned Strength	Available Strength Add split of the nature of post: Permanent/ Temporary/ Ad-hoc/ Daily wages	No. of unfilled vacancies
------------------	---------------------	---	---------------------------

FAMILY COURT INFRASTRUCTURE – ANDHRA PRADESH

Family Court, Guntur



Mediation Centre, Family Court, Guntur



Family Court: Ongole, Prakasam



Mediation Centre, Ongole, Prakasam



Family Court Mediation Centre, Vishakhapatnam



Family Court, Kurnool



District Mediation Centre, Kurnool



FAMILY COURT INFRASTRUCTURE – KERALA

Family Court Wayanad



Court Hall, Family Court Wayanad



Family Court, Malappuram, Kerala



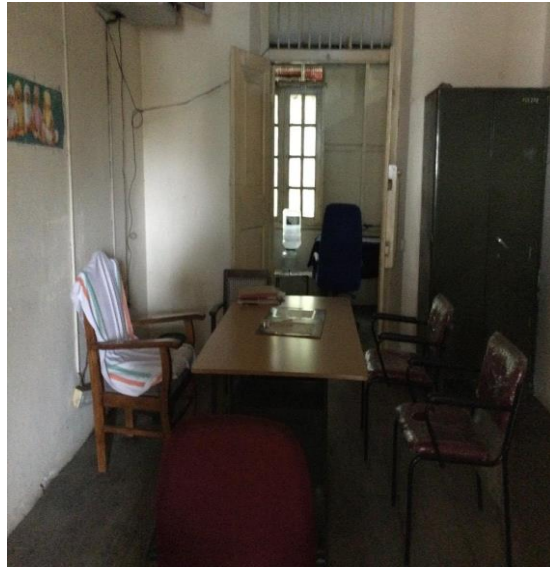
Counselling Centre, Malappuram, Kerala



Family Court, Thiruvananthapuram



Family Court, Ernakulam

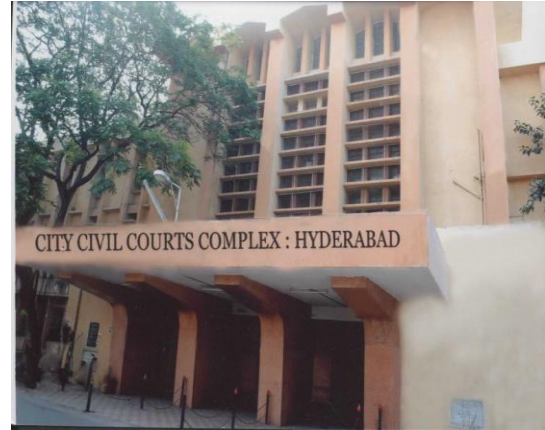


Counselling Room, Ernakulam, Kerala

District Court Complex, Medak



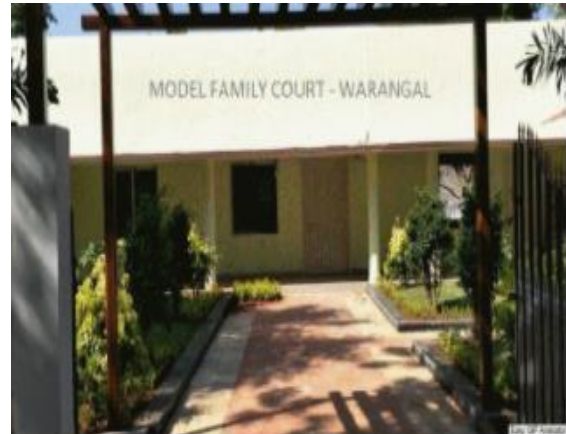
City Civil Court Complex, Hyderabad



District Court Complex, Karimnagar



Model Family Court, Warangal



Pictures from Warangal District Court Complex



Details of Online Focus Group Discussions and List of Participants

Date & Time	Topic
February 27, 2021 10.00 AM- 11.30 AM	Gender Justice and Family Courts: Expectations Vs Reality
February 27, 2021 11.30 AM- 01.00 PM	Family Court Counselling: Existing Gaps and Way Forward
March 6, 2021 10.00 AM- 11.30 AM	Family Court Procedure: Making Courts more Accessible to People
March 6, 2021 11.30 AM- 01.00 PM	Making Family Courts Effective: Much Needed Reforms

Discussants:

1. Justice Mohammed Mushtaque, Judge, High Court of Kerala.
2. P.S. Antony, Former Judge, Family Court, Retired District and Sessions Judge & Guest Lecturer, Bharatmata School of Legal Studies, Ernakulam.
3. Adv. Malavika Rajkotia, Rajkotia Associates Advocates, New Delhi
4. Adv. Afsar Jahan, Assistant Government Pleader for Industries and Mines & Member, Minority Marriage Counselling Centre, Government of Telangana.
5. Adv. Noor Zameer, Practicing Lawyer & Accredited Mediator in Family Court, Thodupuzha, Kerala.
6. Adv. Poongkhulali Balasubramanian, Practicing Lawyer, Chennai.
7. Adv. Iyalpari, Practicing Lawyer, Coimbatore.
8. Adv. Maryam Nasir Alavi, Practicing Lawyer, High Court of Telangana (formerly at Supreme Court of India).
9. Adv. Sandhya Raju, Director, Centre for Constitutional Rights, Research & Advocacy.
10. Fsalu Rahman, Principal Counsellor, Kasargorde, Kerala,
11. Dr. Aparna Joshi, Assistant Professor, Centre for Human Ecology, School of Social Ecology, Tata Institute of Social Sciences, Mumbai.
12. Dr. Srimati Basu, Professor, Gender and Women's Studies and Anthropology, University of Kentucky.
13. Dr. Neelam Tyagi, Assistant Professor, Campus Law Centre, Faculty of Law, University of Delhi.
14. Dr. Ruksheda Sayeda, Psychiatrist & Psychotherapist, Co-Chair Indian Psychiatric Society's speciality section of Women and Mental Health, National General Secretary of Indian Association of Biological Psychiatry. Executive Council Member of Indian Association of Private Psychiatry.
15. Dr. Faizanur Rahman, Assistant Professor, Faculty of Law, Jamia Milia Islamia, New Delhi.
16. Prof. (Dr.) Sarfaraz Ahmed Khan | Director, PhD (CityU, Hongkong), LL.M., M.Phil (NUJS), LL.M.(Essex, UK) British Chevening Scholar, UK & Michigan Grotius Fellow, USA, Symbiosis Law School, Hyderabad.
17. Dr Jaisy T. LL.M., PhD, Assistant Professor, CSI College for Legal Studies, Kottayam, Kerala.

18. Zakia Soman, Founder member, Bharatiya Muslim Mahila Andolan, Head of Peace and Human Security theme in Action Aid and Member, SAAPE, South Asian Alliance for Poverty Eradication.
19. Vyjayanti Vasanta Mogli, Social Activist, Founder Member, Telangana Hijra, Intersex and Transgender Samiti,
20. Afrah Saleem, Researcher, Hyderabad Central University.