



# GENDER JUSTICE THROUGH ALTERNATIVE LEGAL FRAMEWORK.A CRITICAL STUDY ON WORKING OF FAMILY COURTS IN KERALA.

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## Introduction

Gender justice is a critical aspect of ensuring equality and fairness for all individuals, regardless of their gender identity. In the state of Kerala, the family court system plays a crucial role in addressing issues related to gender justice. However, there have been concerns about the effectiveness of the current legal framework in achieving this goal. This paper aims to critically examine the functioning of family courts in Kerala and how they contribute to promoting gender justice.

One of the key limitations of the current legal framework is its narrow focus on legal solutions, rather than addressing the underlying societal and cultural factors that perpetuate gender inequality. This often leads to a lack of understanding and sensitivity towards the complex issues faced by individuals in the family court system. Furthermore, there are concerns about the inadequate representation of marginalized groups, such as women from lower socio-economic backgrounds, in the court system. Moreover, the study highlights the need for a more victim-centered approach in family court proceedings.

Currently, the burden of proof often falls on the victim, leading to re-traumatization and discouraging individuals from seeking justice. There is a need for a more empathetic and supportive environment within the family court system, where victims feel safe and empowered to share their experiences. This article contributes to the ongoing discourse on gender justice and provides insights for policymakers and stakeholders in the legal system to improve the functioning of family courts in Kerala. The pursuit of gender justice has been a longstanding issue in societies around the world, and the state of Kerala in India is no exception. In this article, we will delve into the workings of family courts in Kerala and examine how they contribute to the larger framework of gender justice. Through a critical analysis, we will explore alternative approaches and potential solutions for promoting gender equality and fairness within the family court system. This study aims to shed light on the current state of gender justice in Kerala and propose ways to improve it through a more inclusive and progressive framework.

## Concept of Gender Justice in justice delivery system

Gender justice is a concept that has gained significant attention in recent years, particularly in the fields of social justice, human rights, and feminism. It refers to the fair and equal treatment of all individuals regardless of their gender identity or expression. The concept of gender justice is based on the belief that all individuals should have the same rights, opportunities, and treatment regardless of their gender<sup>1</sup>. The concept of gender justice has its roots in the feminist movement, which emerged in the late 19th and early 20th century.

Gender justice is closely related to the concept of gender equality, which is the idea that all individuals should have the same rights, opportunities, and treatment regardless of their gender.<sup>2</sup>

While gender equality focuses on equal treatment, gender justice goes a step further by addressing the systemic and structural barriers that prevent individuals from achieving true equality. Gender justice recognizes that discrimination and inequality are deeply ingrained in society and must be addressed at both individual and societal levels.<sup>3</sup>

The impact of gender justice can be seen in various areas of society, including education, employment, and politics. Women and other marginalized genders continue to face discrimination, harassment, and violence in their daily lives. The gender pay gap persists, with women earning less than men for the same work. Women are underrepresented in leadership roles, both in the public and private sectors. Transgender individuals face discrimination and violence, and their rights are often not recognized or protected. One of the main challenges in achieving gender justice is the deeply ingrained patriarchal attitudes and beliefs that exist in society. These attitudes perpetuate harmful gender stereotypes and perpetuate discrimination and violence against women and other marginalized genders.<sup>4</sup>

When analysing gender justice, even though constitutional safe guards are there, purposeful changes are necessary in substantive law and in procedural laws to reap the benefits provided under the constitution. But these progressive constitutional declarations and legal offshoots have not succeeded fully in granting social and economic equality to the women in India corresponding with their male counterpart mainly due to the typical social structure that prevailed in the country.<sup>5</sup>

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<sup>1</sup> The Supreme Court in *Visakha v State of Rajasthan* AIR 1997 SC 3011, enlarged the gamut of fundamental rights of women by pronouncing that the right to life for working women includes an environment free from sexual harassment, In *Randhir Singh v Union of India & Ors* AIR 1982 SC 879 the Supreme court held that equality and equal remuneration for men and women are fundamental right and it can be enforceable as per Art.32

<sup>2</sup> Art.21 of the Constitution ensures protection of life and personal liberty. Supreme Court of India has read various socio economic measures into this right like 'right to minimum wages' *People's Union of Democratic Rights v Union of India* 1982 (3) SCC 235 'right to lively hood' *Olga Tellis v Bombay Municipal Corporation* 1985(3) SCC 545, and 'right to education' *Mohini Jain v State of Karnataka* 1992(3) SCC and *Unnikrishnan v State AP* 1993 (1) SCC 645). *Indra Sahney And Ors v Union Of India*,1992 SCC 212

<sup>3</sup> J.A.S. Anand, Justice for Women-Empowerment Through Law, the speech on the occasion of inauguration of a colloquium at India Habitat Centre Auditorium, New Delhi on 8th May 1999, published in *Justice for Women –Concerns and Expressions*,(3 rd edn, 2008)

<sup>4</sup> [United Nations: Gender equality and women's empowerment](#)

<sup>5</sup> In Indian legal system the division of cases as civil and criminal only and there was no provisions for treating the matrimonial cases exclusively. 'Women's movement needs to explore the possibility of a secular familylaw'. See, D. Gabriele, *Women's Movement and Religion in J. Mary*, (Ed) *Women's Studies in India*,514 (2008)

Drawing spirit from the constitutional mandate of equality and liberty, several discriminatory provisions of the personal laws were brought before the judiciary for declaring them as illegal and non-enforceable. But in many cases the courts have stopped short of declaring the discriminatory dictates of various personal laws as unconstitutional but on the contrary upheld the inequitable provisions as valid and based on reasonable classification. On the contrary, the progressive attempts of the legislature and judiciary could not achieve the desired results primarily due to the lack of an efficient support system with apposite operating parameters. This has indeed developed a very weird social and legal situation.<sup>6</sup>

In the Indian context, marriage and the resultant rights and duties of not only the parties to it but even of the offspring have been decided by the personal law of the parties concerned mainly by reference to their religious beliefs. Marriage which is now an institution by itself initially might have been a contract of natural law but with the passage of time it has been given sanction of religion to cement and perpetuate the concept.

For the Hindu law, marriage is a sacrament, a union, an indissoluble union of flesh with flesh, bone with bone to be continued even in the next world. Although, in the strict legal sense, Nikah under the Muslim law is a civil contract, it has always claimed some sort of divinity. Marriages solemnized under Christianity have been rigidly a matter of church and religion and the nuptial knot was considered as sacred and divine and beyond the human capabilities to untie.

Although elements of a legal contract can be noticed in the marriage of all religious communities it is something much more than an ordinary civil contract because it creates a social entity or relations between contracting parties in which not only the parties to it but the state is also interested.<sup>7</sup>

One of the important reasons for this failure has been identified as the absence of effective procedural and organizational backing to the justice delivery system. It has been recognized that the ordinary legal and judicial system with its despicable trait of insistent procedural intricacies would not be able to deliver justice promptly to the hapless victims of domestic injustices. Likewise, the apathetic approaches of a dialectical legal system were found to be grossly inadequate to handle the fragile issues of conjugal jurisprudence.

## **CONCEPTS OF FAMILY COURTS**

The family court system in India has its roots in the British judicial system. Prior to the establishment of family courts, all family-related matters were handled by the regular civil courts. However, with the increasing number of divorce cases and other family disputes, the need for specialized courts to handle these matters became apparent. In 1976, the Law Commission of India recommended the establishment of family courts in

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<sup>6</sup> While deciding cases of restitution of conjugal rights and divorce the general trend of the judiciary is that, it is the duty of the wife to go along with her husband wherever irrespective of her job, health, education or any inconvenience. See *Ram Prakash v Savithri devi*, AIR 1958 Punjab 87, *Trath Kaur v Kripal Singh*, AIR 1964 Punj28, *Gaya Prasad v. Bhagavath* AIR 1966 MP 212, *Surinder Kaur v Gardeep Singh* AIR 1973 P&H 134, *Kailashwathi v Ayodhya Prakash*, ILR1977P&H 642, *FB Jagdish Mangtani v. Geetha Jagadish Mangtani*, XLIV (1) 2003, Guj LR 309.

<sup>7</sup> Matrimony is an institution in the modern era must be recorded as serious dimension of the pursuit of the mission of life by equal adult person seeking perfection, completeness, harmony, happiness and contentment in life *Aboobacker C.K. v Rahiyanath and Another* 2008(3) KLT 482

its 59th report. The report highlighted the need for a separate court system to handle family matters, stating that the existing courts were not equipped to handle sensitive family issues.<sup>8</sup>

The 59th Law commission report (1974) stressed that in dealing with disputes concerning the family the court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of trial<sup>9</sup>. Several association for women, other organizations and individual have urged from time to time that family court be set up for the settlement of disputes, where emphasis should be laid down on conciliation and achieving socially desirable results and adherence of rigid rules of procedure and evidence should be eliminated<sup>10</sup>.

These principles have been reflected in the Statement of objects and reasons of The Family Court Act, 1984. The report also emphasized the importance of providing speedy and inexpensive justice in family matters. Following the recommendations of the Law Commission, the Family Courts Act was passed in 1984, which mandated the establishment of family courts in every state of India. This act defined family courts as special courts that have jurisdiction over matters relating to marriage, divorce, custody, adoption, and other family disputes. These courts were intended to provide a more efficient and specialized approach to resolving family disputes.<sup>11</sup>

The first family court in India was established in Chennai (formerly known as Madras) in 1984. Over the years, more family courts were established in different states of the country. Today, there are over 715 family courts functioning in India, with each state having its own set of family courts. The main objective of family courts in India is to provide a less formal and more accessible forum for resolving family disputes. These courts follow a more conciliatory approach, encouraging parties to reach a mutual agreement rather than resorting to lengthy and costly court proceedings. This approach is particularly beneficial for women, who often face financial challenges in accessing the regular court system.<sup>12</sup>

In addition to handling various family disputes, family courts in India also play a crucial role in promoting social justice and gender equality. They have been instrumental in implementing important laws such as the Hindu Marriage Act, the Hindu Adoption and Maintenance Act, and the Hindu Minority and Guardianship Act, which have greatly improved the legal rights of women and children in the country. One of the key features of family courts in India is the presence of counselors and social workers who assist in the resolution of disputes.

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<sup>8</sup> F. Agnes, Family Courts: From the Frying pan into the Fire? in John Mary E (Ed.), Women's Studies in India – A Reader, 272

<sup>9</sup> J. Godwin Preamsingh, Sheena Rajan Philip, "A Study on Increasing the Divorce Rate in Kerala", IOSR Journal Of Humanities And Social Science (IOSR-JHSS), Volume 19, Issue 6, Ver. I, Jun. 2014, pp. 58-60, www.iosrjournals.org, Accessed on 10-04-2024

<sup>10</sup> <https://doj.gov.in/family-court/>

<sup>11</sup> N. Janval, Have Family Courts lived up to Expectations? Mainstream, Vol XL VII No.12 (2009)

<sup>12</sup> Supra n 9

These professionals provide counseling services and help parties in understanding the implications of their actions and decisions on their families. This not only helps in resolving disputes but also promotes amicable relationships between family members. Another important aspect of family courts in India is the emphasis on confidentiality.<sup>13</sup>

The proceedings of these courts are not open to the public, ensuring the privacy of the parties involved. This is particularly beneficial for women who may be hesitant to approach the regular courts due to fear of social stigma and judgment. In recent years, family courts in India have also taken steps to modernize their operations and incorporate technology into their functioning. This has resulted in the introduction of e-filing systems, video conferencing for hearings, and other measures to make the process more efficient and accessible. However, despite the many benefits of family courts, there are also several challenges that they face.<sup>14</sup>

The peculiarity of the personal laws is the diverse and multifaceted substantive and procedural legal structure. Enforcement of rights under the personal laws thus has to encounter the dual threats, emanating from the procedures prescribed under the parliamentary enactments as well as the customary prescription. Establishment of the Family Courts aimed to address the traditional as well as the complex procedures in the personal laws.

### **FAMILY COURTS ACT 1984**

The Family Courts Act of 1984 was enacted in order to establish a specialized court system to handle matters related to family law. This act addresses a wide range of issues, such as divorce, child custody, adoption, and domestic violence. It aims to provide a streamlined and efficient process for resolving these complex and sensitive matters, while also prioritizing the well-being and best interests of all family members involved. The Act establishes Family Courts at the district level, with the power to hear and decide cases related to family law. These courts are headed by a District Judge, who is assisted by a panel of experts in family law.

The Act also provides for the establishment of a Family Court Appellate Tribunal at the state level, which hears appeals from the decisions of the Family Courts. One of the key provisions of the Family Courts Act is the requirement for mandatory counseling and mediation before any case can be heard by the court.<sup>15</sup> This is aimed at encouraging amicable settlements and reducing the burden on the court system. The Act also allows for the appointment of social workers and other professionals to assist in the counseling and mediation process. The Act also includes provisions for the protection of women and children in cases of domestic violence. It allows for the issuance of protection orders, which can prohibit the abuser from contacting or coming near the victim, and can also provide for the removal of the abuser from the shared household.<sup>16</sup>

The Act also provides for the establishment of Special Protection Homes for women and children who are victims of domestic violence. In addition to addressing issues related to marriage and divorce, the Family

<sup>13</sup> Flavia Agnes "familylaw ,Marriage.divorce and Matrimoniallitigations 300 oxford university press, newyork ,2011 p.34

<sup>14</sup><https://dashboard.doj.gov.in/family-court-cases/>

<sup>15</sup> Supra n 15 p.45

<sup>16</sup> Supra n 9 p.123

Courts Act also covers matters related to adoption and guardianship. It aims to simplify and expedite the adoption process, while also ensuring that the best interests of the child are always the top priority. The Act also provides for the appointment of guardians for minors and individuals with disabilities, in cases where their parents are unable to fulfill this role.

Furthermore, the Family Courts Act recognizes the importance of alternative dispute resolution mechanisms, such as arbitration and mediation, in resolving family disputes. It encourages parties to explore these options before resorting to the court system, in order to save time, money, and emotional stress. Overall, the Family Courts Act of 1984 has played a crucial role in modernizing and improving the Indian legal system when it comes to matters related to family law. It has helped to streamline the process and provide specialized attention to these sensitive issues, while also promoting amicable resolutions and protecting the rights and well-being of all family members involved. However, there is still room for improvement in terms of implementation and awareness of this important legislation.<sup>17</sup>

The preamble of Family Courts Act, 1984<sup>18</sup> clearly establishes the main objective behind passing of the Act. It indicates speedy settlement of matrimonial and family disputes through conciliation process. The Act is divided into six chapters. Chapter I is a preliminary one. Chapter II deals with the establishment of family courts, appointment of judges, association of social welfare agencies, counsellors, officers and other employees of family courts. Chapter III deals with jurisdiction of family courts. Chapter IV deals with procedural matters. Chapter V lays down about the rules of appeal and Chapter VI discusses about miscellaneous matters. The Act empowered the State Governments to establish Family Courts depending on the population of the area. As per Section 3 of the Act, the State is bound to establish a family court where the population of an area exceeds one million while in other areas; the establishment of family court is at the discretion of the State. The Act further provides that where a family court has been established for any region, every suit or proceeding pending before District Court or subordinate court or Judicial Magistrate of that region in relation to which such family court has jurisdiction, shall stand transferred to it on the date of its establishment.

Under the Act, the family courts have been given special jurisdiction to adjudicate on matters relating to family disputes including nullity of marriage, restitution of conjugal rights, annulment of marriage, judicial separation, dissolution of marriage, matrimonial status of any person, disputes relating to property of married couple, legitimacy of any person, maintenance proceedings, guardianship of person, custody of minor and the maintenance proceedings under the Code of Criminal Procedure, 1973.

For expeditious settlement of matrimonial dispute, the Act enables the family courts to lay down its own simplified and practicable procedure in addition to the provisions of Code of Civil Procedure, 1908 and Code of Criminal Procedure, 1973. The Act also empowers the family court to receive and consider any evidence irrespective of the strict rules of relevancy or admissibility under Indian Evidence Act, 1872.

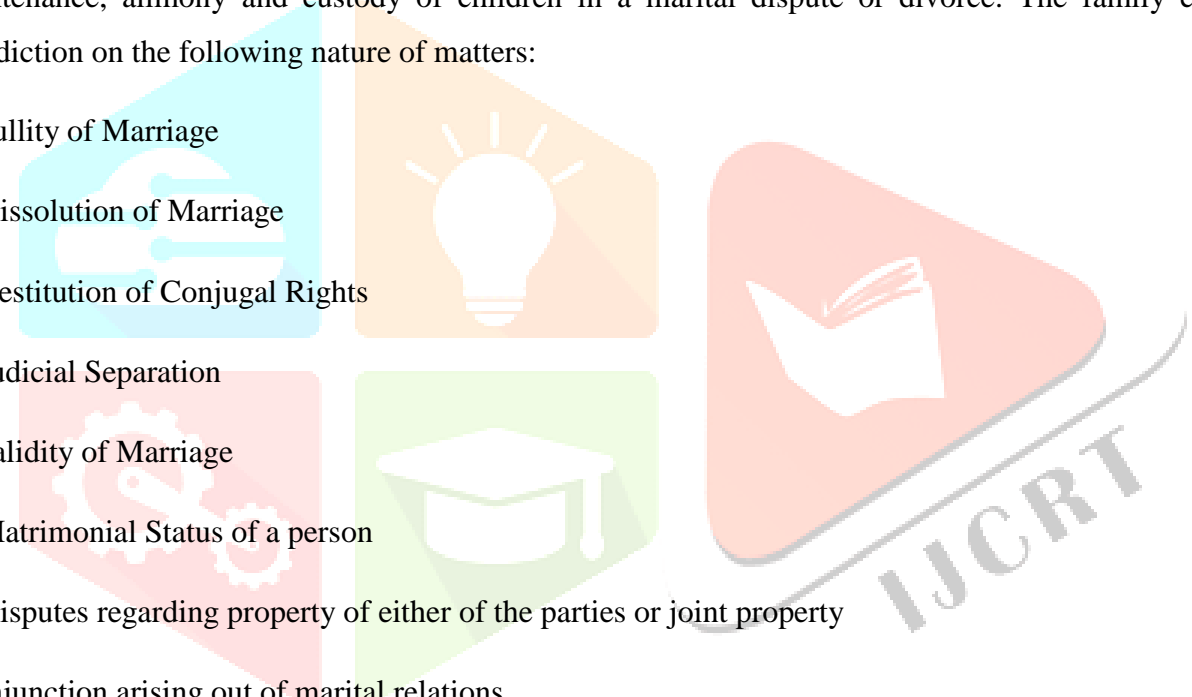
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<sup>17</sup> Supra n 12 p.34

<sup>18</sup> See Family courts act 1984

The Act<sup>19</sup> further authorizes the family courts to take the assistance from medical and welfare experts including social welfare agencies to participate in matrimonial proceedings for the amicable settlement of matrimonial disputes. For simplification of proceedings in the Court, the Act restricts the engagement of legal practitioners by parties but entitles the family court to seek their assistance as amicus curiae in the interests of justice. The Act makes it obligatory for the family court to hold proceedings in camera either suo motu or on the request of either party.

The Act<sup>20</sup> provides an appeal from every judgment or order of family court to the Division Bench of High Court except the appeal from consent decree or interim orders issued by family court. Thus, the above mentioned features of the Act indicates that family courts have been entrusted with wide powers to decide any dispute relating to matrimonial and family affairs expeditiously and amicably. Though its success is dependent upon its functionaries including judicial and non-judicial members and the other staff associated with these court. The legal jurisdiction of family courts extends to all matters that pertain to matrimonial issues, maintenance, alimony and custody of children in a marital dispute or divorce. The family courts have jurisdiction on the following nature of matters:

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- ⊕ Nullity of Marriage
  - ⊕ Dissolution of Marriage
  - ⊕ Restitution of Conjugal Rights
  - ⊕ Judicial Separation
  - ⊕ Validity of Marriage
  - ⊕ Matrimonial Status of a person
  - ⊕ Disputes regarding property of either of the parties or joint property
  - ⊕ Injunction arising out of marital relations
  - ⊕ Legitimacy of any person
  - ⊕ Maintenance
  - ⊕ Guardianship

### **FAMILY COURTS IN KERALA**

Family courts in Kerala play a crucial role in resolving disputes and matters related to marriage, divorce, child custody, and other family matters. As such, it is essential to critically examine the functioning of these courts and understand their impact on society. Through a thorough analysis, we aim to gain a better understanding of the role of family courts in Kerala and their impact on families and society as a whole.

<sup>19</sup> Supra n 20 p.144

<sup>20</sup> Supra n 20 p.145

Kerala is considered to be a unique State in many social aspects as compared to the rest of India. This unique phenomenon of socio economic development has also been very widely referred to as the 'Kerala Model of Development. Kerala's achievements in attaining high human development indicators have put the State way ahead of other Indian States and on par with developed economies in critical areas such as literacy, health care, gender consciousness, labour rights and participative governance. These strengths can be leveraged further by understanding the changing aspirations of the people in the light of global dynamics.<sup>21</sup>

Although the status of women in Kerala, compared to that of their counterparts in other states of India, is very high, several social indicators reveal that they are relatively disadvantaged. Due to the high literacy rate, it is believed that the people of Kerala know well about the laws affecting their lives. With abundant print and electronic media, the state is marked with higher rates of legal awareness. Even though a sizeable percentage of the women population in Kerala is educated and beneficially employed it has been pointed out that they do not enjoy equal social and legal status with men.

The socio-economic and cultural structure of Kerala is becoming more complex in the era of globalisation. Though the state of Kerala has achieved tremendous progress in many social sectors, conflicts and disintegration of the family are in every sphere of life. The legal system is overburdened with family disputes and many of them moves to the family court<sup>22</sup>. The number of family disputes coming before the courts is increasing every day. Thus, new avenues for justice-dispensation in family disputes in family courts are needed for the effective function and speedy settlement.

Family courts, which were established throughout the country with a view to promoting reconciliation and securing speedy settlements of disputes relating to marriage and family affairs, could not ensure gender justice and equality as expected. The delay in taking decisions, lack of proper infrastructure and informal surroundings, excessive importance to compromise and mediation, patriarchal attitude of judges and counselors, perceiving women litigants from the angle of conventional norms etc have made this innovate institution ineffective in securing justice and equality for women.

Kerala's 14 revenue districts are further divided into 78 taluks, 1070 gram panchayaths, six corporations, and 90 municipalities for the sake of effective administration. The Kerala High Court has the jurisdiction of the state of Kerala and each of the districts has a District Court. Since 1992 the Family Courts have been established in the state of Kerala.<sup>23</sup>

The family court aims to promote conciliation and to secure speedy settlement of disputes, based on non-adversarial and multidisciplinary approach<sup>24</sup>. Therefore the conciliation, speedy settlement, non-adversary approach, multidisciplinary strategy to deal with family disputes, informal and simple rules of procedures and gender justice have been the cornerstones of the philosophy of the family courts. The establishment of family courts was a part of the legal reforms concerning women and of ensuring the maximum welfare of society and

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<sup>21</sup> Supra n 9 p.35

<sup>22</sup> K.panduranga Rao ,commentary on the familycourtsAct 1984,Gorgia law Agency ,Hyderabad 2010 p.3

<sup>23</sup> [https://en.wikipedia.org/wiki/Municipalities\\_of\\_Kerala#Functionaries](https://en.wikipedia.org/wiki/Municipalities_of_Kerala#Functionaries)

<sup>24</sup> Supra n 9



dignity of women. Thus, the family court was established for the disputes related to marriage and family affairs. The backlog of cases of family matters pending with the various courts was transformed into the newly established family courts for reducing the existing load on civil courts.<sup>25</sup>

Many of the legal experts suggest that every revenue district in Kerala needs at least three to five family courts for the settlement of the disputes<sup>26</sup>. The family court records reveal that the following are the major reasons for the filing of cases: financial reasons, drug addictions, extra marital relations, mental disorders, sexual dissatisfactions, and suicide attempts. The other reasons for family issues<sup>27</sup> include ego problems, adjustment problems of a woman with the family of her husband, the utopian concept of the family and relations, differences of family traditions, high influence of parents, and the impact of new information technology and social media.

### **Effectiveness of family courts in Kerala in promoting gender justice**

The Family Courts Act 1984 was enacted with a view to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith. Though this was aimed at removing the gender bias in statutory legislation, the goal is yet to be achieved. Mechanism of the family courts must develop systems and processes, perhaps with the help of civil society organizations, to ensure that atrocities against women are minimized in the first place.<sup>28</sup>

Family courts should align themselves with women's organizations for guidance in matters related to gender issues. In the context of family courts, action forums should be initiated and strengthened by incorporating NGOs, representatives of elected members and the active members of the departments such as Urban Community Development, as members. State level monitoring mechanisms could be established to review the functioning and outcome of the cases related to women in the family courts.

Women judges and those who have expertise and experience in settling family disputes should be appointed. These special courts should have the authority to try cases against an accused even if the female victim is not willing to testify or is bent upon withdrawing her case. The marriage counsellors should not be frequently changed as it causes hardship to a women who has to explain her problems afresh to the new counsellors each time. The family courts committed to simplification of procedures must omit the provisions relating to Court Fees Act. Each additional relief should not be charged with additional court fee. To begin with, an example where the objective of the family court is diminished due to procedural lapses may be cited. Rules formulated are yet to provide a specific format for the interim applications, summons, etc. Many lawyers still use the format which is provided in the Civil Procedure Code which uses words like Counsel can be heard by; Counsel for the Petitioner, although the lawyers are not allowed to representation.

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<sup>25</sup> Supra n 10

<sup>26</sup> Supra n 11

<sup>27</sup> <https://opentextbc.ca/introductiontosociology2ndedition/chapter/chapter-14-marriage-and-family>

<sup>28</sup> Ratan varm (ed) Family courts in India ,An appraisal of strength & limitation .InterIndia Publication Newdelhi 1997 p.15

The absence of a lawyer in family court cases can greatly affect the pending of cases and ultimately impact gender justice. Without proper legal representation, individuals may not have access to the information and resources necessary to make their case effectively<sup>29</sup>. This can lead to unequal outcomes and injustices, particularly in cases involving gender-based issues such as divorce, custody, and domestic violence. Additionally, the lack of legal representation may also contribute to delays in the court process, prolonging the resolution of the case and potentially causing further harm to those involved. Overall, the absence of a lawyer in family court cases can have detrimental effects on gender justice and the fair treatment of all parties involved.

In addition to procedural lacunae, other problems connected with substantive law persist. Family courts have been set up to deal with problems that arise on the breakdown of a marriage, divorce, restitution of conjugal rights, claims for alimony and maintenance and custody of children. The setting up of family courts does not in any way alter the substantive law relating to marriage<sup>30</sup>. Divorce disentitles a woman to the matrimonial home. Whether or not she gets maintenance during a separation or after divorce depends on her ability to prove her husband's means. In a situation where women are often unaware of their husband's business dealings and sources of income, it is difficult, if not impossible, to prove his income. To make matters worse, the existence of a parallel black economy makes it impossible to identify the legal source of income.

The other much neglected area of law for women is domestic violence. Wife beating is prevalent in all classes and yet there is no effective law to prevent it or protect a woman against a violent husband. Such a law is urgently required. With these changes in substantive laws, family courts would be empowered to protect women, but without them these courts have ended up being poor substitutes for civil courts. The adversarial system is unsuited to the needs of women who are in any case disadvantaged and have no access to their husband's assets and income.<sup>31</sup>

Family Courts must have investigative powers to be able to compel disclosures of income and assets for passing appropriate orders of maintenance. The Family Courts Act does not explicitly empower the court to grant injunctions preventing violence or ouster of violent husbands. The lack of sustaining rights in pending cases in family courts can have a significant impact on gender justice. Without proper rights and support, individuals, particularly women, may not have the resources or ability to fight for their rights in court. This can lead to a perpetuation of gender inequalities and injustices within the legal system. It also highlights the importance of ensuring equal access to legal representation and resources for all parties involved in family court cases. Without these rights and resources, gender justice may not be fully achieved within the family court system.<sup>32</sup>

In such a situation, unless the law changes in radical ways conferring rights on women and creating new rights in their favour, the setting up of family courts will not help to alter their position. The right to community of matrimonial property would be the first step in ensuring security for women. This would mean that all property

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<sup>29</sup> R.Lekshmi Narayan "The Family Act 1984 A critical Appreciation 2 Kerala Law times 21 (1992)

<sup>30</sup> Supra n 9

<sup>31</sup> Supra n 9 p,23

<sup>32</sup> Supra n 20 p,25

acquired after the marriage by either party, and any assets used jointly, such as the matrimonial home, will belong equally to the husband and wife. Based on such a law, family courts would be able to provide effective relief to women in case of breakdown of the marriage. Even otherwise, courts must be empowered by law, to transfer the assets or income of a husband to his wife and children or to create a trust to protect the future of the children of a broken marriage. But as the law stands today, courts have no power to create obligations binding on the husband for the benefit of the wife or children.<sup>33</sup>

The courts were set up almost overnight, without any preparation whatsoever the total lack of infrastructure and basic facilities make the fight for justice a Herculean task. While both men and women are affected, in any given situation women who do not have any exposure to and experience in dealing with public institutions, are the worst sufferers<sup>34</sup>. The women also become victims of the general anti-women bias in society which is reflected in the attitude of the judges, court clerks or peons who treat the women litigants with contempt while the men experience a certain camaraderie (the brotherhood of men) with the judge, the clerks or the peons depending upon the social strata they belong to.<sup>35</sup>

In the absence of basic infrastructure like a stamp office, typist and stationery, services of a notary or even adequate sitting arrangements, canteen and drinking water, the litigants are subjected to endless hardships. The court is seen more as a court doling out maintenance orders, rather than a court deciding crucial legal and economic issues.

The judges appointed to the family court do not seem to have any special experience or expertise in dealing with family matters, nor any special expertise in settling disputes through conciliation, a requirement prescribed in the Act. The provision that women judges should be appointed and that the judges should have expertise and experience in settling family disputes, have remained only on paper. In many states the family court does not have a single woman judge.

The current family court system has a thoroughly dissatisfying record. Over the last 17 years it has fostered intense anger, frustration and resentment over the continual misuse and abuse of its power and authority. It has become a system that has lost trust of the majority population regarding its capability to provide any kind of a fair and just forum for handling family disputes. Unless the present situation of the family courts is remedied, the women will be forced to continue to remain unsecured within their family and society. Speedy justice is the right of every litigating person. There is no denying the fact that delay frustrates justice. But in the recent days, litigation has increased immensely.<sup>36</sup>

The population growth, improved financial conditions, lack of tolerance, awareness in legal literacy and materialistic way of life may be some of the causes for the litigation tendencies. But the delay in dispensation of justice has to be eliminated by taking effective steps. The position may not be that gloomy but still alarming. In order to meet this contingency, substantial increase in the number of judges and corresponding infrastructure is required at the earliest in the family courts<sup>37</sup>. It should be treated as a developmental work, a

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<sup>33</sup> Supra n 19 p.43

<sup>34</sup> Supra n 7 p.34

<sup>35</sup> Supra n 9 p.34

<sup>36</sup> Supra n 10 p.56

<sup>37</sup> Supra n 11 p.46

work to provide justice to all, a principle enshrined in the Preamble of our Constitution Speedy trial is guaranteed under article 21 of the Constitution of India. Any delay in disposal of cases infringes the right to life and personal liberty, guaranteed under article 21 of the Indian Constitution.

The debate on judicial arrears has thrown up number of ideas on how the judiciary can set its own house in order. Alarmed by the backlog of inordinate delay in disposal of cases, more have to be constituted. Thus in the family courts in Kerala, pendency is very high and alarming. It is high time to restore the confidence of people in the judiciary by providing speedy justice. The judiciary has to play a special role in the task of achieving socio-economic goals enshrined in the Constitution and maintaining their independence for the people. The Indian judicial system is constantly exposed to new challenges, new dimensions and new signals and has to improve the service to the public, by reducing delays and making courts more efficient.

## **CONCLUSION**

Though the family court is providing a fair and just forum for handling family disputes in the present family court system, the women and children remain insecure within their families and societies. This is not only a situation in the state of Kerala but also an overall situation everywhere in India with minor differences. In recent times the family courts in Kerala witness a huge increase of family disputes and are unable to dispose it in a speedy and amicable settlement. In the family courts, this study shows that divorce and mutual consent divorces are towering in the recent years of family courts. Considering the statistical analysis<sup>38</sup>, it reveals that family courts in Kerala witnessed a huge increase in matrimonial disputes, especially in divorce cases. The family courts in Kerala are burdened with huge case logs and are unable to dispose timely. Inadequate number of staff and lack of infrastructural facilities also affect the effective functioning of the system.

The study reveals that marriages are falling apart in Kerala as never before as the number of couples seeking divorce rises. The number of divorce cases in the 28 family courts in Kerala has shown a steep increase in the past nine years (2013-2023)<sup>39</sup>. Though the family courts provide qualified counsellors, in practice most of the counselling sections are inadequate for the peaceful settlement of family disputes.

In conclusion, the concept of gender justice in the Indian legal system is a complex and ongoing issue that requires continuous examination and reform. The family court system in Kerala, while established with the intention of promoting gender justice, still faces many challenges and limitations in its functioning. This critical study has shed light on some of these challenges, including the lack of representation of women and marginalized groups, the delay in court proceedings, and the inadequate support for victims of domestic violence. It is crucial that these issues are addressed and remedied in order to truly achieve gender justice in the family court system. Additionally, alternative legal frameworks, such as mediation and arbitration, should be explored and implemented to provide more accessible and efficient avenues for resolving family disputes. Only through continued efforts and reforms can we strive towards a more just and equal society for all genders.

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<sup>38</sup> Supra n 12 p.56

<sup>39</sup> Supra n 12 p.45