

UNDERSTANDING THE CONNECTION BETWEEN FAMILY COURTS AND GENDER BIAS

by

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ABSTRACT

With the help of this paper, I have tried to discuss the gender bias that prevails in the family courts in India and the different aspects that can be related to it. Gender bias is very important and controversial and any kind of involvement of biases in the judicial process can lead to inefficiency of the judicial system. The establishment of a family court has been further discussed in this paper which has been discussed in Section 3 of the Family Courts Act, 1984. One of the major drawbacks of family courts is gender bias.



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INTRODUCTION: The Central Government authorized the Family Courts Act in 1984 with an expectation to empower brief settlement of questions managing family undertakings and marital issues. According to the Family Courts Act, 1984, it is an Act to accommodate the foundation of Family Courts so as to advance pacification in, and secure fast settlement of, debates identifying with marriage and family issues and for issues associated therewith.

Family Court procedures might be held in camera if the Family Court so wants and will be so held if either party so wants.¹

The need to set up the Family Courts was first accentuated by the late Smt. Durgabai Deshmukh. After a visit through China in 1953, where she had the event to concentrate on the working of family courts, Smt. Deshmukh examined the subject with specific Judges and legitimate specialists and afterward made a proposition to set up Family Courts in India to Prime Minister Pt. Jawaharlal Nehru.

To this foundation, a critical improvement has been the new setup of the Family Court in Delhi. However, such courts have been set up and are working in different states, the setting up of a family court in the Capital is a critical turn of events and a stage which was important to be taken.²

Society's perspective on fathers has changed significantly since the days at the point when courts once in a while interceded between the dad youngster relationship. Family court judges need to wrestle with unenviable choices, with legitimate guide slices making it harder to precisely evaluate dangers to youngsters. However, placing these choices in the possession of an untouchable and excessively male legal executive, undeveloped in homegrown maltreatment, some of whom appear to have no issue slipping their social inclinations into the court, will undoubtedly cause issues.³

Given the limit with respect to blunders in human judgment, obviously, there might be fathers who have sadly approached their kids unfairly confined. Yet, the balance of proof focuses on

¹ Family Courts, <https://districts.ecourts.gov.in/>, 26 October, 2021, 10:00 AM, <https://districts.ecourts.gov.in/family-court-10>

² Archi Agnihotri & Medha Srivastava, Legal Services India, 26 October, 2021, 10:30 AM, <https://www.legalserviceindia.com/article/I356-Family-Courts-in-India.html>

³ Sonia Sodha, the idea that family courts are biased against men is a dangerous fallacy, The guardian, 26 October, 2021, 11:00 AM, <https://www.theguardian.com/society/commentisfree/2020/mar/05/family-courts-biased-men-dangerous-fallacy-abuse>

a framework that is one-sided against manhandled ladies and kids, not guiltless, erroneously blamed men.⁴

FAMILY COURT AND GENDER BIAS

GENDER BIAS IN INDIA- Gender Stereotyping is characterized as an overgeneralization of qualities, differences and characteristics of a specific gathering dependent on their sexual orientation. Sexual stereotypes generalizations make broadly acknowledged predispositions about specific attributes or qualities and sustain the thought that every sex and related practices are double.

Sexual orientation differences are risky in light of the fact that they can make us may be confused in our perceptions. At the point when people don't adjust to our sex stereotypes the outcome can prompt separation and inconsistent or make inconsistent or unjustifiable treatment to someone in particular who decides to resist individuals' suppositions about his/her sex. At the point when sex disparity happens behind the scenes of sex generalizing, this is in the most essential sense sexism.⁵

Sexually oriented differences still exist in India. Being brought into the world as ladies in Indian culture, one needs to confront sex separation at all levels. At the family level, females are restricted to their family tasks, bringing up youngsters and taking care of families, regardless of their schooling degrees of occupation profile. In her working environment: ladies have restricted admittance to open positions and are saving money on similar work.

Training and educational opportunities: sex-based literacy rates in India exhibit a wide hole among people. **According to 2011 enumeration information, effective literacy rates (age 7 or more) were 82.14% for men and 65.46% for ladies⁶.** Guardians are reluctant to spend on young ladies' schooling on the grounds that teaching ladies is of no worth as they will just serve their spouses and the parents-in-law later on.

The Indian constitution gives equivalent freedoms and advantages to all kinds of people, yet most ladies across India hate these privileges and opportunities ensured to them. This is a result of various reasons.

⁴ Supra note 3

⁵ Gender Stereotyping, gender equality law, 26 October, 2021, 11:40 AM, <https://www.genderequalitylaw.org/gender-stereotyping>

⁶ Gender Discrimination in the Indian Society, save the children, 26 October, 2021, 12:00 PM, <https://www.savethechildren.in/others/gender-discrimination-in-the-indian-society/>

ESTABLISHMENT OF FAMILY COURTS

As per **Section 3 of the Family Court Act 1984**, coming up next are the subtleties for the foundation of Family Court:

(1) For the purpose behind practicing the jurisdiction and powers granted to a Family Court by this Act, the State Government, after counsel with the High Court, and by notice- (1) For the reason for practicing the ward and powers gave on a Family Court by this Act, the State Government, after meeting with the High Court, and by notification- "

(a) will, when might be after the initiation of this Act, set up for each area in the State involving city or town whose populace surpasses 1,000,000, a Family Court;

(b) may set up Family Courts for such different regions in the State as it might consider significant.

(2) The State Government will, after counsel with the High Court, determine, by notice, the neighborhood furthest reaches of the space to which the locale of a Family Court will expand and may, whenever, increment, diminish, or adjust such cut off points.⁷

In **Gangadharan v. Territory of Kerala**⁸, it was held that *"the foundations of Family Courts are significant not just on the grounds that it is given in the Act yet, in addition, to make a different stage for Family-related issues."*⁹

The principal objective of the Family Court is to give quick help for the marital questions. For this, the Government needs to set up Family Court in urban areas and towns with a population more than 1,000,000. It is referenced in the Act that under **Section 3(2)**¹⁰ the State Government subsequent to talking with the High Court ought to determine the constraint of the space up to which the Jurisdiction of Family Court can expand.¹¹

DRAWBACKS OF FAMILY COURTS

⁷ THE FAMILY COURTS ACT, 1984, Legislative Government, 26 October, 2021, 01:30 PM, https://legislative.gov.in/sites/default/files/A1984-66_0.pdf

⁸ Appeal (civil) 2638 of 2006

⁹ M.P. Gangadharan & Another v/s State of Kerala & Others, Lawyers services, 25 October, 2021, 03:00 PM, <https://www.lawyerservices.in/MP-Gangadharan-and-Another-Versus-State-of-Kerala-and-Others-2006-05-12>

¹⁰ Family Court Act, 1984

¹¹ Analysis Of Family Court, Indian Law Portal, 26 October, 01:00 PM, <https://indianlawportal.co.in/analysis-of-family-court/>

The Family Courts' primary objective is to help the smooth and viable removal of cases identifying with family matters. Be that as it may, similar to some other framework there are sure issues that become an issue of concern with regards to the working of these courts¹².

A significant downside of the Family Courts Act turns out that it does not unequivocally engage Courts to give orders to prevent abusive behavior at home. While there has been progress, viz the authorization of the Protection of Women from Domestic Violence Act, 2005 which presently stretches out to rebuffing people for acts of violence too; there are still issues of the ward to be handled.

Since the Family Court has a prohibitive ward and doesn't have the ability to choose issues of disdain, individuals don't appear to view the court as in a serious way as they would an officer or a city common court. Further, it was set down in the Family Courts Act that most of the judges ought to be ladies. Be that as it may, this arrangement has not been consented to. Over the span of the workshop coordinated in March 2002 by the National Commission for Women, it was noticed that there were just 18 women judges till then in the Family Courts in India out of 84 judges in every one of the 84 courts that existed around then.¹³

ORIGIN OF GENDER BIAS IN FAMILY COURT

Judicial courts, including Family Courts, work in the more extensive setting of society. Customary gender roles favor a nuclear family with a male and female parent with organic youngsters. They view the mother as the kid's nurturer and the dad as their provider. Fathers are not relied upon to interface as much with the kids. Their essential obligation is giving cash to loan them an agreeable life. Conversely, the mother is to be effectively engaged with each part of their life.¹⁴

Because of prevalent difficulty, numerous families frequently fall into complying with these customary sex jobs. In family courts, this assumes a significant part. At the point when two people here, a man and a woman, go into a marriage, they frequently try to keep a steady nuclear family. They don't play out their obligations expecting a breakdown. However, when they arrive at the court, they are compelled to stand up to this situation. The courts, as the most

¹² Delhi Family Court, E- Courts Mission Mode Project, 26 October, 2021, 02:15 PM, <https://districts.ecourts.gov.in/delhi-family-court>

¹³ ARCHI AGNIHOTRI & MEDHA SRIVASTVA, Family Courts in India, Legal Service India, 26 October, 2021, 02:05 PM, www.legalserviceindia.com/article/1356-Family-Courts-in-India.html

¹⁴ AKSHITA ROHATGI, do men face negative bias in family courts, blog Ip leaders, 26 October, 2021, 04:25 PM, <https://blog.ipleaders.in/do-men-face-negative-bias-in-family-courts/>

citizenry, wind up succumbing to these generalizations. This influences the aftereffect of their case.

As westernization is on the ascent, a family unit with the two guardians working is acquiring more prominent predominance. Notwithstanding, traditional gender roles are not that simple to dispose of. Indeed, even as an ever-increasing number of ladies begin going out to work, they are viewed as the essential nurturers. Subsequently, they're compelled to shuffle the two obligations.¹⁵

This is in fact and deliberately gross speculation, and indeed it ought to be, on the grounds that this "customary" type of a parental relationship bringing about a family unit really happens usually enough for it to mutilate any misrepresentation of a "fresh start" going into family court.¹⁶

In this example, we can see how gender roles play out in a "*traditional family*" and why this can lead to gender bias in the family court system.

It is often felt by the fathers that Family Courts are gender-biased against them in the case of custody of the child and it is often preferred by the judges to give the custody of the child to the mother for the betterment of both the mother and the child also to ensure that there is the proper upbringing of the child.

WHY DO PEOPLE PERCEIVE A BIAS IN FAMILY COURT?

There are a few reasons behind why individuals trust that there is an inclination against fathers in family court, despite the fact that that is once in a while obvious. These might incorporate that:

1. A few fathers are missing or decide to invest little energy with their kids.
2. The courts weigh custody dependent on who deals with the youngsters all the more regularly and who has a more grounded bond. More ladies are stay-at-home guardians,

¹⁵ Supra note 12

¹⁶ WILLIAM HOSKOVEC, STRAIGHT TALK: GENDER BIAS IN THE FAMILY COURT SYSTEM, Cortez & Hoskovec, 26 October, 2021, 05:00 PM, <https://www.cortezhoskovec.com/legal-blog/2020/july/straight-talk-gender-bias-in-the-family-court-sy/>

which would imply that they had more opportunity to bond with their kids and may have a more grounded case for essential authority.

3. Fathers might be the bread providers, so they are outside the home all the more frequently and can't take on as much guardianship subsequently.¹⁷

DO MEN FACE NEGATIVE BIAS IN FAMILY COURTS?

Family courts have a wide locale to cover matters identified with the legitimacy of marriage, partition, separation, support, and kid authority. Let's examine the likelihood of negative biases in each type of case:

1. DIVORCE CASE

Arguments For: As indicated by certain men's freedoms activists, pitilessness, when asserted by men, is more averse to be accepted by judges. This is especially huge since separate on grounds of mercilessness is regularly utilized in separate cases.

Arguments Against: It is a very well-recognized concern that women frequently cannot be separated because of their imbalance of monetary standing and financial reliance on their spouses. It is contended that upkeep laws are regularly not sufficiently able to help them. Consequently, they are compelled to remain in an unacceptable marriage.

Under the **Dissolution of Muslim Marriages Act, 1939**, a spouse can petition for legal separation on different grounds including abandonment, savagery, absence of upkeep, detainment, impotency, and brutality. Then again, the Bombay High Court in **Dagdu Pathan n, Latur vs Rahimbi Dagdu Pathan, Ashabi, (2002)**¹⁸ proclaimed that "*a Muslim man basically needs to pass on explanations behind the separation and designate conciliators to get a legitimate separation*"¹⁹. Further, under the idea of "*khula*" under Muslim Law, the spouse needs to pay something of financial incentive for the separation. It is important that many arrangements of Muslim individual law emerge out of legal choices, because of the absence of codification of the equivalent.

2. MAINTENANCE CASE

¹⁷ JASPERS, MORIARTY & WETHERILLE, don't fall for this child custody myth, Jaspers Moriarty Wetherille, 26 October, 2021, 06:00 PM, <https://www.jmwlaw.com/blog/2021/01/dont-fall-for-this-child-custody-myth/>

¹⁸ Dagdu Pathan n, Latur vs Rahimbi Dagdu Pathan, Ashabi, (2002), 2003 (1) BomCR 740

¹⁹ Dagdu S/o Chotu Pathan v/s Rahimbi Dagdu Pathan & Others, lawyer services, 26 October, 2021, 07:30 PM, <https://www.lawyerservices.in/>

Arguments For: Under the **Hindu Adoptions and Maintenance Act (1956)** the spouse has the option to upkeep, as long as she stays modest and unmarried. For Hindus, Parsis, and Christians; the monetary situation of the man, those ward on him, and certain different components are thought of.²⁰

The **Hindu Marriage Act (1955)** notwithstanding, permits either mate who has inadequate means to be qualified for upkeep during the pendency of the separation procedures or extremely durable divorce settlement. This idea is like that of support. Arrangements under the **Parsi Marriage and Divorce Act, 1936, and Indian Divorce Act, 1869 (overseeing Christians)** are comparative.

Arguments Against: On numerous occasions, courts have held that a lady equipped for keeping up with herself need not be given upkeep. For example, in *Rupali Gupta v. Rajat Gupta* (2017), it was held that a spouse is capable and equipped for keeping up with herself, who decides to be jobless might be denied between time upkeep. Additionally, **Somdatta Chatterjee nee Raychaudhuri v. Anindya Chatterjee**²¹ (2019) held that “*under the Special Marriage Act (1954) a spouse procuring great would not be granted upkeep.*”²²

These cases demonstrate that only women needing upkeep and monetary help are granted something very similar. Women are excessively influenced by unemployment and face different sorts of inclinations at work. Accordingly, they are regularly not in the situation to exclusively accommodate themselves, and their children.

3. CUSTODY CASE

Arguments For: Regularly, courts view the mother as the essential guardian, who has a superior individual bond with the youngster. This influences the result of the case and moms are granted care.

This outlook is reflected in a **1980 report of the Law Commission of India**. The report comprised of an examination of the Guardians and Wards Act, 1890. It suggested the public

²⁰ THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956, TWC, 27 October, 2021, 08:00 AM, <https://tcw.nic.in/Acts/Hindu%20adoption%20and%20Maintenance%20Act.pdf>

²¹ *Somdatta Chatterjee nee Raychaudhuri v. Anindya Chatterjee*, C.O. No. 1972 Of 2016

²² Bar & Bench, 27 October, 2021, 09:00 AM, www.barandbench.com

authority permit the mother of a minor their care till the minor is 12 years old.²³ The explanation credited was to keep the dad from utilizing the youngster as a "pawn" to tie down the accommodation of his better half to him.

In **Dr. Ashish Ranjan v. Dr. Anupama Tandon (2010)**²⁴, the Supreme Court announced that *"a spouse is not above utilizing the youngster as her pawn all things considered."* In the given case, it held that *"the minor kid's psyche had been impacted with the end goal that he had no regard or love for the dad"*²⁵. In this manner, the court expected the mother to take responsibility for hatred of the court.

Likewise, on account of **Chethana Ramatheertha v. Kumar V. Jahgirdar (2002)**²⁶, the Karnataka High Court accepted that *"a child gets the best schooling and assurance under their mom."*²⁷ This broad assumption was censured by the Supreme Court in an appeal. The Apex Court clarified that it didn't uphold the Court's case that a mother's care would consistently be ideal for the fathers.

Arguments Against: Much of the time, it is believed that since fathers have a superior monetary standing, they would have the option to all the more likely care for a youngster's necessities. This is reflected in the **Hindu Minority and Guardianship Act, 1956** that administers minor's authority among Hindu, Sikh, Jain, and Buddhist Indians. It sees the dad as the essential "regular gatekeeper" of a child or unmarried girl, again than five years old. Up to that point, the mother is viewed as a characteristic watchman of the youngster, and the dad turns into the auxiliary gatekeeper.²⁸

The Calcutta High Court in **Seikh Simran Rahaman v. Sekh Jiayur Rahaman**²⁹ (2016) shed light on arrangements with respect to the authority of minors under Muslim Law. It was held that *"the mother is qualified for the authority of a child till the age of 7, and the little girl till*

²³Working of family courts in India, NCW Apps, 27 October, 2021, 09:20 AM, <http://ncwapps.nic.in/pdfreports/Working%20of%20Family%20courts%20in%20India.pdf>

²⁴ Dr. Ashish Ranjan v. Dr. Anupama Tandon (2010), 14 SCC 274

²⁵ Ashish Ranjan v. Anupma Tandon, Supreme Court Cases, 27 October, 2021, 10:00 AM, <http://www.supremecourtscases.com/>

²⁶ II (2003) DMC 288

²⁷ Chethana Ramatheertha versus Kumar V. Jahgirdar, Lawyers Services India, 27 October, 2021, 10:30 AM, <https://www.lawyerservices.in/Chethana-Ramatheertha-versus-Kumar-V-Jahgirdar-2003-01-27>

²⁸Do men face negative bias in family courts, blog IP leaders, 27 October, 2021, 11:00 AM, <https://blog.ipleaders.in/do-men-face-negative-bias-in-family-courts/>

²⁹Ziaur Rahman, Oxford reference, 27 October, 2021, 11:30 AM, <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803133449846>

adolescence, regardless of whether separated. In any case, if there should arise an occurrence of her re-marriage, authority moves to the dad."

ANALYSIS: In reference to the points discussed above and the knowledge gained from it, it can be concluded that the response to the question of sexism against men in family courts is anything but a parallel "yes" or "no". It changes from one case to another, as gender roles find various ways of impacting the result of different sorts of cases. For example, courts might assume the mother to have a more noteworthy passionate connection to the kid, and grant her care. It might likewise expect fathers to have better monetary standing and will actually want to accommodate the kid better. In support cases, they expect the spouse to have a superior monetary standing and request that he pay upkeep for the youngster. Then again, it would be uncomfortable with the idea of a lady accommodating her better half. In this situation, multiple times the court might say that *"the mother is the one doing all the parental work here"* and may not concede kid care or timesharing to the dad. This can be an illustration of gender bias in some cases. It is necessary for the court to analyze every case in a better way and with a better understanding in order to understand that the cases can be different sometimes. Sometimes a child can be more attached to the father rather than being with the mother.

CONCLUSION: It is clear that the setting up of these family courts was a powerful advance so particularly far as reducing the backlog and disposing of off cases while guaranteeing that there is a successful conveyance of equity and justice. Nonetheless, as previously mentioned, there are still matters of concern that plague these courts. The issues identifying with the working of these courts are to be found altogether, as cited in the models identifying with the procedural just as considerable parts of the issues. There are numerous dubious and questionable issues in regards to the family court in India and one such is sex predisposition.

These generalizations might even be a reality in some of the cases. Social ideas of a father's obligation regularly keep men from being too associated with the children's life. Laws are made remembering a larger part of individuals who will be influenced by them. Thus, one can effectively contend that since India is a customary society and generalizations are polished much of the time, laws basically mirror that. Nonetheless, laws should be a positive instrument for social change.

Discrimination ought not to be the basis to justify more discrimination. Such stereotyped choices sustain a gender bias that prompts this.