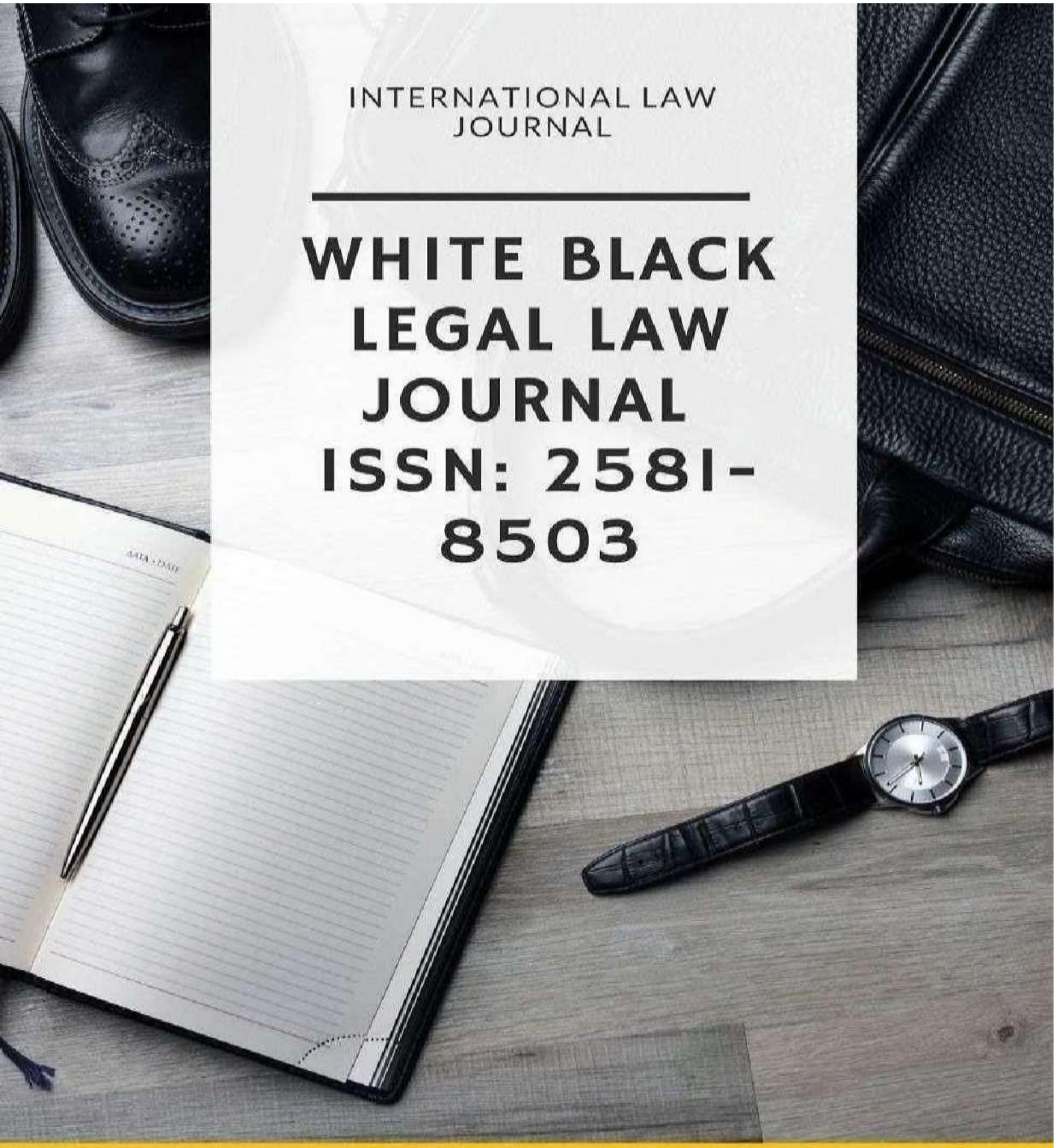


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A STUDY ON GENDER JUSTICE IN FAMILY COURTS

AUTHORED BY - SIVA SHANKARI

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ABSTRACT

Family Courts were established in India under the Family Courts Act, 1984 to provide a humane, informal and conciliatory forum for matrimonial and family disputes. Women form a large share of litigants before these courts, seeking maintenance, divorce, custody, protection from cruelty and a share in marital resources. This study examines whether Family Courts deliver gender justice in substance as well as in form. It analyses constitutional guarantees, the Family Courts Act, personal laws, maintenance and custody law, and the Protection of Women from Domestic Violence Act, 2005, together with judicial decisions. It identifies persistent problems of delay, stereotyping, weak enforcement of maintenance orders, pressure towards reconciliation, inadequate infrastructure and limited access to legal aid, and it suggests procedural, institutional and legislative reforms.

Keywords: Gender Justice, Family Courts, Family Courts Act 1984, Maintenance, Custody, Divorce, Domestic Violence, Mediation, Women's Rights, Access to Justice.

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CHAPTER I

INTRODUCTION

The family is the first institution in which gender roles are learnt and the one in which gender inequality is often most deeply entrenched. Disputes concerning marriage, divorce, maintenance, custody and property therefore carry a gender dimension that ordinary commercial or civil litigation does not. For many women, a Family Court is the only point of contact with the justice system in their lives, and the quality of justice received there shapes their economic security, their safety and their dignity.

India enacted the Family Courts Act, 1984 to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs.[1] The legislation followed the recommendations of the Law Commission of India and long-standing demands by women's organisations for a forum that was less formal, less adversarial and more sensitive than the ordinary civil court.[2] The Constitution of India guarantees equality before the law, prohibits discrimination on grounds of sex, permits special provisions for women, and protects life and personal liberty with dignity.[3] Gender justice in Family Courts must be assessed against these constitutional commitments.

Four decades after the Act, questions remain. Do Family Courts actually deliver substantive equality to women, or do they reproduce the stereotypes of the family they adjudicate? Are maintenance orders enforced? Does the emphasis on settlement protect women, or pressure them into compromise? This study examines these questions through a doctrinal and analytical approach.

1.1 Significance of the Study

Family Courts handle some of the most intimate and consequential disputes in a person's life. A woman who cannot obtain interim maintenance may be unable to litigate at all; a woman who loses custody may lose contact with her children; a woman who settles under pressure may forfeit her right to residence and financial support. The Supreme Court has repeatedly recognised that maintenance is a measure of social justice and that delay and non-disclosure by the paying spouse defeat its purpose.[4]

The subject also engages broader constitutional concerns. The Committee on the Status of

[1]Family Courts Act, 1984 (Act No. 66 of 1984), Preamble.
[2]Law Commission of India, *59th Report on Family Courts* (1974).
[3]Constitution of India, arts. 14, 15(1), 15(3) and 21.
[4]*Rajnesh v. Neha*, (2021) 2 SCC 324; *Badshah v. Urmila Badshah Godse*, (2014) 1 SCC 188.

Women in India had documented the economic dependence of Indian women and the gap between legal rights and their realisation.[5] The Supreme Court has since identified gender stereotyping in judicial reasoning as a harm in itself and has issued a handbook to assist judges in avoiding it.[6] A study of how Family Courts function in light of these developments is therefore timely, and its findings are relevant to judges, lawyers, counsellors, policymakers and litigants.

1.2 Review of Literature

1. Flavia Agnes – ***Family Law, Volume I: Family Law and Constitutional Claims*** **and** ***Law and Gender Inequality: The Politics of Women's Rights in India***
Agnes examines how personal laws and constitutional equality interact and shows how women's claims in marriage and divorce are shaped by community law and judicial attitudes. Her work gives limited attention to the day-to-day functioning of Family Courts as institutions.

2. Archana Parashar – ***Women and Family Law Reform in India***
Parashar studies the reform of family law and the limits of legislative change in altering women's position within the family. The study predates many developments in maintenance law, domestic violence law and the Family Courts' later experience.

3. Paras Diwan – ***Family Law***
Diwan provides a comprehensive doctrinal account of marriage, divorce, maintenance, adoption and guardianship across personal laws. The treatment is primarily descriptive and does not critically assess gender outcomes in Family Courts.

4. Kalpana Kannabiran – ***Tools of Justice: Non-discrimination and the Indian Constitution***
Kannabiran analyses the constitutional meaning of non-discrimination and substantive equality, which supplies the theoretical standard against which family adjudication may be measured.

5. Law Commission of India – 59th Report (1974) and Committee on the Status of Women – ***Towards Equality*** **(1974)**
These reports provide the historical foundation for the creation of Family Courts and document the socio-economic position of women. They predate present-day challenges such as enforcement of maintenance and digital litigation.

6. Supreme Court of India – ***Handbook on Combating Gender Stereotypes*** **(2023)**

[5]Committee on the Status of Women in India, *Towards Equality* (Government of India, 1974).
[6]Supreme Court of India, *Handbook on Combating Gender Stereotypes* (2023).

The Handbook identifies stereotypes commonly found in judicial language and reasoning, including about marriage, motherhood and domestic violence, and offers alternative formulations. It is a judicial resource rather than an empirical study of Family Courts.

1.3 Research Gap

Existing literature largely explains personal laws and statutory entitlements, or it critiques particular judgments, without evaluating the Family Court as an institution through a gender lens.[7] There is limited integrated analysis of how the Family Courts Act, the maintenance regime under the Bharatiya Nagarik Suraksha Sanhita, 2023, the Protection of Women from Domestic Violence Act, 2005 and mediation law operate together in practice. Insufficient attention has also been paid to enforcement of orders, the effect of the settlement-oriented mandate on women facing violence, the uneven availability of counsellors, legal aid and women judges, and the treatment of custody disputes. This study seeks to address these gaps and to propose workable reforms.

1.4 Objectives of the Study

- To examine the concept of gender justice and its relevance to family adjudication.
- To trace the evolution and statutory framework of Family Courts in India.
- To analyse substantive law on divorce, maintenance, custody and property from a gender perspective.
- To evaluate judicial approaches, procedure, counselling and enforcement mechanisms in Family Courts.
- To recommend legal and institutional reforms for strengthening gender justice in Family Courts.

1.5 Research Questions

- What is the meaning of gender justice, and how does it apply to family disputes?
- What constitutional and statutory guarantees support gender justice in Family Courts?
- Does the Family Courts Act, 1984 adequately address the needs of women litigants?
- How effective are maintenance, custody and property laws in protecting women's interests?

[7]See Flavia Agnes, *Family Law, Volume I: Family Law and Constitutional Claims* (Oxford University Press, 2011).

- How do settlement-oriented processes such as counselling and mediation affect women, especially victims of violence?
- What practical barriers of cost, delay, infrastructure and social attitude hinder women's access to Family Courts?
- What reforms are needed to make Family Courts more gender-just?

1.6 Research Methodology

This study adopts a **doctrinal, analytical and comparative methodology**. The doctrinal component examines primary sources: the Constitution of India, the Family Courts Act, 1984, personal laws, the Bharatiya Nagarik Suraksha Sanhita, 2023, the Protection of Women from Domestic Violence Act, 2005, the Mediation Act, 2023 and judicial decisions. Secondary sources include books, law commission and committee reports, journal articles and policy publications.[8]

The analytical component evaluates the scope and limits of the law and its working. Selected comparative references to family justice systems in other jurisdictions are used to draw lessons. The study is **primarily qualitative**, relying on legal interpretation and judicial analysis rather than original empirical data. Official statistics are used only as background.

1.7 Limitations of the Study

The study is doctrinal and does not include field research, court observation or interviews with litigants, judges or counsellors. Official data on pendency and disposal of Family Court cases change frequently and may not capture the full scale of delay or the number of women who never approach a court. Records of Family Court proceedings are confidential, and judgments of trial-level Family Courts are not always publicly available. The law on family disputes is evolving, and developments after the date of writing may not be reflected. The study is confined to gender justice in family adjudication and does not examine criminal courts generally.

Although the focus is on women, who form the majority of persons seeking protective reliefs, gender justice also concerns men, transgender persons and children, and their concerns are noted where relevant.[9]

[8]Constitution of India; Family Courts Act, 1984; Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No. 46 of 2023); Protection of Women from Domestic Violence Act, 2005 (Act No. 43 of 2005); Mediation Act, 2023 (Act No. 32 of 2023).

[9]*National Legal Services Authority v. Union of India*, (2014) 5 SCC 438 (recognising gender identity as part of dignity and personal autonomy).

1.8 Scheme of the Study

The study, titled *"**A Study on Gender Justice in Family Courts,**"* is organised into five chapters.

Chapter I – Introduction: background, significance, literature review, research gap, objectives, research questions, methodology and limitations.

Chapter II – Conceptual Framework of Gender Justice and Family Courts: the meaning of gender justice, the evolution and features of Family Courts, and gender concerns in family adjudication.

Chapter III – Legal Framework for Gender Justice in Family Courts in India: constitutional foundations, the Family Courts Act, 1984, personal laws, maintenance, custody, property, domestic violence law, legal aid and mediation.

Chapter IV – Critical Analysis of Gender Justice in Family Courts: access, judicial approach, enforcement, custody, counselling, delay and infrastructure.

Chapter V – Findings, Suggestions and Conclusion: the principal findings, recommendations for reform and scope for further research.

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CHAPTER II

CONCEPTUAL FRAMEWORK OF GENDER JUSTICE AND FAMILY COURTS

2.1 Introduction

Gender justice in a family dispute cannot be assessed without understanding both what the term means and what kind of institution the Family Court was designed to be. This chapter sets out the concept of gender justice, traces the origins of Family Courts in India, describes their principal features and identifies the gender concerns that arise in family adjudication.

2.2 Meaning of Gender Justice

Gender justice refers to the fair treatment of persons irrespective of gender and the removal of the legal, social and economic barriers that prevent equal enjoyment of rights. It has three connected elements. **Formal equality** requires that laws apply alike to all. **Substantive equality** recognises that identical treatment can perpetuate disadvantage where the starting positions of the parties differ, as they often do between a wage-earning husband and a wife engaged in unpaid domestic work. **Access to justice** requires that rights can in practice be claimed, through affordable, timely and respectful processes.[10]

Indian constitutional law reflects this layered understanding. Article 15(1) prohibits discrimination on grounds of sex, while Article 15(3) permits the State to make special provision for women, and the Directive Principles and Article 51A(e) direct the State and citizens to promote equality and to renounce practices derogatory to the dignity of women.[11] India has also ratified the Convention on the Elimination of All Forms of Discrimination against Women, and the Supreme Court has relied on it to interpret fundamental rights.[12] In *Joseph Shine v. Union of India*, the Court condemned laws and attitudes that treat women as subordinate within marriage, and in *Shayara Bano v. Union of India* it struck down instant triple talaq as arbitrary.[13]

For Family Courts, gender justice therefore means that the court applies the law without stereotype, appreciates the economic reality of the parties, ensures that women can participate

[10]See Kalpana Kannabiran, *Tools of Justice: Non-discrimination and the Indian Constitution* (Routledge, 2012); Constitution of India, arts. 14 and 15.

[11]Constitution of India, arts. 15(1), 15(3), 39 and 51A(e).

[12]Convention on the Elimination of All Forms of Discrimination against Women, 1979; *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

[13]*Joseph Shine v. Union of India*, (2019) 3 SCC 39; *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

in proceedings safely, and secures orders that are actually enforced.[14]

2.3 Evolution of Family Courts in India

Before 1984, matrimonial and family disputes were heard by ordinary civil courts under formal procedure. Litigation was slow, adversarial and costly, and the public airing of private matters deterred many women from approaching the courts. The Committee on the Status of Women in India highlighted the need for specialised machinery, and the Law Commission, in its 59th Report in 1974, recommended separate Family Courts that would adopt an informal approach and prioritise conciliation.[15]

Parliament enacted the Family Courts Act in 1984. Section 3 requires State Governments, in consultation with the High Court, to establish a Family Court for every city or town with a population exceeding one million and for other areas where it considers necessary.[16] Over the years Family Courts have been established in many States, though their coverage is uneven and in several districts family matters are still heard by ordinary courts exercising the same jurisdiction.

The courts' development has been shaped by the Supreme Court. In *K.A. Abdul Jaleel v. T.A. Shahida*, the Court clarified that Family Courts have jurisdiction over claims between parties to a marriage, including those of a woman whose marriage has been dissolved, reinforcing the single-forum purpose of the Act.[17]

2.4 Nature and Features of Family Courts

The Family Courts Act departs from the ordinary civil process in several ways.

- **Exclusive jurisdiction (Section 7).** Family Courts exercise jurisdiction over suits and proceedings for matrimonial relief, property of the parties, maintenance, guardianship and custody of minors, and legitimacy, and they exercise the powers of a Magistrate in proceedings for maintenance under the criminal procedure law.[18]
- **Duty to promote settlement (Section 9).** The court must make efforts to assist and persuade parties to arrive at a settlement and may adjourn proceedings for that

[14]*Rajnesh v. Neha*, (2021) 2 SCC 324; Supreme Court of India, *Handbook on Combating Gender Stereotypes* (2023).

[15]Committee on the Status of Women in India, *Towards Equality* (1974); Law Commission of India, *59th Report on Family Courts* (1974).

[16]Family Courts Act, 1984, s. 3.

[17]*K.A. Abdul Jaleel v. T.A. Shahida*, (2003) 4 SCC 166.

[18]Family Courts Act, 1984, s. 7.

purpose.[19]

- **Flexible procedure (Sections 10 and 14).** The Code of Civil Procedure applies, but the court may devise its own procedure to arrive at the truth and is not bound by strict rules of evidence.[20]
- **Privacy (Section 11).** Proceedings may be held in camera, and must be so held if either party desires.[21]
- **Assistance of experts and counsellors (Sections 5, 6 and 12).** Social welfare agencies, counsellors and medical or welfare experts may assist the court.[22]
- **Restricted role of lawyers (Section 13).** A party is not entitled as of right to be represented by a legal practitioner, although the court may appoint an *amicus curiae*.[23]
- **Composition (Section 4).** The appointing authorities must ensure that Judges are committed to the protection of the institution of marriage and the welfare of children and, as far as practicable, must give preference to women.[24]
- **Appeal (Section 19).** An appeal lies to the High Court on facts and law, but not from interim orders.[25]

These features were intended to make the forum approachable. Yet each also carries potential risks for gender justice, which are discussed in Chapter IV.

2.5 Gender Concerns in Family Adjudication

Several gender concerns recur in family disputes.

Economic dependence. Many women lack independent income, property in their own name or control over household finances. Unpaid domestic and care work, though essential, is rarely valued in financial adjudication, and husbands may under-disclose income. The Supreme Court has therefore required disclosure by affidavit of assets and liabilities in maintenance proceedings.[26]

Stereotypes. Judicial and social attitudes about the "good wife," the duty to adjust, the primacy of the marriage and the mother as natural caregiver can influence outcomes. The Handbook on

[19]Family Courts Act, 1984, s. 9.
[20]Family Courts Act, 1984, ss. 10 and 14.
[21]Family Courts Act, 1984, s. 11.
[22]Family Courts Act, 1984, ss. 5, 6 and 12.
[23]Family Courts Act, 1984, s. 13.
[24]Family Courts Act, 1984, s. 4(4).
[25]Family Courts Act, 1984, ss. 4, 5, 6, 7, 9, 10, 11, 12, 13, 14 and 19.
[26]*Rajnesh v. Neha*, (2021) 2 SCC 324.

Combating Gender Stereotypes identifies such assumptions and cautions against them.[27]

Violence within the family. Where a woman alleges violence, a process that emphasises reconciliation may expose her to continued risk or pressure her to withdraw claims.[28]

Procedural burdens. Travel, court fees, repeated adjournments and the need to take time away from work or childcare affect women disproportionately, especially those in rural or low-income settings.[29]

Competing perspectives. Some litigants and commentators argue that protective provisions are sometimes misused and that men and fathers also face bias, particularly in custody. These claims call for evidence-based assessment and for procedures that test allegations fairly, without diluting protection for genuine victims.[30]

2.6 Conclusion

Gender justice requires more than the formal availability of rights. The Family Court was conceived as an instrument to make those rights accessible in the sensitive setting of family disputes. Its informal and conciliatory design offers real advantages, but also opens space for unequal bargaining and stereotyped assumptions. The conceptual framework set out here provides the standard for examining, in the next chapter, the constitutional and statutory provisions on which gender justice in Family Courts depends.

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[27]Supreme Court of India, *Handbook on Combating Gender Stereotypes* (2023).

[28]Protection of Women from Domestic Violence Act, 2005, ss. 2(g) and 3; Family Courts Act, 1984, s. 9.

[29]Family Courts Act, 1984, ss. 3 and 13; Constitution of India, art. 39A.

[30]See *Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42; *Vikram Vir Vohra v. Shalini Bhalla*, (2010) 4 SCC 409 (welfare of the child as the governing test in custody disputes).

CHAPTER III

LEGAL FRAMEWORK FOR GENDER JUSTICE IN FAMILY COURTS IN INDIA

3.1 INTRODUCTION

There is no single code on gender justice in family disputes in India. The framework consists of constitutional guarantees, the procedural statute that creates Family Courts, religion-based personal laws, secular statutes on maintenance, guardianship and domestic violence, and institutional mechanisms such as legal services authorities and mediation. This chapter examines these sources and the extent to which each supports gender justice in Family Courts.[31]

3.2 Constitutional Foundations of Gender Justice

Article 14 guarantees equality before the law and equal protection of the laws. **Article 15(1)** prohibits discrimination on grounds of sex, and **Article 15(3)** permits special provisions for women and children, which supplies the constitutional basis for protective measures such as maintenance and domestic violence law. **Article 21** protects life and personal liberty, which the Supreme Court has read to include dignity, privacy and autonomy. **Article 39A** directs the State to ensure equal justice and free legal aid, and **Article 51A(e)** calls upon citizens to renounce practices derogatory to the dignity of women.[32]

The Supreme Court has given these provisions concrete content. In *Vishaka v. State of Rajasthan*, it treated gender equality and the right to work with dignity as fundamental rights and drew on international conventions to fill a legislative gap. In *Joseph Shine v. Union of India*, it struck down the offence of adultery, holding that treating a wife as the husband's property is incompatible with equality and dignity.[33] These decisions set the constitutional standard against which family adjudication must be read.

3.3 The Family Courts Act, 1984

The Family Courts Act, 1984 provides the institutional structure. Section 7 confers jurisdiction over matrimonial relief, property disputes between spouses, legitimacy, guardianship and custody, and maintenance, including proceedings under the criminal procedure law. Section 8 excludes the jurisdiction of other civil courts over matters within Section 7, and Section 20

[31]Constitution of India; Family Courts Act, 1984; Protection of Women from Domestic Violence Act, 2005; Bharatiya Nagarik Suraksha Sanhita, 2023.

[32]Constitution of India, arts. 14, 15(1), 15(3), 21, 39A and 51A(e).

[33]*Vishaka v. State of Rajasthan*, (1997) 6 SCC 241; *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

gives the Act overriding effect over inconsistent laws. As noted in Chapter II, the Act also provides for settlement efforts (Section 9), flexible procedure (Sections 10 and 14), privacy (Section 11), assistance of counsellors and experts (Sections 5, 6 and 12) and limited lawyer participation (Section 13).[34]

From a gender perspective, the Act has clear strengths: a single forum for related claims, privacy, and a preference for women Judges. Its limitations lie in implementation, and in the absence of any specific provision on screening for domestic violence before settlement efforts begin.[35]

3.4 Personal Laws and Matrimonial Reliefs

Substantive matrimonial law remains largely community-based, and Family Courts apply the personal law governing the parties.

Hindu law. Under the Hindu Marriage Act, 1955, divorce may be sought on grounds including cruelty, desertion and adultery (Section 13(1)). Section 13(2) confers certain additional grounds on wives alone, reflecting their historically weaker position. Divorce by mutual consent is available under Section 13B, ordinarily after a statutory waiting period. Section 24 provides interim maintenance and litigation expenses and Section 25 permanent alimony and maintenance.[36]

The waiting period has been the subject of important decisions. In *Amardeep Singh v. Harveen Kaur*, the Supreme Court held that the six-month period is directory and may be waived by the court in appropriate cases. In *Shilpa Sailesh v. Varun Sreenivasan*, a Constitution Bench held that the Court may, under Article 142, dissolve a marriage that has irretrievably broken down and laid down guidelines for doing so. These developments follow the long-standing recognition, including in *Naveen Kohli v. Neelu Kohli*, that irretrievable breakdown should be a ground for divorce.[37] Whether such flexibility benefits women depends on whether their financial rights are fully secured at the point of dissolution.

Other laws. Muslim women may seek dissolution under the Dissolution of Muslim Marriages Act, 1939, and are protected by the Muslim Women (Protection of Rights on Divorce) Act, 1986. After *Shayara Bano v. Union of India*, instant triple talaq is invalid, and the practice has

[34]Family Courts Act, 1984, ss. 5–7, 8, 9–14 and 20.

[35]Family Courts Act, 1984, ss. 4(4), 7 and 11.

[36]Hindu Marriage Act, 1955 (Act No. 25 of 1955), ss. 13(1), 13(2), 13B, 24 and 25.

[37]*Amardeep Singh v. Harveen Kaur*, (2017) 8 SCC 746; *Shilpa Sailesh v. Varun Sreenivasan*, 2023 SCC OnLine SC 544; *Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558; see also Law Commission of India, *71st Report on the Hindu Marriage Act, 1955 – Irretrievable Breakdown of Marriage as a Ground of Divorce* (1978).

been made an offence by statute. Christians are governed by the Indian Divorce Act, 1869, Parsis by the Parsi Marriage and Divorce Act, 1936, and persons marrying under the Special Marriage Act, 1954 by that Act.[38] The plurality of laws means that a woman's remedies depend on her community, which is a recurring source of inequality.

3.5 Maintenance Laws

Maintenance is the most frequently invoked remedy by women in Family Courts and arises under several overlapping laws.

Bharatiya Nagarik Suraksha Sanhita, 2023. Section 144, which replaces Section 125 of the earlier Code of Criminal Procedure, enables a wife unable to maintain herself, and also children and parents, to claim maintenance from a person with sufficient means who neglects or refuses to maintain them. It provides for interim maintenance, and non-payment can be enforced through recovery procedures and imprisonment.[39]

Personal and special laws. The Hindu Adoptions and Maintenance Act, 1956 provides for maintenance of a wife (Section 18), children and parents (Section 20) and sets the factors for determining the amount (Section 23). The Hindu Marriage Act, 1955 provides for maintenance in matrimonial proceedings. In *Mohd. Ahmed Khan v. Shah Bano Begum*, the Supreme Court held that a divorced Muslim woman could claim maintenance under the secular provision, and in *Danial Latifi v. Union of India* it upheld the 1986 Act while reading it to require a fair and reasonable provision for the woman's future.[40]

Guidelines. In *Rajnesh v. Neha*, the Court observed that overlapping and parallel maintenance proceedings cause hardship, and issued directions requiring disclosure of assets and liabilities by affidavit in all maintenance proceedings, setting out criteria for fixing quantum, providing that maintenance runs from the date of application, and laying down methods of enforcement. In *Badshah v. Urmila Badshah Godse*, it held that maintenance provisions must be interpreted purposively to advance social justice for women.[41]

[38]Dissolution of Muslim Marriages Act, 1939; Muslim Women (Protection of Rights on Divorce) Act, 1986; Muslim Women (Protection of Rights on Marriage) Act, 2019; *Shayara Bano v. Union of India*, (2017) 9 SCC 1; Indian Divorce Act, 1869; Parsi Marriage and Divorce Act, 1936; Special Marriage Act, 1954.

[39]Bharatiya Nagarik Suraksha Sanhita, 2023, s. 144 (corresponding to Code of Criminal Procedure, 1973, s. 125).

[40]Hindu Adoptions and Maintenance Act, 1956, ss. 18, 20 and 23; *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556; *Danial Latifi v. Union of India*, (2001) 7 SCC 740.

[41]*Rajnesh v. Neha*, (2021) 2 SCC 324; *Badshah v. Urmila Badshah Godse*, (2014) 1 SCC 188.

3.6 Custody and Guardianship

Guardianship and custody are governed by the Guardians and Wards Act, 1890, which makes the welfare of the minor the paramount consideration (Sections 7 and 17), and by the Hindu Minority and Guardianship Act, 1956. Section 6 of the latter names the father as natural guardian of a minor, with the mother next, but provides that custody of a child below five years should ordinarily be with the mother.[42]

The Supreme Court has repeatedly stated that custody is decided on the welfare of the child and not on the legal rights of the parents. In *Gaurav Nagpal v. Sumedha Nagpal*, the Court emphasised that the welfare of the child is paramount and that the court must consider the child's wellbeing in all its aspects. *Vikram Vir Vohra v. Shalini Bhalla* likewise stressed that the child's emotional and psychological needs, and the importance of both parents in the child's life, must be balanced in custody decisions.[43] The statutory ranking of the father as first natural guardian has been criticised as inconsistent with equality, though the welfare principle operates to moderate it in practice.

3.7 Property and Financial Rights of Women

India does not have a statutory regime of matrimonial property or a community-of-property system. A wife's financial claims in marriage therefore depend principally on maintenance and alimony, her *stridhan* (property which she owns absolutely, recognised under Section 14 of the Hindu Succession Act, 1956), and her succession rights. Section 6(1) of that Act, as amended in 2005, makes daughters coparceners by birth on the same footing as sons, and in *Vineeta Sharma v. Rakesh Sharma* the Supreme Court held that this right does not depend on whether the father was alive on the date of the amendment.[44] Section 6 of the Dowry Prohibition Act, 1961 requires dowry received by a person other than the woman to be transferred to her.[45]

The law does not expressly recognise the economic value of a homemaker's contribution to the household when property is divided, a gap discussed in Chapter IV.

3.8 Domestic Violence, Legal Aid and Mediation

Protection of Women from Domestic Violence Act, 2005. The Act provides civil remedies against domestic violence, including protection orders, residence orders, monetary relief,

[42]Guardians and Wards Act, 1890, ss. 7 and 17; Hindu Minority and Guardianship Act, 1956, s. 6.
[43]*Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42; *Vikram Vir Vohra v. Shalini Bhalla*, (2010) 4 SCC 409.
[44]Hindu Succession Act, 1956, ss. 6 and 14; *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1.
[45]Dowry Prohibition Act, 1961, s. 6.

custody orders and compensation (Sections 18 to 22). Section 26 allows these reliefs to be sought in any legal proceeding before a civil, criminal or family court. In *Satish Chander Ahuja v. Sneha Ahuja*, the Supreme Court held that a woman's right to reside in a shared household is not confined to premises owned or rented by the husband, and thereby widened protection of residence.[46]

Legal aid. Article 39A and Section 12 of the Legal Services Authorities Act, 1987 entitle women to free legal services. Because Section 13 of the Family Courts Act limits participation of lawyers, the availability of legal aid and *amici curiae* is important to preserve fairness.[47]

Mediation. The Mediation Act, 2023 provides a statutory framework for mediation and the enforceability of mediated settlement agreements. In family disputes, mediation operates alongside the settlement duty under Section 9 of the Family Courts Act and the work of court-annexed counsellors. The balance of power between spouses, and the presence of violence, determine whether mediation is genuinely voluntary.[48]

3.9 Overall Assessment of the Legal Framework

Indian law offers women a wide range of rights and remedies in family disputes, supported by constitutional equality and progressive judicial interpretation. Weaknesses remain. Personal laws produce unequal outcomes between communities. There is no matrimonial property regime. Overlapping maintenance proceedings in different forums create duplication. The Family Courts Act contains no mandatory screening for violence before settlement is attempted. Whether the framework produces gender justice therefore depends heavily on how courts apply and enforce it, which is examined in the next chapter.[49]

[46]Protection of Women from Domestic Violence Act, 2005, ss. 12, 17–23 and 26; *Satish Chander Ahuja v. Sneha Ahuja*, (2021) 1 SCC 414.

[47]Constitution of India, art. 39A; Legal Services Authorities Act, 1987, s. 12; Family Courts Act, 1984, s. 13.

[48]Mediation Act, 2023 (Act No. 32 of 2023); Family Courts Act, 1984, s. 9.

[49]See Chapter III, Parts 3.2 to 3.8 above.

CHAPTER IV

CRITICAL ANALYSIS OF GENDER JUSTICE IN FAMILY COURTS

4.1 Introduction

The previous chapter showed that Indian law offers women a broad set of rights in family disputes. This chapter evaluates how far Family Courts translate those rights into outcomes. It looks at access to the court, judicial attitudes, enforcement of maintenance, custody, the effect of counselling and mediation, and infrastructure and delay. Statements about the working of courts below are drawn from judicial pronouncements, official reports and doctrinal analysis; the study does not claim to offer original empirical findings.[50]

4.2 Access to Family Courts

The first barrier is physical and economic. Family Courts are not available in every district, and where they are not, a woman may have to travel considerable distances or approach courts that are not equipped for family cases. Court fees, lawyer's fees, loss of wages and childcare costs weigh on women with limited income, and a woman who has left the matrimonial home without resources may be unable to sustain a long case.[51]

Second, Section 13 of the Family Courts Act restricts the right to legal representation. The intention was to reduce adversarial litigation, but in practice many women do not understand the process, while the better-resourced spouse may secure effective legal assistance. Where the court does not appoint an *amicus curiae* or refer the woman to legal services, the restriction can aggravate inequality rather than reduce it.[52]

Third, social barriers matter. Stigma attached to divorce, family pressure to adjust, and lack of knowledge of rights deter many women from approaching a court at all. The courtroom environment may itself be intimidating, especially where a woman must share space with the opposite party or an abusive spouse.[53]

4.3 Judicial Approach and Gender Stereotypes

Courts are charged with applying law neutrally, but neutrality can mask assumptions. The Supreme Court's Handbook identifies stereotypes such as the idea that a wife must stay in the

[50]Family Courts Act, 1984; Protection of Women from Domestic Violence Act, 2005; Bharatiya Nagarik Suraksha Sanhita, 2023; National Judicial Data Grid, https://njdg.ecourts.gov.in/.

[51]Family Courts Act, 1984, s. 3; Constitution of India, art. 39A.

[52]Family Courts Act, 1984, s. 13; Legal Services Authorities Act, 1987, s. 12.

[53]See Committee on the Status of Women in India, *Towards Equality* (Government of India, 1974).

matrimonial home despite mistreatment, that a woman who works or is educated can easily maintain herself, or that complaints of cruelty by women are likely to be exaggerated.[54] Reasoning that is shaped by such assumptions affects findings on cruelty, desertion, entitlement to maintenance and the credibility of a woman's testimony.

The Supreme Court's own decisions show a movement away from such assumptions. *Joseph Shine* rejected the notion of the wife as the husband's possession, *Shayara Bano* invalidated an arbitrary form of divorce, and *Rajnesh v. Neha* recognised that a wife who is educated or capable of earning is not for that reason disentitled to maintenance, because the question is whether she can maintain the standard of living to which she was accustomed.[55] Whether such principles reach trial-level Family Courts consistently is a question of training and monitoring. At the same time, fairness requires that courts evaluate allegations on evidence, whoever makes them. Gender-sensitive adjudication is not the same as presuming one party's account, and it must also guard against both stereotyped assumptions about women and unfounded generalisations about misuse.

4.4 Maintenance and Its Enforcement

The principal difficulty with maintenance is not entitlement but realisation. Common problems include delay in deciding interim maintenance applications, under-disclosure of income by the paying spouse, orders fixed at amounts unrelated to actual earnings, and difficulty in recovering arrears, particularly where the husband is self-employed, works in the informal sector or relocates.[56]

The law provides enforcement tools, including recovery of arrears in the manner of fines and imprisonment for non-payment, but these are slow in practice and imprisonment does not generate money. *Rajnesh v. Neha* attempted to address several of these problems through mandatory disclosure affidavits, uniform criteria and directions on enforcement, including attachment of property and income. The effect of these directions depends on consistent application by Family Courts.[57]

A related concern is multiplicity of proceedings. A woman may need to file separate applications under the Bharatiya Nagarik Suraksha Sanhita, the Hindu Marriage Act, the Hindu

[54]Supreme Court of India, *Handbook on Combating Gender Stereotypes* (2023).

[55]*Joseph Shine v. Union of India*, (2019) 3 SCC 39; *Shayara Bano v. Union of India*, (2017) 9 SCC 1; *Rajnesh v. Neha*, (2021) 2 SCC 324.

[56]*Rajnesh v. Neha*, (2021) 2 SCC 324 (noting delay, non-disclosure and enforcement difficulties in maintenance proceedings).

[57]Bharatiya Nagarik Suraksha Sanhita, 2023, s. 144; *Rajnesh v. Neha*, (2021) 2 SCC 324.

Adoptions and Maintenance Act and the Domestic Violence Act, each with its own timeline and, at times, inconsistent orders. This increases cost and delay and weakens her bargaining position.[58]

The provision that disqualifies a wife living in adultery from claiming maintenance under the criminal procedure law also merits reconsideration in light of *Joseph Shine*, which held that adultery is not a criminal offence and that the law must not treat women as subordinate.[59]

4.5 Custody and Guardianship in Practice

Although the law makes the welfare of the child paramount, custody decisions are vulnerable to assumptions about parental roles. Mothers may be viewed as natural caregivers, which can disadvantage fathers who have been primary carers, and the same assumption can penalise women who work, who are in a new relationship or who are financially weaker. Allegations about a parent's character are sometimes used strategically, and the child may become an instrument in the dispute.[60]

The courts have indicated a better approach: attention to the child's actual needs and wishes, the continuity of care, and the importance of maintaining the child's relationship with both parents where safe. Practical measures such as structured visitation, child-friendly interviews and professional assessment are important but are unevenly available because of limited counsellors and child psychologists. Where a parent has been abusive, contact arrangements should ensure the safety of the child and of the other parent.[61]

4.6 Counselling, Mediation and Settlement

The settlement-oriented mandate is the most distinctive feature of the Family Court and also its most contested. Counselling and mediation can reduce acrimony, speed resolution and preserve relationships, especially where children are involved. Many women benefit from negotiated agreements that secure maintenance, residence and custody more quickly than litigation.[62]

However, settlement presupposes parties of comparable bargaining strength. Where one spouse is economically dependent, emotionally pressured or a victim of violence, "voluntary"

[58] *Rajnesh v. Neha*, (2021) 2 SCC 324.

[59] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 144; *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

[60] Guardians and Wards Act, 1890, ss. 7 and 17; *Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42; *Vikram Vir Vohra v. Shalini Bhalla*, (2010) 4 SCC 409.

[61] *Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42; *Vikram Vir Vohra v. Shalini Bhalla*, (2010) 4 SCC 409.

[62] Family Courts Act, 1984, ss. 9 and 12.

settlement may be an outcome of coercion or exhaustion. Emphasis on saving the marriage, reinforced by the statutory expectation that Judges are committed to preserving the institution of marriage, may lead to repeated adjournments for reconciliation in circumstances where reconciliation is neither safe nor desired.[63] Counsellors, who are often few in number and without specialised training in domestic violence, may unintentionally reproduce social pressures to adjust.

An effective approach would require screening for violence and coercion before referral to mediation, separate sessions where necessary, written informed consent, and judicial scrutiny of settlement terms, particularly those that waive maintenance or residence.[64]

4.7 Infrastructure, Procedure and Delay

The Family Court was designed to be quick and informal. Official data from the National Judicial Data Grid show substantial pendency of family cases, and practitioners and commentators commonly report that delay defeats the very purpose of the Act, although the precise position varies across States and should be checked against current official data.[65] Delay harms women in particular because interim relief may be their only source of subsistence during the case, and prolonged litigation affects employment, children's stability and mental health.

Infrastructure problems include a shortage of Family Courts and Judges, inadequate waiting rooms and security, lack of child-friendly spaces, and too few counsellors, welfare experts and legal aid lawyers. Procedural causes of delay include repeated adjournments, difficulties in serving notice, and multiple interim applications. The Act's intention that Judges receive training in family dynamics and gender sensitivity is not consistently met. Digital facilities, such as video conferencing for hearings and electronic filing, have increased access in some places, but they depend on reliable connectivity and digital literacy.[66]

4.8 Critical Assessment

The Family Court system has important strengths. It brings related disputes into one forum, offers privacy, enables informal participation, and has been supported by a body of progressive Supreme Court jurisprudence. Constitutional equality, the welfare principle in custody and the

[63]Family Courts Act, 1984, ss. 4 and 9.
[64]Mediation Act, 2023 (Act No. 32 of 2023); Family Courts Act, 1984, s. 9.
[65]National Judicial Data Grid, https://njdg.ecourts.gov.in/ (figures to be verified against the current dashboard).
[66]Family Courts Act, 1984, s. 3.

guidelines on maintenance provide a strong normative base.[67]

Yet the evidence indicates a gap between the law as written and as experienced. Delay, weak enforcement, gender stereotypes, limited representation, the pressure of settlement and under-resourced infrastructure all dilute the gender justice that the law promises. Reform must therefore concentrate on implementation: training, resources, enforcement and procedure, alongside targeted legislative amendments where the law itself creates inequality.[68]

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[67]See Chapter IV, Parts 4.2 to 4.7 above.
[68]See Chapter IV, Parts 4.2 to 4.7 above.

CHAPTER V

FINDINGS, SUGGESTIONS AND CONCLUSION

5.1 Introduction

The present research, entitled *"**A Study on Gender Justice in Family Courts,**"* has analysed whether Family Courts in India deliver gender justice in substance. It has examined the concept of gender justice, the history and features of Family Courts, the constitutional and statutory framework, and the practical working of the courts in relation to access, judicial approach, maintenance, custody, counselling and delay. The study followed a doctrinal and analytical approach, drawing on statutes, judicial decisions, official reports and scholarly writing.[69]

5.2 Findings of the Study

5.2.1 The legal framework is substantial. India has constitutional guarantees of equality, non-discrimination and dignity, a dedicated Family Courts Act, maintenance and guardianship laws, and protective legislation on domestic violence. The Supreme Court has strengthened these protections through decisions on maintenance, residence, divorce and equality within marriage.[70]

5.2.2 Substantive law is fragmented. Personal laws differ between communities, and a woman's rights depend on her religion. There is no uniform matrimonial property regime, and overlapping maintenance statutes lead to multiple proceedings.[71]

5.2.3 Access remains uneven. Family Courts are not equally available across districts. Cost, distance, stigma, limited legal awareness and restrictions on legal representation affect women, especially those who are economically dependent.[72]

5.2.4 Entitlement is stronger than enforcement. The principal difficulty in maintenance is delay in interim relief, under-disclosure of income and weak recovery of arrears. The directions in *Rajnesh v. Neha* provide a framework, but consistent application is required.[73]

5.2.5 Stereotypes persist in adjudication. Assumptions about marriage, motherhood and women's earning capacity can influence findings on cruelty, maintenance and custody. The Supreme Court's recognition of this problem is a significant step, but training and monitoring

[69]Constitution of India; Family Courts Act, 1984; Protection of Women from Domestic Violence Act, 2005; Bharatiya Nagarik Suraksha Sanhita, 2023; *Rajnesh v. Neha*, (2021) 2 SCC 324.
[70]See Chapter III above.
[71]See Chapter III, Part 3.4 above.
[72]See Chapter IV, Part 4.2 above.
[73]See Chapter IV, Part 4.4 above.

at the trial level are essential.[74]

5.2.6 Settlement-oriented processes need safeguards. Counselling and mediation can benefit parties, but they can disadvantage women where there is violence, coercion or economic dependence. The Family Courts Act contains no mandatory screening for violence before settlement efforts.[75]

5.2.7 Custody decisions need child-centred, gender-neutral assessment. The welfare principle is well settled, but practice may be influenced by assumptions about parental roles and by the strategic use of allegations. Expert assistance and structured contact arrangements are unevenly available.[76]

5.2.8 Infrastructure and delay limit the promise of the Act. Shortage of courts, Judges, counsellors and legal aid, and prolonged litigation, defeat the objective of speedy settlement and disproportionately affect women who depend on interim relief.[77]

5.3 Suggestions and Recommendations

5.3.1 Establish Family Courts in all districts. State Governments should ensure that a Family Court with adequate staff and facilities is available in every district, so that no woman is required to litigate family disputes in a general court or travel excessive distances.[78]

5.3.2 Consolidate maintenance proceedings. A woman should be able to obtain a single, comprehensive maintenance order that covers the various statutory sources, with provisions to avoid duplication and to set off amounts already awarded. Interim maintenance applications should be decided within a fixed time, ideally at the first hearing stage.[79]

5.3.3 Strengthen enforcement. Courts should apply the *Rajnesh v. Neha* directions strictly, including mandatory disclosure affidavits, attachment of salary and property, and verification of income through official records. Dedicated enforcement officers and electronic tracking of arrears would help recovery.[80]

5.3.4 Introduce screening for violence before settlement. Before referring parties to counselling or mediation, courts should screen for domestic violence, coercion and power imbalance. Where violence is established or credibly alleged, mediation should proceed only

[74]See Chapter IV, Part 4.3 above.
[75]See Chapter IV, Part 4.6 above.
[76]See Chapter IV, Part 4.5 above.
[77]See Chapter IV, Part 4.7 above.
[78]Family Courts Act, 1984, s. 3.
[79]*Rajnesh v. Neha*, (2021) 2 SCC 324.
[80]*Rajnesh v. Neha*, (2021) 2 SCC 324.

with the woman's informed consent and with safeguards such as separate sessions.[81]

5.3.5 Judicial and staff training. Judges, counsellors and court staff should receive regular, structured training in gender sensitivity, domestic violence, child psychology and the Supreme Court's *Handbook on Combating Gender Stereotypes*. Appointment practice should continue to prefer, as far as practicable, women Judges as contemplated by the Act.[82]

5.3.6 Ensure legal aid and representation. Legal services authorities should maintain panels of lawyers trained in family law and should be present in every Family Court. Courts should routinely consider appointing an *amicus curiae* where a woman is unrepresented and the other party has counsel.[83]

5.3.7 Recognise the value of homemaking and unpaid care work. The legislature should consider a statutory framework for fair division of assets acquired during marriage that recognises the contribution of non-earning spouses, and courts should account for unpaid domestic work when assessing maintenance and alimony.

5.3.8 Strengthen custody practice. Courts should be supported by trained child counsellors and psychologists, use child-friendly procedures, favour shared parenting arrangements where safe, and treat allegations about parental conduct with caution and on evidence.[84]

5.3.9 Improve infrastructure and use technology. Family Courts should have separate waiting areas, child-friendly spaces, security and counselling rooms. Electronic filing, online case tracking and video conferencing should be offered as options, with support for litigants who lack digital access.

5.3.10 Move towards uniformity in family law. Reform of personal laws, undertaken through consultation within communities and consistent with constitutional equality, should progressively remove provisions that treat women unequally. The Law Commission's work on reform of family law offers a starting point for such discussion.[85]

5.3.11 Collect and publish data. Courts and governments should publish disaggregated data on pendency, disposal time, maintenance awards and recovery, and settlement outcomes by gender, so that reforms can be evidence-based.

[81]Family Courts Act, 1984, s. 9.
[82]Supreme Court of India, *Handbook on Combating Gender Stereotypes* (2023).
[83]Constitution of India, art. 39A; Legal Services Authorities Act, 1987, s. 12.
[84]*Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42.
[85]Law Commission of India, *Consultation Paper on Reform of Family Law* (2018).

5.4 Scope of Future Research

Further research may include empirical studies of Family Court proceedings through court observation and interviews with litigants, lawyers, counsellors and Judges; analysis of recovery rates for maintenance orders; evaluation of the impact of the *Rajnesh v. Neha* directions; comparative study of unified family court models in other jurisdictions; the experience of men, transgender persons and children in family adjudication; and the effect of mediation on outcomes for women who have experienced violence.[86]

5.5 Conclusion

Family Courts were created to bring justice closer to families through a humane, conciliatory and accessible process. The legal framework within which they operate is broad, supported by constitutional equality and a progressive judiciary. The study finds, however, that gender justice in Family Courts is constrained less by the absence of rights than by their incomplete realisation. Delay, weak enforcement, persistent stereotypes, unequal access to legal assistance, pressure towards settlement and limited infrastructure combine to reduce the protection women are meant to receive.

The study therefore concludes that reform should concentrate on implementation and institutional capacity as much as on legislation. A Family Court system that screens for violence, enforces maintenance effectively, recognises unpaid care work, trains its personnel and provides legal assistance and a child-centred approach to custody can come closer to the constitutional promise of equality and dignity. Gender justice in the family ultimately requires courts that listen to women without stereotype and treat all parties fairly, and a legal system that ensures its orders are carried out.

[86] *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438; Supreme Court of India, *Handbook on Combating Gender Stereotypes* (2023).

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