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FAMILY COURTS AND WOMEN

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ABSTRACT :

Sociology of law is one of the sub disciplines of Sociology. It is the study of relationship between law and society and aims at studying the socio-legal phenomena. The present research paper will highlight the working of the Family Courts of Lucknow through a sociological analysis. The main objective was to look on how litigants get social justice after approaching the courts for their rights. The work is interdisciplinary in nature while the method of research will be exploratory. The work aims to present the social problems occurring in the court which might delay the resolution of cases deviating from the path from which the Family Courts were established. Various studies have been done which tells us how the courts shape the social, economic, religious and political issues. When laws are studied from a socio-cultural perspective, it reflects on how people relate to the courts or how court rulings actually shape the individual's behaviour. The study will give us detailed insight on how institution of justice consider law as a tool of social engineering and development.

Introduction

Prior to 1984, family and personal issues were resolved through ordinary civil proceedings taking many years to completely close the case and impart justice to the aggrieved party. So, the Family Courts were created in 1984 to secure speedy settlement of disputes either through conciliation or mediation. But while analyzing the functioning of Family Courts in 2023 after 39 years of its establishment, the situation is still the same as the cases go on for years and years. The focus point is how these Institutions of Justice are imparting justice to its citizens? And how the members of the society are looking at these Institutions? These questions impact the larger sections of the society. The present paper will highlight the working of Family Courts of Lucknow through a socio-legal perspective. It will study the cultural and behavioral aspect of lawyers and litigants within the court premises. The aim is to look at social justice after approaching the courts. The research will be interdisciplinary in nature using exploratory method. An extensive fieldwork was done in Lucknow Family Court. The work aims to present the social problems occurring within the court which might delay the resolution of cases for which the Family Courts were established. Various studies have been done which might tell us how the courts shape the social, economic, religious and political issues. When laws are studied from a socio-cultural perspective, it reflects how people relate to the courts or how court rulings actually shape the Individual's behavior. The study focuses on detailed insight on how Institution of Justice consider law as a tool of social engineering and development. The major credit for the establishment of Family Courts goes to several women associations, welfare organizations and individuals with a view to provide a forum for speedy settlement of family related disputes. Without their efforts and active participation, this would not have been possible. The act laid emphasis on the non-adversarial method of resolving family disputes and promoting conciliation and securing speedy settlement of disputes relating to marriage and family affairs. The Law Commission in its 59th Report (1974) had also stressed that in dealing with family disputes, the court ought to adopt and approach radical steps distinguished from the existing ordinary civil proceedings and that these courts should make reasonable efforts at settlement before the commencement of the trial. The Code of Civil Procedure was amended to provide for a special procedure to be adopted in suits or procedure relating to matters concerning the family.

Courts are of vital importance and all its decisions are revered by almost every civilian of the country. They are the last resort for addressing the grievances of an individual. The Indian Constitution has also given several rights to its citizens to approach the courts whenever they feel that their rights are hampered. Indian Courts have always been the male dominated sphere, so there are maximum possibilities of gender biasness within the existing institution. But the question is, does this bias exist even in the modern society in which we live? The existing research paper will look through the problems encountered by the women when they approach these legal institutions. The extensive fieldwork was done to have an insight over this problem.

Constitutional Provisions for Women

Indian Constitutions has also provided several provisions which prohibit discrimination among its citizens. Article 14 of the Constitution talks about equality before law or equal protection of law which indicates everyone is equal in the eyes of law. Article 15(1) prohibits discrimination against any citizens on the grounds of religion, race, caste, sex etc. Article 15(3) provides special provision enabling the state to make affirmative discrimination in favour of women.

Legal Provisions for Women

Various legislative measures have been enacted to prohibit discrimination against women and to safeguard them from all kinds of violence. Provisions under the Indian Penal Code include- Rape (Section 376 of IPC), Kidnapping and abduction for different purposes (Section 363-373), Homicide for Dowry, dowry deaths or their attempts (Section 302/304-B IPC), Torture both mental and physical (Section 498-A IPC), Molestation (Section 354 IPC), Sexual Harassment (Section 509 IPC), Importation of Girls (up to 21 years of age).

After various periodic amendments, some have been created which have special provisions to safeguard women and their interests, for instance, The Employees State Insurance Act(1984), The Family Courts Act (1954), The Special Marriage Act(1954), The Hindu Marriage Act(1955), The Hindu Succession Act(1956) with amendment in 2005, Immoral Traffic Prevention Act(1956), Maternity Benefit Act(1961) amended in 1955, Dowry Prohibition Act (1961), Medical Termination of Pregnancy Act (1971), Contract Labour (Regulation and Abolition) Act (1976), The Prohibition of Child Marriage Act (2006), The Equal Remuneration Act (1976), Criminal Law (Amendment) Act, 1983, Indecent Representation of Women Prohibition Act (1986), The Commission of Sati(Prevention) Act (1987), Protection of Women from Domestic Violence Act(2005)

Government Initiatives for Women

Both central and state governments have introduced a number of programs to give women more social, economic, and political initiatives. These programs seek to address concerns including financial independence, education, health, female safety, and gender inequality. By supporting equitable development and defending the rights of women, these initiatives contribute significantly to building a more equitable society. Some of the initiatives have been enumerated below:

Beti Bachao, Beti Padhao (BBBP)- This scheme was launched in the year 2015. Its main aim was to give attention to declining child sex ratio, promote girl child education and rights. Several mass media campaigns, community mobilization and education reinforcement programmes were carried out. It led to increased and improved awareness of girl child education in Haryana and Rajasthan.

Sukanya Samridhi Yojana (SSY)- This is a small savings scheme for girl child under 10 years age which matures at 21 years or marriage at 18 plus. New innovative schemes for marginalised women have been a significant step to ensure women's welfare and advancement. Solar Charkha Mission is one such scheme which empowers rural women artisans with solar-powered spinning technology, supporting employment and sustainable energy. Nai Roshni Scheme trains women from minority communities in leadership and self-sufficiency.

Many government schemes also address the issues related to the family courts to grant access to justice such as Nirbhaya Fund Initiatives. Though their aim is to provide gender justice, the challenges still remain embedded with the legal procedures and outcomes. It has been found that sometimes it leads to psychological impacts on women especially with children. They are frequently asked to interact with the accused on several occasions. This trauma is connected to long term effects such as anxiety, sadness due to lack of empathy towards them.

Some of the challenges faced by women in family courts are as follows:

Gender Bias and Discrimination

Women often face subtle and overt gender bias in courtrooms that reflect broader societal patriarchies. The following are the challenges that they face:

- **Societal Pressure and Stigma:** Sometimes women pursuing divorce or maintenance undergo societal judgment and familial rejection.
- **Counselor and Judicial Attitudes:** Although women are encouraged to serve as judges but patriarchal attitudes can lead to pressure on women to make reconciliation.
- **Limited Legal Awareness:** Many women are unaware of their legal rights, which leaves them susceptible to manipulation or dependent on legal representation.

There are some intersectional disadvantages too. It has been found that the marginalised section of women often face additional hurdles in accessing justice and navigating complex procedures.

Our country has more than 30,000 customary laws impacting the lives of women and girls. Tribal women in Maharashtra and Bihar filed a petition in the supreme court demanding land rights, several women groups like Saheli, Swayam, forum against women, and human rights lawyers groups, Indian Social Institutes have debated the issue of gender justice and secular family laws for over two decades. It is under this backdrop that family jurisprudence gained prominence in our country. (IMPRI, 2021)

The Family Court at Kaiserbagh, Lucknow, has undertaken reforms to improve efficiency and accessibility, including the introduction of online filing systems, though digital disparities continue to limit equal participation for some litigants (Mutual Divorce Online, n.d.). To enhance sensitivity toward women's experiences, initiatives have focused on gender training for court personnel and the appointment of experienced women judges and counselors, thereby fostering more empathetic adjudication in family disputes (Author, Year). Furthermore, judicial pronouncements across India have increasingly emphasized anti-stereotyping principles, with higher courts striking down legal provisions and practices that discriminate on the basis of gender (Centre for Law & Policy Research, 2024).

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