

FAMILY JUSTICE IN INDIA: LESSONS FROM GLOBAL FAMILY COURT PRACTICES

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Abstract

In this increasingly inter-dependent and interconnected world, overseas Indians are becoming ‘Global Citizens’. Even so, our shared culture and shared values bond all of us together. The Indian diaspora is a pluralistic community just as India is. It holds within its fold, people of different languages, faiths and regions. The spirit of India transcends the narrow barriers of religion, language, caste or class, both within and outside the Indian nation. More than 25 million people of Indian origin are settled abroad. Besides neighboring countries in Asia, a considerable amount of population has immigrated to the western countries like United Kingdom, Canada and United States of America (U.S.A). Therefore, to deal appropriately with the procedural technicalities faced by the Family Courts in India it is significant to observe and adopt the most viable practices adopted globally. However, on the basis of analysis it is to be seen as to whether the Indian system is equally prepared to adopt similar procedures/practices in its own jurisdictions considering several factors like demography, emotional set up of people, financial support from the government etc. Thus, this paper undertakes a comparative doctrinal and constitutional analysis of family court models in select foreign jurisdictions – including the U.K., Canada, and U.S.A., to identify institutional and procedural best practices. By giving particular emphasis on institutional innovations such as Unified Family Courts, CAFACASS-type child advisory models, mandatory information programmes, structured case management, and robust maintenance enforcement regimes, the study evaluates their relevance and adaptability to the Indian legal framework.

KEYWORDS: FAMILY COURTS ACT, 1984, FAMILY COURTS IN UK, CAFACASS, COUNSELLING, GLOBAL BEST PRACTICES, UNIFIED FAMILY COURTS, CHILD WELFARE.

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I Introduction

“When dealing with people, let us remember that we are not dealing with creatures of logic. We are dealing with creatures of emotion, bustling with prejudices and motivated by pride and vanity.”

- Dale Carnegie¹

Family Courts occupy a pivotal position in every society, serving as the foundational unit of social organisation. They play a significant role in the administration of justice, addressing disputes that directly affect familial relationships, individual dignity, and child welfare. Legal disputes arising within families relating to marriage, divorce, maintenance, child custody, guardianship, and domestic violence are distinct in character, as they involve not only legal rights but also emotional, psychological, and social dimensions. Recognizing the need for a specialized forum to address such disputes with sensitivity and efficiency, many jurisdictions across the world have established dedicated family courts with distinct procedures and objectives. In India, this recognition culminated in the enactment of the Family Courts Act, 1984 (hereinafter referred as FCA, 1984), which sought to promote conciliation, secure speedy settlement of disputes, and replace the traditional adversarial procedure by a less formal procedure.²

Despite the progressive intent of the FCA, 1984 the functioning of family courts in India has been subject to critical scrutiny. Issues such as mounting pendency, inadequate infrastructural support, lack of trained counsellors and inconsistent application of conciliatory mechanisms have diluted the effectiveness of the family justice system in India.³ Moreover, traditional adversarial procedures often aggravate familial conflict, particularly in cases involving children, thereby undermining the welfare-oriented philosophy that family courts are expected to uphold. The Supreme Court of India has repeatedly emphasized that family courts must adopt a problem-solving and child-centric approach rather than a strictly adversarial one.⁴

In contrast, several foreign jurisdictions have restructured their family court systems to respond more effectively to the complex realities of family disputes. Countries like Canada have developed integrated family court models that combine judicial adjudication

¹ Dale Carnegie, *How to Win Friends and Influence People* 29 (Simon & Schuster, New York, 1936).

² The Family Courts Bill, 1984, Statement of Objects and Reasons.

³ See generally, Law Commission of India, “59th Report on Hindu Marriage Act, 1955 and Special Marriage Act, 1954” (1974); Law Commission of India, “217th Report on Irretrievable Breakdown of Marriage” (2009).

⁴ *Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42; *Sheoli Hati v. Somnath Das*, (2019) 7 SCC 490.

with mandatory mediation, counselling, and risk assessment mechanisms.⁵ The United Kingdom has introduced procedural innovations and support structures to enhance access to justice for self-represented litigants, while the United States has experimented with problem-solving family courts and multidisciplinary interventions.⁶

Against this backdrop, a comparative analysis of family court models across jurisdictions assumes critical importance. Comparative law dissolves unconsidered national prejudices, and helps us to fathom the different societies and cultures of the world and to further international understanding; it is extremely useful for law reform in developing countries; and for the development of one's own system the critical attitude it engenders does more than local doctrinal disputes.⁷

II Legislative Framework of Family Courts in India

The progress of any society or a country is directly proportional to the quality of life its people enjoy. A marriage is the essence of a happy family life. Any conflict in marriage or a marital discord may result in the eruption of disputes in a family. And at this juncture, it is crucial to deal with such matters in a wiser & sensitive manner in order to avoid an irrevocable breakdown of the backbone of family i.e., marriage. The 'FCA, 1984' was part of the trends of legal reforms concerning women.

The Family Courts in India were established under the special regime of the FCA that helped in re-shaping the idea of gender justice & to take a progressive approach in dealing with such family matters with patience and prudence. For this reason, at the very outset, the preamble of the FCA, 1984 declares the objectives of the FCA, 1984 which is to promote conciliation in and to secure speedy settlement of disputes relating to marriage and family affairs and for the matters connected therewith. The very purpose of entrusting family disputes to the Family Court from ordinary civil court is to focus not on the rights and obligations of the disputants but on the interest of the parties and welfare of the subject

⁵ Federal Circuit and Family Court of Australia, *Family Law Practice and Procedure*. available at: <https://www.fcftoa.gov.au> (last visited on February 22, 2026); Also see, Department of Justice Canada, *The Family Justice System*. Available at: <https://www.justice.gc.ca> (last visited on February 22, 2026).

⁶ National Council of Juvenile and Family Court Judges (USA), *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*. Available at: <https://www.ncjfcj.org/publications/adoption-and-permanency-guidelines-improving-court-practice-in-child-abuse-and-neglect-cases/> (last visited on February 22, 2026).

⁷ Konrad Zweigert & Hein Kötz, *An Introduction to Comparative Law* 16 (Oxford University Press, Oxford, 3rd edn., 1998).

of the dispute.⁸ In order to impart gender justice, a Family Court has the following specialized procedure:

Predominance of Inquisitorial procedure:

Under the FCA, 1984, family courts primarily follow an inquisitorial system rather than the traditional adversarial model. Unlike the adversarial system, where lawyers control evidence and the judge acts as a neutral observer,⁹ the inquisitorial approach gives judges an active role in investigating facts and questioning witnesses. Lawyers have minimal participation,¹⁰ and the judge performs both investigative and adjudicatory functions. The objective is to make family court proceedings more informal, efficient, and expeditious.

Court's duty to persuade parties to settle matter at first instance:

§ 9 of the FCA, 1984 imposes a duty on Family Courts to make sincere efforts to promote settlement before trial. The Court must attempt reconciliation or amicable settlement, regardless of the nature of the dispute. Even in cases excluded from mandatory conciliation under § 23(2) of the Hindu Marriage Act, 1955, such efforts remain compulsory, as held in *Bini v. Sundaran K.V.*¹¹ The emphasis is both on trying rapprochement and in the alternative amicable settlement of the dispute.¹² Counsellors play a key role in this process, and adjudication begins only after all settlement possibilities are exhausted making this a unique feature of Family Courts.

Family Court can lay down a separate procedure:

Family Courts are empowered to adopt their own flexible and less formal procedures, departing from the traditional adversarial model. The process should be simple, empathetic, and adaptable to complex family disputes, with clear rules from initiation to enforcement. Emphasis is placed on simplified pleadings, pre-trial reconciliation, protection of children's rights, speedy resolution, and minimal technicalities. The ultimate aim is to promote amicable settlement, and where parties agree, the court may pass consent orders without a formal trial. This has been reinstated in the case of *K.S.Srinivas Rao v.*

⁸ *Neesha Hanifa v. Abdul Latheef*, (2022) SCC OnLine Ker. 1556.

⁹ Flavia Agnes and Geeta Ramaseshan while speaking at a Refresher Course organized by the National Judicial Academy (2018) titled "Family Courts: Developing the Relevant Judicial Persona".

¹⁰ The Law Reform Commission of Ireland, "Consultation Paper on Family Courts" (1994); See also John Wade, "The Family Court of Australia and Informality in Court Procedure" 27 *International and Comparative Law Quarterly* 820, 840 (1978).

¹¹ AIR 2008 Ker. 84.

¹² *Rakesh Harsukhbhai Pareskh v. The State of Maharashtra*, AIR 2011 Bom. 34.

D.A.Deepa where it was observed that the Court recognizes mediation as an effective mode of resolving matrimonial disputes and emphasizes that the object is genuine settlement rather than merely reducing court backlog.¹³ The power to choose the mode of procedure itself sufficiently indicates that a Family Court is not bound by any strictness of procedure of law as referred in the Civil Procedure Code, 1908, the Criminal Procedure Code, 1973, the Indian Evidence Act, 1872 etc. The most essential part is that the Family Court is only to devise procedure for fair conclusion of the proceedings.¹⁴

In-camera proceedings:

With the growth of the population litigation has grown tremendously and some disputes are such that in order to protect the honour and position of the parties to the litigation the proceedings should not be exposed to the public¹⁵ and the matters relating to family are some of those disputes. Thus, provisions related to *in-camera* proceedings is incorporated into the FCA, 1984 in order to keep the proceedings private and confidential as such matters may involve intimate issues that do not require to be exposed before the public. Furthermore, the possibilities of settlement of disputes increase by holding the proceedings *in-camera*.¹⁶ *In-camera* proceedings may be conducted at the initiative of either the Family Court or at the desire of either of the parties.¹⁷

Legal Representation of parties:

As per § 13, FCA, 1984,¹⁸ only partial legal representation of the parties¹⁹ is allowed by the Family Courts to ensure minimum intervention of lawyers and speedy disposal of matters. However, legal representation through lawyers is permitted as *amicus curiae* whenever required.

Provisions for providing support services or Auxiliary services:

Auxiliary service is an essential adjunct of the Family Court. No Family Court system can succeed without a well-organized support service. It is a logical concomitant of the Family Court system as they support reconciliation and reduce adversarial conflict. The FCA,

¹³ (2013) 5 SCC 226, paras 35-36.

¹⁴ *T. Anjana v. J.A. Jayesh Jayaram*, O.P. (FC) No. 127 of 2022, Kerala High Court; DoD: April 7, 2022, para 5.

¹⁵ Shriniwas Gupta, Preeti Misra, *E.L.Bhagiratha Rao's Marriage Laws & Family Courts Act* 442 (Asia Law House, New Delhi, 2017).

¹⁶ *Ibid.*

¹⁷ The Family Courts Act, 1984 (Act 66 of 1984), s. 11.

¹⁸ *Id.*, at s.13.

¹⁹ *Ibid.*

1984 provides for such support through § 5 (association of welfare institutions and experts), § 6 (appointment of counsellors and staff), and § 12 (engagement of medical and other specialists). These services ensure effective functioning and promote family welfare-oriented dispute resolution.²⁰

Judge can form an opinion of documents, even if not admissible under Evidence Act:

A Family Court may receive in evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Bharatiya Sakshya Adhiniyam (BSA), 2023 (replaced by the Indian Evidence Act, 1872).²¹

Flexibility in rules of Evidence:

Strict application of the Evidence Act (BSA) in Family Courts may defeat the purpose of the FCA, 1984, which aims at speedy and less technical resolution of family disputes. Therefore, detailed recording of evidence is not mandatory; instead, a brief memorandum of evidence, signed by the judge and witness, is sufficient.²² This approach, similar to order XVIII rule 13 of the CPC, ensures efficiency without compromising the court's authority.²³

Judgment:

Judgment shall contain a concise statement of the case, the point for determination, the decision thereon and the reasons for such decision.²⁴

III Family Court Practices in the United Kingdom

Concept of McKenzie friend:

The concept of *McKenzie's* friend for the first time evolved in 1970 in an English case titled *McKenzie v. McKenzie*.²⁵ A McKenzie friend is a lay assistant who may or may not possess formal legal training; there is no prohibition on engaging a legally qualified person, as the primary objective is to provide cost-effective support to a litigant with minimal involvement of a solicitor or barrister. The role is particularly significant for a

²⁰ *Supra* note 13.

²¹ *Supra* note 17, s.12.

²² *Ibid.*, s.15.

²³ *Supra* note 15.

²⁴ *Supra* note 17, s.17.

²⁵ [1970] 3 All ER 1034; See also, John Forsyth, "Little help from my friends" *The Scotsman*, May 4, 2009.

‘Litigant in Person’ who is either ineligible for legal aid or unable to afford professional representation.²⁶ A *McKenzie* friend may accompany the litigant in court, offer advice, moral support, and take notes (e.g., hearing dates or key observations), but cannot conduct litigation, file documents, or exercise rights of audience except as permitted under applicable Practice Directions in family courts of England and Wales. Fee-charging *McKenzie* friends are permitted in England and Wales, and a report of the Legal Services Consumer Panel has recognized them as a net benefit, observing that they “provide valuable support that improves access to justice in the large majority of cases.”²⁷

The legitimacy of disclosing confidential court documents to a *McKenzie* friend was affirmed in a 2005 decision concerning the children of Mr O’Connell, Mr Whelan, and Mr Watson²⁸, thereby reinforcing their role in family proceedings. Beyond England and Wales, the practice exists in Northern Ireland, the Republic of Ireland, New Zealand, and Australia. Singapore has adopted a modified version through the Lay Assistant Scheme (2006), enabling persons with some legal knowledge to assist unrepresented litigants in hearings, primarily on administrative and non-legal matters.²⁹

Position Statement:³⁰

A Position Statement is filed in advance and must be sent to the judge and the opposing party at least one day before the hearing. It is usually a concise document of one or two pages outlining a party’s position for that specific hearing. Such statements help present arguments clearly and succinctly, especially when judges are burdened with lengthy pleadings.

Unlike detailed pleadings, a Position Statement is a brief summary intended to save the court’s time. It should not include evidence, as evidence is provided separately through witness statements when required. The statement may be filed at each stage of the hearing process. It is generally sent *via* the court’s official email, with case details like party names

²⁶ Family Law Assistance: Supporting Children and their Families, Mckenzie Friend Organisation Ltd., Registered in England and Wales. Available at: <http://www.mckenzie-friend.org.uk/?forumid=823354> (last visited on January 23, 2026).

²⁷ Owen Bowcott, “Legal watchdog urges culture shift over fee-charging *McKenzie* friends” *The Guardian*, April 17, 2014.

²⁸ *Re O’Connell & Ors (Children)* Rev. [2005] 3 WLR 1191.

²⁹ Family Dispute Support Services: Charitable Community Organization, Family Court Hearing Support-*McKenzie* Friend Service. Available at: <https://www.fdss.org.nz/mckenzie-friend-service/> (Last visited on February 20, 2026).

³⁰ Rights of Women, “How to write a Position Statement for a Family Court hearing”. Available at: <https://rightsofwomen.org.uk/wp-content/uploads/2017/04/How-to-write-a-position-statement-FINAL.pdf> (last visited on July 31, 2026).

and case number clearly mentioned in the subject line to ensure proper delivery. To mention a few, following instances describes as what all may form the part of a Position Statement:³¹

1. Capacity in which parties are litigating and their relationship *inter-se*.
2. At the first hearing, the applicant must state the reasons for filing the case. The Applicant must also inform the court about any prior negotiations and whether urgent relief is sought, along with the grounds for urgency.
3. Whether the case filed before the court also involved domestic violence, whether parties are safely able to communicate with each other, whether their addresses are confidential.
4. The parties who are unable to engage a lawyer may be accompanied in court by a friend, relative, or professional for support. They must, however, submit the assisting person's details, such as a brief CV or in the format prescribed by the court.
5. It should briefly mention all relevant developments since the last hearing, including documents sent, received, or not received between the parties and the court.
6. In case, a party was unable to comply with any of the directions of the court then an explanation for such inability must be made which is to be recorded in the order of the court.
7. Any directions issued by the court that the party couldn't comply with.
8. The ultimate expectation of the litigant regarding the matter from the court.

Position Statement in matters of custody of children:

In custody-related matters, the Position Statement must outline each parent's relationship with the child and whether the other parent maintains contact, including any concerns in brief. It should clearly state the litigant's views on custody and visitation arrangements, along with any special needs of the child. If further evidence is proposed, the nature of such evidence (e.g., witness statements or school letters) must be specified. Parties must also file a Statement of Arrangements, as courts will not grant divorce or dissolution unless satisfied that proper arrangements for residence, visitation, and maintenance have been made. In the U.K., a non-resident parent does not automatically have a right to contact,

³¹ *Ibid.*

though both parents retain responsibilities, with mothers having parental responsibility at birth and fathers acquiring it if married to the mother.³²

Position Statement in matters related with finances:

In financial matters, a Position Statement must briefly state the party's current financial status, desired outcome, disclosure of financial documents (including any missing documents), and directions sought from the court, such as expert valuation or additional records. Such cases typically take five to eight months, though delays are possible, and experienced legal assistance may help reduce stress and time.³³

Provision related to decree nisi and decree absolute:

In the UK, divorce proceedings involve two decrees: decree *nisi* and decree absolute. Decree *nisi* is the first, provisional order granted when the court is satisfied that legal requirements for divorce are fulfilled, confirming that the grounds are proven. The parties need not be present when it is pronounced. Decree absolute is the final decree, granted upon application after at least six weeks and one day from decree *nisi*. It legally ends the marriage and may also be sought by the respondent if the petitioner fails to apply within the prescribed time.³⁴

Decree to be refused in certain cases:

Under § 4 of the Divorce Reform Act, 1969,³⁵ a respondent may oppose a decree *nisi* if divorce would cause grave financial or other hardship and it would be wrong to dissolve the marriage. Where the petition is based solely on the ground mentioned in § 2(1)(e) of the Divorce Reform Act, 1969, the court must consider all circumstances, including the conduct of parties and interests of children, before granting the decree.

It may be noted that as per § 2(1)(e) of the Divorce Reform Act, 1969 in the U.K., a marriage could be dissolved if the parties had lived apart for a continuous period of at least five years immediately preceding the petition, even without the consent of the other spouse. Thus, if the court is satisfied that serious hardship would result, the court may

³² *Ibid.*

³³ Sudershan Goel and B.S.Goel, *Burning Issues on Family Law in India (Including NRIs Problems)*, 321 (Walden Publishers, USA, 1st edn.,2014).

³⁴ *Ibid.*

³⁵ The Divorce Reform Act, 1969 (1969 chapter 55), s. 4.

dismiss the petition. “Hardship” includes loss of potential financial or other benefits the respondent might have gained had the marriage continued.

*Division of Matrimonial Property:*³⁶

In the UK, division of matrimonial property depends largely on the duration of the marriage, with longer marriages generally resulting in a more equal distribution, while the welfare of minor children remains the primary consideration. Courts assess factors such as the age of the parties, income and earning capacity, financial needs, standard of living, roles and contributions (including homemaking and childcare), and any physical or mental disability. Conduct is considered only where it would be inequitable to ignore it, particularly if it affects financial circumstances, such as concealment of assets or loss of earning capacity due to domestic violence. The court also accounts for future financial benefits like pensions and aims, where possible, for a fair division and a “clean break” between the parties after securing children’s needs.

CAFCASS and CAFCASS CYMRU:

In U.K., the disputes relating to children are specifically taken care by an organization called The Children and Family Court Advisory and Support Service (*hereinafter* referred as ‘CAFCASS’) or CAFCASS CYMRU (in Wales). The primary function of such services is to render advice, information and recommendations to the judge so as to help him in reaching a decision that may prove to be safe and beneficial for the child. Where a parent has made an application for child arrangements order or an application for a prohibited steps order or specific issue order, then CAFCASS will carry out background safeguarding checks before the first hearing and report to the court to highlight any safety issues.

This involves participation of the local authority and police. Even an officer from CAFCASS can also telephonically discuss the safety issues related to the child. CAFCASS may be called up by the court for further reports during the pendency of the case. An officer from CAFCASS helps the court in a way so that he may informally interact with the children and their parents at an individual level to find out their wishes and feelings.

³⁶ *Ibid.*

IV Family Court Practices in Canada

As per the Constitution of Canada, i.e.; the Constitution Act (1867), family law in Canada is an area of shared jurisdiction between the federal, provincial and territorial governments.³⁷ The main federal law is the Divorce Act³⁸, R.S.C.,1985, c.3 (2nd Supp.), which applies across Canada. There exist two parallel court systems namely the Provincial/Territorial Superior court that are presided over by federally appointed judges, and the Provincial/territorial Inferior courts that are presided over by the provincially appointed judges.³⁹ At present quasi- Unified Family Court model is prevalent as an alternative to the Unified Family Court.

The Unified Family Court Model:

The increasing complexity of family law matters in the 1970s was a key impetus for introducing the Unified Family Court conceptualized (*hereinafter* referred as ‘UFC’) Model. The Law Reform Commission of Canada in 1974 had introduced the UFC Model to address the shortcomings of the traditional approach used in family law. It focuses on unifying jurisdiction over all matters such as domestic relations or family dispute with juvenile cases. As compared to a non-unified family courts system, the Unified Family Courts greatly enabled better access to a specialized bench of judges and on-site dispute resolution and family justice services.

Furthermore, it helped in the effective management and resolution of family matters that return to court frequently or where multiple litigations are pending amongst same parties to the family disputes. Most unified family courts had certain elements in common. Some of which were the concepts like ‘one family-one judge’ or ‘one family-one team’, training for court staff in a wide range of issues that UFC families often bring before the court, an emphasis on non-adversarial dispute resolution, and a single court able to order whatever services are needed by adults and children in the household. Thus, it enabled the families to resolve all outstanding legal issues in a single forum, providing ‘one-stop shopping’ for family law services by unifying the jurisdiction of the federal government and the provinces into a single court.

³⁷ Department of Justice, Canada, “The Unified Family Court Summative Evaluation - Final Report”⁵ (March ,2009). Available at: <https://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/09/ufc-tuf/ufc.pdf> (last visited on July 31, 2026).

³⁸ Available at: <https://laws-lois.justice.gc.ca/eng/acts/d-3.4/> (last visited on July 31, 2026).

³⁹ *Supra* note 37.

Main features of the UFC Model included employing simplified, flexible procedures in a user-friendly environment, having specialist judges, and providing a full range of professional and community support services. A huge range of benefits could be offered by adopting a flexible procedure such as expeditious resolution of family matters thereby reducing the potential for further conflict, ease in accessibility to family courts and obtain other services most appropriate to their needs, and high possibility of better, long-term outcomes for children and their families.

Types of Dispute Resolution and Family Justice Services:

The UFC model includes a range of dispute resolution options and other supports for families experiencing separation or divorce. Examples of these mechanisms include:

1. *Mediation*: a non-binding process in which a neutral, impartial third party with no decision-making authority attempts to facilitate a settlement between disputing parties;
2. *Conciliation*: an approach that is essentially mediation with a third party who is more interventionist, and may shuttle between disputants who are unwilling to meet in person;
3. *Facilitation*: the use of techniques to improve the flow of information in a meeting between parties to a dispute, or in a decision-making meeting;
4. *Settlement conferences, case conferences and pre-trial conferences*: case management processes that involve an informal dialogue between a member of the judiciary, legal counsel and/or the parties, prior to a hearing or trial. The conferences tend to focus on either settlement or hearing preparation. Objectives can include settlement of issues and/or improving efficiency of the hearing through more thorough preparation; and
5. *Trial*: any process in which a judge hears each party's evidence and arguments and renders a decision that is binding on them.

The Family Justice Services may entail a greater range of options, the most basic of which are information services. One service that has recently been implemented on a large scale is the provision of family law information through Family Law Information Centres (*hereinafter* referred to as 'FLICs'). Literature regarding family law practices and proceedings is available online and in brochure or pamphlet form at all sites serving family law clients. In some instances, in-person information services and referrals are provided,

depending on the model adopted by each court location. A key benefit from providing these services is that self-represented individuals are given information about court processes, legal topics, court programs and other court services to assist them in navigating the family justice system.

1. *Parent information and education programs*: These are designed to help parents understand the needs of their children during separation or divorce and provide tools/advice. These programs may simply make information available to parents who choose to access it, or they may require that parents attend participatory sessions which may or may not be mandatory and/or may be ordered by a judge.
2. *Maintenance enforcement programs*: These are in place in all provinces/territories. These are usually administered separately from the court, although in some cases the courts may be involved, especially when variations to child support are required. All provinces/territories also have in place programs that deal with inter-jurisdictional support matters.
3. *Intake, review and/or referral services*: These services employ trained staff to help parties understand their issues and needs and identify the most appropriate resources and paths for each case and are typically accessed early in the process.

There are many other types of services such as legal advice lawyers, supervised access programs and other programs that target specific groups. The types of services developed and implemented are specific to the province/territory and are selected to meet community needs.

Cost-effectiveness of the UFC Approach:

The cost-effectiveness of the UFC approach was supported by an agreement during the 1998 expansion that provincial salary and benefits savings from judicial elevations would be reinvested in Family Justice Services (FJS). However, it is unclear whether and how these funds were specifically tracked or allocated, as they may not have been reinvested directly at UFC sites.

Streamlined Administration under the UFC Model:

The Unified Family Court (UFC) model streamlines court administration by requiring only one registry for all family matters, enabling frontline staff to develop specialized

expertise. Judges observe that maintaining two court levels for family cases is costly and inefficient. The UFC system promotes a coordinated service approach, where specialized intake staff help families navigate procedures, allowing judges to focus on substantive dispute resolution. It has also improved access to family justice information services, including Family Law Information Centres (FLICs) and intake services.

Divorcing a sponsored spouse in Canada:

One of the unique practices adopted in Canada is sponsoring one's spouse belonging to a country other than Canada. If a person has sponsored his spouse from another country, he is required to sign a sponsorship undertaking which remains in effect for three years after the person becomes a permanent resident, even if the parties are separated or divorced during that period. The sponsor is responsible for the basic needs of 'sponsored spouse' throughout the duration of the sponsorship undertaking. Such a provision provides legal security to a spouse belonging to a foreign country and is a protection against fraudulent spouses.

Consequences of non-payment:

Federal, Provincial and territorial laws set out a variety of tools to enforce support. If the federal government owes money to Respondent, that money may be taken and used to pay Applicant's support debt. The Family Orders and Agreements Enforcement Assistance Act⁴⁰ allow the government to take payments such as income tax refunds and employment insurance benefits for the payment of support. If a party earn income as a federal government employee or contractor, the Garnishment, Attachment and Pension Division Act⁴¹ allows the government to take part or all of that income to pay any judgment debt that the Respondent owe, including family support. The Garnishment, Attachment and Pension Division Act, 1985,⁴² also allow the government to take a part of certain federal pension benefits which that litigant employee receives. The pension benefits can only be taken to pay family support. They cannot be taken to pay any other debt.

Suspension of passport or federal licenses:

Under the Family Orders and Agreements Enforcement Assistance Act, 1984⁴³ maintenance enforcement program may request the denial or suspension of a Canadian

⁴⁰ Family Orders and Agreements Enforcement Assistance Act (R.S.C.,1985, c.4 (2nd Supp.)).

⁴¹ *Ibid* (R.S.C.,1985, c. G-2).

⁴² *Ibid*.

⁴³ *Supra* note 40, Part III, s.68-71.

passport. It can also request the denial or suspension of certain federal marine and aviation licenses. If a party already has a Canadian passport or one of those licenses, the government must suspend it at the request of a Maintenance Enforcement Program. A Maintenance Enforcement Program can make such a request only if the respondent has missed three or more payments or the respondent is behind in payment by \$3,000 or more.⁴⁴

If the passport or the federal license is suspended, it is important to return it immediately as instructed on the notice he /she has received. If the Respondent fails to comply with the directions to return his passport, it will become invalid. The penalty for non-compliance of the aforementioned conditions may be imposition of fine of up to \$5,000 or sent to jail for up to six months, or both.

Objectives of Federal Child Support Guidelines in Canada:

The Federal Child Support Guidelines are formulated with the following objectives:⁴⁵

1. To establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation;
2. To reduce conflict and tension between spouses by making the calculation of child support orders more objective;
3. To improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and encouraging settlement; and
4. To ensure consistent treatment of spouses and children who are in similar circumstances.

Marriage Contract:

There is also a concept of a Marriage Contract. Couples are free to make alternative arrangements in a marriage contract where in their opinion the law does not suit the kind of relationship they have. The couple can enumerate a long list of mutual expectations that they have from each other during their marriage. The list also includes that property which they are bringing into the marriage along with all its details like its net worth and to whom and how much share they own in that property. The parties may stipulate how they will

⁴⁴ *Supra* note 40.

⁴⁵ SOR/97-175. Available at: <https://laws-lois.justice.gc.ca/eng/regulations/sor-97-175/index.html> (last visited on August 1, 2026).

divide this property and make support payments, if their marriage ends. Thus, the parties are not under an obligation to divide their property equally. Moreover, they can also make plans for the education and religious upbringing of their children, even if their children are not yet born.

Practices related to Divorce proceedings:

Canadian divorce practices, particularly in Ontario, allow divorce without court appearance if parties mutually settle and establish grounds such as one-year separation, adultery, or cruelty. A Mandatory Information Program (MIP) educates separating families on legal and emotional aspects, and courts encourage settlement through conferences and mediation, issuing temporary orders where necessary. Married spouses have equal rights to reside in the family home until a court order otherwise, and decisions prioritize children's stability. The spousal support is based on the principle of economic partnership, considering factors like duration of marriage, roles, age, earning capacity, and ability to become self-sufficient, guided by advisory (non-binding) guidelines. Property division generally follows equal sharing of assets acquired during marriage, with certain exclusions (e.g., gifts, inheritance, and personal injury compensation), though the matrimonial home is shared fully, and deviation from equal division is allowed only in exceptional cases.

V Family Court Practices in the United States of America (USA)

Best Practices related to counselling in U.S.A:

It was also found that on an average those couples, who sought for counseling for at least 12 sessions, had shown a drastic improvement of 66% improvement in nearly 20 sessions.⁴⁶ Within Couple Therapy the modern states follow different sorts of couple counselling of which the two most frequently used therapies in resolving matrimonial disputes are Behavioral Couples Therapy (BCT), also known as Behavioral Marital Therapy and Emotionally Focused Therapy (EFT).

⁴⁶ Susan Gibert and M. Johnson, "Married with Problems? -Therapy May Not Help", *The New York Times*, April 19, 2005. Available at: <https://www.nytimes.com/2005/04/19/health/psychology/married-with-problems-therapy-may-not-help.html> (last visited on August 1,2026).

Behavioral Couples Therapy (BCT) or Behavioral Marital Therapy:⁴⁷

It is one of the earliest and most influential marriage counselling method that is followed by the family counselors in the USA. The therapy aims at making couples learn such practical skills that can help them to improve the quality of their relationship. The communication skills make the parties realize as to describe how that party feels ('I statement') rather than to point a blaming finger at other partner ('you statements'). This practice inspires couples to change their behavior in such a manner which can reduce negative relationship patterns between couples.⁴⁸ Though the therapy has been proved to be effective at several instances, but it doesn't always lead to long lasting change. The New York Report suggests that half of the couples though showed initial improvement in their relationship, but the relationship could not be prolonged after a year. That means that where the relationships are complex and mere one round of therapy may not be enough and this therapy would fail to work.⁴⁹

Emotionally Focused Therapy (EFT):

This therapy was developed primarily by Leslie Greenberg. A humanistic approach to treatment, it is designed to help people better accept, regulate, understand, and express their emotions. There is an active collaboration of the therapist and the person in therapy where both are viewed as equal contributors. The person in treatment, not the therapist, is seen as the person most capable of interpreting their emotional experience.⁵⁰ This technique is based on the idea that emotions should be used to guide healthy, meaningful lives. This theory is based on a scientific inquiry into the human emotional experience.⁵¹ Two key skills that are required during the session are:⁵²

- arriving at one's emotions through increased awareness and acceptance.
- Learning to transform emotions and better use the information they provide to avoid negative or harmful behaviors or other effects of certain emotions.

⁴⁷ L.S. Greenberg, "Emotion-focused therapy" 11 *Clinical Psychology and Psychotherapy* 3 (2004).

⁴⁸ Stephanie Hairston, "Does Marriage Counseling Work-Your Questions Answered" *OpenCounseling* January 20, 2020. *available at* : <https://www.opencounseling.com/blog/does-marriage-counseling-work-your-questions-answered> (last visited on August 1, 2026).

⁴⁹ JRyan Fuller, "Infidelity and Couple Therapy Outcomes." *New York Behavioral Team* ,*available at* : <https://www.newyorkbehavioralhealth.com/infidelity-and-couple-therapy-outcomes/> (last visited on August 1, 2026).

⁵⁰ GoodTherapy, "Emotion -Focused Therapy" June 22, 2018, *available at* : <https://www.goodtherapy.org/learn-about-therapy/types/emotion-focused-therapy> (last visited on August 1, 2026).

⁵¹ *Ibid.*

⁵² *Ibid.*

But on the otherhand this technique suffers from some anomalies as well. For instance: this technique would be of no use where the parties deliberately deceive or manipulate the therapist. Similarly, since it aims at improving a person's overall functioning and doesn't address specific symptoms. Therefore, it may not be that effective for people seeking treatment to reduce a specific mental health symptom.⁵³

VI. Conclusion and Suggestions

Family Courts play a crucial role in safeguarding dignity, protecting child welfare, and resolving sensitive disputes affecting the foundation of society. Comparative analysis of the United Kingdom, United States of America and Canada reveals a progressive shift from rigid adversarial adjudication to a holistic, service-oriented, and child-centric model of family justice. Mechanisms such as regulated lay assistance (*McKenzie* Friend), concise position statements, structured divorce procedures, hardship safeguards, independent child advisory bodies like CAFCASS, and the Unified Family Court (UFC) model demonstrate how specialization, coordinated services, and flexible procedures enhance both efficiency and fairness.

A comparative analysis of the family justice systems of the United Kingdom, the United States of America, and Canada demonstrates a significant global transition from traditional adversarial adjudication towards a holistic, multidisciplinary, and service-oriented model of family justice. These jurisdictions recognize that family disputes extend beyond purely legal questions and often involve psychological, financial, and social dimensions that require coordinated institutional responses. Accordingly, mechanisms such as regulated lay assistance through the *McKenzie* Friend system, mandatory Position Statements, structured Case Management, specialized judicial oversight, integrated counselling services, and independent child welfare institutions have substantially improved the accessibility, efficiency, and fairness of family dispute resolution.

The United Kingdom illustrates the value of procedural simplification and child-focused adjudication through innovations such as regulated *McKenzie* Friends, concise position statements, independent child representation through CAFCASS, and modernized divorce procedures that minimize unnecessary adversarial conflict. Similarly, the Unified Family Court (UFC) model in Canada represents one of the most comprehensive

⁵³ *Ibid.*

institutional frameworks for family justice. Its “one family–one judge” approach ensures judicial continuity, reduces conflicting orders, and promotes consistency in decision-making. The integration of mediation, counselling, parenting education, intake services, information centres, maintenance enforcement mechanisms, and structured child support guidelines reflects an approach that aligns legal procedures with the social realities of family disputes. Likewise, several family court practices in the U.S.A highlight the importance of judicial specialization, therapeutic interventions, alternative dispute resolution, and collaborative decision-making in achieving sustainable outcomes for families.

The comparative study further reveals that effective family justice depends not merely upon substantive legal provisions but equally upon institutional design, coordinated support services, simplified procedures, and timely enforcement mechanisms. While therapeutic interventions such as Behavioural Couples Therapy (BCT) and Emotionally Focused Therapy (EFT) have demonstrated considerable value in preserving relationships and improving parental cooperation, they should be viewed as complementary rather than universal solutions. Their effectiveness depends upon the willingness of the parties, the nature of the dispute, the presence or absence of domestic violence, and the broader socio-economic circumstances of the litigants. Accordingly, therapeutic approaches should remain voluntary, professionally supervised, and carefully integrated into the broader family justice framework.

Although the Family Courts Act, 1984 envisages a conciliatory and informal system of adjudication, the functioning of Family Courts in India continues to face significant challenges. Persistent delays, inadequate infrastructure, shortage of trained counsellors and psychologists, inconsistent mediation practices, limited child participation, procedural complexities, and weak enforcement of maintenance and custody orders often undermine the objectives of the legislation. The increasing number of self-represented litigants further highlights the need for greater procedural assistance and simplified court processes. These deficiencies indicate that legislative reform alone is insufficient unless accompanied by corresponding institutional strengthening and administrative modernization.

In light of the comparative analysis, the following reforms merit serious consideration for strengthening the Indian family justice system:

1. Introduce a regulated Lay Assistance Scheme to provide supervised procedural support to self-represented litigants while maintaining professional and ethical safeguards.
2. Mandate concise Position Statements before hearings to identify disputed issues, reduce unnecessary adjournments, and facilitate focused judicial intervention.
3. Implement structured case management conferences and judicial monitoring to ensure time-bound progression of family disputes.
4. Establish an independent child welfare advisory body on the lines of CAFCASS to provide objective assessments and represent the best interests of children before Family Courts.
5. Strengthen mediation, counselling, psychological support, and other therapeutic services by integrating qualified multidisciplinary professionals within Family Court institutions.
6. Develop comprehensive statutory guidelines governing matrimonial property division, spousal maintenance, and child support to promote consistency, predictability, and fairness in judicial decision-making.
7. Strengthen mechanisms for the enforcement of maintenance, custody, visitation, and child support orders through effective monitoring, technology-driven enforcement, and inter-agency coordination.
8. Promote digital filing systems, case-tracking platforms, intake services, online dispute resolution where appropriate, and time-bound disposal standards to improve accessibility and reduce procedural delays.

Comparative experiences show that an effective family justice system requires judicial expertise, accessible procedures, multidisciplinary support, institutional coordination, and effective enforcement. India should adopt relevant global practices selectively, adapting them to its constitutional values, legal framework, cultural diversity, and socio-economic realities. Integrating global best practices with indigenous legal principles can transform Family Courts into effective centres of adjudication, reconciliation, problem-solving, and social justice. Such an approach would advance the objectives of the Family Courts Act, 1984, fostering a more efficient, child-centric, responsive, and humane family justice system in India.
