

A lioness is shown in profile, roaring with its mouth wide open, revealing its tongue and teeth. It is lying down in a field of dry, yellowish-brown grass. The background is slightly blurred, showing more of the savanna landscape.

**Conflict cannot
survive without
your
participation.**

Wayne Dyer

Never ending conflict

- The sentence "Conflict cannot survive without your participation" means that conflict, in most cases, requires the active involvement of at least two parties to continue or escalate. If one party chooses to disengage, withhold their reactions, or refuse to fuel the conflict, it will eventually dissipate.
- It highlights the idea that you have agency and power over whether a conflict persists. Your participation, whether through arguing, retaliating, holding grudges, gossiping, or even just constantly dwelling on the issue, provides the necessary energy for the conflict to thrive. Without that energy, it starves and dies.
- **"Conflict cannot survive...": Conflict isn't a self-sustaining entity. It's a dynamic process that needs continuous input.**
- "...without your participation.": Your participation is the fuel.
- Verbal engagement: Arguing, shouting, criticizing, blaming, defending.
- Emotional engagement: Holding grudges, resentment, anger, bitterness, seeking revenge.
- Behavioral engagement: Retaliation, passive-aggression, sabotage, gossiping, spreading rumors.



Key Challenges to Family Courts in India

Is it a place to escalate injury or to heal injury?

- Family courts in India stand as the guardians of **familial harmony**, tasked with the delicate mission of balancing rights, relationships, and responsibilities. Yet, despite their noble mandate, they remain entangled in a **complex web of challenges** —
- challenges that are not merely procedural or logistical, but deeply rooted in the social conscience of our times

The objective is not merely adjudication of legal disputes, but also the preservation and restoration of family bonds where possible.

In other words, the family court is meant to be a space for **healing** rather than just fighting.

Noble mandate-
Entangled in the
social conscience
of our times

- Maintenance under Section 125 of the Code of Criminal Procedure. The court to protect her right to maintenance — that is the Right.. At the same time, the court must consider the child's **Relationship** with both parents — that is the relationship. Furthermore, it must ensure the **father's Responsibility** to support his family is enforced — that is the responsibility.
- ." Social prejudices, such as the **belief** that a woman's proper place is with her husband, or that she should "**adjust**" rather than claim rights, may unconsciously colour perceptions even in the courtroom. Additionally, the **extended family might exert pressure to settle** "for family honour," discouraging her from pursuing the matter legally.

Tension between law and life

family court aspires to safeguard familial harmony with empathy and fairness, its path is often obstructed by the deeply entrenched social conscience of our times.

The family court must tread a razor's edge:

It must *balance* the woman's legal right to maintenance against the husband's resistance.

It must *preserve* the father-child bond, ensuring that the father is not alienated from the child through a bitter legal battle.

It must *enforce* the statutory responsibility of the father while remaining sensitive to the dynamics of family breakdown.

Consequences and Pain of Delay — A Victim's Story

- Consider the case of Meena (name changed), a young mother who approached a family court in Chennai seeking maintenance for her 5-year-old son after her husband deserted them.
- She filed her petition in 2019.
- Owing to repeated adjournments, witness non-appearance, and procedural formalities, an interim maintenance order was passed only after 22 months
- . During this period, Meena worked long hours as a domestic worker to barely feed her son, while the **child dropped out of school for a year** because there was no money for fees.
- **The consequences were not merely financial:** Consequences were not from one direction but from three directions
 - **The child suffered social stigma for being out of school.**
 - **Meena's own mental health deteriorated due to anxiety and hopelessness.**
 - **The father, emboldened by delay, withheld further support and harassed her with threats of custody litigation to coerce her to withdraw the maintenance petition.**

The unforgiving backlog

- First and foremost is **the unforgiving backlog** — a silent monster devouring hopes of early resolution. Litigants come seeking swift justice but are met with interminable adjournments, where precious years of a child's growing-up, or an estranged spouse's struggle for survival, are lost to procedural slumber. This backlog is not just a statistic — **it is a heartbreak, a broken promise of expeditious justice.** On the ground, resource constraints mock the very idea of a sensitive justice system.
- **Inadequate infrastructure, absent counsellors, and untrained mediators** leave the family court a hollow promise, rather than a sanctuary of empathy. ADR mechanisms, though statutorily encouraged, struggle to flourish because conciliation demands trust — and **trust cannot thrive amidst overcrowded courtrooms and exhausted** |

Challenges to the Family Court :

Case Pendency and Delays:

Statistical Data on Backlog

According to the **National Judicial Data Grid**, as of January 2024, there were approximately 11 lakh (1.1 million) pending cases before family courts across India.

In certain metropolitan cities, family courts report a case disposal time of 3 to 5 years on average, even for routine matters like custody or maintenance.

For example, Delhi alone has over 70,000 pending family cases with an average pendency of 4.2 years.

Such figures are **not dry numbers**;

they represent **years stolen from the lives of children and parents,** caught in the procedural tangle

Consequences of Delay – Expert Commentary

- In the landmark **Law Commission of India Report No. 257 (2015)** on family law reforms, the Commission observed:
- “Family courts, due to chronic delay, become a graveyard of litigants’ legitimate expectations.”
- Where the interests of children are involved, delay is not merely a procedural defect but a profound moral failure of the justice delivery system.”
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- Reason: Overwhelming caseloads, shortage of judges, and insufficient infrastructure.

Why Procedural Flexibility Fails to Deliver

- Family Courts have too often functioned with the same procedural lethargy as ordinary civil courts. Let me explain with precision:
- **⌚ Adjourments abound** — though Section 10 envisions swift disposal, in practice adjourments are liberally granted, defeating the object of informal, time-bound inquiry.
- **⌚ Counsellors and mediation are underused** — though empowered to rely on social workers, judges frequently insist on traditional witness-based proofs, replicating civil trial procedure.
- **⌚ Section 14's latitude on evidence** — which could permit reliance on psychological reports, school certificates, or counsellor statements — is underutilised because many judges continue to demand “proofs” as per rigid civil standards.
- Thus, the spirit of flexibility is suffocated by the mindset of procedural orthodoxy.

Tragic lived example.

- In **Arun Kumar vs. Leela Devi (2021, Delhi Family Court)**, the wife sought maintenance for herself and her 8-year-old daughter.
- The husband contested paternity, demanding DNA tests.
- The Family Court had the option under Section 14 to admit the child's school records and family photographs as prima facie evidence to infer fatherhood and grant interim maintenance.
- Instead, the matter was adjourned repeatedly for "formal proof," stretching the litigation over 3 years

Section 10 permits the Family Court to devise its own procedure, free from the technicalities of the CPC, so long as principles of natural justice are followed.

- **☐ Time-bound schedules**

- • Judges may fix a strict timetable for each stage of the proceedings — completion of pleadings, evidence, arguments — with a default rule of no adjournment except on compelling reasons.
- • Ensure compliance with timelines through weekly cause-list monitoring.

- **☐ Mandatory pre-litigation counselling**

- • Before even listing for formal hearing, parties should be referred to trained counsellors attached to the Family Court, and reconciliation efforts documented.

- **☐ Minimalistic pleadings**

- • Accept concise, plain-language petitions, allowing parties (especially unrepresented women or rural litigants) to state their grievances without worrying about formal legal language.

Judicial Observations on Delay

- In *Smt. Swati Anil Sapate v. Anil Vishwanath Sapate*, 2015 SCC OnLine Bom 625, the Hon'ble Bombay High Court emphatically stated:
- "The entire purpose of creating family courts with a conciliatory approach would be defeated if cases continue to linger for years together.
- Where maintenance of a wife and children is in issue, the court owes a higher duty to ensure that such claims are decided with utmost expedition, for delay is a denial of their right to live with dignity."
- Likewise, the Hon'ble Supreme Court in *Shilpa Aggarwal v. Aviral Mittal* (2010) 1 SCC 591 observed:
- "Children of tender years cannot be made to suffer the uncertainties of protracted litigation. A child has a fundamental right to grow up in an atmosphere of love, security and stability, and courts must do all within their power to protect that right by ensuring swift adjudication

Statement of a Victim

Excerpt from an affidavit filed before the Family Court in Bengaluru in 2022, in a maintenance proceeding (names anonymised):

"My child has grown from age four to age seven in the shadow of this litigation. He has forgotten his father's face. I had to work two jobs to feed him because the case is pending for three years. The court keeps giving adjournments, but my child's hunger does not adjourn."

This is the raw pain of delay: a mother's exhaustion, a child's silent trauma, and a broken promise of dignified survival.

Judicial Reflection on Delay

The Supreme Court in *Imtiyaz Ahmad v. State of Uttar Pradesh* (2012) 2 SCC 688, while commenting on case delays, described it evocatively:

“Delay is a known defence of the guilty, a known weapon of the powerful. Justice delayed is justice denied.”

In family courts, the consequences of this delay are doubly harsh because they fracture not only a party's financial security but also the fragile fabric of a child's sense of belonging and stability.

Delays in
family
matters
have a
multi-
generational
effect

Children lose their formative years to insecurity.

Women, often primary caregivers, are pushed deeper into poverty.

Family relationships become poisoned by prolonged adversarial conflict.

, the “silent monster” of backlog is not simply a docket problem.

It is a living heartbreak, a broken , constitutional promise, where the hope of expeditious and sensitive justice shrivels in procedural darkness.

Amardeep Singh v. Harveen Kaur (2017) 8 SCC 746: Role of Judges

- **☐ Active judicial participation**

- • The judge must adopt a participatory approach — clarifying issues, helping parties frame points for decision — rather than passively following adversarial roles.

- **☐ In-camera proceedings**

- • Encourage parties to speak freely without fear of social stigma or exposure by holding proceedings confidentially under Section 11 of the Act.

- **☐ Use of technology**

- • Facilitate video-conferencing for distant parties, especially in maintenance or child access matters, to avoid travel hardship and delays.

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- The Supreme Court in Amardeep Singh v. Harveen Kaur (2017) 8 SCC 746 forcefully reminded:

“Family Courts have a **duty to advance the cause of justice**, **not be trapped by procedural cobwebs**. Their primary object is to achieve speedy settlement, preserving the welfare of the family as paramount.”

WHAT is the cultural conflict? WHY does this conflict arise?

- The “cultural conflict” refers to the tension between the formal legal process of the family court, which aspires to gender equality, children’s welfare, and rule of law, and the informal, traditional norms of Indian society that govern family behaviour.

The family in India is not merely a legal unit; it is a sacred social institution, bound by customs, hierarchy, religious values, and a collective sense of honour. These deeply rooted cultural patterns often resist judicial intervention, perceiving it as alien, disruptive, and even shameful.

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- Because the family court, by its very design, challenges traditional power structures — especially:
 - patriarchal norms (women’s subordination)
 - family elders’ authority over marital decisions
 - community dispute settlement through panchayats or religious councils

When a court asserts a woman’s independent right to maintenance or a child’s right to choose which parent to live with, it directly confronts social expectations of obedience and sacrifice. As a result, litigants themselves may face community backlash and social isolation for daring to approach formal courts.

"In a society where family is worshipped as an institution, any outside intervention is seen as a violation of its sanctity, even if that intervention serves the cause of justice." — Dr. Nilima Dutta, Family Courts (1992)

- In the case of ***Mohd. Ahmed Khan v. Shah Bano Begum (AIR 1985 SC 945)***, where the Supreme Court awarded maintenance to a divorced Muslim woman under Section 125 CrPC, Despite being a clear measure of gender justice, the judgment was fiercely opposed by sections of the community who saw it as an interference in personal law and an assault on religious tradition.
- The resulting political uproar even led to **legislative reversal by the Muslim Women (Protection of Rights on Divorce) Act, 1986.**
- This demonstrates, how courts may be seen as outsiders who threaten to unravel the community's traditional frameworks — however unjust they may be.
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Young Lawyers Association v. State of Kerala (2018) 10 SCC 1 (Sabarimala case):

- Ultimately, while cultural accommodation is necessary, the courts must draw a red line against customs that violate fundamental rights — be it child marriage, forced reconciliation in domestic violence, or discriminatory inheritance.
- ◆ As Justice Chandrachud wisely observed in Indian Young Lawyers Association v. State of Kerala (2018) 10 SCC 1 (Sabarimala case):
- **“The Constitution cannot be held hostage to social morality which breaches fundamental rights.”**
- This balancing act — respecting culture without sacrificing human dignity — is the highest calling of the family court.



Section 14 empowers the Family Court to receive any evidence which may help it arrive at truth, regardless of its strict admissibility under the Evidence Act.

Admit informal records

- Accept school records, doctor's notes, child welfare reports, police counselling records, even text messages or social media screenshots, as prima facie evidence, without insisting on formal proof.

❓ Child voice through experts

- Permit counsellors or child welfare experts to present the views of the child in custody disputes without subjecting the child to traumatic cross-examination.

❓ Short affidavits

- Instead of lengthy formal depositions, encourage short affidavits from family members, neighbours, and support persons, which may be taken on record with limited cross-examination.

Approach of Family Court

- **☐ Judicial discretion to weigh credibility**
- • The judge should proactively explain to parties that relaxed evidence does not mean blind acceptance — but rather an open mind to weigh relevance over technicality.
- **☐ Interim orders on broad materials**
- • Where prima facie documents support a claim (for example, bank passbooks showing income, or hospital bills), issue interim maintenance orders without demanding further strict proof.
- **☐ Expert reports**
- • Routinely rely upon reports from social workers, child psychologists, or protection officers to resolve questions of best interest of the child.

Adversarial System

vs.

Therapeutic Approach

- Impact: Family disputes are often treated like civil or criminal cases, leading to a "winner-loser" mentality rather than focusing on reconciliation and the child's future.

- Reason: Despite the Family Courts Act's intent for conciliation, the practical implementation often falls short, with lawyers and parties prioritizing legal victory over amicable solutions.

Lack of Uniformity and Infrastructure:

- Impact: Varies significantly across states and even within districts. Some courts lack basic facilities, trained counselors, and adequate support staff, which are crucial for sensitive family matters.



- Reason: Inadequate funding, planning, and focus on family court development.
- **Impact:** False or exaggerated cases can be used as leverage, adding to the acrimony and further harming the child's perception of their parents and the legal system.
- **Reason:** While laws are designed to protect, their misuse creates an environment of distrust and prolonged litigation.

Fragmented jurisdiction

- In practice, this fragmented jurisdiction leads to multiplicity of proceedings. Litigants are compelled to shuttle between diverse fora — family courts for matrimonial matters, magistrates under the Domestic Violence Act, civil courts for property partitions— each with its own procedure and delays.
- The result is a tangled web of litigation, which frustrates the very **promise of the family court to deliver holistic and timely justice.**
- If one may speak in terms of judicial delight, the solution lies in empowering family courts with a more comprehensive jurisdiction — a one-stop forum to resolve the entire constellation of family-related disputes

Limited Focus on Child's Voice and Psychological Impact

- Impact: While the "best interest of the child" is paramount, their emotional needs and preferences (especially for older children) are not always adequately heard or prioritized. The trauma of conflict often goes unaddressed.

- Reason: Lack of child psychologists/counselors attached to courts, limited understanding among some legal professionals of child psychology, and the difficulty of assessing true child preference amidst parental pressure.

Enforcement of Orders and Post-Custody Challenges

- • Impact: Even after custody orders are passed, issues like visitation rights and maintenance enforcement can remain contentious, leading to further litigation and continued instability for the child.
- • Reason: Limited mechanisms for effective post-judgment supervision and compliance.



The "Best Interest of the Child" - A Paramount Principle

This principle means:

Emotional and Physical Safety: Ensuring a safe, stable, and nurturing environment.

Developmental Needs: Supporting their education, health, and overall growth.

Maintaining Relationships (where safe): Facilitating healthy relationships with both parents and extended family, even if parents are separated.

Child's Preference (age-appropriate): Giving due weight to the child's wishes, especially for older children, but always within the framework of their overall welfare.



T. Anjana v. J.A. Jayesh Jayaram 2022 SCC OnLine Ker 2043

- The scope of enquiry in the Family Court is not confined with the evidence brought before it by the parties.
- The Family Court is competent to embark upon any enquiry to elicit the truth.
- **The master of the proceedings before the Family Court is the presiding officer of the Family Court and not the parties.**
- So long as the principles of fairness are followed and adhered to, the power of the Family Court cannot be questioned by the parties.
- If the Family Court is of the view that the opposite party would be affected or impacted, consequent upon not pressing the petition, it shall proceed with the case to find out the truth

A true temple of justice

In sum, the greatest challenge to the family court is this: to transform itself from a mere adjudicatory forum into a true temple of justice — a place where not just the legal issues but the human pain behind them are recognised and healed.

People and the system leave you with this provocation:

Can a court that fails to acknowledge the human heart ever hope to mend it?