CONTENTS

Declaration
Certificate
Acknowledgement
List of Tables
List of Figures
List of Abbreviations

Chapter I
Introduction
1.1 Relevance of the study 4
1.2 Objectives of the study 5
1.3 Hypothesis 6
1.4 Methodology of the study 6
1.5 Scheme of Chapters 7
1.6 Limitations of the study 8

Chapter II
Family Court: origin and development 9
2.1 Family 9
2.2 Family Law 14
2.3 Nature of family law in India 16
  2.3.1 Ancient Period 16
  2.3.2 Medieval Period 17
  2.3.3 British-India 19
  2.3.4 Post-independence 21
2.4 Family Court 23
  2.4.1 Concept of Family Courts 24
  2.4.2 Objects and Rationale of Family Courts 26
  2.4.3 Genesis of Family Courts 27
  2.4.4 Family Court Act of 1984 30
    2.4.4.1 Salient features of the Act 32
2.5 Family Law Legislations in India 33
2.6 Conclusion 38
Chapter III

Family Courts in India: An Analysis

3.1 History of Family Courts in India 40
3.2 Establishment of Family Courts 48
3.3 Constitutional Validity 49
3.4 Present Position of Family Courts in India 51
3.5 Functions of Family Courts 52
  3.5.1 Appointment of Judges 52
    3.5.1.1 Qualification for appointment as Judge 54
    3.5.1.2 Preferences for Appointment of Judges 55
    3.5.1.3 Age Limits 57
    3.5.1.4 Powers of Judges 57
3.5.2 Jurisdiction of Family Courts 60
  3.5.2.1 Territorial Jurisdiction 62
  3.5.2.2 Subject Matter Jurisdiction 62
  3.5.2.3 Jurisdiction related to Property Disputes 68
  3.5.2.4 Jurisdiction of High Court 73
  3.5.2.5 Exclusion of Jurisdiction and Pending Proceedings 76
3.5.3 Conciliation and Counselling in Family Court 78
3.5.4 Procedure of Family Court 90
  3.5.4.1 General Procedure 93
  3.5.4.2 In Camera Proceedings 99
3.5.5 Right to Legal Representation 101
3.5.6 Support or Auxiliary Service 110
3.6 Gender Justice in Family Courts 114
3.7 Conclusion 124

Chapter IV

Family Courts in USA, UK and Australia: A comparative study

4.1 Functions of Family Courts in USA 127
  4.1.1 Family Court and Divorce 131
  4.1.2 Property division proceedings 132
4.2 Functions of Family Courts in United Kingdom 136
  4.2.1 Background of the family court system 139
  4.2.2 Public law 140
  4.2.3 Private Law 140
  4.2.4 Mediation in Family Disputes 141
4.2.5 Family Courts in Marriage Matters 141
4.2.6 Forced Marriage Protection Orders 142
4.2.7 Domestic violence 142
4.2.8 Financial remedy 143
4.2.9 Adoptions 143
4.2.10 Judge’s role in a family case 144
4.2.11 Family Courts and Important Legislations 145

4.3 Functioning of Family Courts of Australia. 148
4.3.1 Overview of the Family Courts in Australia 148
4.3.2 Family violence action plan 153
4.3.2.1 Seminar series 153
4.3.2.2 Risk screening tool 153
4.3.3 Enhancing service through information technology 154
4.3.3.1 Case track 155
4.3.3.2 Live Chat 155
4.3.3.3 Twitter 156
4.3.3.4 You Tube 156
4.3.3.5 Video conferencing 156
4.3.3.6 Q-Flow statistics on websites 157
4.3.3.7 Commonwealth Courts Portal 157

4.4 Comparison of family courts in the USA, the UK, Australia, and India 158
4.4.1 Family, Marriage, Divorce 159
4.4.2 Functions of family courts 161
4.4.3 Access to Public services 161
4.4.4 Alternative Dispute Resolution 162

4.5 Conclusion 163

Chapter V
Family Disputes and Courts 164
5.1 Family and Marriage 165
5.2 Ceremonies of marriage 167
5.2.1 The Hindu Law 168
5.2.2 The Muslim Law 169
5.2.3 The Christian Law 170
5.2.4 Parsi and Jews 171
5.3 Essential conditions of a valid marriage 171
5.3.1 Void and voidable marriage 173
5.4 Annulment of marriage 177
5.4.1 Grounds of Annulment of marriage 177
  5.4.1.1 Bigamy 178
  5.4.1.2 Absence of the free consent 179
  5.4.1.3 Impotency 181
  5.4.1.4 Insanity/ Mental Disorder 182

5.5 Restitution of conjugal Rights 183

5.6 Judicial Separation 190

5.7 Divorce 190
  5.7.1 Theories of Divorce 193
    5.7.1.1 Fault Theory of Divorce 193
    5.7.1.2 Consent Theory of Divorce 194
    5.7.1.3 Theory of Irretrievable Breakdown of Marriage 195

5.8 Grounds for Divorce 196
  5.8.1 Fault grounds of Divorce 196
    5.8.1.1 Hindu Marriage Act 197
    5.8.1.2 Indian Divorce Act. 199
    5.8.1.3 Special Marriage Act 202
    5.8.1.4 The Muslim law 202
    5.8.1.5 The Parsi law 204
    5.8.1.6 Foreign Marriage Act 205
  5.8.2 Requirements for Mutual Consent Divorce 205
    5.8.2.1 Withdrawal of Consent 207
    5.8.2.2 Waiver of statutory period 208
  5.8.3 Requirement for Irretrievable Breakdown of Marriage 210

5.9 Right to Maintenance 215
  5.9.1 Maintenance under Matrimonial Statues 217
  5.9.2 Maintenance under the protection of women from Domestic Violence Act, 2005 218
  5.9.3 Maintenance under Section 125 of Cr. P.C 219
  5.9.4 Basis of the claim 220
  5.9.5 Procedure for claim maintenance 221
  5.9.6 Award of Maintenance 222
  5.9.7 Maintenance to wife 223

5.10 Guardianship and Custody of Minors 223
  5.10.1 Natural Guardian 226
    5.10.1.1 Rights of guardian of person 227
  5.10.2 Testamentary Guardians 228
  5.10.3 Guardian Appointed by the Court 228
  5.10.4 De-facto- guardian 228
Chapter VI
A Critique of Family Courts in Kerala

6.1 The State of Kerala

6.1.1 Family, Marriage and Family courts

6.2 Family Courts in Kerala

6.3 Family Courts (Kerala) Rules

6.3.1 Power of the State Government to make rules

6.4 Establishment of Family Courts in Kerala

6.4.1 The first phase of Family Courts

6.4.2 The second phase of family courts

6.4.3 The third phase of family courts

6.5. Critique of Family Courts in Kerala

6.5.1 Analysis of Family Courts in Kerala

6.5.2 Filing of Cases

6.5.3 Disposal of Cases

6.5.4 Pendency Cases

6.5.5 Divorce Cases

6.6. Counselling in the Family Courts: Challenges.

6.6.1 Procedure of Counselling in Family Courts

6.6.2 Different Views on Family Court Counselling.

6.6.3 Counsellors in Family Courts.

6.7. Challenges of Family Courts in Kerala

6.7.1 Inadequate and Poor State of Infrastructure

6.7.2 Judges in Family Courts

6.7.3 Pendency of Cases

6.7.3.1 Government

6.7.3.2 Lawyers
6.7.3.3 The judges 269
6.7.4 Speedy justice 269
6.7.5 Technology 270
6.8 Conclusion 271

Chapter VII
Conclusion and Suggestions 273
7.1 Major Findings 279
7.2 Suggestions 280
7.2.1 Legal Representation 280
7.2.2 Legal Aid and Counselling 280
7.2.3 Case management system 281
7.2.4 Timely settlement 282
7.2.5 Improvement of Administration 282

List of Cases 283
List of Statute 288
Bibliography 290
Webliography 302