

INDIA

Explained | The Family Courts (Amendment) Bill, 2022 and why it relates to only two States

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The Bill seeks to give validity to family courts in two States. Why was this amendment needed?



The story so far: On July 26, Lok Sabha passed a bill to grant statutory cover to already established family courts in Himachal Pradesh and Nagaland and retrospectively validate actions taken by them. The Family Courts Act was enacted in 1984 for the establishment of family courts by States to deal with disputes related to family and marriage. Union Law Minister Kiren Rijiju **introduced** the Family Courts (Amendment) Bill, 2022, as he urged State governments to set up family courts in all districts.

The Family Courts Act, 1984 and its provisions

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The law was passed to allow State governments to establish family courts to promote conciliation and ensure that disputes related to family affairs and marriage are promptly settled. It came into force on September 14, 1984.

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Under the Act, the setting up of family courts and their functioning comes under the purview of the State governments in consultation with their respective high courts. The Act also lays down provisions for the appointment of judges in family courts.

Notably, the Centre has to notify a date for the Act to come into force in a State where such courts have been set up. If there is no government notification, it raises questions about the jurisdiction and statutory powers of these family courts. “It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States,” reads Section 1(3).

What was the need for an amendment and why does it only concern two States?

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Two family courts were established in Nagaland on September 12, 2008, and three in Himachal Pradesh on February 15, 2019, via notifications issued by the two State governments. While Himachal Pradesh set up family courts in Shimla, Dharamshala and Mandi, Nagaland established two such courts at Dimapur and Kohima. However; these courts were functioning without any legal authority since no central notification was issued in this regard, as prescribed under Section 1(3) of the Family Courts Act.

The issue came to light last year after a petition was filed in the Himachal Pradesh High Court (Omkar Sharma vs. State of Himachal Pradesh). The plea contended that these family courts were functioning without jurisdiction since the Central Government had not issued any notification to bring into force the provisions of the Act in the State. It added that this would render void anything done or any action taken under orders issued by these courts.

The Court expressed serious concern and directed the Assistant Solicitor General of India to seek instructions from the Centre. The HC impleaded the Centre as a party in the matter.

Since there was no provision in the Act for the Centre to notify the establishment of family courts, the Union Law Ministry brought The Family Courts (Amendment) Bill, 2022 to address this lacuna. The amendment was brought with a view to tide over the legalities and “validate” and “save” all actions taken by the State Government and family courts, including the appointment of judicial officers and court staff. The amendment Bill was cleared by the Union Cabinet at its meeting held on July 6, as per news agency PTI.

What change has been proposed?

The Family Courts (Amendment) Bill, 2022 will amend the Family Courts Act by inserting a proviso to Section 1. The suggested new Section 3A extends the application of the Act to

Himachal Pradesh and Nagaland, with effect from the dates the family courts were set up.

“Provided that it shall be deemed to have come into force in the State of Himachal Pradesh with effect from the 15th February, 2019 and in the State of Nagaland with effect from the 12th September, 2008,” the proposed amendment reads.

Under Section 3A, all actions taken, appointments made and notifications issued under the Act in Himachal Pradesh and Nagaland before the commencement of the Family Courts (Amendment) Act, 2022 will be deemed valid. The document also says that all orders of appointment of a family court judge, and the posting, promotion or transfer of such a judge under the Act will also be valid in the two States.

“Every power exercised and function performed, every matter dealt with, every proceeding undertaken, every order, judgment, decree or sentence passed and every other act done by the family courts in the States of Himachal Pradesh and Nagaland before the commencement of the Family Courts (Amendment) Act, 2022 shall be deemed to be validly exercised, performed, dealt with, undertaken, passed or done under the provisions of this Act,” it adds.

- Family Courts (Amendment) Bill, 2022 was passed to allow State govts to establish family courts to promote conciliation and ensure that disputes related to family affairs and marriage are promptly settled.
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