

Bill No. 123 of 2022

THE FAMILY COURTS (AMENDMENT) BILL, 2022

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BILL

further to amend the Family Courts Act, 1984.

BE it enacted by Parliament in the Seventy-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Family Courts (Amendment) Act, 2022.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

66 of 1984. 5

2. In the Family Courts Act, 1984 (hereinafter referred to as the principal Act), in section 1, in sub-section (3), the following proviso shall be inserted, namely:—

Amendment of section 1.

“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.”

Insertion of
new section 3A.

3. After section 3 of the principal Act, the following section shall be inserted, namely:—

Validation of
certain
actions.

“3A. (1) The establishment of Family Courts 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 shall be deemed to be valid and always to have been valid as if the notification for appointing the date for bringing this Act in force in the States of Himachal Pradesh and Nagaland, as required under sub-section (3) of section 1, had been issued by the Central Government with effect from such dates. 5

(2) Anything done, any action taken, any appointment made, any duty performed, any rules made, any notification issued or purported to have been done, taken, performed, made or issued under this Act in the States of Himachal Pradesh and Nagaland prior to the commencement of the Family Courts (Amendment) Act, 2022 shall be deemed to have been validly done, taken, performed, made or issued, as the case may be, under the provisions of this Act. 10

(3) Every order of appointment of a person as a Judge of a Family Court and every order of posting, promotion or transfer, as the case may be, made under this Act in the States of Himachal Pradesh and Nagaland prior to the commencement of the Family Courts (Amendment) Act, 2022 shall be deemed to be validly made under the provisions of this Act. 15

(4) 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 prior to 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.”. 20

STATEMENT OF OBJECTS AND REASONS

The Family Courts Act, 1984 (66 of 1984) was enacted for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith.

2. Sub-section (3) of section 1 of the said Act provides that "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". The said Act has come into force on the 14th September, 1984 and as on April, 2022, there are 715 Family Courts which are established and functioning in 26 States and Union territories, including three Family Courts in the State of Himachal Pradesh and two Family Courts in the State of Nagaland.

3. Though the Government of Himachal Pradesh has established three Family Courts at Shimla, Dharamshala and Mandi *vide* notification dated the 15th February, 2019 and the Government of Nagaland has established two Family Courts at Dimapur and Kohima *vide* notification dated the 12th September, 2008, the Central Government notification under sub-section (3) of section 1 was not issued for bringing the said Act into force in those States.

4. The issue of lack of jurisdiction of Family Courts in the State of Himachal Pradesh has been challenged before the Hon'ble High Court of Himachal Pradesh in the case of Omkar Sharma *Versus* State of Himachal Pradesh and another in Criminal Revision Petition No. 180 of 2021 (CWP No. 2571/2021) stating that as the Central Government has not issued any notification to extend the jurisdiction of Family Courts in the State of Himachal Pradesh, such Courts are functioning without jurisdiction and anything done or any action taken under the said Act appears to be *void ab initio* and the notification issued by the State of Himachal Pradesh establishing the Family Courts is *ultra vires*, as the said Act was not in force in the State of Himachal Pradesh. The Union of India has been impleaded as a party and the matter is pending before that Court.

5. As the Family Courts in the States of Himachal Pradesh and Nagaland are functional ever since the date of their establishment and all actions taken by the State Government as well as the Family Courts are required to be validated and saved, it is proposed to amend the said Act.

6. The Family Courts (Amendment) Bill, 2022 *inter alia* seeks to amend the said Act to insert—

(a) a proviso in sub-section (3) of section 1 to provide for the establishment of Family Courts 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; and

(b) a new section 3A to retrospectively validate all actions under the said Act taken by the State Government of Himachal Pradesh and Nagaland and the Family Courts of those States prior to the commencement of the Family Courts (Amendment) Act, 2022.

7. The Bill seeks to achieve the above objects.

NEW DELHI;

KIREN RIJU

The 14th July, 2022.

ANNEXURE

EXTRACT FROM THE FAMILY COURTS ACT, 1984

(66 OF 1984)

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CHAPTER I

PRELIMINARY

Short title,
extent and
commencement.

1. (1) This Act may be called the Family Courts Act, 1984.

(2) It extends to the whole of India.

(3) 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.

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further to amend the Family Courts Act, 1984.

(Shri Kiren Rijiju, Minister of Law and Justice)