



JUDICIOUS APPROACH BY FAMILY COURT TO MAINTENANCE AND DIVORCE PROCEEDING

JUDICIOUS APPROACH

- ◉ Law + something
- ◉ Law is what is extracted through legal provisions and that something is what the experience teaches about human psychology
- ◉ Content of s 9 of Family Courts Act, Ss 5, 9, 10, 11, 13A, 13B and 14 of Hindu Marriage Act, O 32A CPC
- ◉ Unlike marriage which is a personal thing, divorce is a social issue for it impacts the structure of the society and affects the life style of children

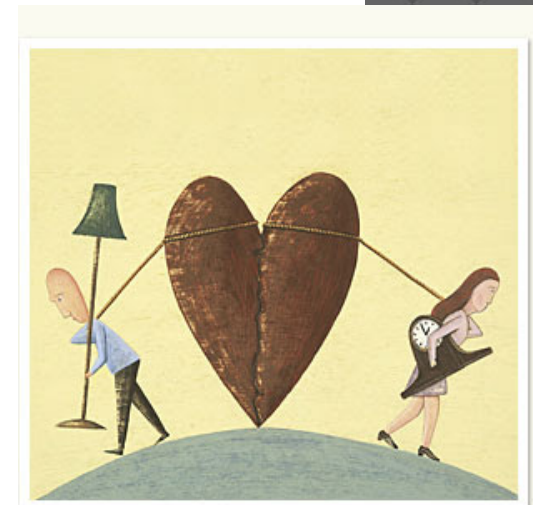
ATTITUDE OF FAMILY COURT JUDGE GENERALLY



- ⦿ Make room for parties to settle and not litigate
- ⦿ Initiate process of settlement at the earliest (*KA Abdul Jaleel v TA Shahida* (2003)4 SCC 166.)
- ⦿ Inbuilt mechanism in family court to refer to counselors
- ⦿ Keeping options for mediation/ conciliation at any time
- ⦿ Undertake trial work as an option of last resort
- ⦿ Ensure parties are at par in terms of ability to attend court without fear of harm and have substantial resources to carry through trial

PETITION FOR MAINTENANCE

- ◉ Proceeding under s 125 CrPC
- ◉ Interim maintenance in divorce proceeding
- ◉ Suit for maintenance and interim application for maintenance
- ◉ Adopting a secular approach to maintenance regardless of the religion that a party professes



MEANING OF MAINTENANCE

- ⦿ Not merely of the spouse but also of the child(ren)
- ⦿ Not merely provision for food and raiment but also of shelter
- ⦿ Not merely during the pendency of proceedings but for life time, if divorce is granted or till parties unite



GATHERING EVIDENCE

- ◉ Adopt informal approaches to gathering evidence about the economic status of parties
- ◉ Invoke provisions of the Protection of Women Against Domestic Violence Act and get protection officers gather evidence by visiting houses parties
- ◉ Do not always place the burden of proof on the spouse seeking for maintenance to gather evidence. Demand evidence from the party withholding evidence and who is capable of producing it



EXAMPLES OF BAD PRONOUNCEMENTS



- ⦿ The wife has miserably failed to produce proof that the husband has the money to meet the quantum of demand as placed by her
- ⦿ It is settled law that the plaintiff has to prove the case and the wife has failed to give establish the adequate means of the wife
- ⦿ Since evidence has to be collected only during regular trial, it is not possible to provide for interim maintenance

PROCEEDINGS FOR DIVORCE

- ⦿ Never take up trial before putting the matter for settlement
- ⦿ Good settlement is not necessarily a situation of both parties remain together, though it is ideal if the family stays put for community's larger good of stable families and protection of children
- ⦿ Award litigation expenses and maintenance to the spouse who is economically deprived as quickly as possible before pleadings and commencement of trial



INTERIM DIRECTIONS



- ◉ Maintenance
- ◉ Custody issues regarding children
- ◉ Admission and discovery of documents
- ◉ Ensuring shelter for woman and adequate protection against physical abuse and emotional blackmail
- ◉ Authenticity of signatures, thumb impressions, blood sampling, DNA ought not to be taken after the commencement of trial but shall be undertaken as soon as the pleadings sets are complete.

AT THE TIME OF PASSING FINAL ORDERS



- ⦿ Provide for permanent alimony
- ⦿ Matrimonial settlements and distribution of common property
- ⦿ Recognising the rights of parties to approach court for directions regarding custody of children
- ⦿ In case of ex parte orders, to ensure the service of the order personally on the person who has remained ex parte

UNDERSTANDING PERSONAL LAW ISSUES RELATING TO DIVORCE

- ◉ Effect of pronouncement of talaq in written statement
- ◉ Provision for maintenance during the period of iddat, with special reference to *Shamin Ara's case*
- ◉ Permissibility of divorce by mutual consent for parties who are Christians
- ◉ Permissibility of remarriage, when

