

FAMILY
COURTS; DEVELOPING THE
RELEVANT JUDICIAL
PERSONA

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OCTOBER 2018

CHALLENGE

- ▣ ADVERSARIAL FAULT FINDING
PERSONAL LAWS VS PROBLEM SOLVING
APPROACH
- ▣ COMPLEXITIES IN LITIGATION THAT
ENCOMPASS VARIOUS BRANCHES OF
LAW, SUCH AS CRIMINAL LAW,
CORPORATE, TRANSFER OF PROPERTY
ETC.

ROLE OF A JUDGE IN AN ADVERSARIAL SYSTEM

- ▣ Common Law system
- ▣ Presumes both sides to be equally pitted
- ▣ Appreciation of evidence is a crucial tactic and sometimes it is called “lawyer’s manipulation of truth.” Lawyers have control over the evidence in chief, cross and re examination
- ▣ Judge is expected to be a neutral observer

ROLE OF A JUDGE IN PROBLEM SOLVING APPROACH

“Judge has to take on a role of an administrator, collaborator, convenor and an advocate.” Judge Leonard Edwards, California.

Multiple roles- from an individualised legal determination (judgment) to broader conception of judicial leadership.

ROLE OF JUDGE IN A PROBLEM SOLVING APPROACH

- ▣ Problems to be addressed in a constructive rather than a punitive way
- ▣ Role of therapeutic justice-not only resolve the dispute but also resolve the underlying dysfunctions existing in the litigants and families

Challenges of this method

- ▣ Litigants and lawyers, who have a different understanding and expectation from the system
- ▣ Shift from a neutral position of a judge to a participant in the process
- ▣ Balancing the position of authority to one of a judge who mediates/settles the dispute

FAMILY COURTS PROCEDURE

- ▣ JUDGE CAN LAY DOWN A SEPERATE PROCEDURE
- ▣ VIDEO CONFERENCING,
- ▣ JUDGE CAN FORM AN OPINION OF DOCUMENTS, EVEN IF NOT ADMISSIBLE UNDER EVIDENCE ACT.