

REFRESHER COURSE FOR FAMILY COURT JUDGES [P-1278]

(22nd & 23rd January 2022)

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PROGRAMME REPORT

National Judicial Academy organized a two-day online Refresher Course for Family Court Judges on 22nd & 23rd January 2022, to facilitate the deliberation and sharing of insights and experiences between participant judges on contemporary themes. The course provided a platform to impart knowledge in adjudication of disputes by family courts such as psycho-social approaches; issues involved in matters of divorce, maintenance, custody & guardianship; tools & techniques for effective resolution of family disputes and use of counselling, conciliation & mediation. The course also facilitated accretion of knowledge and transmission of skills towards effective, speedy and quality adjudication. A brief snapshot of the scheme of the course spread over the duration of 2 days was:

Day-1

Session 1 - Understanding Family Disputes: A Psycho-Social Approach

Session 2 - Role of Judges in Divorce, Maintenance, Custody and Guardianship Proceedings

Day-2

Session 3 - Tools and Techniques for Effective Resolution of Family Disputes

Session 4 - Counselling, Conciliation & Mediation in Resolving Family Disputes-Relevance and Importance.

Day 1

22nd January 2022

Session 1

Theme: Understanding Family Disputes: A Psycho-Social Approach

Panel: *Justice Roshan Dalvi Dr. Harish Shetty*

The session on “*Understanding Family Disputes: A Psycho-Social Approach*” initiated with experience sharing. Participants were requested to share their experience as family court judges to highlight the challenges and approaches to deal with such challenges. Importance of interaction with litigants as human being than as a judge was stressed upon. The significance of marriage & family, as a set of institutions was elaborated. The evolution of family, components of a healthy family and causes of breakdown of marriage was explained and discussed with the help of hypothetical examples. The statistical data on mental health under different categories was placed before participants to highlight the mental health status in India. It was emphasized that many litigants in family disputes are struggling mentally. Participants were asked to give their views on emotional disorders & mental illness vis-à-vis marriage, based on case studies. Effective ways to establish conversation with litigants were discussed. Self-care methods such as awareness, debriefing, mindfulness, self-talk and self-audit were also highlighted in the session. Referring the judgement of *Sandeep Agarwal v. Priyanka Agarwal MAT. APP. (F.C.) 142/2020*, impact & consequences of mental disorder in marriage was discussed and elaborated.

Session 2

Theme: Role of Judges in Divorce, Maintenance, Custody and Guardianship Proceedings

Panel: Justice S. Vimala Dr. Aruna Broota

The session on “*Role of Judges in Divorce, Maintenance, Custody and Guardianship Proceedings*” commenced with posing two pertinent questions i.e., what is family? & What is marriage? It was explained as to how marriage as an institution and its interpretation has changed over a period. Relationship between marriage and society in context of its evolution was emphasised upon. Referring the Judgement of *Anu Bhandari vs Pradip Bhandari S.L.P. (Civil) No. 15537 of 2016*, the duties & responsibilities of family court were explained. It was emphasised that the family courts should involve itself in the process of conciliation/mediation between the parties for assisting them not only to settle the disputes but also to secure speedy settlement of disputes. Difference between individual interest & social interest was elaborated. Several statutory provisions such as, Section 9, 10, 14, 15, 20 and 21 of the Family Courts Act, 1984 were discussed. Judicial pronouncements on issues relating to audio-video recordings by spouses, powers of the matrimonial court to order a person to undergo medical tests, ‘privileged’ in respect of husband-and-wife communication and privacy were discussed such as *Deepti Kapur v. Kunal Julka, 2020 SCC Online Del 672, Tukaram S. Dighole v. Manikrao Shivaji Kokali, AIR 2010 SC 965 and Justice K.S. Puttaswamy v. Union of India 2017(10) SCC 1*.

Deliberations were made with respect to pertinent issues of custody and guardianship. Referring the judgement of *Rajnesh v. Neha, 2020 SCC OnLine SC 903*, the guidelines of the Supreme Court on the issue of maintenance of wife, covering overlapping jurisdiction under different enactments for payment of maintenance, payment of interim maintenance, the criteria for determining the quantum of maintenance, the date from which maintenance to be awarded,

and enforcement of orders of maintenance was discussed. Issues of child development, family dynamics, determination of best interest of child and visitation rights was also pondered upon. Deliberating upon the issue of mental health, it was pointed that litigants are facing several mental health problems and judges should take this into consideration during matrimonial adjudication. Stress was given on balancing individual right and the institution of marriage. Question as to how divorce impact children was also formed part of discussion in the session.

Day 2

23rd January 2022

Session 3

Theme: Tools and Techniques for Effective Resolution of Family Disputes

Panel: *Justice S.G. Gokani Dr. Harish Shetty*

The session on “*Tools and Techniques for Effective Resolution of Family Disputes*” commenced with introduction on marriage as an institution, its foundation and aims under the law. It was emphasized that foundation of the institution of marriage is built upon, trust, respect, tolerance and adjustments. Referring to Christopher Moore’s Circle of Conflict, several facets of conflicts viz. relationships, language, interest, structural and moral values conflict were explained. It was pointed out that differences among people and groups may arise due to various reasons viz. cultural, personality, opinions, and situations. Deliberating upon the key judgements of the apex court, pertinent areas viz. the mandate of speedy disposal in matrimonial matters¹, social responsibility & obligation on the members of the bar to upkeep social fabric of family life² and settlement of disputes through mediation³ were also discussed. Referring to ADR mechanism, the role of the court as a facilitator of strengthening institution of marriage and promoting peace, harmony and congeniality was stressed upon. Requirement for effective communication skills in mediation was emphasized. Many tools & techniques for effective resolution of family disputes viz. shifting locations of discussion, deep listening, use of metaphors in conversation and supportive counselling were explained during the session.

¹ *Sushil Kumar Sharma v. Union of India*, AIR 2005 SC 3100

² *Preethi Gupta v. State of Jharkhand*, AIR 2010 SC 3363

³ *K. Srinivas Rao v. D.A. Deepa*, AIR 2013 SC 2176

Session 4

Theme: Counselling, Conciliation & Mediation in Resolving Family Disputes-Relevance and Importance

Panel: *Justice Anu Malhotra Mr. Aman Hingorani*

The session on “*Counselling, Conciliation & Mediation in Resolving Family Disputes-Relevance and Importance*” began with sharing of data relating to family dispute settlement through mediation at Delhi to highlight the importance of mediation, counselling in resolving family disputes. Attention was drawn to infrastructure facilities at the mediation centers to point out its significance. Distinguishing features of matrimonial disputes from other kinds of litigation were highlighted. It was stressed that many factors play role in matrimonial cases viz. education background, sentiments, social compulsions, personal liabilities, responsibilities, emotions, views of the litigants regarding life in general and on institution of marriage, therefore, judges are required to approach and adjudicate matrimonial matters from various considerations.

Ethos of the family courts under the Family Courts Act was discussed. Mediation process and its benefits were also explained. It was mentioned that mediation is a structured process where a neutral mediator uses specialized communication and negotiation techniques to assist the parties in resolving their disputes. A comparative distinction between mediation-adjudication, mediation-arbitration, mediation-conciliation was explained as to highlight the effectiveness of mediation in resolution of matrimonial disputes. Salient features of The Mediation Bill, 2021 were also discussed. The session concluded with Q&A and discussion.