

NATIONAL CONFERENCE OF THE PRESIDING OFFICERS OF FAMILY COURTS

(9th – 11th January, 2015) (P-887)

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The National Judicial Academy organized the “National Conference of the Presiding Officers of Family Courts” during 9th to 11th January, 2015. This conference provided a forum to presiding officers of family courts to share views and express their problems with their counterparts. The aim was also to make them aware of the public perception of this special category of courts and to offer an opportunity to discuss ways and means to improve performance of these courts to meet the public expectations and to realize the objectives underlying their establishment. The resource persons in the conference included Hon'ble Ms. Justice Roshan S. Dalvi, Hon'ble Mr. Justice Alok Singh, Hon'ble Ms. Justice Manju Goel, Ms. Shamina Shafiq, Ms. Flavia Agnes, Ms. Pritarani Jha and Dr. Manju Mehta.

Following are the main issues discussed in the Conference.

Day 1:

The Conference began with an ice-breaking session wherein all the participants introduced fellow participants. **Session 1** dealt with the Functioning of Family Courts in India; An Overview was given by Ms. Shamina Shafiq, Member, National Commission for Women. The resource person emphasized that National Commission for Women is the apex national level organization of India with the mandate of protecting and promoting the interests of women and it cannot do much in the interest of women as courts remain the ultimate authority.

She delineated that matrimonial litigation is a horrifying truth for both the spouses and thus courts should hear not only wives but also husbands. She also expressed her concern towards the general belief that women file false complaints against their husbands and in laws. She stressed that it takes a lot of courage on part of a woman to go against her family and in most of the cases, aggrieved women wants reconciliation and not alimony.

She gave certain causes of concern in family courts, which includes, absence of uniform rules across the country, absence of fixed tenure of counselors in family courts due to which they sometimes leave in midsession of counseling, Non alignment and lack of coordination among NGOs and social workers across the country because of this, their services are not available in

small cities, complicated terminology used in courts are not understood by the litigants, women having a maintenance order in their favours cannot get regular maintenance as there is no follow up of such orders by the courts, sometimes the amount of maintenance is very inadequate, there is lack of speedy settlement of cases including maintenance applications and interim applications, apathy of lawyers towards the rights of women, after training at the time of appointment, there is no follow up training for judges. She also showed concern on lack of synergy between National and State women Commissions. She highlighted the purpose of establishing family courts in India which was to allow women to get justice without nitty-gritty of strict legal proceedings. She also added that these issues can be addressed by: simplifying the procedure in family courts and giving patient and compassionate hearings. The session ended with an open discussion wherein participants highlighted the practical difficulties in speedy disposal of cases and adopting summary procedure. It was said that advocates try to delay the proceedings by resorting to complicated procedure of regular courts and put baseless allegations against judges and even move to High Courts if summary procedure is adopted. Section 13 of the Family Courts Act was referred which does not allow advocates in family courts but only provides for appointment of *amicus curiae* wherever court deems fit.

The following suggestions came out in this discussion: Proving standard formats for simple applications including applications under Section 125 CrPC. For this, reference was made to 2 cases of Delhi High Court: *Puneet Kaur v. Inderjeet Sawhney and Sangeeta Vij v. Sanjay Vij*

The theme of the **Session 2** was Judging Women and Children in Family Disputes. Ms. Pritarani Jha, Advocate emphasized upon the major problems that women are facing in family courts like delay in completion of proceeding, filing of separate application under different statute, amount of maintenance awarded is much less than the standard of living.

The cases that were referred for Muslim Women (Protection of Rights on Divorce) Act, 1986: *Mohammad Ahmed Khan v. Shah Bano Begum (1985 SCR (3) 844)*, *Danial Latifi & Anr v. Union Of India ((2001) 7 SCC 740 3)*, *Shamim Ara v. State Of U.P. & Anr (MANU/SC/0850/2002)*, *Shamim Bano vs Asraf Khan (decided on 16 April, 2014)*, *Noor Saba Khatoon vs Mohd. Quasim (AIR 1997 SC 3280)*. The case of *Badshah v. Sou. Urmila Badshah Godse & Anr* was referred where the petitioner was already married but he duped the respondent by suppressing the factum of alleged first marriage. After this marriage both lived together and respondent No. 2 was also born from this wedlock. On these facts Supreme Court held that

petitioner cannot be permitted to deny the benefit of maintenance to the respondent, taking advantage of his own wrong. *S.R. Batra And Anr v. Smt. Taruna Batra* ((2007) 3 SCC 169) and *Sudha Mishra v. Surya Chandra Mishra* (Delhi High Court decided on 25.07.2014) was also referred whereby it was said that wife does not have any right over the property of her in laws. It was also emphasized that wherever possible, courts should rely more on those precedents which are women friendly rather than those which are against their interest.

Session 3 which was on Protection of Women from Domestic Violence Act, 2005 was delineated by Ms. Flavia Agnes. She expressed her concern on the implementation of the women welfare legislations and section 13 of the Domestic Violence Act was also discussed. She stated that Domestic Violence Act, 2005 is a gender focused legislation and defines the term domestic violence in a wide manner. The Act provides for a summary procedure and though it provides for a civil remedy, non compliance of order attracts criminal consequences. She stressed that the Act gives certain Forms which make it very easy for women to approach the courts even without advocates. She further stated that involvement of multiple courts add to their hardship. In the open discussion, participants pointed out the need for increasing the no. of family courts in India to clear the backlog of pending cases and speedy disposal of matters. In fact, some family courts do not have proper infrastructure and counselors to deal with the cases.

It was also concluded from the discussion that a family court is competent to grant remedy under DV Act also by virtue of Section 26 of the DV Act read with Section 7(2) (b) of the Family Courts Act. However, the remedy under DV Act cannot be sought independently, but along with some other application over which family courts have jurisdiction. This is also because Family Courts Act is procedural and DV Act is substantive in nature. **Session 4** was on Effective Use of ADR Methods in Resolving Family Disputes where Justice Manju Goel emphasized on different connotations of marriage, including emotional and irrational aspects attached to it. She stated that family disputes are different from other disputes. Thus, it is essential for family courts to hear parties and advocates first before looking at the pleadings. She also emphasized on the need of neutral judging in such cases. She added that effort for reconciliation is the statutory duty of every family court. For reconciliation, it is important that both spouses clearly know what remedy they want from the court. She stressed that sometimes children and in laws can be a solution for reconciliation and said that reconciliation is not a half an hour job, rather is a long process involving several sittings with the couple.

Day 2:

Session 5 was on the role of Family Courts in Maintenance and Divorce Proceedings in which Justice Alok Singh has stressed upon the need of family courts in India. He further said that marriage is social institution and if this institution breaks children are the biggest sufferers. He added that this institution can be saved by reconciliation of spouses. Thus, family courts should make efforts for reconciliation in chambers of judges. He also said that most of the matrimonial disputes can be resolved if judicial officers have patience and convince parties to settle. With regard to maintenance the resource person narrated that courts should take into account salary and property of husband and the standard of living of wife during the marriage and also said that the existing law is to grant 1/3rd of the husband's income as maintenance to wife and children is unequal and unjustified for women and children. The view came out that there should not be any straight jacket formula to calculate maintenance and it should depend upon facts and circumstances of each case. During **Session 6: Rethinking Role of lawyers in Family Courts** Ms. Pritarani Jha, Advocate emphasized upon training the lawyers practicing in family courts as the proceedings are different from regular civil and criminal courts. She also highlighted unwanted interference of lawyers can destroy the efforts for reconciliation, multiple adjournments by the lawyers lead to delay in disposal of matter, Judges faces frivolous complaints if they make try to dispose off a case in a summary manner.

In the group discussion, participating judges gave suggestion that a panel of lawyers should be set up for the family courts by the High Courts and lawyers only out of that panel should be allowed to appear before the family courts, that too only on the order of the judge. Remuneration of panel should be made by the Legal Services Authority. Further, this panel should be renewed regularly and power should vest with the Principal Judge to change the panel depending upon the requirement. This may lead to speedy and effective disposal of a case. **Session 7** was on Constraints Faced by the Family Courts in Effective Adjudication of the Matters. The moderator Dr. Amit Mehrotra divided all the members in five different groups and further asked the participants to discuss amongst the group members on the topic, which was followed by a presentation by any one group member.

After the discussion, the groups made some very effective suggestions like counseling of parties should be conducted simultaneously with mediation, Presiding officer can himself be the mediator, Family courts should have their own execution machinery for enforcement of the

orders of the family courts as existing machinery keeps family matters on the least priority, Trial of domestic violence cases by family courts over-burden them, Interim applications should be decided within specified durations by courts, In order to reduce documentation, family court should accept only memorandum from parties as is required by section 15 of the Family Courts Act, since family courts are heavily over-burdened number of cases in each such court should not exceed 1000. Also, it was suggested that there is a need of increasing number of family courts in India, In districts where family courts have been recently established rules and procedures should be displayed within the premises of the court in local language in order to acquaint litigants about them, there is a shortage and non availability of qualified staff in family courts which needs to be addressed by the government, there should be separate and independent family courts in each district.

Session 8 was on matters relating to Custody and Guardianship: Issues and Challenges. In the session Justice Roshan S. Dalvi circulated a legal problem on custody of child to all the participants and screened a documentary and emphasized upon weighing the pros and cons of giving custody to mother and father. She gave certain parameters which are to be considered by each court while granting custody of a child to either parent and stressed that supremacy should be given to 'welfare of child' which means rights of child and not rights of parents.

Day 3:

Session 9: Couple Therapy in Resolving Family Disputes- Relevance and Importance was dealt by Prof (Dr.) Manju Mehta who discussed the goals of the couple therapy. She stressed that since an attempt for reconciliation is mandatory for family court judges, the therapy may be extremely useful for them at times. Justice Dalvi stated that judges should not put their legal acumen in psychological matters. They should refer it to psychologist. Besides, judges should be empathetic and not sympathetic to the parties. **Session 10** was on Special Communication Techniques and Skills Required By Family Courts Judges whereby Justice Roshan S. Dalvi and Justice Manju Goel emphasized that judges should know very well how to communicate, both verbally and non verbally. Neutrality and Non judgmental aspects are very important which has to be kept in mind by the family court judges. The conference came to a conclusion with understanding that character of a judge is reflected in his judgments and to understand problems, family court require sentiments and empathy, but the judgments should be delivered as per the principles of law and equity.

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