

National Conference of Judges of the District Judiciary on "Adjudication of Issues Relating To Women and Children" P-843

Dates: 12th September to 14th September, 2014

Venue: National Judicial Academy

(Programme Coordinator--Dr. Amit Mehrotra, Assistant Professor, National Judicial Academy)

National Judicial Academy organized three days National Conference of Judges of the District Judiciary on "Adjudication of Issues relating to Women and Children" during 12th to 14th September, 2015. Total 26 judicial officers across the country have taken part in the conference.

This Conference was aimed to identify and analyze the constraints and challenges faced by judges in dealing with cases and implementation of the laws related to women and children. The objective of the conference was to discuss the peculiar challenges and special sensitivity that is been required by the judicial officers while adjudicating the core legal issues related to women and children. The purpose of the conference is to sensitize the judicial officers on the new developments of law that have taken place in this area. The resource persons of the conference include Hon'ble Mr. Justice V. Gopalagowda, Judge, Supreme Court of India; Hon'ble Ms. Justice Manju Goel, Former Judge, Delhi High Court; Hon'ble Mr. Hon'ble Justice R.Basant, Former Judge, Kerala High Court; Dr. Mrinal Satish Associate Professor of Law, NLU, Delhi and Advocate Mr. Anil Malhotra.

Dr. Balram K. Gupta, Director National Judicial Academy gave the brief introduction about the conference and welcomed the judicial officers and the resource persons of the conference. He stressed that National Judicial Academy provides a platform where the experienced best intellect minds meet together to ponder upon the delicate and sensitive legal issues and come out with the constructive solution with the help of the eminent resource persons so as to make the conference meaningful. Dr. Amit Mehrotra, programme coordinator of the conference gave an overview of the conference. Dr. Mehrotra initiated the conference with its introductory remark that where women are honored, divinity blossoms and where women are dishonored all actions no matter how noble, remains unfruitful. Through mother tender love great men are born. He narrated that on the other hand children are the great asset of any nation and no nation afford to ignore them. He further deliberated that unfortunately our country is facing dowry related problems, domestic violence and abuse, bride burning, sexual assault,

gender based abortion, gender inequality, child labour, child sexual abuse and trafficking of child and women. He stressed that this conference is particularly designed to focus on these sensitive issues and to identify and analyze the constraints and challenges faced by judges with regard to the implementation of the laws related to women and children. The theme of the **session one** was on Development in laws of Women and Children. The resource person Dr. Mrinal Satish deliberated the session and given the insights to the participants on the new developments in laws that has taken place with respect to the women and children.

The Theme for **session 2** was on **Child Custody and Private International Law**. The resource person for this session was Hon'ble Justice Manju Goel. She started the proceedings by conducting a simulation exercise and on the basis of that, conducted a small group discussion and presentation focusing on few pertinent questions based on the simulation exercise. Through this simulation exercise she sensitized the judicial officers on the issues of child custody with respect to the theory of best interest and welfare of the child.

The resource person discussed the few provisions explaining the concept of guardianship to the participants while focusing on section 6 and section 17 of the Guardianship and Wards Act, 1890. She further deliberated on the pertinent case laws which comprise of: Walker vs. Walker & Harrison (1981 N. Z. Recent Law 257), Sarita Sharma vs. Sushil Sharma (2000) 3 SCC 14, Surinder Kaur Sandhu vs. Hurbax Singh Sandhi (1984) 3 SCC 698, Sau Anasuyabai vs. Trymbak Balwant Rakshe (1985) CVC 60, Mohd. Ramzan Magrev vs. Tala & Ors. AIR 1983 J & K 70, Dhanwanti Joshi vs. Madhav Uncle (1998) 1 SCC 112, Smt. Ratnamanjari Sahu vs. Purna Chandra Sahu & Ors., 1985 (2) Hindu Law Reporter 129, Kumar V. Jahgirdar vs. Chethana Ramatheertha, (2004) 2 SCC 688, Bilkis vs. Munne Khan, 1987 (32) M.P.L.J. 430, Lekha vs. P. Anil Kumar (JT 2006) (10) SC 516 and Rajesh Kumar Gupta vs. Ram Gopala Agarwala (2005) 5 SCC 359, etc.

The resource person carried the discussion forward by elaborating the position of International law on the custody of child. She stated that the cases of parents who were separated and living in two different countries and both of them seeking the custody of the child have become a frequent subject for the courts. She discussed the two Hague conventions that were concluded over the last 23 years with a fundamental purpose to provide the practical machinery to enable the states to cooperate to protect children. It was disused that the 1980 convention on the civil aspect of the

International Child Abduction has been adopted by 75 countries and these countries are working together to protect the children from their wrongful removal or wrongful retention. Jurisdiction, applicability of law, recognition, enforcement and cooperation in respect of parent's responsibility for protection of children was also discussed.

It was deliberated that the UN Convention on the Rights of Child 1989 has been accepted by 129 states including India and it generally deals with the protection of Rights of Child and imposes conditions on the government to ensure the rights of the children. It was emphasized that the UNCRC declares that the children have right to live with their parents and children whose parents do not live together have right to stay in contact with both parents. Article 18 of the UNCRC which speaks that government must respect the responsibility of the parents for providing appropriate guidance to their children was also discussed.

The Hon'ble resource person stated that the Hague Convention of 1996 had the objective to determine the questions of jurisdiction in the matter of protection of the person or property of a child and provide recognition and enforcement of measures for protection of children in all contracting states. She concluded the session by discussing the relevant features of the 1989 UNCRC which includes: Article 9 (Separation from parents), Article 10 (Family reunification), Article 12 (Respect for the views of the child), Article 20 (Children deprived of family environment) and Article 21 (Adoption).

. In **Session 3** a documentary "Saving Face" was screened which was on acid attack of the women and depicted the atrocities that a women faces in the society. The documentary sensitizes the judicial officers on the problems and discrimination that women encounter in the society. After the documentary screening, the participants were divided into different groups and were asked to discuss on the major challenges that judges encountered while imparting justice to victim and also being requested to present pro active steps which can be taken by judicial officers while imparting justice to women victims.

In **Session 4** with regard to the protecting rights of women and children, the judicial officers stressed that there is a need to sensitize the judicial officers for speedy justice to women and children. It was also deliberated that technology plays a very vital role to adjudicate the issue fast and in a reasonable time frame. It was stressed that there is a need to change the mind set

while adjudicating such delicate and sensitive issue related to women and children. It was expressed that court plays a very integral role in implementing the legislation of prohibiting violence against women and children as it is the judicial officers who bear the responsibility for just outcome of the case. It was further emphasized that Judge should not record the evidence mechanically and should play an active part while recording the statements of the witness and should ask questions as and when required.

DAY 2

Session 5 was on **Adoption and Guardianship of Children: Role of Judiciary**. The resource person of the session was Advocate Anil Malhotra chaired by Hon'ble Justice Manju Goel. The Guardian and Wards Act 1890 were discussed in detail by the resource person. Intercountry parental child removal and the law were also discussed. It was delianted that The Hague Convention, a multilateral treaty provides an expeditious method to return a child taken from one member nation to another. It was stated that proceedings on the convention were concluded on 25th October 1980 and the Convention entered into force on 1st December 1983. It currently has 80 nation members worldwide. It was further deliberated that the convention seeks “to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for the rights of access.” It was discussed that India is not a signatory to the Hague Convention. “Inter-parental child abduction” is neither defined nor is it an offence under any statutory law in India. It was further delineated that illegal detention in requirement for Habeas Corpus is difficult to prove the illegality to invoke the remedy and stated that the only remedy is by way of becoming a guardian of one's own child. Some of the lank mark cases which were discussed during the discourse were Dhanwanti Joshi Vs. Madhav Unde; Ruchi Majoo v. Sanjeev Majoo (2011) 6 SCC 479; Dr. V. Ravi Chandran v. Union of India: 2010 (1) SCC 174, Arathi Bandi v. Bandi J. Rao Judgments Today 2013 (II) SC 48, Shilpa Aggarwal v. Aviral Mittal: 2010 (1) Supreme Court Cases 591, Paul Mohinder Guhan v. Selina Guhan: Delhi High Court Judgment; 130 (2006) DLT. The case of Shabnam Hashmi vs. Union of India (2014) 4 SCC 1 was also discussed in which it was emphasized that the Apex Court uphold the recognition of the right to adopt and to be adopted as a fundamental right and held that every person, including Muslims, irrespective of the religion is entitled to adopt a child.

The theme of the **Session 6** was on **Surrogacy as an emerging concern: Judicial Response**. Advocate Anil Malhotra was the resource person of the session chaired by Hon'ble Justice Manju Goel. Position of Indian law with respect to the surrogacy was discussed. Advocate Anil Malhotra delineated that Surrogacy in India is legitimate because no Indian law prohibits surrogacy. It was stressed that to determine the legality of surrogacy agreements, the Indian Contract Act would apply. Alternatively, the biological parent/s can also move an application under the Guardian and Wards Act for seeking an order of appointment for a declaration to be declared as the Guardian of the surrogate children born to the commissioning biological parent/s. It was further deliberated that in the absence of any law to govern surrogacy, the 2005 Indian Council of Medical Research (ICMR) Guidelines will apply. But, being non-statutory, they are not enforceable or justifiable in a Court of Law. It was further stressed that under Section 10 of the Contract Act, all agreements are contracts, if they are made by free consent of parties, competent to contract, are for a lawful consideration, are with a lawful object, and are not expressly declared to be void. Therefore, if any surrogacy agreement satisfies these conditions, it is an enforceable contract. It was further deliberated during the discourse that under Section 9 of Civil Procedure Code, it can be the subject of a civil suit before a Civil Court to establish all /any issues relating to the surrogacy agreement and for getting any declaration/injunction. The questions that were discussed during the discourse were (i) As to what would be the remedy available to biological parent/s to obtain exclusive legal custody of surrogate children (ii) how can the rights of the surrogate mother be waived off completely (iii) how can the rights of the ovum or sperm donor be restricted and (iv) how can the genetic constitution of the surrogate baby be established and recorded with authenticity.

The status of divorced biological parents in respect of the custody of a surrogate child was discussed and it was delineated that it should be determined in accordance with the surrogacy agreement between the parties. It was also stressed that there would be apparently no bar to either of the divorced parents claiming custody of a surrogate child. However, if the custody is contested, it may require adjudication by a court of competent jurisdiction. It was further emphasized that the biological parents would be considered to be the legal parents of the children by virtue of the surrogacy agreement executed between the parties and the surrogate mother.

It was further discussed that determination of rights of parties in a surrogacy arrangement is essential in respect of a foreign biological parent who wishes to take the surrogate child to his /

her country of origin or permanent residence can either be done through a declaration from a civil court and / or a guardianship order ought to be obtain to conclusively establish the rights of all parties and to prevent any future discrepancies arising in respect of any claims thereto. ART Regulation Bill 2010 was also been delineated and discussed by the resource person.

In **Session 7** a documentary “Ek Tha Bachpan” was screened to make the participants abreast of the issues of children and to sensitize the judicial officers on the injustice that juvenile in conflict with law suffers. After the documentary screening discussion on the Juvenile Justice system in India: its achievement and shortfalls was deliberated and discussed with help of the panel members which includes: Hon’ble Justice Manju Goel, Advocate Anil Malhotra, and Prof S.P. Srivastava. It was suggested that a State Commission be formed under the Commission for Protection of Child Rights Act, 2005 (CPCRA), in every State to look into the matters of protection of violation of Child Rights which are not visualized in other Acts.

The Theme of the **session 8** was on the **age determination enquiry under the Juvenile Justice Act**. Prof S.P. Srivastava has deliberated the session which was chaired by Hon’ble Justice Manju Goel and Advocate Anil Malhotra. Prof S.P Srivastava delineated on the very vital aspects of determining the age of a juvenile. The cases that were deliberated during the discourse includes: Brij Mohan Vs Priyabrat AIR 1965SC282, Biradmal Singhvi Vs. Anand Purohit, AIR 1988 SC 1796, Umesh chandra vs Rajasthan AIR1982 SC 1057, Gopi Nath Ghose V/s State of W.B A (1984) Supp SC 228, Pradeep Kumar Vs State of UP 1995Supp(4)SCC419, Bhoopram vs State of UP (1989) 3 SCC 1, Bholu Bhagat Vs State of Bihar (1997) 8 SCC 720, Daya Chand Vs Sahib Singh (1991) 2 SCC 438, Ram Deo Chauhan Vs Assam AIR 2001 SC 2231, Ravindra Singh Gorkhi Vs Up AIR2006 SC 2157, Babloo Pasi Vs Jharkhand 2008(13)SCALE 137, Jitendra Ram Vs Jharkhand 2006 Cri L J 2464(SC), Jyoti Prakesh Vs Bihar AIR 2008SC 1696, Pawan Vs Uttaranchal (2009)15 SCC 259, Hariram Vs Rajasthan (2009)13 SCC211, Raju Vs Haryana (2010)3 SCC 235, Shah Nawaz Vs UP AIR 2011 SC 3107, Om Prakesh Vs Rajasthan 1012 (4) SCALE 348, Aswani Kumar Saxena Vs MP (2012)9SCC 750, and Kulai Ibrahim Vs State 2014(8)SCALE178.

Session 9 was deliberated on **Matrimonial Offences including Adjudication issues of Domestic Violence**. Hon’ble Justice R. Basant, Advocate Anil Malhotra were the resource

person chaired by Dr. Balram K. Gupta. It was delineated that judicial system should be more responsible and gender sensitive to women's needs, especially in cases of domestic violence and personal assault. It was discussed during the conference that new laws should be enacted and existing laws should be reviewed to ensure quick justice. The objects and the reasons of the Domestic Violence Act were discussed. Definition of domestic violence, who can seek remedies under the law and what types of protection can be sought was also been deliberated and discussed during the discourse. The cases which include Santosh Bakshi Vs. State of Punjab AIR 2014SC2966 and Saraswathy Vs. Babu (2014) 3 SCC 712 was also being discussed during the discourse. It was further delineated that the culprit should be severely punished to give the message to the society.

The theme of the **Session 10** was on Maintenance to Women: Judicial Concern. Hon'ble Justice R. Basant, Advocate Anil Malhotra were the resource person of the session. The session was chaired by Hon'ble Mr. Justice V. Gopalagowda. It was delineated in the session that the law of maintenance in India is a need based requirement and has to be assessed and evaluated by the court depending on the facts and circumstances of a case. It was further discussed that there is no rigid or mathematical formula to determine the amount of maintenance. However, the Supreme Court has clearly held that time is the essence of the matter in such claims of maintenance and courts have been directed to decide all such claims expeditiously in the interest of parties. The verdicts of the Supreme Court cases were discussed in this regard which includes: Vinny Parmvir Parmar V. Parmvir Parmar (2011) 13 SCC112, Vishwanath v. Sau Sarla Vishwanath Agrawal, 2012 (7) Supreme Court Cases 288 and U.Sree v. U. Srinivas, AI R 2013 SC 415.

Dr. Balram K. Gupta, Director, NJA concluded the conference by expressing his heartfelt thanks and deep gratitude towards the judicial officers and to the eminent resource persons of the conference.

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