

NATIONAL JUDICIAL ACADEMY



NATIONAL CONFERENCE OF JUDGES OF THE DISTRICT JUDICIARY ON “LAWS RELATING TO WOMEN & CHILDREN” (P-909) FEBRUARY 20-22, 2015

PROGRAMME REPORT

By

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Background

The National Judicial Academy organized the National Conference of Judges of the District Judiciary on "Laws relating to Women and Children" on February 20-22, 2015 to focus laws relating to women and children, to analyse the impact of these laws and the problem areas associated with these laws. The programme sought to examine the various laws that relate to the rights and concerns of women and children with the aim of identifying whether these laws further the cause of women and children or are a greater source of misery and hardship to women and children.

The objectives of the conference was –

1. To examine the jurisprudence relating to women and children in India.
2. To discuss and analyze the impact of the laws relating to women and children.
3. To identify the problem areas in the law relating to women and children and to identify the reasons why certain laws prove to be detrimental to the cause of women and children.
4. To discuss and deliberate on the ways and means that judges can adopt in dealing with matters relating to women and children to ensure the effective application of the law to protect the interests of women and children.
5. To provide a forum to presiding officers of family courts to share views and express their problems with their counterparts

Day I

Introduction & Thematic Context

The programme commenced with an Introductory Address by the Programme Co-ordinator. The Programme Co-ordinator welcomed the participants and the resource persons to the Conference and set out the thematic context of the conference. The programme co-ordinator drew the attention of the participants to the plethora of laws that dealt with the issues relating to women and children and raised the question that whether these laws are achieving any success. The Programme Co-ordinator drew the attention of the participants to certain provisions of the law relating to women and children which seem to be detrimental to the interests of women and children. The Programme Co-ordinator also reminded the participants of constitutional vision of equality liberty and justice and the provisions of the Constitution of India that form the basis of the special provisions

made for women and children. With this, context, the Programme Co-ordinator urged the participants to think critically over the laws relating to women and children and to analyse its achievements and shortfalls.

Session I

The theme of Session I was **“Rights & Concerns of Women & Children- Constitutional Protection & Guarantees”**. The resource person for the session was Mr. Asheem Srivastava, Member Secretary, NCPCR. The resource person, with the aid of a PowerPoint presentation, identified and discussed the major provisions of law relating to children.

In his power point presentation the resource person dwelt on the major provisions of the Juvenile Justice Act and the Protection of Children from Sexual Offences Act, 2012. Mr. Srivastava focused on the issue of determination of the age of juvenility under the J Juvenile Justice (Care and Protection) Act, 2000. The resource person stressed on the objectives of the Act of establishing norms and standards in the approach to the care, protection, treatment, development and rehabilitation of children. The underlying object of reformation and rehabilitation of children in conflict with law and also the protection of children in need of care and protection was emphasized on. The provisions of the POCSO Act were delineated and the object of the Act in protecting children from a crime that preys on their innocence was brought to the fore.

After discussing the major provisions in these laws, Mr. Srivastava discussed the status of children in India as indicated by the recent surveys undertaken by Government agencies. Through this discussion, the resource person indicated that the laws have not achieved the purpose for which they were enacted.

The views of the participants were invited on the issue of non-effectiveness of the laws relating to children. Some of the participants were of the view that non-reporting of crimes against children especially sexual abuse and also in cases of child labour, prove to be a hindrance to the effectiveness of the law. Certain other participants expressed the view that the misuse of the provisions under the Juvenile Justice Act and certain other laws are also a concern. Discussion on the issue of the reduction of the age of juvenility from 18 years to 16 years found several opinions being expressed. Some participants shared their experience of dealing with cases where the juvenility of the child was misused by gangs to involve children in petty thefts so that the child would not be subjected to punishment as an adult.

Session II

The theme of this session was “**International Law relating to Women & Children and its Impact on Indian Law**”. The resource person for this session was Professor Ved Kumari, Faculty of Law, University of Delhi. In this session, the resource person dwelt on the major international conventions relating to women and children. Prof. Ved Kumari discussed the major provisions of the CEDAW and the CRC and the standards that they have sought to establish in law to guarantee certain basic and inalienable rights of women and children. The resource person then discussed the impact that these conventions have had on the law in India and the provisions of law that give effect to the CEDAW and the CRC. The resource person also dwelt on the reporting mechanism under the international conventions whereby India is required to give reports on the status of women and children in India and the action that has been taken by India to give effect to its obligations under the conventions. The resource person also discussed the international views regarding the age of juvenility and the scientific reasons behind the fixation of the age of juvenility at the age of 18 years. The resource person expressed her view that the Juvenile Justice Bill 2014 was contrary to the CRC and it puts Women’s rights and children’s rights in conflict.

Session III

The theme of this session was “**Recent Trends in Jurisprudence Pertaining to Disputes Involving Women & Children**”. The resource persons for this session were Ms. Flavia Agnes, Dr.Soumya Uma, Ms. Pritarani Jha, Ms. Nina Nayak.

Ms. Pritarani Jha – Ms. Jha presented an overview of law prevailing in relation to women and children. She also discussed the concept of Feminist jurisprudence and the prevalent understanding and misconceptions regarding this concept. Ms. Jha also dwelt on the gradual recognition under law as to the importance of courtroom atmosphere in the adjudication of cases relating to women and children. Ms. Jha also discussed the role of the police in investigation of cases relating to women and children and the prevalent distrust of the police and the reasons for such distrust.

Ms. Saumya Uma – Ms. Uma focused the discussions on two (i.e. Honour Killing and Acid Attacks) that have been in the spotlight and are gaining recognition as grave crimes against women and children. Ms. Uma discussed the crimes of Honour Killing and Acid Attacks, its impact on women and children and the legal

provisions that penalize these crimes. Ms. Uma also discussed the landmark judgments relating to these two crimes.

Ms. Nina Nayak – Ms. Nina Nayak focused on the POCSO Act, 2012 as a recent legislation relating to children. Ms. Nayak discussed the major provisions of the law. She discussed the areas of concern in the implementation of the Juvenile Justice Act and the POCSO Act and the role that commissions and non-governmental agencies can play in the effective implementation of the law relating to children.

Ms. Flavia Agnes – Ms. Agnes discussed the Criminal Law Amendment, 2013 and the major changes in the penal law relating to offences against women and children.

Session IV

The theme of Session IV was “**Social Welfare And Beneficial Legislations Addressing The Concerns Of Women And Children**”. The resource person for the session –Prof. Ved Kumari listed out the major social welfare and beneficial legislation in India that deal with the issues relating to women and children. Prof. Ved Kumari dwelt on the concept of beneficial legislation, the purpose of this type of legislation and the basis of this legislation in the Constitution of India. Prof. Ved Kumari, with the aid of simulation exercises, discussed the major issues relating to Matrimonial Cruelty, Rape and Juvenile Crime.

Prof. Ved Kumari also discussed the issue of the age of juvenility and expressed her opinion that according to scientific research, maturity does not set in persons before 18 years. Prof Ved Kumari also discussed the various scientific reasons for the involvement of children in crime and need to factor these studies in the course of the debate on the laws relating to children.

Day II

Session V

The theme for Session V was "**Protective Legislations Relating To Women**" and the resource persons for this session were Hon'ble Justice S. Vimala and Ms. Flavia Agnes. Ms. Agnes discussed the Muslim Women (Protection of Rights on Divorce) Act, 1986 and the protective provisions in this law. Ms. Agnes also traced the development of the rights of Muslim Women through the decisions of the Supreme Court in respect of the rights of Muslim women.

Hon'ble Justice S. Vimala stressed on the Constitutional basis of the protectionist approach to the rights and concerns of women and children and the need for judicial sensitivity towards the needs of women and children. Hon'ble Justice S. Vimala discussed the landmark judgment of the Supreme Court regarding sexual harassment of women in the workplace and the resultant legislation on this subject which was enacted almost 2 decades later. Hon'ble Justice S. Vimala also discussed the provisions of the Dowry Prohibition Act and highlighted the protectionist approach taken by the law makers and the judiciary in dealing with dowry cases.

Session VI

The theme of session VI was "**Penal Law Dealing With Sexual Violence against Women And Children**".

The resource person for this session was Prof. Ved Kumari, Ms. Nina Nayak and Ms. Bharti Ali.

Prof Ved Kumari – Prof. Ved Kumari discussed the law relating to sexual harassment and its evolution. The major provisions of International Law and its impact on the development of sexual harassment laws in India were discussed. Prof. Ved Kumari dwelt on the scope and ambit of the Sexual Harassment of Women At Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the conceptual understanding of sexual harassment as a criminal offence.

Ms. Bharti Ali – Ms. Ali focused on these points-

- Need for caution in directly taking cognizance of reports of offences under POCSO Act.
- Courts need to be innovative.
- Interviewing children particularly the young ones is difficult so the help of experts is taken.
- Cases of trafficking before POCSO Courts are also as often the traffickers try their best to get the child out of child protection system established under JJ Act.
- Victims have right to be legally represented by the lawyer of their choice.
- Where the offender is a minor, Juvenile Justice Boards are to assume the role of POCSO Court.
- Age enquiry of the victim has to be carried out as per Rule 12 of the Juvenile Justice Act.
- Victim Compensation under the POCSO Act.

- As far as possible, victim's examination-in-chief and cross examination should be conducted on the same day.

Ms. Nina Nayak - Ms. Nina Nayak spoke on the role of police and Child Welfare Committees and the role that they can play in cases of crimes against children and in the rehabilitation of child victims.

Session VII

The theme for discussion in Session VII was "**Penal Law dealing with Matrimonial Offences against Women**". The speakers of this session were Hon'ble Justice S. Vimala and Ms. Pitarani Jha.

Hon'ble Justice S. Vimala - Hon'ble Justice S. Vimala discussed the laws relating to the matrimonial offence of dowry death. Hon'ble Justice S. Vimala discussed the presumptions under Section 304B of the Indian Penal Code, 1860 and the shift of the burden of proof under the said Section. Hon'ble Justice S. Vimala also dwelt on the presumptions made in the penal law relating to matrimonial offences and the factors that necessitate such presumptions. Hon'ble Justice S. Vimala discussed the offences of the abetment of suicide of a married woman and dowry death. Hon'ble Justice S. Vimala further discussed the major Supreme Court decisions in matrimonial offences and the approach taken by the courts in dealing with matrimonial offences. Hon'ble Justice S. Vimala also discussed dying declarations and its use in matrimonial offence cases.

Ms. Pritarani Jha – Ms. Jha discussed the Protection of Women from Domestic Violence Act, 2005 as a mix of penal law as well as civil remedy in domestic violence cases. Ms. Jha stressed that domestic violence being a violation of the rights of women. Ms. Jha discussed the major provisions of the Act and the orders that could be passed in domestic violence cases. Ms Jha further dwelled on the ineffective implementation of the Domestic Violence Act and the reasons for the same. Ms. Jha highlighted the cultural and social factors that make it difficult for victims of domestic violence to resort to legal action.

Session VIII

The theme of this session was "**Protective Legislations Relating to Children**". The resource persons for Session were Prof. Ved Kumari and Ms. Bharti Ali. In this session, Prof. Ved Kumari discussed the provisions of the Juvenile Justice Act and the changes that the Juvenile Justice Bill of 2014 seeks to bring about in the juvenile justice system in India. Ms. Bharti Ali discussed the provisions of the Prohibition of

Child Marriage Act, 2006. Ms. Ali discussed the issue of custody in cases of child brides and the duty under law of the guardian in such cases

Day III

Session IX

In Session IX, the theme for discussion was "**Personal Laws Relating to Women**". The resource persons for this session were Hon'ble Justice S. Vimala and Dr. Aman Hingorani. In this session, Hon'ble Justice S. Vimala stressed on the Constitutional vision as expressed in the preamble and stressed on the need for the rights in marriage and in the family to be equal irrespective of religion and gender. Hon'ble Justice S. Vimala discussed the important judgments of the Supreme Court with respect to the rights of the parents in cases of guardianship and adoption. Hon'ble Justice S. Vimala also discussed the approach of the Courts in dealing with matrimonial cases with reference to certain landmark judgments. Dr. Aman Hingorani dwelt on the issue of diverse laws governing the personal lives of people and the need to create a uniform civil code governing the all people equally irrespective of their religion.

Session X

The theme of this session was "**Personal Laws relating to Children**". In this session the resource persons were Ms. Bharti Ali and Dr. Aman Hingorani. Dr. Hingorani discussed the provisions regarding guardianship and custody under the personal laws. Ms. Ali discussed the provisions of the CRC regarding the personal law applicable to children and the position of India with regard to the CRC. Ms. Ali dwelt on the rights of women under law and the unequal status of the mother in matters of guardianship and custody of children. Ms. Ali also discussed the issue of determination of best interest of the child in matters of custody and adoption and the legal provisions and recent judgments in this regard.

The programme concluded with the concluding remarks by the Programme Co-ordinator.