

**PROGRAM REPORT**

# **NATIONAL JUDICIAL ACADEMY**



**P-1191**

## **ORIENTATION PROGRAM ON CASES CONCERNING PERSONS RESIDING ABROAD**

23&24 November, 2019  
At National Judicial Academy (NJA), Bhopal

**PROGRAM COORDINATOR**  
**MR. YOGESH PRATAP SINGH**  
**FACULTY**  
**NATIONAL JUDICIAL ACADEMY, BHOPAL**

**RAPPORTEUR**  
**AKANKSHA TIWARI**

The National Judicial Academy (NJA) organized a two day “Orientation Program on Cases Concerning Persons Residing Abroad” from 23 – 24 November, 2019 at the NJA, Bhopal.

The program was designed to facilitate discussions on issues & challenges related to marriages, nationality and citizenship of overseas Indians. The objective was to acquaint participants on areas related to inter parental child removal, divorce, maintenance and alimony. Issues with respect to settlement of property, matrimonial offences and inter country adoptions were also part of discussions in the program.

The program included interactive sessions and round table discussions on designated themes among participant judges.

About 36 Judges from different High Courts participated in the workshop. The workshop was divided into various sessions over the duration of 2 days on following themes.

**SESSION 1**

Overseas Indians: Issues and Challenges in Marriages, Nationality and Citizenship

**SESSION 2**

Inter Parental Child Removal: Custody and Guardianship Issues

**SESSION 3**

Issues Relating to Divorce, Maintenance, Alimony and Settlement of Property

**SESSION 4**

Matrimonial Offences under IPC and Protection of Women from Domestic Violence Act, 2005: Jurisdiction and Enforcement Issues

**SESSION 5**

Inter Country Adoptions under the Juvenile Justice Act, 2015 and Adoptions under the Hindu Adoption and Maintenance Act, 1956

## PROGRAM SCHEDULE

TIMING	SESSION(S)
<b>Saturday</b>	<b>Day-1: 23.11.2019</b>
10:00AM -11:30AM	<p><b>SESSION 1</b></p> <p>Overseas Indians: Issues and Challenges in Marriages, Nationality and Citizenship</p> <p><b>Panel:</b> Ms. Geeta Ramaseshan <span style="float: right;">Mr. Anil Malhotra</span> Ms. S. Vani</p> <p style="text-align: center;"><b>Chair:</b> Justice Hima Kohli</p>
11:30AM - 12:00PM	<b>Tea Break</b>
12:00PM - 01:30PM	<p><b>SESSION 2</b></p> <p>Inter Parental Child Removal: Custody and Guardianship Issues</p> <p><b>Panel:</b> Ms. Geeta Ramaseshan <span style="float: right;">Mr. Anil Malhotra</span> Ms. S. Vani</p> <p style="text-align: center;"><b>Chair:</b> Justice Hima Kohli</p>
01:30PM - 02:30PM	<b>Lunch</b>
02:30PM - 04:00PM <b>Tea Break at 04:00PM</b>	<p><b>SESSION 3</b></p> <p>Issues Relating to Divorce, Maintenance, Alimony and Settlement of Property</p> <p><b>Panel:</b> Ms. Geeta Ramaseshan <span style="float: right;">Mr. Anil Malhotra</span> Ms. S. Vani</p> <p style="text-align: center;"><b>Chair:</b> Justice Hima Kohli</p>
<b>Sunday</b>	<b>Day-2: 24.11.2019</b>
10:00AM -11:30AM	<p><b>SESSION 4</b></p> <p>Matrimonial Offences under IPC and Protection of Women from Domestic Violence Act, 2005:Jurisdiction and Enforcement Issues</p> <p><b>Panel:</b> Mr. Anil Malhotra <span style="float: right;">Ms. S. Vani</span></p> <p style="text-align: center;"><b>Chair:</b> Justice A. Muhamed Mustaque</p>
11:30AM – 12:00PM	<b>Tea Break</b>
12:00PM - 01:30PM	<p><b>SESSION 5</b></p> <p>Inter Country Adoptions under the Juvenile Justice Act, 2015 andAdoptions under the Hindu Adoption and Maintenance Act, 1956</p> <p><b>Panel:</b> Mr. Anil Malhotra <span style="float: right;">Ms. S. Vani</span> Mr. Jaganaath Pati</p> <p style="text-align: center;"><b>Chair:</b> Justice A. Muhamed Mustaque</p>
01:30PM - 01:35PM	<i>Audit of the Course by Participant Judges</i>
01:35PM	<b>Lunch&amp; Departure</b>

## **SESSION 1**

Overseas Indians: Issues and Challenges in Marriages, Nationality and Citizenship

Chair: Justice Hima Kohli

Panel: Ms. Geeta Ramaseshan, Ms. S. Vani & Mr. Anil Malhotra

It was an interactive session. Basic idea of establishing family court, its effectiveness, various informal modes of settlement of family dispute and how it is different from regular courts was discussed briefly. Indian Diasporas and various aspects related to NRIs marriages were highlighted. Citing important theories, judgements of the High Court & Supreme Court, the Role of ADJs in matrimonial disputes was explained to participant judges. The session also covered matters relating to solemnisation of Indian marriages, validity of marriage ceremonies, registration of marriages and status of ceremonial marriages solemnised in India/abroad in respect of Persons Residing Abroad under Indian statues. Issues arising out of the Citizenship Act, 1955, Passports Act, 1967, the foreign marriage Act, 1969 and relevant provisions of the Constitution of India in respect of such matrimonial unions and their effect deliberated to update participant Judges on issues of nationality and citizenship in respect of overseas Indians. The session also highlighted applicability of basic principles of Private International Law with respect to issues pertaining to NRI marriages in India.

The following typical instances that arise in NRI marriages were discussed:

- Woman married to an NRI who is abandoned even before being taken by her husband to the foreign country of his residence.
- Woman brutally battered, assaulted, abused both mentally and physically, malnourished, confined and ill-treated and forced to flee or was forcibly sent back.

- A quick engagement, followed by a massive wedding, a huge dowry and a honeymoon, after which the NRI husband flies out of India while the wife waits for her visa.
- Woman who reached the foreign country of her husband's residence and waited at the international airport there only to find that her husband would not turn up at all.
- Abandoned in the foreign country with absolutely no support or means of sustenance or escape and without even the legal permission to stay on in that country.
- Woman who approached the court, either in India or in the other country, for maintenance or divorce but repeatedly encountered technical legal obstacles related to jurisdiction of courts, service of notices or orders, or enforcement of orders or learnt of the husband commencing simultaneous retaliatory legal proceeding in the other country.

## **SESSION 2**

### **Inter Parental Child Removal: Custody and Guardianship Issues**

**Chair: Justice Hima Kohli**

**Panel: Ms. Geeta Ramaseshan, Ms. S. Vani & Mr. Anil Malhotra**

This session looked at, custody, guardianship, care and control issues in respect of children removed from foreign jurisdictions in respect of parents of Indian origin. Jurisdictional conflicts, validity of foreign court orders and parental rights examined and discussed during the session. Important provisions of Guardianship and Wards Act, 1890, Code of Civil Procedure, 1908 and Hague convention on civil aspects of international child abduction, 1980 along with landmark judgments of the Supreme Court & High Court were discussed to highlight the development of law on the issue of inter-country inter-parental child removal.

Concept of best interest of the child and various factors that court should take into consideration under the Juvenile Justice Act, 2015 were also discussed in detail.

The general rules regarding custody were discussed and it was emphasized that in matters of child custody, the family court should develop a child-centric approach rather than a parental rights centric approach. A major concern which came to the forefront during the session was the issue of inter-county inter-parental child removal and the concept of parental abduction.

The concept of first strike and closest contact in determining jurisdiction of foreign courts and recognition of orders of foreign courts was also discussed in this session.

To highlight pertinent issues, followings Judgements of the SC were discussed in the session;

Ruchi Majoo v Sanjeev Majoo, (2011) 6 SCC 479

Nithya Anand Raghavan v State of NCT, (2017) 8 SCC 454

Lahari Sakhamuri v Sobhan Kodali, AIR 2019 SC 2881

### **SESSION 3**

Issues relating to Divorce, Maintenance, Alimony and Settlement of Property

Chair: Justice Hima Kohli

Panel: Ms. Geeta Ramaseshan, Ms. S. Vani & Mr. Anil Malhotra

This session focused on parallel divorce proceedings in India and foreign jurisdictions, validity of foreign court matrimonial judgements in respect of marriages solemnised in India, interim maintenance, division of matrimonial property/assets, settlement of permanent maintenance and related landmark judgements of the Supreme Court and High Courts.

Following judgements were discussed in the session;

Y Narasimha Rao and others v Y Venkata Lakshmi and others (1991) 3 SCC 451

Jagraj Singh v Birpal Kaur (2007) 2 SCC 564

Rupak Rathi vs. Anita Choudhary (2004)

Rajat Gupta v. Rupali Gupta 2018 SCC Online Del 9005

Participants were asked various hypothetical questions and questions based on decided cases to discuss & highlight pertinent issue and practical problems in resolution of cases concerning persons residing abroad.

#### **SESSION 4**

**Matrimonial Offences under IPC and Protection of Women from Domestic Violence Act, 2005:  
Jurisdiction and Enforcement Issues**

**Chair: Justice A. Muhamed Mustaque**

**Panel: Ms. S. Vani & Mr. Anil Malhotra**

This session began with briefly highlighting the status of women globally and in India. The session examined matrimonial wrongs under Indian statutes, their applicability and implementation of penal provisions in India in respect of cause of action arising within India and/or abroad. Further, issues relating to extradition for such matrimonial offences and jurisdictional issues were also examined besides effectiveness of such measures in foreign jurisdictions. Consequences of such measures under Indian statutes were also discussed during the session. Highlighting the relevant provisions of Indian Penal Code, Code of Criminal Procedure, Domestic Violence Act and discussing landmark judgements (*and* ), the concept of jurisdiction, extra territorial jurisdiction was explained to the participants Modes of service of summons for civil and criminal proceedings in India for effective implementation was also discussed in this session.

Following Judgement were highlighted and discussed in the Session:

Fatima Bibbee vs. State of Gujarat, 2008 (6) SCC 789

Jerambhai Vanmalibhai Patel & Anr. Vs. The State Govt. of NCT of Delhi & Anr. [2018 SCC Del 7306]

Habanslal Malik v. Payal Malik, 2010 (171) DLT 67

Dirshan Vanmali Patel and Ors. Vs. Natasha Kapoor, [CA No. 42/18]

## **SESSION 5**

**Inter Country Adoptions under the Juvenile Justice Act, 2015 and Adoptions under the Hindu Adoptions and Maintenance Act, 1956**

**Chair: Justice A. Muhamed Mustaque**

**Panel: Ms. S. Vani, Mr. Anil Malhotra & Mr. Jaganaath Pati**

This session was devoted to looking at Inter Country Adoptions, their procedures, validity and status abroad. The important provisions under the JJ Act and HAMA vis a vis the role of the District Judges in this regard was discussed in the session. Validity of foreign guardianship orders, status of adoptions under HAMA and role of Indian Courts was deliberated. The role and function of the central adoption resource authority (CARA) in light of JJ and HAMA was also discussed. The salient features of the JJ & HAMA Act were comparatively analyzed. Child's best interest under adoption regulations, 2017 was also discussed with the participants.

The program ended with a vote of thanks by Hon'ble Additional Director, National Judicial Academy, Bhopal.