

# NATIONAL JUDICIAL ACADEMY



## Workshop on Sentencing at Trial Court level (P-990)

10<sup>th</sup>- 11<sup>th</sup> September, 2016

**Rapporteur:** Mr. Srikar Jonnalagadda

3<sup>rd</sup> Year, B.A, LL.B,  
Pendekanti Law College, Osmania University, Hyderabad,  
Telangana, India.

**Report on Workshop on Sentencing for Principal District & Sessions Judges**

A two day Workshop on Sentencing for Principal District & Sessions Judges, P-990 was organized by the National Judicial Academy, Bhopal. Following were the resource persons;

Resource Persons		
1	Hon'ble Mr. Justice Navin Sinha	Chief Justice, Rajasthan High Court
2	Hon'ble Ms. Justice Indira Banerjee	Judge, Delhi High Court
3	Hon'ble Mr. Justice R. Basant	Former Judge, Kerala High Court
4	Hon'ble Mr. Justice R. C. Chavan	Former Judge, Bombay High Court
5	Hon'ble Ms. Justice Roshan S. Dalvi	Former Judge, Bombay High Court
6	Prof. Khushal Vibhute	Professor & Dean, Rajiv Gandhi School of Intellectual Property Law IIT, Kharagpur

Mr Millind Bhaskar Gawai, Resesarch Fellow, National Judicial Academy, was the co-ordinator of the programme.

There were 39 participating judges from all over India, the list is as below;

List of Participants			
Sl. No	High Court	Name of Participants	Address
1	Allahabad	Mr. Umesh Kumar Sharma	District & Sessions Judge, Mainpuri, Uttar Pradesh
2	Allahabad	Mr. Kautilya Gaur	District & Sessions Judge, Pilibhit, Allahabad
3	Andhra Pradesh	Ms. Sunitha Gandham	Principal District Judge, Kadapa, Andhra Pradesh
4	Andhra Pradesh	Ms. Renuka Yara	Principal District & Sessions Judge, Karimnagar, Telangana
5	Bombay	Mr. A.Z. Khwaja	Principal District Judge, Akola, Maharashtra
6	Bombay	Mr. A.J. Mantri	District Judge & Addl. Sessions Judge-1 Nashik Maharashtra
7	Bombay	Mr. N.R. Borkar	Principal District Judge Nandurbar, Maharashtra
8	Bombay	Shinde Suryakant . S	Principal District Judge Gadchiroli, Maharashtra
9	Chhattisgarh	Mr. Sanjay Kumar Jaiswal	District & Sessions Judge Balod, Chhattisgarh
10	Chhattisgarh	Mr. Ashok Kumar Sahu	District & Sessions Judge, Jashpur, Chhattisgarh

11	Chhattisgarh	Mr. A.L. Joshi	District & Sessions Judge, Baikunthpur, Chhattisgarh
12	Delhi	Ms. Asha Menon	District & Sessions Judge, New Delhi
13	Gauhati	Mr. Satyajit Khound	District & Sessions Judge, Sivasagar, Assam
14	Gauhati	Ms. Selina Begum	District & Sessions Judge, Nalbari, Assam
15	Gauhati	Mr. Khape Koza	Principal District & Sessions Judge, Mokokchung, Nagaland
16	Gauhati	Mr. Ito Basar	District & Sessions Judge, Tezu, Arunachal Pradesh
17	Gujarat	Mr. Ashish D. Oza	Principal District Judge, Godhra, Gujarat
18	Himachal Pradesh	Mr. Padam Singh Thakur	District & Sessions Judge, Chamba, Himachal Pradesh
19	Jharkhand	Mr. Om Prakash Pandey	Principal District Judge, Pakur, Jharkhand
20	Karnataka	Mr. B.V. Patil	Principal District & Sessions Judge, Kalaburagi, Karnataka
21	Karnataka	Mr. Narayana	District Judge/Registrar, Bengaluru, Karnataka
22	Kerala	Ms. Sophy Thomas	District Judge, Alappuzha, Kerala
23	Madhya Pradesh	Mr. Shambhoo Singh Raghuvanshi	District & Sessions Judge, Harda, Madhya Pradesh
24	Madhya Pradesh	Mr. Rakesh K. Singh	District & Sessions Judge, Mandla, Madhya Pradesh
25	Madras	Ms. R. Tharani	Principal District Judge, Srivilliputhur, Tamil Nadu
26	Madras	Ms. Meena Satheesh	Principal District Judge, Ramanathapuram, Madras
27	Meghalaya	Ms. Gasalynn Rani	District & Sessions Judge, Nongstoin, Meghalaya

28	Meghalaya	Ms. Cordelia Dkhar	District & Sessions Judge, Williamnagar, Meghalaya
29	Orissa	Mr. R.K. Pattanaik	District Judge, Bargarh, Orissa
30	Punjab & Haryana	Mr. Ajay Tewatia	Additional District Judge, Sonipat, Haryana
31	Punjab & Haryana	Mr. Deepak Kumar Choudhary	Additional District & Sessions Judge, Patiala, Punjab
32	Punjab & Haryana	Mr. Rajeev K. Beri	Additional District & Sessions Judge, Ludhiana, Punjab
33	Rajasthan	Mr. Vinod Kumar Bharwani	District Judge, Hanumangarh, Rajasthan
34	Rajasthan	Mr. Yogendra Kumar Purohit	District & Sessions Judge, Churu, Rajasthan
35	Tripura	Mr. D.M. Jamatia	Principal District & Sessions Judge, Unakoti, Tripura
36	Uttarakhand	Mr. Rajendra Singh	Presiding Officer, Haridwar, Uttarakhand.
37	Calcutta	Mr. Suparatim Bhattacharya	District Judge, Suri, West Bengal
38	Madhya Pradesh	Mr. Rajendra Kumar (verma)	District Judge, Alrajpur, Madhya Pradesh
39	Jammu & Kashmir	Ms. Bala Jyothi	One Man Forest Authority, Srinagar, J&K.

The objective of the programme was to provide a national platform to discuss and understand recent trends in sentencing, under the guidance of the resource persons. The entire workshop was divided into 5 sessions. Eminent personalities addressed the gathering on various issues relating to sentencing in various cases particularly capital offences, sexual offences and other major offences against individual and the State.

**Key Points discussed during this workshop:-**

- Disparities in sentencing practices

- Understanding judicial discretion in sentencing
- Jurisprudence of death sentence
- Sentencing practices in major offences like economic crimes, sexual offences against women and children.
- Understanding sensitivity of sentencing young offenders who have just crossed the stage of juvenile but still they are not that matured as harden criminals.
- Analysing sentencing practice in other jurisdictions
- Relevancy of sufferings of victim in sentencing and victimology
- Rehabilitation of criminals
- Rehabilitation of the victim

### **Day 1**

- The program started with an introduction of the participants and the resource persons.
- Inconsistency of death sentence is very evident in our judiciary. There are two forces in this area, one is for the retention of death sentence and another is for the removal of it.
- It was pointed out, how unwarranted disparities in death sentence is violative of Article 14 and 21 of the Indian Constitution.
- Is death sentence deterrent to deter the potential criminals was one of the central topic of discussion.
- During the discourse on sentencing in economic crimes, all of them focused on the practical and conceptual aspects of sentencing
- All participant were requested to participate in various practical activities and discussions during the session.

### **Day 2**

- Usually seminars on sentencing are directly or indirectly confined to cases of murder, rape, and theories of punishment, seldom the discussion on other major offences and hence one separate session was devoted on sentencing parameters in major offences other the murder and sexual offences.
- Young offenders who have crossed age of juvenility but still are not that much matured as that of the harden criminals, therefore sentencing parameters are different for such class of convicts. They can be reformed as law abiding citizens of the nation. They have greater prospects of reform, hence they need

to be treated differently.

- After the successful completion of the workshop everybody has been greeted with the warm departure with a hope that everyone would have learnt something from this deliberations. This workshop helped judges to arrive at better solutions on sentencing in most intricate criminal cases.

**The detailed report of the programme is as under:**

**DAY 1: 10:00 AM – 11:30 AM: SESSION 1**

**Jurisprudence of Death Penalty: Speaker: Justice R. Basant**

Justice G. Raghuram, Director, National Judicial Academy, India welcomed the gathering of participating District Judges, and resource persons including Chief Justice of Rajasthan High Mr. Justice Navin Sinha, former High Court Judge, Justice R. Basant, Mrs. Justice Roshan Dalvi, Justice R. C. Chavan and Prof. Dr. Kushal Vibhute, Dean at Rajiv Gandhi School of Intellectual Property Laws, IIT, Kharagpur. Justice G. Raghuram said that, this is the 990<sup>th</sup> program in this Academy since 2004. This Academy is a Hub for Enhancing Justice delivery system. Milind Bhaskar Gawai, the programme co-ordinator, also welcomed all the participants and the resource person. A self-introduction session was also conducted before commencing the deliberations on session no 1 dealing with jurisprudence of death sentence.

Thereafter Hon'ble Mr. Justice Naveen Sinha, Chief Justice of Rajasthan High Court, said that there are two former High Court Judges, who come from the service, they are more experienced in criminal law than me.

Justice R. Basant, stated that, crime path is different and complaint is different, the circumstances starts of the victim and the offender are different and said that he could learn on bench and use statutes grasping the crux of the sentencing, of course the first topic of the death penalty it has a lot of depth in it and there are some countries which search by it and are unofficial abandon by it and it vary from case to case. The speakers asked that any one of the participant in their career so far has imposed a death sentence, tomorrow what supreme court says may be binding of us but here everyone should be entitled to the equal weight you can discuss don't feel yourself restrained by anything hierarchical restrictions Macro vision-As to what we are discussing what we are trying to what we are discussing I would think that the first question would be what is a criminal justice system what does it seek to achieve barter between the individual and state. He said as a citizen I want my state

to assure two things protecting me from external aggression and protecting me from internal disturbances i.e. crime here in this context.

Well its duty of the state to prevent crimes and that to protect citizen from crime. We have a right to live under Article 21, the freedom from crime and fear of crime is a fundamental right. Primarily to ensure a crime free society, it's important that we understand that the purpose of the criminal law i.e. not even to punish a criminal but to prevent crimes.

- Further it was pointed out said the definition of the crime is duty of the legislature
- Enforcement by police
- Adjudication is by lawyer and judge

Further he discussed on Punishment of the responsive society to the crime, the people are translating the abhorrence of the crime to society, into tangible realities, to impose the punishment which will serve it purposes and said four reasons of the punishment

- Deterrence
- Retribution
- Reparative damages
- Reformative criminals

All these have a role in the death sentence, Indian law trust judges so much so that a single session Judge can award death sentence, not doubt with the confirmation by the High Court. Punishment may extended to imprisonment for life 326 is punishable for life, the law does not prescribed the parameters and the guidelines that to impose as to your discretion, minimum is not prescribed and the maximum is not prescribed, except in some cases, we have a big margin judicial discretion places a very important role may I say runs riot in the realm of punishment. How exactly to control this discretion, you start from the middle and u go up or u start from the top and then come down, not one decision of the supreme court and high court that to where to start, The whole idea is how to we control a discretion. He further said Start from the midline or even to go up or down as the case requires in order to streamline the discretion it's important that we identify that where do we start this may not be very important in a sentence of death because mostly you have only two options in a sentence of death, the vision of the entire session is the whole idea is how do to

channelize how to control the discretion he always advocated that to let's start from the middle its always safe as go up or down as the case requires. The most important case of the sentence of death is the case of bachan singh the court held that, the life is a rule and the death is the exception and the judge shall give the reason for imposing the graver of the sentence. The majority did not have the advantage of the minority judgement, minority judgement advantage the majority did not have. He stated that the very imp decision in swami sharadananda, no session's judge can afford not to read:

1) *Bachhan Sing Vs. State of Punjab AIR AIR 1982 SC 1325*

2) *Macchi Sing Vs. State of Punjab (1983) 3 SCC 470*

3) *Swami Shraddhananda Vs. State of karnataka (2008) 12 SCC 288*

4) *Santosh Kumar Bariyar Vs. State of Maharashtra (2009) 6 SCC 346*

5) *Union of India Vs. V. Sriharan (2016 ) 7 SCC 191*

Without reading case of Santosh Kumar Bariyar Vs. State of Maharashtra 2009 judges should not proceed to decide death sentence, similarly Swami Shraddhananda Vs. State of karnataka 2008 also need to be looked into at the time of deciding quantum of sentence in capital cases. Before Shraddhananda there was a big hiatus between death sentence and life imprisonment, which was tried to mitigate in this case with the third option of life sentence with a rider of minimum 20, 30, or 40 years of imprisonment without any remission, because in practice life sentence is always meant for 14 years. Life sentence is a sentence for life, but unfortunately it was restricted to 14 years of imprisonment, and that's the beauty of judgement of Shraddhananda which provided the third option. Rarest of rare principle as enunciated in Bachan Singh was misunderstood by the judiciary, it said death sentence can be imposed in rarest of rare cases wherein the alternative option i.e. life imprisonment is unquestionably foreclosed. But in practice judges did not understand it properly and used to award death sentence by stating typical wording like “ by considering all the facts and circumstances this is the rarest of rare case, and facts liked gruesome murder, diabolic murder, ghastly act of the convict,



brutality of the convict etc.....are these things sufficient to label a case as rarest of rare? No, certainly not. The focus of the judge should be on the point of alternative option, because death is exception and life sentence is the rule and moreover a judge should take in to consideration the possibilities of reformation of convict and if there is no such possibility then only a judge should opt for death sentence. Justice R. Basant pointed out the a trial court has to draw a yardstick to decide a sentence, from the middle of the sentence provided for an offence for example if an offence is punishable with imprisonment which may extend ten years then the judge should take five years as middle course of sentence then assess the aggravating and mitigating factors and accordingly reduce or increase the punishment. He stated that deterrence and retribution is the fundamental feature of the death sentence. He further stated that how many murders have not been committed because of the death sentence but for the death sentence how many would have chosen to resort to murder. In Justice Bhagavati's dissenting judgment in Bachhan Singh murders yet not increased when the death sentence was avoided and immediateness and the certainty of the punishment the law will catch up as deterrence. He says that the life imprisonment is for 14 years but not for life, whereas life imprisonment is supposed to be for the remaining life of the convict. Even in India it does not seen in the social purposes. The distance between the crime and punishment has to be reduced in our system. Another serious concern for those who are sentence to death is that, how long they shall wait in for execution of death sentence, there must be quicker dispensation of justice in a fit case.

**Speaker II: Prof. Kushal Vibhute**

The speaker started the session that it's a privilege for me to share some words on sentencing of death penalty and said that Justice Basant had covered the complete topic and kindly don't feel bored if I repeat the same.

He discussed on Jurisprudence & Jurists' Prudence, Judicial Discretion-Legislative Scheme, Spirit & Rationale, Death Sentence & IPC-Mandatory & Discretionary Death Sentence or Life imprisonment, as an alternative, is provided in 12 sections of IPC: sections 120B; 121; 132; 194 Part 2; 195A Part 2; 302; 305; 307; 376A; 376E; 364A, and 396 and S 354(3) of CrPC 1973-'Special Reasons' for imposing death sentence – Life imprisonment is a rule and death sentence is an exception. Confirmation-by concurrence of a Bench of 2 Judges of the High Court [s 366].

Further he talked on ‘Special Reasons’ and balancing of A & M circumstances [*Jagmohan Singh v UP* [(1973)] and Death sentence - the ‘rarest of the rare cases’ for ‘special reasons’ [*Bachan Singh v Punjab* [(1980)] thereafter ‘Balance sheet’ of A & M circumstances needs to be drawn to decide whether the case is the ‘rarest of the rare’ or not [*Machhi Singh* (1983)] But: *Machhi Singh* was incorrectly decided and its ‘balance-sheet’ approach was mistaken [*Sangeet v State of Haryana* [(2013), Per Radhakrishnan & Madan Lokur, JJ]. They concluded that *Bachan Singh* has not endorsed the approach of aggravating and mitigating circumstances-however this approach is followed in several cases a balance sheet between aggravating & mitigating cannot be drawn up for comparing the two in sentencing process, both the crime and the criminal are equally important. Whereas in capital offences, sentencing has become judge-centric rather than principled- sentencing lastly the Supreme Court has not encouraged standardization and categorization of crimes. The speaker then stated that different judicial voices on ‘the rarest of the rare cases’ and ‘special reasons’ and the crime test, the criminal test and the R-R Test- and not the ‘balancing test ‘Individualized Sentencing vs Guided exercise of discretion-A Glance and asked that Does arbitrary exercise of judicial discretion in opting for ‘death’ or ‘life’ (differentially treating the capital convicts placed in similar situations) not violate the equality clause under art 14 or the due process requirement under art 21 of the Constitution? He asked a question that does such a sentencing system not become constitutionally arbitrary. , standardization of aggravating and mitigating circumstances or of sentencing process and by whom? These committees came into existence to settle the issue and to pass the absolute remedy Justice Malimath Committee (2003) and Madhava Menon Committee (2008), and the legislature-not acted upon-left it to the judiciary to for setting constraints on its judicial discretion, then the judicial response to the statutory restrictions on the judicial discretion.

He discussed that Apex court-standardization of circumstances not only streamlining sentencing process or theorising sentencing but also the principle of ‘Just Desert’- pre-requisites & genesis and asked that what needs to be done. And lastly said that “The Judge even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is

to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in social life'. [Benjamin Cardozo]

**Session: 2 12:00 P.M To 01:00 P.M**

**Sentencing Parameters in major offenses against human body, excluding homicide and sexual offences against women: Speaker: Justice Roshan Dalvi**

Justice Navin Sinha asked question to the participants as to why sentencing parameters are to be different in cases of offences against women? There were variety of response from the participants but the consensus on two reasons first Women and children are weaker section of the society and they easy targets for the criminals, secondly women are not having the same social status as that of men in our nation and therefore the offences against women need to be dealt with stern punishment for the justice not only to be but manifestly seen to be done.

Roshan Dalvi started the session by stating that sentencing a convict cannot be seen in isolation without the causes of the crime, sufferings of the victim and chances of the reformation of the convict. She stressed on the need of rehabilitation of the victim equally as that of reformation of the convict. She added that sentencing is like a last paragraph of an essay, but if we need understand an essay we need to read from the beginning and that where the decisions err, that they do not look in to several aspect of the crime at the time of the sentencing. She discussed some crimes against women as female Foeticide, Trafficking, Rape, Incest, Dowry Death, Domestic Violence, Sodomy, Outraging Modesty, Aggravated Rape, and Sexual Abuse. She further pointed out some crimes against children like Infanticide, Child Traffic, Rape, Child Labour, Female Foeticide, Aggravated Rape, Outraging Modesty, Pornography, Incest, Paedophilia, and Sexual Abuse etc.... She emphasised on the need of moderation of the sentence. She said that 376 before 2013 was the only section were the judges could sentence even less than the minimum sentence prescribed and she criticised the reason cited by the judges to give less than minimum sentence under section 376, they are like the convict is a young man, he has parents to look after, he has three children etc.... she sternly criticised that these were not the valid considerations to award lesser sentence before 2013. By Criminal Law Amendment Act 2013, has taken away this provision to award less than minimum sentence, the reason for such move was growing numbers of sexual offences against women and

ghastly incidence of *Nirbhaya*'s case. A sentencing judge must have a sagacity and wisdom of sentencing jurisprudence.

Thereafter she discussed some crimes against children under POCSO Act such as Sexual Assault, Penetrative Sexual Assault, Aggravated Penetrative Sexual Assault, Pornography, Sexual Harassment, and Aggravated Sexual Assault.

She pointed out that one person amongst a hundred has suffered sexual abuse in some form during their childhood. Before deciding sentence appreciation of evidence must be done by a judge. She further stated that the propensity to be victims those are children and women, there are 8 children in a small hut these children are sexually abused those who live in joint family also sexually abused. And the 1% of males could be sexual offenders, 99% of people are not the sexual offenders, we have to protect their children against 1% if child is not protected we are at the end of ladder.

- First recognize that these things happen
- Two those people should resist it, but these children cannot resist it
- Three so many crimes are reported so many crimes are not even reported they don't even come up before us we do nothing about them

So at the end of ladder this is what we feel in this case of sexual offense unless you understand you can't be able to psychology, Impact of abuse / violence Destroying psychology, Devastating life, Bitter shock, Disgust, Disbelief, Suspicion, Helplessness, Frustration, Anxiety, Loss of security, Feeling of guilt, Fear of disclosure, Confusion.

She further discussed on Re-victimization / Secondary victimization, Police investigation, Medical examination, Court trial - Order of re-examination of witnesses "India's Other Daughter re-victimized by law(pla)yers"

She discussed on some Judgments Interpretation / Precedents

- For degree of doubt
  - *AIR 2003 SC 3617 – Reasonable doubt is not an imaginary, trivial or possible doubt, but the doubt based upon reason and common sense*
- For sentencing policy

- *2005 (1) Crimes 40 SC – Sentencing policy should be such as to reflect the conscience of the society*
- For extent of punishment
  - *2001 Cr.LJ 1579 (Bom) – Punishment for rape of a 3 year old child should be severe*
- For reformatory directions
  - *AIR 2000 SC 1069 – Psycho therapeutic treatment was ordered for a rapist of a child of 2 years*
- For guidelines of lesser punishment
  - *AIR 2000 SC 1470 – Significance of adequate and sufficient reasons for lesser punishment explained*
- For the test of Justice
  - *AIR 2003 SCW 4065 - Held that letting the guilty escape is not doing justice according to law*

She lastly discussed the stages requiring sensitivity for Sentencing at The stage of bail as, Hearing the victim, the accused and the State, Decision – Sentencing, Fine, Compensation, and Rehabilitation

The participants then dispersed for lunch

### **Session: 3 02:00 P.M To 03:00 P.M**

#### **Sentencing in Economic Offences: Speaker: Justice Roshan Dalvi**

She started the session by stating that we are public officers under section 21, we are only public servants as Judges we take oath as, Integrity , impartiality, and best of ability. We have to deal with them and to go into what the cases are about and what the legislation is and on these parameters judges should understand what should be sentencing policy is, rather than directly going to the sentencing policy because ultimately that will be imprisonment, fine and compensation. The crime problem permeated every level of the society People even like school children are crying by this kind of corruption, these are the offenses of the IPC Section.21, Section .161 to 165A and PC Act 1947, 1952, 1964, 1988

Further she stated some amendments of the acts such as Definition of Public Servant – S. 21, Offences – S. 7, 8, 9, 11 & 13, Penalties enhanced – S. 10, 12, 14, 15, Sanction – S. 19(1), (2), Purpose, Final, if not challenged till trial, Day-to-day trial – S. 4(4), 22(b), 22(c) , Stay in Revision prohibited – S. 19(3) and Bankers' books – S. 18.

The purpose of these amendments are that the honest officers shall not be penalized Court of Original Criminal as A.R. Antulay v/s R.S. Nayak (AIR 1984 SC 718) there after Remand

As far as gratification is concerned Motive or reward, Favour or disfavour, In Cash or kind, For doing or not doing, For service or dis-service, and Attachment of properties - S.102/105C to 105J Cr.PC as Moveable, immovable, tangible, intangible (shares etc), e.g. flats, land, bank accounts, bank lockers, shares, Sealing, seizure, e.g. premises, books of accounts, documents. And Freezing of bank accounts – S. 18 PC Act as Bankers' Book Evidence Act, 1999 (7) SCC 685 State of Maharashtra vs. Tapan Neogi. And Presumption – S.114 (a) Indian Evidence Act, Res Ipsa Loquiter? It's a Latin phrase it applies to persons whose claims to certain properties and then say that they have not got it by way of illegal gratification without showing how they got it from legal gratification. The short context of *Res Ipsa Loquiter*- Without showing how was they recollected.

She further discussed on over-reaching the Law as ATMs, HIV+ persons, disposing off properties, Mala fide transfers. And said the major frauds and crimes were being happening in the ATM, HIV how long people will survive, when the video clip comes to court as the matter of the evidence it will be having more than 2 hours as a scene but the court need just 1 line from the two hours,

She later discussed on enforcing the Law as Advanced Electronic Gadgets in Investigation, Scientific evidence to have enhanced probative value. And Taping of conversation as Sample telephone voice to be collected post arrest / trap, Care & caution in sealing tapes. And Video recording of conversations / interrogations as Establish identity of the voice, Exhibit truthfulness of confessions, if any. And Forensic Computing as Seizure of computers and securing data, Optical scanning techniques as Crime mapping, Commercial sense, e.g. internet piracy, post office fraud. And later said Teamwork with professionals, e.g. solicitors, accountants,

bankers, stock brokers, media, management experts, investment bankers, insurers, capital market regulators, financial experts, economists, IT experts, SEBI officers, Police/prosecutor integration, Information management, Private detectives / investigative agencies. And further said Sentencing will have imposed by the following components as Imprisonment, Fine, and Compensation.

Forensic, seizure and corrupt commercial Sense we do not know about the commercial banking projects the actual working in banking translates. Sentencing-after the conviction, imprisonment fine and compensation, if the dishonest government servant got dismissed but the sentence of course stay then these type of cases of compensate is extremely important said Justice Roshan Dalvi.

Justice Navin Sinha, said that economic offenses are the biggest offenses and there is no legal bargain in economic offences. In 1928 where a person of M.Sc., Ph.D., indulges economic offences and simple imprisonment by justice syndrome can faces. Enclose of excuses cool, calculated, thought out planning and without the theft or cultural objective money laundering etc.....and economic offences and economic crimes done by educated shall face the consequences.

**Session: 4 09:30 A.M To 10:30 A.M**

**Sentencing parameters in major offences against human body, excluding homicide and sexual offences against women: Speaker: Justice R. C. Chavan**

Milind B. Gawai, Research Fellow, National Judicial Academy, Welcomed the gathering and requested resource person to begin with the deliberation.

Hon'ble Mr. Justice Navin Sinha said that, Yesterday, just keep in mind that we are all Judges, as far as work is concerned we do Judgements. And your order can be revised by the High Court and my order by Supreme Court. There can be errors misappropriate of the case and the errors are done by mis implementing of law. He said that yesterday we talked about economic offences but I am not happy, the discussions which are done here is to enrich your knowledge and to dispense the judgements as effectively as possible, the discussions in this academy should fire your imagination to think. Whatever you talk here is to make you think and improve.

Justice Chavan wished good morning all, and said not to hesitate rather than implementing, if we don't walk properly the system collapses. And said one thing that he love the IPC it may be because of its codifications. He said that on one hand

we want judicial system to be correct in nature and rehabilitated as good men of society. He said that I am sure that many of you are aware of the dismissed judicial officers if you does not take any action to take them back to the service they will create all the mischief at all the bases of you. The speaker said that a doctor examines the patient on the basis of that he gives the medicine, the judge absolutely should do the same in the matter of sentencing. It's very difficult to find the precedent also even in Supreme Court Judgements the Judges will not give the sufficient reason for why they passed the same. He said that the reason for the matter of sentencing must be disclosed.

He said to read some orders of punishment and admitted section 325 of IPC that Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine we do not justify the reason therein and in facts and circumstances we take the decision. If it was imprisonment to find the reasons of such judgement. He said that a young person who committed a crime as a passion is a lenience. He said to see the circumstances and then what the sentence can she/he entitled pass the order, it never reflects even it reflects it doesn't make such difference.so mitigating and aggravating circumstances he is uncontrollable passion is mitigating an aggravating is what we have to find that what is relevant.

He said that we cannot ensure the peace and to see therefore the victim should not indulge and should see that he is dissatisfied but not to take much time in deciding the same case. You go by penetration can there be a penetration? No. He said that whatever you want to do just keep it in a paper and examine the same then you will be able to be perfect. And said that the rate of the conviction is the serious problem, the judicial officers shall see that the judgments passed by them, shall be very true because if the judicial officers are wrong the complete judiciary seems to be wrong and if the judiciary is wrong no forum can correct it.

He asked the judicial officers to please keep in the mind in the matter of sentencing that the objective of the social circumstances shall be new and shall give different treatment for them for which crime is not committed one for the crime 90 % of the murderers of the crime is not at all circumstances. If a husband kills his wife or if a wife kills her husband or if a brother kills his brother it is to be said that they could



not control the offence different treatment is prescribed for them to think that what is the nature of mind if a person picks pocket and it contains only 20 rupees, if it contains 10 thousand rupees what will be the circumstances. He said all the participants to read the book called *ANDREW KEETH MANNO* – the Auto-Biography of a Thief, and said that the same book was written by the person when he was in Jail. He said to read that book and sentencing will becoming easy. He said that Judges are the doctors of the citations. Justice to be always tempered in mercy misplace mercy shall not be tempered.

The speaker also said that making a habit of writing at least one page makes the judgement writing improve. Probationary treatment is not wrong if given to persons of 21 years of age. He said that in United States the proportion of the populations living in the world is highest the highest number of the United states citizens are in imprisonment and thus the United States had big jails. There is a big element of crime and we don't want to see criminals roam on the streets with the common and good citizens, the good citizens has to find the right place. The speaker lastly, said that thanks of this opportunity and said good luck for all the judges and also said that you are all the leaders of fraternity judiciary.

#### **Session-5 11:00 A.M To 12:00 P.M**

#### **Sentencing the parameters in cases of young offenders: Speaker: Justice Indira Banerjee**

Justice Indira Banerjee started to comment on the sentencing aspects of young offenders, she said that people know what the law is, what it had been and people also know that there is a punishment for this crimes and so people will secure themselves by not committing crime and not to be in prison. She said that persons who had committed heinous crime and be the cruellest of the commission, harassing women one after the other important aspect is that for sentencing and imprisonment that he is gradually unpersuasive. She said that people may do the crime because they are used, depending on the nature committed by them we use to think of course of the offender and also the childhood. How many of us can stand up and can admit that we had done it either right or wrong? It was the parents who corrects us, if you do something wrong in any course of the thing mother will not love you and she will be angry with you. But what about the people who has no mother and father and who had nothing as relations which are legally wrong.

Later, Justice Indira Banerjee said sentencing principle that the difference between offender of 17 years and 18 years 1 month and who is 18 years 1 month of age, if the court punishes them for 3 months its minor offense and imprisoned for 3 years is serious offense and if punished more than 7 years is a hennas offense. Let's come to the petty offense and serious offense, one person commits act when he is 17 years and 11 months of age and the same offense by the other 18 years and 1 month of age, can two of them be punished under the same sentence, they may be going to school, college, but there is a scope for two sentences one is life sentence and the other is death sentence, the district court has the two sentencing rights. The absolute decision is that the young offender who has entirely right life so he will be imprisoned with life. The speaker further said that if a person can be given chance to improve he can, in our country unlike United states and united kingdom we don't have specific guidelines of the punishments, it is to be said that the same person will be imprisoned for such time and imprisoned or fine and imprisonment about so many years that is why difficulty begins.in our Penal code many for many offences maximum imprisonment is prescribed in the code and for the very minimum offences max imprisonment is not prescribed, there is no guidance to the judge to what to imprison and as a matter of fact that every judge has a power to discretion and thus every judge enjoys the power of discretion this is the problem.

She said that we have very eminent economists and professors doctors and other eminent personalities if we punish them earlier can we see these eminent personalities, there may be young persons who may be used they may not be known, the principle of the sentencing have been used in the judgements of *Bachan Singh & Machan Singh*.

Justice Navin Sinha said that, why should we apply a different way for them and said that participants that to use the power as given in your jurisdiction, police fulfils the formality ask the public prosecutor. He further stated that, don't cross your limits in discharging your duties, be in your limit and act only in you jurisdiction or else you will face the consequences. He finally concluded the session by saying that with the help of the above practical activity has become possible only because of a team effort therefore one must try to Understand the importance of a team within the organization and must try to develop Such personality so that one can work with the team spirit in any organization for its overall success.

Milind Bhaskar Gawai, Program Coordinator expressed his gratitude to Resource persons, and the Participants to makes this programme successful.

The Participants then Dispersed for lunch.