

Workshop for Additional District Judges [P-1047]

15th to 17th September, 2017

Mr. Rajesh Suman, Assistant Professor

The National Judicial Academy organized a “Workshop for Additional District Judges” [P-1047] during 15th to 17th September, 2017. The participants were Additional District Judges nominated by respective High Courts. The Workshop discussed critical areas concerning adjudication at the District level. The sessions involved discussions on issues related to challenges in implementation of the ADR system, Sentencing, Role of Judges in Court and Case Management, Electronic Evidence, Cybercrime and Fair Sessions Trial. The Workshop also focused on appellate and revision jurisdiction of District Judges under civil justice administration.

Major Highlights and Suggestions from the Workshop

Session 1: Challenges in implementation of ADR system in Subordinate Courts

- The jurisdiction of courts concerning Alternative Dispute Resolution system is supposed to be limited but in practical terms it is huge. Section 89 of the Code of Civil Procedure [C.P.C.] was brought with a specific purpose of blending the judicial and non-judicial system in the sense that whenever a civil matter is brought to the court, the court should see whether a settlement option is available in the matter. The matter can be referred under the four category provided under section 89 i.e. conciliation, mediation, arbitration and judicial settlement including lok adalat.
- The basic idea behind the Arbitration and Conciliation Act, 1996 [Act] is to enhance the autonomy of parties regarding choice of dispute resolution and least interference of the court. Section 5 of the Act clearly says that no court shall interfere with the matter which is not provided under part one. But still after this Act the court interferes with the arbitration process.
- Under section 9 of the Act, the court can interfere any time before the execution of arbitration process. The application u/s 9 of the Act can be filed before a district court. But after amendment of the Act, if a matter is brought before court u/s 9 before the commencement of the arbitration, then the party which has sought the order has to commence arbitration within 90 days after the order is made.
- According to a recent order of the Supreme Court, if an order u/s 17 of the Act by the arbitrator is not complied by the parties, then the court can take contempt against the parties under Section 27 of the Act. Section 29 A in the amended Act prescribes the time frame for completion of arbitration process.

Session 2: Court & Case Management: Role of Judges

- The schedule of cases should be prepared for hearing cases. Judges should only put those cases for hearing which can be heard on scheduled date. Such practice can considerably

reduce burden of the court. The time schedule should be prepared in consultation with parties and once fixed it should be adhered to strongly.

- The judge should take control of court proceedings and not the advocate or any other stakeholder. An effective case management system displaces the advocate's control from court process and court ensures that trial progresses according to fixed time schedules. The elements of successful case management include early court intervention and continuous court control of case progress.
- The court manager system has failed because of lack of acceptability. Because of lesser remuneration of court managers, the other regular staff have not given any importance to court managers. But judges cannot do everything by themselves. In West neither the Chief Justice decide roster formally nor the judges decide what they have to hear.
- There is resistance among court staff in adopting to changes brought by e-court project. Proper training to court staff should be provided regarding court and case management. The coordination of competent retired court staff should be taken for providing training to new staff.

Session 3: Civil Justice Administration: Appellate and Revision Jurisdiction of District Judges

- The role of the appellate court is not just supervisory and it is an opportunity to reexamine the decree in all its aspect. The only limitation is that the appellate court do not have the opportunity to look at the witness and his demeanor by which it can determine the intensity of truth and falsehood. But despite the witness not being there, on the basis of material on record, the appellate court can independently arrive at a different conclusion. However the appellate court should give due credence to the findings of facts.
- Appeal is a creation of a statute and only if the statute provide right to appeal the litigant can file an appeal. For civil appeals the right to file an appeal by the litigant has been conferred by the Code of Civil Procedure [C.P.C.]. The defendant also has a right to appeal against findings regarding issue framed by the trial court. Section 96 of the C.P.C. and procedural rules under order 41 deals with appeals against original decrees. Section 96, C.P.C. lays down the grounds on which appeals can be filed and four grounds are mentioned.
- Under Order 41 there are four Rules which are important. These Rules mentions when the decree of the lower court has to be stayed, under what circumstances decree can be stayed, whether a money decree can be stayed and if it is to be stayed then what are the circumstances under which it can be done. Money decree normally should not be stayed and only if the appellant deposit the entire amount or gives security to the satisfaction of the court or gives a bank guarantee then only in such cases money decree can be stayed.

Session 4: Electronic Evidence: Collection, Preservation and Appreciation

- The initiative of the UN Commission on International Trade Law in 1996 made a Model Law and based on that India has framed legislative framework regarding electronic evidence. The Supreme Court of India has recognized the validity of electronic evidence since 1960s and has enunciated guidelines for ensuring authenticity and admissibility of such evidence.
- The crime scene evidence must be captured through electronic medium such as video recording. Judges must check authenticity, relevancy and reliability of every electronic evidence before rejecting its admissibility. The court should see that such evidence has not been tampered with and all norms and guidelines should be followed to ensure authenticity.
- The courts are not getting adequate assistance from prosecution concerning electronic evidence as most of the time the prosecution lacks expertise to understand the complexity of electronic evidence and how to ensure its authenticity. There is need for comprehensive training of investigation and prosecution for proper presentation of electronic evidence.
- Preservation of electronic evidence is a major issue and it is difficult to preserve electronic evidence *quay* its authenticity. Proper guidelines should be followed by courts in ensuring proper preservation of electronic evidence.

Session 5: Laws relating to Cybercrimes: Advances and bottlenecks

- There have been several cases in the past of WhatsApp spoofing and e-mail spoofing whereby messages were sent by a non-existent user masquerading as a known user to spread confusion and to steal data. This is done through VOIP-Voice Over Internet Protocol. The communication on VOIP happens not through towers but through internet cables.
- The WhatsApp spoofing can be detected by clicking on the forward link. Usually after click of forward link certain signs are shown in the header. In case of spoofed messages such signs are not shown. Similarly to catch spoofed email, the email headers should be checked. In email header the word message id should be looked. The revealed email address should be read down to top and not top to down. The domain name should be checked and if the domain name is not that of the internet service provider then it is a mail sent from spoofed server.
- The ownership of internet data is a big issues concerning internet security and regulating internet traffic. The internet at global level is controlled through root servers which are based in United States. India do not have a root server and this create a disadvantage to India in term of internet control and regulation.

Session 6: Digital Evidence

- The digital footprints of a person can be tracked through call data records [CDR]. The call data records can tell the tower locations which can indicate the movement of suspected person. The tower location is shown by the call data record about the person's movement whose CDR has been called. For investigation now the google map is also probed and the accuracy of google map is 99.9%.
- As a convention the CDR of phone communication is kept for one year by the service providers. There is a circular from BSNL for the keeping of CDR for one year and other telecom companies have adopted that as a rule. In some instances service providers do provide details of communication beyond one year as well.
- There is growing incidence of misusing of the IMEI number of mobile phones. The police investigation do not go into the details of checking IMEI number. The police makes mistake about properly identifying first cell id and last cell id in the analysis of call data records.
- Under the Forensic examination performed by the Investigating Agency there is a special need to properly look into the role played by proxy servers. There is need of proper training to police and prosecution in this regard. Awareness regarding the misuse of technology must be promoted.

Session 7: Fair Sessions Trials

- There are international human right conventions and declaration such as UDHR and ICCPR which prescribe certain minimum rights to be safeguarded. These rights include right of accusation told to the accused, right to consult lawyer of his own choice, expeditious trial, trial in presence of the accused, opportunity to lead evidence and cross examination, right to have an interpreter, right against self-incrimination, *autrofois acquit* and *autrofois convict*, right of compensation against wrongful arrest and no application of retrospective penal laws. These rights are inalienable process of justice.
- The presumptions regarding guilt of accused in dowry deaths and domestic violence and reverse burden of proof in economic offenses and sexual offences against children creates advantages in favour of prosecution and trial of such offences can result in unfair trial if safeguards are not applied. The standard of proof beyond reasonable doubt is taken away in such offences but the prosecution has a duty to propose the facts which have to be rebutted by defense because the basic assumption is that negative cannot be proved.
- There has been a rise in the jurisprudence relating to compensation to victim. The court need to be cautious in compounding of serious offences where compensation is offered to

victim by accused. The victim should not enter into settlement because of influence of power of accused.

- The stage of charge is very important and at this stage proper scrutiny must be done. The case where the accused get convicted by trial court but the evidence do not sustain at appellate stage suggest lapses on the part of trial court. The innocent should not be compelled to undergo the ordeal of trial and at the stage of charging courts must ensure fairness.

Session 8: Sentencing: Issues and Challenges

- Sentencing is the end result of trial. It is easy to convict but difficult to come to just and fair sentence. Section 235 (2), Cr.P.C. mandates court to hear the accused on sentencing after conviction. If court do not hear the accused after conviction then there is a statutory violation. Court must assess the circumstances and situation of convict.
- Court must not sentence an accused in a way which will make him a more hardened criminal. Court must see that how much of sentence can help an offender to move out of criminality and move to a domain where he will become worthwhile to society.
- In India the courts seems to have developed personalized sentencing rather than objective sentencing. This personalized sentencing has given rise to inconsistency and disparities in sentencing. Depending on the approach of the judge concerned cases having similar kind of facts can have widely varying sentencing. The Supreme Court of India has suggested some guidelines for objective sentencing to fill the legislative void.
- Non-execution of death sentence is becoming a major problem and it has led to creation of mercy jurisprudence where due to non-execution of death sentence, the accused is approaching Supreme Court for relief due to unreasonable delay in disposing of mercy petition.
