

Workshop for Additional District Judges [P-1084]

2- 4 February, 2018

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The National Judicial Academy organized “Workshop for Additional District Judges” from 2 to 4 February, 2018. The participants were Additional District Judges nominated by respective High Courts. The Workshop aimed to discuss critical areas concerning adjudication at the District Court level. The sessions involved discussions on issues related to Alternative Dispute Resolution [ADR] system, Role of Judges in Court and Case Management, Fair Sessions Trial, Electronic Evidence, Cybercrime and Sentencing. The Workshop also focused on appellate and revisional jurisdiction of District Judges under criminal and civil justice administration.

Major Highlights and Suggestions from the Workshop

SESSION 1: Challenges in Implementation of ADR System in Subordinate Courts

The Speaker commenced the session by discussing the statutory framework for ADR system in the Indian legal system. The speaker then highlighted advantages of ADR system and emphasized importance of needs of parties behind the emergence of ADR system. The power of the court in ADR system is limited. Section 89 of the Code of Civil Procedure lays down the role of court viz-a-viz ADR system which is a blend of judicial and non-judicial system. The speaker also highlighted Sections 8, 5, 9, 27 and 34 of the Indian Arbitration and Conciliation Act which also clarifies the role of the court in ADR system. The jurisprudence relating to the ADR system was discussed with focus on role of courts. The speaker also focused on various conditions under which a court can refer a matter for redressal in ADR system. One of the major constraints which ADR system is facing is the lack of awareness among parties. The ADR system is popular in metropolitan cities and it is less appreciated in other region. There is need of advocates who are trained in ADR system and there should be a panel of mediators in every district. The speaker opined that unit based system of evaluation of judicial performance is an obstacle in the promotion of ADR system. Court should give due consideration to the intention of parties. The speakers discussed principles relating to limitation for commencement of arbitration and the grounds to set aside arbitral awards. Judges should take care of the time frame within which the arbitration should be commenced. The mediation should be left free at the discretion of the parties. The process of mediation could be voluntary but the reference to mediation could be mandatory.

SESSION 2: Court & Case Management: Role of Judges

The speaker commenced the session by highlighting the data relating to delay and arrears in the Indian judiciary. One important thing which should be practiced by judges to reduce delay and arrears is to keep the processes simple and they should avoid too many rules. There should be timeline for court processes and judges should ensure that all stakeholders are following such timelines. The judges should work with their staff in team spirit and should motivate all stakeholders for better court management. Judges should care for their staff and should ensure a positive environment in the court room. Every judge should maintain a notebook for case laws and should update it with latest case laws. Such practice will help in reduction of time in

adjudication. There should be a committee in every court to analyze precedents and there should be regular discussions on precedents.

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

The speaker commenced the session by highlighting the jurisdiction of district judges under various statutes other than the Code of Civil Procedure. The appellate power of district judges under different statutes was discussed. The speaker clarified the situation where a party seeks appellate remedy before a wrong forum. Various aspects of interim relief in an appeal and injunction under section 5 of the Code of Civil Procedure were highlighted. The issue regarding stay of decree and injunction by appellate authority was also highlighted and Order 41 (5) and 39 (1) and (2) of the Code of Civil Procedure were analyzed by the speaker. The situations regarding status quo in a decree and status quo ante were clarified. Court should not ask for proof of documents which are registered documents such as sale deeds. The aspect of appeal without condonation of delay was dealt in the session. The speaker also emphasized that when consent decree obtained by fraud then parties should file application in the court which granted the decree. Section 23 of the Limitation Act was also discussed in the session.

SESSION 4: Fair Sessions Trials

The speakers commenced the sessions by highlighting various elements of fair trial and duties of each stakeholder in the judicial process. The objective of trial as truth finding process was discussed and timeliness in trial was emphasized by speakers as delay affects the rights of accused as well as of the victim. Various legal provisions mandating active role of judges during trial were discussed. The speakers opined that judges must instruct parties for the production of evidence if the presented evidence suggest suppression of evidence by prosecution or defense. The realistic appreciation of evidence and method to apply legal principles were discussed. It was emphasized that fairness of trial starts with investigation. The judges must find out that whether any torture or third degree method has been used by police during investigation as it reflects the quality of prosecution evidence. Therefore the scrutiny of pre-trial process by judges is crucial. The rights provided in international human rights declarations and covenants are important and courts should give due importance to such rights. The speaker opined that standard questions should not be asked from witnesses and questions should be framed after careful analysis of facts and evidences. The session was concluded by emphasizing that judges should not come under the pressure of media especially in sensational cases and should decide cases according to facts and evidences.

SESSION 5: Electronic Evidence: Collection, Preservation and Appreciation

The speaker commenced the session by demonstrating the misuse of mobile numbers and WhatsApp. The method of identifying fake WhatsApp messages was explained to participants. The fake message can be detected by clicking on the forward link of the message. The signs which in ordinary circumstances appear on header are not shown in fake messages. The requirement of certificate under Section 65 (B) of the Indian Evidence Act, 1872 for admitting electronic evidence during trial was discussed with participants. Various aspects related to transmission of messages via Voice over Internet Protocol was discussed. The speaker

highlighted various ways to detect the misuse of IMEI number of mobile. One of the major issue discussed in the session was lack of training for prosecution and investigating officer regarding collection, preservation and presentation of electronic evidence. The speaker highlighted various safeguards for preservation of electronic evidence. The role of judges in ensuring the authenticity and reliability of electronic evidence was discussed by the speaker.

SESSION 6: Laws relating to Cybercrimes: Advances and Problem Areas

The speaker commenced the session with discussion on various contours of cybercrime and various recent instances of cybercrime across the globe. One of the emerging form of cyber-attack is denial of service attack under which unnecessary spam data is fed in the servers of service providers which disable the services. Another kind of cybercrime is data theft by former employees in an organization, credit and debit card frauds and revenge porn attacks. The speaker discussed various features of amendment of the Information Technology Act in the year 2008 focusing on section 66 of the Act. Various legislative and jurisprudential principles for adjudication of cybercrime were discussed by the speaker. The speaker opined that there is very low awareness regarding cybercrime and about 80% of cybercrimes goes unreported.

SESSION 7: Sentencing: Issues and Challenges

The speaker commenced the session by highlighting the need to reduce the effect of personal ideology on sentencing process and making it objective. Sentencing should not be too harsh or too lenient rather the focus should be on imposing a balanced sentence with possibility of reformation of offenders. The speaker opined that role of judges is very crucial in sentencing as it has to be according to the facts and circumstances of the case. The manner of committing offence, social impact of crime, chances of reformation of accused, victims and his/her dependents and circumstances as well as the conduct of the accused should be analyzed during sentencing. The accused must be heard on the quantum of sentence u/s 235 (2) of the Cr.P.C. If accused has not been heard in trial court then the appellate court can hear the accused on the quantum of sentence. The need to avoid mechanical approach in sentencing was emphasized by the speaker. The needs of the victim should get due attention during sentencing especially with respect to their right of compensation. The compensation should be sufficient for effective support to the victim.

SESSION 8: Criminal Justice Administration: Appellate and Revision Jurisdiction of District Judges

The speaker commenced the session with discussion on various aspects of appellate and revisional jurisdiction under the statutory framework of the Code of Criminal Procedure. Various aspects of intervention at appellate stage such as scope of intervention and how to ensure fairness were highlighted. During revision the legality and propriety of order of the lower court can be assessed. The participant asked query about interlocutory order and during revision which application should be considered as interlocutory order which was answered by speaker and debated by participants. An order which conclusively determines the rights and liabilities of parties cannot be an interlocutory order. The speaker emphasized that all orders should be supported by reasons and principles. In revisional jurisdiction the judges can highlight that rights have been conclusively determined so order under revision cannot be an

interlocutory order. The speaker opined that judges must not be concerned about the review of their orders by higher forums. The participant asked question that when a complaint is dismissed on technical grounds and complainant was absent and matter was not finally disposed of on merit so whether there will be revision or appeal in such case. The question was debated and it was concluded that revision will lie because party's interest has been affected. Another question was that when a document has been filed in revision but not in lower court then whether that document can be considered during revision. After discussion it was concluded that when the nature of document is public in nature then such document can be considered in revision and if nature of document is not public then it cannot be considered during revision.

Participants Suggestions and Views

The participants suggested that prosecutors and investigating officer should be adequately trained for handling and presenting electronic evidence. They expressed concern on poor level of investigation and prosecution even in ordinary criminal cases because of which acquittal rate is rising. The participants also emphasized the need of enhancing awareness about the Alternative Dispute Resolution system among people. They further suggested that there should be an online portal for judges for academic discussion on legal principles.