

NATIONAL JUDICIAL ACADEMY



**WORKSHOP FOR ADDITIONAL DISTRICT JUDGES (P-
1129)**

2ND -4TH NOVEMBER 2018

PROGRAMME REPORT

Submitted by

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OBJECTIVE OF THE WORKSHOP

National Judicial Academy organised the workshop for Additional District Judges with the objective of facilitating discussion on critical areas of adjudication and the challenges in administration of justice at the district court level. The workshop aimed to discuss critical areas concerning adjudication at the District level; to explore challenges in implementation of ADR system; to study sentencing practices and advantages of integrating court and case management systems in Subordinate Courts. The sessions covered topics including issues and practices pertaining to collection, preservation and appreciation of electronic evidence; advances and inadequacies in laws regulating cybercrimes. During the sessions, the participants discussed, evaluated and shared best practices on exercise of appellate and revision jurisdiction of District Judges, in criminal and civil domains, as well. The emphasis was on enabling deliberations through clinical analysis of statutory provisions, case studies and critical consideration of the relevant judgments, minimizing the lecture format.

RESOURCE PERSONS

1. Hon'ble Ms. Justice Mridula R. Bhatkar, Judge, Bombay High Court
2. Hon'ble Mr. Justice Joymalya Bagchi, Judge, Calcutta High Court
3. Hon'ble Mr. Justice Dharnidhar Jha, Former Judge, Patna High Court
4. Hon'ble Mr. Justice Ved Prakash Sharma, Chairperson, M.P. State Law Commission, Bhopal
5. Ms. N.S. Nappinai, Advocate, NSN & Associates
6. Mr. Harold D'Costa, CEO - Intelligent Quotient Security System
7. Prof. S.P. Srivastava, Professor, National Judicial Academy.

Session I

Theme: Challenges in Implementation of ADR System in Subordinate Courts

Speakers: Justice Dharnidhar Jha & Justice Ved Prakash Sharma

In the discussions on *Challenges in Implementation of ADR System in Subordinate Courts*, the statutory framework ADR and the need for greater use of ADR as a means of resolution of disputes was emphasized upon. The benefits of ADR in reducing the workload and pendency in the courts was emphasised and the need to encourage parties to resort to ADR was stressed upon. The speakers dwelt on the nature of cases that are suitable for referral to ADR under Section 89, Civil Procedure Code, 1908. The discussions centred on the impact of use of ADR on judicial pendency and discussed the major challenges in effective use of ADR. The participants stated that the non-cooperation by the litigants and their advocates proved to be a hindrance in effective settlement of disputes and the tendency to litigate often was a stumbling block in the ADR process. It was suggested that the litigants should be made aware of the benefits of ADR in terms of cost, time and agreeability of outcome in order to encourage litigants to cooperate in the ADR process.

Session II

Theme: Court & Case Management: Role of Judges

Speakers: Justice Dharnidhar Jha & Justice Ved Prakash Sharma

In the session on *Court & Case Management: Role of Judges*, the significance of management skills in the judicial system for speedy and timely justice was emphasised upon and the concerns about the rising pendency, delay and arrears plaguing the judicial system were expressed. The speakers stressed that the judge is the master of the court and hence is the team leader guiding the team comprising of the court staff and the stake holders in the judicial system. Emphasis was placed on streamlining the court processes, efficient use of judicial time and courtroom management as court management skills. The speakers also dwelt on the relevance of case management and emphasised on the need to practice this skill to ensure that the case progresses in a timely manner.

Session III

Theme: Civil Justice Administration: Appellate and Revision Jurisdiction of District Judges

Speakers: Justice Dharnidhar Jha & Prof. SP Srivastava

In the discussions on *Civil Justice Administration: Appellate and Revision Jurisdiction of District Judges*, the speakers elaborated on the concept of appeal as a remedy to test the correctness of the decision of a court. The speakers stressed on appeal as a statutory right which encompasses both questions of fact and questions of law. The speakers distinguished between appeal and revision and the powers of the court in such cases. The speakers discussed the case of *Ganga Bai v. Vijai Kumar* (1974) to draw a distinction between the right to suit and the right to appeal and to stress that the right to appeal can only be exercised against a decree and not a mere adverse finding. The speakers discussed the scope and limitations of the right to appeal with reference to case law on the issue.

Session IV

Theme: Criminal Justice Administration: Appellate and Revision Jurisdiction of District Judges

Speakers: Justice Mridula Bhatkar, Justice Joymalya Bagchi & Justice Ved Prakash Sharma

In the discussions on the theme *Criminal Justice Administration: Appellate and Revision Jurisdiction of District Judges*, the speakers dwelt on the modes by which a complainant can access the revisional court. The speakers distinguished between appellate and revisional jurisdiction of the courts and the procedure for the same. The speakers also dwelt on the issue of how a person who is not a party to the matter can challenge the order of a court in revisional jurisdiction and stated that if the revisional court can entertain the revision *suo moto*, it can entertain a third party complaint. The speakers stated that the right to appeal has 2 facets – appeal against conviction and appeal against acquittal, and dwelt on whether the powers and approach are the same in cases of conviction and acquittal. As regards the role of the appellate judge, it was emphasised that the judgment should ordinarily not be interfered with unless the judgment is perverse. The power to appreciate evidence is restricted to perversity. If the finding of the court is one of the possible views that can be taken in the matter, the order of the court should not be interfered with. However, in cases of appeal against conviction, if there is an

alternate view, then the court can interfere to give the benefit of the same to the accused. In cases of acquittal the acquittal operates as a double presumption of innocence.

Session V

Theme: Fair Sessions Trial

Speakers: Justice Mridula Bhatkar, Justice Joymalya Bagchi & Justice Ved Prakash Sharma

In discussions on *Fair Sessions Trial*, the speakers stressed on the idea of closure of crime as the objective of sessions trial and the necessary elements of a fair trial. The speakers dwelt on the principles of natural justice and its significance in ensuring a fair trial. Fair sessions trial was stressed on as a significant factor in ensuring the public confidence in the judicial system and it was stated that the court must ensure that the parties are made to feel that the court has given them a fair hearing. The major judgments on fair trial were discussed to emphasise on rights of parties that the court must be vigilant to protect in the trial. The speakers stated that if a case hinges on technical grounds evidence, then nothing should stand in the way of permitting the evidence to come forward. The challenges in recording evidence of hostile witnesses was discussed and it was suggested that the court can use Section 311, CrPC to ask questions. Speedy

Session VI

Theme: Sentencing: Issues and Challenges

Speakers: Justice Mridula Bhatkar & Justice Joymalya Bagchi

In the discussions on *Sentencing: Issues and Challenges*, the precedents on sentencing were discussed to emphasise on the need for a rational sentencing policy. The speakers dwelt on the rationale for the conferment of discretion on the judge in determination of sentence and stressed that a mechanical determination of the quantum of sentence would not be possible. The fact scenario of every case differs and the circumstances in each case are relevant in determination of the quantum of sentence. The speakers however, cautioned the participants to use this discretion wisely and rationally to ensure a coherent and uniform sentencing practice. The speakers discussed the aggravating and mitigating circumstances that judges can consider in

determining appropriate sentence and emphasised on a cautious use of judicial discretion in sentencing. The speakers discussed the Supreme Court judgments on sentencing and the guidelines laid down by the Supreme Court for a rational sentencing policy. The cases of *Santosh Bariyar*, *Bacchan Singh* and *Macchi Singh* were discussed to understand the law on death sentence.

Session VII

Theme: Laws relating to Cybercrime: Advances and Bottlenecks

Speakers: Ms. N.S. Nappinai & Mr. Harold D'Costa

In the session on *Laws relating to Cybercrime: Advances and Bottlenecks*, it was stated that the rising popularity of e-devices and social media increases vulnerability to cybercrime. The speaker discussed the concept of cybercrime and the evolution of the manner in which cybercrimes are committed. Earlier, cybercrimes were largely based on access to devices and theft or misuse of devices accessed. Cybercrime now is mostly remotely committed without physical presence and is mostly cases of data misuse and data theft. Victimization in cybercrimes is wide spread as most people use devices which are vulnerable to cybercrime. The speakers explained the concept of spoofing of message and mails discussed the modes by which cybercriminals use spoofed messages and the methods to distinguish between genuine and spoofed messages and email. The speaker explained the concept with a practical demonstration. The speakers suggested that in cases of doubts on genuineness of messages and emails the device should be seized and sent to the forensic lab. The speaker also stressed that in cases of spoofing of mails, it must be verified if the device has been routed.

Session VIII

Theme: Electronic Evidence: Collection, Preservation and Appreciation

Speakers: Ms. N.S. Nappinai & Mr. Harold D'Costa

In the discussions on *Electronic Evidence: Collection, Preservation and Appreciation*, the speaker dwelt on the nature of electronic evidence and the devices from which electronic evidence can be obtained. The speaker discussed the principles of evidence and the provisions relating to the admissibility of electronic evidence. The speaker also discussed the methods

through which electronic evidence can be proved and the integrity and authenticity can be validated. The challenges in the collection and preservation of electronic evidence was highlighted. It was stated that preservation of electronic evidence is curcial as this evidence can be easily destroyed or tampered with. It was advised that a copy of the evidence must be made to ensure that the evidence is not lost. The speaker advised the participants to ensure that the device on which evidence is stored is not exposed to harsh conditions and the practice of attaching the device especially CD by making a hole in the CD should be discontinued as the evidence is irreversibly damaged. The speaker also explained the concept of cryptocurrency and the method of circulation and use of cryptocurrency.