

P-1154: ORIENTATION PROGRAMME FOR JUNIOR DIVISION JUDGES

01st to 07th March, 2019

Mr. Rajesh Suman, Assistant Professor and Mr. Prasadh Raj Singh, Law Associate

The Academy organized Orientation Programme for Junior Division Judges with the objective of capacity building of judicial officers at the primary tier, viz. Civil Judges (Junior Division). The sessions were designed to facilitate sharing of experiences and views amongst participant from different States on the themes, better appreciation of the judicial role; responsibility of judicial officers in a constitutional democracy; recent developments in juridical thinking and technological advances relevant to accreting performance standards; and to deliberate on several aspects of law and practices relevant to enhancing the quality of performance. The emphasis was on enabling deliberations through clinical analysis of statutory provisions, case studies and critical considerations of the relevant judgments, minimizing the lecture format.

Session 1: Constitutional Vision of Justice

The session was initiated with discussion on the meaning of justice and the rationale of justice. The speakers explained the importance of the Constitution and stated that the Constitution is a living organism that grows, moulds, and changes according to the social scenario. The Constitution is not a product of legislation but a source of legislation and all laws are to be tested on the standards prescribed by the Constitution. The speakers explained the Basic Structure Doctrine by referring to *Kesavananda Bharati* judgment and they participants gave illustrations on the Basic Structure Doctrine. The speakers then discussed development of Constitutional law from Government of India Act, 1935 to the latest amendment of the Indian Constitution. The speakers emphasized the importance and relevance of the Preamble to the Constitution of India. Rights which are included in Article 21 by way of judicial pronouncements were discussed. The speakers observed that Article 21 is a big umbrella under which other rights are included. The increasing scope of the right to live with dignity and how Directive Principles of State Policy and Fundamental Duties, which are non-justiciable are being placed under Article 21 to impart justice was highlighted. The history of foreign constitutions and foreign judgments reflecting freedom, equality and importance of fundamental rights were discussed.

Session 2: Role of Courts in a Constitutional Democracy and Adherence to Core Judicial Values

The session was initiated by discussion on the role of courts in constitutional democracy to dispense justice. The speakers explained that the judiciary has a socio-economic role and a creative function. Reference was made to judgments of the Supreme Court where in it was observed that the role of a judge is to apply the law according to the social and economic scenario. The speakers discussed the methods by which judges can interpret and apply the law to fill the gap between law and society and impart pure justice. The role of purposive interpretation, judicial activism and international conventions and treaties as tools in adjudication where discussed; and the examples of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 after the *Vishakha case* (1997) 6 SCC 241 was discussed. It was stressed that courts are not required to merely interpret laws in literal sense, but also have to adhere to the norms of social justice and strike a balance between the weaker or vulnerable party and the stronger party

in cases before. The need for change and them for preservation must be balanced by the judge. The speakers then discussed judicial values and stated that determining the law includes creating the law. Judging is not a job, it is a way of life. There should be open mindedness between the Bar and the Bench and the judges must be courteous towards the Bar.

Session 3: Discovering Current Judicial Methods

The speakers asked the participants whether they make up their minds before the hearing is complete and whether they rely on first impressions and decide the case accordingly? According to the speakers at the time of recording of evidence, a judge may get an intuition that where the case is going to lead. The speakers then discussed the art of decision making process and said that decision making is a two way process. They discussed the role of intuition while judging and shared some examples where the first impression was totally opposite of the final judgment. The speakers emphasized that deliberative thinking process must be adopted and speedy disposal must be done. The speakers then explained what comes first while judging. They said that the deliberations and the conclusion are the two stages of a case. The conclusion is eventually achieved by way of deliberations. A judge must not develop his mind first and then listen to the deliberations. The deliberations must take the case to a conclusion and not vice versa. The speakers stressed that there is no thumb-rule to decide and a judge is guided by wisdom. They also interacted with the participants and asked them to share the conditions in which they work.

Session 4: Courtroom Technology: use of ICT in courts

The Speakers started with issue of proper implementation of information and communication technology and explained how technological development is needed in courts. The speakers appreciated National Judicial Data Grid (NJDG) and considered it to be one of the most important reform of recent times. NJDG promotes efficient court management and allows judges at every level to know about essential information about cases. The discussion highlighted the enhancing role of Information Technology (IT) in today's scenario, for litigants as well as for judges. With the help of technology, judges can monitor cases and dispose old cases on priority basis. The speakers explained how NJDG can be useful for a judge. Then they focused on management issues, discussed objectives of a good management system. The speakers asked the participants to share ideas about management of courts. The speakers then discussed the importance of technological developments in courts and stated that transformation will lead to usage of less paper in court processes. It will also empower every judge to dispense speedy and effective justice. The speakers highlighted the process of implementation of ICT tools in the Delhi High Court and how it is becoming a paperless court. The speakers then discussed "E-FIR" and use of Adobe Acrobat, MS Office, SCC Online and online Bare Acts etc. It was emphasized that nature of evidences produced in courts is changing and judges must be ready to deal with such advancements. The speakers also presented a video showing how E-Evidences help in prosecution of cases and discussed foreign cases where fingerprints were extracted from a photograph and bullet shell.

Session 5: Managing the Docket: Court & Case management

The session started with sharing of experiences by speakers related to management of docket and explained how it must be managed. It was stressed that a judge must maintain his own docket and this work must not

be left upon the court staff. Practices in courts by the court staff with regard to docket management and how to address these problems was elaborated. The speakers interacted with participants regarding the management of docket in different courts of India. The speakers said that with changing times, a judge should actively participate in court proceedings because she/he is the captain of the ship. A judge must be patient and must maintain all the rules. It is the duty of the presiding judge to explore every field to ensure justice. The speaker explained Section 165 of the Evidence Act, 1872 in detail. The speakers discussed 3 aspects of docket management i.e. administrative aspects, management of civil cases and management of criminal cases. Management as optimum utilization of resources and motivation of stakeholders was stressed upon. The speakers gave many suggestions for effective court management which included monitoring of all the records of the courts and fixing similar cases together. The speakers then discussed some of the practical problems faced by judges related to their staff and suggested ways by which judges can control and handle their courts effectively. The speakers shared their own experiences related to court management and also invited participants to share their experiences and solutions they follow to address the issues.

Session 6: Law of precedents: Identification and application of Ratio Decidendi

The speakers initiated the session by saying that substantial number of cases are decided on facts and not on law. The speakers emphasized focusing on the language of bare acts to clear doubts and understand how the law applies to the facts of a case. The speakers said that not every case needs to be rested upon precedents. Every case has different set of facts and some facts are bound to be different especially in criminal cases. The speakers then explained what is relevant evidence and when precedents are required. The speakers advised the participants to read commentaries to get a better understanding of laws before referring to the precedents. The speakers explained Article 141 which makes the judgments of the Supreme Court binding on all courts. It was highlighted that while analyzing judgments, it is usually seen that the final operative part of the judgment becomes different from the body of the judgment, reflecting inconsistency, which must be avoided. The institutional trust must be kept in mind and there should be consistency in writing a judgment. The difference between *ratio decidendi* and *obiter dicta* was explained. If the judgment has not been properly reasoned and referred to the decisions, it can be subject to appeal. The speakers concluded the session by discussing provisions related to marking of evidence, self-incriminating material and burden of proof. They emphasized the importance of NJDG for monitoring the cases and also advised the participants to write a letter to the District Judge if they observe any unnecessary pendency.

Session 7: Law relating to cyber-crimes: Advances and Bottlenecks

The speakers discussed the recent technological developments. They explained John Doe injunction and its use in cases of various pirated content and websites and software like torrent which facilitate illegal data exchange. In these cases the courts face a challenge as there is no particular person to point out in order to obtain injunction and the exchange that takes place is anonymous. The speakers then explained how digital evidence is extracted. The speakers shared statistical data on internet penetration and cybercrime. The speakers discussed operating systems in smartphones and said that in android phones, the e-evidences can be constructed as well as destroyed creating a lot of mischief in the field of e-Evidence. The speakers also discussed how messages on WhatsApp can be easily spoofed and how to detect spoofing. Various aspects of call data recording such as production of record to analyze them were explained by the speaker. The speakers stated that even if the call data record is obtained, the contents of the message is not stored. The

speakers then explained Section 66 of the Information Technology Act, 2000 which deals with hacking, identity theft and spoofing. WhatsApp encryption was referred by the speakers and they said that there is no end to end encryption which is claimed by WhatsApp and messages can be easily spoofed. The speaker discussed various case studies where cyber criminals were apprehended using various methods. The speakers explained the concept of root server and that all the root servers are out of India and this makes investigation of cybercrimes in India difficult. Different types of cybercrimes such as cyber stalking, cyber contraband, cyber trespassing, cyber laundering, cyber vandalism, cyber defamation, cyber theft, cyber terrorism, cyber pornography and cyber fraud were also explained.

Session 8: Electronic Evidence: Collection, Preservation and Appreciation

The speakers initiated the discussion with the concept of cyber murder and cyber fraud through the use of internet. The cases of prescribing lethal drugs through email and committing fraud through the use of emails were discussed. The speakers covered the topic of online job scams and how evidences are found and extracted in such cases. The speakers then focused on biometric hacking. It was highlighted that 96% of fingerprint capturing technology is image based biometric machine which is susceptible to fraud as it stores the image of the fingerprint. It was emphasized that the image can be used in many different ways to commit a cybercrime as fingerprint is a very important form of giving access. The speakers explained that mobiles are the easiest to target as the hackers can put applications in the app that contain malware. According to the speakers, Artificial Intelligence may be able to defend against cyber-attacks and cyber risk insurance is going to become prevalent in future. Thereafter, cyber security scams like Cosmos Bank fraud and Aadhar breach case were discussed. The speakers explained that the electronic evidence may be found in photos, videos, email, messages, internet, history, backups, GPS, call logs, print outs, audio clips etc. They also explained how the date and time of messages can be changed which can mislead the investigation. The speaker emphasized that essential data related to the evidence including size of the file must be documented in the panchnama. But tampering with electronic evidence is also possible with the help of software that alter the attributes of a file. The speakers then discussed 'rooting' of a mobile phone and stated that mobile phone come unrooted by default from the manufacturer. But, for the purpose of getting unauthorized access, many people root the phone which enables anyone to alter the information as well as location. The IP address can be used as an e-evidence in order to know the origin of crime.

Session 9: Forensic Evidence in Civil and Criminal Trials

The speakers started the discussion by highlighting the relevance of evidence and infrastructural issues pertaining to preservation and analysis of evidences. The speakers discussed difference between primary evidence and corroborative evidence. They also focused on limitations of forensic evidence. Major problems in collection and assessment of evidence including delays in collection of evidence, poor infrastructure, improper chain of custody, lack of accreditation or reputation and lack of defence labs were discussed. The speakers explained changing nature of evidence in rape and sexual harassment cases. According to the speakers, nowadays even if there is no forensic evidence, a person can be convicted for rape as the law has been changed. The speakers discussed reports on analysis of Protection of Children from Sexual Offences Act (POCSO) cases across 5 different states of India. They also discussed presumptive test and confirmatory test. Then the speakers focused on the issue of relevance of blood sample and hair in forensic evidence. The speakers explained the relevance of injuries in case of rape and interacted

with participants that whether injuries are necessary to ascertain the fact that a person has undergone rape. There were many different views of participants but the speakers said that injuries are not necessary for proving the offence of rape. The speakers dwelt on issues related to clothes of victim as it contains many small factors which, if extracted properly, can become a very strong forensic evidence. The discussion further analyzed the concept of DNA and explained different ways of DNA sampling in the light of Supreme Court judgment where the principles regarding assessment of DNA evidences were enunciated. The problems of non-matching of DNA due to improper samples was highlighted. The speakers further, focused on lie detectors and narco analysis and how these techniques can be used in forensic evidence. Relevance of blood groups in identification of a child's biological parents was also discussed. Other methods of forensic evidence such as sex verification and age estimation were also discussed.

Session 10: Judging Skills: Framing of Charges

The session highlighted procedural as well as substantive laws pertaining to framing of charges. Reference was made to the case of *V.C. Shukla v. State*, (1980) Suppl SCC 92 where the Apex Court issued guidelines relating to framing of charges. The speaker deliberated on the admissibility of evidence based on which conviction and acquittal can be done. The speaker further explained various stages during which charges can be framed adding a reference to Section 240 of the CrPC. The speaker also mentioned many noteworthy areas related to common intention, common object and burden of proof along with Section 106 of Indian Evidence Act, 1872. Furthermore, with the help of different hypothetical case studies by the speaker, various aspects related to the possibility of conviction were explained and discussed.

Session 11: Judging Skills: Art, Craft and Science of Drafting Judgment

The session commenced with an introduction highlighting the importance of art, craft and science of drafting judgments. The speaker stated that judgment must be based on strong logic & reasoning. Further, it was added that relevant fact of the case must be taken into consideration before reaching a conclusion. It was suggested that superfluous and fancy use of language must be avoided. The speaker emphasized that unnecessary observations in the judgment must be avoided and findings should be recorded with regard to issues involved. The admissibility and inadmissibility of an evidence were discussed. The speaker expressed his concern that in the near future artificial intelligence will substitute everything, however in judging, human role is indispensable. The speaker further stressed upon the importance of expert opinion, their qualification and reasoning before arriving at the conclusion.

Session 12: Art of Hearing: Promoting Rational Discourse in the Courtroom

The speaker initiated discussions pertaining to recording of statement, and suggested that statement must be recorded at the earliest to avoid discrepancies. The speaker also deliberated upon the importance of Section 165 of the Evidence Act, 1872 and it was emphasized that intervention by a judge is essential in trial. The speaker stated that a judge should control proceedings to ensure justice. During the course of discussion, it was emphasized that adequate time should be given to witnesses considering various facets such as; communication skill, responding time and their educational background. It was further highlighted by the speaker that mistakes in recording of facts must be avoided since it is arduous to ratify when the matter goes for appeal. It was emphasized that mistake in law can be corrected, but errors in recording of

facts will create impediments in administering justice. The speaker further discussed the importance of cross-examination and it was stated that complicated questions asked during cross-examination might cause injustice.

Session 13: Role of Magistrates at First Production of Arrested Person

The session involved discussion on the role of magistrates in case of bail, police custody, judicial custody, and discharge. The speaker discussed about cognizable and bailable offenses and it was highlighted that in many instances the police arrest the person in non-cognizable offences. The speaker further emphasized that it is the responsibility of the magistrate to check whether an offence is falling under the category of cognizable offence or non-cognizable offence. It was further deliberated that bail is a matter of right with limited exceptions. The practice of handcuffing in courts at the subordinate level was pointed out and it was highlighted that the Apex Court has strongly condemned the practice of handcuffing and directed that contempt proceedings could be initiated against the magistrate for entertaining such practice. A reference was also made to various landmark judgments of Supreme Court and High Courts on the subject for the purpose of discussion.

Session 14: Fair Trial: Fair Process

It was emphasized by the speaker that the journey to acquittal or conviction is a slow process where evidence is presented and proper attention to detail is required. It was suggested by the speaker that a judge should not jump to conclusions and form an opinion at an early stage of the trial. The speaker further deliberated at length upon the social and media pressure emerging in contemporary times and how to tackle such challenges without affecting the outcome of a case. The importance and lacunae of fast track courts were also discussed. The speaker suggested that the penal sections should be carefully examined to avoid any discrepancy pertaining to minimum punishment prescribed by law. A reference was also made to Universal Declaration of Human Rights (UDHR) with regard to fair trial. Lastly, Section 279 CrPC was discussed in detail.

Session 15: Role of Courts in Securing Gender justice

The session began with an introductory remark by the speaker stating that gender is the social construction of masculinity and femininity. The speaker further highlighted various attributes of a broken home such as; anger, frustration, insecurity, violence, depression, anxiety, confusion and child problems. A reference was made by the speaker to the global studies where it was identified that women do 66% of work with access to just 1/10th of resources. The speaker further cited a report compiled by International Labour Organization which highlighted that the value of the work done by women in terms of money, amounting to \$11 trillion is neither paid nor asked. Various landmark judgments on the subject were referred for discussion during the session such as; *Government of Andhra Pradesh vs. PB Vijay Kumar* (1995) 4 SCC 520, *Air India vs. Nagesh Meerza* (1981) 4 SCC 335, *P.Geetha vs. Kerala Livestock Development Board and Vijay Sharma vs. Union of India* 2015 SCC Online Ker 71, *Vishaka vs. State of Rajasthan* (1997) 6 SCC 241, and *Indian Young Lawyer Association vs. State of Kerala* 2018 SCC Online SC 1690.

Session 16: ADR and Plea Bargaining

During the session different types of ADR mechanisms were discussed such as; arbitration, mediation and conciliation. A comparative structure was highlighted by the speaker where a reference was made to ADR procedures followed by USA and European countries. The speaker further elucidated upon Information Centered Mediation and Process Centered Mediation. Further various types of cases where matter cannot be referred for mediation were highlighted such as; matters involving points of law, interpretation of documents, alleged fraud and acts against society or human rights. The speaker further elaborated upon stages of mediation which included; introduction, opening statements, understanding problems, developing options, solutions and conclusion.

Session 17: Occupational Stress in Judges: Identification and Consequences of Stress

It was emphasized by the speaker that stress is bound to happen irrespective of profession. It was discussed that judges normally agonize more from stress since they are involved in judicial decision making. During the discussion various methods to reduce stress were emphasized upon such as; listening to music, exercise, sports in order to purge stress and remain healthy. Further, it was stated by the speaker that judges should acknowledge, identify, accept, express and exhaust their feelings since holding back emotions could lead to occupational stress. Lastly, it was emphasized by the speaker that sadness is a positive emotion whereas depression is a negative emotion.

Session 18: Managing Judicial Stress: Institutional Strategies and Techniques

The speaker identified stress as a mental, emotional and behavioral reaction. The speaker suggested various methods to reduce stress such as; talking to someone, changing the attitude, being realistic, getting organized, taking breaks, taking good care of oneself, learning to say no and getting regular exercise. A reference was made to a book called *Power of Now* by Eckhart Tolle by the speaker. It was emphasized by the speaker that change is persistent and important for overall growth. The speaker lastly highlighted the importance of time management and advised participants to be punctual and adhere to time schedules.
