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## **Workshop for Additional District Judges**

**10<sup>th</sup> – 12<sup>th</sup> January 2020**

### **Programme Report**

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The National Judicial Academy organized a 3-day programme for Additional district Judges. The workshop was divided into 8 Sessions wherein the legal luminaries and experts on the subject enlightened the participants on various issues which are significant for Additional District Judges while dealing with matters under various acts.

The workshop aimed to provide an in-depth understanding of the ADR System and the challenges faced in Implementation in subordinate courts, Court and Case management, Civil and Criminal Justice Administration, Fair Sessions Trial, Sentencing, Cybercrime and Electronic administration and its admissibility in courts. The Additional Director (Research & Training) welcomed the participants and introduced the themes of sessions to be dealt during the workshop. He welcomed Hon'ble Justice Abhay Manohar Sapre, Former Judge, Supreme Court of India, Hon'ble Justice R.C. Chavan, Former Judge, High Court of Bombay, Hon'ble Justice Ashutosh Kumar, Judge, High Court of Patna, Hon'ble Justice Atul Sreedharan, Judge, High Court of Madhya Pradesh, Hon'ble Justice Raja Vijayaraghavan V., Judge, High Court of Kerala and subject experts who were invited to guide the sessions. Lastly, challenges in the implementation of ADR System in subordinate courts were also pointed out.

#### **Session 1 - Challenges in Implementation of ADR system in Subordinate Courts**

**[Panel:** Hon'ble Justice A.M. Sapre and Hon'ble Justice R.C. Chavan]

Justice A.M. Sapre commenced the session by greeting all the participants. Justice Sapre initiated discussions on court room discipline, punctuality and suggested judges to be always on time in their court rooms and never be

dependent on staff for the work. Further, quoting Justice M.C. Chagla from his biography that “*in my entire term as a High Court Judge I didn’t take a single day leave and devoted myself to the High Court. If my High Court is working, my place should be there and I gave to my high court everything which I was capable of giving*”, the speaker highlighted his dedication towards the profession. He shared his experience as a judge on learning the art of writing judgements with the guidance from Justice R.C. Lahoti.

Further, the session was proceeded by an introduction of all participant judges. Thereafter, Justice R.C. Chavan deliberated upon challenges in the implementation of ADR System in Subordinate Courts, the statutory framework of ADR and the need for greater use of ADR as an alternate means of dispute resolution. Benefits of ADR in reducing the workload and pendency in courts and the need to encourage parties to resort to ADR was emphasized upon. The speakers pointed out cases that are suitable for ADR under Section 89, Civil Procedure Code, 1908, the object behind the provision and how it is interpreted in court. Speakers also highlighted Order 27, Rule 5-B of Civil Procedure Code, 1908 which is a part of Sec. 89. The discussions focused on the impact of ADR techniques on judicial pendency and discussed the major challenges in effective use of ADR. Participants were asked the extent to which advocates causes barriers in effective settlement of disputes and the tendency to litigate as a stumbling block in the ADR process. It was suggested that litigants should be made aware of benefits of ADR in terms of cost, time and agreeability of outcome in order to encourage litigants to cooperate in the ADR process. It is the duty casted by the Code to assist in arriving at a settlement in suits against the government or a public officer.

The speaker further emphasized on the case of *Booz-Allen & Hamilton Inc. vs SBI Home Finance Ltd. & Ors*, whereby it was stated that, the court where a suit is pending, will refuse to refer the parties to arbitration under Sec. 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes.

The well recognized examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.

With the conclusion of the session speaker suggested participants to be clear and thorough with the subject you are dealing with, that no authority can question or challenge and also advised that to improve judgement writing skills, write a judgement daily and plan to write at least two good judgements in a week. Inculcate in you a habit of reading a Supreme Court judgement daily.

## **Session 2 - Court & Case Management: Role of Judges**

**[Panel:** Hon'ble Justice A.M. Sapre and Hon'ble Justice R.C. Chavan]

In the session on *Court & Case Management: Role of Judges*, Justice chavan initiated the session highlighting key points to be followed for court and case management, the main focus was on the number of times a case is listed before the judge. To be listed in such a manner that no authority can play with you and control over the cause-list. The significance of management skills in the judicial system for speedy and timely justice was emphasized upon and concerns about the rising pendency, delay in 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. It is the responsibility of the judge to train their staff and keep their court room in a disciplined manner. Emphasis was placed on streamlining the court processes, efficient use of judicial time and courtroom management as court management skills. The speakers also focused on the relevance of case management and emphasized

upon the need to practice this skill to ensure that the case progresses in a timely manner. In the conclusion of the session Justice Sapre suggested judges to have clarity of the subject in they are dealing with. He gave an example of one of the court whereby a senior lawyer cited a Supreme Court judgement of the January edition of Supreme Court Cases in his case and prayed relief but the judge gave reply stating that it was an older judgement. Therefore, the judges were asked to be well versed and updated with the developments in law.

### **Session 3 - Civil Justice Administration: Appellate and Revision Jurisdiction of District**

**[Speaker:** Prof. S.P. Srivastava, **Co-Chair:** Hon'ble Justice A.M. Sapre and Hon'ble Justice R.C. Chavan]

The Session was initiated by Prof. Srivastava highlighting that the word “appeal” has not been defined under the Civil Procedure Code, 1908. It needs to be constructed in its natural and ordinary meaning. Appeal may lie to confirm, reverse, modify the decision or remand the matter, by a competent higher forum on: Question of fact, and Question of law. It was stated that an appeal is a:

- Creature of statute
- A substantive right
- Which can be exercised only against the decree, or appealable orders and not merely against an adverse finding
- Suo motu appeal is not possible

It is a continuation of the suit wherein the entire proceedings are left open before the appellate authority.

Judgment in cases *Smt. Ganga Bai v. Vijay kumar*, AIR 1974 SC 1126 and *Union of India v. K.V. Lakshman*, AIR 2016 SC 3139 were referred to suggest that the right to first appeal, under Sec. 96 of the CPC, against the decree is a legal right of the litigant, the jurisdiction of the first appellate Court is very wide like that of the Trial Court, and hence a litigant can challenge almost

any of the findings of fact or law by the Court of first instance. Right to First Appeal is a very valuable right of the litigant.

The case of *Madhukar v. Sangram*, AIR 2001 SC 2171 was cited to reiterate that the judgment of the Appellate Court must issue-wise record findings supported by reasons. The same should be done for all the issues, along with the contentions put forth, and asserted by the parties. While reversing a finding of fact the Appellate Court must contemplate with clarity the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding.

Following cases were also referred during the course of discussions: *Deepchand vs Land Acquisition Officer*, 1994 AIR 1901; *Banarsi and Ors vs Ram Phal*, (2003) 9 SCC 606; *Shasidhar vs Ashwini Uma Method*, (2015) 11 SCC 269; *Union of India vs Ibrahim Uddin*, (2012) 8 SCC 148; *Andisamy Chettiar vs A. Subburaj Chettiar*, (2015) 17 SCC 713; *Shyam Sundar Sarma vs Pannalal Jaiswal and Others*, (2005) 1 SCC 436.

It was stated that Sec. 115 CPC invests the power of Revision in High Courts. It was stated that the power of revision is limited to keep subordinate courts within the bounds of their jurisdiction. Primary object of the revision is to prevent subordinate courts from acting arbitrarily, capriciously, illegally or irregularly in exercise of their jurisdiction. Lastly, it was emphasized that orders, which are interim in nature, cannot be the subject matter of revision under Sec. 115. Preferring an application under Sec. 115 of the Code is not a substantive right. It is a source of power for the High Court to supervise the subordinate courts.

#### **Session 4 - Fair Sessions Trial**

**[Panel:** Hon'ble Justice Ashutosh Kumar and Hon'ble Justice R.C. Chavan]

The session was initiated by an introduction of the theme. It was an interactive session between speakers and participants. Concept of fair trial was discussed in detail. Principles of fair trial were discussed at length which are required to be upheld at every stage of the judicial proceedings. Principles

of fair trial includes right to be presumed innocent, the right to be defended by a lawyer, the right to be informed of charges, Right against Self-incrimination. It was emphasized that fairness, justice and reasonableness are the heart and soul of adjudication. In order to bolster the faith of a common man in the judicial system, it is of paramount importance that the trials are carried impartially applying sound principles of law. It was further stressed that justice needs to be done as well as seen to have been done to ensure public confidence in the justice system. Concept of fair trial in Universal Declaration of Human Rights (UDHR) lays down the common standard to be met by all nations. Article 11(1) states: "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he had all the guarantees necessary for his defence." Article 14 of the constitution deals with the Equality and Fair treatment. Further, it was quoted by the speaker that "Law is good but Justice is better." A judge should be fair in approach. It was stated by the Supreme Court that "A judge has to be a Robust Judge". The rules that ensure protection of all parties – defence, prosecution, accused, victim, and witnesses are laid down in the Code of Criminal Procedure and the Evidence Act.

It was suggested that procedures e.g. framing of charges should be done properly by the judges. Grouping of documents like police report, investigation reports must be done meticulously. Accused should be told about the crime for which he has been accused and the examination of witness should be done properly. Examination of the accused should also be carried out by the judge.

In the session case laws were discussed such as *Kali Ram v. State of Himachal Pradesh*, AIR 1973 SC 2773; *Nandini Satpathy v. P.L. Dani*, AIR 1978 SC 1025, and *Maneka Gandhi v. Union of India (UOI) and Anr*, (1978) 1 SCC 248.

In the conclusion Justice Chavan interacted with the participants and asked them to state the average number of cases where acquittal is false. The participants were suggested to be fair in their work.

## **Session 5 - Criminal Justice Administration: Appellate and Revision Jurisdiction of District Judges**

**[Panel:** Hon'ble Justice Ashutosh Kumar and Hon'ble Justice R.C. Chavan]

The topic for fifth session was Criminal Justice Administration: Appellate and Revisional Jurisdiction of District Judges. It was stated that Chapter XXIX and XXX of Code of Criminal Procedure provides for Appeals and Revision. It enables Superior Courts to review and correct decisions of lower courts. Apart from it being a corrective device, the review procedure serves another important purpose. In revision, acquittal cannot be turned into conviction and the matter can only be remanded. Special revision jurisdiction has been provided under section 398 of CrPC. It was stated that the appellate Court has equal powers as of trial courts and appeal is of two types that is appeal against acquittal and appeal against conviction. The discussion on introductory order and final order took place. It was stated that revision does not lie against an interlocutory order but only against a final order. It was deliberated that delay in itself cannot be used by the trial court as a ground for acquittal of an accused. Sec. 372 of Code of criminal procedure was discussed in which it lays down general principle that no appeal shall lie from any judgement or order of a criminal court except as provided by the Code or by any other law for the time being in force. It is therefore necessary to bear in mind that an appeal is a creature of statute and that there is no inherent right of appeal. No appeal where the accused is convicted on his plea of guilty. Section 376 states that there shall be no appeal by a convicted person in petty cases.

Under Sec. 397 power is given to judges and the High Court to call for the records of the subordinate courts for the purpose of exercising the powers of revision, and 398 empowers them to order further inquiry under certain circumstances.

The judgments of *Madhu Limaye vs State of Maharashtra*, 1977 4 SCC 551; *Mohd. Hashim vs State of U.P.* 2017 2 SCC 198; and *Subhash Chand vs State (Delhi Administration)*; *Rama and Ors. vs State of Rajasthan*, AIR 2002 SC 1814; *VC Shukla vs State through CBI*, 1980 SCR (2) 380; *Pala Singh & Anr vs*

*State Of Punjab*, 1973 SCR (1) 964; *State of Himachal Pradesh v. Gyan Chand* (2001) 6 SCC 71; and *Amar Nath And Others vs State Of Haryana & Others* 1977 4 SCC 137 were discussed at length.

### **Session 6 - Sentencing: Issues and Challenges**

**[Panel:** Hon'ble Justice Ashutosh Kumar and Hon'ble Justice R.C. Chavan]

Justice Chavan initiated the session a brief introduction of the theme and stated that Sentencing means what is meaning of maximum under the prescribed act. How the manner in which the offence is committed and told to find out what sentence the accused deserves. Uniformity in the substantive and the procedural law of the country was achieved with the passing of the Indian Penal Code, 1860. Sec. 235 of Code of Criminal Procedure 1973 was discussed in which the Judgement of acquittal or conviction is given after hearing the accused on the question of sentence and pass sentence on him according to the law in case of conviction. Sec. 354 of The Code Of Criminal Procedure, 1973 was also discussed where the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence. Instances were described in which death penalty can be given such as, if the murder has been committed after previous planning and involves extreme brutality. 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 suggested to use their power in a Uniform and Proportional manner such as a level of uniformity and consistency must be observed and there should be lack of arbitrariness. 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 emphasized upon cautious use of judicial discretion in

sentencing. The speakers discussed some theories relating to sentencing such as Retributive, Expiatory and Reformatory school of penology. *“Every saint has a past, every sinner has a future.” – Krishna Iyer J “Theory of Reformation through punishment is grounded on the sublime philosophy that every man is born good, but circumstances transform him into criminal.”* 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 *Accused ‘X’ vs State of Maharashtra* 2019 7 SCC 1, *Radhe shyam vs Chhavi Nath* 2015 5 SC 425, *Bacchan Singh* and *Macchi Singh* were discussed to understand law on death sentence.

### **Session 7 - Law relating to Cybercrime: Advances and Bottlenecks**

**[Panel:** Hon’ble Justice Atul Sreedharan and Hon’ble Justice Raja Vijayraghavan]

Justice Raja Vijayraghavan initiated the session by giving introduction on the theme *Law relating to Cybercrime: Advances and Bottlenecks* with presentation. The speaker stated that Crime is an act or omission, which is prohibited by the law. Cyber-crime may be said to be an act which violates net etiquettes. Cyber-crime is the latest and perhaps one of the most specialized and dynamic field in cyber laws. The speaker discussed on what is cyber-crime, any criminal activity in which a computer or computer network is the source, tool, target or place of crime. The speaker also discussed against whom cyber-crime can be done such as:-

1. Crime against government in which cyber terrorism and Hacking government sites are most frequent,
2. Crime against persons such as cyber pornography, Stalking, Defamation and Business Email Compromise (BEC) are more frequently done,
3. Crime against property such as phishing and illegal Intellectual Property Rights are there.

The speaker discussed on Types of Cyber Criminals which are:

1. The Social Engineer,

2. The Spear Phisher,
3. The Hacker,
4. The Rogue Employee,
5. The Ransom Artist

The speaker stated the types of Cyber Crimes:-

1. Distributed Denial of Service Attack (DDoS)
2. Phishing
3. Credit Card Fraud
4. Ransomware
5. Shoulder Surfing
6. Keylogger
7. Skimmer
8. Spoofing
9. Salami Attack

The Speaker also discussed the Cybercrime statistics of 2018 and the data of NCRB. The cases which were recorded of Cyber Stalking or bullying of Women/Children (Section 354D IPC) in different states such as Maharashtra – 301 Cases, Haryana – 27 Cases, Andhra Pradesh – 48 Cases etc. The discussion also dealt with the Frauds related to ATM's and Violation of privacy in Cyberspace. Further global impact of Ransomware was also stated. Some of the Major Cybercrimes of 21<sup>st</sup> Century were also discussed:-

- At least 300,000 computers were affected by Ransomware WannaCry.
- Norpetya Ransomware said to be the most destructive cyber Attack.

The Speaker stated the offences under the Information Technology Act' 2000 as provided under sections 65, Sec. 66 and Sec 66B. Sec. 65 to Sec. 74 of the act were also referred highlight offences under the Act. Section 66B was focused and discussed their doubts under Sec 66B amongst the resource persons. The concept of compounding of offences and section 77-A was also dealt by the speaker.

Further some Major Cybercrimes were stated by the speaker, such as:

- UIDAI Aadhar Software Hacked.
- Cosmos Bank Cyber Attack in Pune.
- ATM System Hacked – Canara Bank ATM.
- SIM swap scam.
- Health Attack on Indian Healthcare Website.
- Attack on Kunkulam.
- ISRO Attack.

The Legal Challenges from social media platforms and challenges for law enforcement was discussed by the speaker. Further, the Enforcement issues or Bottlenecks as stated included - Detection of Crimes, Non-Corporation from ISPs and MNCs, Anonymity, and Shortage of Staff, infrastructure and expertise.

There is a pressing and exigent need to give a message about the 'Pernicious and for reacting impact of cybercrime and to those who are minded to commit' these type of offences. In the conclusion of the seminar there was an interactive session with the participants regarding their experience with cybercrimes.

### **Session 8 - Electronic Evidence: Collection, Preservation and Appreciation**

**[Panel: Hon'ble Justice Atul Sreedharan and Hon'ble Justice Raja Vijayraghavan]**

Justice Raja Vijayraghavan initiated with the session by explaining what is 'electronic form' according to Information Technology Act, 2000 with reference to information, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, microfilm, computer-generated micro fiche or similar device. The simpler explanation was stated as that information that is stored/transmitted electronically is said to be digital. The case of Anwar P.V. vs. P.K. Basheer 2014 10 SCC 473 was discussed by the speaker regarding the production of electronic records in evidence that only if

the electronic record is duly produced in terms of Section 65B, the terms would arise as to the genuineness thereof and in that situation, resort can be taken to Section 45A- Opinion of examiner of electronic evidence. The difference between physical and electronic evidence was discussed with the participants. The speaker stated that the challenge was that, Digital evidence has wider scope, and can be more personally sensitive. The speaker stated that Digital Forensics is defined as the process of preservation, identification, extraction, and documentation of computer evidence which can be used by the court of law. It is a science of finding evidence from digital media like a computer, mobile phone, server, or network. It provides the forensic team with the best techniques and tools to solve complicated digital-related cases. Digital Forensics helps the forensic team to analyze, inspect, identify, and preserve the digital evidence residing on various types of electronic devices. Concept of Locards was explained related to computer interactions which was explained as *“when a person comes in contact with an object or another person, a cross transfer of physical evidence can occur”*.

The speaker discussed on Forensic Linkages which are – Person, Platform, Application, and Data

Forensic process was also explained as:

- Preparation
- Collection
- Examination
- Analysis
- Reporting

The speaker gave guidelines for handling of Electronic Evidence at a crime scene:-

- Recognize, identify, seize and secure all electronic evidence at the scene.
- Document the entire scene and the specific location of the evidence found.
- Collect, label and preserve the electronic evidence.

- Package and transport electronic evidence in secured manner.

Electronic Evidence management timeline was explained by the speaker:-

1. Case Preparation
2. Evidence Identification
3. Evidence Handling
4. Evidence Classification
5. Evidence Transportation
6. Evidence Acquisition
7. Evidence Analysis
8. Evidence Reporting

The reasons are to be considered before seizing device and collect related evidence. Places where data is typically found were dealt by the speaker which included the following: Email, Cache files, Registry, Unallocated Space, Temp. files, Encrypted files, Compressed files and Slack space

Further the speaker pointed out objects which could be seized and measures to be taken while seizing those items such as

- Chain of Custody
- Transfer documentation
- Enumerated list of data, devices and associated media

The Chain of custody was explained by the speaker as *the documentation that shows the people who have been entrusted with the evidence.*

Points for Fool-Proof chain of custody were stated as:-

- Always accompany evidence with their chain of custody forms.
- Give evidence positive identification at all times that is legible and written with permanent ink

Further the topics such as Acquisitions, Integrity of Digital Evidence were dealt by the speaker. Digital data is vulnerable to intentional or unintentional alteration. Admissibility of Electronic Records as evidence before courts was discussed by the speaker as only by section 65A that the procedure for

proving electronic records by virtue of section 65B is laid down. Section 65A of the Evidence Act creates special procedure laid down in section 65B by which electronic records may be admissible in evidence. On a deeper scrutiny, section 65A performs the same function for electronic records that section 61 does for documentary evidence. Section 65B is a complete code in itself detailing conditions by fulfilling which alone, can an electronic record shall be deemed to be also a document admissible in evidence in any proceedings without further proof or production of the original.

In the whole discussion the cases which were referred are: *Santosh Madhavan Vs. State of Kerala* 2014 KHC 31, *Tukaram S. Dighole vs. Manikrao Shivaji Kokate* 2010 4 SCC 329, *Tomaso Bruno and Another vs. State of Uttar Pradesh* 2015 7 SCC 178, *P. Gopalakrishnan vs. State of Kerala* 2018 4 KHC 437, *State (NCT of Delhi) vs. Navjot Sandhu* AIR 2005 SC 3820, *Anvar P.V. vs. P.K. Basheer* 2014 10 SCC 473, *Shafi Mohammad vs. The State of Himachal Pradesh* 2018 2 SCC 801.