

National Judicial Academy, Bhopal



PROGRAMME REPORT

Orientation Programme for Junior Division Judges

[P-1207]

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Programme Co-ordinators

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National Judicial Academy, Bhopal

The National Judicial Academy organized a seven days Orientation Programme for Junior Division Judges from 21-27 February 2020. The Programme was conceived for capacity building of judicial officers at the primary tier, viz. Civil judges (Junior Division). The sessions provided a forum for the participants to share experiences and views with counterparts from other States. The programme facilitated participants in comprehending judicial role and understanding their responsibility in a constitutional democracy. Alongside, recent developments in juridical thinking and technological advances relevant to accrete performance standards were discussed. Several aspects of law and practice relevant to enhance the quality of performance in judges formed an integral part of the deliberations.

Day-1

Session -1 Constitutional Vision of Justice

Panel- Dr. Justice Shalini P. Joshi & Prof. V.K. Dixit

The session commenced by emphasizing the key objective of courts which is, to secure and impart justice. It was stressed that 'justice' is a virtue that transcends all boundaries and it is this very virtue which is the philosophy of our constitution. The discussion accentuated that the role of the judiciary is to protect rights of the people against the ever expanding powers of government. The discussion also underlined the importance of Article 14 & Article 21 of the Constitution of India and it was highlighted that fundamental rights play a fundamental role in defining justice. Emphasis was placed on the fact that judiciary is endowed with the responsibility to interpret the constitution and this interpretation is not only restricted to writ jurisdiction of the Supreme Court and the High Courts but also to the district judiciary. Thereafter, in the light of a few leading case laws like *Justice K. S. Puttaswamy (Retd.) & Another v. Union of India & Ors* (2018) 1 SCC 809, *Bandhua Mukti Morcha v. Union of India* (1993) 3 SCC 19 and *Olga Telis v. Bombay Municipal Corporation & Ors* (1985) 3 SCC 545: AIR 1986 SC 180, Right to Livelihood, Right to food, Right to Education, Right to housing, and Right to health as envisaged under Article 21 were discussed.

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

Panel- Dr. Justice Shalini P. Joshi & Prof. V.K. Dixit

The session commenced by emphasizing the primary role of courts and elucidated that the judiciary need to apply the law according to the social and economic scenario. For this purpose it is significant for the courts to have a comprehensive understanding of the various levels at which the law operates. This will ultimately lead them to understand the idea of justice. The role of purposive interpretation, judicial activism and international conventions and treaties as tools of adjudication were discussed in detail. The session further emphasized that law encompasses a lot of transgressions and the purpose of courts is to remove those anomalies. The participants were requested to share their perspectives on the role of a judge in a constitutional democracy. Subsequently, it was emphasized that the quintessence of a democracy is that the majority while reaching out at a decision takes into consideration the views of the minority as well. Therefore, it is necessary for courts to maintain and respect the content of the rule of law at both the behavioral and institutional level. For doing so the values of the constitution need to be internalized.

Session -3 Discovering Current Judicial Methods

Panel- Dr. Justice Shalini P. Joshi & Prof. V.K. Dixit

The session began by discussing the adversarial and inquisitorial methods of adjudication. It was highlighted that in inquisitorial system judges play an active role in deciding the case. In India this is done by way of PIL (Public Interest Litigation), Commissions, ADR (Alternative Dispute Resolution) mechanism, interlocutors etc. This may give rise to judicial activism. Thereafter, the two typically used decision making methods that is, intuitive and deliberative methods of adjudication were discussed. The discussion further dwelt with techniques of interpretation along with relevant hypothetical illustrations. Additionally the discussion emphasized that it is important for judges to discover how contemporary judicial methods help in reaching justice. It was stressed that judicial method is an uncertain term because it has many dimensions. Judicial method with respect to decision making maybe of two types that is, literal interpretation and

purposive decision making. The purposive decision making method was discussed in detail along with illustrations from certain landmark judgments.

Day -2

Session- 4 Courtroom Technology: Use of ICT in Courts

Panel- Justice R.K. Gauba Mr. Atul Kaushi

The next session commenced by underlining the enhanced use of ICT in the Indian judicial system and how the e-courts projects were phased out. This was followed by highlighting the significance of ICT in courts and how the use of technology has strengthened the court systems. The discussion further emphasized that the greater use of ICT has amplified judicial productivity both quantitatively and qualitatively. Thereafter, significance of the National Judicial Data Grid (NJDG) was deliberated upon. The working of NJDG was also demonstrated to the participants. Various concerns and problems faced by the judges while applying ICT in their courtrooms formed an integral part of the discourse. Several allied best practices which have enhanced the court systems like- use of video conferencing techniques, display systems outside courtrooms, kiosk systems, Judicial Service Centre [JSE] from where a litigant can gather his case related information etc. were comprehensively deliberated upon.

Session- 5 Managing the Docket: Court and Case Management

Panel- Justice Anjana Prakash Justice R.K. Gauba

The discussion initiated by highlighting the court and case management schemes and emphasized the significance of court and case management in the smooth functioning of the justice delivery system. It was suggested that case management is required to improve the efficiency of judges and their staff, reduces delay and arrears and most importantly aid in cost cutting. The discourse accentuated that the ambit of case management is both procedural and substantive which requires infrastructural sensitivity. The later part of the session discussed how judges and court administrators must work together and coordinate their efforts in key areas of court administration and management. Since the overall functioning of a court depends heavily on the interplay between judges and administrative staff, it is important to set up a system capable of

building a shared responsibility between the head of the court and the court administrator for the overall management of the office. Emphasis was also placed on the fact that a judge is the master of the court and therefore, it is his/her outmost duty to be aware about everything happening in the court. A judge must ensure that all the stakeholders of the court have faith in him and must be sure that they are at the right place to seek justice.

Session- 6 ADR and Plea Bargaining

Panel- Justice Anjana Prakash Justice R.K. Gauba

The session discussed the significance of ADR and how it can be used to impart timely justice. It was highlighted that in case of reference to mediation it is not the case but the parties who are referred to mediation and therefore it is the duty of the judge to determine the cause of conflict and perceptions of the parties before making any referral to mediation. The discourse highlighted that mediation does not perpetually give results, the reason includes:-lack of infrastructure since mediation needs a specific kind of atmosphere; parties are not willing for mediation; too much intervention by lawyers; huge variance between the interest of parties; lack of competent mediators etc. To do away with these systemic deficits a judge is expected to be a good mediator, and should know the mediation process, the elements of settlement, the appropriate stage for commencement of mediation process and how to encourage the parties etc. The participants were suggested to have an attitudinal change while looking into matters before them and must always remembers that courts should not be the place where resolution of disputes begin rather courts should be the place where alternative methods of resolving disputes have been considered and tried.

Day-3

Session- 7 Law relating to Cyber Crimes: Advances and Bottlenecks

Speaker Mr. Harold D' Costa

The session initiated by highlighting issues related to the authenticity of electronic evidences like- WhatsApp messages, SMS, credit and debit cards, emails and CCTV cameras. The discussion emphasized that a judge while scrutinizing evidences should always keep in mind the

authenticity quotient of the evidence placed before him. Certain instances of technological manipulations were illustrated. The participants were also apprised on various techniques through which they themselves can check the authenticity of emails, messages etc. Further, Section 66 C, 66 D and 67 C of the Information and Technology Act, 2000 was elaborated upon. The discussion emphasized that in contemporary times it is inevitable for judges to have basic knowhow with respect to the law relating to cybercrimes and related procedures.

Session- 8 Electronic Evidence: Collection, Preservation and Appreciation

Speaker Mr. Harold D' Costa

The session commenced by emphasizing that electronic evidences are refutable in nature and can easily be altered. Safeguards are essential to be taken during search, collection, preservation, transportation and examination of such evidences. It was advised that electronic evidences should be stored in a manner in which their veracity is not impinged upon. The discussion particularized that authenticity and authenticity are the significant factors to be deliberated upon by courts while appreciating electronic evidence. It was suggested that while appreciating evidence standard of proof, source of authenticity and best evidence rule are very significant. Admissibility of electronic evidence and Section 65 (B) of the Indian Evidence Act 1872 was discussed at length.

Session- 9 Forensic Evidence in Civil and Criminal Trials

Speaker- Dr. Jayanthi Yadav

The session commenced with brief overview to forensic science and its significance in civil and criminal trials. The significance of Forensic Medicine and Forensic Science for aiding judges in reaching at an accurate decision during trials was deliberated in detail. The job of forensic expert is to find out that trace and render its evidence before the court. During the course various sub-categories of forensic experts and their role was discussed. Those categories included Forensic Narcotics, Forensic Toxicology, Forensic DNA analysis, Forensic Serology, Forensic Ballistics etc. Concepts like DNA fingerprinting, DNA profiling and DNA data banks were discussed in details with its importance in the justice delivery system. Furthermore, the advantages and disadvantages of forensic evidence were discussed. Major advantages included scientifically

proven evidence because man may lie but circumstances may not, conclusive nature of forensic evidence, reliability etc. whereas disadvantages included improper collection of evidence may vary the result, improper sampling etc. Some of the important cases like Sheena Bora murder case, Rajiv Gandhi Assassination case etc., relating to collection, preservation and appreciation of forensic evidence were discussed. The niceties of autopsies and related evidentiary also formed an integral part of the discussion. The reasons for reluctance of courts to use forensic evidence were also discussed.

Day-4

Session- 10 Judging Skills: Framing of Charges

Panel- Justice Ved Prakash Sharma Justice Seetharama Murti

The session focused on the skills necessary for correctly and accurately framing of charges. The purpose of framing a charge was asserted to the judicial officers. It was asserted that framing of charges is a cardinal judicial activity which cannot be delegated. It is not only for informing the accused precisely about the accusations against him/her, but also enabling him/her to prepare best for defense. Simulation and hypothetical problem solving exercise was performed and analysed during the session. A number of Supreme Court judgments such as *Sajjan Kumar v. CBI (2010) 9 SCC 368*, *Asian Resurfacing of Road Agency Pvt. Ltd. v. Central Bureau of Investigation, 2018 SC 310* and *Dinesh Tiwari v. State of Uttar Pradesh (2014) 13 SCC 137* were discussed in detail.

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

Panel- Justice Ved Prakash Sharma & Justice Seetharama Murti

The session on asserted that a judgement is indicative of the working of the judicial mind, the judge's approach, his grasp on issues of facts and law involved in the case, his analytical skills and the depth and breadth of his knowledge of law. It is a product of long practice and persistent perseverance. It was suggested that language of the judgement must be simple, and must not be equivocal or vague, precedents or irrelevant quotations from arguments must be avoided as citation. A judgement must ensure the narration of facts, framing of issues, analysis of the

evidence and must ensure that the flow of the language is clear, logical and coherent. Further, it was stressed that a judicial officer must possess judicial and administrative skills to manage adjournments, interlocutory proceedings, witnesses and counsels and ensure fair trial and judicial ethics.

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

Panel- Justice Ved Prakash Sharma & Justice Seetharama Murti

The session focused on the duty of a judge to be an active listener and encourage rational discourse in the courtroom. Judges render justice, which should be speedy, effective and in an impartial manner, maintaining the highest standard of integrity. Courts are temples of justice and judges do not identify themselves with the causes before them or those litigating for such causes. It was emphasized that as a judge active listening is significant and it becomes crucial during recording of evidences to check on scandalous and annoying question asked by advocates. Further, the speaker listed out six essentials of a good listener which can promote rational discourse, which are 1) hearing, 2) understanding, 3) remembering, 4) interpretation, 5) evaluation, and 6) reasonability.

Day-5

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

Panel- Justice Ved Prakash Sharma Justice Seetharama Murti & Prof. S. P. Srivastava

The session on commenced on a note of caution to the judicial officers that putting a person in police custody should be with sincere application of mind. At first production of an arrested person a magistrate must ascertain the age of the person, whether the offence is bailable or not, the enactments under which the person is arrested, whether the guidelines for the police as laid down in the D.K. Basu case have been followed or not. Further, participants were posed with different set of legal problems as to why remand is necessary, rights of accused on remand, issues relating to handcuffing, and discouraging practice of parading the accused for shame in public. The participants were suggested to give remand order only in consonance with law and

not under the influence of media or one's own emotions. At the same time participants were also suggested not to be mechanical in passing orders for remand.

Session 14: *Fair Trial: Fair Processes*

Panel- Justice Ved Prakash Sharma Justice Seetharama Murthi & Prof. S. P. Srivastava

The session began with the assertion that right to a fair trial has long been recognized by the international community as a basic human right. A fair trial is very important as it decides the fate of entire case. Attributes of fair trial viz. speedy trial, presumption of innocence, right of representation by lawyer of choice, right to silence of accused, importance of public trial and public hearing, fair investigation, independent and impartial courts etc. were discussed. A major problem for denial of fair trial is the contradiction between the said fact and writing those facts in records. Inability of the witnesses to understand a question posed by an advocate often leads to incorrect or inconsistent depositions, wherein judges need to enable the witness by helping him to properly understand the question posed. A number of landmark judgments of the Apex Court were discussed in this context. The session concluded with the reminder that most of the attributes of fair trial are provided in our constitution and judges should try their best to abide by those constitutional ideals during trial.

Session 15: *Role of Courts in securing Gender Justice*

Speaker- Justice Manju Goel

The session aimed to sensitize the judges as to how to secure and promote gender justice in their capacity as a judge. In this regard, role of courts as an institution and judge as an individual in spreading gender sensitivity was discussed at length. Despite having so many enactments dealing with women atrocities, and judgments of the apex court enabling protection of women the societal condition of women has not improved to the level wherein she is actually at par with her more dominant counterpart. Participants shared their experiences while dealing with cases of domestic violence and rape. Also some innovative ideas were shared regarding making courts women and child friendly.

Session 16: *Law of Precedents: Identification and Application of Ratio Decidendi*

Panel - Justice Manju Goel & Prof. (Dr.) V. Vijaykumar

The session commenced with discussion on the meaning of Ratio Decidendi and how it is different from Obiter Dicta. It was pointed out that law of precedents is based on three principles- applicability of law, relevancy in fact and cumulative effect of above two. The issues relating to inconsistencies in precedents were discussed at length with the help of four Supreme Court judgments, namely *Shamsher Singh v. State of Punjab AIR 1974 SC 2192*; *Safia Bee v. Mohd. Vajahath Hussain AIR 2011 SC 421*; *Sampath Kumar v. Union of India 1987 SCR (3) 233*; and *Union of India v. S.K. Shegal 2007 SC 1211*.

Session 17 & 18 : *Occupational Stress in Judges: Identification and Consequences of Stress & Managing Judicial Stress: Institution Strategies and Techniques*

Speaker- Dr. Harish Shetty

The sessions were interactive and participative in nature. The speakers focused on clinical approach to deliberate on the subject matters. Deliberation was made to understand what is “stress”? What are the stressors? What are the commonly identified stress triggers amongst the judicial officers? What is work-life balance? How can it be achieved? It was explained that stress is a reaction to a stimuli and not *per se* the issues or problems that triggers them. It was explained that 21st century leaking bucket hypothesis on “emotional wealth” and “emotional equity” are two vital objectives which needs to be nurtured to develop control over reactions propelling stress. While discussing various ways to reduce or control stress, it was suggested that slowing down one’s autonomic nervous system is a cardinal way to reduce stress. It was suggested that one needs to consciously adopt practices to reduce stress. A few ways to do the same included, Abdominal breathing; Sleeping; Meditation; Mindfulness activities; Exercise; Journaling; Laughing; Reframing negative experiences into a more positive light; Doing activities that we enjoy; Spending time with those we love and being present etc. Explaining emotions it was deliberated that “anger” is a positive emotion as compared to “aggression” which is negative emotion. It was underscored that “peace is difficult to find within, but impossible to find outside”. It was shared that whenever one is not happy, and he/she tracks back and analyzes to

look out for the reasons, (s)he must be able to find out one out of the following two bases: a) either (s)he is comparing or b) (s)he is not living in now.