# NATIONAL JUDICIAL ACADEMY


## NATIONAL WORKSHOP FOR HIGH COURT JUSTICES [P-1316]

**19TH & 20TH NOVEMBER, 2022**

# PROGRAMME REPORT

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## OVERVIEW OF THE PROGRAMME

The National Judicial Academy (NJA) organized a two day National Workshop for High Court Justices on 19th & 20th November, 2022. The workshop aimed to impart knowledge and expertise in areas pertinent to the exercise of jurisdiction by High Court Justices and identifying novel approaches to justice dispensation in order to meet emerging challenges. The workshop familiarized participant justices with jurisprudence pertaining to environment and wildlife protection and explore the various dimensions of the law with a view to identifying role of the judiciary in such matters. The workshop also engaged participant justices on the nuances and intricacies of bail jurisprudence. The various factors which have contributed to docket explosion and backlog were discussed and innovative methods and initiatives to reduce delays and pendency were explored with a view to realize the obligation of the judiciary to deliver prompt and inexpensive justice without compromising on the quality or elements of fairness, equality and impartiality. The workshop sensitized the participants with the gamut of laws governing medical practitioners while acquainting them with the moral and legal issues relating to medical practice along with their jurisprudential basis. The workshop also focused upon the origin and scope of the law of contempt, constitutional aspects and its relevance to the rule of law and democratic society in contemporary times.

## DAY 1

**Session 1 – Protection of Environment and Wildlife: The Judicial Approach**

**Session 2 – Bail Jurisprudence: Nuances and Intricacies**

**Session 3 – Developing Efficient Judicial System**

## DAY 2

**Session 4 – Law of Contempt**

**Session 5 – Dimensions of Law Governing Medical Practitioners vis-à-vis Morality and Ethics**

# DAY I

## SESSION 1

### THEME – PROTECTION OF ENVIRONMENT AND WILDLIFE: THE JUDICIAL APPROACH

### PANEL – JUSTICE A.K. GOEL & MR. RITWICK DUTTA

The session commenced by elaborating upon the *parens patriae* principle, Public Trust Doctrine, Polluter Pays principle, Precautionary principle and climate change issues through various judgments. The Polluter Pays Principle as interpreted by the Supreme Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. *In* ***Research Foundation for Science (18) v. Union of India***[1] it was clarified that the polluter pay principle basically means that the producer of goods and other items should be responsible for the cost of preventing or dealing with any pollution that the process causes. The principle also does not mean that the polluter can pollute and pay for it. In ***M.C. Mehta v. Kamal Nath***[2] it was observed that our legal system is based on English Common Law and therefore, includes the Public Trust Doctrine as part of its jurisprudence. The State is the Trustee of all natural resources which are by nature meant for public use and enjoyment. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. Thus, the Public Trust doctrine is part of the law of the land. Also, in ***Centre for Environmental Law v. Union of India***[3] the state was referred as a custodian of natural resources which has a duty to maintain them not merely for the benefit of the public, but for the best interest of flora and fauna and wildlife. It was pointed that the doctrine of 'public trust' has to be addressed in that perspective. As regards the jurisprudence developed in ***Animal Welfare Board v. A Nagaraja***[4] it was noted that the Court has also a duty under the doctrine of *parens patriae* to take care of animals, since they are unable to take care of themselves as against human beings. It was highlighted that every species has an inherent right to live and shall be protected by law, subject to the exceptions provided out of necessity. Animals also have honour and dignity which cannot

[1] (2005) 13 SCC 186
[2] (1997) 1 SCC 388
[3] (2013) 8 SCC 234
[4] (2014) 7 SCC 547

be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attack.

Further, it was asserted that many of our principles like sustainable development, polluter pay principle, and intergenerational equity have their roots in anthropocentric principles. In ***T.N Godavarman Thirumulpad v. Union of India***[5] it was pointed that environmental justice could be achieved if we drift away from the principle of anthropocentric to eco-centric. Ecocentrism is nature centered where humans are part of nature and non-humans has intrinsic value. In other words, human interest does not take automatic precedence and humans have obligations to non-human independently of human interest. With reference to the principle of sustainable development the observations made in ***Tarun Bharat Sangh v. Union of India***[6] was highlighted. Certain aspects of climate migrants, climate depression, ecological grief and increased violence and crime were deliberated. It was stated that issues related to climate change are yet to figure actively in judicial decisions and mostly appear as *obiter dicta*. In ***Himachal Bus Stand Management Authority v. CEC***[7] it was emphasized that the environmental rule of law seeks to create essential tools – conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It facilitates a multi-disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognises that the 'law' element in the environmental rule of law does not make the concept peculiarly the preserve of lawyers and judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats.

## SESSION 2

### THEME – BAIL JURISPRUDENCE: NUANCES AND INTRICACIES

### PANEL – DR. JUSTICE B.S. CHAUHAN & MR. SIDHARTH LUTHRA

The discussion traced the evolution of 'bail' while highlighting that the concept of modern bail chiefly originated from all the medieval laws governing it. It was pointed that `Liberty' - the most

[5] (2012) 3 SCC 277
[6] 1993 Supp (3) SCC 115
[7] (2021) 4 SCC 309

cherished fundamental right, a basic human right, a "transcendental", inalienable, and `primordial' right, should not be put in peril without following the procedure prescribed by law and in a casual and cavalier manner. The Courts are tasked with the primary responsibility of preserving the liberty of all citizens, and it cannot countenance an approach that has the consequence of applying this basic rule in an inverted form. In this regard, the Supreme Court in ***Gudikanti Narasimhulu & Ors. v. Public Prosecutor, High Court of Andhra Pradesh***[8] has highlighted the importance of personal liberty of an accused. In the said judgment, the Supreme Court emphasized on creating a balance between the right of the victim and liberty of the accussed guaranteed under Article 21 of the Constitution of India and the interest of justice as well as the society which is sought to be protected by Section 437 Cr.P.C. Similarly, in ***Nathu Singh v. State of Uttar Pradesh***[9] it was pointed that the grant or rejection of an application under Section 438 CrPC has a direct bearing on the fundamental right to life and liberty of an individual. The provision therefore, needs to be read liberally and considering its beneficial nature, the courts must not read in limitations or restrictions that the legislature has not explicitly provided for. Various other judgments of the Apex Court were cited wherein right to speedy trial as a facet of Article 21 encompassing the stages of investigation, enquiry, trial, appeal and revision were laid.

The right to bail under Section 167(2) Cr.P.C. first proviso is absolute. It is a legislative command and not court's discretion. If the investigating agency fails to file charge-sheet before the expiry of 90/60 days, as the case may be, the accused in custody should be released on bail. Among other circumstances, the factors to be borne in mind while considering an application for bail were delineated: (i) prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction;(iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; (viii) danger of justice being thwarted by grant of bail; and (ix) frivolity in prosecution i.e. there cannot be any doubt as to genuineness of prosecution.

[8] AIR 1978 SC 429
[9] (2021) 6 SCC 64

The deliberation further expressed concern over long incarceration pending trial with reference to ***Gopisettey Harikrishna v. State of Andhra Pradesh***[10] wherein the Supreme Court granted interim bail as the trial had not commenced for 9 years. With regard to anticipatory bail, it was clarified that it should be granted only in exceptional circumstances where it appears that a person may be falsely implicated. The considerations to be borne by the court in grant of anticipatory bail as laid down in ***Gurbaksh Singh Sibbia v. State of Punjab***[11]***; Dataram Singh v. State of U.P.***[12] and ***Sushila Aggarwal v. State (NCT of Delhi)***[13] were discussed at length. It was stressed in ***Jagjeet Singh v. Ashish Mishra***[14] that while granting bail, the court cannot examine or make any observation on credibility and the evidentiary value of the witnesses as it may affect the ultimate result of the trial.

The provision of bail under special statutes such as PMLA, UAPA, NDPS, MCOCA, SC/ST Act with reference to recent landmark developments was deliberated. It was further noted that where an order granting bail ignores material on record or if a perverse order granting bail is passed in a heinous crime without furnishing reasons, the interests of justice may require that the order be set aside and bail be cancelled. In this regard, the principles enumerated down by the Supreme Court in ***Brij Mani Devi v. Pappu Kumar***[15] and various other judgments as to the indispensability of reasoning in a bail order was discussed. Also, condition imposed while granting bail should neither be arbitrary nor discriminatory nor should lead to miscarriage of justice. It should not be so excessively onerous as to amount to denial of bail itself.

Various other issues such as expeditious disposal of bail applications, participation of victim in criminal proceedings, bail by magistrate in non-bailable offences, distinction between an appeal from an order granting bail and an order of cancellation of bail, dealing with successive bail applications were also discussed.

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[10] 2022 SCC Online SC 654
[11] AIR 1980 SC 1632
[12] AIR 2018 SC 980
[13] (2020) 5 SCC 1
[14] 2022 SCC OnLine SC 453
[15] (2022) 4 SCC 497

## SESSION 3

### THEME – DEVELOPING EFFICIENT JUDICIAL SYSTEM

### PANEL – JUSTICE SANDEEP MEHTA & JUSTICE R.C. CHAVAN

It was widely agreed that the effective administration of justice depends critically upon a successful partnership between the judiciary and those responsible for the administration of the courts. The main issues that were raised during the discussion were high rates of case pendency across India and that there are not enough judges to dispose of the cases before them, lack of other necessary infrastructure, the tendency of giving frequent adjournments, fragmented hearings and other related issues. It was noted that behaviour of the judge in the court is one of the most important aspect in court management. Handling disruptive persons, aggressive lawyers, reluctant witnesses, sluggish staff, would go a long way in effective disposal of cases. It was pointed that most of the High Courts have much outdated rules and procedures applicable to court and case management which require to be updated to be in tune with amendments in procedural laws and uniformity in its application to all High Courts. It was also asserted that judiciary must adopt a more dynamic and progressive attitude in preparing budgets and spending of allocations. Uniform accounting practice and regular audits will provide much needed financial discipline. It was highlighted that digitisation of records with standardized indexing helps in reducing the problem of space in the High Courts which are courts of record.

Further, the discussion focussed upon the introduction of the e-Courts Mission Mode Project as a national e-Governance project implemented under the aegis of the Supreme Court for the enablement of Information and Communication Technology (ICT) enablement in the District Courts and High Courts across the country. The objective of the e-Court project were highlighted as: (i) to provide efficient and time-bound citizen centric service delivery; (ii) to make the justice delivery system affordable, accessible, cost effective and transparent; (iii) to enhance judicial productivity both qualitative and quantitative; and (iv) to provide transparency of information and access to its stakeholders. A wide range of services available under the e-Courts portfolio for different stakeholders were elaborately discussed. The Case Information System (CIS) developed for Subordinate courts and High courts in India to automate the court processes catering to diversified requirements was highlighted. The National Judicial Data Grid (NJDG) was

characterized as the repository of case data available on public platform and monitoring of pendency and disposal of cases in District Courts and High Courts.

# DAY II

## SESSION 4

### THEME – LAW OF CONTEMPT

### PANEL – DR. JUSTICE B.S. CHAUHAN & JUSTICE S. TALAPATRA

The session commenced while tracing the history of Law of Contempt. It was further asserted that contempt proceedings are quasi-criminal in nature. The Latin Maxim *Affirmanti Non Neganti Incumbit Probatio* meaning thereby "the burden of proof lies on the one who asserts and not the one who denies" has its due application in the matter of proof of allegation, said to constitute the contempt. Thus, the procedure prescribed by law for trial of contempt requires strict adherence. The standard of proof is that of a criminal case i.e., beyond reasonable doubt and where two views are possible the contemnor becomes entitled to benefit of doubt. Further, the nature and scope of the inherent power of contempt incidental to maintaining the dignity of the court was discussed with reference to ***Pritam Pal v. High Court of Madhya Pradesh, Jabalpur***[16] wherein the Supreme Court observed that the said power is an inherent power under which the Supreme Court and the High Court can deal with contempt of itself. The jurisdiction vested is a special one not derived from any other statute but only from Articles 129 and 215. Supreme Court further clarified that the constitutionally vested right cannot be either abridged, abrogated or cut down by legislation including the Contempt of Courts Act.

With regard to Article 19(1) (a) of the Constitution, in ***In Re: Prashant Bhushan***[17] the Apex Court held that no doubt, free speech is essential to democracy, but it cannot denigrate one of the institutions of democracy. Rights under Article 19(1) (a) are subject to reasonable restrictions under Art. 19(2) and rights of others cannot be infringed in the process. Hostile criticism of the Judges or judiciary amounting to scandalising the court is not protected under Art. 19(1) (a) of the

[16] AIR 1992 SC 904
[17] (2021) 3 SCC 160

Constitution. Though a fair criticism of judgment is permissible in law, a person cannot exceed the right under Article 19(1) (a) of the Constitution to scandalise the institution.

Various facets of civil contempt such as wilful disobedience, withdrawal of contempt, *status quo* order, refusal to obey interim or final order, difficulty in compliance of the order, repeatedly approaching the courts of law for the same relief etc. were discussed through judgments. As regards, criminal contempt innocent publication and distribution of matter, accurate reporting of judicial proceedings and fair criticism were highlighted. Further, punishment for contempt of court was discussed with reference to ***SEBI v. Subrata Roy Sahara***[18] wherein the Apex Court has clearly laid down that apology tendered is not to be accepted as a matter of course. The Court can reject the apology and impose punishment recording reasons for the same, particularly where the words are calculated and clearly intended to cause insult, an apology tendered lacks penitence, regret or contrition may not be accepted. An apology should not be paper apology and it should come from heart as "contrition is the essence of the purging of contempt." It was also pointed that justification for contempt and tendering apology would not go together. In ***Mahipal Singh Rana v. State of Uttar Pradesh***[19], the Supreme Court held that regulation of right of appearance in courts is within jurisdiction of courts and not Bar Councils, thus court can bar convicted advocate from appearing/pleading before any court for an appropriate period of time, till convicted advocate purges himself of the contempt, even in absence of suspension or termination of enrolment/right to practise/licence to practise.

Further, Sections 15, 16 and 17 of the Contempt of Courts Act dealing with the procedure to take cognizance was deliberated at length. While interpreting the provisions of section 19 of the Contempt of Courts Act, 1971 the Supreme Court in ***Baradakanta Mishra v. Justice Gatikrushna Misra, C.J. of the Orissa H.C.***[20] held that an appeal shall lie only against those orders or decisions in which some point is decided or finding is given in exercise of jurisdiction by the Court to punish for contempt. Appeal shall not lie under Section 19 of the Act against any other kind of interlocutory order. Certain other issues such as limitation, contempt application moved by non-

[18] (2019) 13 SCC 333
[19] AIR 2016 SC 3302
[20] AIR 1974 SC 2255

party, contempt of a void order, bar on contempt jurisdiction on the basis of impressions, dismissal of contempt etc. were accentuated.

## SESSION 5

### THEME – DIMENSIONS OF LAW GOVERNING MEDICAL PRACTITIONERS VIS-À-VIS MORALITY AND ETHICS

### PANEL – JUSTICE K. KANNAN & DR. LALIT KAPOOR

The session commenced with the assertion that since the evolution of mankind, efforts have been made to regulate the behavior of individuals and groups of individuals in society by voluntarily enunciating a code of ethics for their respective members. Ethics has been defined as a science of moral principles. It is a code of conduct, a way of behavior, almost a way of life. The oldest code of ethics for medical practitioners was the Hippocrates oath which formed the basis for a self-inflicted code of conduct. Further, the key principles of biomedical ethics vide the interplay between law and ethics was impressed upon. It was noted that ethical standards required of professionals often exceed those required by law and the instances of advertising by doctors and dichotomy of fees was discussed. Potential liabilities of health care professionals and impact of exponential rise of litigation against doctors was deliberated.

Various issues relating to medical negligence/malpractice and the liability arising therefrom was delineated. The distinction between medical negligence and complications, side effects, sequelae, medical accident and error of judgment was clarified. A number of judgments such as ***Dr. Suresh Gupta v. Govt. of N.C.T. of Delhi & Anr.***[21]***, Jacob Mathew v. State of Punjab and Anr***[22] and ***Lalita Kumari v. Govt of U.P. & Ors***[23] defining criminality of medical negligence and recommended action were discussed. In this regard, ***Bolam v. Friern Hospital Management Committee***[24] was referred wherein Bolam Test was propounded which states that a doctor is not negligent if he does not breach the standard of care, which is supported by a responsible body of similar professionals. In India Bolam's test has been accepted as a general rule in a number of

[21] (2004) 6 SCC 422
[22] (2005) 6 SCC 1
[23] (2012) 4 SCC 1
[24] [1957] 1 WLR 582

decisions such as ***Achutrao Haribhau Khodwa v. State of Maharashtra***[25]***, Poonam Verma v. Ashwin Patel and Ors.,***[26]***Laxman Balkrishna Joshi v. Trimbak Bapu Godbole & Anr.***[27]***, State of Haryana and Ors. v. Smt. Santra***[28] and ***Dr. Suresh Gupta v. Government of NCT of Delhi***[29]**.** The Bolitho Test, which resulted from the 1996 court case of ***Bolitho v. City and Hackney HA*** was also mentioned. The dimensions of informed consent were deliberated with specific reference to ***Kishan Rao v. Nikhil Super Specialty Hospital***[30] (wherein application of Bolam Test was doubted) and ***Arunkumar Manglik v. Chirayu Health & Medicare***[31] (wherein the Montgomery Principle was applied).

Further, the liabilities and obligations in transplantation of human organs under the Transplantation of Human Organs and Tissues Act (THOTA), 2011 and the rules framed thereunder in 2014 was discussed citing the most vital features of the Act such as (a) regulation of removal of organ(s) for transplantation from cadaver donors, (b) regulation of removal of organs from living donors, (c) regulation of hospitals, (d) regulation of medical practitioners, and (e) punishment for those flouting the Act. The definition of 'death' as a medical and legal issue and the implications of such dissonance was referred. It was emphasized that the definition of 'death' should be standardized in both Registration of Births and Deaths Act and THOTA and that brain stem death should be de-linked from organ donation. In this context, it was stated that the decision in ***Dority v. Superior Court of San Benardino County of USA***[32] which held that once brain death has been determined no criminal or civil liability will result from disconnecting the life-support devices needs replication in India.

The discussion also highlighted the aspect of DNA analysis and its impact on judicial decision making in civil and criminal litigations. In this regard, the fallibility of forensic evidence in view of collection methods and conditions, chain of custody, purity of forensic sample, and limitation of current technology were taken note of. It was further emphasized that data protection and confidentiality of medical records remains an important ethical, legal and professional practice in

[25] (1996) 2 SCC 634
[26] (1996) 4 SCC 332
[27] (1969) 1 SCR 206
[28] (2000) 5 SCC 182
[29] (2004) 6 SCC 422
[30] (2010) 5 SCC 513
[31] (2019) 7 SCC 401
[32] 145 Cal.App.3d 273, 193 Cal. Rptr. 288 (Cal. Ct. App. 1983)

clinical medicine. It was noted that given the sensitive nature of health care information, the issues of integrity, security, privacy, and confidentiality are of particular significance. Recent experience from COVID times regarding Supreme Court's interventions in protecting health workers from unreasonable public ire and the notification under Pandemic Act increasing punishment for harm done to doctors and hospitals engaging in life saving measures was discussed.

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