

NATIONAL CONFERENCE OF JUDGES OF THE DISTRICT JUDICIARY
ON
JUST SENTENCING: POLICY AND PRACTICE (P-851)
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Programme Report

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National Judicial Academy organized a national conference of the judges of the District Judiciary on the theme Just Sentencing: Policy and Practice from 17th to 19th October 2014. Approximately 25 judges from across the country participated in the three day conference. On opening day of the conference the main speakers were: Ms. Nidhi Gupta, Assistant Professor, National Judicial Academy; Dr. Mrinal Satish, Associate Professor, National Law University, Delhi; Mr. K Pattabhi Rama Rao, Assistant Professor, National Judicial Academy and Mr. C.V. Muniraju, Addl. Director General of Prisons, & Correctional Services, Madhya Pradesh. The sessions on day one chaired by Justice Chandresh Bhushan, former judge, M.P. The main speakers on day two of the conference were Justice S. Nagamuthu, judge, Madras High Court, Justice Seshsayana Reddy, judge, Andhra High Court and Justice Dama Seshadri Naidu, judge, Kerala High Court.

Main objectives of this conference were to draw attention of the judges towards huge variations in the sentencing practices in India and to explore the feasibility of developing sentencing guidelines as a means to deal with, what can be seen as, excessively individual/judge centric sentencing practices. This conference, in other words, was aimed at discussing an important question: how to ensure that the exercise of discretion by the judges, the necessary element in sentencing practices in particular and judicial decision making in general, remain a discretion guided by law and principles.

The first session on day one was addressed by Ms. Nidhi Gupta, Assistant Professor, National Judicial Academy, Bhopal. She addressed the participants on the theme: *Theories of Punishment: Relevance for Sentencing Practices*. She discussed various theories of punishment which have come to develop over the centuries in India as well as in the world jurisdictions to justify punishment to a wrong doer or offender. She pointed out a shift in the sentencing

practices all over the world- from retribution to rehabilitation. She highlighted one of the main aims was to punish the wrongdoer, to making him or her pay for having chosen a path of crime and wrongdoings, the current trend in all civilized nations is to focus on rehabilitation of the offenders considering every offender as much a victim of social, economic and political circumstances, more than a rational free agent to have chosen the path of crime and wrongdoings. In the second session, Dr. Mrinal Satish presented a study on sentencing practices in cases relating to rape. Having analyzed approximately 800 cases from different levels of judiciary over a period of years, he demonstrated huge variations in the sentencing practices, with significant evidence of variations on the basis of personal philosophies and individual preferences of the judges- something which go beyond mere exercise of discretion, escaping in the domain of arbitrariness. Mr. Pattabhi Rama Rao also presented an analysis of the prominent cases from the Supreme Court and the High Courts to demonstrate inconsistency and absence of any coherent sentencing guidelines in India. Mr. Rao also highlighted that while the global trend in sentencing practices shows a shift towards theory of rehabilitation, in India during last few years there is re-emergence of the emphasis on retribution. Considering the above as a disturbing trend Mr. Rao reiterated the need for developing some kind of broad guidelines to guide the discretion of judges in the process of sentencing.

Session third on day one was addressed by Mr. Muniraj, ADG prisons who offered a detailed description of practices adopted by the prison authorities to fulfill the objective of rehabilitation of prisoners. He discussed various schemes which have been developed by the government to ensure that offenders can be brought back to the mainstream after completing their prison terms. The last session on day one was a session for open discussion which gave the participating judges opportunity to reflect on the issue of variations in sentencing practices in India. At the end of discussions the house agreed on the following propositions: (i) sentencing practices in India are far too individual/judge centric leading to arbitrariness and uncertainty and that this state of affairs must not be acceptable in a legal system which claims to abide by the value of rule of law; (ii) while straight-jacket formulas for calculating sentences is neither desirable nor feasible, it is essential to develop some kind of guidelines, which can serve the purpose of guiding the discretion without curtailing it; (iii) there is need for systematic research

at the national level to be initiated and conducted by the National Judicial Academy to explore the possibilities for developing sentencing guidelines for a country as diverse as India.

While the day one could be used to set the context of the discussion and also to offer inter-disciplinary perspectives on the subject of sentencing, the attempt during the next two days of the conference, was to understand whether it can be possible to cull out certain guidelines from the case law which can be deployed by the judges to bring some coherence and consistency in the sentencing practices. Justice Nagamuthu from Madras High Court addressed the judges on the theme, “judicious approach in determination of quantum of sentences”. He discussed the idea of “mitigating and aggravating circumstances” developed through various high court and Supreme Court cases. He pointed out how a correct understanding of the above concepts can go a long way in finding a right balance between the theories of punishment- mainly the theory of retribution and theory of rehabilitation. He explained that the idea of mitigating and aggravating circumstances makes it possible to focus both on the crime and the criminal, in other words, it allows sentencing judge to look at the offender both as a rational agent and also as an agent conditioned by social and economic circumstances. He exhorted that the judges should make an effort to understand the clear distinction between the mitigating and aggravating circumstances, since a clear understanding of this distinction may be a way to take principled decisions while awarding sentences. While Justice Nagamuthu explained the general principles of sentencing as developed by the courts, Justice Seshadari Naidu focused on the specific aspects of sentencing as he discussed the sentencing practices in offences against women and children. Justice Seshsayana Reddy talked about the special approaches that need to be adopted while dealing with economic offences. On day three of the conference, Justice Seshsayana Reddy opened the discussion on the theme, ‘alternatives to custodial sentences’, an area which remains unexplored and underdeveloped in India. Although there exists a special legislation named Probation of Offenders Act, 1958, the judges in India, in contrast to their western counterparts, have not been to develop and use alternates to custodial sentences. In the last session of the conference Justice Nagamuthu addressed the participants on the theme Compensation to victims. Victimology, another unexplored are in Indian criminal justice system, has received some attention during last year with the amendments in the Criminal Law and also through judicial pronouncements. Justice Nagamuthu highlighted that the provisions relating to the victims compensation need be

invoked by the judges in order to ensure that victims of the crime also get due compensation.
Program ended with a vote of thanks from the program co-ordinator.