

National Conference for the Presiding Officers of the NDPS Courts

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Program Report**

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In the series of the conferences organized for the presiding officers of the special courts, NJA organized the second conference for the presiding officers of the NDPS courts from 6th to 8th February, 2015. 28 judges from across the country participated in this conference. Justice Abharam Mathew, judge from Kerala high court addressed the participants in different sessions on the February 7th, whereas Justice Joymalya Bagchi from Calcutta high court addressed the participants on both days, 6th and 7th February. The participants were also addressed by Mr. Prabhjeet S. Gulati from UNODC, Delhi, Ms. Tripti Tandon and Mr. Anand Grover from Lawyers Collective and Mr. Simon Beddoe from Alliance India, Delhi. The program was co-ordinated by Ms. Nidhi Gupta, Assistant Professor, National Judicial Academy, Bhopal.

On day one of the conference Ms. Nidhi Gupta welcomed the participants and gave a brief introduction of the scheme of programs at NJA along with an introduction of the conference. After a round of self-introduction by the participants, the session was addressed by Mr. Prabhjeet S. Gulati from UNODC. Mr Gulati presented a picture of global drug scenario and drew attention towards integral connection between drug trafficking, money laundering and human trafficking. He also highlighted drug trafficking and drug abuse as a complex problem which is linked to many socio-economic reasons such as, political

instability, poverty, lack of development, terrorism and also cultural breakdown in many parts of the world. Second session was addressed by Mr. Simon Beddoe from Alliance India, which is an organization working with HIV/AIDS victims and also with the health related aspects of the drugs. Mr. Beddoe explained important distinctions between drug use, drug abuse and drug misuse. He also drew attention towards the fact that use of drugs in India in some or other form is an ancient phenomenon, whereas criminalization of drugs is more or a colonial phenomenon. The sessions after lunch were addressed by Ms. Tripti Tandon from Lawyers Collective. Ms. Tandon dwelled into historical aspects of the NDPS Act. She pointed out that this legislation was introduced in Indian statute books in fulfillment of India's international obligations, since India is signatory to three International Conventions relating to drugs. Also, reiterating the link between Indian culture and use of drugs, she mentioned that while the Act aims to deal with a problem of drug trafficking it also over-criminalises the use of drugs in India. She also mentioned that this legislation, to a very large extent, reflect American prejudices towards drugs, whereas other intoxicating substances like alcohol, which are more or at least equally harmful to society are considered safe. In session four, she discussed amendments to the Act introduced in 2014 which offer more possibilities for use of drugs for health purposes without risking criminalization. The discussions on day one were concluded by Ms. Nidhi Gupta. She explained that the objective of the discussions on day one was to provide a social and economic context to the legislation. She also pointed out that main import of the discussions on this day was to emphasise that while drug trafficking and problem of drug abuse needs to be addressed through the NDPS Act, the judges need to be sensitive towards the fact that use and even misuse of drugs

per se is not to be seen as a criminal activity. She also mentioned that one of the main challenges for judges was to find ways to prevent abuse of the NDPS Act. She pointed out that dealing with narcotic and psychotropic drugs is a major challenge faced by the modern governments all over the world. She pointed out that the task for governments is challenging since on the one hand government has the duty to make drugs available since use of narcotic drugs is indispensable for medicinal preparations in treatment of pain, and also for rehabilitation of drug addicts and users. On the other hand governments are under a duty to check drug trafficking and excessive availability of drugs to keep them out of reach of those who are susceptible to misuse. Ms. Gupta also stated that NDPS Act is a category of laws which is more strict and stringent than other penal laws that are available in democratic regimes. She highlighted that the courts have a onerous task since the courts need to implement this Act to achieve desired result of deterrence and also to punish the offenders, and at the same time the courts need to have due regard for human rights of the accused facing trial under such stringent piece of legislation.

On day two, Mr. Anand Grover, senior advocate addressed the participants on the theme, Judicial Investigation of Search and Seizure under the NDPS Act. He discussed series of cases relating to search and seizure provisions under the Act. He drew attention towards inconsistency in judicial decisions on the subject of personal search, recovery, chance recovery etc. In session six on day two Justice Bagchi and Justice Mathew addressed the participants on the topic of bail in NDPS cases. In post-lunch session Justice Bagchi elaborated on various presumptions under the Act, which shift the burden on accused. He also deliberated extensively

on the theme of culpable state of mind. The judges mentioned emphasized that the judges should be careful in applying the provisions of NDPS Act as the consequences of finding a person guilty under the NDPS act are severe. It was stated that since many of the offences in NDPS Act attract severe penalties, Presiding Office of NDPS courts shall implement each letter of the law. Justice Bagchi also dwelled on the issues such purity and weight issues in determining the quantity of drug. Justice Bagchi also explained international developments relating to drug laws which have influenced amendments in the 1985 Act. Mr. Grover constantly highlighted those aspects of the Act which render it excessively stringent and of draconian nature. He mentioned that there is need of rethinking about relevance of this Act in India too given the fact that many countries, especially the United States, which has been advocating criminalization of drug use so far, has begun decriminalizing drug use.

On day three Justice Bagchi and Mr. Grover addressed the participants on the theme, sentencing the drug offenders. He explained the special scheme of sentencing adopted under the NDPS Act. The last session was meant for open discussions, where participants interacted with Justice Bagchi and Mr. Grover on various issues relating to the Act. The conference concluded with vote of thanks from Ms. Nidhi Gupta.