

ACADEMIC PROGRAMME FOR JUDGES FROM SRI LANKA
JUNE 1ST – 5TH, 2015

Report

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LIST OF RESOURCE PERSONS

1. Justice Madan B. Lokur
2. Dr. T.K. Viswanathan
3. Mr. Anand Desai
4. Mr. Vakul Sharma
5. Mr. Avinash Kadam
6. Ms. N.S. Nappinai
7. Justice U.U. Lalit
8. Justice I. A. Ansari
9. Ms. Sonia Mathur
10. Prof. Dr. Madhava Menon
11. Ms. Usha Ramanathan
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SESSION 1: CYBER CRIMES AND LAWS DEALING WITH CYBER CRIME

SPEAKERS: DR.T.K.VISWANATHAN, MR. ANAND DESAI AND MR. VAKUL SHARMA

The session was started by Dr.T. K. Viswanathan where he discussed the nature of digital age and its main features i.e. cyberspace, knowledge economy and speed with which it has transformed industrial economy into a knowledge economy. He then discussed about the problems in cyberspace such as its borderless nature, anonymity and nature of information. Borderless nature of cyberspace makes enforcement of criminal liability difficult. Crimes can be engineered far away from the scene of the crime. He said that cyberspace permits anonymity & pseudo-anonymity. It causes problem for imposing liability. He added that information is the raw material of

Cyberspace. Nature of information causes problems for law as it is intangible in nature. The traditional legal conceptions have been called into question and more relevant legal conceptions are required to deal with cyber crimes. Then he discussed about electronic evidence stating its latent nature and briefly discussed about cryptography.

Mr. Anand Desai briefly discussed about the changes that has been brought up with the advent of technology such as changes in the concept of privacy and anonymity, communication, shopping techniques etc. Then while defining the term cybercrime, he discussed about the various forms of cybercrimes which included hacking, spamming, phishing, identity theft, cyber stalking, cyber espionage, spoofing, piracy, morphing, cyber pornography, privacy violation, cyber defamation and cyber terrorism. He briefly talked about the key provisions of the Information Technology Act which is the prevailing law dealing with the issue of cybercrime. He also discussed the issues which are there in proper law enforcement. Such issues included difficulty in detection of crime, mask on identity, volume of data in internet, admissibility of digital evidence, data protection, jurisdiction issues and awareness of rights and experience.

Then while discussing different case laws such as *State of Tamil Nadu v. Dr. L Prakash*, *Yahoo Inc. v. Aakash Arora*, *Syed Asifuddin & Ors v. State of Andhra Pradesh* he suggested how to deal with such crimes. He suggested introducing technology training so that awareness about the different ways the technology can be used is disseminated. Educating people about the pitfalls and the negative impact the internet can have is the need of hour. He said that training police, prosecutors and judicial officers is very necessary. Cyber crime cells have been a big step forward. Cyberlabs and NASSCOM support has helped in India with initiatives like cyber-safety week. He concluded by saying that investigations and legal enforcement need to be more sophisticated, and stricter.

Thereafter Mr. Vakul Sharma traced the origin of the word cyberspace with a science fiction word 'neuromancer' (1984) and discussed about the evolution of computer

network from telegraph to optical network. Then he briefly discussed about the characteristics of cybercrimes and the crime of phishing, case studies related to child pornography and cyber terrorism.

Justice Lokur added that under cyber space, injunction has no meaning as information is known to whole world. The conventional definition of theft has been now thrown away. He gave the example of multicountry ownership of flights which makes determination of jurisdiction difficult in cyber crime involving flights. The international law is required to be brought in and a process such as extradition is required to be used in such situations. The information about individuals can be gathered from smartphones and in one case 8000 pages covering 6 months period contained all the information about a particular individual.

Mr. Ananda Desai discussed a recent cases where cheating in All India Medical Examination involved smartphones and answers were distributed to the large number of students.

SESSION 2: APPRECIATION OF ELECTRONIC EVIDENCE

SPEAKERS: MR. VAKUL SHARMA AND MS. N.S. NAPPINAI

Mr. Vakul Sharma started his address by explaining two types of electronic evidence i.e. user created and computer created evidence. He then discussed about the aspects of cyber criminality such as anonymity, no immediate physical risk, lag between action and detection. He then explained about the appreciation of electronic evidence and defined electronic records. He asked a question that whether such evidence can be manipulated or tempered with. To which he said that even the forensic labs may come out with two different versions even after using the same software. A judge is expected to be a technocrat i.e. able to appreciate electronic evidence. He discussed various case laws and showed as to how electronic evidence has been appreciated by different judges in their judgements.

He then discussed the importance of Section 65B of the Indian Evidence Act and while explaining whether evidence under this section should be considered as primary or secondary evidence he discussed various case laws and came to the conclusion that electronic records are treated as secondary evidence. He said that there are a few conditions which are to be looked at for admissibility of electronic record. These are whether the document is an electronic record; whether it is produced by a computer; and whether it is accompanied by Section 65B of Indian Evidence Act or not? He also discussed about section 77A of the Evidence Act. He concluded by saying that the hands of judiciary are not light and that they need to be more cautious and perfect.

Ms N.S. Nappinai started her discussion with an overview of criminal justice system. She said that technology is a facilitator of crime as there is a greater reach, larger criminal base and larger victim base. She added that a document has no restriction and it can range from a paper to an electronic device. She discussed about the first principles that are involved in electronic evidence which include nature of document or electronic record, author of the document, chain of custody, proof of contents and authenticity and integrity of the document. She mentioned the applicable Acts in Sri Lanka such as Evidence Ordinance 1895 and Electronic Transaction Act 2006. She said that in electronic records, there is a presumption of authenticity. She also mentioned electronic evidence in United Kingdom under the Police and Criminal Evidence Act, 1984. She also discussed about the challenges to electronic evidence such as authenticity of document, integrity of contents, non-repudiation and possibility of alteration or detection. Then she explained the difference between electronic signature and digital signature. While concluding she talked about hacking and data theft and thus gave suggestions as to how the trail can be cracked.

Justice Lokur said that three important takeaways from the session include issues of jurisdiction, changing technology and the new jurisprudence of digital evidence.

SESSION 3: CIRCUMSTANTIAL EVIDENCE

Ms. SONIA MATHUR, JUSTICE U. U. LALIT, JUSTICE I. A. ANSARI

Justice Ansari explained the concept of circumstantial evidence and emphasised the use of ordinary prudence test in assessing it. The use of ordinary prudence will involve the viewpoint that how an intelligent man will consider as to how a particular situation is ought to be treated. There will always be some direct evidence in circumstantial evidence. The demeanour of accused and witness is very important in case of circumstantial evidence. So such facts should be linked together and the judges must see that all the facts in circumstances are joined as a chain and there should not be any missing link. The reverse test should also be applied on the chain of circumstances. This is a positive test. The negative test is that any hypotheses of accused's innocence have to be excluded.

Ms. Sonia Mathur gave the outline of her discussion in which she talked about the Concept and Indian perspective of circumstantial evidence. She discussed two cases i.e. King v Burdett 1820 and R v Burton 1854.

In the Indian Perspective she discussed following aspects with regard to circumstantial evidence:

1. The circumstances from which the conclusion of guilt is to be drawn should be fully established, as distinguished from 'may be' established;
2. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
3. The circumstances should be of a conclusive nature and tendency;
4. They should exclude every possible hypothesis except the one to be proved; and
5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

Then she discussed case *Sharad Birdhi chand Sarda v. State of Maharashtra*, (1984) 4 SCC 116 (Panchsheel Case), *Santosh Kumar Singh vs State through CBI*, 2010 (10)SCALE

422, and *Vasanta Sampat Dupare vs. State of Maharashtra* (Crl Appl. 2486 - 2487 of 2014), *State v. Carter*, 136 N.J. Super. 271 (1974) 345 A.2d 808 and *Duncan PederMckenzie Jr Petitioner V/s Henry Risley Respondent*, Court of Appeal for the ninth Circuit.

She concluded that no useful purpose is served by contrasting two methods of proof which are not opposed to one another and are in fact in daily use to complement each other. Rule for circumstantial evidence is that for proof such evidence must be not merely consistent with guilt but inconsistent with innocence. In practice circumstantial evidence can sometimes have an advantage over direct evidence since it can come from multiple sources that can check and reinforce each other, whereas eyewitness testimony can be inaccurate at times or be perjured.

Justice Lalit added that circumstances and facts in civil cases are required to proved in a different way as compared to facts and circumstances in criminal matters. In criminal side, the test is of beyond reasonable doubt but in civil cases it is preponderance of probability. In circumstantial cases, the court must reach to the conclusion that concluded situation must have happened and nothing else could have happened.

SESSION 4: RECORDING OF CONFESSIONS AND RELIABILITY OF WITNESSES

SPEAKERS: JUSTICE U. U. LALIT AND JUSTICE I. A. ANSARI

Justice U. U. Lalit said that no man can be compelled to be a witness against his own cause. After a brief explanation about the same, he moved on to the different categories of confession.

- Judicial Confession – Admission of guilt before the magistrate. Some precautions need to be taken before recording of such confession. The magistrate needs to make sure that the person confessing is not acting under any kind of pressure or

duress and the person needs to be informed that the confession can be used against him in the court of law. All kinds of warnings and safeguards are to be ensured before such a confession can be recorded. These are the certain objective standards which need to be crosschecked before relying upon a confession.

- Confession made to the police – In case of confessions made to the police officer during the time of investigation, such a confession is not a valid confession and is not admissible. There is an exception to this general rule which was given in the case of *PulukuriKottaya v. Emperor*, AIR 1947 PC 119. In this case according to the Privy Council, when the confession made to a police officer leads to the discovery of a material fact then such evidence or the part thereof which directly leads to the discovery will be admissible and nothing else.
- Extra Judicial confessions – Under it, confessions are made by the accused elsewhere than before a magistrate or in court. It is not necessary that the statements should have been addressed to any definite individual. It may have taken place in the form of a prayer. It may be a confession to a private person. A man after the commission of a crime may write a letter to his relative or friend expressing his sorrow over the matter. This may amount to confession. Extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility. Extra-judicial confession is generally made before private person who includes even judicial officer in his private capacity. Various questions as to why the confession was made to such a person is asked by the judge in order to make sure that the confession is admissible.
- Confession of co-accused – The confession made by a co-accused can be held to be valid even against the other accused. For such a confession to be valid, the co-accused making the confession must admit his own guilt in the said confession and both the accused should be liable for committing the same offence.
- There are special legislations like anti-terror legislations under which even the confession made in front of the police officer is admissible as valid evidence.
- A valid confession should satisfy the conscience of a judge as it depends on the discretion of the judge and if a confession does not satisfy the requirements then

such a confession should only be used to lent assurance for the conclusion reached upon by a judge and should not be relied upon.

Justice Ansari talked about the confession made to a police officer. He said that a confession made under the influence of truth serum is also admissible if it leads to the discovery of a material fact. In case of a confession by a co-accused, if the rest of the evidence excluding the confession of the co-accused is sufficient enough to prove a case, then the court should not rely on such a confession and should use the same only for the purposes of lending assurance for the particular case. Justice Ansari also emphasised about the fact that in case of a confession made to a judicial magistrate, the magistrate has to make sure about the safeguards before recording the said confession. Justice Ansari then talked about the scenario when a witness turns hostile. The court directs the prosecutor to show that the witness has turned hostile and the onus is on the person who claims the hostility of the witness. The evidence of a witness in a case is used only till the point it supports the case of the prosecution and not beyond that.

There was a question put up i.e. whether the police is entitled to the copy of the confession? Justice Lalit said that theoretically the police is not entitled to get the copy of the said confession but in the contemporary scenario, the police are given the copy of the confession anyways.

SESSION 5: SENTENCING: PRINCIPLES AS DERIVED FROM JUDICIAL DECISIONS

SPEAKERS: JUSTICE U.U. LALIT AND PROF. DR. M. MENON

Prof. Dr. Menon initiated the discussion by stating that a project to update and restate the principles involved in different branches of law particularly of great relevance to the trial judiciary at the instance of the Supreme Court of India has commenced. This is called the reinstatement of law series. One of the series in that would be on sentencing to deal with the issue of disparity and divergence in sentencing practices

across the country. Series of research is required to ascertain that whether there are guidelines to follow in the matter of sentencing in particular crime.

Prof. Dr. Menon then said that the functions of a criminal court is to determine facts on the basis of evidence and thus to determine the appropriate sentence. Then he asked questions that what evidence proves facts and are they consistent from court to court? He said that there are wide variations in finding of guilt and giving sentences. It's a game full of uncertainty, lot of subjectivity and thus arbitrariness. He added that a properly trained judicial mind will not have variations. Such variations imply lack of training. He said that while granting punishments the fundamental right to live is taken away, therefore, sentencing should be done carefully and not arbitrarily. Then going to history he discussed the theory of human behaviour and theory of punishment and thus said that there should be a balance between pain and pleasure. The purpose of punishment is prevention, retribution, protection etc. In India, local and special laws has circumscribed jurisdiction of judiciary by fixing maximum and minimum limit.

He then discussed two case laws dealing with the principles of proportionality and social impact of punishment. He added that too lenient as well as too harsh sentences both lose their efficaciousness. Sentencing is a delicate task which should be done with several considerations. The Indian Constitution has criminal justice system which guarantees human rights incorporated in the provision of equality. Inequality is exploitation. Any amount of arbitrariness is countered by judges under equality. He talked about Section 357 regarding compensation as a matter of equalisation. He talked about arbitrariness in imposition of death penalty. He said if you cannot bring in all the human rights jurisprudence then get rid of it. Going into the depth of death penalty he discussed various case laws and said that the death penalty given in "rarest of the rare cases" has been invariably and inconsistently applied by various Courts. The mode of execution is such that the actual execution seems to be unfair and excessive. He also discussed the position of Sri Lanka on death penalty where no executions have taken place since 1976. Every year Sri Lankan courts are awarding 50-

60 death sentences but executive is not implementing it. Because of this there is large number of death row inmates in the prisons of Sri Lanka. While concluding he said that the death penalty jurisprudence is now occupying field.

Justice U. U. Lalit started his discussion by giving the instances of Salman Khan where he killed a deer and got 5 years of imprisonment and N. Siddhu who was imprisoned for 3 years for man slaughter. He asked that whether the life of a man is cheaper than that of an animal and therefore where to draw a line. He discussed about section 304 of the Indian Penal Code about culpable homicide and said that law is such that it puts in a platter before judges for their own assessment as to what should be the punishment given. There is a room for wide variety and discretion. He said that the various guidelines issued takes away the element of wider discretion. He talked about the statutory mechanism of power of pardon as to when it can be granted. While discussing about Swami Shradhanand's case, he said that the executive can commute a sentence or grant a pardon for death penalty but there's an amendment which states that it shall not be exercised till the prisoner has completed 14 years of imprisonment. Assessment should be done on the basis of whether the person will be a useful member of the society. He said that the assessment of the judges cannot be ascertained in each case as there is no definiteness in the entire process. He concluded by stating that the legislature is trying to save the judges from situations of arbitrary discretion and thus giving proper guidelines.

SESSION 6: PLEA BARGAINING: LAW AND PRACTICAL ISSUES

SPEAKERS – JUSTICE U. U. LALIT, PROF. DR. MENON, MS. USHARAMANATHAN

Ms. Usha Ramanathan talked about the history of plea bargaining. She said that plea bargaining applies in the United States for very serious cases whereas it applies for petty offences in India. Plea bargaining was generated as a concept to recognise the individual liberty at the time of beginning of the Public Interest Litigation. Then she talked about how a large number of under trial prisoners are there in prisons who

have been kept in prison without any trial and without any sentence. In fact they are not even aware about the crime and the charges for which they have been imprisoned. Then Ms. Ramanathan discussed about how the justice delivery system takes a large amount of time. She said that the delay in justice is not because of the judges, but it is because of the large amount of time taken at the investigation stage, it is the criminal justice system which is to be blamed. The judiciary comes at the far end of this problem. Then she talked about the different methods being used to reduce the time i.e. fast track courts, lokadalats, Camp courts in prisons. She also talked about how the investigative skills are reducing which again is a reason for the delay in justice.

She talked about the introduction of plea bargaining as a way to reduce the time and to ease the burden on the courts. Non performance of police in investigation, delay in filing FIRs and initiation of the investigation are some of the core reasons for the delay caused in the justice delivery system.

Prof. Dr. Madhav Menon talked about the amendment made to Cr.P.C in 2006 and the inclusion of the separate chapter dedicated to plea bargaining. He also talked about Section 89 of the CPC. Around 70% of the cases are punishable for less than 7 years and the plea bargaining provisions apply only for the offences for less than 7 years. In spite of there being a provision of plea bargaining it is still not in operation. Judges and advocates have to together contribute in order to make sure that plea bargaining is enforced properly in India. There are 3 types of bargains; bargain on facts, bargain on charge and bargain on sentence. Dr. Menon also discussed about the National Accountability Bill of Pakistan and how it has had an impact in the cases of plea bargaining with regard to corruption cases.

Justice U. U Lalit discussed the two sides of the criminal matters, black and white and how the plea bargaining applies on the grey areas. He discussed about fiscal laws, the settlement commission, and how and why there are very few cases of plea bargaining coming up though nearly 10 years have passed since the provision was introduced. He then went on to discuss about the advantages attached to acquittal, the stigma

attached with conviction and how the normal process of criminal administration takes many years. He also talked about the applicability of plea bargaining on petty offence. He also suggested about revisiting the idea of conviction and how it might be able to change the relationship between marginal population and law enforcement authorities.

SESSION 7 & 8: LIVING IN HARMONY WITH VISION AND VALUES

Speaker: Mr. Sampath Iyengar

Mr. Sampath Iyengar initiated the discussion with leadership qualities. He discussed some examples of leadership initiatives where people in difficult circumstances have come up with excellent results. Mr. Sampath emphasised on doing best in work and life so that there will no space left for any kind of stress. The main reason of stress is that many people do less than what they are capable of and that creates space for stress. He discussed various kinds of visions which people aspire for. It primarily includes happiness for self and family and then yearning for materialistic life. Everybody has a vision either high or low. It could be responsibility for oneself and for family. It is independent of colour creed or nationality. He gave examples of vision of great people. Individual must not look for others for vision but should develop their own. He discussed four combination of vision of values where changes in degree in vision and values create different kinds of persons and goals. He then engaged participants in a game where four teams were formed and each were given slips for expressing choices in terms of X or Y. A score sheet was prepared out of the teams preferences and then conclusions were discussed.

SESSION 9: ART OF JUDGEMENT WRITING

SPEAKERS – JUSTICE YATINDRA SINGH, JUSTICE G. RAGHURAM

Justice Yatindra Singh talked about what a good judge should do. He talked about 2 topics i.e. court management and ability to communicate reasons or Judgement writing.

He said that in a judgement the following things needs to be there as per Chapters XX & LXI, Sections 187 & 774 – CPC and Chapters XXIII & XXVIII, Sections 283 & 352 – Cr.P.C:

- Case of the parties
- Points for determination
- Decision on the points for determination
- Reasons for the decision

Then he talked about how to prepare and write a good judgement in which he discussed about,

- Planning, be clear – Don't go in Circles.
- Write and then revise, and revise...
- Avoid quoting from pleading and evidence
- Avoid long quotations from citations
- Simple points – no complicated discussion

Then he discussed about writing as if talking is necessary in a good judgement and it is necessary to write complete sentences. One should not use unnecessary words - 'oh', 'I mean'. One should write in spoken language and then readers will feel that you are talking to them. On the point of language and punctuation he said that one should think about others and write to express and not to impress. One must use active voice, break the page with paragraphs, use short sentences, and avoid negatives.

He said that a judgement should be easy to understand and he emphasised the importance of heading and sub-heading, lists – bullets and numbers and format of the judgement. In heading and sub-heading he discussed about breaking the continuous text, making writing logical, indicating to the reader to reach the point, leaving more space above than below and following the priority. In bullets and numbering he discussed about Bullets and number are used to,

- (i) State a series of facts or conclusions
- (ii) Signal the essentials
- (iii) Encourage the writers to be brief
- (iv) Avoid boredom of reading continued text

Then he talked about the format of the judgement which should contain introduction/ opening words, the facts, points for determination/ issues, findings and reasons on different points, conclusions and order.

In court management he said that a judge should be fair, be consistent, stick to the court timings, don't delay your judgements, avoid social gatherings, parties, control court proceedings, listen to the advocates attentively, ask relevant questions and summarize the submissions. He concluded by saying that nature does not endow every judge to be a good judge or with an ability to write clearly. But if, the anxiety - to do right – remains, then it can always be achieved.

Justice Raghuram on the same lines discussed about how the world has created different kinds of myths and to govern the same there are laws created. He talked about the myths of world and the objective realities thereof. A judge has to maintain equilibrium in his judgement. There has to be equilibrium of conflicts and peace in order for the society to move on. Only peace and only conflict cannot alone survive. The art of judgement writing is coherent storytelling in which coherence is to be established between all the different varieties of myths being created by the human brain. The art of reasoning in the judgement is what gives out the personality of a judge and it is the personality which affects the judgement which is again a result of the society and the individual conscience and collective conscience of the society.

SESSION 10: ART OF REASONING

SPEAKERS: JUSTICE G. RAGHURAM

Justice G. Raghuram started discussion by asking as to why reasoning is important i.e. to justify the conclusion and it acts as a check on certain bad elements. Reason eliminates such arbitrariness. He said that you come to a conclusion because you have given a reason. While discussing about the precedents, he talked about how to apply the principle of ratio decidendi and stare decisis. One should distil the broad norm and apply it to the decisions and the reasoning. Use or application of precedents is tricky. The art of reasoning discloses as to how a precedent is applied in a case which does not have identical facts. He then discussed about interpreting statutes. He said that broad expressions are used and a language has chronically multiple meanings. He added that an ultimate reasoning is the product of different lenses applied. Life of a judgement depends on the socially digestive nature of the theory and not its beauty. The thought or courage to stand up in the principle marks out distinction between man and beast. Then he said that consistency should be indicated in proper reasoning. A judgement reflects one's growth. With growth views are changed with respect to experience. Therefore, a judgement reflects changes. Thus, cause of reasoning reflects yours growth.

Justice Yatinder Singh added by discussing about his approach towards reasoning and said that life of law has never been logic rather it has been experience. He said that decisions depend on feelings and emotions and not logic. With this he put up a question for every judge present there that whether they apply their heart or brain while giving decisions in a case. To this question maximum judges replied that they look into the facts of the case and the law and give their decisions while others said they apply their heart also.

SESSION 11: STRESS MANAGEMENT

SPEAKER: DR. ARUNA BROOTA

Dr. Aruna initiated the discussion with the reasons for stress in judges' life. The expectations of people and system cause stress in judges' life. Judges start expecting a lot from one's own self. Judges bear lot of responsibility in giving justice. Judges lives different life in home and different life in court. Judges develop a habit of behaving in a particular way and when other does not respond in an expected manner then judge experience stress. The body responds in a non specific way to any demand put on it and if the demand is not bearable then it creates pressure. Reacting to situation of stress is depend on many factors. Therefore stress is any threat to your adequacy or well being. It could be physical, psychological, social stress or spiritual. Everyday stress occurs because of poor time management or mismanagement of resources. She discussed various examples of stress which her patients shared with her. Different people react differently to various situations. It depends on many factors. If stress is not managed or released on time then it can cause many serious diseases in long run.

Dr. Aruna suggested various lifestyle interventions for reducing stress. One should observe everyday schedules properly. Changing lifestyle is necessary and exercises should be included in everyday schedules. Due to physical exercises the body starts to generate a biochemical called endorphins which are knows as happy hormones. Taking and releasing deep breath can reduce stress, anger and aggressiveness. One must change one's habit for changing attitude towards world. One should reflect on day's work in night and it will help in changing perspective.

The coconut water is best under stress as it has electrolyte and it changes blood chemistry which will affect neurotransmitter and then quality of your thoughts. But only natural coconut water should be taken and tetra pecks should be avoided. One should take watermelon to place of work and should eat it in between. It activates five

biochemicals in the brain which act as mood stabilizers. One should eat something in each 2.5 hour rather than drinking tea and coffee. Fruits are best to eat during such breaks.

Sleep management is also effective in reducing stress. Playing badminton, tennis, rugby and football should be included in daily schedule. Playing with table tennis and dribbling basketball refreshes the brain. These are mind exercises through the body as it makes one focus on sport and help in forgetting heartburns and jealousy.

Justice Raghuram added that in high profile cases judges' faces lot of stress. They fear criticism from high court and therefore they tend to convict in such situation. Dr. Aruna responded to a question and said that music also reduce the turmoil of the nervous system and relive stress. Music heals the pain and is road to calmness in the mind. But one must resolve the stress at every level including cognitive level. Another query was of sharing problem with friends and Dr. Aruna said it can be a good stress reducer and it helps in venting feeling. It gives you more insight in the issues but the friend should be a trusted person.

SESSION 12: RELATIONSHIP MANAGEMENT

SPEAKER: DR. MANJU MEHTA

Dr. Mehta initiated the discussion with a story where the message was that any weight which one held for long time will cause pain. Similarly any strain in relationship can cause problems such as marital problems, problems with colleagues, problems with lawyers and supporting staff. We have to put down any strain before we go to sleep. There must be proper communication either verbal or non verbal to indicate the instructions. Sometime due to strain in relationship with a lawyer the judges prefer to postpone his case but there cannot be escape from the situation. Judges in such situation could be assertive to maintain the rules and regulation of the court

room and they need not fight or be angry with lawyer. By saying that silence has to be maintained or please go by the diary or by rules, judges could be assertive. One has to learn social skills by which one will be able to interact in harmonious way and will not get aggressive. Judges should also have negotiation skills. For instance if there is consistent occurrence of wrong typing by the supporting staff then judges should be able to deal with such situation.

Judge must not keep any grudge with them if somebody has misbehaved with them. Judge must forgive that person and the peace of mind would be there. Forgiveness is very important in any relationship. Such skills can be applied during mediation or in family courts where judges can help families towards reconciliation. The trust is necessary between colleagues and other staff otherwise judges will take more work upon themselves and will increase their workload. Trust is necessary if judges want to discuss cases with colleagues in case of doubts. Ego of the judges is another problem and many issues emerge because of ego. Ego means whatever I am saying is right and then such person in ego will not listen to other good options. Status and position also create ego problems. Bias, belief and prejudices also causes problem in relationship. Language and style of communication cause problem in relationship. If judges feel offended by lawyers aggressive tone then they can ignore him as it could be usual way of talking of that lawyer. Sometime the personality of a person also causes relation problem such as perfectionist type personalities. That person always find fault with others. In intervention to improve relationship we may have to modify our expectation and communication to bring satisfactory resolution. Self observation and monitoring one's temper helps in reducing strain in relationship as there can be fatigue which makes you lose your temper. This also implies being aware of emotions and reactions towards situations. The way of thinking about others behaviours and making changes in it according to right information can also reduce strain in relationship. So restructuring of thought and thinking is very important. In court rooms, knowing reasons for others' irritating behaviour can lead to change in the perception about that behaviour and it reduces strain in relationship. Time

management is very important and demands on the body should be adjusted according to balance between work and leisure. Sleeping early is necessary to maintain the health of the brain and going to sleep late cause hanging of memory.

SESSION 13: ADR: MAPPING OF SUCCESS OF ADR INITIATIVES IN INDIA

SPEAKERS: JUSTICE M.B. LOKUR, JUSTICE DEEPAK GUPTA

Justice Lokur stated the mediation practices in Sri Lanka and said that in India mediation started in 2005. There is mediation and conciliation project committee setup by the Supreme Court in 2005 to encourage mediation all over the country. The major strategy for encouraging mediation is threefold which first of all include the statutory backing in terms of Section 89, Code of Civil Procedure where ADR mechanism has been mentioned. The ADR mechanisms include lok adalats where petty matters are resolved. The decision of lok adalat is binding on the parties. The mediation and conciliation project committee launched a pilot project to see if mediation picked up. It was initiated in Tis Hazari district court. About 1,27,000 cases have been referred to mediation in Delhi district courts till now and the settlement rate is in the range of about 70 percent. 73,000 cases have been settled through mediation. With many cases there are always connected cases for instance in matrimonial dispute there can be a case of domestic violence, maintenance, custody and dowry. The number of connected cases that have been resolved in Delhi district court is 21,000. In mediation process is simple and the parties sit across the table and express their view and mediator does not take any side. The mediator just facilitates the parties to arrive at a settlement. So a large number of disputes i.e. family disputes, industrial dispute of management and labourer, landlord and tenant disputes and connected cases can be resolved through this. The second strategy was to train judges as mediators. Judges are respected for being independent and litigants have lot of respect for judges. There is one day in every week fixed for judges for doing mediation. Initially lawyers objected to mediation but gradually it caught the imagination of lawyers. In 2006 lawyers realize that it is not affecting their work and

they too start demanding mediation training. In Delhi there are 8-9 mediation centres and there are large numbers of lawyers as mediator. The fourth strategy was to launch pilot project in each district in some states such as Jharkhand, Kerala, Maharashtra and Punjab and Haryana etc. The guidelines for successful mediation and training were given and it worked well. It did not work in Orissa and Assam. Mediation training at appellate level has also been given in Delhi and it has worked well. The fifth strategy was to set up mediation committees in each high court to see the development of mediation practices in each state. The sixth was to introduce community mediation centres. 9 centres have been established in Delhi and people from community can come to mediation centres in their community for resolving disputes. Such centres has resolved small disputes such as parking issues, loud music, nuisance by dog etc. Till 31 May, 2015, total 29000 cases have come to such centres and 11000 cases have been settled.

In consumer courts there are large number of cases in delay and arrear category and those too can be resolved through mediation. After consultation with the the chairperson of NCDRC, it has been resolved that Consumer Protection Act will be amended and mediation clause will be inserted.

Justice Deepak Gupta stated that ADR system is a viable alternative to resolve disputes as everybody cannot face the delay in litigation. He said that cost of arbitration is high and system of arbitration is not institutionalised. Judges and lawyer in arbitration follow civil procedures and therefore it has remain as complex as normal litigation. He said mediation and lok adalats have been successful in Himachal Pradesh. The banks and finance companies take advantage of pre-litigation lok adalats. In mediation, no party is forced and they are only guided. Mediation centres are popular among public because there are no lawyers around to charge fees. Parties sit across the table and discuss and it is being done in a comfortable surroundings. Arbitration goes out of court but mediation if not successful then case comes back to court.

Justice Lokur added that litigants don't have to pay any fees in mediation and payment of honorarium to mediator is taken care by NALSA and the state governments. Mediation is successful in Supreme Court also where 1008 cases have been referred and 490 settlements have been done. He said that Section 89, CPC is not very well drafted and it makes mediation difficult. People should be free to enter into mediation and no law should be required for mediation. The mediators should be trained properly.

SESSION 14: CASE MANAGEMENT

SPEAKERS: JUSTICE M.B. LOKUR, JUSTICE DEEPAK GUPTA, JUSTICE R.C. CHAVAN

Justice R.C. Chavan pointed out the ways and methods through which the judges can manage the cases in their respective courts. He compared a judge with a juggler who has one ball in hand the other in the air, likewise a judge also has one case in hand and the other in motion. Through this he suggested the need to manage cases and explained methods to have better management. The classification of cases in tracks is necessary. Matters such as family matters, money matters, property matters should be prioritized over the others. He gave foremost importance to fixing of realistic schedule as a method to manage cases and frame rules in order to take control of one's court. Further, he insisted on making the rules flexible, taking settled practices into account while framing such rules. Further he emphasized on need for the courts to have a critical approach i.e. programme evaluation time. Through this the above mentioned schedule can be prepared by the computer which can be revised as and when required. This can also be put on record to improve the efficiency and also minimize the time requirement. He added that with the completion of data entries in e-courts project, the next step is data farming or analysis of data. This analysis should be for institution and progress of cases i.e. how case progress in a particular place. Lawyers usually hijack the progress of case such as not submitting written statement on time. Therefore realistic time schedules should be fixed. The objective of judicial

system is to smoothen life and not finding out truth. Finding out truth in litigation can hurt the parties by delay such task causes. The prime concern is to give timely result otherwise party suffers and economy gets ruined.

Justice Deepak Gupta said that case specific time schedule should be fixed once service of summons is done and then advocate should be taken into confidence. He added that the cases in court must be judge specific, time specific and the schedule of the judges must be place specific. He said that a single judge must not deal with civil as well as criminal cases. The case must have a time frame in which it must be disposed and the schedule which is made must be according to the place of work instead of being uniform for everyone.

Justice Lokur was in consonance to the previous speaker in the context of affixing schedule and having place specific ones. He emphasized on the need for such training programmes and also allocation of resource to the people who require it. He also highlighted the need for the judges to cordial relationship with the bar which means that the judge could be polite but he should remain firm. This will help the judge to have full control of his court.

He added that the following methods must be adopted for better management in the court:

- There must be courts assigned as per their specialization. The mixing of civil and criminal cases is not a good idea for better management.
- The oldest cases should be given priority. With this he gave example of a Peshawar judge who used to put up a list of old cases in front of his court and prioritized them.
- There must be a proper categorization of cases. Categorization leads to simplification of job.

- Priority must be given to a few cases. A specific litigant should be given priority over the other. With this he gave example that an 80 year old litigant must be given priority over the other.
- With the advent of new technology it is necessary for the judiciary to cope with it and to reengineer their process.
- The courts must be computerized so that data farming can be done.
- Alternate dispute resolution mechanisms must be encouraged. Mediation should take place during the time gaps of the hearings.
- Frivolous adjournments should be avoided. There must be cost imposed for such activities which can act as deterrence.
- Focused and quality judicial education must be imparted by professional management experts.
- There must be points given to the judicial officers for particular disposal or with regards to the stage which has been covered. There must be a specific number of cases which must be mandatory to discharge with specific points. This is called the carrot and the stick policy.

To this Justice R.C. Chavan added that too much importance should not be given to numbers as the cause of justice suffers. A participant asked question as to how the delay of justice has to be taken care of in case it is necessary to give the adjournments. To this Justice Lokur replied that in case of mandatory adjournments, the gap between the hearings must be less.

SESSION 15: E- COURT PROJECT: COMPLETION OF PHASE 1 AND BEGINNING OF PHASE 2

SPEAKERS: JUSTICE M.B. LOKUR, MR. C. M. JOSHI, MR. PRAMOD GOEL

Justice Lokur began the discussion by giving the background of the e-court project in India. Justice G. C. Bharucha of Patna High Court headed the first committee on e-court project in India which was started in 2006-07 and successively Justice

Balasubramaniam became the head. These two Justices started taking steps for the implementation of phase 1 of the e-court project in India. In 2012 Justice Lokur was nominated for the post of head of the e-court committee. He gave an overview of how the project is working in India and pointed out a flaw regarding the follow up of the training which was imparted to the trainers.

Further Mr. Pramod Goel, head of the computerization project in the state of Punjab and Haryana started his discussion by highlighting the benefits of it for the litigants which is mentioned as follows:

- It is cost effective.
- It is accessible.
- It is affordable.
- It provides a transparent justice system.

He identified three major aspects of computerization in India. The first one being the hardware which required the systems to be set up at various courts. Second, being the software which had to be made in order to feed all the data in single software so that it is made available. The Indian software was one with core version as well as a periphery version. Third, being the human ware through which the judicial officers were made aware of this technology, a set of trainers were appointed and trained who further trained the judicial officers. So under this a website was prepared which connected 10000 courts.

The major aspects undertaken were:

- Change management
- Reprocessing of rules
- Optimization of Human resources

Mr. Goel shared his experience of implementation of this project. First, being video conferencing through which the witness statements are recorded. Second, being establishment of paperless court. E-filing has been made available and as an incentive

the next day is granted if there is an e-filing. Third is the establishment of RF id system, through which the issuing and the returning of the book has been made available online. Fourth, the data has been collected in the National Judicial data Grid and it is made available live to the people.

Mr. C.M. Joshi highlighted that 16000-17000 courts have been covered under this project. He highlighted the pattern in which the phase 2 would work in future. The following was the pattern:

- Each court will have 5 systems connected to national data grid.
- The software will be enhanced.
- The records of the courts will be digitalized.
- Video conferencing facility will be made available in the courts.
- Capacity building exercise will be undertaken. More trainers, trainees and staff will be appointed to train the court staff.
- Rearrangement of work can be done. Once a filing is done it can be scrutinized by the computer itself which will make the working more efficient.
- More services have to be provided such as e-filing has to be used widely, plastic money and net banking services to be made available.

To implement the phase 2, Mr. Joshi emphasized on the need for a conscious effort because such efforts yield faster results for a change.

One of the participant asked question as to how the security of the software is maintained in India. To this Justice Lokur replied that required firewalls have been established in the software.

SESSION 16: APPOINTMENT OF COURT MANAGERS

SPEAKERS: JUSTICE M.B. LOKUR, JUSTICE R.C. CHAVAN

Justice R.C Chavan stated that the concept of court management failed because there was less work on change management. According to him there were many issues for

the failure of this system of management because there was no course provided for court managers in the management institutions. The management graduates were more money driven, due to which the court did not have sufficient capacity to pay them. He also pointed out that the judges had no idea regarding the functioning of court manager which they have to perform. If one takes another aspect into account both the court management as a study and appointment of court managers is necessary.

Justice R.C Chavan insisted on introducing an induction programme on court management for judicial officers as well as for the staff of the court, instead of hiring court managers from outside. According to the Justice Chavan, even if we hire court officers from outside then their compensation has to be managed and because of this, the system proved to be a failure. The officers should be trained well before they act as judicial officers and they should know the techniques and methods to manage the court proceedings as well. Court staff must also be encouraged so that they could help the management in a better way.

Justice Chavan laid stress on thinking of our own officers and our own staff rather than appointing the court managers from outside so that they do not leave their jobs and can work more efficiently. Otherwise, if the judiciary wants court managers then the management institutions should start a course on court management as there are other courses on school management, hospitality management and likewise. These courses are successful because there are many employment opportunities. To retain the court managers their pay should be increased but the moment the court managers are paid higher salary and then the judges would develop inferiority complex as their value will diminish.

Justice M.B Lokur addressed the gathering further by elaborating on court managers. Justice M.B Lokur was very much in favor of appointing court managers. The 13th Finance commission recommended the appointment of court managers for the administrative functioning of the courts. The difficulty arose because the finance commission did not explain the role of the court managers and no efforts were taken

by any courts to understand the need for court manager. The NALSAR University will come up with course on court management. Court managers are very necessary as there are many administrative works in court which is at present taken care by judges. The court managers will be helpful in reducing burden on judges and judges will be able to reduce non judicial work they undertake. The court managers will be accommodated in the capacity building head in the 14th Finance Commission fund.

FEEDBACK

The concluding session of the conference was the feedback session where Justice Madan B. Lokur had asked for a feedback from the participants regarding the conference. The session was highly interactive where all the judicial officers from Sri Lanka expressed their views regarding the programme. The discussion went round the table where each judicial officer thanked the panel of judges for effective sessions. Many judicial officers appreciated the stress management as well as judgment writing sessions which were very helpful. The judicial officers comparatively analyzed and understood the similarities as well as the differences of Sri Lankan and Indian legal system. The judicial officers were of the opinion that written material of the conference should be given in advance so that it will be easy for them to understand the sessions. Since Indian and Sri Lankan cuisine differs, many of them were not satisfied with the food provided. Some of the officers wished to visit the local courts and to see the E - filing of cases. Plethora of officers were not satisfied with the timings of the conference as many of them suggested that it should start at 9 A.M - 4 P.M as it is easier for them to grasp in the early hours of the conference rather than in the late hours where the grasping level may decline with the time. One of the officers suggested including topics relating to public nuisance as well as environment issues. Towards the end the initiative taken up by the National Judicial Academy was appreciated.
