

NATIONAL JUDICIAL ACADEMY



**Programme Report**

P-973

WORKSHOP ON DEVELOPMENT OF SPECIFIC MODULES FOR THE SJAs

(22-26 February, 2016)

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**National Judicial Academy**

The National Judicial Academy organized a five days' workshop for developing common modules on specific subjects from 22<sup>nd</sup> to 26<sup>th</sup> February 2016. The workshop aimed at developing uniform consistent approaches in judicial education on specific subjects throughout country. For this purpose the faculty members from the SJAs were asked to design and develop core modules for judicial training on judicial ethics, presiding officers handling commercial matters, intellectual property rights and for sensitization of magistrates on prevention of cruelty to animals.

### **Day 1**

#### **Sessions 1, 2, 3 & 4**

#### **THEME ONE- JUDICIAL ETHICS TRAINING MODULES**

Dr. [Prof.] Geeta Oberoi commenced the workshop with self-introduction of the participants and thereafter gave a brief introduction of the speaker.

Dr. [Prof.] Geeta Oberoi then shared the objective of the workshop which was to design and finalize 4 curriculum modules namely:

- 1) Judicial Ethics
- 2) Commercial Law
- 3) IPR
- 4) Animal Rights Jurisprudence

Justice Manju Goel started the session with an ice breaking exercise so that the participants can inter-mingle with each other. Thereafter, the Hon'ble Justice deliberated upon the following points

- What are ethics?
- Why ethics, it means why we are talking about ethics.
- What are judicial ethics?
- How judicial ethics is different from ethics for other professions

After discussing the above points Justice Manju Goel divided the participants into groups and gave them exercise related to Judicial Ethics. In light of the exercises above Justice Manju Goel talked upon the importance of Judicial Ethics and how a judge should deal with situation where there are conflicts in virtues, opinion of others etc.

Justice Manju Goel discussed as to what is a module? According to her a module has two parts.

1) Content

2) Form

First comes content, what is that it's going to be discussed in the class. What is it that we are going to impart? The content again has 3 parts, knowledge, skill and attitude.

According to Justice Goel the main areas of training include:

1. What is the content going to be: is it law?
2. Is it some social context?
3. It's something about you in controversy?
4. Is it about some observation?
5. What is the content?

These main areas of the training can be experienced through Audio visuals, PowerPoint presentation, sharing of experience, group discussions, group exercise, coaching method, and conduct of the faculty (discussion).

Justice Goel then asked Dr. [Prof.] Geeta Oberoi to talk upon adult learning and how to design a module for adults to learn. According to Dr. Oberoi before the preparation of the module it is important to identify if there are problems in a particular area of concern. Like in this case ethical issues pertaining to judges. According to her, ethics is a universal phenomenon. There is no geographical boundary attached to it. But we have to be ethical because we are human beings. Whichever country we are placed it doesn't matter. Caste, religion, place doesn't matter. Ethics it has one dimension. We should have some idea what are problems, on basis of which kind of problem you like to address Judges on ethical issues. That should be clear from one jurisdiction to another. Because every jurisdiction people behave according to their culture. So what may be ethical issues in west Bengal? It will not be same for west Bengal and Jharkhand there will be separate issues. One has to find out what are those ethical issues in their jurisdiction. According to Dr. Oberoi, the curriculum package includes the prima that is distributed to Judges who participate in the program to provide background information in the course and to serve as a useful reference for the future. This Primer can be taken from the judges. That will include the background information i.e., actual objective of the course. This is what needs to be prepared while preparing a module.

Dr. [Prof.] Geeta Oberoi then shared a module on Judicial Ethics prepared for Nigerian Judiciary, by UNODC. This sample module was given to the participants for reference in preparing a training module on Judicial Ethics. The purpose was to assist the participants with some basic structure

and frame work that is required for the preparation of a training module. This sample module covered more or less all Bangalore principles. But the final module which was required by the participants was supposed to be comprehensive document.

The participants were then asked to prepare the final module according to their respective SJA.

## **Day 2**

### **Sessions 5, 6, 7 & 8**

#### **THEME TWO-COMMERCIAL COURTS TRAINING MODULES**

Dr. [Prof.] Geeta Oberoi commenced the day with a brief introduction of the speaker.

Mr. Navneet Sharma initiated by emphasizing upon the reason why the commercial courts are coming into existence. The foremost reason being to make sure that the business runs smoothly and more and more investment comes into play. With the reasons for the setting up the Commercial Court that was joined the other speaker to the session that is Ms. Priya Misra along the queries of the participants from the various SJAs. According to the speakers the commercial courts have been established for making the sharing of two modules on Commercial Court which are as follows:

#### **Module – 01**

Draft Module for Orientation Training of Presiding Officers of Commercial Courts

#### **Day 1**

Sessions 1&2: Primer on (suggested length 2 sessions)

- Business management: incorporation, ways of organic and inorganic growth
- Business strategy
- Finance and financial institutions

Sessions 3&4: Primer on Corporate Laws (suggested length 2 sessions) (Relevant portion of each law)

- Competition Act
- Companies Act
- Sale of Goods Act
- Consumer Protection Act

- Contracts Act
- Sectoral Regulatory Acts
- SEBI Act
- IP Laws

## **Day 2**

Sessions 5: Understanding Commercial Disputes (suggested length 1 session)

- Financing – raising money from capital markets – shareholder agreements
- Business structures – Forms of incorporation, SPVs, JVs, OPC, Partnerships, LLPs
- Production agreements – technology/ licensing agreements
- Sale – Supply – Distribution agreements – franchising agreements
- Business services – consultancy agreements

Sessions 6: Commercial Court Proceedings - (suggested length 1 session)

Sessions 7&8: Second half – mock court

Shareholder agreements

## **Day 3**

Sessions 9&10: First half: Mock court on technology/ licensing agreements

Sessions 11: Second half: franchising agreements

Sessions 12: Valedictory session

## **Module – 02**

Draft Module for Orientation Training of Presiding Officers of Commercial Courts

### **Day 1**

Sessions 1&2: Primer on (suggested length 2 sessions)

- Business management: incorporation, ways of organic and inorganic growth
- Business strategy
- Finance and financial institutions

Sessions 3&4: Primer on Corporate Laws (suggested length 2 sessions) (Relevant portion of each law)

- Competition Act
- Companies Act
- Sale of Goods Act
- Consumer Protection Act
- Contracts Act
- Sectoral Regulatory Acts
- SEBI Act
- IP Laws

## **Day 2**

Sessions 5: Understanding Commercial Disputes (suggested length 1 session)

- Financing – raising money from capital markets – shareholder agreements
- Business structures – Forms of incorporation, SPVs, JVs, OPC, Partnerships, LLPs
- Production agreements – technology/ licensing agreements
- Sale – Supply – Distribution agreements – franchising agreements
- Business services – consultancy agreements

Sessions 6: Commercial Court Proceedings - (suggested length 1 session)

Sessions 7&8: Second half – mock court

Shareholder agreements

## **Day 3**

Sessions 9&10: First half: Mock court on technology/ licensing agreements

Sessions 11: Second half: franchising agreements

Sessions 12: Valedictory session

Ms. Priya Misra then discussed with the participants what they think should be included in the module itself that will be helpful to the judges? In this regard she came up with the following questions:

1. Can we say that our Judges are well versed in these laws? Absolutely? Yes or not?
2. How can we make that possible through the limited module of commercial courts?
3. How to impart judges the intersection between the commercial disputes and different law?

In the light of the above posed questions and issues Ms. Misra suggested that the commercial courts modules should be made as per the kind of commercial disputes that come up before these courts. According to her the module may include minimum and maximum duration of the training module as well as different stages for instance- refresher training course, workshops/ seminars, advance course etc. the speaker also suggested to have a research on the type of disputes that arises in a particular geographical area that come up before the commercial courts. Such type of research work will help in a better structuring of the training module for commercial courts.

After going through the modules prepared by the SJAs, Ms. Misra suggested:

1. The module may be focused on those related aspects and issues which are not mentioned in the statute.
2. The objectives of the commercial courts and the ordinance thereof can be dealt with in the introductory session, there is no need to have a separate session for an hour or so.
3. There could be separate session for transfer of suits and procedure involved.
4. To what extent the commercial courts procedure is deviating from the CPC and what changes have been brought there in?
5. appeals and timeline
6. An ideal discussion or ideal module will include more of grey areas more of debatable issues than what is already settled.
7. A module can have an assessment after by the end of every session or every two sessions.

Based on the suggestions and inputs from the speakers all the SJAs came up with a broad draft of a Module for commercial courts.

### **TRAINING MODULE FOR PRESIDING JUDGES OF COMMERCIAL COURTS AS JOINTLY PREPARED BY THE SJAs**

**DURATION:** 3 Days.

**OVERVIEW:-**

To equip the Trainee Judges with the knowledge of the provisions of Commercial Courts or Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and its interface with allied laws.

**OBJECTIVE:-**

Imparting knowledge and to develop skills of the Trainee Judges for qualitative and expeditious disposal of commercial dispute cases.

**KEYWORDS AND CONCEPTS:-**

Commercial disputes,

Distribution and licensing agreement

Franchising Agreements,

Insurance and Re-insurance,

Joint Ventures,

Mercantile document,

Shareholder Agreements,

Special Purpose Vehicles,

Specified value,

Technology Development Agreements

**METHODOLOGY:**

Lecture/PPT/Interaction/Group Discussions and exercises/Identification of Grey Areas/ Mock Trial.

**CONTENTS: -**

1. Introduction of the subject: need, significance, the practical aspects.

2. Provisions of Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 – Salient features, Constitution and Powers of the commercial courts, Jurisdiction.



**3. Commercial Disputes and Interface with relevant enactments.**

- Contract Act, Sale of Goods Act, Carriage of Goods Act – Specific Relief Act - Transfer of Property Act –Law of agency- Relevant provisions – Discussion through sample agreements (including discussion on clauses related to damages, warranties, indemnity, force majeure, performance of contract, etc.)
- Partnership Act - Relevant provisions – Discussion through sample partnership agreements.

**4. Mercantile Documents: construction and infrastructure contracts, agreements relating to immovable property used exclusively in trade and commerce, mercantile agency and usage- special features and disputable areas therein.**

- IPR laws: emphasis on franchising agreements, technology development agreements, distribution and licensing agreements, etc- special features and disputable areas therein.

**5. Joint Venture agreements, Shareholders agreements and other investment agreements – intersection with relevant laws.**

**6. Special Agreements – Eg.: Aircraft related transactions, Oil extraction agreements, mining lease, admiralty and maritime law related agreements – special clauses and contentious areas therein.**

**7. Procedural aspects: Procedure under the Act**

- Amendments made in CPC and other laws including Arbitration Act.
- Transfer of pending cases, interlocutory applications and orders, determination of costs, execution, etc.
- Case management hearing, summary judgment, Conditional orders, pre-trial procedures and Order VA of CPC.

**8. Challenges before commercial courts and solutions thereof**

- Expeditious disposal of disputes – problems faced by the commercial courts already established
- Summary of the entire module

**ADDITIONAL RESOURCES:**

Case law, Sample Agreements, Quizzes, FAQs, List of technical terms (with meanings) apart from Reading Material and Bare Act.

**ASSESSMENT AND EVALUATION:**

- On each day
- Presentation by groups on disputes arising out of sample agreements- Sample agreements can be allotted as assignments to groups formed beforehand (before the commencement of the module or on the first day of the module). The participants must point out the disputable areas in that agreement along with relevant case law, if any.
- Quizzes.
- Sample cases- Trial procedures and Decision making (once in entire module)

**REFLECTION AND TAKE HOME MESSAGE:**

Feedback in the form of questionnaire – ratings and comments of the participants on the effectiveness, usefulness and relevance of the course/module.

**DAY 3**

**Sessions 9, 10, 11 & 12**

**THEME THREE- SENSITIZATION ON PREVENTION OF CRUELTY TO ANIMALS**  
**TRAINING MODULES**

Prof. Geeta Oberoi commenced by the day with a brief introduction about Animal Jurisprudence. Thereafter she discussed and guided the participants on the kind of structure that is required to be followed while preparing a training module. The structure of module was divided into various heads and each of the participant SJA was assigned the task to work upon that particular area so that by the end of the day all the heads could be combined to come up with a sample training module on animal jurisprudence.

The structure is as follows:

1. Substantive laws
2. Procedural laws
3. research on related social context
4. Evidence appreciation issues
5. Scholarly work
6. Case laws from the Supreme Court
7. Case laws from High courts.

8. Trial courts cases compilation
9. Hypothetical
10. Frame important questions which are to be addressed to the course
11. Role play exercises
12. To develop the questionnaire for participant before they come to the course
13. Research about experts in the field from all over India
14. Power point presentation
15. Paper writing for lectures
16. International conventions, treaties and laws in other countries

Based on the above structure all the participant SJAs came with a combined training module on Animal Rights.

#### **Day – 4**

#### **Sessions 13, 14, 15 & 16**

#### **THEME FOUR-IPR TRAINING MODULES**

Prof Geeta Oberoi commenced the day with a brief introduction of all the speakers. She further elaborated that the kind of outline that was followed in the preparation of the training module on Animal Rights can be followed in the preparation of the module on IPR as well. Rest she left it to the speakers to give their technical inputs on the subject matter so that the participants may come up with an exhaustive training module on IPR.

The first speaker Prof. Ghayur Alam started with the basic question related to module building as to why we require to build up a training module. He emphasized on the need to have trainings that are more and more activities based which can make the participants get involved in building up a substantial and practical work or a module as has been the primary criteria of the said workshop. On the completion of a training a trainee must be in the capacity to train others.

According to Prof. Alam to build up a module the foremost thing to identify the objectives of the module, then the duration that would be required to reach out at all the identified objectives. Another important aspect of a module is to identify the type of trainees or what he mentioned as Judges of training of average intelligence. The expected participants must be then give the associated reading material prior in advance so that they can have a through reading of it and which can be later on helpful to them for the purposes of getting actively involved in the training. Along with the expected trainees may be give exercises or PowerPoint presentations to be done before

coming for the training. The trainings should be horizontal as far as possible. Experts can be playing the role of coaches only intervening when the trainee is going wrong.

Then coming to technical part of IPR the speakers in details discussed on the following aspects:

1. How does IPR differ from property rights
2. Right to use
3. Right to alienate
4. Right to exclude others
5. Types of IPR etc.

Thereafter, the speakers elaborated on IPR module preparation. As to what are the common things that a module must include in IPR and what are those things which we have to keep in traces attaching faces too. What a judicial officer of district level will be required to know about IP. Subsequently the participants prepared the modules based on the outline provided to them in the earlier sessions.

## **DAY 5**

### **SESSION-17 & 18**

#### **CHALLENGES FACED IN PREPARING TRAINING MODULES AND IDENTIFYING BEST PRACTICES FOR PREPARATION OF TRAINING MODULES**

Dr. [Prof.] Geeta Oberoi commenced the day by discussing with the participants to come up with the practical challenges that they face while preparing a module. The challenges could be ranging from Human Resource, Infrastructure, strengths etc. during the discussion the following challenges were identified.

1. To have a good library with all latest technological assistance
2. To have resource full Resource Persons or experts in their subjects.
3. To have sufficient time for preparing of comprehensive training modules
4. To have regular induction trainings
5. To have adequate human resource like ,research and other support staff
6. Budgetary issues

As far as the best practices are concerned a reference was made regarding research staff which is already functional at the Delhi State Judicial Academy or getting interns as is practices by the NJA. All that has to be done is to get to the concerned High Court and request for replicating those practices at your SJA. For the purposes of budget the SJAs can engage experts who are at the ministry of finance/state departments etc.

The modular approach lies itself particularly where the short courses which have been developed for specific training purposes such as to provide specific training, relating to specific occupations or industries, for the most part driven by local demand in such cases the course content tends to be clearly defined and its views to provide the specific service rather than to be part of long term training , for broader professional development that is to say it tends to use to effect the , typo of already existing skills and knowledge. Currently however there is ample evidence that module & of courses are being widely used. They will develop skill and knowledge basis with block release and system in education, modularization often has been used in the recent past. It talks about advantage as well as some disadvantage there. in short term courses this may be good approach but if you want very long term effective learning then they are not very sure, whether modular approach is good or not.

The association of modular course and behavioral approaches to compliment based training has been recognized for a long time. Inspection of range of modular courses currently employed in different specialist areas is likely to reveal a high proportion, heavily influenced by earlier behavioral theory. The continued influence of seems to have occurred because many modular course designers lack a thorough understanding of cognitive and effective elements. It's not been incorporated into more reason competency based learning positions to overcome the narrowness of the earlier to strictly behavioral approaches. That reflect very strong interest in cognition and problem solving and post for this organization and management systems which require the training or flexible and possess substantial problem solving abilities.

We have to make persons or problems skill, we have to impart skill in problem solving issues then we have to have modular approach. The only thing is that over the time that over the time, one of the basic disadvantage of module is that you cannot use it over the years. You have to actually new issues you have to keep adding on it, the most challenging aspect of this would be that this document has to be re worked and added and subtracted after every 6 months or 1 year. So, this document has to be redesigned. It has to be like a working document. Module, at least for adult learning, a professional development education has to be this. Because every year we will face a new problem that your system faces now we are all thinking about delay we are not actually able to come out with something which is above the delay , there are many other problems which we are not studying the system. And we have to see that those things are also incorporated otherwise you will be stuck in one thing delay, pendency. We should come out with other problem system are facing and accordingly design our module.

Despite the cognitive elements, in more recent sophisticated statements on competency based ideals and the tendency to develop relatively narrow and behavioral, conceptualization, modularization is reinforced and likely to continue to assert itself unless replaced by guiding principles which are specifically oriented to cognitive aspects of training. This is because competence based training is essentially concerned with performance, there is also a need to

recognize on account of its fundamental characteristics of division into smaller units has the inherent potential to fragment the information. it has need argued that there is a danger with vocational program driven by labor market may result in loss of theoretical general used knowledge in favor of specialized knowledge applicable in occupational tasks not conceptually related to one another . The objectives of broader concepts.

When we are thinking about building good Judges, it's also about enhancing their cognitive skills, rather than performance skills. Performance skills can be enhanced by the management training it's not the work of a judicial academy. But of course now judicial academies or education has to go everything under the sun. But the basic and most important work of any judicial education institution should be that you have to be like thinking human being. You have to enhance the ability to think. Think wisely, broadly. So cognition is very important about which we should all be bothered about. The literature in the cognitive psychology skill learning and developing of expertise providing clear principles to guide the course development. There is this tendency to make more performance oriented people but if you take help of other literature then maybe we can actually help yourself from just, you know putting all our efforts into performance. It's not just about performance, it's also about thinking ability because the whole actually the business of adjudication is what, A said this, B said this but then what I said and what I hold moves right in the given situation but why I think so is more important and then what I say. The reasoning is very important so cognition is very important and therefore we must take help of other disciplines who can actually help us to come out of this approach performance. How many units, hours? Because Judge is not an ordinary bank or accounts officer who has to give oh this much is tallied, entered. He is not a typist how many pages you have done. A judge is much more a bigger profession. So you cannot. In your education of just performance oriented goal. Education has to be thinking oriented goal. How to make people think, differently and widely and therefore this. Therefore there is a need to take help of other disciplines may be to come out with a better modularization. Otherwise we are stuck in how many units? What is performance?

Thereafter Prof. Oberoi, explained the Bruna the spiral curriculum which is like you deliver some chunk of information at one point of time in your life and again call the same person, give that knowledge which already gave or at least see what is happening whether that person has learnt or not and then who want the second part or see how much he retains, what you said and then you definitely follow in your induction training without actually knowing them. As a big knowledge over the existing knowledge, Bruna's spiral curriculum is about building module alone but about building first and second part.

The workshop concluded with a vote of thanks by Dr.[Prof] Geeta Oberoi