

Workshop for Additional District Judges, [P-1050]

October 06th to 08th, 2017

PROGRAMME REPORT

Programme Coordinator – Sumit Bhattacharya, Research Fellow, National Judicial Academy

A three day National Workshop for the Additional District Judges was organized on October 06th to 08th, 2017, attended by nominated judges providing them with a unique platform to share experiences and assimilate ‘Best Practices’.

The objective of the workshop was to explore challenges in implementation of ADR system; to study sentencing practices and advantages of integrating court and case management systems in Subordinate Courts. The sessions covered topics including issues and practices pertaining to collection, preservation and appreciation of electronic evidence; advances and inadequacies in laws regulating cybercrimes. The workshop also facilitated deliberations on the intricacies and challenges relating to monitoring adoptions within the framework of the Juvenile Justice Law, in India. During the sessions, the participants discussed, evaluated and shared best practices on exercise of appellate and revision jurisdiction of District Judges, in criminal and civil domains.

Session 1

(10:00 A.M. – 11:30 A.M.)

Challenges in implementation of the ADR system in Subordinate Courts

Speakers: Hon’ble Justice Roshan Dalvi & Hon’ble Justice Sunil Ambwani.

The workshop commenced with the introductory address by the program coordinator, National Judicial Academy. In the first session of the workshop, i.e. “Challenges in implementation of the Alternate Dispute Resolution (hereinafter ADR) system in Subordinate Courts” the importance of ADR was explained. Emphasis was laid on the “alternate” yet effective forms of approaching a problem or a situation as against conventional ways to attain more productive resultants. It was opined that, mediation is the best form of ADR system and strategy upon which it is based may be listed as the acronym POS. POS stands for identifying **P**roblems, generating **O**ptions, and reaching out for **S**olutions. Explaining the credibility of ADR in India it was explained that on one hand judgments by the Indian courts are appreciated in different jurisdictions world over, on the other hand considering the procedural law, foreign parties are often reluctant to arbitration proceedings under the Indian laws. Though amendment to Section 89 of the Civil Procedure Code, 1908 (CPC) in the year 1999 had significantly changed the Indian position. It brought in the mandatory requirement for judges to consider at the appropriate stage if the dispute can be referred to any of the ADR processes. Situations where mediation is a better and a preferred option were discussed e.g. cases relating to specific performance of contracts, licenses, money matters, matrimonial matters relating to insufficiency of maintenance amount etc. It was asserted that often parties are unaware of the ADR and it is appreciable if the judge herself stimulates them to consider the same in the common interest of all. Exceptions to such referrals were discussed which included: cases involving fraud; non-compoundable offences; cases involving fabrication of documents; acts against the society etc. It was highlighted that under situations wherein, the referred cases

return back to the Courts undecided (posing a problem) the courts should follow the hybrid models/procedure of “med-arb” (Mediation-Arbitration) or “med-con” (Mediation-Conciliation). In the UK, the USA and Canada such procedures are followed by the parties in case of an impasse. Thus, in a “med-arb” scenario there would be flexibility (of mediation) plus finality (of arbitration). However, it should be remembered that the condition precedent is that the parties have agreed to such a procedure. Furthermore, there are certain categories of cases which do not require adjudication at all and can be settled by the parties themselves.

The reasons, which, have not made ADR successful to its full potential were cited as:

1. Lack of awareness amongst the bar members. Less than 10% lawyers know about the ADR process completely.
2. Lack of awareness amongst the litigants. They do not know about alternative dispute resolution mechanisms.
3. Mindset of the judges. They are skeptical as they think as to what is the need of referring, if they can decide the dispute themselves.

It was pointed out that the judges need to understand that though they can decide the dispute, they cannot settle it. This is also a result of the reason that everyone is the owner of his idea. For instance, even in a debate one sticks to his point thinking that (s)he is correct. Similarly, the judges sometimes act obstinately.

Discussing on the conciliation proceedings, it was opined that conciliation is as old as 1947 where in the Industrial Disputes Act, 1947, it was provided that the matter cannot go to the industrial tribunal without going for conciliation first. It is noticed that conciliation in courts is very rarely followed. It is mainly because parties are not willing to resolve dispute through conciliation. However, it should be noted that this is one ADR method which should be extensively tried in courts. As to why ADR did not pick momentum in the beginning when it was introduced, there was a basic flaw in the wording of Section 89 of Code of Civil Procedure, 1908 which stated that “if the parties draw out a settlement”. Furthermore, there was confusion between the interpretation of the words ‘judicial settlement’ and ‘mediation’ as used in the section. This confusion was settled by Justice Ravindran in *Afcons Infrastructures Ltd. v. Cherian Varkey Construction Company Pvt. Ltd. & Ors*,¹ in which he provided a purposive interpretation to S. 89. Considering the types of dispute resolution processes i.e. Arbitration, Conciliation, Lok Adalats, Mediation, Judicial settlement, it was opined that a possible method of dispute resolution can be, that mediation decides some of the issues and the rest of the issues be decided by the court. It was opined that there should be uniformity in the mediation process being followed in the country. Mediation training should be given in vernacular language so that the mediators are able to understand the techniques of mediation better. Pre-litigation mediation is particularly helpful in cases of matrimonial disputes.

Session 2

(12:00 P.M. – 01:30 P.M.)

Court & Case Management: Role of Judges

Speakers: Hon'ble Justice Roshan Dalvi & Hon'ble Justice Sunil Ambwani. Hon'ble Justice A. N. Mittal.

¹ (2010) 8 SCC 24.

The Session was initiated by pondering over the reasons of high pendency in the Indian Courts. The reasons included inadequate number of judges, increase in public awareness about one's rights, increase in institution of frivolous suits, misuse of adjournments by advocates etc. Case and Court Management systems were distinguished as: case management deals with the management of a particular case, on the other hand court management deals with management of the specific court. Case management involves pre-determination of time by a judge within which he wants to dispose of the case. Judges should practice differential treatment of cases w.r.t listing, clubbing, use of ADR, curbing adjournments etc. This entails differentiating the cases on the basis of duration and complexity of every single case. Discussions on adaptation of new technology in order to expedite service of notice was done by citing the 2017 Delhi High Court judgment in *Tata Sons Ltd. v. John Doe*², wherein it was held that notices can be sent using *WhatsApp*. The issues under consideration may be enumerated to include: information system should be analyzed, a calendar system should be chosen whereby cases are not listed on the dates the judges are proceeding on holiday, cases should be classified, early disposition should be obtained, firm trial dates should be established, continuance and appearances should be controlled, efforts should be made to reduce backlog, deadlines should be met on time, judges should develop a vision for their system and newer methods of case and court management should be thought about. Emphasizing on the core values and advantages of management principles, it was illustratively discussed as to how these principles apply the Indian judicial system. A few examples for Court Management discussed were:

- We should do away with non-value added items. Less time should be taken for disposal of easy cases. The procedure should take less. For instance, one notice served to the Parties is sufficient. If they do not appear, an ex-parte decree should be passed. Furthermore, the process of serving notices can be done by any communicable means and not merely through process service.
- There is a need to have specialized judges and lawyers. So that they are able to understand the case better and dispose of cases as quickly as possible.
- Time management should be practiced efficiently. Matters should be called only when parties are present in the court.
- There is a requirement to simplify the procedures. The codes, rules etc. should be made as simplified as possible.
- There needs to be a paradigm shift in the way the cases and courts are being managed today.
- There is a need to decentralize the work between law clerks. This would lead to more efficient handling of cases.
- The practice of latest first should be practiced i.e. the newest cases should be dealt with first and should be disposed of as soon as possible. The practice of taking the old cases first results in the new cases becoming old and thus this vicious cycle of backlog never ends.
- The judges of different courts should share the best practices among themselves so that everyone can benefit from those efficient practices.
- There is a need to sit and discuss about the problem areas which the courts are facing in respect of timely disposal of cases. Some sort of impact assessment should be done.

² MANU/DE/1235/2017.

- There are certain things which we can control, some can be influenced and some still remain in our concern. However, steps should be taken to overcome those hurdles which are within our reach.
- There is a need to develop an OODA loop practice i.e. Observe, Orient, Discern and Act.
- Performance related promotions should only be given to the deserving judges.
- Legal aid and legal services should be provided.
- The judges, lawyers, clerks should all work as a team in the process of realizing the goal of court and case management.

Ambit of case management is both procedural and substantive. It involves infrastructure and sensitivity. Case management entails handling cases in such a way that it uses less resources and less time in dispensing justice. It is done for increasing efficiency, reducing delay and cutting the costs. For proper and effective case management, judges should not be hyper technical in compliance with court procedures. Oral orders should be passed wherever possible. Certified copies should be made available quickly via best use of ICT. Same party matters and related suits should be grouped together e.g. grouping tenant-landlord cases building-wise day-wise in metro cities like Mumbai. Regular case tracking should be practiced. Discharge of suits should be displayed on bard or website. Classification of suits should be done. Registrar's powers should be increased. Easy facilitation techniques should be followed.

The Scheme of National Court Management Systems (NCMS) as approved by Hon'ble Chief Justice of India on 02.05.2012 was referred. Objectives of this scheme were:

- a. National framework for court excellence with measurable performance standards
- b. A system of monitoring and enhancing the performance parameters
- c. A system of case management to enhance user-friendliness of the judicial system
- d. A national system of judicial statistics (NSJS)
- e. A court development planning system.
- f. A human resource development system.

Under the NCMS, State Court Management Systems Committee (SCMS) is to be constituted at High Courts and Sub Committees at District levels. The participants were recommended to read Justice P. Sathasivam's article on case management titled '*Effective District Administration and Court Management*'.

Session 3

(02:30 P.M. – 04:00 P.M.)

Civil Justice Administration: Appellate and Revision Jurisdiction of District Judges

Speakers: Hon'ble Justice Roshan Dalvi & Hon'ble Justice Sunil Ambwani. Hon'ble Justice A. N. Mittal.

It was asserted that, two important aspects of appellate jurisdiction are revision and appeals. The main causes of delay in disposal of appeals were discussed which included:

- Filing of additional oral and documentary evidence.
- Third party moving an application for impleading - sometimes they are generated mostly in rent control cases after the order has been passed. Before admitting such a plea, the court should see whether the third party had a chance to know about the suit.

- Application for amendment in pleadings is filed - in such cases, it is for the judges to see if such an amendment is necessary or it has been made for causing delay.
- Application is moved for appointment of receiver.
- Late receipt of original records.
- Substitution of legal heirs- it occurs mainly because the suit takes time to get decided
- Moving other application like application for interim injunction, for setting aside *ex-parte* decision.

Discussing over the concept of appeal as a right, it was stated that appeal is a creation of a statute. It is not a constitutional or inherent right. As an appellate authority, courts have full rights as a trial court. They can appreciate evidence, reject evidence and form their own opinion. Right of appeal is not merely a matter of procedure but is a substantive right. Appeal cannot be dismissed at the admission stage though revision can be. Right of appeal is preserved till the rest of the tenure of the suit. Thus, by subsequent amendment, law cannot take away this right. It exists from the date of filing the suit. It is a vested right which continues till the decision on appeal is given. The two categories of appeal were discussed:

- a. First appeal- on both question of law and fact.
- b. Second appeal- only on substantial question of law. It is filed to the high court.

Explaining when an appeal lies and who can appeal under the C.P.C., 1908; it was opined that, Appeal can be from original decree passed *ex-parte*. No appeal lies from a decree passed by the court with the consent of parties. No appeal lies, except on question of law, from a decree of the nature cognizable by court of small cause and where amount exceeds Rs. 10,000. Appeal can be maintained by persons interested in the suit. However, a person not a party to a suit may obtain the right to appeal if he is affected and he obtains the leave of the court.

The vital points to be considered by an appellate court were identified as:

- Appreciation of reasons given by trial court - a judge needs to give his reasons for not been satisfied with the findings of trial court.
- It should be kept in mind that the trial court had the advantage of assessing the witness by seeing and hearing him. Thus, appellate court should only interfere with facts where it is very necessary to do so.
- Appellate court should give cogent reasons for disagreeing with trial court.
- Opinion of trial judge on appreciation of oral evidence should be disturbed only in exceptional circumstances.
- Pleas given up by party in trial court cannot be entertained in appeal. Thus, it is necessary, that the parties are interrogated in the trial court before framing of issues.
- Remanding the matter should be avoided as far as possible. Remanding takes about 15 years to travel back to the appellate stage, thus, it should be avoided.
- Second appeal should be allowed only in case there is a question of law involved.
- Even if finality through a judgement has been given, doors of justice should not be closed. In case of original suits, second appeals are provided. In rent control matters, there is rent control revision and in small causes case only one revision is provided.

Furthermore, in *L. Chandra Kumar v. Union of India*³, it has been held by the Supreme Court that judgment of tribunal can be challenged in a high court.

- Remedies available in law should be honored or the field should be opened to challenge the decision of lower courts.

Scope of revision is limited. Section 115 of C.P.C. provides for revision power in civil matters. It states that “*The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears—*

- a. to have exercised a jurisdiction not vested in it by law, or*
- b. to have failed to exercise a jurisdiction so vested, or*
- c. to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.”*

Revision power can only be exercised in the three instances as stated in Section 115 of C.P.C. It was explained that often it is being experienced that litigants are not satisfied by the order(s) of trial courts or High Courts knowing fully that their issues have been rightly decided. Problem occurs when proceedings of trial court are stayed. It was insisted that, attempt should be made to dispose off a revision petition on the very date of its institution. Certain restriction have been provided under Section 115 of the C.P.C. like “*the High Court shall not, under this section vary or reverse any decree or order against which an appeal lies either to the High Court or to any court subordinate thereto.*”

It has to be kept in mind that if a remedy of appeal is available, revision cannot be done.

The difference between revision and appeal was explained. An appeal is available on question of law and fact while revision deals with substantial question of law. Revision petition can be disposed off with certain directions without serving notice to opposite party, however, in an appeal this cannot be done. It was informed that in Uttar Pradesh, by way of an amendment made to Code of Civil Procedure, district judges have been given revisional power for suits up to Rs. 5 lakhs. A question was posed as to, when an application for additional evidence should be decided? The participants answered that it should be done to the earliest instance i.e. when the appeal was filed and not while giving the judgment on appeal.

It was categorically remarked that the judges should be extremely careful in passing interim orders in matters of appeals. Reference to certain judgements like *Union of India v. KV Lakshman*⁴ and *Banarasi & Ors. v. Ram Phal*⁵ were made. It was stated that in *Ram Phal's case* it was held by the Supreme Court that an appellate court cannot grant decree of specific performance when no cross appeal has been filed. It was informed that in Allahabad High Court, around 42,000 second appeals are pending. In these cases, interim orders have been granted and no one wants to hear those appeals. Lastly, it was pointed out that it is observed that appellate jurisdiction is the most neglected and exploited jurisdiction by the lawyers. Lawyers just get a stay order and then they forget about the case.

³ AIR 1997 SC 1125.

⁴ AIR 2016 SC 3139.

⁵ (2003) 9 SCC 606.

Day 2
7th October, 2017

Session 4
(10:00 A.M. – 11:30 A.M.)

Laws relating to Cybercrimes: Advances and Problem Areas

Speakers: Hon'ble Justice Sanjeev Sachdeva & Mr. Vakul Sharma.

Chair: Hon'ble Justice Navin Sinha.

At the outset the chair set the context by stating that, cybercrime is an aspect of smart crime. The person committing the crime is smart, the police has to become smarter and the judge need to be the smartest. Cybercrime is more of a science and thus there is a need for the judges to understand this science of law. It was underscored that by 2017, it is expected that 420 million mobile users would be present in the country. The use has deep penetrated into the rural areas. Hence, cybercrime is not an urban crime anymore as the technology has brought a revolution in the countryside with respect to commission and detection of crime. Cybercrimes are different from normal crimes since they are not committed in a heat of passion. These crimes are well-planned and well-thought of crimes. Justice Sinha stated that there is a greater need to understand the structure, architecture, nature, modus, implication and the types of crimes because there are various facets of cybercrime unique in themselves like phishing, hacking etc.

Discussion on the technical aspects of a cybercrime was initiated. It was illustrated that cyber space is a journey into the world of imagination. It is a virtual world where one is not necessarily known as his/her existing identity (as it exists in the real world). One can create his/her own identity. There are no laws, countries, properties, territories in this virtual world having a strict control. There is no governmental control. It is the result of huge corporate houses who owns the virtual control in space and time e.g., one cannot trace the history of cryptocurrency. No one knows where it comes from. India's entry into the virtual world came about on 31st July, 1995 when the first GSM call was made in India. On 4th August, 1995, VSNL launched India's first full internet service for public access. Legal issues in cybercrime were discussed including:

- Identify theft: knowingly or unknowingly posting personal information to social networking sites leading to making personal data available to the public domain. Thus, increasing the risk of information being hacked. These days, credit card frauds, fake SMS frauds, bank details fraud, etc. have become rampant. Furthermore, creating fake identities using the information of dead people are no more unusual.
- Child abuse- 1/3rd of Facebook users are below the age of 13. Children are using Facebook without the express consent of parents. In today's complicated digital age, there is a greater need to protect children from cyber bullying since they are easy targets for cyber criminals.
- Unauthorized use of trademarks- when one re-posts someone's blog he/she may be infringing trademark. For instance, while shopping online on Flipkart we sometimes get duplicate products from companies posing as the original company. Thus, cases of trademark infringement are also increasing.

- Copyright infringement- just like trademark infringement, copyright infringement has also been on rise.
- E-commerce- Issues relating to uninformed or least cared for implications of agreeing to shrink wrap agreements, click wrap agreements and browse wrap agreements was highlighted.

The question is as to “who owns/possesses the information posted by one in the internet?” e.g. terms and conditions of WhatsApp provide that when something has been posted on its platform, the information is under their possession and they can use it in whichever way they want. Protecting ones online privacy is also a major concern in the present time. The issues of retrieving and illegally exhuming the information extinct or deleted leads to a cyber threat. Moreover, there is an ever growing risk of disclosure of confidential information. Large amount of cases relating to cyber bullying have also been observed. This involves sending offensive emails, email threats, social networking gossip, and hate comments on social networking sites. The infamous US case *United States v. Drew*⁶, wherein a girl committed suicide after getting a hate mail stating “you are a burden to the society”. Absence of uniform rules at the international level was highlighted. Government of India’s notification on 18.02.2015 insisting all government officials to use the official mails for all official communications was cited only to project its extremely limited implementation.

Discussions regarding to jurisdiction in cybercrime cases included reference to the *Banyan Tree Holding Ltd. v. A. Murali Krishna Reddy*,⁷ a case wherein the Delhi High Court held that, in case of online transactions, the place where a person enters into a contract will have jurisdiction and not merely the place where one views the website.

Addressing the issues of cybercrime in India was discussed with reference to the relevant statutory provisions. In cases of child pornography sites, fake phishing sites, fake social network accounts, videos hurting religious sentiments, sites practicing internet banking frauds, how blocking of the website and the page can be done, and who will do the same was explained. It was informed that blocking can be done at the end user level (normally through end user filters like parental filter), at the organizational level (e.g. organizational firewall) and at the state or country level (for instance, the success rate of this type of blocking in Saudi Arabia is 86%).

Judge’s options were illustrated and discussed to include:

- Firstly, a judge can ask whether the grievance officer of that particular website has been approached. If not, it can direct the grievance officer to look into the matter.
- Secondly, an order can be passed against the internet service provider asking it to block a webpage. Thirdly, investigating officers can also be asked to block the website. In such a scenario, even police officers would be covered under investigating officers.
- In *Shreya Singhal v. Union of India*,⁸ Supreme Court had stated that the appropriate government or any of its agencies can do the blocking. Thus, even police officers would be covered under it.

⁶ 259 F.R.D. 449 (C.D. Cal. 2009).

⁷ (2010) 42 PTC 361.

⁸ AIR 2015 SC 1523.

- Fourthly, CERT-IN (Computer Emergency Response Team- India) can be also asked for help. However, CERT's role is limited to cyber security of the nation and it does not have any investigative role.
- Fifthly, NIXI (National Internet Exchange of India) can be ordered to block the '.in' or '.co.in' websites.

It was explained that blocking can only be ordered for 'http' websites and not 'https' websites. Https websites are secured websites which deals with secured information of the user. No law of the country makes it mandatory for the https websites to comply with the order of the courts regarding blocking of those websites. However, in case of a http website, court can pass an order for blocking. Thus, the judge has to first look at the URL of the website before passing any order of blocking. It was opined that the fastest way to get a website blocked would be to ask the Department of Telecommunications to block the website. In case of https website, court can inquire if the grievance officer has been asked to block the website since it is only the grievance officer who can block https website. As to whether there is a need to block the whole website or a particular webpage has be decided by the judge using his sound reasoning. Blocking which overreaches the potential damage (was opined as) may not be the right thing to do. It was suggested that, the courts can ask the applicant for a screenshot of the website which he wants to get blocked.

The difference between blocking and disabling is that blocking is permanent whereas disabling is done only for the time being. S. 69A of the IT Act (held to be valid in *Shreya Singhal case*) provides six grounds on which content can be blocked from public view. These are: a) sovereignty and integrity of India, b) defence, c) security of state, d) friendly relations with foreign states, e) public order, f) preventing incitement to the commission of any cognizable offence relating to the above five mentioned categories. It was argued that Delhi High Court held that blocking under S. 69A can only be done with respect of six categories provided therein. In *Fateh Garh v. R.M. Lohia* and *Arun Ghosh v. State of West Bengal*, the court explained the public order ground as provided in S. 69 of the IT Act. A rider was placed by the way that, defamation is not a ground under this section. Thus, defamatory content cannot be blocked under S. 69A. It was underscored that, it is often observed that many judicial officers are passing orders wherein they are blocking defamatory content under S. 69A of the IT Act.

Under S. 79(3)(b) of the IT Act, courts are empowered to direct disablement of content which it finds wrong. Whereas, Section 79(3)(b) is generic, Section 69 is specific in its scope. The words 'actual knowledge' as used in S. 79(3)(B) were interpreted in the *Shreya Singhal case* to mean 'knowledge of the court', thereby enabling the Courts. It was further discussed that, in *Deity v. Star India Pvt. Ltd.*, Delhi High Court laid down the 'dominant activity test' which needs to be followed while deciding whether to block the whole website or only a part of it. A few other case law were discussed which included *Ali Ahmed Siddiqui v. State of Maharashtra*⁹, Bombay High Court directed blocking of escort sites by department of telecommunication. In *Sabu Mathew George v. Union of India*¹⁰, de-indexing of search engine was directed for the first time. So as to remove the word 'pre-natal'.

⁹ 2016 SCC OnLine Bom 5821.

¹⁰ (2017) 2 SCC 514.

Session 5
(12:00 P.M. – 01:30 P.M.)
Electronic Evidence: Collection, Reservation and Appreciation

Speakers: Hon'ble Justice Sanjeev Sachdeva & Mr. Vakul Sharma.

Chair: Hon'ble Justice Navin Sinha.

Electronic evidence is evidence stored or transmitted in binary form. Before accepting such an evidence it is necessary to establish its veracity. Therefore for identifying a particular computer (source), its unique identifiable number is of cardinal importance, because the unique series of number pins down a particular machine. Source of an electronic evidence may be any storage devices like cell phones, hard drives, pen drives, CDs, floppy discs or in digital photo, internet browser, spreadsheets. Moreover, internet today is the biggest source and reservoir of electronic evidence, wherein nothing gets deleted permanently and hence the footprints can be recovered almost all the time. Hence, judges, can always trace electronic evidence by making use of investigative agencies since nothing has ever been erased from the internet. There is a need to understand how a computer stores data in order to distinguish between primary evidence and secondary evidence. Since, computer stores data in binary form, software are needed to encrypt it. Electronic evidence can be classified into volatile and non-volatile evidence. Volatile electronic evidences vanishes as soon as the power is switched off, for e.g., RAM (Random Access Memory). Non-volatile electronic evidence are still resent even after power supply snaps, for e.g., hard disk, CD, pen drive, mobile etc. Before appreciating an electronic evidence, the three things which needs to be are: a) relevancy, b) authenticity and c) veracity. Electronic evidence is more voluminous, easily destroyable and modifiable. Some programs can be used to restore the files which have been permanently deleted from the computer (even after the computer has been formatted). Thus, forensic experts can find such file. Computer forensics explains the state of digital artefacts. As a best practice, instead of switching on the computer while making an investigation, cloning of hard drive should be done at its outset. This is because switching on the computer can be pleaded as tampering with evidence by the defence, as the log details change every time the machine is switched-on.

Morphing of images and the importance of metadata was discussed with illustrations of how to identify and appreciate the evidence. Metadata is the data which gives information about other data. Explaining the concept it was stated that, in a photo, metadata tells about the camera used, lens used, while, in a file, metadata tells about author, number of characters, when file was created, when it was edited etc. Judges can ask for metadata of a specific file or picture. Even when a photo is copied, metadata does not change until any editing has been done.

In *Puluswamy v. Puruswami case*, it was held by the court that CD can be used as electronic evidence. There are two types of digital evidence:

- a) User created evidence - consisting of images, videos, webpages, text, databases.
- b) Computer created evidence – consisting of backup files, browser cache, activity logs, email headers, cookies etc.

In *Sanjay Kumar Kedia v. Narcotics Control Bureau*,¹¹ Supreme Court referred to the importance of IP addresses in identifying the location from where the message was sent. An IP

¹¹ (2008) 2 SCC 294.

address is date and time specific as it is a geographical indicator. Thus, they are dynamic in nature. However, IP addresses of websites are stationary in nature and they will have the same IP every time. Similarly IMEI is a 15 digit number. *Gajraj v. State* (NCT of Delhi) dealt with the importance of IMEI. Certain cases where Supreme Court gave directions regarding electronic evidence were discussed in *Tukaram S. Dighole v. Manikrao Shivaji Kokate*,¹² wherein the Supreme Court held that standard of proof in electronic evidence should be more accurate and stringent than that in documentary evidence. In *Sanjay Singh v. Dattaraj* (2015), Supreme Court held that source and authenticity are two key factors in electronic evidence. In *Tomaso Bruno v. State of U.P.*,¹³ Supreme Court held that mere instances of faulty investigation amounts to withholding of best evidence. The important aspects to be considered while appreciating CCTV footage were discussed:

- Whether it was 24 hours recording?
- What is record and retention period of such a footage?
- Whether that e- device was linked to a computer system? Here it becomes important to note down the hard disk number and the CCTV camera product number. Every hard disk has a unique serial number.
- Is it just a visual record or it has an audio too?
- Is the colour version of the black and white CCTV footage available?
- Whether a CCTV footage should be accepted as electronic evidence?
- Can CCTV be called a witness?

Kishan Tripathi v. State,¹⁴ was a seminal judgment wherein the Supreme Court held that CCTV footage would be direct evidence as a judge seeing the footage travels back in time and sees the incident as it happened at the time of happening of crime. The court also noted that manipulation and tampering of such CCTV footage must be done away with. For doing so it came out with a twofold test of system integrity and record integrity. In *Mohammed Ajmal Kasab v. State of Maharashtra*,¹⁵ the Supreme Court held that electronic evidence should be appreciated whether in the form of CCTV, mobile devices, memory cards, IP addresses. At the last, the court also observed that this judgment should be made a part of the curriculum of every judicial academy in the country.

Section 65B of the Indian Evidence Act was discussed. The objective of this section is to identify if the computer has been properly processed and reproduced the information it has received. This section deals with the production of information from computers only. Furthermore, it is also stated in the section that the information should be processed by a person who has lawful control over the computer. It has to be ensured that the computer was working properly. Section 65B (4) has not been complied by the judges in real life implies, that the courts should ask for the 'particulars of device.' In this regard the judgments discussed were: *Anvar v. P.K. Basheer*,¹⁶ it was held by the Supreme Court that electronic evidence should be accompanied by a certificate so as to ensure source and authenticity. In *Kundan Singh v. State*,¹⁷ the Delhi High Court has held that the certificate under S. 65B if not given in the first

¹² (2008) 3 Bom CR 141.

¹³ (2015) 7 SCC 178.

¹⁴ 2016 SCC OnLine Del 1136.

¹⁵ (2012) 9 SCC 1.

¹⁶ (2014) 10 SCC 473.

¹⁷ 2015 SCC OnLine Del 13647.

instance can be given at a later stage too i.e. at the time of rendering evidence. In *Ashwani Kumar v. State of Haryana*¹⁸, the court has held that there is no requirement of certificate under S. 65B if officer in charge has taken an oath as a witness that the documents are correct. On preservation of electronic evidence, it was asserted that that electronic evidence cannot survive heat, dust or humidity. Thus, there is a greater need to protect it. CD's can get corrupted if exposed to high degrees of temperature and can subsequently become unreadable. Many a times, courts face this problem of destruction of evidence due to unreadability. Thus, the judges should pass some kind of order to direct the making of some sort of replica of the available digital evidence. District computer committees should come up with certain guidelines regarding it. It was informed that in *Dharambir v. CBI*,¹⁹ the court has held that electronic evidence would be a document within S. 3 of Indian Evidence Act. The court further directed that, hard drives should be kept in an aseptic environment in a temperature controlled room.

Session 6

(02:30 P.M. – 04:00 P.M.)

Criminal Justice Administration: Appellate and Revision Jurisdiction of District Judges

Speakers: Hon'ble Justice K.C. Bhanu and Hon'ble Justice Sanjeev Sachdeva

Chair: Hon'ble Justice Navin Sinha.

Chapter XXX of Code of Criminal Procedure (Cr.P.C.) provides for revision power. In revision, acquittal cannot be turned into conviction and the matter can only be remanded. In *Chinnaswamy Reddy* case following principles have been laid as the grounds on which a judge can interfere with the decision of trial court in revision:

- Decision of trial court is grossly erroneous.
- Finding of trial court was based on no evidence.
- Material evidence overlooked by trial court.
- Glaring miscarriage of justice to parties.

Revision does not lie against an interlocutory order but only against a final order. In *Madhu Limaye v. The State of Maharashtra*²⁰ and *V. C. Shukla v. State through C.B.I*²¹, the court illustrated as to what is an interlocutory order and what is a final order. It was discussed that arrest reports and seizure reports contain both admissible as well as non-admissible evidence, hence see if order has been correctly arrived at. However, in appeal jurisdiction what is to be admitted is to be carefully considered by the judge. Special revision jurisdiction has been provided under Section 398 of Cr.P.C. Revision jurisdiction is generally a call for records to judge's powers are wider as compared to revisional jurisdiction. The appellate court has equal powers as the trial court. Appeal is of two types, i.e., appeal against acquittal and appeal against conviction. In *Aher Raja Khima v. The State of Saurashtra*²² (1956), it was held by the Supreme Court that there must be compelling reasons to set aside acquittal as the accused is presumed

¹⁸ 2016 SCC OnLine P&H 16083.

¹⁹ 148 (2008) DLT 289.

²⁰ 1978 AIR 47, 1978 SCR (1) 749

²¹ 1980 AIR 962, 1980 SCR (2) 380

²² 1956 AIR 217, 1955 SCR (2)1285

to be innocent until proved guilty. *Harbans Singh*²³ and *M.G. Aggarwal*²⁴ cases also dealt with the principles to be followed while deciding an appeal. In *Chandrappa v. State of Karnataka*,²⁵ the Supreme Court discussed the previously mentioned cases and principles. *Jessica Lal's case* also dealt with the procedure to be followed in deciding an appeal. The question arises whether acquittal can happen on ground of delay in lodging the First Information Report or submitting report to the magistrate. In *Pandurang case*, *Pala Singh case*²⁶, *State of Himachal Pradesh v. Gian Chand*²⁷, the Supreme Court has held that delay in itself cannot be used by the trial court as a ground of acquittal of an accused. While clarifying the scope of corroboration of evidence, it was highlighted that it is not necessary that the evidence of victim is corroborated by any other evidence every time. Corroboration is not a matter of law. Law does not provide for mandatory corroboration. So, even the evidence of a single witness which is completely reliable can be taken into account in deciding an appeal. In *Rameshwar case*²⁸, it was held by the Supreme Court that corroboration is not necessary for solitary evidence. However, it is still observed that subordinate courts are acquitting the accused on absence of corroboration in solitary evidence. The types of witnesses were discussed.

- Wholly reliable- solitary testimony is accepted as the question of corroboration does not arise
- Wholly unreliable witness
- Neither reliable no non-reliable- difficulty arises in appreciation of such witnesses. In such cases there is a need to look for corroboration by way of direct or indirect evidence.

In *Malkiat Singh case*²⁹, the Supreme Court discussed about five points to be kept in mind while deciding the veracity of witness's claim:

- Presence of witness at crime scene
- Was witness in a position to see the incident
- Conduct of the witness
- Conduct of the accused
- Whether witness had any enmity with the accused.

The session was concluded by Justice Sinha. While doing so he made some remarks regarding appellate jurisdiction of subordinate courts. He asserted that if two views are possible in an appeal case but weight of evidence is in favour of one, the judges should give an explained diction by explaining why the judge is taking a particular view. Not doing so creates two problems. Firstly, it gives the appellant the dissatisfaction that his application was not decided properly and secondly, it gives easier reasons for the higher court to reject it.

²³ 1962 AIR 439, 1962 SCR Supl. (1) 104

²⁴ 1963 AIR 200, 1963 SCR (2) 405

²⁵ (2007) 4 SCC 415.

²⁶ *Pala Singh & Anr v. State Of Punjab*; 1972 AIR 2679, 1973 SCR (1) 964

²⁷ Appeal (crl.) 649 of 1996.

²⁸ *Rameshwar v. The State Of Rajasthan*; 1952 AIR 54, 1952 SCR 377

²⁹ *Malkiat Singh & Anr v. State Of Punjab*; 1970 AIR 713, 1959 SCR (2) 663

Day 3
8th October, 2017
Session 7
(10:00 A.M. – 11:30 A.M.)
Sessions Trials: Fair Processes

Speakers: Hon'ble Justice Joymalya Bagchi, Hon'ble Justice K.C. Bhanu and Hon'ble Justice S. Nagamuthu.

It is of seminal importance to ensure that trial procedure is fair, just and reasonable. This can be traced not only to Cr.P.C. but also to the Constitution of India. It is important to have an erudite judges as individuals having knowledge of law as well as a sense of fairness. Fairness, justice and reasonableness are the heart and soul of adjudication. Offense is not seen solely as violation of law but inclusive of prescribed punishments. In a criminal trial, the general perception is that the battle is between the mighty state and puny individual. Therefore, in order to bolster the faith of a common man in the judicial system, it is of paramount importance that the trials are carried impartially applying sound principles of law. Tracing the evolution of the trial system it can be seen that with time, there has been a shift in the manner in which trials are carried out. Contemporarily, the focus is equally on the victim in addition to the accused as per conventions. Justice needs to be done as well as seen to be done to ensure public confidence over the judicial system. The importance of Sessions Court as the all-important and competent court of trial empowered to award punishments of highest order needs to ensure impartiality, capability and transparency. Judges in such a responsible court should be capable not only in their own understanding but also in the eyes of the accused, victim and the society at large. Procedures e.g. framing of charges should be done properly by the judges. Grouping of documents like police report, investigation reports must be done meticulously. Accused should be told the crime of which he has been accused. The examination of witness should be done properly. Examination of the accused should also be carried out by the judge (as has been provided under Section 313 of Cr.P.C.). Evidence given by the handwriting expert, child witness, and ballistic evidence should be appreciated by the judge properly. Whenever an accused has created an alibi then burden should be on him to prove that. Difference between omission and contradiction was discussed and explained. Omission occurs when the person does not states an event before the police but does that in the court for the first time. In case of contradiction, there is a variance between the fact said before the police and the thing said in the court. Citing the *Govinda Reddy case*³⁰, wherein, the constitutional bench of the Supreme Court talked about the precautions which need to be taken while admitting circumstantial evidence:

- a. All circumstances must be firmly established.
- b. All circumstances should point towards the accused.
- c. There should be all probability that the accused has committed the crime.

A few hypotheticals were discussed in order to clarify the differences, confusion in application of statutory provisions. These hypotheticals clarified jurisdiction issues (e.g. in case of an SC/ST child and sexual abuse, which special court will have jurisdiction etc.), taking of cognizance etc.

³⁰ Govinda Reddy v. State of Mysore, AIR 1960 SC 2

Session 8
(12:00 P.M. – 01:30 P.M.)
Sentencing Policy: Issues and Challenges

Speakers: Hon'ble Justice Joymalya Bagchi, Hon'ble Justice K.C. Bhanu and Hon'ble Justice S. Nagamuthu.

Sentencing is the most important part of a trial. Section 53 of IPC talks about the various sentences. The problem arises when a judge is provided with discretion to award a sentence in a particular case as per the committed crime(s). With the lack of any sentencing policy in India (to serve as a guideline to arrive at a figure) for awarding a sentence while exercising discretion, it becomes extremely important to judiciously and reasonable exercise the power of discretion. It was explained that if a judge goes out of his jurisdiction in passing a sentence it is deemed to be an illegal sentence. However, if a judge misapplies his discretion, the sentence becomes unjust. Thus, the question that arises is how should a judge decide what is a fair sentence? What circumstances should be taken into account while deciding the quantum of sentence? Moreover, the object behind not shackling sentencing policy into rules may be construed as to give freedom to judges, to decide sentences on a case to case basis. However, at the same time doing so makes the sentence, judge specific and not case specific. In *State of Punjab v. Prem Sagar & Ors.*³¹ it was noted by the Supreme Court that the absence of judiciary-driven guidelines in India's criminal justice system, stating, "[i]n our judicial system, we have not been able to develop legal principles as regards sentencing. The superior courts[,] except [for] making observations with regard to the purport and object for which punishment is imposed upon an offender, had not issued any guidelines." A large number of cases "show anomalies as regards the policy of sentencing," adding, "[w]hereas the quantum of punishment for commission of a similar type of offence varies from minimum to maximum, even where [the] same sentence is imposed, the principles applied are found to be different. Similar discrepancies have been noticed in regard to imposition of fine[s]." Moreover, Supreme Court, in the case of *Soman v. State of Kerala*³², also observed the absence of structured guidelines:

Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the administration of criminal justice. There are no legislative or judicially laid down guidelines to assist the trial court in meting out the just punishment to the accused facing trial before it after he is held guilty of the charges.

It was further discussed that, in the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) certain parameters have been provided which need to be observed by judges while imposing sentences. In foreign jurisdictions, guidelines have been provided by the legislature itself. Though, certain Indian cases, provide for certain parameters, these parameters do not tell how one needs to be reconciled against another. In *Muthuramalingam & Ors v. State Rep. By Insp. of Police*³³ the court held that if offences have been constituted in the course of same transaction, ordinarily sentences would be concurrent but if reasons are given, sentencing can be done consecutively. However, it was also asserted that although there is no policy regarding sentencing in India but, Cr.P.C. and the IPC provides enough indicators (e.g. Section 232 of

³¹ (2008) 7 S.C.C. 550

³² (2013) 11 S.C.C. 382

³³ AIR 2016 SC 3340

Cr. P.C.). It was asserted that in corporate genocide cases, individual and specific charges should be framed distinctly so that at the time of sentencing different sentences can be given. For instance, in a case where a driver killed 5 pavement dwellers due to rash driving, the judge should frame five different charges. It is because, every individual victim is recognized as a separate entity in the eyes of law. Moreover, though conviction does not depend on motive, it should be a compelling factor during sentencing. The sentence passed should satisfy the test of proportionality. It was informed that the Sessions Courts cannot give sentence of life without the consideration of parole. It is so because they should not have the power to limit the executive of their power to give parole. A reference to 'Arthasashtra' was made wherein Kautilya deliberated upon justness of sentences passed in the king's rule. Hence, even in the ancient times, it was believed that sentences passed should have the quality of proportionality, fairness and liability towards the society.

It was underscored that the following main points must be considered while sentencing:

- Doctrine of proportionality.
- Judicial discretion.
- Considerations should be given to special reasons, as motive too plays an important role in sentencing policy.
- Fair and reasonable opportunity should be given to the accused to present his case before deciding the quantum of sentence.

The proviso to Section 309 of Cr.P.C. provides that there should be no adjournment on the day of sentencing, thus, the accused is deemed to be ready with his pleading on the day of sentencing. However, in the interest of justice, the court by exercising its conscience should allow the accused a fair hearing. It should not be a mere mechanical hearing. Thus, the judges can be a little flexible in demanding compliance with this provision.