

PROGRAMME REPORT (P-1077)

NATIONAL JUDICIAL ACADEMY



NATIONAL ORIENTATION PROGRAMME FOR JUNIOR DIVISION JUDGES

5-11 January, 2018

At the National Judicial Academy, Bhopal

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The National Judicial Academy (NJA) organised a 7 day “National Orientation Programme for Junior Division Judges” (P-1077) from 05 – 11 January, 2018 at the National Judicial Academy, Bhopal.

The Programme was conceived at capacity building of judicial officers at the primary tier, viz. Civil judges (Junior Division). The sessions were designed to provide a forum for the participant officers to share experiences and views with counterparts from other States; to facilitate better appreciation of the judicial role; responsibility of judicial officers in a constitutional democracy; recent developments in juridical thinking and technological advances relevant to accreting our performance standards; and to deliberate on several aspects of law and practice relevant to enhancing the quality of their performance.

About 34 Judges, nominated from different High Courts participated in the programme. The programme was divided into 20 sessions over the duration of 7 days on *following themes*.

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| Session 1 Constitutional Vision of Justice |
| Session 2 Role of Courts in a Constitutional Democracy |
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Session 1
Constitutional Vision of Justice

Speakers
Justice Navaniti Prasad Singh
Prof. (Dr.) D.P.Verma

Constitutional Vision of Justice

- This session focused on the guiding principles of the constitution to interpret the law.
- The role of trial Judges in context of the constitution was also discussed. It was emphasized that the trial judges play a critical and crucial role in building the foundation of a case.
- The concept, meaning and theories of Justice within the Constitution of India were discussed and explained during the session.
- While discussing the idea of constitution vision of Justice, it was highlighted that every judge must look into Justice from Social, Economic and Political point of view for greater welfare of citizens in general and society in particular.

Session 2
Role of Courts in a Constitutional Democracy

Speakers
Justice Navaniti Prasad Singh
Prof. (Dr.) D.P.Verma

Role of Courts in a Constitutional Democracy

- The importance of having a deep understanding of architectural cartography of Constitution of India under various provisions was discussed. The doubts regarding the interpretation of the language of a particular statute was also emphasized in the session.
- The duty of the Judges to uphold the Constitution values under the constitution and the law of the land was emphasized as primary role of a Judge in a constitutional democracy.
- It was highlighted that Court has to protect individual rights as embedded in the Constitution of India. To elaborate this further post-independence scenario with respect to the tussle of power, instances of clashes between the Legislature and the Judiciary, landmark Judgements of the Supreme Court and a strong nature of Indian judiciary was explained to the participant Judges in the session.
- It was suggested that as a judge, they must try to discover the language of the Constitution in its true spirit. The wider your vision, the wider will be the interpretation.
- It was emphasized that the Judges are surgeons of a social pathology. They shouldn't be too passionate while writing a judgement. The Judges should maintain the equilibrium of conflict and continue to remain neutral and professional. Therefore, broad and a deep understanding of the constitution become significant.
- It was further suggested that the judges should be reflective and not reactive.

Session 3
Discovering Current Judicial Methods

Speakers
Justice Navaniti Prasad Singh
Prof. (Dr.) D.P.Verma

Discovering Current Judicial Methods

- The session began with the screening of Michael Sandel's movie called '*Justice: What's The Right Thing To Do?*' Discussions were then followed on whether one can justify killing if the other person consents. During these discussions, the concept of 'law' and 'society' was defined and explained.
- Further, *The Case of the Speluncean Explorers* was discussed and viewpoints and comments of the participant judges were heard. After discussion It was suggested that judges should be innovative. They should look within the norms in order to deliver a better judgement. It was also advised that the judges should not let the exceptions become the rule; rather they must look up to the precedents and apply them accordingly.
- Two aspects of Judicial Methods, Discovery and Justification explained to the participants. Discovery means how a judge reaches a particular decision and the other is Justification means how a judge justifies a decision. It was further explained briefly the difference between the two by stating that the former is a realistic approach and is more important while the latter is less important.

Session 4
Adherence to Core Judicial Values

Speakers
Justice A. MuhamedMustaque
Justice M S. Sonak
(Chair)
Justice Manmohan Sarin

Adherence to Core Judicial Values

- This part of the session was premised on the three core judicial values- Competence, Independence and Impartial Judiciary.
- It was advised and suggested that the judges must build public trust and confidence. Building up the credibility by having an impartial conduct and unquestionable integrity, both inside and outside the court, will help in building public trust and confidence.
- In order to maintain independence, it was advised that Judges should avoid contact with undesirable elements.
- Emphasis was also laid on maintaining one's integrity, competence, diligence and having a sense of containment and propriety.
- Four essential characteristics of a Judge were highlighted that includes- hearing courteously, proceeding wisely, considering soberly and deciding impartially.
- It was emphasized that Justice shouldn't only be done, but it should be seen to be done. Therefore, its projection is also equally important.
- Emphasized on the fact that since people expect certain standards from the judges, the 'quality of service' is one of the most important judicial values.

- Certain objectives of judicial values such as Accountability, Independence, Commitment, Confidence and Professionalism by demonstrating competence and efficiency were explained in the session.
- With respect to the impact of technology, the judges must be able to use the technology and deploy it for legal research.
- It was suggested that the Judges should play active role in referring matters to Alternative Dispute Resolution by counseling litigants about the benefits of ADR for speedy Justice.
- Certain statutory principles like Statement of Values of Judicial life (as adopted by the bench of Supreme), Bangalore Principles of Judicial Conduct, The Universal Charter of Judges 2017 (International Association of Judges) were briefly explained to the participant Judges.
- Impartiality of the judges was considered to be the most critical value in a judicial process. They should not develop any human biases.
- The Judges must always keep their minds open and should focus on institutional values and not their individual values. Therefore, in other words, judges should always project the image of the institution instead of their own.
- It was further suggested that Judges should avoid discussing their judicial work on any social platform. They should avoid making any comments, opinions or expressions and shall also not respond to comments or criticism.

Session 5
Judging Skills: Art, Craft and Science of Drafting Judgment

Speakers

Justice A. MuhamedMustaque

Justice M S. Sonak

(Chair)

Justice Manmohan Sarin

Judging Skills: Art, Craft and Science of Drafting Judgment

- The session commenced with a discussion regarding need to provide reasons in the Judgement and its importance thereof. It was emphasized that it is not only a duty but a statutory obligation to provide reasons in the Judgement.
- It was further pointed out that Judgements should always be written in small, simple and understandable manner and must record all their findings on every issue.
- Two core values relating to writing judgements such as Transparency and Accountability were explained to the participants.
- It was highlighted that redundant phrases and repeating sentences should not be included in the judgement.
- On Language, style and length of the judgement, it was pointed out that the judgements should be written in a non-complicated fashion and the relief part must be clear.
- Words like ‘careful’, ‘thoughtful’ or ‘anxious’ should be avoided. Strong or disparaging remarks should also be avoided.
- On writing a good Judgement, it was suggested not to worry much about the result of one’s judgment’s approval as there is no absolute right or wrong. The judges were advised not to stress on it and be fearless.
- Original thought process and element of creativity while writing a judgement is always appreciated.

Session 6
Managing the Docket: Court and Case Management

Speakers
Justice A. MuhamedMustaque
Justice M S. Sonak
(Chair)
Justice Manmohan Sarin

Managing the Docket: Court and Case Management

- The session was based primarily on how to manage the court effectively and practice case management efficiently and provide quality.
- Various methods of time management and measures to reduce stress and workload were discussed.
- Suggestions such as referring a case for ADR, appointment of court managers as Advisors, regulation of one's board by bringing it within the manageable limits and not overburdening were also discussed during the session.
- E-court system was explained to the participants.
- It was further suggested that Judges should monitor their cases. Judges must observe minute details of their courtrooms and should avoid getting in arguments with the counsel.

Session 7
Information Technology and CyberCrimes

Speakers
Dr. S. Murugan
Justice M S. Sonak

Information Technology and Cyber Crimes

- The session began with a brief overview on the current technological advancements, the pros and cons in context of day to day judicial functioning and role of Judges in effectively tackling cyber crimes.
- The provisions with respect to digital evidence under Indian Evidence Act were discussed.
- Characteristics of digital evidence such as Invisibility, easy alteration or destruction were discussed. The requirement of specialized training and expert testimony and challenges before the Court were also discussed during the session.
- Various stages and concept with respect to investigation of a cyber crime were explained to the participants in detail.
- The provisions with respect to the proof of Electronic Evidence under Information Technology Act were also discussed during the session.
- A long discussion then followed regarding the challenges social media poses and how easily it can be misused. Cases where the Supreme Court upheld the internet ban were discussed briefly.
- Some questions were posed to the participants regarding their experiences in dealing with the cases of electronic evidence, its reliability and admissibility at the stage of trial.
- What a judge must do when the electronic evidence is tampered was explained to the participants by citing various examples

Session 8
Electronic Evidence : Collection, Preservation and Appreciation

Speakers
Dr. S. Murugan
Justice M S. Sonak

Electronic Evidence: Collection, Preservation and Appreciation

- The session commenced by citing various practical examples by way of questions posed to the participants, to illustrate as to how technology can be used to extract evidence and what should be the approach of courts in considering electronic evidences.
- The evolution of electronic evidence was explained.
- It was highlighted that regardless of whether the evidence is physical evidence, trace evidence, biological matter, or electronic evidence residing on a specialized device, all evidence must be treated the same.
- On where electronic evidence exist, It was explained that Electronic evidence can exist in any kind of storage device, Computers, CD's, DVD's, floppy disks, hard drives, thumb drives, Digital cameras, memory sticks and memory/ SIM cards, PDA's, cell phones, Fax machines, answering machines, cordless phones, pagers, caller-ID, scanners, printers copiers and in CCTV.
- Role of electronic evidence in crime investigation and various challenges during investigation were also explained.
- The legislative framework under Information Technology Act with respect to electronic evidence was explained in detail with the help of relevant provisions of law and landmark judgements of Supreme Court and High Court
- Various terminologies related to cyber crime were also explained in detail.

Session 9
Forensic Evidence in Civil and Criminal Trials: DNA Profiling

Speakers
Dr. S. Murugan
Justice M S. Sonak
Ms. Nisha Menon

Forensic Evidence in Civil and Criminal Trials: DNA Profiling

- The session began with a discussion on the role of Forensic Science in the Criminal Justice System.
- It was explained that forensic Science is the application of science for legal purposes in order to evaluate circumstantial sort of evidence. It is therefore supplied always by an Expert Witness.
- Two types of evidence, Direct and Circumstantial, were discussed.
- The speaker talked about DNA, its types and its characteristics. New technologies in DNA profiling that would address the issues of time and expertises were also discussed.
- It was discussed that there is a lack of scientific methods in investigations that ultimately hamper the delivery of justice. Investigating Officers are also not well equipped due to which Judges have no other option but to rely on witnesses.
- There is a lack of DNA testing infrastructure in India. DNA is not collected properly due to lack of required knowledge and expertise. In order to avoid contamination of DNA samples, certain guidelines were discussed that an Investigating Officer must take care of, emphasizing on their training, skill and expertise.

Session 10
Understanding Stress & its Implications
Session 11
Managing Stress through Emotional Intelligence
Session 12
Dealing with Occupational Stress

Speaker
Dr. SampathIyengar K R

Understanding Stress & its Implications, Managing Stress through Emotional Intelligence and Occupational Stress

- The session began with a discussion on stages of stress such as relaxed, pressurized, worried, stressed, depression and breakdown.
- After a short exercise, various causes of stress and the ways to deal with were discussed with the participants.
- Various aspects related to stress in professional and personal life were also discussed in detail during the session.
- Speaker conducted various exercises involving participants followed by interactive question –answer session.

Session 13
Role of Courts in Securing Gender Justice

Speakers
Dr. Sudhir Kumar Jain
Ms. Renu Sharma
Dr. Anuja Gulati

Role of Courts in Securing Gender Justice

- The session began with a discussion on need of sensitization of judicial officers with respect to gender Justice.
- The difference between the definition of ‘sex’ and ‘gender’ was also explained during the session.
- The concept of Gender Justice and provisions thereto as enshrined in the Constitution of India in Part III and IV, International treaties, conventions and landmark Judgements of the Supreme Court on Gender Justice were also highlighted during the session.
- Various legislations dealing with Gender Justice were also discussed in the session.
- The speaker through various examples emphasized and explained that there is a gender bias in the courtroom as well and therefore, there is an urgent need of gender sensitization of Judicial Officers.
- It was further emphasized that task of the judges is to be sensitive in order to bridge the gap between reality and law. Therefore, the judges were suggested not to deal with the cases mechanically.

Session 14
ADR and Plea Bargaining
Session 15
Simulation Exercise and Discussion

Speakers
Dr. Sudhir Kumar Jain
Ms. Renu Sharma

ADR and Plea Bargaining

- The speaker began the discussion by posing the challenges faced by the justice delivery system in India so far and why there is a need for ADR mechanism.
- It was stressed that ADR is although not a substitute for courts, but it is a complementary mechanism that provides pragmatic approach towards realization of justice.
- The origin of ADR regime in India, landmark Judgments of the Supreme Court, constitution of Mediation and Conciliation project committee by the Supreme Court and present scenario were also explained and highlighted during the session.
- Advantages of ADR such as creative resolution time efficient, informal, economical, private, and easily accessible were discussed during the session.
- The speaker explained the importance of mediation and defined it as an amicable resolution of disputes by using specialized communication and negotiation techniques by the mediator who does not adjudicates, but facilitates.
- In order to explain the process of mediation, the speaker conducted a simulation exercise involving participants as a mediator and as parties to the dispute.

- It was explained that process of mediation is impartial, purely confidential, creative and flexible and since the parties themselves find the solution to the dispute, it also recognizes the right of self-determination. Therefore, it changes confrontation into collaboration.
- The session concluded with a short discussion on Plea Bargaining. It is defined to be as a negotiation between the Complainant, accused, investigating agency, public prosecutor and the defense counsel, if so desired by the accused. It was therefore introduced in the year 2006 in the Criminal Procedure Code of 1973, by virtue of the Criminal Law (Amendment) Act 2005.

Session 16
Law of Precedents

Speakers
Justice Sunil Ambwani
Prof. V.K. Dixit

Law of Precedents and Challenges in Identifying & Applying *Ratio Decidendi*

- The session began with a discussion on certainty in law with respect to precedents. It was emphasized that there has to be certainty in law and that it cannot be changed frequently. However, there are times when the judges are tempted to make decisions contrary to the settled law, but the precedents cannot be overruled. The freedom of the judges, therefore, is limited to the law of Precedents. Precedents can only be broken by legislation, subsequent decision or the changing law and the needs of the society.
- Article 141 of the Constitution of India clearly mandates that law declared by the Supreme Court is binding and thus, reflects the principle of Stare Decisis. But for the High Courts, there is no such mandate and it is only the precedents that are binding.
- The speaker explained the difference between Res Judicata and Stare Decisis stating that former is the decision binding only to the parties and the latter is the decision where question of law is settled and is binding on the subordinate courts.
- The speaker cautioned the participants to follow the Ratio Decidendi carefully as sometimes the Counsel might lead them to Obiter Dicta. Thus, they have to distinguish between the Ratio Decidendi and the Obiter Dicta.
- The speaker also explained the distinction between Judicial Precedents and Legislative

Rules, where the former is generally evolved during the course of time and stated in wide terms. Whereas, the latter are made or enacted and are precise in nature.

- Stare Decisis was distinguished from precedents as it means standing by the things decided. Precedents, on the other hand are persuasive and binding.
- It was explained that it is the discretion of the judges to decipher which part of the earlier decision is binding upon them. Even the binding judgements need not be binding if they can easily distinguish from it.
- It was stressed that precedents although discourages independent thinking, common sense and initiative, it brings consistency and uniformity.
- The difference between Overruling, Reversing and Distinguishing was discussed briefly.
- Few pointers were also discussed by the speaker in order for judges to identify the Ratio in the precedents.
- While discussing the exceptions to the law of precedents, it was advised that the Rule of *per- incurium* and *sub silentio* should not be used.
- In cases where a long-standing precedent is wrong or is a perpetuation of justice or opposed to public policy, the judges should accept and refer it to the higher court or a larger bench.

Session 17
Challenges in Identifying & Applying *Ratio Decidendi*
Session 18
Courtroom Technology: Use of ICT in Courts
Speakers
Justice Sunil Ambwani
Prof. V.K. Dixit

Courtroom Technology: Use of ICT in Courts

- The session began by highlighting some of the recent developments and technological advancements in the e-Courts system so far.
- It was highlighted that in 2005, an E-Committee was formed and a plan was prepared for Phase-I that included delivery of hardware's to the courts, preparing a CIS system and preparing websites for each district. In Phase-I, computers were given to all states and in order to train the judicial officers, Cyber Law Training was given through the "TOT" Programme.
- In the Process Re-Engineering Program, a Committee was formed in every High Court to amend the rules in order to standardize the rules of all states into one. Core and Periphery Model was given, and source codes were given to all States.
- In Phase-II program Cloud Computing was introduced, configuration was made better and the courtrooms were provided with computers and video conferencing facilities. Additionally, finding the case details became easier because of the Case Number Record (CNR) on the E-courts website. Inter-operable Criminal Justice System was developed wherein the database was connected with jails, court, police stations and the hospitals. Digitalization of courts records was also introduced.

- The speaker also explained about the National Judicial Data Grid, its functions and utility.

Session 19
Art of Hearing; and of Regulating Appropriate Decorum in the Court Room

Speakers
Justice Sunil Ambwani

Art of Hearing; and of Regulating Appropriate Decorum in the Court Room

- The session began with an introductory remark by the speaker that judges perform a public function in their courtrooms and therefore, they should be very cautious and careful. Hence, the skill of art of hearing is essential for every Judge.
- Attributes of hearing includes- civility, politeness and courteousness; and the principle function of a judge is Hearing.
- Fairness and Impartiality – Judges should not give more importance to either of the parties and should give equal time in equal measures by being fair to the parties.
- Facial Expressions – Judges should not keep smiling and should give the expression of attentiveness only. The parties are always watching them and their behavior.
- Open Mind – Judges are advised to not close their minds to the case and always keep their minds open to the society, the litigants and the arguments.
- Neutrality – Remain neutral throughout the proceedings. Be equal to all the parties and take active participation in hearing them.
- Make Notes – Take notes at the time of the hearing and develop your own style of making notes. This will not only make judges confident, but it will also help them writing the judgement.
- The speaker advised the judges to not behave arrogantly when the client wants to talk to

their lawyer and make them feel that they have been heard.

Session 20
Perceptions and Prejudices
Speakers
Dr. Amitabh DeoKodwani
Chair
Justice Sunil Ambwani

Perceptions and Prejudices

- The session began with a discussion regarding our prejudices in our day-to-day lives. The speaker conducted an activity that demanded views of the participant judges on a hypothetical situation. On basis of this exercise, he explained how many things in our lives influence our process of seeing and understanding things.
- It was explained that our every action influences our biases and many a times, we found ourselves to become forcefully biased on a particular situation. Perception Processes are therefore getting influenced by our beliefs, actions, biases, etc, which are again susceptible to change.
- It was further stressed that perceptions are influenced by our beliefs, values, attitudes, motives, interest, experience, expectations, background, repetition, time factor, work setting and social setting.
- The speaker advised that one must be conscious about one's perceptual biasness. One must think consciously before taking any decision. It is not the facts, but the way facts are presented and hence, we should try to collect more data and statistics, take a pause and re-think.
- Since subconscious bias is always lurking behind our thinking, we should always ask ourselves a question as to why we are taking this decision and whether anything

extraneous is affecting our decision. Judges, therefore, were advised to de-sanitize themselves from all such prejudices.

Workshop concluded with vote of thanks and audit of course by participant judges.