

# **NATIONAL ORIENTATION PROGRAMME FOR JUNIOR DIVISION JUDGES, [P-1093]**

**6 – 12, April 2018**

**Ms. Shruti Jane Eusebius and Ms. Nitika Jain, Law Associates, National Judicial Academy**

## **PROGRAMME REPORT**

The National Judicial Academy Bhopal, organized a 7 day orientation programme for Junior Division judges from 6<sup>th</sup> – 12<sup>th</sup> April, 2018. The orientation programme initiated discussion on various themes pertaining to the judicial function with the objective of encouraging the participants to introspect on the significance of their role in upholding the Constitutional vision of justice and the rule of law. The orientation programme was attended by 36 judges from across the country. 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 judges to share experiences and views with counterparts from other states and to facilitate better appreciation of the judicial role.

## **OBJECTIVE OF THE PROGRAMME**

District judiciary is the basic framework of our justice delivery system and is to a substantial measure the most accessible institution of the Judicial Branch, to the vast multitude of our people. Judges operating at the primary tier in the judicial hierarchy constitute the vitals of; and their operative excellence indexes our institutional relevance, to justice delivery and in effect the health of our democratic way of life itself. The Programme was organised with the objective of 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.

### **Session 1**

**Theme: Role of Courts in a Constitutional Democracy**

**Speaker: Justice Ram Mohan Reddy, Justice RC Chavan & Dr. Usha Ramanathan**

**Chair: Justice Sunil Ambwani**

The first session on the theme *Role of Courts in a Constitutional Democracy*, involved discussions pertaining to the role of judges in upholding constitutional democracy. It was emphasized that each case decided by the junior division judges strengthens the democracy. The speakers threw light on the inadequacy of laws made by political parties and stated that it is the role of a judge to protect the rights of minorities. A brief historical overview of the evolution of constitutional democracy in India was undertaken with specific analysis of the *Kesavananda Bharti*, *SR. Bommai* and

*Golaknath* cases. The principle of sanctity of Basic Structure and balancing factor between constitutional democracy, majoritarian parliament and regional political situation were discussed. Various articles of the constitution were also deliberated upon in detail with a view to appreciate the role of the judiciary in upholding the constitutional ethos.

## **Session 2**

**Theme: Managing the Docket: Court and Case Management**

**Speaker: Justice Sunil Ambwani, Justice Ram Mohan Reddy**

**Chair: Justice RC Chavan**

On the theme *Managing the Docket: Court and Case Management*, the speakers stressed upon the requirement of coordination and management for efficient functioning of courts. It was pointed out that for case management quality, responsiveness and time must be considered. The framework of National Court Management Scheme was discussed with regard to management of courts. The problems in the prevalent Court Management systems identified in the course of the discussions include-

- (i) Infrastructural challenges such as inadequate size of courts, misuse of office space, lack of separate arrangements for special courts.
- (ii) Organizational issues including inadequate staff strength, user-friendliness of the courts, inadequate management of resources.
- (iii) Inadequate budgetary allocation to the courts.
- (iv) The Court Managers are not being used effectively by the courts.
- (v) Management of caseload by judges is a challenge as judges have to prioritize various classes of cases.

It was stressed that judges should not use shortcuts to expedite cases and do away with necessary process. The quality, responsiveness and timeliness of justice are essential traits of an effective judicial system.

## **Session 3**

**Theme: Courtroom Technology: Use of ICT in Courts**

**Speaker: Justice Sunil Ambwani & Justice RC Chavan**

**Chair: Justice Ram Mohan Reddy**

On *Courtroom Technology: Use of ICT in Courts*, the phases of e-court project was discussed in detail. It was pointed out that computerization in judiciary started in 1992 and ICT enablement led to creating capacity and infrastructure. The speakers suggested that entry level judges must use it and modify it as per requirements. The speakers stated that lack of enthusiasm in using ICT and the misuse of computers and laptops are a problem in the effective use of ICT in courts. Enabling digital signature for judicial officers is a challenge as the digital signature requires a yearly renewal. The speakers also emphasized on the benefits of cloud computing for storing judicial data.

## **Session 4**

**Theme: Constitutional Vision of Justice**

**Speaker: Justice Deepak Gupta & Justice Rajiv Shakdher**

**Chair: Justice RV. Raveendran**

On Constitutional Vision of Justice, the speakers threw light on the preamble which is the heart and soul of the constitution followed by Articles 38 and 39A that lays down the constitution's vision of justice. It was stated that constitutional vision of justice not only includes creation of law but also creation and enforcement of rights and duties. It was highlighted that mind should be attuned to the object of social justice behind the social legislation. It was stated that primary judiciary is the face of judiciary in the country as very few cases reach the Supreme Court. It was further, opined that justice is an idea which is abstract in terms and could include liberty of thought, belief, faith, worship and upholding the rule of law.

## **Session 5**

**Theme: Adherence to Core Judicial Values**

**Speaker: Justice Deepak Gupta , Justice S. Nagamuthu & Justice Rajiv Shakdher**

**Chair: Justice RV. Raveendran**

On the theme *Adherence to Core Judicial Values*, Bangalore principle was discussed at length. It was pointed out that competence and diligence must be shown through the judgments. The speaker highlighted that what is expected out of a judge is, how he conducts himself inside and outside a court. It was mentioned that for judges the ethical values are most stringent as compared to other professions. The core ethical standards pointed out were, integrity & honesty, judicial aloofness, independence of institution as judiciary and as judge individual, humility and Impartiality. Each of these standards were discussed in detail stating that independence is the greatest asset a judge has, but this independence comes with a responsibility.

## **Session 6**

**Theme: Law of Precedents: Identification and Application of Ratio Decidendi**

**Speaker: Justice Deepak Gupta & Justice Rajiv Shakdher**

**Chair: Justice RV. Raveendran**

The session on *Law of Precedents: Identification and Application of Ratio Decidendi*, included deliberations upon the various principles applied by the judiciary relating to precedents. It was mentioned that judges need to be fact oriented and precedent is what exemplifies the doctrine of *stare decisis*. The doctrine of *Ratio Decidendi* and *Obiter Dicta* were discussed in detail. It was suggested by the speakers that when judges try a case and determine the ratio, they must have clarity in their mind. It was further stated that when judgment is quoted judge must read the case carefully and only quote the relevant portions of the judgment. The speakers requested the participants not to quote the headnotes. Justice R.V. Raveendran gave fundamental rules to be followed in precedents.

## **Session 7**

**Theme: Judging Skills: Framing of Charges**

**Speaker: Justice S. Nagamuthu & Justice D. Seshadri Naidu.**

In the discussions on *Judging Skills: Framing of Charges* the speakers discussed the steps involved in a case up to the framing of charges. Three types of cases i.e. cases exclusively triable by court of sessions, cases ought not to be tried by court of sessions and committing the case to court of sessions were highlighted. The essentials required while framing of charges and what constitute charges were explained by the speakers. Various hypothetical cases were discussed and the participants were asked to frame charges in each case followed by discussion based on the charges framed.

## **Session 8 & 9**

**Theme: Judging Skills: Art, Craft and Science of Drafting Judgment**

**Speaker: Justice KT Sankaran, Justice D. Seshadri Naidu & Justice S. Nagamuthu**

In the session on *Judging Skills: Art, Craft and Science of Drafting Judgment*, the resource persons discussed the various styles of judgment writing viz. the pure and impure styles of judgment writing. The pure style of judgment writing requires a sequential structure to the judgment, beginning with the facts of the case, stating the arguments and issues and culminating the analysis and the conclusion arrived at by the court. The impure style is an unstructured form of judgment wherein the whole story in the case is stated in the first paragraph and the judgment mainly deals with the questions for consideration and the analysis of the court. The resource persons also discussed the anatomy of a judgment and stressed that the judgment must include

- (i) Table of contents
- (ii) Issues for discussion
- (iii) Facts and procedural history
- (iv) Analysis and discussion
- (v) Conclusion and disposition

The resource persons stressed that the judgment is primarily for the litigants and must be crafted accordingly. The language must be simple and coherent. The litigants should be able to easily understand the outcome of the case and the reasons for the outcome. The reasoning is the soul of the judgment. The approach to judgment writing must be consistent and precise. The judgment delivers the message of the law and the language is the medium. The medium is like a gift wrapper and is important to the judgment as it attracts attention.

All judges irrespective of the level of the judicial hierarchy discharge the same functions, with only minor difference in degree and name. The judge is like an artist and his/her outlook matters in discharge of his judicial function especially in the art of writing judgments. Judges must approach judgment writing as art and must take the liberty to write freely and to develop his/her own style of writing. A judge's judgment is as distinct his/her personality and signature and a judge must develop his/her own distinct style of judgment writing.

The resource persons stressed that-

- (i) The judgment should first state the law, then state the facts and thereafter state the question for consideration.
- (ii) The statement of the Issue in the case should not exceed 75 words.
- (iii) Judges should avoid using 'whether' in the judgment while stating the Issue.
- (iv) Sentences in the judgment should not be longer than 2 printed lines.
- (v) Judges should avoid copying and using large quotes from precedents. Judges should rather state the ratio of the precedent.

The speakers gave key points which should be followed by the judges for better judgments which included, to write precise and not lengthy judgments, to fully hear the arguments of the lawyers, to quote only relevant part of judgment and not to quote head notes, avoid abbreviations, reference must be made to binding precedents, and the language of the judgment must be sober and easy to understand. It was suggested that judges know what to write but they must learn how to write as a judgment is a judge's signature and it reflects the personality of a judge. Lastly, it was pointed out that every judgment must include content table, issues, introduction, facts, analysis, conclusion and disposition.

## **Session 10**

### **Theme: Electronic Evidence : Collection, Preservation and Appreciation**

#### **Speaker: Ms. NS Nappinai**

On the theme *Electronic Evidence: Collection, Preservation and Appreciation*, the speaker pointed out that the session is intended to address the fear of dealing with electronic evidence. It was stated that it is not the machine but the software which makes a difference. Every device collects data and there is no such thing as erasing data completely as everything could be retrieved.

## **Session 11**

### **Theme: Information Technology and Cyber Crimes**

#### **Speaker: Ms. NS Nappinai**

On *Information Technology and Cybercrimes*, the speaker threw light on working of crypto currency & bitcoin and discussed at length various forms of cybercrimes like hacking, identity theft, child abuse, unauthorized use of trademarks, online piracy, cyber defamation and cyber bullying. It was pointed out that virus is like a code which is intended to cause harm and as a user we must be very careful. The also discussed the process of hacking, cheating by personation in online domain and the jurisdictional issues with regard to such offences.

## **Session 12**

### **Theme: Forensic Evidence in Civil and Criminal Trials**

#### **Speaker: Prof. Dr. SL. Vaya**

In the discussions on *Forensic Evidence in Civil and Criminal Trials*, the resource person dwelt on the relevance and the increasing role of forensics and the increasing involvement of forensic evidence in cases in recent times. The scope of science of forensics has gone beyond the mere sampling and analysis of evidence and now encompasses the study of criminality as a science.

The speaker discussed the concept of neuro-criminality and emphasized on criminality as a learned behaviour as the brain has learned to do certain acts. The speaker discussed the concept of Automatic mind (which is irrational thought and acts) and rational mind (which is rational in thought and act). In the development of habit patterns the behaviour has become automatic and there is no diversion in the neural pathway and hence the brain commits certain acts as an automatic or irrational behaviour. The speaker discussed the various methods of collecting forensic evidence and recent developments in science with regard to forensic evidence. The speaker discussed the science of brain mapping and the recent method of layered voice analysis.

## **Session 13 & 14**

**Theme: Break-out Group Discussion on the specified Theme**

**Speaker: Prof. Dr. Geeta Oberoi**

In the session for break out group discussions, the participants were engaged in discussion on the art of writing judgments and the importance of reasoning in judgments. The discussions were based on a simulation exercise and it was emphasized that the judgment should reflect the facts, issue, conclusion arrived at by the court and the reasoning of the court for such conclusion. The relevance of reasoning in judgment writing was emphasized and it was stressed that judgment should state the law and the precedents relevant to the case to bolster the conclusion arrived at by the court. The speaker stressed that judgments should be precise, coherent, well structure and sequential and should conclusively deal with the facts. Most importantly, the judgment should be able to communicate the opinion of the court to the person reading the judgment so that the person is left in no doubt as to the conclusion and the reasons for such conclusion.

## **Session 15**

**Theme: Role of Courts in Securing Gender Justice**

**Speaker: Justice Arun Tandon & Ms. Karuna Nundy**

On the theme *Role of Courts in Securing Gender Justice* the resource persons dwelt on the concerns of gender bias and gender inequality that is prevalent in Indian society. The speaker discussed the issue of sexual violence with the aid of simulation exercises. The speaker highlighted the prevalent myths and stereotypes regarding sexual violence, including perceptions of chastity, consent, absence of injury as an indication of consent, promiscuity and previous sexual history. The speaker discussed the concept of bodily integrity as a right and discussed the cases of *Justice KS Puttaswamy v. Union of India* and *Independent Thought v. Union of India* in this regard. The speaker also discussed the concept of consent and its constitutional dimensions, and stressed that constitutionally a female has equal rights as a male and no statute should be interpreted or understood to derogate from this position. If there is some theory that propounds such an unconstitutional myth, then that theory deserves to be completely demolished. The speaker discussed the judgment in the case of *Anuj Garg v. Hotel Association of India* where employment of “any man under the age of 25 years” or “any woman” in any part of such premises in which liquor or an intoxicating drug is consumed by the public was held to be unconstitutional and it was held that no law in its ultimate effect should end up perpetuating the oppression of women. Personal freedom is a fundamental tenet which cannot be compromised in the name of expediency until and unless there is a compelling

State purpose. The speaker also dwelt on marital rape as a violation of a woman's right to bodily integrity. The speaker also discussed the need to ensure victim centered justice especially in sexual violence cases.

## **Session 16 & 17**

### **Theme: ADR and Plea Bargaining**

#### **Speaker: Dr. Sudhir Kumar Jain & Chair: Justice Arun Tandon**

On the theme *ADR and Plea Bargaining*, the resource persons highlighted the challenges before the judiciary viz. litigation explosion, inadequacy of judicial resources, backlog of cases, increasing cost of litigation, as reasons for the increasing use of ADR methods for settlement of cases. The speakers also highlighted the negative consequences of the failure of the judicial system in providing speedy justice viz. use of extra-legal methods of settlement, cynicism in the people with regard to the judicial system, delay, negative public perception of the judiciary. The speakers highlighted the benefits of ADR to the judicial system and to the litigants. The speaker discussed the statutory provisions enabled dispute resolution through ADR and the models of ADR that can be employed to settle disputes. The speakers stressed that ADR is a democratic settlement of disputes and involves direct communication, acceptance of each other's views, accommodation and mutual agreement between the parties. The mediator plays the role of a facilitator. The speaker conducted a mock mediation to enable the participants to understand the modalities of conducting mediation and to reinforce the benefits of settlement of disputes through ADR.

## **Session 18**

### **Theme: Occupational Stress in Judges: Identification and Consequences of stress**

#### **Speaker: Dr. Harish Shetty & Dr. Manju Mehta**

In discussions on *Occupational Stress in Judges: Identification and Consequences of stress*, the speaker dwelt on the concept of emotional wealth and its significance in positivity and mental harmony. Happiness, positive energy, respect and inner peace are necessary for emotional wellbeing. The speaker stressed one must be aware of ones' thoughts and emotions. The speaker suggested self-affirmation as a tool for positivity. Good sleep hygiene including less use of gadgets at bedtime is necessary for mental wellbeing.

With regard to managing staff behaviour, the speaker stated that one must understand that the staff as human beings are imperfect. One must try to understand the court staff and the advocates to understand their neuro-linguistic programming. The suggested measures/tools to build cordial relations with the court staff are –

- (i) Organize monthly get-together with the staff
- (ii) Build personal emotional bridges with the staff
- (iii) Cultivate better relations with the staff
- (iv) Small gestures towards the staff will go a long way to foster harmony.

With regard to handling advocates in the court room the speaker stressed that the judge must prepare his mind before entering the courtroom so as to avoid getting provoked. Managing advocates is an art and skill that is acquired with experience. Politeness is a tool that works with adversarial advocates.

The speaker suggested that one must break the wall between home and office. One must take 10 minutes timeout before going home to destress and recharge your brain before going home. The speaker also stressed that one must keep abreast of the law as academic deficit also leads to stress. Stress also results the belief that we are dealing with objective reality. We are dealing with shared myths of the day. Don't have moral canonisation and demonization of the litigants. One must build and create one's own remedies

## **Session 19**

### **Theme: Managing Judicial Stress: Institutional Strategies and Techniques**

#### **Speaker: Dr. Harish Shetty & Dr. Manju Mehta**

In discussions on the theme *Managing Judicial Stress: Institutional Strategies and Techniques*, the speaker dwelt on the concept of occupational stress and individual reaction to stress. Stress can be caused by environmental factors, personal/individual factors, occupational factors, psychological factors and health factors. The speaker discussed the coping strategies which are adopted by individuals to deal with stress. The speaker made the following suggestions to cope with stress –

- (i) Avoid Stressors- one must take control of one's environment and learn to avoid the situations, issues and persons who cause stress. One must distinguish between the "shoulds" and the "musts" and learn to say no.
  - (ii) Behavioral Management – One must learn to manage stress by methods of relaxation, distraction and time management
  - (iii) Problem Solving – One must find and define the problem, generate and evaluate alternative solutions, select and implement the solution and evaluate the result.
  - (iv) Adapt to the Stressor – Adaptation can be done through thought management. One must use measures of self-reinforcement, self-instruction and reframing one's thoughts
  - (v) Anger management
  - (vi) Managing relations
  - (vii) Lifestyle management
-