

NATIONAL JUDICIAL ACADEMY



P-1130

NATIONAL ORIENTATION PROGRAMME FOR JUNIOR DIVISION

JUDGES

16TH TO 22ND NOVEMBER 2018

PROGRAMME REPORT

PROGRAMME COORDINATORS:

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Faculty NJA

The National Judicial Academy (NJA), Bhopal organized a seven day orientation programme for Junior Division Judges (P-1130) from 16th to 22nd November 2018.

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.

SESSION 1

Constitutional Vision of Justice

Speaker: Prof. G. Mohan Gopal

Chair Justice A.K. Ganguly

The session emphasized that the fundamental role of the court is to impart justice as per the ideals set by the Constitution of India. The crucial role played by the trial judges in building up strong structural foundation of the justice delivery system was discussed. It was opined that it is the 'judicial mind' of the judge that paves way for justice. The broad concept of the word 'justice' was intensively deliberated upon. It was highlighted that Sovereign, Socialist, Secular, Democratic and Republic are the attributes of justice that are provided in the Preamble of the Constitution of India. The objectives laid down in the Preamble of the Constitution of India were succinctly discussed. Article 13 of the Constitution of India which reflects the pre constitutional law and post constitutional law was

deliberated upon. It was opined that the expression 'justice' should be looked from social, economic and political viewpoint for overall betterment of the general public and society in large.

SESSION 2

Role of Courts in a Constitutional Democracy and Adherence to Core Judicial Values

Speaker: Prof. G. Mohan Gopal

Chair Justice A.K. Ganguly

The session involved discussion pertaining to the role of judges in upholding Constitutional democracy. Article 38 and 39A of the Constitution were discussed and observation was made that the Constitution gives mandate to promote justice. It was emphasized that district judiciary judges plays vital role in strengthening the democracy. Their role is much more important and realization of the constitutional goal to a great extent depends upon them. It was stated that even though district judiciary may not be performing the task of interpretation of the Constitution, unlike the judges of the Supreme Court and the High Courts, but, they are under an obligation to follow and apply the Constitution while performing their task. A landmark cases like *Yakoob Menon v. State of Maharashtra* and *Ram Lakhan v. State* were discussed in depth highlighting the concept of 'justice'. It was suggested that a judge must shoulder primary responsibility to be the guardian and protection of fundamental rights of the citizens as provided in Part III of the Constitution. It was emphasized that a judge should act as an agent of social revolution and carry out the very objective of promoting justice for greater welfare of public and society.

SESSION 3

Discovering Current Judicial Methods

Speaker: Prof. G. Mohan Gopal

Chair: Justice A.K. Ganguly

The session stated that in a democratic country the role of judicial system is to protect rights of people. It was stressed that justice along with freedom and equality are standards of human conduct. It is mandatory for the system to promote and comply these standards as well as protect the principles of law as laid down in the Constitution. Justice is highest set of norms and it should be guided by right values. *Olga Tellis & Ors v Bombay Municipal Council* and *S.P. Gupta vs President of India and Ors*; were outlined and views of participants were heard and discussed. It was stressed that judges are in-charge of justice. They should act in accordance with the set norms in order to deliver better judgments because the real challenge at present before the judicial system is to write sound and reasoned judgment.

SESSION 4

Courtroom Technology: Use of ICT in Courts

Speakers: Mr. Talwant Singh & Justice R.C. Chavan

In this session the implementation of ICT in courts, the current technological trends, its advantages and disadvantages were discussed. The main components of e-judiciary that includes Case Information System (CIS), Digitization of records, E-courts, E-filing and various other e-services such as e-FIR and e-summons, NJDG were extensively deliberated upon. It was opined that ICT is a very vital tool for fast disposal of pending cases and reduces the overburdening. It was suggested that there is a need for optimum IT Infrastructure which includes hardware sourcing, data center and web server hosting setup, implementation of court website online integrated with e-Filing and maintaining the

Software & Web Application. It was stated that the objective of the ICT was to ensure quick data, reduce processing time and to bring transparency.

SESSION 5

Managing the Docket: Court and Case Management

Speakers: Justice Ved Prakash Sharma & Justice R.C. Chavan

Technique of efficient management of the court were discussed during the discourse. The key measures that could be adopted by the judges for maintaining quality of justice while disposing of the cases were discussed that includes finding and scrutinizing the pending cases in a court, preparing time table and schedule, scrupulously adhering to the timelines laid down in CPC, Cr.P.C and in The Indian Evidence Act. It was stated that that old cases should be given special priority while disposing of matters. Concepts like court management, case management, case flow management, board management and case load management were discussed.

SESSION 6

Law of Precedents: Identification and Application of Ratio Decidendi

Speakers: Justice Ved Prakash Sharma & Justice R.C. Chavan

In this session it was stated that the concept of Law of Precedents emerged from common law system. The precedent is a substantial source for development of law, it assists in filling up the lacuna, helps to remove ambiguity from law and ensures systematic growth of law. The meaning of the term ratio decidendi was explained as 'the reason behind the judgment' and held it to be of universal application. The distinction to be made between obiter dicta and ratio decidendi was discussed. Article 141 of the

Constitution that reflects the principle of stare decisis that mandates binding nature of law declared by the Supreme Court was also discussed.

SESSION 7

Judging Skills: Framing of Charges

Speakers: Justice Dharnidhar Jha & Prof. S P Srivastava

In this session it was stated that while framing charges, two aspects should be looked upon, first, whether charge has to be framed or not, and second, how the charges are to be framed. The purpose of framing of charges was discussed in the light of V.C. Shukla v. State 1980 AIR 962. It was opined that the purpose of framing of charge is to give accused clear and precise accusations against him/her. Sec. 211-214, Sec. 218,- 22, Sec 223, Sec 227, Sec 239 and Sec. 244- 246 of Cr.P.C with respect to framing of charges were also discussed in detail.

SESSION 8

Judging Skills: Art, Craft and Science of Drafting Judgment

Speakers: Justice K. Chandru & Justice Dharnidhar Jha

The theme for the session 8 was. Statutory provisions that dealt with overall framework of the judgments were discussed. Judgment writing is an art of storytelling. It was stressed that judgment should be such that has capacity to bring about social change and should not be an outcome of personal experience or views of a judge. Judgment should be worded in most precise, coherent and simple language for the benefit of layman. Judgment should be supported with reasons as reason is the blood of judgment. It was suggested that copying of redundant phrases and sentences from precedents should be avoided. The core elements of judgments were discussed in detail. It was

proposed that the judges should not worry much about the result of one's judgments but give their best while writing sound and reasoned judgments.

SESSION 9

Art of Hearing: Promoting Rational Discourse in the Courtroom

Speakers: Justice K. Chandru & Justice Dharnidhar Jha

It was deliberated that the rational discourse should be promoted by a judge in his court. The most basic requirement for rational discourse is the knowledge of the facts of the case, and laws applicable to the case. It was stated that fair hearing involves issuing of notice to the parties, submission of evidences by both the parties, opportunity to rebut the evidences produced and final adjudication of dispute. Judges should not portray any sign of bias or partiality against any party in dispute. Good and patient hearing skill is very important for dispensation of justice. Judges should maintain litigant-friendly atmosphere in the courtroom and make them feel that they are being heard.

SESSION 10

Law relating to Cyber Crimes: Advances and Bottlenecks

Speaker: Mr. Harold D'costa

Chair: Justice U.C. Dhyani

It was pointed out that the traces of cyber-crime in India were first suspected during the end of 20th century, in the year 1997. There is no owner of internet but it is governed by 13 route servers out of which maximum are owned and operated by USA. Hence, India is at great risk and dealing with cyber-crime cases is a great challenge for our country. A live demonstration as to how the cyber-crimes take place and how electronic evidence produced before courts could be misleading was displayed.

A demo was given as to how misleading emails, SMS, calls and WhatsApp messages can be planted to be used as an evidence and how to identify whether they are genuine or spoofed. The concepts like spoofing, hacking, rooting etc. were discussed. It was suggested that judges should be extremely cautious while dealing with the cyber-crimes.

SESSION 11

Electronic Evidence: Collection, Preservation and Appreciation

Speakers: Adv. Prashant Mali & Adv. Jayesh Gaurav

Chair: Justice U.C. Dhyani

It was stated that electronic evidence may be primary evidence or secondary evidence. It may be in form of email, message, CD, pen drive, CDR, Hard-Drive, CCTV footage, recording etc. Thereafter, the case of *Sharat Babu Digumati v. Government of NCT of Delhi*, (2016 SCC OnLine SC 1464) was discussed wherein it was held by the Hon'ble Supreme Court that Information Technology Act, 2000 is a special Act and shall prevail over the general law. The case of *Shafhi Mohammad v. The State of Himachal Pradesh* (JT 2018 (2) SC 349) was also discussed wherein it was held that requirement of certificate under Section 65B (4) is not always mandatory. Admissibility and appreciation of evidence in the form of photographs, CD/DVD, hard disk, compact disk, SMS/MMS, CCTV footage, bank statements, IP Address and CDR (Call Data Record), challenges in appreciating the electronic evidence and common mistakes committed by the investigating agencies with the help of relevant case laws were also discussed.

SESSION 12

Forensic Evidence in Civil and Criminal Trials

Speakers: Prof (Dr) Arijit Dey & Prof (Dr) Jayanti Yadav

Chair: Justice U.C. Dhyani

The importance of Forensic Evidence and DNA profiling in civil and criminal trials in today's world was highlighted. It was stated that ultimate idea behind admissibility of forensic evidence is to utilize expert opinion. The usage of forensic evidence in justice delivery system in civil cases includes insurance claims, paternity test, negligence, accident accusation matters, age estimation among others and in criminal cases includes homicides, sexual assaults, dowry death, NDPS cases, accidents, poisoning, etc. The two facets of forensic evidence viz. Forensic medicine and Forensic science were discussed. Former deals with application of knowledge of medicine and includes examination of injury, nature of injury, type of weapon used, age determination etc., while the later deals with application of knowledge of science which includes forensic DNA analysis, forensic toxicology, narcotics, forensic documents analysis, forensic serology, forensic ballistics, diatoms, forensic entomology, examination of clothes and biological samples etc.. It was stated that benefit of placing reliance on forensic science is that it is reliable, scientific and unbiased. Importance of DNA profiling, forensic investigation and common sources of extracting DNA were also discussed in detail.

SESSION 13

Role of Courts in securing Gender Justice

Speaker: Justice Roshan Dalvi

Chair: Justice Rajive Bhalla

It was stated that the term 'gender' no longer confines to male and female category only, a 3rd category of "transgender" is also included within it as per Supreme Court's verdict on Sec 377 of IPC. Family related matters with special reference to gender justice and the role of judges dealing with such cases was discussed. It was stated that while dealing with such cases judges should be very sensitive to the issues. It was stated that no doubt, there is misuse of some provisions like Sec. 498A, 304B, and 306 of IPC, but there are also genuine cases with which a judge has to deal with very sensitively.

SESSION 14

ADR and Plea Bargaining

Speakers: Mr. S.K. Jain & Justice Roshan Dalvi

Chair: Justice Rajive Bhalla

The four major methods included in Alternate Dispute Resolution System (ADR) viz. - Arbitration, Mediation, Conciliation and Lok Nyayalaya (or Lok Adalat) were explained. The scope of mediation was discussed. What cases can be referred for mediation and what not was discussed in the light of various landmark judgments. It was emphasized that when there is question of law involved, when the case is with respect to interpretation of document, matters involving fraud, matters involving acts against society or with respect to violation of human rights, such cases shall not be referred to mediation. A short role play was conducted to demonstrate as to how mediation actually takes place. It was stressed that there are four stages of mediation. First is introduction, where mediator introduces

himself to both the parties and tells the rules; second is joint session with both parties where mediator discusses the issue with both parties in their presence; third is individual session with each of the party where he can discuss confidential informations from each party; and the last stage is conclusion, where either matter is settled or returned back to the court for further proceedings. The cases of *Salem Advocates Bar Association* and *Afcons Infrastructure* were also discussed.

SESSION 15 & 16

Occupational Stress in Judges: Identification and Consequences of Stress & Managing Judicial Stress: Institutional Strategies and Techniques

Speaker: Mr. Sampath Iyengar

Chair: Justice U.C. Dhyani

The stress related issues in judges were discussed. The participants were asked to give there their opinions and provide reasons as to why they get stressed up. It was expressed by most of the participants judges that in professional life due to inability to manage professional and personal life, meeting up deadlines, reaching out expectations of others, difficulty in solving complicated and technical matters, high targets, excess workload, etc. creates stress them. It was pointed out that the innate quality of fearfulness and negative thinking also leads to stress. It was suggested that there is a need to change the perspective and response towards situations and circumstances. Significance of quality sleep, physical fitness and wellbeing was emphasized for leading a good and healthy life. It was highlighted that stress is another form of energy and some amount of stress is necessary for development of human beings. However, excessive stress has negative impacts on one's life like improper behaviour, poor health, sleep disorders, addictions etc. The stages of stress viz. relaxed, pressurized, worried, stressed and depressed were discussed. Causes of stress were also discussed.

It was emphasized that to deal with the problem of stress one must accept that learning is a continuous and lifetime process. In case of any serious problem one should consult or seek help from professionals. It was suggested that every person should inculcate some core values within them that includes forgiveness, forgetfulness and courage to move on.

SESSION 17

Role of Magistrates at First Production of Arrested Person

Speakers: Ms. Madhurima Dhanuka & Ms. Devika Prasad

Chair: Justice Ravi Tripathi

The team of Commonwealth Human Rights Initiatives (CHRI) was to conduct this session as per the memorandum of understanding between NJA and CHRI. It was stated that first production of accused is a most important aspect of court working. It was shown that there is an increase in percentage of arrest from 2009 to 2016. It was highlighted that the arrested person has been provided with various rights that includes right to silence under Article 20(3) of the Constitution, right to know the grounds of arrest as per Section 50(1), Section 55, Section 75 of CrPC and Article 22 (2) of the Constitution, information of right to be released on bail, right to be produced before a Magistrate without delay as provided under Section 56 and Section 76 of CrPC, right to consult a legal practitioner as per Article 22(1) of the Constitution and section 50(3) of CrPC, right to be examined by a medical practitioner as per section 54 of CrPC, Right of free legal aid as per Article 21 of the Constitution etc. It is the responsibility of the magistrate to safeguard these rights of accused before whom he is first produced. A simulation exercise was conducted to demonstrate role of magistrate at first production. Provisions relating to first production under sec. 167 of CrPC, prisoner's rights and reforms, provisions relating to bail and bonds in CrPC and role of magistrate in case of accused being found juvenile at the first

production were also discussed. The cases like *D. K. Basu vs. State of West Bengal*, *Sheela Barse vs. State of Maharashtra*, *Arnesh Kumar vs. State of Bihar*, *CBI vs. Anupam Kulkarni* were also discussed.

SESSION 18

Fair Trial: Fair Processes

Speakers: Prof. S.P. Srivastava & Prof. Balraj Chauhan

Chair: Justice Ravi Tripathi

The theme for session 18 was *Fair Trial: Fair Processes*. It was emphasized that sole aim of law is to provide justice and assure fair trial, which is the primary requirement for dispensation of justice. It was asserted that trial should be justly and fairly conducted for both accused and victim. Article 21 of the Indian Constitution makes obligatory upon State not to deprive any person of his life or personal liberty except according to the procedure established by law. It is not only trial process but even judgments are quashed by higher courts if the trial is not fair. There should be stringent adherence to and observance of principles of Rule of Law while conducting a trial. It was emphasized that trial should be aimed at ascertainment of truth. Justice should not only be done, but should be seen to have done and in this light the attributes of fair trial, principles of fair trial were discussed. The cases *Ashok Ranjan vs. State of Bihar*, AIR 2017 SC 1979, *Dinubhai Solanki vs. State of Gujrat*, (2018) 11 SCC 129, *Mohanlal vs. State of Punjab*, 2018 SCC Online SC 974, *State of Bihar vs. Rajballav Prasad*, (2017) 2 SCC 178, '*Mohammad Akhtar vs State of Jammu & Kashmir*' popularly known as "*Kathua Rape Case*" were also discussed. With formal expression of vote of thanks, the conference was concluded.
