

## **P-1147: ORIENTATION PROGRAMME FOR JUNIOR DIVISION JUDGES**

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The Academy organized a seven days Orientation Programme for Junior Division Judges. The programme was conceived for capacity building of judicial officers at the primary tier, viz. Civil Judges (Junior Division). The sessions were designed to facilitate participant officers to share experiences and views with counterparts from other States; better appreciation of the judicial role; responsibility of judicial officers in constitutional democracy; recent developments in juridical thinking and technological advances relevant to accreting performance standards; and to deliberate on several aspects of law and practice relevant to enhancing the quality of performance. The idea was to provide participants a unique platform to share experiences and assimilate best practices.

### **Session 1: Constitutional Vision of Justice**

The speakers initiated the session by questioning the need to study the constitutional vision of justice. They also emphasized the role of the Preamble in interpreting the Constitution. Referring to the judgment in *All India Judges' Association case*, the speakers emphasized that judges are not subordinate to anyone, rather they are subordinate to the laws and the Constitution. The speakers discussed Article 20 (2) of the Constitution read with Section 50 Criminal Procedure Code (Cr.P.C.) regarding rights of arrested person. The speakers accentuated that though the magistrates are not deciding constitutional matter hitherto they have to see the constitutional aspects of the cases before them. Referring to the judgments in *Hussainara Khatoon v. State of Bihar* (1979) AIR SC 1369 and *Sheela Barse v. State of Maharashtra* AIR 1983 SC 378, the speaker stressed upon the expansion on rights of poor persons by the Supreme Court. The speakers discussed that law should meet the demands of changing society and judges should interpret law accordingly. The participants shared their concern regarding the ignorance of police towards the constitutional guidelines as framed by the Supreme Court especially in remand matters. The speakers suggested that the magistrates should not issue remand orders until they are satisfied that all the required and established procedure has been followed by concerned police officers. The speaker also opined that if judges start refusing remand in cases of violation of procedure, then automatically the police will start following the procedures as established in the guidelines.

### **Session 2: Role of Court in Constitutional Democracy and Adherence to Core Judicial Values**

The speakers initiated the session by discussing concepts of justice and rule of law. While explaining constitutionalism, the speakers stressed that it is necessary to internalize values and ideas of the Constitution. It was emphasized that minority is not merely those who are numerically less in number but are also weak in relation to powers for instance- farmers, transgenders and women and protection of rights of these minorities results in certain conflicting situations. The speaker expressed concern that people these days openly challenge the majesty of law and disobey it due to their own reasons. It was emphasized that one must not only think on the normative level but also on the behavioral and cultural manner to increase obedience to law. The speaker emphasized importance of Article 39A of the Constitution concerning the responsibility of the State to ensure proper support to marginalized groups in the matters of providing

justice. The speaker referred to the decisions of the Supreme Court which resulted in framing of the National Legal Service Authority Act 1989. The session was concluded with a remark that sustenance of democracy is only because of the Indian Constitution and it is the judges who have the responsibility to protect and safeguard constitutional rights enshrined in the Constitution.

### **Session 3: Discovering Current Judicial Methods**

The speakers started the session by discussing various aspects of adjudication at the trial court level and the methods that judges follow. The speaker emphasized that fairness and expeditiousness are the two fundamental values which governs adjudication at trial court level. The speakers discussed literal interpretation and purposive interpretation as methods of adjudication. Judges should rely on either of the two methods i.e. take the rule as it is or interpret it according to the situation. The purposive interpretation will be balancing of the interest. If there are two conflicting ideologies, then it depends on the personality of the judge as to which she/he will choose. The judges must ensure adherence to these values while adjudicating cases in their respective courts. The speakers suggested that to sort cases in their respective courts, judges should classify cases in the order in which a case is ready to be heard, under which cases charges are to be framed and in which cases, issues have to be framed. According to the speaker, if there is absence of expert/medical witness, magistrates should report the same to the district judge for ordering Superintendent of Police or other civil servant for the presence of expert/medical witness. The speaker also insisted upon the use of latest technology like video conferencing for interacting with witnesses. The session concluded with discussion on role of magistrates in ensuring effective legal aid.

### **Session 4: Courtroom Technology: Use of ICT in Courts**

The speaker stated that many courts are becoming technologically advanced while some are trying to improve but there is paucity of funds. The speaker highlighted some methods by using ICT and how by adoption of new techniques, efficiency of the court process can be improved. The speaker referred to the Supreme Court's decision where it ruled that live streaming of court proceedings in matters of national importance can be done. Various information such as the details of case, the issues at hand, the details of accused and witnesses and the source of information can be easily managed through data management techniques. The speaker focused on docket management, case tracking system and e-filing. The use of ICT to provide the judgment instantly to concerned authority/parties was also underlined. The speaker emphasized the use of bio-metric system to identify the accused or the witnesses. The participants also discussed their experiences of using laptops for writing orders, making cause list and e-mailing. The SMS alerts to the lawyers for their dates of listing is ensured by courts. The speaker discussed the future of legal practice which will be artificial intelligence, cognitive computing and conducting legal research that is capable to predict the outcome of litigation. Screening of videos were done to emphasize use of ICT in the courtroom.

### **Session 5: Managing the Docket: Court and Case Management**

The speakers started the session by discussing various aspects of managing the docket. Efficient docket management requires classification of cases into various categories depending upon the complications of

each case and this will result in better court management. The speakers referred to Lord Woolf's Report which supports categorization of case for better case management. The simpler case can be fast tracked and difficult ones must be allocated in a different category. Thereafter, the speaker emphasized developing synergy between all stakeholders for proper docket management. There should be immediate listing of the case as soon as the case is filed and time limit must be fixed in consultation with the counsels. The speaker insisted on framing issues on facts and then resorting to pleading. If the facts are such that the case needs to be sent to mediation, it must be immediately sent. The judge should ask for written submission from the counsels. The judge must communicate with the stakeholders and should attempt to understand their concerns. Mediation is the biggest tool which can be used by the judges for case management. The speakers emphasized on minimizing the roll call time and adjournments. The speakers said that every judge has his/her own docket which he/she manages by his/her own thought process and work conditions. The judge must not be affected by the external conditions and must adhere to procedural law.

### **Session 6: Law of Precedent: Identification and Application of Ratio Decidendi**

The speakers started the session by highlighting the importance and origin of the law of precedent. The basis of precedent started with the commencement of reporting of judgments. The main assumption behind the system of precedent was that like cases should be treated alike. Precedent must be understood in the light of the facts of the case. The judge must conduct the legal research that must be read with the facts of the case for application of the precedent. If the precedents are applied without proper understanding of the facts of cases then it may result in wrong judgment. The reasoning of a particular judgment should be analyzed and then it should be used as a precedent. The reasoning which leads to the decision i.e. *ratio decidendi* must be understood. The speakers also explained *obiter dicta* and said that the observation of higher courts with respect to matters which do not directly lead to decision are *obiter dicta* and are not binding over any courts. The speakers discussed various nuances about *ratio decidendi* and *obiter dicta* and referred to various Supreme Court judgments to explain the same. Precedent must be applied when there is an ambiguity in the position of law. The speaker gave an example related to habits of lawyers citing various precedents in a pleading. The speaker suggested that the participants should question the lawyers about the relevance of the precedents to the case. The speaker said that judges must have good co-ordination with bar and bar must be disciplined. The speaker concluded the session by highlighting Article 141 of the Constitution according to which the decision of the Supreme Court is binding on all courts.

### **Session 7: Law Relating to Cyber Crime: Advances and Bottlenecks**

The session started with the issue of emergence of cyber world and its legal implications. Giving a brief history of cyber world, the speakers expressed concern regarding emergence of complex cybercrimes and inadequacies to address them effectively. The speaker explained different types of cybercrimes such as malicious programming, causing disruption, assisting in unauthorized access, destroying, deleting or altering information residing in the computers and diminishing its values. The speaker explained computer source code which includes aspects like listing of programs, computer commands, design, layout and program analysis. The speaker discussed the provision dealing with source code theft i.e. Section 65 of the Information Technology Act, 2000. This provision is related to the action to conceal, destroy and alter source code. The speaker also explained the term 'Logic Bomb' which are programmes that detonate in pre-defined manner. The speaker also explained the importance of internet service provider in tracking sources

of crime. According to Section 67C internet service provider is required to retain the information in the manner and format as per the direction of the Central Government. However still the Central Government needs to notify the manner and the format in which the information has to be retained. The speaker also focused on the Interception Monitoring Decryption 2009 where the competent authority is the Secretary, Ministry of Home Affairs.

### **Session 8: Electronic Evidence: Collection, Preservation and Appreciation**

The speaker started the session by explaining provisions of the Information Technology Act, 2000. The Critical Information Infrastructure where computer resources whose destruction can debilitate national security, economy, public administration or order as well as health and safety of people was discussed. These are notified by Gazette Notification as protected system. Explaining the difference between access and secure access, the speaker said that the access is punishable but secure access might not be punishable upto certain extent. Section 43A deals with entities which handle sensitive personal data information and ensure reasonable security practice and procedure to protect the information was discussed. The speaker discussed various aspects of personal data such as password, medical information, financial information and bio-metric information. The speakers then focused on regulation of private companies for using private data of the users and emphasized on having computer data protection legislation as the need of the hour. The speakers focused on intermediary liability under to Section 79 and explained the process of tracking the accused by approaching the network service provider and obtaining the IP Address. The judgment in *Shreya Singhal v. Union of India* 2015 (5) SCC 1 was also referred for explaining the liability of intermediaries. The speaker discussed judgments of the Supreme Court on the admissibility of electronic record. The requirement of certificate under Section 65B for issues of admissibility of electronic record by way of secondary evidence was discussed by referring to the judgments of *Anvar v. P.K. Basheer* [2014(10) SCC 473], *Sonu v. State of Haryana* [2017(8) SCC 570] and *Navjot Sandhu* [2005 (11) SCC 600] case.

### **Session 9: Forensic Evidence in Civil and Criminal Trials**

The speakers started the discussion by stating that forensic science is the use of science and technology to provide scientific evidences. The forensic evidences are mainly of two kinds i.e. physical and biological. The speakers discussed both types of forensic evidence in detail. The process of forensic analysis of documents was discussed which includes various fields such as handwriting analysis, signature and initial analysis, alteration, erasure, sequence of strokes of handwriting as well as printed matter. The speakers explained the principles of handwriting analysis which consists of identification of forgery in disputed handwriting and signature. The speaker discussed different types of forgeries which consists of freehand, simulated forgery and the cut copy paste signature. Various aspects of checking forgery including determination of authorship of forgery, comparison of handwriting, use of photocopies of signature, determination of whether a person is left-handed or right-handed and also determination of age of ink and paper were highlighted. Relevant Judgments of the Supreme Court in this regard were referred and discussed. The speakers highlighted the importance of expert opinion in deciding issues of evidences. The speaker discussed evidentiary value of fingerprint and opined that it is a valuable means of identification due to its uniqueness and that it never changes. According to the speakers, judges in various cases have decided that the identification of thumb impression is almost perfect and the evidence of fingerprint expert can be relied upon. The speakers also discussed the concept of DNA and how DNA is helpful in crime

investigation, identification of paternal and maternal genesis and the identification of sex of a person. The speakers focused on various protocols which investigating agencies should strictly follow during collection and preservation of physical and biological evidences.

### **Session 10: Judging Skills: Framing of Charges**

The speakers highlighted issues regarding framing of charge at commencement of a trial. It was suggested that while framing charges a judge must be very careful, verify the charges levelled in the chargesheet and should not simply rely upon the prosecution or police chargesheet alone. The *Ajmal Kasab's* case was referred during the discussion to elaborate upon how charges were framed in that case. It was pointed out that there are two types of cases - summons case where no formal charge is framed and warrant's case which involves formal framing of charge. The speaker also dwelt on with how to frame charge in a particular case and stated that it must include ingredients of a particular offence and the manner of committing the offence. The technicalities relating to multiple charges, which charges can be joined together, separate and distinct charges, minor and major charges etc. was also covered during the course of discussion. The speaker also gave an overview of the provisions relating to theft, criminal conspiracy and cases involving constructive liability and vicarious liability under IPC and pointed out the technicalities of framing of charge in such cases. Lastly, the speaker mentioned that framing of charge is important for a fair trial and involves application of mind.

### **Session 11: Judging Skills: Art, Craft and Science of Drafting Judgment**

The need to learn the art of writing judgment was highlighted during the session. It was stated that judgment is a message of legal principle with reasoning leading to an outcome. The speakers pointed out essential ingredients to be included in a judgment. It was emphasized that a judgment must be concise, precise and the decision must be based on reasoning; it must be in simple language, easily understandable by the litigants. It was deliberated that two decisions are never similar even if the facts are same and this is due to the variation in application of logic and interpretation of law by individual judges. Difference between admissible and inadmissible evidence was also discussed at length. The participants were suggested not to read headnotes and editorial summation of a judgment as it does not have any authority and in cases involving complex facts the judge must include elaborations if the judgment is lengthy. The speaker also recommended the participants not to overload the judgment with precedents as trial courts are court of facts. It was further highlighted that a judgment must be decisive, use of words like 'may' or 'might' must be ignored and there should be use of specific words with well-reasoned logic. Lastly, it was stated that reasoning is the most important part of a judgment and it must be based upon quality of the evidence/ witness and not on the quantity.

### **Session 12: Art of Hearing: Promoting Rational Discourse in the Courtroom**

The meaning of terms 'rationale' & 'discourse' was discussed in detail during the session. It was suggested that a judge must not be a silent spectator and must completely participate in the trial. It is the duty of a judge to promote rational discourse in his courtroom. The speakers stated that strength of a judge is knowledge, personality and conduct. A judge should resort to politeness and must react to each situation

logically. It was highlighted that the discourse must be constructive in a courtroom only then it can be rational. The speakers advised the participant judicial officers to read law and have command over it, over the facts and then try to maintain the discourse and rationality in the court.

### **Session 13: Role of Magistrate at First Production of Arrested Person**

During the session the speakers deliberated that arrest must only be made when there is an offence and it must be made only in accordance to the procedure established by law. It was stated that at the time of production of an accused, the magistrate must verify the reasons for production, whether counter signed, memorandum signed by one witness and whether any 3rd degree measures have been resorted to by the police etc. In case of any 3rd degree measures resorted to by the police then magistrate has the power to produce the accused before a doctor. It was mentioned that depending on the severity of the crime a magistrate can grant police custody for not more than 14 days by giving reasons for such remand. Various landmark judgments on the subject were referred for discussion during the session such as *Nandini Satpathy v. Dani (P.L.) And Anr*, AIR 1978 SC 1025; *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579; and *Prem Shankar Shukla v. Delhi Administration*, AIR 1980 SC 1535. Article 20(2), Article 22, Article 21 of the Constitution were also referred. The speakers emphasized that it is the duty and responsibly of a judge to uphold law and to uphold the rights of an accused as enshrined in the Constitution. It was mentioned that the idea of law is that, if a person is deprived of his liberty then it must be under scrutiny. The concept of bailable and non-bailable offence was also discussed. Lastly, it was highlighted that handcuffing is not permissible except in exceptional cases. The speakers suggested the judicial officers to decide by going into the merits of the case even if they are acting as remand magistrate to avoid injustice.

### **Session 14: Fair Trial: Fair Processes**

On the theme, the speakers highlighted that fair trial process is a check the abuse of power. Maintaining judicial calm, neutrality, impartiality is important for ensuring fair trial. The speakers stated that fair trial is a corner stone for a just society. The speakers elaborated the concept of 'Fair Process' which includes a fair prosecutor who is calm and have no vexatious and oppressive conduct. It was suggested that a judge should act as a neutral referee since there are chances that the witness and other protected person is vulnerable to biases. The session further included discussions on the rights under Article 20(1) and Article 20(3) of the Constitution. Cases of extra judicial killing and custodial violence were also discussed in detail. Giving a reference of *Sohrabuddin's Case*, the speaker stated that moral conviction is not enough unless there is evidence to link. The other speaker highlighted that the first step in a trial process is framing of charge which must be specific and accused is entitled to know the charge. It was mentioned that speedy trial is an important aspect of fair trial and the concept of fair trial is embedded in Article 21 of the Constitution. Further, three principles of criminal jurisprudence were enlisted - presumption of innocence, impartial order and right to open trial.

### **Session 15: Role of Courts in Securing Gender Justice**

The speakers stated that creation of awareness and attitudinal change is the key to achieve gender justice. The principles of freedom, equality, dignity, equity and fairness must be ensured at all times. The speakers

highlighted two tests to determine whether an issue is gender sensitive or not. Citing an example of POSCO Act, it was mentioned that there are cases where no reporting is done which is also a crime under the POCSO Act. A judge is required to be more sensitive towards all aspects and there needs to be an attitudinal change in the behaviour of a judge towards the issues of gender justice. The speaker pointed out that there can be a lot of impact of human rights abuse such as disturbing psychology, feeling of disgust, disbelief, suspicion, helplessness, frustration, anxiety and depression, loss of confidence, fear, loss of security, fear of guilt etc. There must be judicial sensitivity and empathy while dealing with cases involving rights of women and children. It was suggested that a judge must give priority to disposal so as to provide speedy justice and ensure that victim support and representation is prioritized. A judge should work for making rich trends and progressive approach in every gender case.

### **Session 16: ADR and Plea Bargaining**

The speakers explained the concept of mediation and discussed its essential aspects. The difference between mediation and arbitration was pointed to the participants. It was mentioned that in ADR Arbitration is affordable by few, while conciliation is used in selected kinds of disputes and mediation is the most preferred mode of ADR. Lok Adalats are intermittent. Further, it was stated that in conciliation, a conciliator who is either a judge or a lawyer knows the law. The speakers emphasized that in most of the civil suits mediation is possible which includes possession suits, commercial disputes, corporate litigation, family matters, partnership disputes and injunction suits. It was suggested that a judge should try to bring consensus among parties towards use of ADR as an alternate means to decide a matter. Maintaining the confidentiality and complete hearing of both parties are two essential aspects of mediation.

### **Session 17: Occupational Stress in Judges: Identification and Consequences of Stress**

It was deliberated that stress has become an important facet of life since we all live in stress every moment. Management of stress is very important and it depends on one's personality and behaviour inculcated from childhood. The speaker stated that the level of stress does not depend on the tier of the judicial hierarchy. The other speaker highlighted that each judge has its unique way of processing stress. The speaker distinguished between healthy and unhealthy stress and suggested methods to tackle unhealthy stress. The speakers elaborated upon the determinants of stress like nature of event, predictability, control, ambiguity and domain. A judge suffers from occupational stress that relates to stressful job factors, sedentary work environment, work overload etc. As a judicial officer one has to manage one's emotions as well as the emotion of their case too, in one's day to day life. The speaker pointed out that a judge becomes irrational due to anger and fear and therefore, insisted the participants to write down their thoughts and see what can be done. The speaker advised the judicial officers to take good sleep and maintain healthy diet.

### **Session 18: Managing Judicial Stress: Institutional Strategies and Techniques**

The speaker highlighted certain reasons for stress pertaining to judiciary such as stress relating to transfer, compliance with circulars and orders, dealing with high profile cases, trial by media, troublesome advocates, promotion prospects, and complicated cases. To overcome these causes of stress the speaker suggested few techniques which included practicing yoga daily, exercise and prayer, devote sufficient time

to family, plan for holiday etc. The speaker advised the judges not to read law articles or case reports while on vacation instead devote time on their hobbies, family and other things like sports, writing, cooking etc. Judge should be frank to discuss their legal problems with their seniors and colleagues and should be confident of their own actions. The speakers concluded with the remark that it is a judge who has to keep the patience so as to keep the courtroom atmosphere better for all.

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