

NATIONAL JUDICIAL ACADEMY



WORKSHOP FOR ADDITIONAL DISTRICT JUDGES [P-1159]

5TH – 7TH APRIL, 2019

**COORDINATOR: MS. ANKITA PANDEY, FACULTY, NATIONAL JUDICIAL
ACADEMY, BHOPAL**

List of Resource Persons

S. No.	Name	Designation
1.	Hon'ble Mr. Justice Sanjeev Sachdeva	Judge, Delhi High Court
2.	Hon'ble Mr. Justice Atul Sreedharan	Judge, Madhya Pradesh High Court
3.	Hon'ble Mr. Justice Ved Prakash Sharma	Chairperson, M.P. State Law Commission, Bhopal
4.	Hon'ble Mr. Justice U. C. Dhyani	Former Judge, Uttarakhand High Court
5.	Hon'ble Mr. Justice K. C. Bhanu	Former Judge, Andhra Pradesh High Court
6.	Dr. Sudhir Kumar Jain	Principal Judge, Family Court, Tis Hazari Court, Delhi
7.	Dr. Debasis Nayak Director	Director, Asian School of Cyber Laws

PROGRAMME SCHEDULE

<p align="center">DAY 1</p> <p align="center">5th April 2019</p> <p align="center">Friday</p>	<p align="center"><u>SESSION 1</u> <u>09:30 AM- 11:00 AM</u></p> <p align="center">Challenges in Implementation of ADR System in Subordinate Courts</p>	<p align="center">T E A B R E A K</p>	<p align="center"><u>SESSION 2</u> <u>11:30 AM – 01:00 PM</u></p> <p align="center">Court & Case Management: Role of Judges</p>	<p align="center">L U N C H B R E A K</p>	<p align="center"><u>SESSION 3</u> <u>2:00 PM – 3:30 PM</u></p> <p align="center">Civil Justice Administration: Appellate and Revision Jurisdiction of District Judges</p>
<p align="center">DAY 2</p> <p align="center">6th April 2019</p> <p align="center">Saturday</p>	<p align="center"><u>SESSION 4</u> <u>09:30 AM- 11:00 AM</u></p> <p align="center">Criminal Justice Administration: Appellate and Revision Jurisdiction of District Judges</p>		<p align="center"><u>SESSION 5</u> <u>11:30 AM – 01:00 PM</u></p> <p align="center">Sentencing: Issues and Challenges</p>		<p align="center"><u>SESSION 6</u> <u>2:00 PM – 3:30 PM</u></p> <p align="center">Fair Sessions Trial</p>
<p align="center">DAY 3</p> <p align="center">7th April 2019</p> <p align="center">Sunday</p>	<p align="center"><u>SESSION 7</u> <u>09:30 AM- 11:00 AM</u></p> <p align="center">Laws relating to Cybercrime: Advances and Bottlenecks</p>		<p align="center"><u>SESSION 8</u> <u>11:30 AM – 01:00 PM</u></p> <p align="center">Electronic Evidence: Collection, Preservation and Appreciation</p> <hr/> <p align="center">1:00 PM – 1:15 PM Feedback and Audit by the Participants</p>		

P-1159: WORKSHOP FOR ADDITIONAL DISTRICT JUDGES

The National Judicial Academy organised a three days programme for the Additional District Judges from 5th to 7th April, 2019. The workshop was aimed at critical areas concerning adjudication at the District level; exploring challenges in implementation of ADR system; studying sentencing practices and advantages of integrating court and case management systems in Subordinate Courts. The sessions covered diverse topics including issues and practices pertaining to collection, preservation and appreciation of electronic evidence; advances and inadequacies in laws regulating cybercrimes. During the sessions, the participants discussed, evaluated and shared best practices on exercise of appellate and revision jurisdiction of District Judges, in criminal and civil domains, as well. The emphasis was to enable deliberations through clinical analysis of statutory provisions, case studies and critical consideration of the relevant judgments. The workshop provided a forum to the participant Judges to discuss and exchange views regarding Civil, Criminal, Arbitration and cyber related issues in separate sessions and also to assess problems faced by the judicial fraternity and the means to overcome them.

DAY 1

Session 1 - Challenges in implementation of the ADR system in subordinate courts

Speaker – *Dr. Sudhir Kumar Jain*

Chair – *Justice U.C. Dhyani*

The speaker began the session by point out that the concept of parties settling their disputes peacefully among themselves or with the help of third party is well-known to ancient India. The current judicial system with the kind of infrastructure available with the courts in India is not adequate to deal with the growing litigation within reasonable time. It was further emphasized that while reforms in the judicial sector should be undertaken there is an imminent need to supplement the system by means of Alternative Disputes Resolution mechanisms. It was asserted that Alternative Disputes Resolution system therefore, is the only hope for the future as far as civil cases are concerned. The various ADR mechanisms such as Arbitration, Mediation, Conciliation, Negotiation and Lok Adalat were briefly discussed. However, there are a few challenges in this regard, which includes building and enhancing functional capacity of mediation process and procedure, acceptability and creditability of mediation process, and propagation and promotion of mediation. The participant judges were advised to consider such

referral as a part of one's judicial work in accordance with the mandate of the Civil Provision Code.

Session 2: Court and case management: Role of Judges

Speakers – Justice U.C. Dhyani & Dr. Sudhir Kumar Jain

The speaker initiated the session with the assertion that the major reason for discussion the theme of court and case management is without a doubt the ever increasing number of cases pending at all levels in the judiciary. However, the goal of court and case management is not only to expedite the justice delivery system but also to improve the efficiency in decision making in courts. The session further went on as a discussion on the subject the participant judges came up with best practices/ideas/suggestions some of which were: explore the possibility of settling a particular matter through ADR mechanism; decide interim applications on the same day on which they are filed; achieve the monthly goals in the ambit of healthy practices; ensure maximum use of ICT in managing the affairs of the court; address the issue of pendency by adopting proper identification based approach and grouping the cases accordingly; increase the manpower for better management of the courts; avoid unnecessary adjournments, etc.

Session 3: Civil Justice Administration: Appellate and Revision Jurisdiction of District Judges

Speakers – Justice U.C. Dhyani & Prof. S.P. Srivastava

The session commenced with the assertion that right of appeal is vested right and accrues on the date on which first proceedings (suit, application, objection etc.) are initiated. If the right of appeal is taken away or restricted thereafter, it does not affect right of appeal in respect of pending proceedings, unless expressly so expressed. Thus, an appeal is a very sensitive part of a case wherein discretion plays a very significant role. It further went on to deliberate on the role of appellate courts and section 96 of the Civil Procedure Code. First Appellate Court has got power to judge the correctness of findings of facts as well as of law recorded by the Trial Court. It was explained that the entire case reopens before the first appellate court and every aspect of it needs to be examined. A fresh approach is to be given to the matter keeping in mind the grounds of appeal and at the end consideration is to be given in the form of findings which are mentioned in the judgment by the court. It was further emphasized that when a trial judge has also taken a view and has supported it with reasons and evidences it shouldn't be disturbed.

It is a rare practice, that in second appeal, the facts written shall be disturbed by the appellate court. If the trial court has misread the evidence or overlooked some aspects in such cases only then findings should be interfered with. This is what is expected from a judge of an appellate court. The speaker further clarified doubts of the participants on issues such as cross appeal, ex parte decree and limitation period in case of appeal.

DAY 2

Session 4 - Criminal Justice Administration: Appellate and Revision Jurisdiction of District Judges

Speakers - *Justice Atul Sreedharan, Justice K.C. Bhanu & Justice Ved Prakash Sharma*

The session commenced with the assertion that appeal is necessary to ensure due process so that any sort of mistake do not result in a false or erroneous outcome. A criminal appeal is a statutory creation and the right of such an appeal is not inherent but manifestly restricted one. It is not a fundamental right nor merely a matter of procedure but is substantive right and cannot be presumed or assumed. It was explained that an appeal is generally when there are some elements of finality involved and revision is for the other matters for which appeals aren't provided for. Just as in regular first appeal in civil matter, in criminal matters also, the entire matter is opened again but the appellate authority is not to supplant it, appellant discretion is to be exercised in addition to the discretion of the trial court. The provision of appeal is there to give the impression that justice is not only done but appears to be done. That is to say it's a guarantee that even though looked from different perspective by each of the court similar conclusion is arrived at. And sometimes the decision of trial court is changed because different perspective is being used. This is the reason we have aspects of Appeal and Revision. It was further stated that the scope of appeal and revision are totally different. Appeal is a statutory right provided under law, but in criminal appeal, the right to appeal is restrictive at times and may not be available in certain circumstances. Right of revision is provided in only certain circumstances and it is a discretionary right. It is a sort of supervisory power which is to prevent miscarriage of justice.

Session 5 - Sentencing: Issues and Challenges

Speakers - *Justice Atul Sreedharan, Justice K.C. Bhanu & Justice Ved Prakash Sharma*

The session commenced with the assertion that sentencing is the heart of the criminal justice system and that there is a lot of subjectivity in the award of sentence which gives rise to lot of inconsistencies in the arena. It was further stated that there is no sentencing policy in India as such although judge made law does provide some guidelines. The lawmakers thought it fit to leave the element of discretion in matters relating to the quantum of sentence in a particular case. However, it was emphasized that the doctrine of proportionality must be adhered to while awarding sentence by exercising judicial discretion. Further, the various theories of punishment

such as deterrent theory, reformatory theory, retributive theory etc. were discussed in the course of the session. The most debatable form of sentence i.e. death sentence was also discussed at length. The concept of concurrent and consecutive sentences was also clarified by the resource persons while emphasizing that elaborate reasoning must be given when either of these is awarded. The session was concluded with the cation that any sentence awarded must be appropriate, adequate, just and proportionate.

Session 6 - Fair Sessions Trial

Speakers - *Justice Atul Sreedharan, Justice K.C. Bhanu & Justice Ved Prakash Sharma*

The session commenced with the assertion that every person is entitled to a fair hearing by a competent, independent and impartial authority established by law. It was further asserted that there cannot be a fair trial if the reasons do not indicate the application of mind to the matter at hand, the consideration of the relevant factors and the conclusion on that basis. The speaker stressed that the power under Section 313 Cr.P.C should be adequately exercised. The accused must be provided with a fair procedure and adequate representation. Further, emphasis was made on Section 301 of Cr.P.C and that the intent of legislature behind enacting this provision of 'Appearance by Public Prosecutor' is to assist the court with the documents and proceedings. Further, the importance of Section 303 was discussed where it is right of the person against whom the proceedings are instituted to be defended by a pleader of his choice. It was explained that charges must be framed cautiously and that the judge must not appear to be just a mouth piece of the prosecution. Although it is not mandatory to record reasons while framing charges, it would be ideal if brief reasons for framing of specific charges are given reflecting that the judge has applied his mind in doing so.

DAY 3

Session 7 - Laws relating to Cyber-crimes: Advances and Bottlenecks

Speakers – *Justice Sanjeev Sachdeva & Dr. Debasis Nayak*

The speaker gave an enlightening insight into the concept of virtual world and the evolution of technology in India since 1995. Further, the session delved into the various types of cyber-crimes such as identity theft, corporate espionage, phishing, disclosure of confidential information/trade secrets by employee, etc. There was also discussion on The Information Technology (Intermediaries guidelines) Rules, 2011 which provides protection against offensive material on the web in which case it must be removed within 36 hours. However, any offensive material has to be brought to the knowledge of the intermediary only through a court's order. This is a bottleneck in the regime by the time order is obtained damage is already done. The speaker also mentioned the two types of bio-metric devices which are commonly used these days, Image-based biometric device and Sensor-based device. In Image-based biometric, the impression of someone's fingerprint can be used and this is the reason it is considered less secure. On the other side, the sensor-based devices are considered fully secure. Thus, the chances of fraud increase with image-based biometric. Further, there was an elaborate discussion on the significance of SPDI Rules according to which any entity which stores sensitive personal data such as passwords, health information, sexual orientation etc. has to conform to certain standards and guidelines and if any damage is caused due to non-conformity to such standards/guidelines the entity will have to compensate the person so suffered.

Session 8: Electronic Evidence: Collection, Preservation and Appreciation

Speakers – *Justice Sanjeev Sachdeva & Dr. Debasis Nayak*

The session began with the assertion of the fact that the Indian Evidence Act contains principles of law of evidence and regulates the procedure for taking evidence before a court of law. It has subsequently been amended to acknowledge significant technological developments and introduce admissibility of electronic records. In this context, the various aspects relating to digital forensics was discussed with special focus on the acquisition, authentication, analysis and documentation of data. Further, issues relating to Section 65-B certificate were deliberated upon. It was pointed out that conditions of this provision must be satisfied to ensure admissibility of secondary evidence. It was explained that section 65-B certificate is only

required while producing secondary evidence of the copy of the original and not when the original itself is being produced. Some of the significant cases discussed on the point were State v Navjot Sandhu; Avadut Waman Kushe v State of Maharashtra; Kundan Singh v State; Shafi Mohammed v State of Rajasthan and Sonu v State of Haryana.