

Orientation Programme for Junior Division Judges
[P-1189]
15th – 21st November, 2019

Rajesh Suman, Assistant Professor
Shashwat Gupta, Law Associate

The National Judicial Academy (NJA) organized a seven days Orientation Programme for Junior Division Judges from 15th – 21st November, 2019 at the NJA, Bhopal. 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 sharing experiences and views with counterparts from other States; 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 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. The emphasis was on enabling deliberations through clinical analysis of statutory provisions, case studies and critical considerations of the relevant judgments, minimizing the lecture format.

Session-01

Constitutional Vision of Justice

The session began with defining the concept of justice and the overview of judicial administration in India. The speakers emphasized on establishing the relationship between Part III and Part IV of the Constitution and the attainment of socioeconomic justice. The issues related to interpretation of laws according to the spirit of the Constitution was discussed. The speaker elaborated on the distribution and management of power among the different organs of the government and accountability of the organs of government towards citizens of India. The limits of power of organs of government to prevent the misuse of power was discussed. The role of judiciary in the Constitutional democracy was highlighted and the need to promote Constitutionalism was emphasized. The judiciary's role is of paramount importance in the scheme of government as it is the last resort to citizens for protection of rights and enforcement of liabilities. The speakers said that the Constitution has to be understood and interpreted in widest perspective to serve the interest of community and to serve justice in the best possible manner. The speaker discussed various aspects of distributive justice and corrective justice. The harmony among various values mentioned in the preamble of the Constitution was discussed and judicial role in promotion of this harmony was highlighted. The importance of socio-economic justice was discussed and speakers referred to constituent assembly debates in this regard. The right of freedom and expression and its importance in democracy was discussed by referring to various judgments of the Supreme Court. The speakers discussed analytical tools to analyze laws and emphasized the importance of four Ws and H i.e. Why, What, Where, Which and finally How in analyzing laws. The importance of commitment in ensuring proper implementation of the Constitution was highlighted by referring to the words of Dr. B.R. Ambedkar that however good the Constitution is, it will fail if the people

managing the same are not good and however bad it is, it might turn out to be a success if the people implementing the same are good.

Session -02

Role of Courts in a Constitutional Democracy: Enhancing Access to Justice in the Context of Socio-Economic Asymmetry

The session commenced with the query from participants regarding role of judges in ensuring protection of rights and speakers responded to that by explaining role of judges in Constitutional democracy. The importance of judicial review and independence of judiciary was discussed in this regard by referring to various judgments of the Supreme Court. The vital role played by judiciary in checking arbitrary exercise of power was discussed. The speaker discussed the ways to enhance trust of people in judiciary and various values of Constitutionalism were referred in this regard. The doctrine of basic structure was discussed and various judgments of the Supreme Court were referred concerning this doctrine. The first amendment to the Constitution leading to the incorporation of 9th schedule and issues related to land reforms were referred. The speakers said that judiciary plays an important role in ensuring the federal structure in governance by balancing the power between Union and State. The speakers referred to various judgments of the Supreme Court where the attempt was made to balance the directive principles of state policy and fundamental rights. The need to enhance access of poor people to justice was highlighted and speakers discussed various strategies for making judicial system litigant oriented. Ensuring satisfaction of the litigants through easier court processes was discussed. The speakers said that whosoever comes to the court irrespective of their caste, creed, background, or religion, they must be given access to justice in the most appropriate manner so that the confidence of people in the judiciary can be enhanced and the court can serve its own role and purpose in its true sense by enhancing the justice in the context of socio economic asymmetry. The speakers emphasized the role of the judge for smooth coordination between different stakeholders in justice delivery.

Session -03

Judicial Methods in Trial Court

The session began with the questions that what makes the function of a modern court so challenging. The speakers deliberated on the issue related to neutrality in judicial process and said that there are several set of beliefs followed by individuals belonging to their respective communities and the judges also belong to one or the other existing communities. However when the matter is regarding the determination of rights and liabilities of parties in court then judges are expected to treat every individual in the same way in accordance with the provisions of law. The judgement should be based on sound and rational opinions. The speakers shared their experience in maintaining neutrality in judicial process. The speakers then focused on interpretation of laws in the light of Constitutional values and referred to many judgments of the Supreme Court where the apex court mentioned courts' duty to uphold the Constitutional values. The speaker said that the essence of the Constitution governance is limited governmental power with effective administration. One of the main idea to be followed in a Constitutional democracy is strict adherence to the rule of law. The speakers referred to Section 113 of the Civil Procedure Code according to which a subordinate court can refer a case to High Court for opinion when there exists

a reasonable doubt regarding the question of law. The speakers discussed about the issues related to transparency and accountability in court proceedings, proper access to courts for protecting Constitutional and legal rights, user friendliness and enhancement of knowledge regarding the latest laws and judgments.

Session -04

ADR and Plea Bargaining

The Session began with introduction to alternative dispute resolution [ADR] system in India and the reasons for its incorporation as one of the means for effective administration of justice. There are several matters which do not need the assistance of court on account of being trivial in nature and in such situations ADR plays a crucial role along with the additional benefits of being economical, efficient and flexible. It also promotes trade and commerce, maintains peace and harmony between the parties and finally enhances the confidence and faith in the judiciary. The speakers explained various patterns in evolution of ADR and in India. The speaker discussed several benefits which ADR confers such as decrease in the quantum of pending suits and benefits for both the parties. The creative input required for implementation of ADR was emphasized by the speakers. The speakers referred to success of ADR system in other countries where substantial cases are settled through this mechanism. There are five forms of ADR namely Arbitration, conciliation, Lok Adalat, mediation, and finally the judicial settlement. The speakers then focused on various challenges in the implementation of ADR system in Indian judicial system.

The speakers emphasized strict adherence to “Doctrine of POS” i.e. identification of problems, generating options, and then reaching to a solution. The discussion went ahead with the query of a participant regarding determination of appropriate timing for bringing a case within the purview of ADR. The speakers gave various instances for considering appropriate timing such as at the time of hearing of interim application, framing of issues and before the recording of evidences. However the speakers emphasized that any time can be a good time for considering a case for ADR mechanism. The final part of the discussion was a detailed explanation of the factors which lead to the failure of such mechanism including lack of institutionalization, excessive interlocutory appeals and lack of committed and trained team of lawyers and judges. The speakers concluded by emphasizing that ADR system is not just for reducing the number of pending suits but for serving the interest of parties in best way in accordance with law.

Session-05

Managing the Docket: Court and Case Management

The discussion began with the question “What is Court Management” and the speakers discussed the same by mentioning the importance of leadership quality in a judge and the crucial task of identifying the people who can manage the court effectively. Excellent courts always assumed to have the efficient material resources but efficient human resources play a significant part in this regard. The speakers emphasized on the use of ICT tools for faster means of communication. The judges are expected to bring quality management in the court by assigning tasks according to staff’s skills and competency. The speakers explained functional attributes associated to the job of

a judge which includes maintenance of public trust and confidence in the administration of justice and gaining the confidence of court staff. Various issues related to the job of court manager and coordination with all stakeholders formed part of the discussion. Various strategies and methods of court managements were explained to the participants. The speakers focused on ways to ensure optimum utilization of court hours and use of the case management tools for faster disposal of cases. The session was concluded by deliberating on issues related to developing core competence of human resources, time management, simplification, decentralization, confronting the systematic challenges and performance related promotions.

Session-06

Courtroom Technology: Use of ICT in Courts

The discussion began with a visual presentation which depicted the necessity of teamwork, balance, time management, practice, consistency and attaining perfection. The speakers associated these attributes with the functioning of a courtroom in the context of ICT tools. The speakers focused on implementation of ICT tools in courts and ways to enhance capacity of stakeholders in this regard. The speakers discussed usage of mobile apps exclusively designed for judges which allows them to keep a track over the number of cases and ensuring hearings on dates fixed for them. The targets should be fixed in advance by the judges and then they should examine whether the resulted action has met with the planned action. The use of videoconferencing facility for witnesses was discussed for faster disposal of cases. The speakers also demonstrated the National Judicial Data Grid (NJDG) and explained its various features. The use of data regarding case progress in NJDG helps in observing the performance of courts in all corners of the country. The NJDG proved very effective in tracking the progress of cases which are pending in court for more than five years. The speakers discussed the process of making court processes paperless and shared their experience in this regard. The use of judgment database such as SCC Online was discussed and speakers emphasized that judges can save their time by developing online research skills.

Session-07

Judging Skills: Framing of Charges

The discussion began with the proposition that a mere imperfection in the framing of charges cannot be a ground for rejecting the conviction. The speakers explained the importance of framing of charges. It is essential because it gives an idea of nature of offence to the accused so that he can prepare for his defense. It also helps the prosecution in proving the grounds for offences against the accused. The framing of charges begins after assembling all the necessary ingredients of a particular offence. Framing of charges substantially relies on the facts of the case and it is to be done with all due care and caution. The court is not expected to be merely the mouthpiece of prosecution and the judges must see that the actions of the accused are related with the ingredients of an offence.

If the statement of the witness suggests that there is no sufficient material to frame the charges against the accused then the judge must again look at facts of the case. The stage of framing of charges is preceded by various other steps such as investigation, filing of charge sheet, taking the

cognizance of an offence, sending summons to the accused culminating in framing of charges and it is to be ensured that all these stages are entirely fair and transparent. The speaker shared their experiences with regard to various issues that trial court judges may confront in framing of charges and strategies to address those issues. Various queries were asked by participants regarding framing of charges and speakers responded to them accordingly. Lastly the speaker said that if there is no grave suspicion arising from the facts of a case then the judge can acquit the accused, but at the same time such decision should be reached upon only after taking into consideration of all the facts and evidences produced before the court.

Session-08

Judging Skills: Art, Craft and Science of Drafting Judgment

The discussion began with defining what a judgement is. The speakers said that a judgment determines the rights and liabilities of parties in a suit and drafting of a judgment begins with thorough analysis of documents and evidences produced during the trial of the case. Drafting of judgment requires taking out the gist of the pleadings and then determining interest of the parties in a suit. First requirement is the clear narration of facts, cause of action, and then the arguments. A judgment must answer the following questions i.e. what, why, when, how, where and who. After the completion of this stage the contention of parties has to be taken into consideration and how the laws pertaining to those facts and evidences are to be interpreted. Specific reasons must be given for reaching upon a particular conclusion and the explanation must be rational. The speakers emphasized that while drafting of a judgment two factors are to be kept in mind i.e. the purpose of writing the judgment, which must involve clarity of thoughts and explanation and communication of decision to the parties. A decision not accompanied by a rational explanation cannot be considered to be binding. Trivial facts should be avoided. The decision must rest upon the principles and procedures laid down in law. Language of the judgment cannot be derogatory in any sense and the judge should proof read his judgment and revise the same again and again in order to avoid any kind of discrepancy in the judgment. The operative portions of the judgment must be self-explanatory and self-sufficient. The speakers said that manner of writing judgment can be classified into three categories i.e. philosophical way of drafting, scientific way of drafting, and lastly advocate's way of drafting. The judgment begins with conceptualization of entire case and then involves articulation of facts. The submission of the parties must be kept as brief as possible. The speakers concluded by saying that judges should be just and fair while writing and must adhere to the principles of law.

Session-09

Art of Hearing: Promoting Rational Discourse in the Courtroom

The discussion began discussing with basic mannerism which a judge must adopt in his court. The judges are expected to remain neutral and impartial and they must avoid any kind of conflict with the counsels during the proceedings. The conduct and control of a courtroom largely depends upon the personality of the judge. The judge must take control of the proceedings going on in the courtroom. The speaker referred to Section 165 of the Indian Evidence Act where a judge in order to discover or to obtain the proper proof of the relevant facts, may ask any question relevant to the

facts. The speakers discussed various ways for rational discourse in courtroom. The magistrate need to take care of the fact that the facts and evidences are not repetitive in nature and the magistrate is expected to be victim sensitive and respectful to both the parties. At the stage of arguments the magistrate must ensure that the counsels are not repetitive in their examination and the hearing can be moderated by the judges towards this end. The counsel as well as the parties must get the impression that the judge is taking sufficient interest in the arguments. The session further continued with providing clarification to queries of participants regarding managing the court proceedings.

Session 10

Law relating to Cyber Crimes: Advances and Bottlenecks

The speaker started the discourse in the session by focusing upon the emerging challenges due to increase in incidents of cyber-crimes. The speaker highlighted the recent ransomware attacks and stated that these are increasingly being used to target government installations to extort large amount of money from governments. Furthermore, it was stated the social media platforms are being increasingly used to commit cybercrimes. These crimes are mostly committed by novices and therefore it is easier for the law enforcement agencies to catch the perpetrators by following the evidentiary trail. The speaker also discussed about certain email services which does not disclose the identity of the sender of the electronic mail to any authority which are increasingly being used for committing crimes.

Session 11

Electronic Evidence: Collection, Preservation and Appreciation

It was opined that authenticity, integrity and non- repudiation of electronic evidence are important for appreciation. It was stated that electronic evidence can be easily tampered or manipulated and therefore it is imperative that such evidence should be closely scrutinized for authenticity. The participants were advised to be cautious and alert while appreciating electronic evidence. Thereafter, the speaker demonstrated a method whereby spoofed messages can be sent through Whatsapp. He focused upon the usage of Call Data Records (CDR) in crime investigation and stated that it is the responsibility of the telecom operator to maintain the CDR data for 10 years. The speaker also discussed several judgments relating to appreciation of electronic evidence and highlighted the various requirements of the certificate under Section 65B of the Indian Evidence Act, 1872. The speaker also stated that there should be proper handling of storage medium containing electronic evidence and it is integral that proper chain of custody is maintained.

Session 12

Forensic Evidence in Civil and Criminal Trials

The speaker initiated the discourse in the session by focusing upon the Locard's Principle of Exchange and definition of forensic science. It was stated that forensic science includes forensic document analysis, forensic toxicology, forensic narcotics, forensic serology, forensic ballistics, forensic entomology and forensic DNA analysis. Thereafter, the speaker focused upon Questioned Document Examination (QDE) and stated that it includes handwriting analysis, signature analysis

and digital written document analysis. It was stated that the questioned document examination is undertaken to ascertain alteration, obliteration and counterfeit documents. The speaker also explained various principles of handwriting and highlighted different types of handwriting forgeries. It was opined that the judge should ascertain the competency of a handwriting analyst before accepting his testimony as an expert witness. The speaker focused on fingerprint examination and explained that the pattern of ridges and furrows in the fingerprints are analyzed during the course of fingerprint examination. The session also included discussion on use of DNA in solving crime and the benefits of using DNA as an evidence in justice administration. Thereafter the speaker focused upon the shortcomings in use of forensic evidence in India which includes improper collection, improper preservation, non-collection of evidence, non-maintenance of chain of custody and delayed dispatch for analysis. It was stated that delay in examination by the expert and failure in following the prescribed guidelines during testing adversely affects the forensic evidence.

Session 13

Role of Magistrates at First Production of Arrested Person

The speaker initiated the discourse in the session by focusing upon the duties of the magistrate on first production of arrested person. It was stated that it is the responsibility of the magistrate to protect the constitutional and statutory rights of an arrested individual. The magistrate has an integral role in every stage of the criminal trial and hence it is imperative that he should take decisions with utmost care and caution. The magistrate should verify that the arrest memo has been prepared properly and it has been attested by a witness at the time of production of the arrested individual. The magistrate is also required to peruse and scrutinize the case diary at the time of production of arrested person for remand. Moreover, it is the duty of the magistrate to inform the accused about his various rights at production. The speaker discussed that the magistrate should record reasons for authorizing remand in police custody and failure to record it would result in disciplinary action. Lastly, the speaker stated the arrested individual can be sent for medical examination depending upon the circumstances of the case.

Session 14

Fair Trial: Fair Processes

It was stated that a judge should take care that all procedural requirements are followed during trial so that it does not get vitiated due to non-adherence to procedures provided under the Code. Furthermore, it was stated that the judges should strive to finish the trial as expeditiously as possible. The speaker advised the participant judges to provide sufficient opportunity to both the parties and to ensure that their actions do not create an impression they are biased towards any particular side. It was stated that to promote fairness criminal cases are sometimes required to be transferred from one state to another. It was stated that the judge should record the evidence impartially and in an unbiased manner. It was suggested that the judge should record the demeanor of the witness during recording of evidence. It was also stated that adherence to procedural requirements and protection of rights of accused are integral to criminal justice administration.

Session 15

Role of Courts in Securing Gender Justice

It was stated that gender equality is required for securing gender justice. There should be substantive equality and not formal equality since one yardstick cannot be applied to all. It was stated that courts often fail to recognize the value addition of housewife to a household while providing compensation to accident victims. The speaker also focused upon the resistance to entry of women in legal profession in India and highlighted the struggle of Cornelia Sorabji in gaining entry into the legal profession. It was stated that judges should address discrimination against women and should undertake social context adjudication while deciding cases. The speaker also highlighted certain gender stereotypes and prejudices and stated that these stereotypes have no role in contemporary society. It was further stated that an individual does not have to follow any societal defined role and the individual has the prerogative to undertake any occupation irrespective of their gender. The participant judges were advised to create an atmosphere in the court so women coming to the court either as witness or accused do not feel intimidated. The speaker also highlighted various international conventions and constitutional provisions providing for various rights and equality for women. The landmark judgments of *Air India V Nargesh Meerza* [(1981) 4 SCC 335], *Githa Hariharan v. Reserve Bank of India* [(1999) 2 SCC 228], *Vishaka v. State of Rajasthan* [(1997) 6 SCC 241] and *Indian Young Lawyers Association v State of Kerala* [2018 (13) SCALE 75] were also discussed during the course of the session.

Session 16

Law of Precedents: Identification and Application of Ratio Decidendi

The speaker commenced the session by discussing development of the doctrine of precedent. The speaker highlighted the necessity of precedent which includes bringing uniformity, consistency, and predictability and to avoid conflicting decisions. It was stated that there are two different type of precedents - i.e. binding and persuasive precedents. The speaker discussed Article 141 of the Constitution and the binding nature of precedents of Supreme Court on lower courts. The speaker also highlighted the exceptions to the rule of precedent. Thereafter the speaker elucidated upon the doctrines of *sub silentio* and *per incurium*. The speaker also discussed the issue of conflict between judgments of coordinate benches of the court. The speaker elaborated upon different methods to determine the ratio of a judgment and highlighted the method by Arthur Goodhart to determine ratio of a judgment.

Session 17

Occupational Stress in Judges: Identification and Consequences of Stress

The speaker initiated the discussion by delving upon the concept of stress. She stated that stress affects the body, mind, emotions and behavior of any individual. It was also stated that performance and stress are correlated and optimum stress results in optimum performance by an individual. The speaker highlighted two different kind of personalities i.e. Type A and Type B and related characteristics of the personality. Thereafter, the speaker stated the judges are mainly stressed due to their professional commitments. The participants discussed various reasons by which they suffer from stress i.e. pending work; control issues; high court not satisfied with

performance; maintaining work life balance and maintaining a sustained approach to achieve goals. The speaker highlighted that the judges may suffer stress from other reasons like pressure from superiors; media glare; compassion fatigue; poor infrastructure; unruly public etc. It was stated that the judges suffer from vicarious trauma because they are directly associated with traumatized individuals. The participant judges were suggested various methods for managing stress (short term, long term, preventive measures, palliative measures) and various other coping style and strategies. It was stated that they should undertake proper diet and exercise regularly. It was suggested that the judges should maintain their health since it is also affected by stress. It was also suggested that guided imagery could be used by the participants for relaxing.

Session 18

Managing Judicial Stress: Institutional Strategies and Techniques

The speaker initiated the session by discussing various coping strategies used by the participants to reduce their stress. He advised them to maintain a healthy lifestyle which would help them immensely in reducing stress. He suggested that the judges should exercise regularly, have optimum sleep and meditate to alleviate stress. The participants were also advised not to harbour feelings of resentment because that adversely affects their health and mental peace. The speaker also opined that self-care is important since it directly impacts performance and working capacity. Furthermore, the participants were advised to maintain a balance between their emotions and decisions since their emotions should not be reflected in the judgments of the court. However, judges should also not shy away from seeking help if their condition warrant such an action. He stated that the judges should smile while providing relief to litigants since it will improve the atmosphere in the court. He also opined that the participants should enjoy small moments of happiness since it would help them in reducing stress.