



*THE JUDGE & JUSTICE:  
UNDERSTANDING THE  
CONTEMPORARY OUTLOOK*

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*-BY JUSTICE S.B. SARAF, JUDGE,  
HON`BLE HIGH COURT OF CALCUTTA.*

# AGENDA



*Session 1:*

*Elements of Judicial  
Behaviour*

# JUDICIAL ETHICS

## Judicial Aloofness and Detachment

*“...the judge best serves the administration of justice by preserving the judicial calm and the judicial demeanour, aloof and detached from the arena of contention.” - Lord Birkett*

## Integrity and Honesty

*“The power of Judiciary lies, not in deciding cases, not in imposing sentences, not in punishing for contempt, but in the trust, faith and confidence of the common man.” - John Marshall*

## Judicial Independence

*“Independence is not the freedom of Judges to do what they like. It is the independence of judicial thought. It is the freedom from interference and pressures which provides the judicial atmosphere where he can work with absolute commitment to the cause of justice and constitutional values. It is also the discipline in life, habits and outlook that enables a Judge to be impartial.” - Union of India vs. R. Gandhi, Madras Bar Association*

## Humility

*“...his general attitude towards law, the habits of mind that he has formed or is capable of unforming, his capacity for detachment, his temperament or training for putting his passion behind his judgment instead of in front of it. The attitudes and qualities I am groping to characterise are ingredients of what compendiously might be called dominating humility.” - J.Felix Frankfurter*

## Impartiality

*“When a Judge puts on his robes, he puts off his relationships and friendships. He becomes a person without a relative, without a friend, without an acquaintance. In short, he becomes impartial.” - Thomas Fuller*

# JUDICIAL ETHICS

- A creative Judge must also exercise Judicial Restraint. In the words of Justice Cardozo:-

*“The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to ‘the primordial necessity of order in the social life’. Wide enough in all conscience is the field of discretion that remains.”*

# JUDICIAL ETHICS

- The Bangalore Principles of Judicial Conduct, 2002 enumerates the following:-

Value 1

- Independence

Value 2

- Impartiality

Value 3

- Integrity

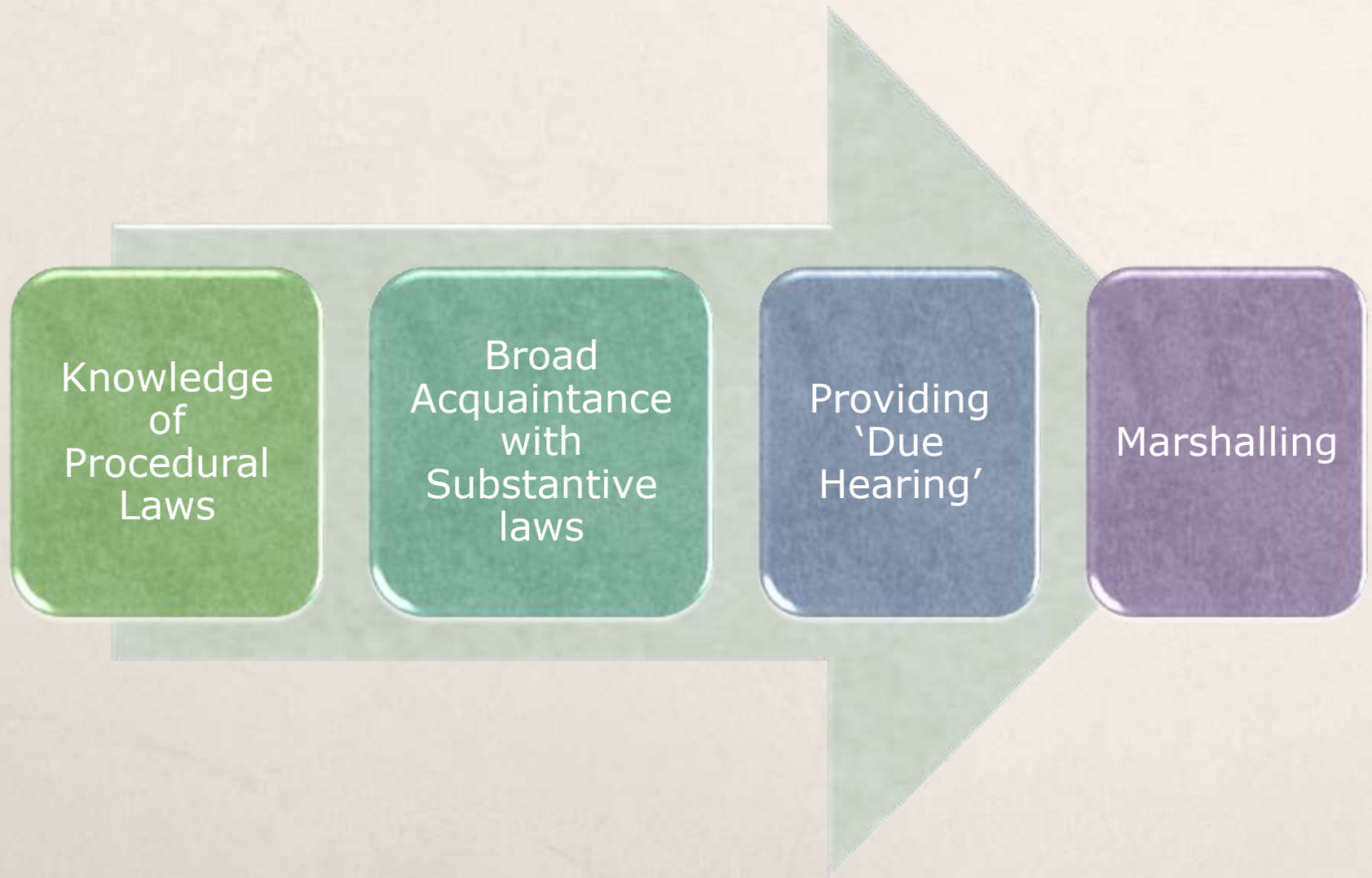
*Session 2:*

# *Judging Skills*

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*-Art, Craft and Skills of drafting Judgments*

# JUDICIAL SKILLS



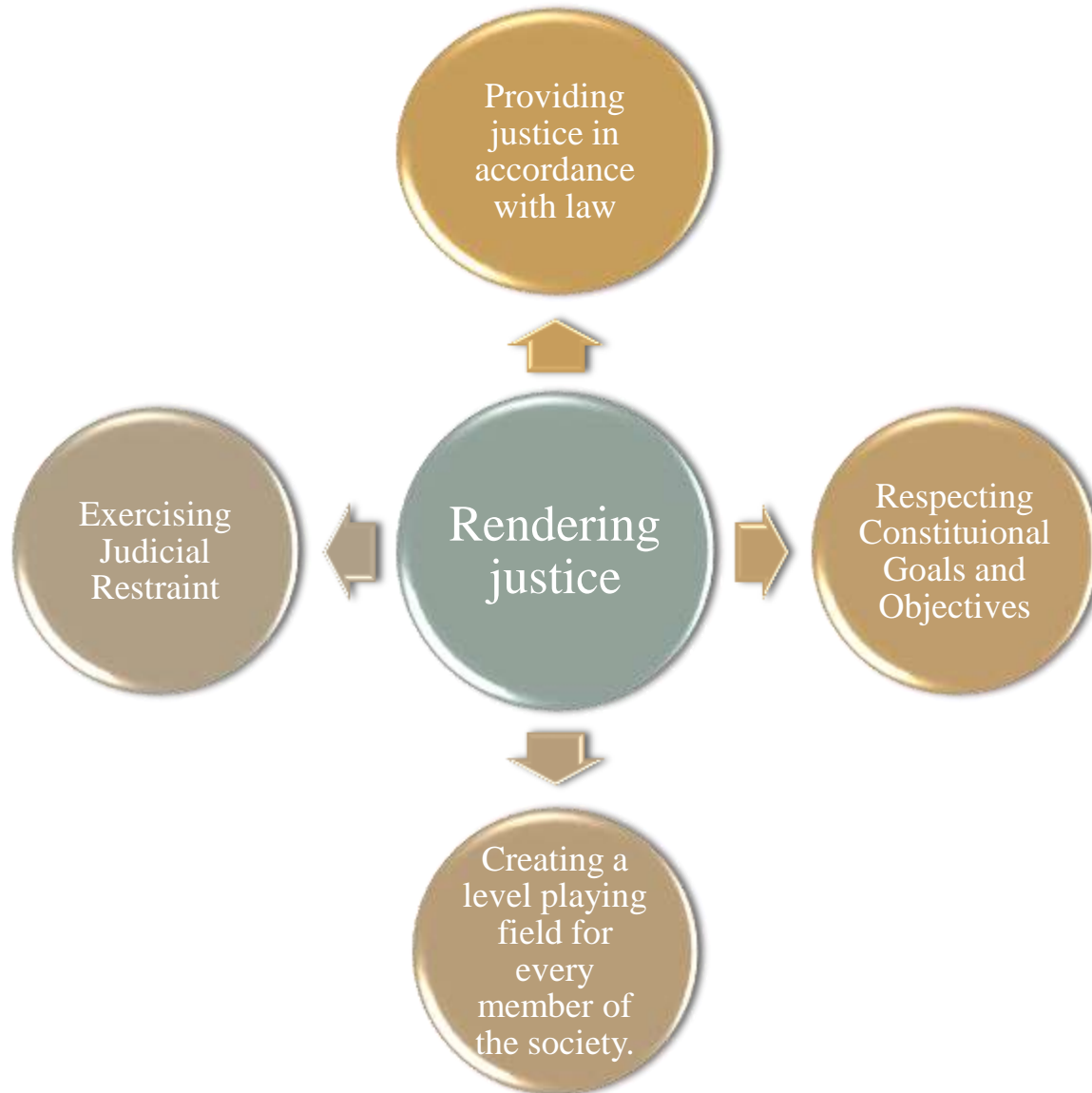


# RENDERING JUDGMENT

- What is rendering of a judgment?
- Determining the rights and obligations of the parties, or the guilt or innocence of an accused, and in most of the cases, the fate of persons

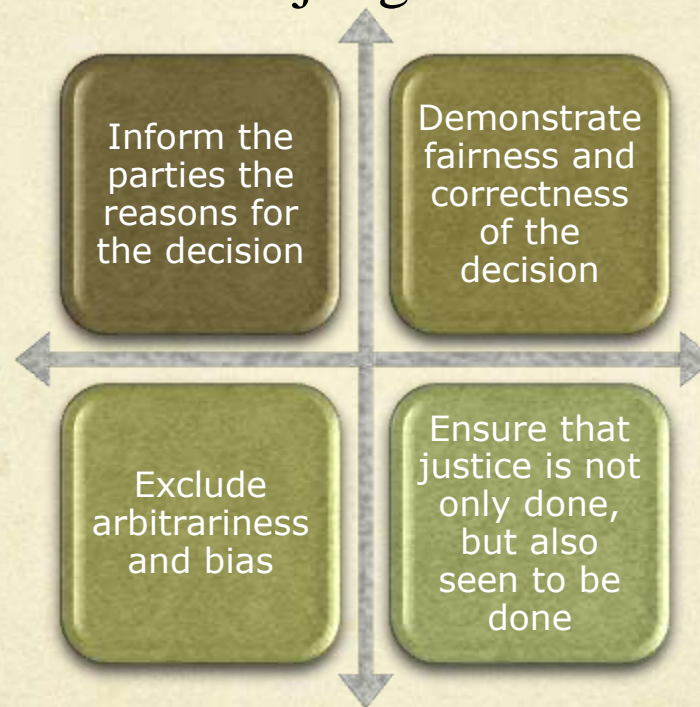


# RENDERING JUSTICE



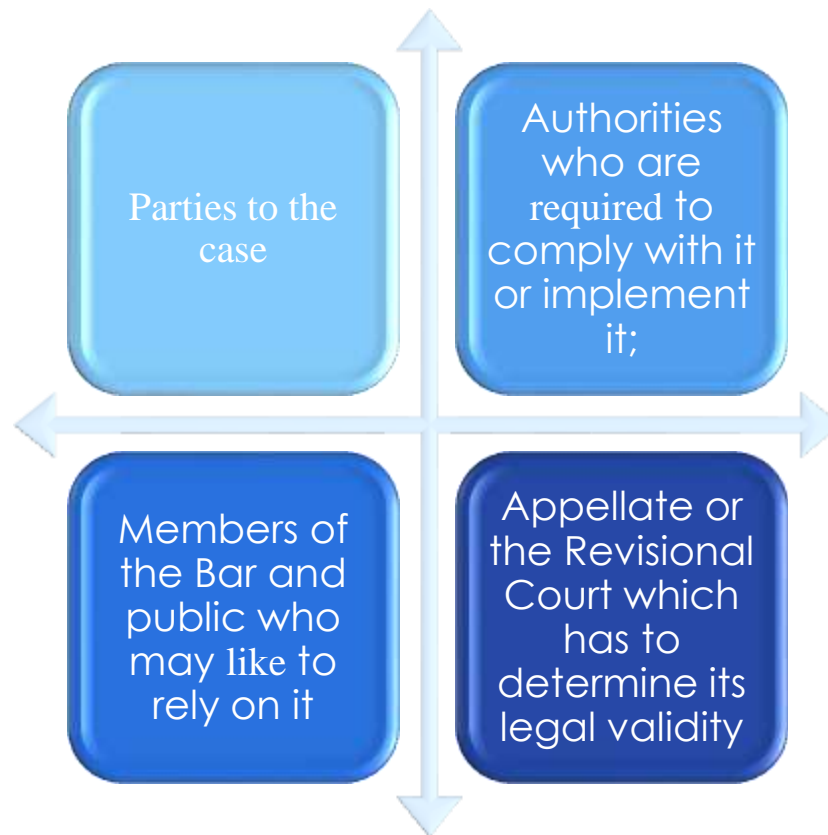
# THE ART OF JUDGMENT WRITING

The main object of a reasoned judgment is to:-



A good judgment should be self-contained and specific apart from being fair, reasonable and correct on facts and law

The judgment will have to be understood by the:-



# BASICS RULES FOR JUDGMENT WRITING

Reasoning should be intelligible and logical

A judge cannot use his personal knowledge of facts in a judgment

Use of complex sentences should be avoided

In civil matters, the judgment should not travel beyond the pleadings or the issues

The findings and directions should be specific and precise

While exercising appellate or revisional jurisdiction, unnecessary criticism of the trial court's conduct, judgment or reasoning should be avoided

# JUDGMENTS UNDER CIVIL LAW

## Judgments under Civil Law

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### **Section 2(9) CPC**

Defines “judgment” as the statement given by the Judge on the grounds of a decree or order

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### **Order 20 Rule 4(2)**

Requires “judgments” to contain a concise statement of the case, points for determination, the decision thereon, and the reasons for such decision

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### **Order 20 Rule 5**

Enumerates that where issues have been framed, the Court shall state its findings or decision, with the reasons thereof, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision *of the suit*

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### **Order 20 Rule 4(1)**

Makes it clear that in a summary proceeding, the “judgment” contains the points for determination and the decision therefore

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# JUDGMENTS UNDER CRIMINAL LAW

## Judgments under Criminal law



Section 354 of CrPC requires that every judgment shall contain points for determination, the decision thereon and the reasons for the decision.



It also requires that the judgment should specify the offence for which the accused is being convicted and the section under which he is being convicted and the punishment to which he is sentenced.



The judgment should set out the particulars of the offence, the prosecution case, the plea of the accused, the evidence of the prosecution witness, the case of the defence, discussion of the evidence and conclusions.



The judgment should reveal whether the evidence shows proof beyond reasonable doubt.



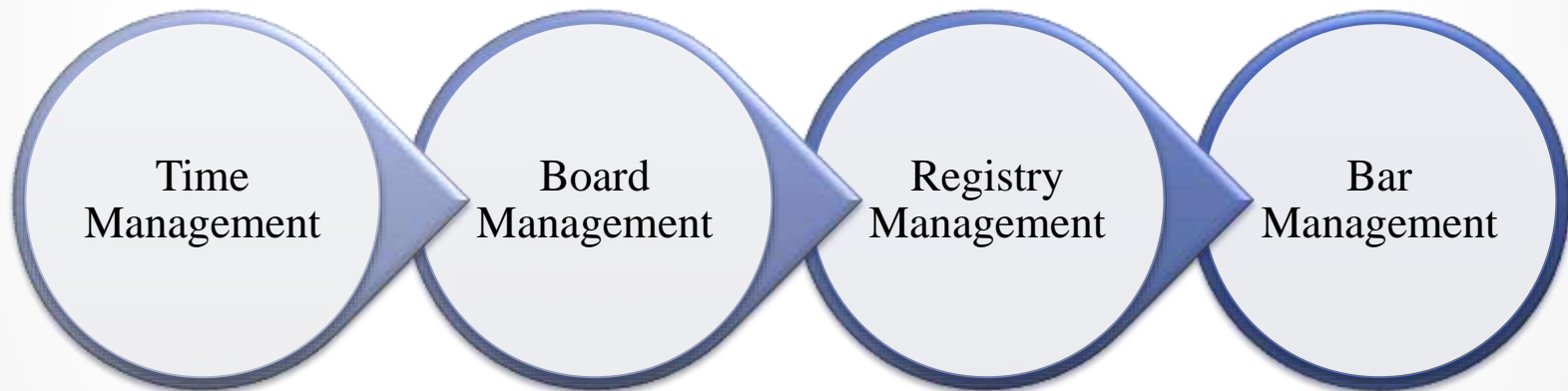
*Sessions 3:*  
*Judge: The Master of the Court*



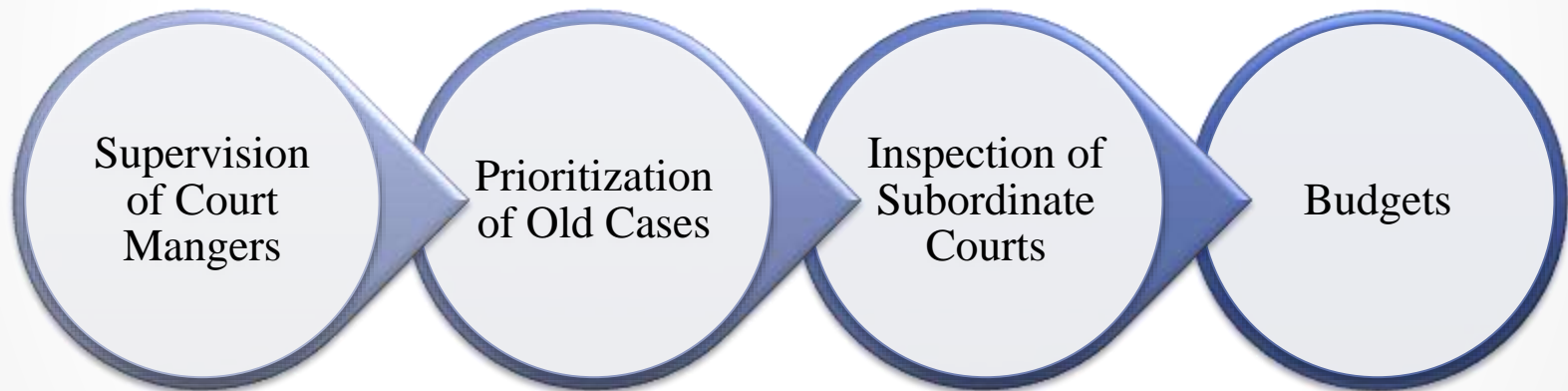
*-Court Management & Case Management*

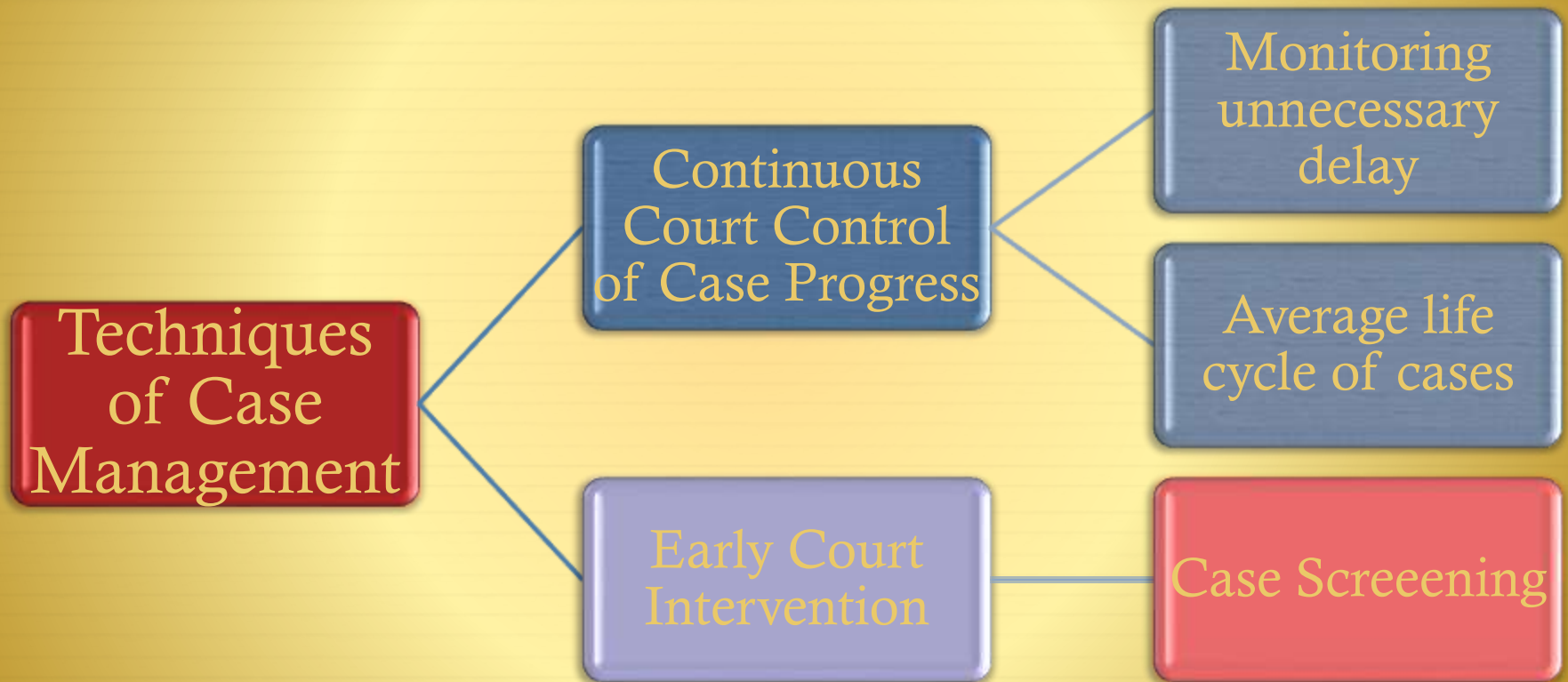


# ADMINISTRATIVE SKILLS



# ADMINISTRATIVE SKILLS





# CONDUCTING COURT PROCEEDINGS

Applying different approach to different types of cases

Posing questions for clarifying doubts

Providing a patient hearing

Being cautious while granting interim orders

Ensuring uniformity and consistency

Dealing with Civil matters

Dealing with Criminal matters

# NATIONAL JUDICIAL DATA GRID

- National Judicial Data Grid (an initiative under National e-Governance Plain) which acts as a storage space for case records across the country, was established with the objective of ensuring transparency and inter-operability, so that cases can flow without any hindrance digitally from the District Court to High Courts and from High Courts to Supreme Court and consequently, eliminate duplicity. Over the years, it has also become an important tool Case Management for Judges.

# RECOMMENDATIONS

- *Attempt to be made to dictate most of the orders in Court including smaller judgments.*
- *Before starting a judgment that has been reserved, points may be noted by the Judge as also the manner in which he wishes to proceed with the drafting of the judgments. For example: you decide on writing the facts first, placing the issues, thereafter deciding which issues are to be covered together etc.*
- *Focus should also be there in criminal matters for giving specific reasons for the nature of the sentences.*
- *While the hearings are going on in a matter, the Judge should try and have all legal and factual aspects clarified through the counsel appearing in the matter.*
- *It is to be noted that the drafting of a judgment starts from the very initial stage of trial and the Judge should be conscious of the same since any lacuna in the trial stage could lead to defects in the judgment.*

# RECOMMENDATIONS

- *The Hon`ble Supreme Court in the case of Ramrameshwari Devi vs. Nirmala Devi (2011) 8 SCC 249 while contemplating upon the methodology to curb delay in civil litigation, laid down several guidelines which can be followed by trial Courts while dealing with Civil trials.*
- *Accordingly, the Supreme Court in the case of Hussain & anr. vs. Union of India (2017) 5 SCC 702 had also issued certain directions for speedy trial of the accused and timely disposal of criminal litigations.*
- *Attempt should be made to deal with all the judgments cited by the parties that are relevant to the issues involved. Care should also be taken to distinguish/rely on judgments with proper reasons.*
- *A Judge must also ideally devote a reasonable amount of time to ensure that his judgments are appropriately formatted and do not suffer from any grammatical and/or typographical errors.*

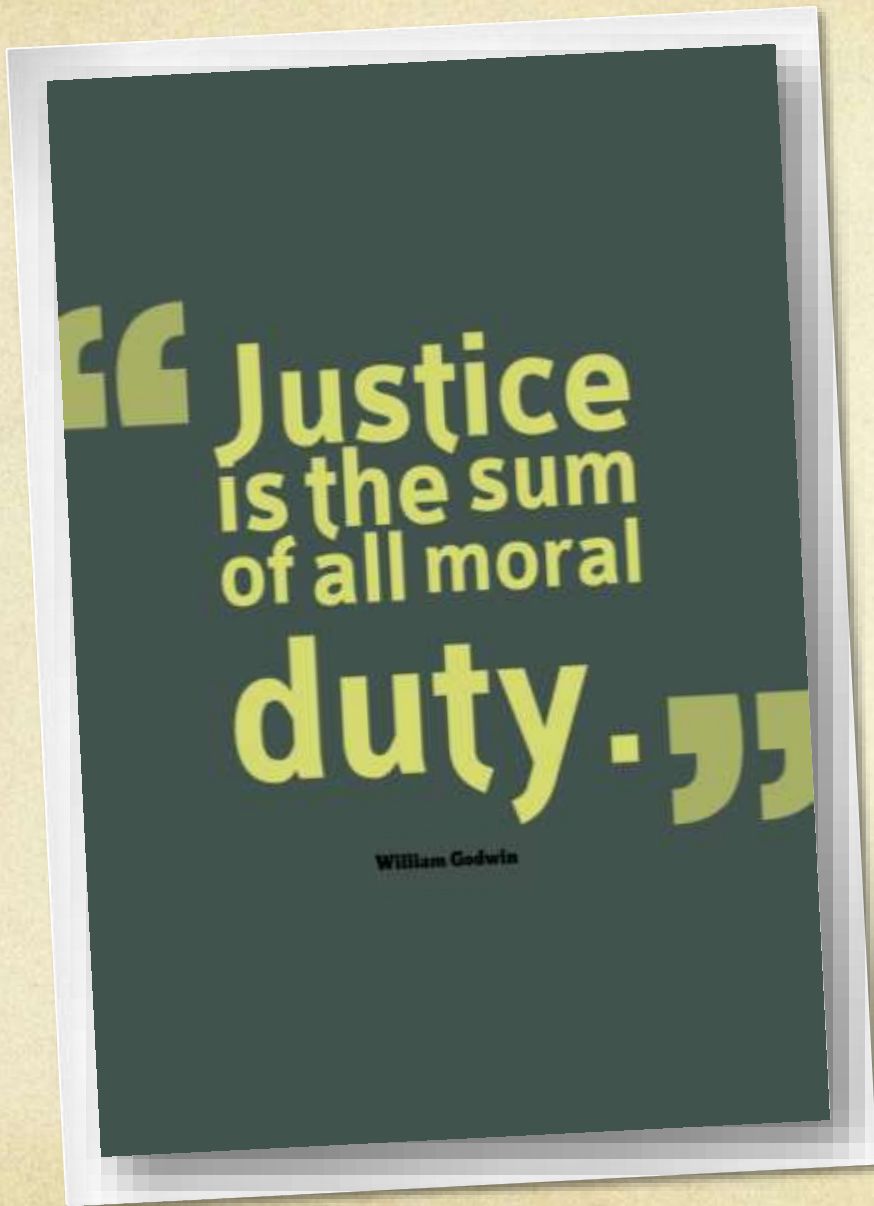
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THANK YOU!!