

NATIONAL JUDICIAL ACADEMY



Reference Material for P-1230

**Workshop on Criminal Trials in Serious offences
(28th – 29th November, 2020)**

**Program Report
P-1230**

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Objective of the Workshop

The objective of the workshop is to provide a platform for participant judges to deliberate upon, share experiences, insights on contemporary themes like Jurisprudence and Trial Process in Serious offences; Preparation of Charge in Serious Offences; Appreciation of Evidence; and Witness Protection & Victim Compensation. The program aims to facilitate the sharing of skills towards better, speedier, and quality adjudication in serious offences. The deliberations during the workshop seek to focus on the imperatives of adhering to criminal law norms while construing applying and executing procedural mandates applicable to causes coming before their courts.

Justice Navin Sinha, Justice Ashutosh Kumar, Justice P.N. Prakash, Justice A.M. Thipsay, Justice Sanjib Banerjee, Justice Nagamuthu, Justice Deepak Gupta, Justice Kotiswar Singh were guided the sessions.

Workshop on Criminal Trials in Serious offences (28th – 29th November, 2020)

The National Judicial Academy conducted a two-day online workshop on criminal trials in serious offences on 28th & 29th November, 2020, which was attended by 43 participants including District & Sessions Judges from different jurisdictions nominated by respective High Courts. The workshop provided a forum to deliberate upon the imperatives of adhering to criminal law norms and procedural mandates applicable to causes coming before criminal courts, with a panel of distinguished resource persons from the judicial branch and other relevant domain experts. The workshop facilitated sharing of skills towards better, speedier and quality adjudication in serious offences. The deliberations threw light upon the structure of existing framework pertaining to adjudication of serious offences, thereby, identifying new

challenges while conducting trial of serious offences and adopting suitable changes to strengthen the criminal justice system. The workshop was conceived with a view to share knowledge on intricacies of sessions trial in cases of serious nature involving complex trial process. The broad themes deliberated upon during the course of workshop included Jurisprudence and Trial Process in Serious offences; Techniques and preparation of Charge in Serious offences; Appreciation of Evidence; and Witness protection and Victim Compensation.

(Day 1)

Session 1

Jurisprudence and Trial Process in Serious Offences

Justice Navin Sinha, Justice Ashutosh Kumar

On the theme *Jurisprudence and Trial Process in Serious Offences*, speakers deliberated upon the procedural requirements and challenges in trial of serious offences were deliberated upon. It was suggested that magistrate must take cognizance of serious offences once the FIR is lodged and delve into evidence by analyzing it. It was highlighted that delay such as witness turning hostile, intimidating witnesses etc. creates problems in trial of serious offences. Participant judges were advised to fix dates and control proceedings for continuous trial and to refrain from frequent adjournments unless for compelling reasons. It was pointed out that judges must be alert and should analyze behavior of the accused. Sentencing principles, concept of rule of law, presumed innocence and due process were some areas discussed at length. The *O.J. Simpson trial (People of the State of California v. Orenthal James Simpson, 1994)* was referred to highlight the intricacies of recording and preserving evidence. The *Menendez Brothers murder trial* was highlighted to elaborate upon the social connotation of crime and the principles of sentencing. The summation of Clarence Darrow in the case of *People v. Henry Sweet 1926* was also discussed, highlighting that judges must be calm and swift in deciding a

case. Judges were suggested to be robust in their approach and restrict advocates from placing irrelevant evidence. It was emphasized that the order sheet is very important where analytical skills of a judge plays a vital role in writing reasoned orders. Writings of some famous authors and jurors like Prof. J.H. Wigmore on Indian Evidence Act, Lord Denning, Victor Hugo and Robert Fletcher were referred during the discourse.

Session 2

Techniques and Preparation of Charge in Serious Offences

Justice P.N. Prakash, Justice A.M. Thipsay

On *Techniques and Preparation of Charge in Serious Offences*, the session threw light on framing appropriate charges and ensuring adequate defence for the defendant in trial of serious offences. The procedural requirements of relevant provisions of Criminal Procedure Code, 1973 (CrPC) and Indian Evidence Act, 1872 were discussed at length. It was highlighted that the application of Sec(s) 34-37 under IPC, 1860 may be invoked by the court at any stage of the trial proceedings prior to judgment to change others as co-accused. It was suggested that if proper charges are framed a judge will be able to solve fifty percent of the case by strictly adhering to Sec. 225 226 and 227 of the CrPC. It was pointed out that judge must analyse and frame all charges properly. It was mentioned that due to the failure of prosecutors, problems at the stage of framing charges generally arise. It was suggested that judge must discard the material which is not admissible at the very initial stage and separate the material which cannot be taken as evidence. Relevant provisions relating to charge in Sec. 211 to 215 of CrPC including basic principles were referred and it was stated that, for every charge there should be a specific offence. It was emphasized that charge plays an important role in criminal jurisprudence because an accused must be made aware of what he/she has been accused of. An error in framing charge does not *ipso facto* vitiate the trial, but if prejudice is caused then it

will vitiate. Therefore, it was suggested that framing of charges should be appropriate and concrete.

(Day 2)

Session 3

Appreciation of Evidence

Speakers: Justice Sanjib Banerjee and Justice M. Nagamuthu

On *Appreciation of Evidence*, the change in court system, from physical mode to virtual hearing mode was highlighted. Deliberations were focused on two issues i.e. appreciation of evidence and investigation in India. Emphasis was placed on the evidentiary standards of 'proof beyond reasonable doubt'. Challenges faced by judges in adjudication of cases where the investigation is either incomplete and improper were discussed. For opinion in case involving issues relating to ballistics, DNA profiling etc. expert opinion must be sought. It was opined that judges often have to rely on circumstantial evidence because of lacunas in the investigation. It was stated that a case can be proved by direct evidence, indirect evidence, circumstantial evidence, and eyewitness or by legal presumptions. An English adage 'A chain is as good as its weakest link' was cited to emphasize that the chain of circumstantial evidence must be complete to form a sequence so strong that it must prove the finding of culpability on part of the accused. Sections 3, 4 and 5 of the Indian Evidence Act, 1872 which helps a judge to write a scientifically strong judgment were highlighted during the discourse.

Session 4

Witness Protection and Victim Compensation **Speakers: Justice Deepak Gupta and Justice N. Kotiswar Singh**

On the theme *Witness Protection and Victim Compensation*, it was asserted that, in criminal jurisprudence until recently compensation was not awarded as a matter of right. The proactive role played by the High Court and Supreme Court in the development of compensatory jurisprudence was highlighted as an evolving jurisprudence on the subject matter. In *Nipun Saxena v. Union of India*, the Supreme Court opined that NALSA should constitute a committee to prepare model rules for victim compensation for sexual offences and for victims of acid attacks. The concept of and modalities for providing interim compensation were discussed. Challenges and measures were suggested for effective implementation of the scheme. It was stated that this scheme is a step in the right direction in ensuring the confidence of witnesses in trusting the criminal justice system. Victimology was emphasized on as the means to instill confidence in the criminal justice system. It was opined that witnesses are worst treated in our system. It was stated that witness is the only person who has no axe to grind in a case, judges, court staff, lawyers and police are paid but only a witness is a *pro bono*. Witness protection does not merely mean protection from violence, rather it means provision of a safe space and an opportunity to speak. Miscarriage of justice due to issues faced by the court such as hostile witness, reluctance of witnesses to appear in court etc. was discussed. The words of Jeremy Bentham, "Witnesses are eyes and ears of justice" was referred.