

# NATIONAL JUDICIAL ACADEMY



## NATIONAL CONFERENCE ON SENTENCING, PROBATION AND VICTIM COMPENSATION [P-1381]

20<sup>TH</sup> & 21<sup>ST</sup> JANUARY, 2024

### PROGRAMME REPORT

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## Overview of the Seminar

The National Judicial Academy organized a two day National Conference on Sentencing, Probation and Victim Compensation on 20<sup>th</sup> & 21<sup>st</sup> January, 2024. The conference aimed to draw attention of **judges from district judiciary** towards issues and challenges in sentencing practice, victim compensation and disposal of cases by resorting to triple method of plea bargaining, compounding of offences and the Probation of Offenders Act, 1958 as held by the Apex Court in ***Re: Policy Strategy for Grant of Bail, 2022 SCC OnLine SC 1487***. The conference involved discussion on approaches towards sentencing policy and practice while enhancing the skills of judges by providing theoretical perspectives and deliberating on pragmatic requirements. The conference facilitated participant judges to comprehend the substantive and procedural aspects relating to probation of offenders in upholding the edifice of administration of justice. The conference also aimed to acquaint participant judges with the legislative mandate of compounding of offences and effective utilisation of compounding in criminal cases. The evolving horizons and general principle of plea bargaining were also discussed. The scheme of victim compensation and application of mind while recording reasons for awarding or refusing compensation also formed part of the discourse.

### Session 1: Fair Trial

**Speakers: Justice Ujjal Bhuyan & Justice P.N. Prakash**

The session was commenced with discussion on relevance of the Constitution for district judiciary. It was stated that the Constitution is the grund norm and all laws emanates from the Constitution. The fair trial is a constitutional requirement and is traceable to the Criminal Procedure Code. The importance of public confidence on courts was highlighted and the importance of right of hearing was explained. It was stated that people have confidence in the Indian justice delivery system because of its fairness of procedures which prevent conviction of innocent persons. Various fair trial rights were discussed and Sections 311, 313 and 319 of the Criminal Procedure Code were referred. Then discussion focussed on the right to legal aid and judgments *Tara Singh vs. State of Punjab* 1951 SCR 729, *Madhav Hayawadanrao Hoskot vs. State of Maharashtra* 1979 SCR (1) 192, *Suk Das vs Union Territory of Arunachal Pradesh* 1986 SCR (1) 590 and *Md. Ajmal Amir Kasab vs State of Maharashtra* AIR 2012 SC 3565 were discussed. The prospective effect of the criminal law was discussed and Article 20 (3) of the Constitution was referred. The impact of the judgment *Maneka Gandhi vs. Union of India*, AIR (1978) SC 597 on fair trial rights was highlighted.

The historical background of the principles of fair trial in England was discussed and it was stated that these principles were enunciated to prevent the tyranny of State on individuals. The regulations of the British Empire in Madras, Bombay and Calcutta courts were discussed. The Charter Act, 1833 and the codification of criminal laws and procedures by British rulers were highlighted. The progressive spirit of criminal procedure was highlighted and the inadmissibility of confession to police officer was discussed. The formation of evidence laws and role of judges in trial was deliberated upon. Section 165 of the Indian Evidence Act and Section 91, 311, 312, 311A of the Criminal Procedure Code were referred in this regard. The underlying reasons behind protection of accused was discussed and it was opined that 90% of accused belong to poor sections of society and they need protection from unfairness by the court. Trial by jury and trial by assessors were discussed and meaning of Sessions trial was explained. The abolition of jury trial in India and the enhanced role of judges in determination of facts were explained. Section 225 of the Criminal Procedure Code and the role of magistrate in discharging the accused against whom no evidence was found were discussed. The judgment

*Vinod Kumar vs. State of Punjab* [Criminal Appeal No. 554 OF 2012] and the issues related to examination in-chief and cross examination were deliberated upon.

**Session 2: The Triple Method of Plea Bargain, Compounding and Probation**  
**Speakers: Justice Ujjal Bhuyan, Justice P.N. Prakash & Mr. E. V. Chandru @ E. Chandrasekaran**

The session commenced with discussing suggestions proposed in the judgement *In Re: Policy Strategy for Grant of Bail, 2022 SCC OnLine SC 1487*. The concern was expressed on courts not granting bail to accused persons in deserving matters. The data of the National Crime Record Bureau on high number of under trial prisoners was shared and concern was expressed on delay in investigation and prosecution of cases which prevent timely completion of trial. The historical background behind the system of probation and relevance of probation for prison reforms were discussed. Various strategies to achieve restorative justice were highlighted. Sections 360, 360 (10) & 361 of Cr.P.C. and Section 19 of the Probation of Offenders Act were referred. The maxim *Generalis Specialibus non Derogant* was discussed. The importance of Sections 3 & 4 of the Probation of Offenders Act was highlighted.

Thereafter various strategies to effectively implement probation system in the State of Tamil Nadu were shared. It was stated that there is a system of remanding first time offenders in the age group of 18 – 24 years apprehended for petty offences in one sub prison where adequate measures are taken to rehabilitate them through meditation, spiritual teachings and education in remand period. For bail to such offenders the surety of parents are ordered rather than putting difficult conditions while granting bail by invoking discretion under Sections 437 & 439, Cr.P.C.. Such practices are being extended to all courts and prisons in Tamil Nadu. The low number of prisoners in prisons in Tamil Nadu was highlighted and it was opined that criminality is very low in the Indian society.

The judgment *Pratap Singh vs. State of Jharkhand* 2005 (3) SCC 551 dealing with issues related to determination of juvenility was referred. The issue related to segregation of juvenile offenders with hardened criminals was highlighted and judgments *Jugal Kishore Prasad vs State of Bihar* 1973 SCR (1) 875 and *Daulat Ram vs. State of Haryana* AIR 1972 SC 2334 were discussed. It was opined that courts should analyse circumstances of the case, nature of the offence and character of the offender and then should consider Section 4 of the Probation of Offenders Act. Section 3 (4), Cr.P.C. dealing with magistrate's duty of sifting of evidence was referred.

The issues related to plea bargaining was discussed and its lack of use was highlighted. Section 229, Cr.P.C. dealing with plea bargaining and judgments *State of Maharashtra vs. Sukhdeo Singh* 1992 SCR (3) 480 and *Madanlal Ramchandra Daga vs. State of Maharashtra* AIR 1968 SC 1267 were referred. It was opined that accused persons are aware that they can prolong the trial or can get acquittal because of loop holes in the system so they don't come forward to confess their guilt in plea bargaining. Various strategies for identification of cases for disposal through plea bargaining were discussed and effective implementation of plea bargaining was deliberated upon. Sections 320 (1) and 320 (2) of the Cr.P.C. dealing with compounding of cases were discussed. Various issues related to effective utilization of compounding of criminal cases were deliberated in the session.

### **Session 3: Victim in the Criminal Justice System**

**Speakers: Justice A. Hariprasad & Justice Moushumi Bhattacharya**

The session was commenced with discussion on amendments made in Cr.P.C. in the year 2008 which enunciated various rights of victim. The definition of victim under 2(w)(a) of the Cr.P.C. was discussed which defines victim as a person who has suffered an injury or loss due to act or omission by the accused person and victim include his/her guardian or legal heir. The right of victim to file an appeal under Section 372, Cr.P.C. was discussed.

The definition of victim and rights of victims according to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 were discussed. Various legislation in the aftermath of this declaration including Victim of Crimes Act, 1984 and Victim Rights and Restitution, 1990 of United States of America, Victims of Crimes Act 2001, Australia and Victims Bill of Rights, Canada were referred. The 154<sup>th</sup> Report of the Law Commission of India and the Malimath Committee Report on the Reforms in Criminal Justice System were discussed.

The issues related to compensation to the victim were discussed and Sections 12 (1) and 13 (1) of the National Legal Services Authority Act and the judgment *Serina Mandal vs. State of West Bengal* 2018 SCC Online Cal 4238 were referred. The compensation can be granted when the accused has been identified and the trial has not commenced. The concern was expressed on the large number of false cases filed for getting victim compensation under section 357(A), Cr.P.C.

Various rights of victim including the right to appeal, right to get medical treatment, right to the protection of identity and right to restitution were deliberated upon. It was opined that in order to give just and proper compensation and rehabilitation of victim the courts should consider various factors including loss of livelihood, age of the deceased, number of dependents, medical expenses of victim and continuity of offence. It was stated that it should be ensured that there should not be further victimization and stigmatization of victims specially women and children. It was suggested that name and identity of victim should be protected from media and reporting should be anonymous with letter X. The judgments *Maru Ram vs. Union of India* AIR 1980 SC 2147, *Nilabati Bahera vs. State of Odisha* AIR 1993 SC 1960, *Rudul Saha vs. State of Bihar* AIR 1983 SC 1086 and *Ratan Singh vs. State of Punjab* 1979 4 SCC 719 were referred and importance of protection of rights of victims was emphasised. It was suggested that victim must not feel unprotected and she should know that accused persons have been duly punished by the justice delivery system.

### **Session 4: Witness Protection: An Overview**

**Speakers: Justice C.V. Karthikeyan and Justice K. Sreenivasa Reddy**

The session commenced by tracing the history and evolution of witness protection in India. It was stated that the first ever reference to Witness Protection in India came in 14<sup>th</sup> Report of the Law Commission of India in 1958. Subsequently, reference was drawn to the judgment in *Neelam Katara v. Union of India* 2003 SCC OnLine Del 952 wherein the Delhi High Court after considering the Witness Protection Schemes in western countries, the 154<sup>th</sup> and 178<sup>th</sup> Law Commission Reports and Vohra Committee Report issued the Witness Protection Guidelines. Later, in *Mahender Chawla v. Union of India*, (2019) 14 SCC 615 the witness protection scheme, 2018 was approved and declared to be the law under Article 141 by the Apex Court

in absence of any legislation by the centre and the states. Thereafter, the modalities of Witness Protection Scheme, 2018 was delineated. Thereafter, while dealing with the issue of hostile witnesses the case of *Ramesh v. State of Haryana*, (2017) 1 SCC 529 was highlighted wherein the Apex Court enumerated the following reasons which leads the witness to turn hostile: threat/intimidation; deployment of muscle and money power by the accused; use of stock witnesses; protracted trials; hassles faced by the witnesses during investigation and trial; absence of any legislation to check hostility of witness; and inducement by various other means. The cases of *Sanjeev Nanda v. State*, 2009 SCC OnLine Del 2039, *K. Anbazhagan v. The Superintendent of Police*, (2004) 3 SCC 767, *Bhagwan Singh v. State of Haryana*, AIR 1976 SC 202 and *State of UP v. Ramesh Prasad Misra*, (1996) 10 SCC 360 were referred on the aspect that the statement of hostile witness cannot be rejected in its entirety, the part of testimony which is creditworthy may be used by the Court.

Lastly, the various provisions for the protection of witnesses under special statutes viz., Unlawful Activities (Prevention) Act, 1967 (UAPA), Prevention of Terrorism Act, 2002 (POTA), National Investigation Agency Act, 2008 (NIA), Prevention of Children from Sexual Offences Act, 2012 (POCSO), Juvenile Justice (Care and Protection of Children Act) Act, 2015 (JJ Act) and Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act, 1989 (SC-ST Act) were delineated. It was opined that despite protection to witnesses provided in these special enactments, witnesses under these special statutes are not extended protection as desired.

### **Session 5: Sentencing Procedure: Issues & Challenges**

**Speakers: Justice C.V. Karthikeyan and Mr. Mr. E. V. Chandru @ E. Chandrasekaran**

The session initiated on the premise that unlike United States India awaits a policy on sentencing. The recommendations of the Malimath Committee on Reforms of Criminal Justice System (2003) and the Committee on Draft National policy on Criminal Justice, 2008 (also known as the Madhava Menon Committee) were referred. *Jagmohan Singh v. State of U.P.*, AIR 1973 SC 947 was cited to corroborate the fact that a very wide discretion in the matter affixing the degree of punishment and that this discretion in the matter of sentence is liable to be corrected by superior courts. Emphasis was placed on the competing interests in sentencing viz. the expectations of society, interest of the victim and the liberty of the accused. The factors which are required to be taken into consideration before imposition of sentence was discussed in reference to *Gurmukh Singh vs State Of Haryana* (2009) 15 SCC 635. The theories of sentencing were alluded to as basis of sentencing practices. The task of balancing aggravating and mitigating circumstances was dwelt and the judicious exercise of discretion was emphasized. The reformatory theory of punishment was examined and emphasis was placed on the principles and objective of restitutive and reformatory justice. In *Chhannu Lal Verma v. State of Chhattisgarh* AIR 2019 SC 243 it was observed by the Apex Court that in the matter of probability and possibility of reformation of a criminal, it is seen that a proper psychological and psychiatric evaluation is hardly done. Without the assistance of such psychological or psychiatric assessment and evaluation of the criminal, it would not be proper to hold that there is no possibility or probability of reform. The State has to bear in mind this important aspect while proving by evidence that the convict cannot be reformed or rehabilitated.

Thereafter, the cardinal factors of “uniformity” and “proportionality” in sentencing practices in order to abandon arbitrariness and rope in the rigor of certainty in punishment which is considered to be a more effective deterrent than the bare quantum of a sentence. *Rajbala v. State of Haryana*, (2016) 1 SCC 463 was quoted to explain the imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and the manner in which the crime is committed. *Shyam Nrain v. State (NCT of Delhi)*, (2013) 7 SCC 77 was quoted for establishing that the purpose of just punishment is designed so that the individuals in the society which ultimately constitute the collective do not suffer time and again for such crimes.

Further, sentencing parameters in death sentence cases was examined referring to the triple tests of aggravating circumstances, mitigating circumstances and the rarest of rare doctrine. The guideline in death sentence cases was discussed referring to the judgments in *Bachan Singh v. State of Punjab* (1980) 2 SCC 684 and *Machhi Singh v. State of Punjab* (1983) 3 SCC 470. *Framing Guidelines Regarding Potential Mitigating Circumstances to be Considered while Imposing Death Sentences, In re*, 2022 SCC OnLine SC 1246 was also referred. Lastly, the case of *Gopal Singh v. The State of Uttarakhand* (2013) 7 SCC 545 was highlighted wherein it was observed that “*just punishment is the collective cry of the society. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence.*”