

NATIONAL JUDICIAL ACADEMY



P-1430: ORIENTATION COURSE FOR NEWLY ELEVATED HIGH COURT JUSTICES (4TH & 5TH JANUARY, 2025)

PROGRAMME REPORT

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Overview of the Seminar

The course aimed to enhance and leverage the understanding of participant judges in a dialogue relating to espousing constitutional values while facilitating discussions on the role of Judge in a democracy. The course involved deliberations on application of precedents and Article 141 as an element of judicial discipline; the evolving jurisprudence of bail in light of Article 21 of the Constitution was also explored. As a matter of practice, a session on the effective use of Information Communication Technology (ICT) in Courts also formed part of the course. The seminar provided a forum for judges to share experiences, insights, and suggestions with a panel of distinguished resource persons on relevant themes.

Session 1- Role of Judge in a Democracy

Panel: Justice A.S. Oka and Justice Aparesh Kumar Singh

The session commenced with the assertion that in a democracy, the role of a judge is fundamental in upholding justice, maintaining the rule of law, and ensuring the protection of individual rights and freedoms. It was accentuated that judiciary must contribute to social change and development through progressive interpretations of the law. It was commented that judges are not just interpreters of the law but also active participants in the ongoing process of societal advancement. While dealing with the aspect of judicial independence it was opined that judges must be free from external influence, whether from political executive, the media, or public opinion, so they can make decisions based solely on the law and facts. This independence builds public confidence in the judiciary and reinforces the legitimacy of the judicial process.

Thereafter, it was remarked that in a majoritarian democracy, there is always the risk that the will of the majority could undermine the rights of individuals or smaller communities. Judges, were advised to safeguard these rights, ensuring that justice is not compromised by political or social pressures. Further, on the issue of media reporting and its impact on administration of justice it was deliberated that media plays an essential role in supporting justice through transparency and public engagement, it must exercise its freedom responsibly. Ethical reporting, adherence to legal boundaries such as contempt of court laws, and respect for due process are necessary to ensure that media serves as an ally, not a hindrance, in the fair administration of justice.

Session 2 – Doctrine of Precedent

Panel: Justice Sabyasachi Bhattacharyya and Mr. N. Venkataraman

The session commenced by discussing Article 141 of the Constitution of India. It was stated that the judgments of the Supreme Court are authoritative and must be followed by High Courts, District Judiciary, and Tribunals. Further, it was iterated that the High Courts also follow a hierarchical structure, where the decisions of a larger bench are binding on smaller benches, and

the decisions of a High Court are binding on lower courts within its jurisdiction. Thereafter, the decision in *Trimurthi Fragrances (P) Ltd. v. Government of N.C.T. of Delhi* 2022 SCC OnLine SC 1247 was highlighted wherein it was held that binding nature of a judgment depends on the Bench strength and not the numerical strength of the Judges taking majority view. A judgment delivered by a larger bench will prevail irrespective of the number of judges constituting the majority. In view of Article 145(5) of the Constitution of India concurrence of a majority of the judges at the hearing will be considered as a judgment or opinion of the Court. It is settled that the majority decision of a Bench of larger strength would prevail over the decision of a Bench of lesser strength, irrespective of the number of Judges constituting the majority.

Lastly, it was opined that the doctrine of precedent promotes consistency, guides legal interpretation, and ensures the evolution of law in an orderly manner. While it provides stability, the doctrine also allows for flexibility and adaptation when necessary, enabling the law to respond to changing social and legal needs.

Session 3 – Effective use of Information and Communication Technology (ICT) in Courts

Panel: Justice Anoop Chitkara and Justice Sanjeev S. Kalgaonkar

On the theme of court and case management, the discussion commenced by elaborating on several innovative ways to streamline working of courts and emphasise the need for a comprehensive policy on equipping the courts with technologically advanced infrastructure. . It was opined that the stakeholders will transition to policy changes only if they are incentivised. The need of making optimum use of technological innovations was highlighted by elucidating issues like transformation of courts through digitization of old records, use of electronic devices, improving connectivity in courts and keeping abreast with the aspirations of the society. The case of *Swapnil Tripathi v. Supreme Court of India* (2018) 10 SCC 639 was referred wherein it was observed that technology can be used for expeditious disposal of cases and enhance transparency. The court also explored the feasibility of live streaming of court proceedings.

Thereafter, the discussion focused on the role of Central Project Coordinators (CPC) in implementation of the initiatives of the High Court. It was commented that the CPC's should coordinate with various stakeholders; look into the deployment of infrastructure and CIS periphery development; should have strict adherence to timeliness and target and must ensure timely submission of utilization certificates. Several initiatives and best practices of various High Court Computer Committees were emphasized viz. digitization of case records; e-Filing and online certified copies; implementation of e-Office for administrative purposes and virtual court for Traffic Challan and other petty cases.

Session 4 – Bail: Intricacies and Nuances

Panel: Dr. Justice G. Jayachandran and Ms. Aishwarya Bhati

The session commenced by discussing the guidelines issued by the Apex Court in *Satender Kumar Antil v. Central Bureau of Investigation*, 2022 SCC OnLine SC 825. While delineating on the aspect of bail under special statutes, it was opined that one of the main reasons for restrictions in granting of bail under special laws is the concern for national security. Subsequently, the changing nature of restrictions on bail from the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA Act) and the Prevention of Terrorism Act, 2002 (POTA) to the Unlawful Activities (Prevention) Act, 1967 (UAPA) was discussed. It was opined that restrictions on bail under the TADA Act and the POTA has been brought to Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and also find place in the Prevention of Money Laundering Act, 2002, (PMLA) with slight modifications. While dealing with the issue of bail under special legislations judges were advised to take into consideration the period of imprisonment served by the accused and the likelihood of trial commencing in near future.

While dealing with expeditious disposal of bail applications, the judgment in *Satendar Kumar Antil v. CBI*, (2022) 10 SCC 51 was discussed wherein it was directed by the Supreme Court that bail applications must be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Further, applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.

Session 5 – Sentencing: Issues and Challenges

Panel: Justice P. Sam Koshy and Dr. Justice G. Jayachandran

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 v. 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 retributive 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.

