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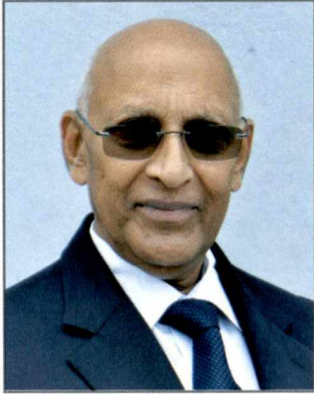
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From the Desk of the Director, NJA

This newsletter presents activities of your Academy during October to December, 2018. Sixteen programs were organized during this period, including four overlapping events in October, one parallel and one overlapping set of events, each in November and December.

This quarter commenced with a conference for High Court justices on the regime of GST held during 5th to 7th October; and during 5th to 11th October a seminar for Bangladesh judges. A refresher course for CBI courts presiding officers was held during 12th to 14th and a refresher course for judges of Family courts during 12th to 16th. The month concluded with a Regional Conference for the West Zone, held during 27th to 29th in co-ordination with the Rajasthan High Court and the State Judicial Academy, at Jodhpur.

Parallel programs, a Conference for High Court Justices and a workshop for Additional District judges were organized at our campus during 2nd and 4th, November. During 16th to 22nd of this month an orientation program for Junior Division judges was held and overlapping part of the period, during 16th to 18th we had a Conference for newly elevated High Court justices. The 2nd phase of the Court Excellence Enhancement Program for this calendar year was organized during 30th November to 2nd December at our Academy campus.

The North Zone Regional Conference, on 1st and 2nd November was organized at Jammu, hosted by the High Court of J&K and the State Judicial Academy. Parallel programs, a Refresher course for Labor Courts and a National Seminar for Principal District and Sessions judges on “Access to Justice and Legal Aid” were conducted at the campus during 7th to 9th December. A seminar for judicial officers of Bangladesh was organized during 7th to 13th followed by a Conference on Arbitration including International Arbitration, for High Court justices which was held during 14th to 16th of this month. This quarter concluded with the East Zone Regional Conference hosted by the Jharkhand High Court and the State Judicial Academy at Ranchi during 22nd and 23rd December.

The academic programs organized during this period provided participant judges from across India; and overseas judicial officers as well, a very productive opportunity to meet, exchange views with counterparts and gain rich and valuable insights from Justices, both serving and retired of the Supreme Court, High Courts, and other domain experts in several

fields relevant to the themes of the sessions in each of the programs. A synopsis of the several events, the thematic content and a summary of the deliberations is set out in the newsletter. As ever, all these events could not have been fruitful, the deliberations vibrant and robust without the gracious co-operation and immense guidance provided by the distinguished resource persons; and we gratefully acknowledge their valuable contribution.

Justice (Retd) G. Raghuram
Director

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CONFERENCE FOR HIGH COURT JUSTICES ON THE REGIME OF GOODS AND SERVICES TAX

05th to 07th October, 2018

Ms. Paiker Nasir, Research Fellow



The National Judicial Academy organized a three day Conference for High Court Justices on the Regime of Goods and Services Tax from 05th to 07th October 2018. The said conference was conceived to provide insights into the Goods and Services Tax Act, 2017 (hereinafter GST Act) and deliberate upon normative issues relevant to the evolution of indirect taxes, from a regime of distinct multiple taxation to one of substantial uniformity across diverse tax domains and jurisdictions i.e., Federal and State. It explored and classified potential areas of conflict and litigation consequential to this legislative shift, the constitutional evolution in the area and the adjudicative and socio-judicial consequences that result thereby. The discourse had elaborated discussion on the themes like- Indirect Taxes – Historical Perspective; GST : Constitutional Perspective; Concept of Supply; Classification: Mixed/ Composite Supply; Valuation: Time & Place of Supply; Input Tax Credit; Anti-Profiteering and Demands/ Refunds, Normal/Extended period of Limitation, Unjust Enrichment, Zero Rated Exports – Mechanism.

The first session was on the theme “*Indirect taxes – Historical perspective*”. The session commenced with emphasis on Art. 246 of the Constitution of India which distributes legislative powers including taxation, between the Parliament of India and the

State Legislatures. Thereafter, the new provision of Art. 246A- Power to Impose GST was discussed elaborately. While discussing the Constitution (101st Amendment) Act, 2017 the meaning of *Service, State, Goods and Supply* was elaborated. Furthermore, levy & collection of GST in the course of Inter-State trade or commerce under Art. 269A was also discussed. GST Council under Art. 269A and the recommendations that can be made by the Council was also discussed upon. The concept of Central State Service and Value Added Tax was also discussed. The objectives behind the indirect tax reforms i.e., Widening the tax base, Rationalizing the rate structure – few rates, low rates, Enhancing international competitiveness of Indian goods and services, Enhancing equity of the tax system, Simplifying the tax laws and processes to optimize tax collections and reduce compliance cost and Strengthening the fiscal autonomy of the States were elaborated upon.

The second session was on the theme “*Constitutional Perspective of GST*” & “*Overview of GST, Features of GST*”. The session commenced with discussion on the history of GST highlighting the structure of indirect taxes in India. Tax law prior to 1950’s was discussed in the light of certain case laws - *King v. Dominion Engineering Co. Ltd.* (AIR 1947 PC 94) which laid

down that in the case of an ordinary retail sale for cash across the counter of a shop, the stages of agreement, appropriation of the goods to the contract, delivery, payment of the price and passing of the property are all practically simultaneous. But in more complicated transactions for the sale of goods to be produced or manufactured these stages may be spaced in time in various ways. The discussion on the interpretation of Art. 286 was elaborated upon in the light of the Case - *State of Bombay v. United Motors (India) Ltd* [(1953) 4 S.T.C. 133 (S.C.)] which was overruled by *Bengal Immunity Company Ltd. v. State of Bihar* [(1955) 6 S.T.C. 446 (S.C.)]. The 6th Constitutional Amendment Act, 1956 which substituted Entry 54 of List II, inserted Entry 92A in List I, inserted clause (3) in Art. 269 and the amendment to Art. 286 formed an integral part of the deliberation. While discussing about the features and overview of GST it was stressed that under the Act both the Parliament and the State Legislatures are empowered to make laws with respect to GST that is leviable on Intra-state supply of goods and services. It was stressed that Central Goods and Services Tax Act, 2017 (hereinafter CGST Act) is the law that levies GST on intra-state supply of goods and services from the Central Government's side. Each such supply is also leviable to GST under the relevant State GST legislation or Union Territory GST legislation.

The next session was on the theme *Concept of Supply*. The definition of 'supply' across jurisdictions was discussed and it was observed that the definition of supply in European Union and Malaysia have a restrictive definition, whereas, India and New Zealand have expansive definition. This was elaborated with discussion on the case - *Databank Systems Ltd v. Commissioner of Inland Revenue* [(NZ) (1987) 9 NZTC 6213], wherein it was held that "supply" means "to furnish or provide" and that a voluntary act of provision was necessary. The case of *Shaw v. Director of Housing and State of Tasmania* [(No. 2), [2001] TASSC 2], relied on the Databank case above, under Australian GST, and the Court stipulated that the term 'supply' requires a voluntary act by the supplier. It was emphasized that Sec. 7(1)(a) of the CGST Act states that supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance

of business; and Sec. 7(1)(b) of the CGST Act states supply includes import of services for a consideration whether or not in the course or furtherance of business. It was opined that there is significant departure between Sec. 7(1) (a) and Sec. 7(1) (b) of the CGST Act. Sec. 5 of the IGST which provides for levy and collection of tax was also discussed. It was stressed that in case of a dispute between the national interest and state interest, national interest should always prevail. The Constitutional provisions of GST which includes Art. 262, Art. 279A (6), Art. 279A (11) and Art. 246A were also discussed.

Another session was on the theme *Classification: Mixed/ Composite Supply* which discussed the definition of interstate supply of goods and interstate supply of services as given under Sec. 7(1) and 7 (3) respectively. With respect to Sec. 7(5) (c) it was construed that the word 'in' is different from 'into', 'at', 'within' the territory in the aforementioned Section. The deliberation also highlighted that taxable territory and supply of interstate territory is not defined under the Integrated Goods and Service Tax Act (IGST Act). Furthermore, the discussion on Sec. 9 suggested that the said Section does not deal with interstate supply with the illustration that territorial water is not for any part of the State rather it is for every territory of State. It merely applies to territorial water and not for exclusive economic zone. Discussions on Customs Tariff and HSN Explanatory Notes, and GST Schedules were also made.

The session on *Valuation: Time & Place of Supply* commenced with discussion on Sec. 15 of CGST Act & Valuation Rules. It was accentuated that the core of GST scenario lies in the fact that the disputes are mostly between what is goods and what is supply? And at what value should somebody pay tax? The discussion also stressed that the GST law sees the economic purpose of a transaction. Sec. 13 was elaborately discussed to understand how to connect the scheme of Sections to calculate valuation. It was indicated that value of supply shall include incidental expenses charged by supplier to recipient, interest, late fee or penalty for delayed payment and subsidies directly linked to prices except when provided by the Government. Moreover, when supply is between related persons or price is not the sole consideration, value to be determined on basis of open market value, value of like kind and quality of goods or services, cost plus method and residual

method. Provided where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods and services. It was highlighted that pre-sale discount and post-sale discount are to be excluded from value of supply. Sec. 8 of the CGST Act which states the manner in which the tax liability on a composite or a mixed supply shall be determined was discussed. The concept of mixed supply [Sec. 2(74) of the CGST Act], composite supply [Sec. 2(30) of CGST Act], works contracts [Sec. 2(119) of CGST Act], Item 6 (b) Schedule II of the CGST Act were deliberated upon. With respect to the place of supply, it was emphasized that place of supply is different from goods and services. There is no definition of location of supply, however, Sec. 2(70) and Sec. 2(70) of the CGST Act define the “location of the recipient of services” and “location of the supplier of services respectively.

With respect to *Input Tax Credit (hereinafter ITC)* the deliberation focused on the relevant provisions like Sec. 2 (54) – ‘input’, Sec. 2(19) – ‘capital goods’, Sec. 2(55) – ‘input service, Sec. 2(57) - input tax, Sec. 16—Eligibility and conditions for taking input tax credit and Sec. 17—Apportionment of credit and blocked credits. The discussion highlighted that - Sec. 16(1) allows availment of ITC subject to the satisfaction of two conditions; firstly, supply should be made to a registered person; and secondly, such supply are meant to be used or intended to be used by such registered person in the course or furtherance of his business. As per Sec. 16(2), Input Tax Credit (ITC) is available if the following conditions are fulfilled- possession of a tax invoice or duty paying document, receipt of goods/services, Tax charged has been paid to the Government and filing of returns. It was also emphasized that ITC as is claimed should not be restricted as per the stipulations under Sec. 17(5) of the CGST Act. Thereafter, restrictions on availment of ITC was discussed at length with elaborated deliberations on works contracts and free supplies. Overview of proposed GST amendments about ITC with respect to Explanation to Sec. 16(2)(b), Proviso to Sec. 16(2), Sec. 17(3), Sec. 17(5), Clause (c) of Explanation to Sec. 20, Sec. 43A and Sec. 49(5) formed an integral part of the discourse.

The session on *Emerging/Evolving Constitutional Issues*, highlighted some of the defects in the earlier structure of taxes. Previously, Central Sales Tax (CST)

was payable @ 2% for every movement of goods from one State to other. Even in case of stock transfers or branch transfers, there are incidences that tax as input service credit was not fully available. The cascading effect of taxes could not be avoided due to CST and Entry Tax. State Value Added Tax (VAT) was payable on Central Excise element also. It was emphasized that over the years, distinction between goods and services became hazy, due to which there was overlapping of State VAT, Central Service Tax on transactions like works contract, food related services (restaurants, outdoor catering, mandap services), software, SIM cards, lease/renting of goods etc. Same transaction was taxed both by the Central and State Government which created confusion, litigation and double taxation in many cases. GST is a solution to get over all of these above mentioned defects.

The next session was on the theme *Anti-profiteering*. It was stressed that anti-profiteering is one of the most important aspects of GST. Anti-profiteering measures were explained with respect to its purpose, mechanism and legislation. It was asserted that the purpose of anti-profiteering as per the Preamble of the Constitution is to provide economic justice. It was deliberated that neither the CGST Act nor the CGST Rules provide the guidelines for determining the methodology and procedure, for ascertaining the fact of profiteering by the supplier and the same has been left to the discretion of the authority.

The last session was on the theme *Demands/Refunds Normal/Extended period of Limitation Unjust Enrichment Zero Rated Exports – Mechanism*. The concept of demand and refunds was explained. Sec. 73 of the CGST Act was stressed upon which deals with the determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of facts. The impact of a person accepting the liability and to pay tax/ penalty was discussed. Sec. 74 which deals with determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts was also discussed during the discourse. Sec. 75 of the Act deals with the general provisions relating to determination of tax. Sec. 76 of the Act that deals with tax collected but not paid to the government was also referred and deliberated upon.

SE-02

SEMINAR FOR FOREIGN JUDGES [BANGLADESH]

05th to 11th October, 2018

Mr. Yogesh Pratap Singh, Research Fellow

Mr. Prasadh Raj Singh, Law Associate



A Memorandum of Understanding (MOU) has been entered between the National Judicial Academy (NJA), India and the Supreme Court of Bangladesh for organising training and capacity building programmes for Bangladesh Judicial Officers, for the year 2018-19, it is proposed that four batches, 40 judicial officers would visit India and participate in 15 days training programme.

Pursuance to the MOU, a 7 day training programme for Senior Assistant Judges, Assistant Judges and Magistrate of the first batch nominated by the Supreme Court of Bangladesh was organised by the National Judicial Academy from 05 – 11 October, 2018 at NJA, Bhopal, India.

The objective of the Seminar was to acquaint participants with elements of judicial behavior- ethics, neutrality and professionalism, skill of judging and judgment writing. The programme also facilitated discussion on Constitutional Vision of Justice, Evidentiary Principles, DNA Profiling, Human Rights Principles, Precedent, Court & Case Management and use of ICT in Administration of Justice.

40 Judicial Officers nominated by the Supreme Court of Bangladesh participated in the Seminar. The seminar was divided into sixteen sessions over the duration of 7 days on following themes.

Overview and Architecture of the Indian Constitutional Arrangement; Indian Judiciary: Organizational Structure and Jurisdiction; and Goals, Role and Mission of Courts: Constitutional Vision of Justice

The session began with discussion on framing of the Constitution of India, wherein the speaker discussed briefly the philosophy of the Constitution and chronological events leading to the making of the Constitution of India since World War II, 1945 to adoption of Constitution by Constituent Assembly on 26th November 1949. Thereafter, the speakers discussed the Preamble of the Constitution of India and emphasized on major similarities between Constitutions of India and Bangladesh. The broad scheme of the Constitution of India from Part I to Part XXI was explained to participants during the session. Attention was drawn to important parts of the Constitution in comparison to the Constitution of Bangladesh.

The basic structure of the Constitution of India was also discussed in the session. The Speakers highlighted and discussed in detail various landmark judgments of the Supreme Court of India in contextually explaining and the nature of Fundamental Rights, Directive Principles of State Policy. Judicial Review and Amendment to the Constitution was discussed. The following landmark judgments were discussed during

the session. *Shankari Prasad v. Union of India* (1952) 1 SCR 89; *Sajjan Singh v. State of Rajasthan* AIR 1965 SC 845; *Golaknath v. State of Punjab* AIR 1967 SC 1643; *Keshavananda Bharati v. State of Kerala* 1973 (4) SCC 225; *Raj Narain v. Indira Gandhi*, (1975) AIR 865; *Minerva Mills v. Union of India*, AIR 1980 SC 1789. The session concluded with an interaction on the concept and meaning of 'Justice' in the context to Constitutional Vision of Justice as laid down in Constitution of India and Constitution of Bangladesh. Various definitions and theories of 'justice' were discussed in the session.

Elements of Judicial Behaviour-Ethics, Neutrality and Professionalism

The session began with explaining the concept of Justice and its evolution over a period of time, and how ethics, neutrality and professionalism became an integral part of judiciary. The speaker explained what is value, what constitute values, virtues and values and how judicial behavior is developed through values. Thereafter, the objectives and elements of judicial behavior were discussed with the participants. Qualities of a good judge such as integrity, transparency, accountability, independence, commitment, excellence and professionalism were discussed in the session. Enhancing judicial values through ADR and ADR as a tool for resolving disputes also formed a part of discussion. The oath of a judge as contained in the Third Schedule of the Constitution of India was discussed and various conventions that aim to provide ethics for judges were taken into consideration. Conventions such as The Bangalore Principles of Judicial Conduct 2002, Universal Charter of Judge 2017, Restatement of values of Judicial life (as adopted by full bench of Supreme Court on 7th May 1997), Canons of Judicial Ethics adopted by American Bar Association 1924 were also discussed in the session. The need for competent, independent and impartial judiciary as an institution was stressed during the session.

While explaining judicial ethics, speaker stressed on the importance of developing judicial skills, administrative skills in order to render justice in accordance with law and in time bound manner. The speaker highlighted and discussed the following Judicial and Administrative Skills

Judicial skills

- Thorough knowledge of procedural law
- Acquaintance with substantive laws and fundamental legal principles
- Skill for giving due hearing
- Skill of marshalling facts and arriving at findings
- Skill to consider and dispose of interim prayers, interlocutory applications

Administrative skills

- Time Management
- Board Management
- Registry Management
- Bar Management
- Self-Management

Judging Skills: Art, Craft and Science of Drafting Judgment

The session commenced with discussion on juristic views on law & justice and judicial adjudication. Various theories on law and justice as propounded by jurists such as HLA Hart and Ronald Dworkin were discussed, Hans Kelsen's Formal Science of Justice, John Austin's Command of Sovereign, Salmond's Law for Promotion of Justice, Aristotle's Distributive Justice, Rawls Theory of Justice and Bentham's Utilitarianism were discussed in the session. Basic concepts of jurisprudence such as possession and ownership, rights and duties were deliberated upon. The fundamental concepts of Jural Opposites and Jural Correlatives propounded by W.N. Hohfeld were discussed. The concept of Restorative Justice was also discussed in brief. Methods of legal reasoning such as analytical reasoning, deductive reasoning and syllogism and how a judge should apply these methods while hearing a matter was discussed. Seven steps of clear judgments writing by Justice Linda Dessau were discussed in the session. Attention was drawn to Sec. 2(9) of Civil Procedure Code, 1908. The format of judgment was discussed in detail which shall include introduction, facts, points for determination, reason for the decision on a point of determination, conclusion, order, footnotes, endnotes and appendices. On how to record findings of fact, participants were asked to consider following; sift the grain from the chaff, facts be written in chronological order, state relevant facts without detail, state only facts and history that affects the analysis and decision, be accurate, precise

and impartial, consult the record to avoid errors. On appreciation of evidence, attention was drawn to the following: point out discrepancies, if any, and make findings of fact, consider the credibility of witnesses i.e. body language, audibility, the demeanor of witnesses is assessed but this should be from notes already recorded, evaluate the evidence as a whole for both sides. Various guidelines were brought forward as to how a good judgment should be drafted, which included the following; Plain and simple language must be used, latin expressions should be avoided, facts and issues should be well framed, facts should be mentioned in a relevant manner and in chronological manner, there should be clear applicability of law, pleadings should be avoided in judgment, one should use a writing style with which one is comfortable.

Judge the Master of the Court: Court Management & Case Management

The session revolved around the role of ICT in court management and case management. It was deliberated that proper mechanism of ICT can help in reducing the pendency of the cases drastically. The ICT in court can be used in following areas : to ensure court work effectively, to effectively put cause list, to identify cause list, judges have access to legal database from all around the world. The concept of e-courts was discussed in detail. It was observed that for speedy trial of justice the introduction of ICT is the need of the hour. The concept of paperless courts was discussed. Various essentials for setting up an e-court were discussed. Various steps taken by Government and Judiciary for digitization of judiciary were discussed. The question of how a paper-bound judiciary can transform itself to e-Judiciary was discussed in detail. Various steps that have been taken were discussed such as displaying case listing on the boards, SMS Filing, e-Court app, e-Records, e-Filing etc. Electronic evidence was discussed through an interactive session with the participants. Admissibility and authenticity of evidence was deliberated upon. The benefits of electronic evidence and how it can lead to speedy justice was deliberated upon.

Principles of Evidence: Appreciation in Civil and Criminal Cases

The session started with light being shed upon the development of Indian Evidence Act, 1872 from colonial period to amendments that have taken

place in Indian Evidence Act, 1872 (hereinafter IEA). The session revolved around the basics in Evidence Act. Basic concepts of IEA such as fact, presumption of evidence, relevancy, burden of proof, exclusion of oral evidence and other concepts of evidence were discussed in detail. The concept of documentary evidence was discussed in detail and it was observed that documentary evidence may either be admissible or inadmissible in court of law. It was further observed that documentary evidence should only be admissible after its authenticity has been verified.

Evidentiary Presumptions; Onus and Burden of Proof

The concept of “may presume” and “shall presume” as mentioned under Sec. 4 of IEA was discussed in detail. It was held that “may presume” constitutes the discretionary power of the court whereas “shall presume” constitutes an obligation on the court that a fact has been proved. Various provisions of IEA such as Sec. 79, 105, 140 relating to evidentiary presumptions were discussed. Sec. 64 and 65 of IEA was compared with the Bangladesh Evidence Act, 1872 and same was deliberated upon. Further, the legal concepts of Onus and Burden of Proof as mentioned under the Indian and Bangladesh Evidence Act was discussed in detail. It was observed that Onus and Burden of Proof is always upon the plaintiff apart from cases mentioned under Sec. 105 of the IEA. Various Sec(s). including 41, 84, 86, 87, 105, 112, 140, 145 mentioned under Bangladesh Evidence Act were discussed in depth.

Electronic Evidence: New Horizons, Collection, Preservation and Appreciation

This session began with exhibition of practical problems in deciphering the genuineness of source of electronic evidence. e-evidence was emphasized upon as a tool for speedy justice. Source and authenticity of e-evidence was discussed in detail. It was observed that with an increase in cyber-crimes, the concept of e-evidence is growing at a rapid rate. Various facets related to e-evidence were touched upon by the speaker. Concepts such as encryption, decryption, spoofed email, proxy servers were explained and how to preserve digital evidence, and the best practices to decipher and preserve digital foot prints were discussed in detail.

Forensic Evidence in Civil and Criminal Trials; DNA Profiling

The session began with a discussion on the role of Forensic Science in the Civil and Criminal Justice System. It was explained that forensic Science is the application of science for legal purposes in order to evaluate circumstantial evidence. It is therefore supplied always by an expert witness. Two types of evidence, Direct and Circumstantial, were discussed. It was deliberated that forensic evidence is science-based information. The use of science and technology in the legal field was extensively discussed. The speaker talked about DNA, its types and its characteristics. New technologies in DNA profiling that would address the issues of time and expertise were also discussed. It was discussed that there is lack of scientific methods in investigations that ultimately hamper the delivery of justice. Investigating officers are also not well equipped due to which judges have no other option but to rely on witnesses. There is a lack of DNA testing infrastructure in India. DNA is not collected properly due to lack of required knowledge and expertise. In order to avoid contamination of DNA samples, certain guidelines were discussed that an investigating officer must take care of, emphasizing on their training, skill and expertise. Various techniques related to forensic sciences were discussed which included graphology, fingerprint analysis, voice modulation and various equipment used in forensic science were pondered upon. It was underscored that there exists two techniques which are normally followed to establish conclusive proof when it comes to examination of a dead

body viz. i) Superimposition examination, which has its own limitations and may sometimes lead to incorrect or imprecise conclusions, and ii) DNA profiling, which is more reliable and is 99.99% accurate. It was discussed as to how long a DNA can be preserved and how it is to be preserved from getting contaminated. Furthermore, the concept of DNA profiling was discussed in detail. Various cases as to where DNA was used as evidence were discussed in detail and they included the following: *State of UP v. Ramtej; Priyadarshini Mattoo's Case; Tandoor Case; Sheena Bora Murder Case; Aarushi Talwar Murder Case.*

Criminal Justice Administration and Human Rights

During the course of discussion it was deliberated that "justice administration" and "justice dispensation" being two different concepts, both a part of broader theme i.e. Criminal Justice Administration. The role of the judiciary as an authority for providing justice in criminal cases was deliberated upon. It was observed that Criminal Justice Administration needed to be viewed through the prism of human rights. It was observed that Criminal Justice Administration can also be termed as social engineering by the judiciary.

Human Rights: Fair and Impartial Investigation

The session started with light being shed upon the investigation process being followed in India and Bangladesh. The concept of human rights was discussed and fair and impartial investigation was emphasized as a facet of human rights. It was observed that free and impartial investigation is a right enshrined under Art.



21 of the Constitution of India. The importance of free and impartial investigation in civil and criminal matters was discussed in depth. Further, various international conventions such as Universal Declaration of Human Rights and International Covenant on Civil and Political Rights were also discussed.

ICT and E-Judiciary: Indian Perspective

Concepts such as digitization of paper records, e-evidence, and video conferencing of the accused, e-filing, e-FIR under Motor Vehicles Act, 1988 were discussed in detail. It was further deliberated that the technology system in courts can be used to ensure court work effectively.

Identification of Ratio in a Precedent

During the session, various observations made by judges and jurists relating to law of precedent were deliberated upon. It was observed that precedent keeps a check on judicial arbitrariness. The concepts of "*per incuriam*" and "*stare decisis*" were discussed in detail. Art. 141 of the Indian Constitution and Art. 111 and 112 of the Bangladesh Constitution were discussed by the speaker. It was further observed that "*ratio decidendi*" becomes a law when there is absence of any statutory law on the concerned subject matter.

Landmarks Judgments in India

The session started with light being shed upon the development of legal system in India. Further the

discussion moved on to the hierarchy of court system being followed. It was further deliberated that with the passage of time, there have been judgments which changed the landscape of political, civil, social and economic rights in India. A reference was made to *K.S. Puttaswamy vs Union of India* where in it was held that Right to Privacy was a fundamental right under Art. 21 of the Constitution. It was observed that it is not only that the majority judgments needs to be considered as landmark judgments; even the dissenting opinion of the judges could be considered as landmark judgments. In this regard while discussing *K.S. Puttaswamy* case reference was drawn to the judgments given in *MP Sharma* case where it was observed that "Right to Privacy is not a fundamental right". The case of *PUCCL (Telephone Tapping case)* was discussed in which it was held telephone tapping does violate the fundamental right mentioned under Art. 21 of the Constitution, though it was observed that the court did not recognize the right to privacy as a fundamental right. Issues related to right to privacy were extensively discussed and a wide range of interpretations drawn from interpretation of constitution were deliberated upon. International conventions such as Art. 1 and 12 of Universal Declaration of Human Rights and Art. 17 of International Covenant on Civil and Political Rights were deliberated upon.

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REFRESHER COURSE FOR CBI COURTS**12th to 14th October, 2018****Mr. Krishna Sisodia, Law Associate**

The National Judicial Academy organised a Refresher Course for CBI Courts from 12th - 14th October, 2018, which was attended by 33 CBI Court judges from across the country. The objective of the course was to provide a forum for participants to discuss, deliberate amongst themselves and share experiences, knowledge and best practices in exercise of jurisdiction, evolving new horizons of relevant law and jurisprudence. The course was structured to facilitate deliberations on investigation procedures adopted by the CBI, prosecution of civil servants, economic offences and sentencing practices. The sessions also enabled discussions on contemporary themes such as appreciation of electronic evidence, forensic evidence and the *Modus Operandi* of Cyber Crimes.

On the theme of *CBI: Why is it preferred for investigation ?*, the speaker dealt with background of CBI Courts by mentioning about the origin of CBI which traces its origin to Special Police Establishments (SPE) which was set up in 1942 by the Government of India. The Delhi Police Establishment Act (DSPE Act) was then brought into force in 1946. The Delhi Police Establishment later was popularly known as the Central Bureau of Investigation (CBI), through a Home Ministry Resolution dated 01.04.1963. Thereafter, the speaker stated that CBI is preferred for investigation

as CBI has a set of Standard Operating Procedures (SoPs) for every aspect of investigation and they are open to radical changes that take place in criminal law and judicial system. The best part is that the investigators conduct a free and fair investigation and the investigation is reviewed by the supervisory officers at least once a month. Besides this, all the cases have multi-layered supervision which means that the cases are scrutinized at multiple levels, which enables quality as well as free and fair investigation. Whereas, in police organizations, predominant work is to maintain law and order, hence time for investigation is compromised. A best practice in the working of CBI is that all the instructions are in writing and well documented hence, informal and oral instructions do not have any place in its functioning. The officers of CBI are posted on deputation for a tenure of 5 to 7 years; therefore, they are normally away from their parent cadre, due to which the influence of politicians on their decision making is almost zero. It was stated that CBI being an agency of the Central Government having jurisdiction throughout India has better coordination with other organizations like Interpol, Enforcement Directorate, Income Tax, SFIO, SEBI etc. for conducting investigation. During investigation, CBI lays great emphasis on usage

of science and technology, it is well equipped with Technical and Forensic Support Units (TAFSU) with latest technological advancements; CBI investigates 1400 cases per annum on an average therefore, the quality increases due to the reduction of quantity. CBI has an exclusive *Pairvi Section*, which handles services of summons and execution of warrants unlike the State Police, hence, it is a preferred agency for investigation.

Sessions 2 & 3 were on the theme of *Prosecution of Civil Servants: Sanction for Prosecution and Prosecution of Civil Servants: Arrest & Investigation*, the panelists briefly touched upon Sec. 4 (4) of the Prevention of Corruption (Amendment) Act, 2018 (hereinafter 'Act') which states that as far as possible a trial of the offence shall be held on a day-to-day basis. The learned speakers raised the issue of whether this provision applies to the cases which come in the Courts for trial after 26.07.2018 or it also applies to the cases prior to the amendment, to which it was stated that since it is a procedural provision, it will apply retrospectively. Thereafter, recent amendments to the Act were discussed at length main focus being on Sec. 17 A of the Act which deals with enquiry or inquiry or investigation of offences relatable to recommendations made or decisions taken by public servant in discharge of official functions or duties. It was vociferously debated by the participant judges that the provision is treading the dangerous path of immunity versus impunity.

On the subject of *Economic Offences: Banking and Corporate Frauds*, the speaker predominantly dealt with Sec(s). 3, 4, 5 and 8 of the Prevention of Money Laundering Act, 2002 (hereinafter PMLA). It was also mentioned that money laundering is a scheduled offence which involves concealment of origin of illegally obtained money typically by means of transfers involving foreign banks or legitimate businesses. Furthermore, a thin line of difference was pointed out between Sec. 5 (1) and Sec. 8 (1) of the PMLA wherein Sec. 5 (1) makes an officer duty bound to investigate and record the reasons to believe that such person has committed the offence in writing; and Sec. 8 (1) does not make an officer duty bound to record the reason to believe in writing. Thereafter, the speaker dealt with the objective of the PMLA stating that whosoever commits a crime is liable to get its property attached derived from the proceeds of crime. It was further stated that Sec. 4 of the Act prescribes punishment

which makes any person found guilty of the offence of money laundering; liable to a punishment of rigorous imprisonment for a term of three years which may extend to seven years and in some cases to 10 years.

On the theme of *Cyber Frauds in Banks: Modus Operandi of Crime*, the panelists stated that there are around 50 Crore internet users as on 30.06.2018. The service of internet came to our country in 1994. The main question is who owns the internet and who runs it? It was stated that internet is run by Internet Corporations for Assigned Name and Number (ICANN). It is a globally distributed computer network comprising of various voluntary interconnected autonomous works. It has over 108 Crore domains out of which 8 – 8.5 Crore are Indian domains. Thereafter, the speaker threw light on 'phishing scams' and the *modus operandi* to obtain sensitive information such as usernames, passwords and credit card details, often for malicious reasons by disguising as a trustworthy entity in an electronic communication. The speaker also highlighted about the COSMOS Bank Fraud in which the 'switch software' which was used to identify whether a card being inserted is genuine or spoof or fake was made a proxy due to which fake cards were signaled as genuine by the ATM. Due to this 13,329 cards were generated between 28 countries worldwide and around ₹ 78 Crore was siphoned from 11.08.2017 – 11.08.2018.

On *Electronic Evidence: Collection, Appreciation and Preservation*, the speaker dwelt on definition of cyber crime as a "crime in which an electronic communication device is the object of the crime, or used as a tool or target to commit an offence". Cyber criminals may use information technology to access personal information, business trade secrets or use the internet for malicious or exploitative purposes. A computer may be a target as well as a tool of cyber crime. A computer is used as a target for unauthorized use of data, identity theft etc. whereas a computer as a tool is used for phishing, lottery fraud, credit card frauds and also using e-mail for threat or harassment. The speaker further quoted "Edmond Locard's" Theory which states that "anyone, or anything entering a crime scene takes something of the crime scene with him, similarly, when a person enters at a digital platform he always leaves something behind which may be later used by fraudsters for malicious activities". The speaker drew a distinction between conventional crimes and cyber crimes. The

speaker stated that the traditional criminal techniques have now turned into cyber crimes with the growth in technology and development. It was stated that the crime of burglary has changed into hacking and deceptive callers have turned to phishing. Extortion has now become internet extortion and fraud has converted into internet fraud. However, identity theft and child exploitation still remain the same.

On the theme of *Forensic Evidence in CBI Cases*, the expert elaborated that forensic science is the application of sciences to matters of law, it can help investigators understand how blood splatter occurs (physics), learn the composition and source of evidence such as drugs (chemistry) or determine the identity of an unknown suspect (biology). Thereafter, the expert highlighted the significance of forensic evidence as it helps in proving that a crime has been committed or establishing key elements of the crime, places the suspect in contact with the victim or crime scene, establishes the identity of persons connected with the crime, corroborates a victim's testimony and mainly assists in establishing the facts of what actually occurred. The two recent scientific and technological advances were brought to light – (i) DNA typing which facilitates the

determination of an individual's DNA characteristics, and (ii) Computerized database of DNA, fingerprints and firearms which can be stored and retrieved when required. Sometimes, the DNA profile may not match the suspect, thereby exonerating the suspect from the crime. A latent print can match a suspect but further investigation may reveal that the suspect can explain why his prints were at the scene and supply with evidence to proof that he was not at the scene when the crime occurred. The session was concluded by stating that forensic evidence is not mathematics which provides a definitive answer; rather it is a means to arrive at the nearest possible outcome.

On the topic of *Sentencing Practices in Corruption Cases*, the panel mentioned that in corruption cases, there is always a pre-meditation and an intention; as corruption is not something which occurs at the spur of the moment, rather it is a premeditated process. Hence, it is extremely important to strike a delicate balance between aggravating and mitigating circumstances. The conference concluded with an interactive session of the participants and the panelists in which they discussed various topics relating to the subjects of the conference and shared their experiences.

Prominent Suggestions by Participants (CBI Court Judges)

The participant judges provided certain suggestions that could help the courts while trying cases:

- CBI should develop a holistic procedure for scrutinizing officials on deputation.
- Scrutinization of charge sheets.
- Videography of the process of collecting evidence.

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REFRESHER COURSE FOR FAMILY COURTS

12th to 16th October, 2018

Ms. Shruti Jane Eusebius, Research Fellow

Mr. Shashwat Gupta, Law Associate



The National Judicial Academy organized a Refresher Course for Presiding Officers of Family Courts from 12th to 16th October, 2018 which was attended by 30 participants. The objective of the refresher course was to discuss and examine the constitutional and statutory mandate of Family Courts and the evolving co-relative jurisprudence. The refresher course aimed to sensitize the participants regarding the role of Family Court judges and the relevant judicial persona to encourage amicable settlement of family disputes. The refresher course also aimed to provide an inter-disciplinary perspective to family disputes and strived to evolve mechanisms to address concerns of litigants and impacted parties. The refresher course also familiarized the participants with mediation techniques, couple therapy, group therapy and other skills requisite to enable qualitative and expeditious adjudication.

Session 1 - Constitutional and Legislative Mandate of Family Courts

The speakers dwelt on the increasing litigation before the Family Courts and the public perception regarding women empowerment as a cause for increase in matrimonial litigation. The speakers dwelt on the objectives of setting up Family Courts namely- reconciliation, expediting cases and amicable resolution of family disputes. The speakers

discussed the concept of 'economics of marriage' by highlighting the financial elements of a marriage such as income, contribution to family wealth and marital household. The speaker discussed adultery as a ground for divorce and stated that Sec. 497 of the Indian Penal Code 1860 (IPC) treated women as chattel and protected the right of husband over her. The speaker also discussed the challenges in execution of maintenance order and stated that parties often transfer property to avoid paying maintenance. The speakers discussed 'Constitutional Equality' and its relevance in family law. The concepts of 'Formal Equality', 'Substantive Equality' and 'Protectionist Equality' were explained and the examples of such approaches to equality existing in present statutes were highlighted. The speakers also expressed concern on the use of multiplier in determining maintenance which resulted in discrimination in maintenance on the basis of age.

Session 2 - Family Courts: Developing the Relevant Judicial Persona

The speaker distinguished between fault finding adversarial approach and problem-solving approach and thereafter expounded upon the role that a Family Court judge is expected to perform. The Family Court judge though situated in an adversarial system is

expected to adopt a problem-solving approach. The speaker emphasised on the need for Family Courts to adopt a therapeutic approach to resolve the dispute as well as address the underlying causes for the dispute. The challenges in adopting a proactive role by Family Court judges were pointed out and emphasis was placed on balancing the authoritative role of a judge with the role played by a Family Court judge who mediates the dispute. The speakers stated that no uniform standard can be devised in view of the varying situations in different jurisdictions. The speakers advised the judges to deliver justice taking into account the social realities and to keep Art. 21 of the Constitution of India at the forefront while adjudicating family disputes.

Session 3 - Communication Skills and Techniques for Effective Resolution of Family Disputes

The session was initiated by the speaker by stressing upon the importance of communication skills in adjudication of family disputes. It was stated that the position of a Family Court judge is different from other appointments and therefore it is imperative that the judge has expertise over communication skills. The speaker also discussed the importance of various traits which include tone of voice, respect to litigants, neutrality in judging, empathy, timely response and helpfulness. The speaker discussed assertive communication skills and discussed various actions to be undertaken by the judges which include setting agenda and atmosphere, filtering, deferring, redirecting, neutral reframing and reflecting. The speaker also discussed various questioning skills and the methods to elicit a response from the litigants. The speaker also highlighted various problems with listening and stated that the judges should listen attentively to the statements and assertions made by the parties. The speaker also stressed upon the power of empathy in resolving family disputes.

Session 4 - Counselling, Conciliation & Mediation in Resolving Family Disputes-Relevance and Importance

The speaker stated that the judges should not consider their posting in Family Court as punishment, since this post gives them a chance to touch lives and mediate disputes between families. The speaker stated that conflict is usual part of life and they should strive to understand the different facets of the conflict in their effort to resolve it. The speaker also brought forth the difference between the concept of mediation and

conciliation. The speaker distinguished the mediation from judicial process and stated that mediation focuses on the future wherein there is advantage for everyone. The speaker also expounded upon the role of a mediator and stated that he has to play a facilitative and a non-judgmental role. The speaker also discussed about referral of cases to mediation and stressed upon the factors which should be considered at referral, including the role of referral judges in such processes.

Session 5 - Significance of Couple Therapy & Group Therapy in Matrimonial Disputes

The speaker discussed the differences between advice, counselling and therapy and the situations where these methods can be applied. The speaker stressed on the use of gentle persuasion, mild tone and empathy as tools in couple therapy. Advice is a useful tool in cases where the dispute is small. The advisor must be in a position of authority to whom the parties are ready to listen. Counselling is suitable in cases where there is need to go behind the words to understand the cause of the dispute. Therapy is generally used as a tool to bring about modifications in behaviour pattern, beliefs, mindset and practices of an individual. The objective of couple therapy is not to bring about a change but to make the parties aware of the problem, its causes and its probable results. Lastly, the speaker discussed the rules and the tools that are to be adopted in therapy.

Session 6 - Understanding Family Disputes: A Psycho-social Approach

The speaker initiated the session by discussing the unique nature of human beings and stated that every individual has a different perception of an event. The root cause of any dispute is the difference in understanding and perception of any text or statement.

Disputes and conflict between individuals or families mostly occur due to difference in interpretation of a given situation or statements. The speaker dwelt on societal influences, upbringing, family environment and personal relations as factors which influence and shape an individual's mindset. The speaker stressed on the significance and impact of psychological intervention in conflict situations to identify and address the root causes of such conflict and to provide long term solutions for the same.

Session 7 - Role of Judges in Divorce Proceedings

The speakers dwelt on cruelty as a ground for divorce, its facets- physical and mental cruelty and discussed the recent developments in law. The speakers discussed Irretrievable breakdown of marriage as a ground for divorce and the recent judgments of the Supreme Court of India. It was also stated that the duty of the Family Court judge is to make all endeavour for settlement and to adjourn the matters if there is a reasonable possibility of settlement. However, conciliation should not be pursued in cases of suspected physical violence or assault. Sec. 10 of the Family Courts Act, 1984 enable the Family Court to adopt innovative procedures and methods to facilitate settlement and Sec. 14 enables the Family Courts to adopt relaxed rules of evidence.

Session 8 - Maintenance Proceedings: Radical Approach of Family Courts

The speakers stressed on the two important considerations in maintenance i.e. quantum of maintenance and the income used as a basis for calculation of maintenance. The speaker stated that maintenance generally is determined to be one-third of the income and should be determined on the basis of the following factors viz.

- (i) Earning of the wife;
- (ii) Ability of the wife to earn and support herself; and
- (iii) Standard of living and background of the wife and standard of living of the husband.

The speaker also stressed that judges should try to ascertain the veracity of salary slips given in maintenance proceedings since sometimes husband produce doctored salary slips to pay less maintenance amount to wife. The speaker emphasized that maintenance is neither dole nor charity but is rather the value of contribution of a spouse to the marriage. The session involved discussion on quantum of maintenance and it was stated that no arithmetic formula for determination of maintenance can be devised and it depends upon the needs of the wife. The issue whether maintenance can be paid in foreign currency and method for execution of a maintenance order against a person residing in another country were discussed.

Session 9 - Adjudication of Property Disputes by Family Courts: Challenges & Solutions

The speakers discussed the concept of 'matrimonial house' and 'matrimonial property' as a phenomenon that evolved in USA and UK and distinguished the

practices prevalent in USA, UK and India. The concept of 'matrimonial home' in India usually refers to the house of the in-laws unlike the practices in USA & UK of establishing a new setup on marriage. The speakers highlighted the issue of adjudicating personal rights and proprietary rights in property involved in the marital setup in India and the challenges in determining proprietary rights on the basis of contribution to the marriage and marital property. The speakers discussed the concept of 'shared household' in Protection of Women from Domestic Violence Act, 2005 and the rights over a shared household. The speakers highlighted the absence of substantive law determining the rights of persons over property acquired in the course of marriage and inability of the Family Courts to adjudicate on this issue in the absence of such provisions.

Session 10 - Child Custody and Guardianship: Issues and Challenges

The general rules of custody under the law were and it was emphasised that in matters of child custody the Family Court should develop a 'child-centric' rather than a 'parental rights centric' approach. A major concern which came to the forefront during the session was the issue of inter-county parental child removal. The speaker also discussed the concept of first strike and closest contact in determining jurisdiction of foreign courts and recognition of orders of foreign courts. The speaker discussed the cases of *Ruchi Majoo*, *Surya Vandanan*, *Prateek Gupta*, *Nitya Anand Raghavan* and *Kanika Goel* to highlight the development of law on the issue of Inter-country Parental Child Removal. It was stated that Sec. 9, Guardians and Wards Act, 1890 mandates that the petition for guardianship should be filed where the child ordinarily resides and not the place where the child is detained or is residing on the day that the petition is filed. The speaker also discussed various factors which should be considered while ascertaining guardianship which included: Age, gender and religion of minor, Character and capacity of guardian, Closeness of relationship, and Wishes of deceased parents.

Session 11 - Psychological Perspectives to Determine Best Interests of the Child

The speaker discussed the concept of 'Best Interests of a Child' and highlighted various factors which should be taken into account by the court to ascertain the best interest of the child. These include – wishes



of the child, mental and physical health of the parents, home environment, age and gender of child, evidence of drug addiction or sexual abuse, use of force by either parent, employment status of parents, ability and willingness of the parents to provide stability to the child, negligence on part of parents, special needs of the child, and previous living arrangements.

The participants were given case studies on custody disputes between parents, parental alienation, psychological effect of parental depression on child, psychological effects on child in divorce and custody disputes to analyse the issues involved in such cases and to develop possible solutions to such issues keeping in mind the best interests of the child.

Session 12 - Gender Justice and Gender Bias: Maintaining Equilibrium

The speaker discussed the concept of gender bias and reminded the participants about the constitutional mandate of equality and non-discrimination under Art. 14 of the Constitution of India. The speaker also dwelt on protective discrimination permitted under Art. 15(3). The speaker discussed the gender bias present in Sec. 6 of the Hindu Minority and Guardianship Act, 1956 which holds the father to be the natural guardian in preference over the mother. The term “after him (father)” in the section was interpreted to mean that the mother would only get custody of the child after the death of the father. The landmark judgments *Gita Hariharan* and *Roxann Sharma* were discussed to highlight the development of law in this regard. It was opined that the concept of “Best Interest of the

Child” is gender neutral and the welfare of the child is of paramount importance. The speaker discussed the concept of bias and stated that humans have a tendency to stereotype. It was stated that judges sometimes have preconceived notions and opinions which affect their judgments. It was further discussed that bias arises from various factors which include extraneous information, previous experience, lack of knowledge etc. These biases affect the adjudication of cases since it affects interpretation and appreciation of evidence.

Section 13 - Challenges and Constraints Affecting the Working of Family Courts

The speakers emphasised that the role of the Family Court was not to protect the institution of marriage at all costs but to adjudicate taking into account the best interest of parties to a marriage. The judges were advised to adjudicate keeping in mind the unequal relations and position in a marriage, and also at the same time they should not be biased or unduly sympathetic to either party in a matrimonial dispute. The speakers stated that maintenance amount should be determined keeping in mind the wife’s contribution, monetary or otherwise, to the marriage.

The constraints highlighted by the participants were - non-cooperation by advocates, problem posed by unit system in recognising and appreciating efforts made in mediation and counselling, filing of baseless complaints against Family Court judges, delays caused by advocates and litigants, inadequacy of legal aid provided to litigants, practice adopted by advocates of determining their fees as a percentage of permanent

alimony granted to wife, non-availability of counsellors, delay in payment or no payment to counsellors, delay in execution of the orders of the court, contravention of visitation orders and non-availability of children's room in court.

The speaker suggested that video conferencing should be utilized in Family Courts for examination of witness. It was also suggested that the judges could invoke Sec. 12 to take help of counsellors, if no counsellors are attached to the Court.

Session 14 - Strengthening the Family Courts: The Way Forward

In this session the panel of experts provided suggestions to various problems put forth by the participants. The speaker opined that in case of difficulty in process serving abroad, the judge can contact the Indian embassy in the concerned nation. The speakers stated that Sec. 125(3) of the Code of Criminal Procedure, 1973 does not provide for part payment of maintenance and advised the participants that part payment should not be considered as a

ground to release the person imprisoned under Sec. 125(3). The participants raised the issue of conflict between customary laws in Nagaland and the central legislation which poses a problem in adjudication of dispute before the court. The participants raised the issue that in cases where no property is found for realisation of maintenance amount, whether the court can order rigorous imprisonment to ensure that the payment received by the husband in jail can be used to provide maintenance to wife. In response, the speakers stated that the statute does not prohibit the court from taking this action. The speakers further suggested that if the husband shows no income and no property, then the court can ascertain his income by assessing his lifestyle to determine maintenance amount for his wife. The participants also discussed measures for partition and attachment of coparcenary property for payment of maintenance, and it was suggested that the share in a coparcenary property is attachable and maintenance can be ordered as a charge on the share in the coparcenary property.

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REGIONAL CONFERENCE (WEST ZONE-I) ON ENHANCING EXCELLENCE OF THE JUDICIAL INSTITUTIONS: CHALLENGES & OPPORTUNITIES

27th & 28th October, 2018

Mr. Sumit Bhattacharya, Research Fellow

Ms. Ankita Pandey, Law Associate



A two day Regional Conference for the West Zone comprising of four High Courts i.e. High Court of Rajasthan, High Court of Gujarat, High Court of Bombay and High Court of Madhya Pradesh was organized by NJA on 27th and 28th October, 2018 at Jodhpur, hosted by the Rajasthan High Court in collaboration with the Rajasthan State Judicial Academy.

The session on *Constitutional Vision of Justice* began by dispelling the prevalent myth, common to the officers of the subordinate judiciary (a major constituent fraction of the participating judges) as to their perceived extremely limited role in the “Constitutional Vision of Justice”, premised on the belief, that neither are they “Constitutional Courts” nor do they interpret the Constitution. Hence, how do they internalize and practice constitutional vision of justice? It was underscored that all Courts irrespective of hierarchy are constitutional Courts and an avid example amongst plethora of judgments exhibiting constitutional vision of justice is the *Ratlam Municipality Case*. It was clarified that the constitutional vision of Justice is not about interpreting merely the constitutional provision, but lies in the spirit and goals which the Constitution envisages and propagates to establish justice (social, economic and political). It relates to the interpretation of the statutes and the clauses by a court of first instance in a manner most suited for socio-economical

justice; e.g. even while interpreting private law of contract, when the court recognizes in a given situation the “contra authoritative rule” (i.e. interpreting a rule against the author of the contract). The subordinate judiciary needs to apply the principles laid down by the suitable precedents, so as to extend the constitutional vision of justice at the grass-root level.

It was categorically emphasized in the session on *High Court and District Judiciary: Building Synergies*, that in order to build synergies between the High courts and the District Judiciary, the State Judicial Academies (SJAs) play a cardinal role. It was urged that specific and periodic programs must be designed and organized by the SJAs to enable effective coordination and develop a bond and instill trust between the supervisor and the supervised. SJAs must play the role of a hub to resolve issues between the portfolio judge and the district(s) supervised by him/her. Addressing the apprehension of the junior division judges on the susceptibility of their judgments to adverse to scrutiny by the High Court, it was insisted that a judge’s biggest shield for withstanding any scrutiny is a meticulously reasoned order. It was further emboldened emphasized that a judge must at all times be adhering to the code of conduct and practice judicial work with a clear conscience and utmost judicial ethics. It ensures absolute fearlessness and renders enormous respect not

only to the institution but raises the bar of public trust. It was suggested that a High Court judge entrusted with the noble job of supervising district(s) must in essence exhibit him/herself as a mentor and a guardian rather than being a typical ring master administrator.

In the session dedicated on *Revisiting Norms for Appellate Review: Consequence of Frequent and Excessive Appellate Interference*, defending the robust capabilities of the colossal infrastructure of the subordinate judiciary of India, it was explained that, if the lower judiciary were to be (unfairly) considered incompetent, incapable or of doubtful integrity, and therefore a pretext to justify an appellate or review jurisdiction, then why do we at all need the tier one level of judicial services at all? It is a direct adverse indication on the very existence of the system. All the more, there exists a sizable burden on the public money to run such a vast infrastructure of grass-root level judicial system. It was also emphatically stated that appeals were a luxury and at the Tribunals they were barred by pecuniary jurisdiction, and were thus qualified by affordability (i.e. 50 lakhs or below no appeals would be admitted to the High Courts). Likewise, "Revisions" were restricted to issues of jurisdictions only, which were later on transgressed to include other grounds. It was argued and discussed that often the exercise of the appellate power is subservient to the perception of the judge who subsequently discovers a way or reason to allow an appeal, and hence, is often not exercised as per allowance provided by law. Stays are granted readily in an appeal today, depicting serious concerns. Appeals literally languish to serve as a lawyers' paradise. It was pointed out that mostly the appeals are on procedural issues and rarely on substantive law. It was also stated that ADR cases uniquely restrict appeals. It was emphasized that in matrimonial cases in particular the appeals must be settled forthwith. It was urged that the appeals must be disposed of at the notice stage itself wherever possible. Principles applicable to *certiorari* jurisdiction must be adopted; wherein a mistake committed may be corrected immediately at the notice stage itself in order to save judicial time and avoid inconveniences of frivolousness and triviality. It was also suggested to impose cost on delays, adjournments and vexatious litigations. It was also advised to limit the grant of interim relief after first level of litigation as it is likely to reduce tertiary and circuitous litigations significantly.

The session on *Access to Justice: Information and*

Communication Technology in Courts began with discussion on the introduction of information and communication technology in Indian courts and further went on to analyze the achievements of Phase I and II of the e-Courts project. It was asserted that the use of technology in courts has made judicial functioning more efficient and further attempts are being made to incorporate new technologies. In this regard, it was further explained that E-Committee has paved the way for Phase-III which would bring in technologies such as artificial intelligence, augmented reality, machine translation, mobile collaboration, speech recognition to ensure a more transparent and accountable judicial system. Various positive changes that have been brought about by the introduction of technology in the day-to-day functioning of the court system were highlighted. The session gave an opportunity to the participant judges to place before the house the limitations faced by them with respect to the use of information and communication technology and their implementation in courts. Lastly, reference was also made to the website www.ecourts.gov.in, wherein extensive and exhaustive database with updated information with respect to every court in India is available.

The last session delved on *Access to Justice: Court and Case Management*. In this session the discussion focused on methods to coordinate efforts on key areas of court administration and management. In this regard, the basic objectives of the scheme of National Court Management System (NCMS) were laid out with special focus on the roles of the State Court Management System Committee at High Courts and Sub-Committees at the district level. Further, the recommendations made by the NCMS baseline report relating to "best practices" for court management were discussed at length. These included infrastructural developments such as model court rooms, conference rooms, ADR centres, judicial service centres, judges and staff residences etc. and organizational issues to be addressed for such as judge strength, establishment of special courts, appointment of adequate administrative and technical staff, assignment of digital signatures, budget and finance, etc. It was interestingly pointed out that maintenance of healthy Bar and Bench relation would also go a long way in the effective and efficient functioning of the courts. The use of ICT is another way to support and automate case management practices of courts.

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CONFERENCE FOR HIGH COURT JUSTICES

02nd to 04th November, 2018

Ms. Nitika Jain, Law Associate



A three day Conference for High Court Justices was organized by the National Judicial Academy from November 4th – 6th, 2018. The conference was attended by 18 Justices from various High Courts, providing them a common platform to share experiences, insights and suggestions with a panel of distinguished resource persons from the judiciary; and other relevant domains. The conference was designed to facilitate discussion on themes like *Entrenching the Constitutional Vision of Justice*, *Social Context Judging as a Controlling Element in Statutory Interpretation & Exercise of Discretion*, *Impact of Media on Public Perception regarding vitality of Justice Delivery*, *Precedents: Navigating through precedential conflicts*, *Managing Judicial Review within Democratic Framework*, *Adjudicating Electoral Disputes: Free & Fair Elections and Adjudicating Economic Crimes* like corporate fraud and manipulation. The current challenges faced to curb Money Laundering under the Prevention of Money Laundering Act, 2002 was also deliberated upon. Identifying challenges and evolving optimal solutions/ strategies to effectuate qualitative justice delivery was the agenda during the conference.

The first session on *Entrenching the Constitutional Vision of Justice*, involved discussions on the concept of Justice and vision of framers of the Constitution as

enshrined in the Preamble. It was observed that the text used in the Constitution is illustrative in nature and is subject to liberal interpretation rather than strict interpretation. The speaker highlighted that the Constitution must have a wider interpretation than the civil or criminal law. The speaker deliberated upon Part III and Part IV of the Constitution and it was observed that Part IV of the Constitution has often led to realization and enforcement of certain fundamental rights. It was stated that fundamental rights are interlinked to each other and cannot be read in isolation. The concept of equality was discussed by highlighting Art. 14, 15, 16 and 21 of the Constitution and how these provisions have ensured in entrenching constitutional vision of justice.

On *Social Context Judging as a Controlling Element in Statutory Interpretation and Exercise of Discretion*, various landmark judgments were discussed at length for better understanding of the subject. The judgments included *Indira Sawhney & Ors v. Union of India*, *Chairman, Railway Board v. Chandrima Das* and *Joseph Shine v. Union of India*. The session included deliberations upon the concept of judicial discretion and sovereign immunity. The theories of H.L.A. Hart, Ronald Dworkin and Ahron Barak were discussed to elaborate upon the concept of judicial discretion. The

difference between American and Indian jurisprudence in relation to exercise of judicial discretion was discussed by the speaker in detail. It was suggested that judicial discretion must be exercised only when there is ambiguity in law or when there are multiple alternatives available.

The next session was on the theme *Impact of Media on Public Perception Regarding Vitality of Justice Delivery*. The session focused on how media and judiciary are interlinked and the role of media as the fourth pillar of democracy. The advantages and disadvantages of media including the social media on justice delivery was highlighted by the speakers. The concept of media trial and its impact upon *sub judice* matters and on the judiciary was discussed among the participant justices. It was suggested that a government organization should be empowered to set rules for ethics and raise the standards of journalism in the country.

On the theme *Precedents: Navigating through Precedential Conflicts*, the speakers discussed the basic concept of precedents which included what are precedents, role of precedents and its history in common law. The law of precedent in India under Art. 141, 144 and 227 was highlighted. The session further focused on two types of precedents *viz.* horizontal and vertical, where the former type is based on facts and the latter determines the rule of law which cannot be ignored. During the course of session, it was observed that precedents originate from a pyramidal structure of judicial hierarchy. An emphasis was drawn upon the concepts of *per incuriam*, *stare decisis* and *ratio decidendi*. Theory of 'explicit' and 'implicit' *ratio decidendi* was briefly discussed by the speakers. The Wambaugh's test with regard to determining the *ratio decidendi* of a decision and American Rule of interpretation was also deliberated upon.

On *Role of Judiciary in Adjudicating Electoral Disputes: Free and Fair Elections*, the statistics relating to criminal record against MP's and MLA's was highlighted to give an overview of the type of offences and the current scenario relating to electoral disputes. Recent judgments by the Supreme Court on electoral disputes and its implications were discussed. The speaker further pointed out various electoral issues that need judicial consideration such as electoral bonds, funding of political parties from outside India and whether political parties are 'public authority' under RTI Act, 2005. The discussion further stressed on

the role of courts in preserving the sanctity of elections and role of the Election Commission in keeping electoral process free and fair. Lastly, the 'model code of conduct' in relation to elections and electoral process was also discussed at length.

The session on *Managing Judicial Review within Separation of Powers and Democratic Framework*, included a comprehensive discussion on the concept of separation of powers and judicial review as the basic structure of the Constitution. Further the discussion to caused on landmark judgments such as *Marbury v. Madison*, *Vishnu Dutt Sharma* etc. It was observed that judicial review is a tool to keep a check and balance on the powers of the other two limbs of any democratic society i.e. executive and legislature. The issues relating to discretion, judicial activism and judicial overreach were deliberated upon during the course of discussion. Lastly, recent landmark judgments by the Supreme Court which have been a by-product of judicial review such as Liquor Ban on highways, Sabarimala temple case, *BCCI* case were discussed by the speakers.

The next session was on *Adjudicating Economic Crimes: Corporate Fraud and Manipulation*. The statistics relating to corporate fraud, highlighting the rise in incidents of frauds, manipulation and money laundering in the corporate world was pointed out by the speaker. The issues relating to lack of robust financial and regulatory mechanisms to deal with the cases of corporate fraud and inefficiency of existing machinery of State dealing in the cases of economic fraud was discussed during the session. Cases such as *Haridas Mundhra scam*, *Harshit Harshad Mehta case*, *Speak Asia Case*, and *Nirav Modi case* were discussed in detail with special emphasis on their mode of operation and laws relating to financial fraud in the country. Other areas covered during the session included role of investigating agencies in dealing with cases of corporate fraud, definition of 'fraud', SEBI Regulations of 2003, lacunas in the legal system, incompetence of administrative machinery, lack of training on global and emerging areas of corporate fraud.

The last session was on *Money Laundering: The Prevention of Money Laundering Act, 2002: Current Challenges*. The speaker highlighted the background for enacting the Prevention of Money Laundering Act, 2002 (PMLA). It was stated that the fundamental



principle of PMLA was not only to chase the person but to confess the money as well. It was highlighted that there is absence of jurisprudence in context to PMLA since the appeal lies with the tribunal thus bypassing the higher judiciary. A brief overview of the legislation act including various sections and their implication was given by the speaker. The *Aadhaar Judgment* was discussed in detail to highlight the

aspect of authorization of financial transaction through aadhaar as an instrument of check upon the institution and individuals. Various issues involving cybercrime relating to the subject were also addressed by the speaker. Further, the session involved discussion amongst the participants on challenges faced by them under the current scheme of legislation to adjudicate cases relating to money laundering.

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WORKSHOP FOR ADDITIONAL DISTRICT JUDGES

02nd to 04th November, 2018

Ms. Shruti Jane Eusebius, Research Fellow



National Judicial Academy organised the workshop for Additional District Judges with the objective of facilitating discussion on critical areas of adjudication and challenges in administration of justice at the District court level.

In the discussions on *Challenges in Implementation of ADR System in Subordinate Courts*, the statutory framework of Alternate Dispute Resolution (hereinafter ADR) and the need for greater use of ADR as a means of resolution of disputes was discussed. The benefits of ADR in reducing the workload and pendency in the courts was emphasised. The need to encourage parties to resort to ADR was stressed upon. The speakers dwelt on the nature of cases which are suitable for referral to ADR under Sec. 89, Civil Procedure Code, 1908 (C.P.C.). The discussions centred on the impact of use of ADR on judicial pendency and discussed the major challenges in effective use of ADR. The participants stated that non-cooperation by the litigants and their advocates proved to be a hindrance in effective settlement of disputes and the tendency to litigate is often a stumbling block in the ADR process. It was suggested that the litigants should be made aware of the benefits of ADR in terms of cost, time and agreeability of outcome in order to encourage these to cooperate in the ADR process.

In the session on *Court & Case Management: Role of Judges*, the significance of management skills in

the judicial system, for speedy and timely justice was emphasised upon and the concerns about the rising pendency, delay and arrears plaguing the judicial system were highlighted. The speakers stressed that the judge is the master of the court and hence, is the team leader guiding the team comprising of the court staff and the stake holders in the judicial system. Emphasis was placed on streamlining the court processes, efficient use of judicial time and courtroom management as court management skills. The speakers also dwelt on the relevance of case management and emphasised on the need to practice this skill to ensure that the case progresses in timely manner.

In the discussions on *Civil Justice Administration: Appellate and Revision Jurisdiction of District Judges*, the speakers elaborated on the concept of appeal as a remedy to test the correctness of the decision of a court. The speakers stressed on appeal as a statutory right which encompasses both questions of fact and law. The speakers discussed the case of *Ganga Bai v. Vijai Kumar* (1974) to draw a distinction between the right to suit and the right to appeal and stressed that the right to appeal can only be exercised against a decree. The speakers discussed the scope and limitations of the right to appeal with reference to case law on the issue.

In the discussions on the theme *Criminal Justice Administration: Appellate and Revision Jurisdiction of District Judges*, the speakers dwelt on the modes by



which a complainant can access the revisional court. The speakers distinguished between appellate and revisional jurisdiction of the courts and the procedure for the same. The speakers also dwelt on the issue of how a person who is not a party to the matter can challenge the order of a court in revisional jurisdiction and stated that, if the revisional court can entertain the revision *suo moto*, it can also entertain a third party complaint. The speakers stated that the right to appeal has 2 facets – appeal against conviction and appeal against acquittal, and dwelt on whether the powers and approach are the same in cases of conviction and acquittal. As regards the role of the appellate judge, it was emphasised that the judgment should ordinarily not be interfered with, unless the judgment is perverse. The power to appreciate evidence is restricted to perversity. If the finding of the court is one of the possible views that can be taken in the matter, the order of the court should not be interfered with. However, in cases of appeal against conviction, if there is an alternate view, the court can interfere to give the benefit of the same to the accused. In cases of acquittal the acquittal operates as a double presumption of innocence.

In discussions on *Fair Sessions Trial*, the speakers stressed on the idea of closure of crime as the objective of sessions trial and stated that, if a case hinges on technical grounds of evidence, then nothing should stand in the way of permitting the evidence to come forward. The challenges in recording evidence of hostile witnesses were discussed and it was suggested that the court can use Sec. 311, CrPC to ask questions.

In the discussions on *Sentencing: Issues and Challenges*, the precedents on sentencing were discussed to emphasise on the need for a rational sentencing policy. The speakers discussed the aggravating and mitigating circumstances that judges can consider in determining appropriate sentence and emphasised on cautious use of judicial discretion in sentencing.

In the session on *Laws relating to Cybercrime: Advances and Bottlenecks*, it was stated that the rising popularity of e-devices and social media increases vulnerability to cybercrime. The speakers explained the modes by which cybercriminals use spoofed messages and the methods to distinguish between genuine and spoofed messages and emails. The speakers suggested that in cases of doubt on genuineness of messages and emails, the device should be seized and sent to the forensic lab.

In the discussions on *Electronic Evidence: Collection, Preservation and Appreciation*, the speaker dwelt on the nature of electronic evidence and the devices from which electronic evidence can be obtained. The speaker discussed the principles of evidence and the provisions relating to the admissibility of electronic evidence. The speaker also discussed the methods through which electronic evidence can be proved and its integrity and authenticity can be validated. The challenges in the collection and preservation of electronic evidence were highlighted. The speaker also explained the concept of cryptocurrency and the modus of circulation and use of cryptocurrency.

P-1130

ORIENTATION PROGRAMME FOR JUNIOR DIVISION JUDGES

16th to 22nd November, 2018

Dr. Amit Mehrotra, Assistant Professor
Mr. Rahul I. Sonawane, Research Fellow



The National Judicial Academy (NJA) organized a seven day orientation programme for Junior Division Judges from 16th to 22nd November 2018.

The Programme was conceived for capacity building of judicial officers at the primary tier, viz. Civil judge (Junior Division). The sessions were designed to provide a forum for the participant officers to share experiences and views with counterparts from other states; to facilitate 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 our performance standards; and to deliberate on several aspects of law and practice relevant to enhancing the quality of their performance.

The theme for the Session 1 was *Constitutional Vision of Justice*. It was emphasized that the fundamental role of a court is to impart justice as per the ideals set by the Constitution of India. The crucial role played by trial judge in building up strong structural foundation of the justice delivery system was discussed. It was opined that it is the 'judicial mind' of the judge that paves way for justice. The broad concept of the word 'justice' was intensively deliberated upon. It was highlighted that Sovereign, Socialist, Secular, Democratic and

Republic are the attributes of justice provided in the Preamble to the Constitution of India. The objectives laid down in the Preamble to the Constitution of India were succinctly discussed. Art. 13 of the Constitution of India which reflects the pre and post-constitutional law was deliberated upon. It was opined that 'justice' should be looked from social, economic and political viewpoints for overall betterment of the general public and society at large.

The theme for the Session 2 was *Role of Courts in a Constitutional Democracy and Adherence to Core Judicial Values*. This session involved discussions pertaining to the role of judges in upholding constitutional democracy. Art. 38 and 39A of the Constitution were discussed and it was observed that the Constitution gives mandate to promote justice. It was emphasized that judges of district judiciary play a vital role in strengthening the democracy. Their role is much more important and realization of the constitutional goal to a great extent depends upon them. It was stated that even though district judiciary may not be performing the task of interpretation of the Constitution, (unlike the judges of the Supreme Court and the High Courts) they are under an obligation to follow and apply the Constitution while performing

their task. Landmark cases like *Yakoob Memon v. State of Maharashtra* and *Ram Lakhan v. State* were discussed in depth highlighting the concept of 'justice'. It was suggested that a judge must shoulder primary responsibility to be the guardian and protector of fundamental rights as provided in Part III of the Constitution. It was emphasized that a judge should act as an agent of social revolution and carry out the very objective of promoting justice for greater welfare of public and society.

The theme for Session 3 was *Discovering Current Judicial Methods*. It was stated that in a democratic country the role of judicial system is to protect the rights of people. It was stressed that justice along with freedom and equality are standards of human conduct. It is mandatory for the system to promote and comply with these standards as well as protect the principles of law as laid down in the Constitution. Justice is highest set of norms and it should be guided by right values. *Olga Tellis & Ors v. Bombay Municipal Council* and *S.P. Gupta v. President of India and Ors*; were outlined and views of participants were heard and discussed. It was stressed that judges are in-charge of justice. They should act in accordance with the set norms in order to deliver better judgments because the real challenge at present before the judicial system is to deliver sound and reasoned judgment.

The theme for Session 4 was *Courtroom Technology: Use of ICT in Courts*. The implementation of ICT in courts, the current technological trends, its advantages and disadvantages were discussed. The main components of e-judiciary include Case Information System (CIS), Digitization of records, E-courts, E-filing and various other e-services such as e-FIR and e-summons, NJDG were extensively deliberated upon. It was opined that ICT is a vital tool for fast disposal of pending cases and reduces the overburdening of courts. It was suggested that there is a need for optimum IT infrastructure which includes hardware sourcing, data center and web server hosting setup, implementation of court website integrated with e-filing and maintaining the software & web application. It was stated that the objective of the ICT was to ensure quick data access, transparency and reduce processing time.

The theme for Session 5 was *Managing the Docket: Court and Case Management*. Techniques for efficient management of the court were discussed during the

discourse. The key measures that could be adopted by the judges for maintaining quality of justice while disposing of cases were discussed, including finding and scrutinizing the pending cases in court, preparing time table and schedule, scrupulously adhering to the timelines laid down in CPC, Cr.P.C and in The Indian Evidence Act. It was stated that old cases should be given special priority while disposing matters. Concepts like court management, case management, case flow management, board management and case load management were discussed.

The theme for Session 6 was *Law of Precedents: Identification and Application of Ratio Decidendi*. It was stated that the concept of 'Law of Precedents' emerged from common law system. The precedent is a substantial source for development of law, it assists in filling up the lacuna, helps to remove ambiguity from law and ensures systematic growth of law. The meaning of the term *ratio decidendi* was explained as 'the reason behind the judgment' and held it to be of universal application. The distinction to be made between *obiter dicta* and *ratio decidendi* was discussed. Art. 141 of the Constitution that reflects the principle of *stare decisis* that mandates binding nature of law declared by the Supreme Court was also discussed.

The theme for Session 7 was *Judging Skills: Framing of Charges*. It was stated that while framing charges, two aspects should be looked into, first, whether charge has to be framed or not, and second, how the charges are to be framed. The purpose of framing of charges was discussed in the light of *V.C. Shukla v. State* 1980 AIR 962. It was opined that the purpose of framing of charge is to give accused clear and precise accusations against him/her. Sec. 211-214, Sec. 218, Sec. 222, Sec. 223, Sec. 227, Sec. 239 and Sec. 244- 246 of Cr.P.C with respect to framing of charges were also discussed in detail.

The theme for the Session 8 was *Judging Skills: Art, Craft and Science of Drafting Judgment*. Statutory provisions that dealt with overall framework of the judgments were discussed. Judgment writing is an art of storytelling. It was stressed that judgment should possess the capacity to bring about social change and should not be an outcome of personal experience or views of a judge. Judgment should be worded in precise, coherent and simple language for the benefit of layman. Judgment should be supported with reasons,

as reason is the blood of judgment. It was suggested that copying of redundant phrases and sentences from precedents should be avoided. The core elements of judgments were discussed in detail. It was proposed that the judges should not worry much about the result of one's judgments but give their best while writing sound and reasoned judgments.

The theme for Session 9 was *Art of Hearing: Promoting Rational Discourse in the Courtroom*. It was deliberated that the rational discourse should be promoted by a judge in his court. The most basic requirement for rational discourse is the knowledge of the facts of the case, and laws applicable to the case. It was stated that fair hearing involves issuing of notice to the parties, submission of evidences by both the parties, opportunity to rebut the evidences produced and final adjudication of dispute. Judges should not portray any sign of bias or partiality against any party in dispute. Good and patient hearing skill is very important for dispensation of justice. Judges should maintain litigant-friendly atmosphere in the courtroom and make them feel that they are being heard.

The theme for Session 10 was *Law relating to Cyber Crimes: Advances and Bottlenecks*. It was pointed out that the traces of cyber crime in India were first suspected, in the year 1997. There is no owner of internet but it is governed by 13 route servers, which are mostly owned and operated by USA. Hence, India is at great risk and dealing with cyber crimes is a great challenge for our country. A live demonstration as to how cyber crimes take place and how electronic evidence produced before courts could be misleading

was displayed. A demo was given as to how misleading emails, SMS, calls and WhatsApp messages can be fictitiously planted for use as an evidence, and how to identify whether they are genuine or spoofed. The concepts like spoofing, hacking, rooting etc. were discussed. It was suggested that judges should be extremely cautious while dealing with cyber-crimes.

The theme for Session 11 was *Electronic Evidence: Collection, Preservation and Appreciation*. It was stated that electronic evidence may be primary or secondary evidence. It may be in the form of email, message, CD, pen drive, CDR, Hard-Drive, CCTV footage, recording etc. Thereafter, the case of *Sharat Babu Digumarti v. Government of NCT of Delhi*, (2016 SCC OnLine SC 1464) was discussed, wherein it was held by the Hon'ble Supreme Court that Information Technology Act, 2000 is a special Act and shall prevail over the general law. The case of *Shafhi Mohammad v. The State of Himachal Pradesh* (JT 2018 (2) SC 349) was also discussed wherein it was held that requirement of certificate under Sec. 65B (4) is not always mandatory. Admissibility and appreciation of evidence in the form of photographs, CD/DVD, hard disk, SMS/MMS, CCTV footage, bank statements, IP Address and CDR (Call Data Record), challenges in appreciating the electronic evidence and common mistakes committed by the investigating agencies were also discussed with the help of relevant case laws.

The theme for Session 12 was *Forensic Evidence in Civil and Criminal Trials*. The importance of forensic evidence and DNA profiling in civil and criminal trials in today's world was highlighted. It was stated that



ultimate idea behind admissibility of forensic evidence is to utilize expert opinion. The usage of forensic evidence in justice delivery system in civil cases include insurance claims, paternity test, negligence, accident accusation matters, age estimation among others and in criminal cases includes homicides, sexual assaults, dowry death, NDPS cases, accidents, poisoning, etc. The two facets of forensic evidence viz. forensic medicine and forensic science were discussed. The former deals with application of knowledge of medicine and includes examination of injury, nature of injury, type of weapon used, age determination etc., while the latter deals with application of knowledge of science which includes forensic DNA analysis, forensic toxicology, narcotics, forensic documents analysis, forensic serology, forensic ballistics, diatoms, forensic entomology, examination of clothes and biological samples etc. It was stated that the benefit of placing reliance on forensic science is that it is reliable, scientific and unbiased. Importance of DNA profiling, forensic investigation and common sources of extracting DNA were also discussed in detail.

The theme for Session 13 was *Role of Courts in securing Gender Justice*. It was stated that the term 'gender' no longer confines to male and female category only, a 3rd category of "transgender" is also included within it as per Supreme Court's verdict on Sec 377 of IPC. Family related matters with special reference to gender justice and the role of judges dealing with such cases was discussed. It was stated that while dealing with such cases judges should be very sensitive to the issues. It was stated that no doubt, there is misuse of some provisions like Sec. 498A, 304B, and 306 of IPC, but there are also genuine cases with which a judge has to deal with very sensitively.

The theme of the Session 14 was *ADR and Plea Bargaining*. The four major methods included in Alternate Dispute Resolution System (ADR) viz. – Arbitration, Mediation, Conciliation and Lok Nyayalaya (or Lok Adalat) were explained. The scope of mediation was discussed. What cases can be referred for mediation and what not was discussed in the light of various landmark judgments. It was emphasized that when there is question of law involved, when the case is with respect to interpretation of document, matters involving fraud, matters involving acts against society or with respect to violation of human rights, such cases

shall not be referred to mediation. A short role play was conducted to demonstrate as to how mediation actually takes place. It was stressed that there are four stages of mediation. First is introduction, where mediator introduces himself to both the parties and tells the rules; second is joint session with both parties where mediator discusses the issue with both parties in their presence; third is individual session with each of the party where he can discuss confidential informations from each party; and the last stage is conclusion, where either matter is settled or returned back to the court for further proceedings. The cases of *Salem Advocates Bar Association* and *Afcons Infrastructure* were discussed.

The theme for the Sessions 15 & 16 was *Occupational Stress in Judges: Identification and Consequences of Stress & Managing Judicial Stress: Institutional Strategies and Techniques*. The stress related issues in judges were discussed. The participants were asked to give their opinions and provide reasons as to why they get stressed up. It was expressed by most of the participant judges that in professional life due to inability to manage professional and personal life, meeting up deadlines, meeting expectations of others, difficulty in solving complicated and technical matters, high targets, excess workload, etc. creates stress. It was pointed out that the innate quality of fearfulness and negative thinking also leads to stress. It was suggested that there is a need to change the perspective and response towards situations and circumstances. Significance of quality sleep, physical fitness and wellbeing was emphasized for leading a good and healthy life. It was highlighted that stress is another form of energy and some amount of stress is necessary for development of human beings. However, excessive stress has negative impacts on one's life like improper behaviour, poor health, sleep disorders, addictions etc. The stages of stress viz. relaxed, pressurized, worried, stressed and depressed were discussed. Causes of stress were also discussed. It was emphasized that to deal with the problem of stress one must accept that learning is a continuous and lifetime process. In case of any serious problem, one should consult or seek help from professionals. It was suggested that every person must inculcate some core values within them that includes forgiveness, forgetfulness and courage to move on.

The theme for Session 17 was *Role of Magistrates at First Production of Arrested Person*. Team of



Commonwealth Human Rights Initiatives (CHRI) conducted this session as per the memorandum of understanding between NJA and CHRI. It was stated that first production of accused is a most important aspect of court procedure. It was shown that there is an increase in percentage of arrest from 2009 to 2016. It was highlighted that the arrested person has been provided with various rights that includes right to silence under Art. 20(3) of the Constitution, right to know the grounds of arrest as per Sec. 50(1), Sec. 55, Sec. 75 of CrPC and Art. 22 (2) of the Constitution, information of right to be released on bail, right to be produced before a magistrate without delay as provided under Sec. 56 and Sec. 76 of CrPC, right to consult a legal practitioner as per Art. 22(1) of the Constitution and Sec. 50(3) of CrPC, right to be examined by a medical practitioner as per Sec. 54 of CrPC, right of free legal aid as per Art. 21 of the Constitution etc. It is the responsibility of the magistrate to safeguard these rights of accused before whom he is first produced. A simulation exercise was conducted to demonstrate role of magistrate at first production. Provisions relating to first production under Sec. 167 of CrPC, prisoner's rights and reforms, provisions relating to bail and bonds in CrPC and role of magistrate in case of accused being found juvenile at the first production were also discussed. The cases like *D.K. Basu v. State of West*

Bengal, Sheela Barse v. State of Maharashtra, Arnesh Kumar v. State of Bihar, CBI v. Anupam Kulkarni were also discussed.

The theme for Session 18 was *Fair Trial: Fair Processes*. It was emphasized that sole aim of law is to provide justice and assure fair trial, which is the primary requirement for dispensation of justice. It was asserted that trial should be justly and fairly conducted for both accused and victim. Art. 21 of the Indian Constitution makes it obligatory upon State not to deprive any person of his life or personal liberty except according to the procedure established by law. It is not only trial process but even judgments are quashed by higher courts if the trial is not fair. There should be stringent adherence to and observance of principles of Rule of Law while conducting a trial. It was emphasized that trial should be aimed at ascertainment of truth. Justice should not only be done, but should be seen to have been done and in this light the attributes of fair trial, principles of fair trial were discussed. The cases *Ashok Ranjan v. State of Bihar, AIR 2017 SC 1979, Dinubhai Solanki v. State of Gujarat, (2018) 11 SCC 129, Mohanlal v. State of Punjab, 2018 SCC Online SC 974, State of Bihar v. Rajballav Prasad, (2017) 2 SCC 178, 'Mohammad Akhtar v. State of Jammu & Kashmir' popularly known as Kathua Rape Case* were also discussed. With formal expression of vote of thanks, the conference concluded.

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CONFERENCE FOR NEWLY ELEVATED HIGH COURT JUSTICES

16th to 18th November, 2018

Mr. Rajesh Suman, Assistant Professor



The National Judicial Academy organized a “Conference for Newly Elevated High Court Justices”. The participants were newly elevated High Court Justices nominated by respective High Courts. The conference facilitated deliberations among participant justices on contemporary topics such as Information and Communications Technology in courts and Court Management Techniques to improve efficiency and strengthen justice administration; core Constitutional principles such as the concept of Judicial Review, Federal Architecture, Separation of Powers, Doctrine of Basic Structure and Fundamental Rights under our Constitutional arrangement. The conference included interactive sessions and round table discussions on designated themes among participant justices.

Major Highlights and Suggestions from the Workshop

Session 1: Constitutional Vision of Justice

The session began with discussion on Preamble to the Constitution of India. The speakers said that the Preamble encapsulates the vision of the Constitution and is a key to solve various constitutional issues. The speakers discussed various values enshrined in the Preamble. The preamble provides for socio-economic

justice and courts must strive towards this end. The needs of marginalised sections of the society must be taken care of in this regard. There should be liberty of thoughts and expression to all in society.

The speakers emphasised importance of Directive Principles of State Policy as a means to realize the constitutional vision of justice. Fundamental Duties are as important as Fundamental Rights. The speakers highlighted challenges faced by the Constituent Assembly in framing of the Indian Constitution. The speakers expressed concerns on lengthy proceedings for affluent people and scarcity of court’s time for ordinary people of India. The High Courts should act in a manner which does not shake people’s confidence in the system. Judges should keep their mind open and should not have fixed notions as justice is delivered according to facts and circumstances of each case. The participants expressed concerns on the conflicting precedents and problem in reconciling them.

Session 2: Court Management

The speakers initiated the session by highlighting features of National Court Management System Committee. The role and function of State Court Management System Committee were highlighted.

The issues related to infrastructural gaps and standard model of court building were discussed. The speakers highlighted various aspects of model courts. The challenges in the appointment of judicial officers and skilled court staff was discussed. The speakers emphasised on continuous training of court staff. The impact of case information system (CIS) was discussed. The speakers expressed concern on lack of proper human resources to take care of administrative responsibilities in courts and how it affects judges' performance. The issues related to appointment, tenure and training of court managers were discussed. The function of court managers in other countries such as determination of roster and assignment of cases was explained. The speaker opined that judicial officers should not be engaged in protocol work. The aspect of funding of court and need of proper financial planning was discussed. The use of statistical data and its importance in planning for improvement in court's performances was highlighted. The importance of alternative dispute resolution system in reduction of case load on courts was highlighted by the speakers. The speakers concluded the session by discussing the importance of law clerks for research in courts.

Session 3: Information and Communication Technology in Courts

The speakers initiated the discussion by highlighting the importance of latest communication technology in enhancing organizational efficiency. It was emphasised that better communication systems within an organization enhances accountability, which improves efficiency. The speakers discussed various features of E-Court project in India. The speakers discussed establishment of the hardware systems in courts across India in first phase of the project and the subsequent growth of software systems. Various aspects of the CIS were discussed. The speaker demonstrated data presentation in the National Judicial Data Grid [NJDG] where disposal and pendency data for all courts can be located. The progress of cases in courts can be tracked with the help of NJDG. The challenges in implementation of E-Courts project such as data security, power backup and maintenance of the system were discussed. It was emphasized that extensive process re-engineering of the court procedures is required to be done for better functioning of ICT tools in Indian courts. The transparency brought by E-Courts

project has helped in reduction of corruption as the communication between courts and litigant has become direct and easier. The lack of proper legislative impact assessment was discussed in the session.

Session 4: Theories of Judicial Review

The speakers initiated the session with discussion on basic principles and history of judicial review. The speaker said that judicial review is a public law remedy and exercised by High Courts under Art. 226 of the Constitution. The court can issue writ to any authority for enforcing fundamental rights and/or other rights. The speaker discussed the scope of ambit of various fundamental rights and the reasonable restrictions imposed on fundamental rights in public interest to achieve objectives such as sovereignty and integrity of nation, discipline and morality. The speakers referred *R.C. Cooper* case and *Maneka Gandhi* case and discussed reasonable, just and fair procedure of law. It was stated that the court can also review legislation on grounds of scope of legislative powers. The court has to assess the validity of existing action under parameters of judicial review such as, whether an action is arbitrary or not, whether the same is legal or not and whether there is procedural fairness. The speakers discussed exercise of executive powers and assessment of validity under judicial review. It was stated that various facets of arbitrariness can be checked on the basis of legality, impropriety, proportionality and irrationality. The court can check whether there is colourable exercise of power or any mala fide exercise of power. The court has to look into the decision making process undertaken by the authority in question. The judicial review in claims of breach of conditions in the tender was discussed. The speakers discussed about interim orders for stay granted by High Courts which adversely affect the development and business projects. It was suggested that such cases should be decided expeditiously by the court. Public law has moved from 'culture of authority' to 'culture of justification' in present time. All authorities are limited by law and judicial review is a tool to check violations in this regard. The judges have to enquire into limitation of powers of authority and the skills to identify limitations comes from experience, dedication and wisdom.

The speakers discussed role of court in contract execution and scope of judicial review in 'pre contract' situation. The court has to assess whether substantial

tender conditions were followed or not. The validity of a contractual setup executed by executive has to be tested only against standard of public interest. The scope of judicial review seems to be narrow in this respect. The speakers emphasised that there should not be unwarranted surprise in tender allocation which vitiates the fair process. The speakers also highlighted doctrines of “Wednesbury Principle” and “reasonableness of the people at large”

Session 5: Separation of Powers

The session was initiated by speakers with basic features of separation of powers in India. The speakers opined that we do not have rigid separation of powers between three organs of the government and there is division of power rather. The speakers referred to history of conflict between organs of government in England and opined that separation of power evolved in response to such conflicts. It is now accepted that the question of content of power of legislature and executive is decided by judiciary. Politicians have tried to prevent judicial interference through argument of ‘political thicket’, which was rejected by the Indian Supreme Court and it ruled that powers under Art. 32, 136 and 226 are basic features of the Constitution after *Kesavananda Bharati* case and the parliament cannot touch such powers. The judicial response to such encroachment by legislature was discussed and speakers referred to *Sajjan Singh* case, *Shankari Prasad* case and *Golak Nath* case. The speakers highlighted the attempts by legislature to amend the Constitution which can have effect over fundamental rights and intervention of judiciary in this regard. The *Kesavananda Bharati* case was discussed, wherein the ‘basic feature’ doctrine was laid down. The speakers opined that there is no absolute power and every functionary discharges his/her duties. Wherein, the checks and balances built in the system ensure that no organ of the government is acting beyond its power provided in the Constitution. Some instances of checks and balances were cited as impeachment process, appointment of judges and judicial review. Even President’s power for pardon is subjected to standards of the Indian Constitution. There is no power which is not subject to judicial review. The speakers referred to *Keshav Singh* case, *Privy Purse* case, *Bank Nationalisation* case, *Bihar land reform* case, *Cohelo* case, *D.K. Basu* case, *Jeet Singh Bisht* case and *Kehar Singh* case. The legislative lag is inherent in democracy

and administrative inefficiencies has made the job of the judiciary challenging in present times. Because of huge delay and arrears the judge in cognitive institution become reactive personality instead of reflective personality.

Session 6: Allocation of Legislative Powers - The Federal Architecture

The session started with discussion on distribution of legislative power between Centre and States and basic features of Union List, State List and Concurrent List. The speakers then discussed history of allocation of legislative powers and referred to the Government of India Act, 1935 from where entries in the 3 lists were taken. Chapter 1 in Part XI of the Constitution which deals with relation between Union and States and Art. 245 and 246 which deals with allocation of legislative powers were elaborated upon. The speakers opined that legislative powers are distributed to ‘general authority’ and ‘regional authority’ which are not subordinate to one another. The speaker highlighted that there is bias in favour of the Union as the Parliament can make law for the State as well in some situations. The union can legislate for two or more States after consent. There is restriction on the legislative power and legislature is subjected to Art. 13 which is an inherent limitation on their power. Art. 249, 252, 253 of the Constitution are exceptions to the general scheme of allocation of legislative powers. The speakers said that Union’s powers to legislate corresponds to the need of national cohesion and interest and States’ powers to legislate responds to local interest. The speakers opined that most disputes under this area are concerned with the issue that whether the particular legislation falls within the competence of legislature which has enacted it. Various doctrines such as ‘doctrine of pith and substance’, ‘colourable legislation’, ‘repugnancy’, ‘incidental encroachment’, ‘harmonious construction’ and ‘occupied field governing’ the interpretation of laws under this area were deliberated upon.

The speakers emphasised that each entry in the 3 lists has history in the form of precedents. The courts should refer to such history during adjudication. Each entry has a technical meaning based on the history of interpretation. Judges should refer to parliamentary debates to understand the nature of entries in lists. Generally, broad principles of interpretation giving



effect to widest meaning are adhered by courts. The speakers discussed various judgments include *HS Dillon* case, *Sundar Ram Iyer*, *State of West Bengal* case, *Sea Customs Act* case, *Rajasthan Assembly* case, *Tikaramji* case and *State Bank of India v Santosh Gupta* case. Art. 248 which provides residuary powers to the Union and Art. 258 which empowers the Union to confer its power of List I to the States, were referred in the session. Other areas which formed part of discussion were division of internal sovereignty, federal supremacy, cooperative federalism, overlapping problems, sharing of revenues, ragpack legislation, taxation issues and public order issues.

Session 7: Fundamental Rights and Restrictions on Entrenched Rights

The speakers commenced the session by differentiating fundamental rights from entrenched rights and opined that all fundamental rights are not entrenched rights. The impact of first amendment to Art. 13 of the Constitution and creation of Art. 31A, 31B and IX Schedule to the Constitution was discussed. This was the first attempt by legislature to make law affecting fundamental rights. The *Shankari Prasad* case and *Sajjan Singh* case upholding first amendment to the Constitution was discussed. The *Golak Nath* case ruled that fundamental rights are inviolable and consequently the legislature passed 24th and 25th amendment to the Constitution to dilute provisions of the Constitution including Part III. Finally, *Kesavananda Bharati* case laid down basic structure doctrine which no law can violate. The basic structure doctrine broadly include

supremacy of the Constitution, republican and democratic form of government, secular character of the Constitution, separation of powers between legislature, executive and judiciary and federal character of the Constitution. The speakers discussed various cases dealing with restrictions on the fundamental rights including *Shankari Prasad* case, *Sajjan Singh* case, *Golaknath* case, *IR Coelho* case, *Bhim Singhji* case, *Protector of Democracy* case, *Kesavananda Bharati* case and *Privacy* case. The power of amendment of the Constitution affecting fundamental rights was discussed in the session. The issue as to which fundamental rights are part of 'basic features' and which are not was discussed. Parliament can pass a law affecting fundamental rights, but court has the power to assess its validity on the basis of 'basic features' doctrine. The Effect Test of *IR Coelho* which mandates that the constitutional validity should be tested on the basis of whether there is an effect on 'basic structure', was discussed. The five principles of 'Wednesbury test' were discussed. The court should also see that whether the judgment written by the court is executable or not, otherwise there may be problems as seen in interstate water dispute and fifty percent ceiling on reservation among others. The longevity of a judgment depends on the social digestibility of the outcome. The court should refrain from passing orders which are impractical and non-executable. The issue related to ban on firecrackers was discussed.

Session 8: Theory of 'Basic Features': Contours

The speakers initiated the discussion by explaining

the 'basic features' doctrine under the Constitutional law and origin of the 'basic structure' doctrine. The concern of the Supreme Court with regard to the parliament's power to amend *vis-a-vis* 'basic structure' of the Constitution and restrictions on the power of amendment of the parliament through judicial interpretation was discussed. The speakers discussed various judgments of the Supreme Court where the 'basic structure' doctrine was interpreted. Various judgments viz. *Golaknath* case, *Shankari Prasad* case, *Sajjan Singh* case, *Kesavananda Bharati* case, *S.P. Gupta* case, *Minerva Mills* case, *Indira Gandhi* case, *Indira Sawhney* case, *Bommai* case, *Privacy* case and *NJAC* case were discussed. The First Constitution Amendment Act which introduced 31 A, 31 B and the IX Schedule was also discussed. The speakers expressed concern on the diverse nature of interpretation by the court with regard to 'basic structure' doctrine and emphasised that challenge to legislative action has to be assessed according to merits in each case. The dissenting opinion in the *NJAC* case, explaining the difference between 'basic feature' and 'basic structure' was discussed. It is the violation of 'basic

features' which court should be concerned about. Other issues discussed included importance of Part III of the Constitution, standard of "public interest" and in restricting fundamental rights, concept of "societal equality" and Preamble as part of basic structure. The speaker emphasised that the test which courts should use is that if a legislative act attempts to rewriting the Constitution then there is a violation of basic feature.

Session 9: The Art of Hearing

The speaker began the session by highlighting the importance of restraint while hearing arguments in the court. Judges should refrain from expressing his/her personal opinion in open court during hearing. The judges should cease to become a lawyer in court and should not argue like a lawyer. Judges should have a fair sense of justice. Judges should ask question from lawyers only after reading the file. Judges should never allow lawyers to conduct proceedings and should retain control on the proceedings. Judges must make it clear to the lawyers that their case has been heard properly and duly understood. Judges must allow lawyers to present their points.

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COURT EXCELLENCE ENHANCEMENT PROGRAMME - II

30th November to 02nd December, 2018

Ms. Paiker Nasir, Research Fellow



The National Judicial Academy (NJA) organized a three day Court Excellence Enhancement Programme - II for stakeholders (Judicial Officer, Advocate, Prosecutor, Clerk and Reader) from the High Courts of Kerala, Madhya Pradesh, Madras, Manipur, Orissa, Patna, Punjab and Haryana, Rajsthan, Sikkim, and Uttarakhand.

The Court Excellence Enhancement Programme (CEEP) was conceived by the Academy in the year 2010 and has been favourably rated as a useful programme for judicial officers and other stakeholders of the justice delivery system. Hence, this programme was revived with a view to bring together the several stakeholders, enable comprehensive deliberations and discussions, and provide a forum for identifying challenges and constraints to efficiency and evolve standard working models for delivery of quality justice. This was the second of the two cluster programmes scheduled this academic year. The programme sought to develop a comprehensive Court Excellence Plan for enhancing qualitative and timely justice through harnessing the synergies of various stake and duty holders in the system. An action plan is envisaged to be developed, which would identify areas calling for systemic improvement.

Session one was on the theme '*Assessing and Enhancing Court Performance*'. The session commenced with emphasis on the objective of the programme and stressing that such programmes are a platform to share experiences, learn from best practices and to devise action-plan to speed up disposal of cases, provide qualitative justice and to improve the functioning of the courts. It was opined that litigants come to the court out of absolute helplessness or when they are under great pressure and in such circumstances it is the duty of all the stake holders of the court to serve them in their best interest. There are numerous factors that affect the justice delivery system and litigants should get justice so that their trust and confidence in the justice delivery system remains intact. The participants were suggested to assess their professional responsibilities and the performance of the court, identify the problems and bottlenecks in the functioning of the court and identify with ways and solutions to handle them. Such self-analysis by the duty holders will automatically enhance court performance. The participants were also asked to share their expectations from the course.

Session two was *Discussion on Court Excellence Indicators and Model Court Plan*, which initiated with elaborate discussion (court-wise) on the 11 core measures

or indicators of court excellence as developed by the International Framework for Court Excellence viz.

- i. **Court user satisfaction**- indicates the percentage of court users who believe that the court provides procedural justice that is accessible, fair, accurate, timely and knowledgeable.
- ii. **Access fees**- indicates the courts' success in ensuring that they are accessible to litigants in terms of the costs of access to a court's services, proceedings, and records. These costs should be reasonable, fair, and affordable.
- iii. **Case clearance rate**- it is an indicator of efficiency, productivity and fundamental fairness in court's dealings.
- iv. **On-time case processing**- it provides information about the length of time taken by a court to process cases of different types.
- v. **Duration of pretrial custody**- it indicates the average time that has elapsed while the accused has been detained and is awaiting trial.
- vi. **Court file integrity**- it indicates the percentage of files that can be located and retrieved in a timely manner.
- vii. **Case backlog**- it indicates the proportion of pending and unresolved cases that have exceeded established timeframes or time standards.
- viii. **Trial date certainty**- it measures a court's success rate in hearing important cases on the dates they are scheduled, and also provides a tool to evaluate the efficiency of various case management processes such as court calendar management and continuance policies and practices.
- ix. **Court employee engagement**- it indicates percentage of employees of a court who are passionate about their job and committed to the mission of the court.
- x. **Compliance with court orders**- it measures two areas of performance, one compliance with the law and second, effective revenue collection and efficient financial management by the court.
- xi. **Cost per case**- is a useful indicator of a court's efficient and effective use of its resources.

Session three was *Break-out Group Discussion (Duty-holder wise)*. The participants were divided

in 4 groups viz. Judges, Prosecutors, Advocates and Ministerial Staff. Each group was required to respond to the questions provided in the template. The responses were to be on the basis of discussion among the participants of each group. The groups were also requested to discuss and suggest measures for improvement in a court performance as well as functioning of other duty holders.

The next session was *Presentation by Participants (Duty-holder wise)*, on the responses to the templates provided. One representative from each group of the duty-holders made a presentation on the challenges faced, and gave suggestions to improve performance of the courts. The major takeaways from the presentations are summarized here under (one word):

1. Judges/Judicial Officers -

- Challenges faced-
 - ✓ High pendency.
 - ✓ Lack of competent staff.
 - ✓ Lack of Infrastructure.
- Suggestions-
 - ✓ Neglected pending cases should be prioritised to decrease pendency.
 - ✓ Cause lists must be manageable for effective carried out of proceedings.
 - ✓ Regular skill enhancement trainings for ministerial staff.
 - ✓ Target oriented appraisals.
 - ✓ Use of Plea Bargaining.
 - ✓ Avoiding unnecessary adjournments.

2. Public Prosecutor -

- Challenges faced-
 - ✓ Summons are not duly served.
 - ✓ Witnesses turn hostile.
 - ✓ Advocates are not cooperative and seek too many adjournments.
- Suggestions-
 - ✓ Judicial officers must be strict with respect to the attendance of witnesses.
 - ✓ Proper opportunity should be given for production of documents.

- ✓ Unnecessary adjournments should be avoided.
- ✓ Nodal officer may be appointed for proper execution of summons.

3. Advocates -

- Challenges-
 - ✓ Lack of infrastructure.
 - ✓ Non-cooperative ministerial staff.
 - ✓ Delay in uploading evidences and other relevant documents meant to be on the court's website.
- Suggestions-
 - ✓ Serving advance copies of pleadings, ruling etc.
 - ✓ Judicial officers must be strict towards their staff with respect to their conduct towards litigants and advocates.

4. Ministerial Staff -

- Challenges-
 - ✓ Multi-tasking and work load.
 - ✓ Listing of cases.
 - ✓ Infrastructure issues.
- Suggestions-
 - ✓ Classification of cases to be listed should be maintained.
 - ✓ Ministerial Staff should have access to judicial officer.
 - ✓ Periodical training for enhancement of professional skills.

Session five was *Open Discussion: Best Practice on Developing Court Excellence Enhancement Plan*. It was elucidated that 'best practice' is not just to concentrate on reducing the number of cases as it depends largely upon one's own capacity, ability of managerial staff, working atmosphere of the court and lastly, mutual sense of respect and team work of all duty holders. The discussion emphasized that there is no correct or accurate method or set norms to deal with any matter as it is entirely situational. The best practices acknowledged thereafter were:- to prepare a time frame/schedule within which cases are to be disposed of; to conduct examination of witnesses

through video conferencing in cases of nonappearance of any witness – this will save a lot of judicial time; to establish a help desk within the court premises- this will make the court more litigant friendly; to introduce e-payment system for payment of court fees or fines; to conduct training courses for freshly appointed staff; to impose penalty on filing of vexatious or false cases; to serve summons electronically through Emails or SMS, etc., to provide special protection to child witnesses; to direct the police to include the contact details of the parties in dispute in the charge sheet; to provide free legal aid during the trial process if either party is not being represented by a lawyer; to conduct jail visits on regular basis along with Legal Aid Council to assess the condition of detained under trial prisoners.

The next two session were *Break-out Group Discussion (Court wise)*, the participants prepared court excellence enhancement plan (court- wise). In the following two session court-wise presentation was given by one of the member from all the 10 courts. The presentations highlighted some pre-emptive steps that have been undertaken and recommended solutions and ideas to improve the prevailing systems and enhance court excellence. These presentations highlighted some key aspects which need attention in almost all the courts, like- proper listing of cases, help desk for litigants and witnesses, complaint boxes, frequent use of ADR methods for effective disposal of cases, building coordination among stakeholders by organizing periodical meetings and addressing the grievances.

In the last session *Suggestions and Way forward*, the discussion stressed upon the need for attitudinal change among all the stakeholders in the court towards the litigants. It was opined that Court is a team activity and it will only work when all members work together. One has to enhance its performance in order to improve the performance of others which in turn will increase the efficiency and efficacy of court performance. It was suggested that duty holders should act as mentors of the institution and should strive together to meet the ends of justice as per the constitutional values.

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REGIONAL CONFERENCE (NORTH ZONE-I) ON ENHANCING EXCELLENCE OF THE JUDICIAL INSTITUTIONS: CHALLENGES & OPPORTUNITIES

01st & 02nd December, 2018

Ms. Ankita Pandey, Law Associate
Mr. Krishna Sisodia, Law Associate



A two day Regional Conference for the North Zone comprising of five High Courts i.e. High Court of Jammu & Kashmir, Allahabad High Court, High Court of Punjab & Haryana, High Court of Himachal Pradesh, High Court of Delhi and High Court of Uttarakhand was organized by NJA on 1st and 2nd December, 2018 at Jammu in collaboration with the High Court of Jammu & Kashmir and Jammu & Kashmir State Judicial Academy.

On *Constitutional Vision of Justice*, the panelists initiated the discussion on the basic understanding of the preamble to the Constitution and it was asserted that Constitution is the umbrella under which all domestic laws are made. Therefore, it is important to understand the significance of the term 'justice' in the Preamble. In this regard, right to life, right to legal aid, rights of prisoners/inmates and right to clean and healthy environment were discussed as some of the facets to ensuring justice to the people. It was also pointed out that since the Constitution is meant to govern a polychromatic society therefore it cannot remain monochromatic and that it must evolve with time. Further, it was opined that it is not just the Supreme Court and the High Courts that are entrusted with duty of interpreting the values enshrined in the

Constitution; every court in this country is required to fulfill this obligation while dealing with their routine matters. It was interestingly pointed out that matters like divorce, sexual assault etc. involve pertinent constitutional issues to be dealt with by the subordinate courts. Since, a very small percentage of the population in our country can afford to access the courts and even fewer manage the appellate stage therefore, the courts of first instance assume greater significance.

On *High Court and District Judiciary: Building Synergies*, the panelists emphasized on the point that superior courts must exercise the responsibility of superintendence and not the power of superintendence. It was clarified that any inspection or enquiry must be a fact finding one rather than a fault finding one. The discussion further went on to analyze the 'pros' and 'cons' of unit system. It was asserted that there must be proper assessment of the work of judicial officers, not just quantitatively but also qualitatively. The participant judicial officers were advised that they must always pass reasoned orders reflecting the application of judicial mind. Other important issues that were discussed during the course of the session were with regard to transfers/postings of judges, independence of



the judiciary not only from the executive but also from hierarchies and relationship of the judge with the staff and members of the bar.

On *Revisiting Norms for Appellate Review: Consequence of Frequent and Excessive Appellate Interference*, the discussion began with the assertion that the first appellate court is a court of fact and law. Therefore, an appellate judge must be participative. It was pointed out that frequent and excessive appellate interference results in public loss of faith in the courts of first instance. The panelists further explained that findings made by the appellate court should not be looked upon with skepticism by the appellate courts, since there have been cases wherein the reasoning of the trial court was upheld by the highest court while rejecting the opinion of the appellate court. It was stated that every court must be presumed to be the court of last resort while delivering a judgment. It was also opined that it is the law which has discretion and not the judge and therefore, the participant judges were advised to restrain from exercising discretion in an arbitrary manner.

On *Access to Justice: Information and Communication Technology in Courts*, the panelists dwelt in detail on the achievements of the E-Committee and E-Courts projects besides highlighting contours of court and case management. The discussion elaborated on several innovative ways to further streamline working of courts and emphasized the need for a comprehensive policy on equipping the courts with technologically advanced infrastructural edifice and manpower. Further, the significance of video conferencing as a tool in expeditious disposal of cases was highlighted. It was also stated that despite topographic difficulties and issues of connectivity, the

courts of Jammu & Kashmir have been able to excel in use of ICT. The discussion went on to highlight the need and importance of making optimum use of technological innovations in courts by elucidating issues like transformation of courts through technical empowerment of judges, digitization of old records, use of electronic devices, metadata, improving connectivity in courts and creating an atmosphere in the judicial system which is in line with the technological advancement and changing needs of the society.

On *Access to Justice: Court & Case Management*, the panelists described disposal of cases as the most significant function of judiciary which needs to be expedited for speedy and impartial justice to the litigants. Furthermore, it was also stressed that judicial officers must enhance their court management skills to deal effectively with frivolous litigations besides emphasizing prioritization of litigation disposal on the basis of urgency. The panelists also highlighted that the influx of court managers in the judicial system has not yielded results but the courts have a crucial role in creating a policy to ensure that the court managers develop a congenial atmosphere in courts, an environment wherein judicial officers are able to concentrate fully on their judicial work.

Justice G. Mittal (Chief Justice, Jammu & Kashmir High Court) in her concluding remarks urged the judicial officers to take some time out of their busy schedule and focus on their holistic individual growth. Further, she stated that such conferences provide a unique platform to the participants in sharing their experiences and expertise and help in clearing blurred visions, doubts, improve judicial skills and instill confidence besides improving the capacity to interpret law in order to deliver expedited justice.

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REFRESHER COURSE FOR LABOUR COURTS

07th to 09th December, 2018

Mr. Yogesh Pratap Singh, Research Fellow



The National Judicial Academy (NJA) organized a three day “Refresher Course for Labour Courts” from **07 – 09 December, 2018** at the NJA, Bhopal.

The objective of the course was to provide a forum for sharing experiences with regard to impediments to speedy and efficacious dispensation of cases and for identifying optimal solutions to contentious issues which retard efficacious and speedy disposal of cases. The course also aimed at facilitating discussions on evolving norms and jurisprudence in respect of labour disputes. The course involved discussions on labour & management; evolving perspectives; constitutional signals, the role of courts, contract labour, unfair labour practices, reinstatement, back wages, retrenchment, lay off, dismissal, discharge, strikes and lockouts as well.

25 judicial officers nominated by different High Courts participated in the course. The course was divided into eight sessions on following themes.

Labour & Management: Evolving Perspectives: Constitutional Signals, the Role of Courts

The session began with discussion on the concept of socio-economic justice in context of labour laws in India. Constitutional provisions with respect to protection to weaker and disadvantaged section of labour were highlighted during the sessions. The schemes of the labour laws covered under various Acts were briefly explained to the participants.

The contribution of the Supreme Court of India in developing labour law jurisprudence was also highlighted to the participants. The landmark judgments such as *BALCO Employees Union Registered v. Union of India* (2002) 2 SCC 333 and *National Textile Workers Union v. P.R. Ramakrishnan* (1983) 1 SCC 228 were discussed in detail. Various important legislative aspects, regulating industrial relations in India and development of labour jurisprudence were part of discussion in the session.

Contract Labour: Issues and Challenges

The Session began with explaining the scheme of The Contract Labour (Regulation & Abolition) Act, 1970. Important provisions under the Act such as prohibition of employment of contract labour, penalties and procedure were highlighted and explained to the participants. The landmark judgement of *Standard Vacuum Refining Co. AIR 1960 SC 948*, *Steel Authority of India v. National Union Water Front Workers*, LLJ 2001 SC 239, *Secretary State of Karnataka and Others v. Umadevi & Ors*, AIR 2006 SC 1806 and *State of Punjab and others v Jagjit Singh and Others* (2017) 1 SCC 148 were also discussed during the session.

Unfair Labour Practices

The evolution and development of the concept of unfair labour practices from historical point of view was discussed. It was emphasized that the scope of

the expression 'unfair labour practices' in context of India has not always been limited to mean activities which hinder the smooth functioning of collective bargaining. It was stressed that the expression as used in legislation and in the decisions of the courts is used in a wider and looser sense to cover unjust dismissals, unmerited promotions and every form of victimization. Landmark cases such as *Mackinnon Mackenzie and Company Limited v. Mackinnon Employees* (2015) 4 SCC 544, *Union Umrula Gram Panchayat v. Secretary, Municipal Employees Union and Others* 2015(4) SCALE 334 and *Bajaj Auto Limited v. Rajendra Kumar Jagannath Kathar and Others* (2013) 5 SCC 691 were also referred during the discussion.

Dismissal and Discharge; Reinstatement and Back Wages; Retrenchment and Lay Off: Balancing Rights of Labour and Interests of Employer

The session began with a question, what is dismissal and discharge? The meaning of dismissal and discharge was explained to the participants with the help of landmark judgments and illustrations. It was stressed that both discharge and dismissal are forms of termination of service. Dismissal is termination by way of punishment for misconduct, whereas discharge is classically a termination not by way of punishment and involving no stigma against the terminated employee. The expressions discharge and dismissal was further explained citing relevant landmark judgments. The philosophy behind retrenchment, its meaning under Sec. 2(oo) and lay off was explained to the participants. While elaborating the scope of Sec. 25F of the Industrial Disputes Act, 1947 (hereinafter ID Act) through landmark judgements, it was stressed that in catena of decisions it is held that where the termination is illegal, and especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits. It was further emphasized that the normal rule on the grant of reinstatement pursuant to an illegal termination was that it should be done with full backwages, except to the extent that the workman was gainfully employed in the interregnum, with the burden on the employer to establish the circumstances necessitating departure from the rule. Scope of Sec. 11A was also discussed

with the participants in the sessions.

Some important judgements discussed during the sessions were : *State Bank of India vs. Workmen of State Bank of India* 1991 1 SCC 13, *State Bank of India v. T.J. Paul* AIR 1999 SC 1994, *Hirakud Dam v. State of Orissa*, (1971) 1 SCC 583, *Union of India v. Ghulam Mohammed Bhat*, (2005) 13 SCC 228, *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma*, (2002) 2 SCC 244, *Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd.*, (1973) 1 SCC 813, *Mazdoor Sangh v. Usha Breco Ltd.*, (2008) 5 SCC 554, *Cipla Ltd. and Others v. Ripu Daman Bhanot and Another*, 1999 LLR 534, *Bharat Petroleum Corporation Ltd. v. Maharashtra General Kamgar Union and Others*, 1999 LLR 180 (SC), *Mohan Lal v. Management, Bharat Electronics Ltd* (1981 LAB I.C. 806), *State of Bombay v. Hospital Mazdoor Sabha* (1960 2 SCR 866), *Surendra Kumar Verma v. Central Government Industrial Tribunal—cum—Labour Court, New Delhi* (1980 4 SCC 443), *Safdarjung Hospital v. Kuldeed Singh* (1970 1 SCC 735), *Mulin Sharma v. State of Assam and Others* AIR 2016 SC 3225, *Jasmer Singh v. State of Haryana and Another* (2015) 4 SCC 458, *B.S.N.L. v. Bhurumal* (2014) 7 SCC 177, *Hari Nandan Prasad and another v. Employer I/R to Management of FCI and Another* (2014) 7 SCC 190, *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Others* (2013) 10 SCC 324, *Asst. Engineer, Rajasthan Development Corporation & Anr. v. Gitam Singh* (2013) 5 SCC 136.

Strike, Lockout and Closure

Session began with discussion on relevant provisions under Industrial Disputes Act on strike, lockout and closure. Meaning of strike under Sec. 2 (q), lockout under Sec. 2(1) and closure under Sec. 2(cc) of the ID Act was also explained to the participants, thereafter, attention was drawn to the ingredients of strikes, types of strike and leading case laws which included : *Hindustan Steel Ltd. v. Workmen* (1973) 3 SCC 564; *Workmen v. Indian Leaf Tobacco Dev. Co.* (1969) 2SCR 282; *General Labour Union v. B.V. Chavan* 1985 LIC 726 SC; *Syndicate Bank v. K. Umesh Nayak* (1994) 5 SCC 572; *Maruti Udyog Ltd. v. Ram Lal* (2005)2 SCC 638; and *M/s. Empire Industries Limited v. State of Maharashtra and Others* (2010) 4 SCC 272.

Provisions with respect to prohibition of strikes & lock-out, general prohibition for strikes & lock-out, Illegal strikes & lock-out, prohibition of financial aid to illegal strikes and lock-outs, prohibition of unfair labour practice, penalty for illegal strike & lock-out, Penalty for giving financial aid for illegal strikes and lock-outs, protection of person and representation of parties were also discussed in the session.

Improving the Efficiency of Labour Courts: Constraints and Solutions

It was an interactive session. Speakers discussed various challenges faced by Labour Courts on day to day basis with their effective solutions. Many queries and questions with respect to practical problems were raised and discussed during this session.



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NATIONAL SEMINAR FOR PRINCIPAL DISTRICT AND SESSIONS JUDGES ON ACCESS TO JUSTICE AND LEGAL AID

07th to 09th December, 2018

Mr. Sumit Bhattacharya, Research Fellow



A three day National Seminar was organized for the District & Sessions Judges from 7th to 9th December, 2018. The objective of the Seminar was to study and analyse activities of Lok Adalats and the National Legal Service Authority with a view to assess the impact on the justice delivery system. The seminar attempted to address challenges which impede access to justice. It provided a forum to the Principal District and Sessions Judges to deliberate upon formulation of strategies to ensure access to justice despite adverse economic, social or cultural conditions and to study current legal aid dispensation protocols with a view to streamline delivery of aid to marginalized sections of society. Areas covered during the sessions included: Constitutional Vision & Mission of Legal Aid & Access to Justice; Legal Aid & Public Trust: Enhancing User Friendliness of Trial Courts; Bar & Legal Aid in India; Critical Evaluation of the Powers of Legal Services Authorities its Role & Responsibilities; Strengthening Access to Justice at Grassroot Level: Informal Modes of Access to Justice; Social and Economic Impediments in Access to Justice; Legal Aid to Victims of Crime: Compensation & Rehabilitation; ICT as a Tool to Enhance Access to Justice.

The session was initiated by deliberating upon what Justice means in context of the Constitutional Vision. It was followed by venturing into how the constitutional mission to enable access to justice is to be executed. The speaker also examined scope and impact of Legal Aid. The goal of decongesting the Constitutional Courts, in order to enable speedy justice delivery was discussed, referring to *Krishnakant Tamrakar v. State of M.P.* 2018 SCC OnLine SC 304. It was emphasized that the right to free legal aid has been held to be a constitutional right covered under Art. 21 in *Khatris II v. State of Bihar* (1981) 1 SCC 627. In order to evolve and retain the sanctity of public trust, there needs to be enough courts in the first place with appropriate infrastructure and the same must be easily approachable. The Supreme Court in *Hussain v. Union of India*, (2017) 5 SCC 702, issued directions to the High Courts to further percolate it down by issuing uniform guidelines to subordinate courts (particularly in criminal cases) to curb the menace of delay. Access to Justice can be achieved by adopting best practices such as making the litigants aware of their rights viz. free legal aid at any stage of trial



and their right to appeal, by mentioning the same in the order sheet itself. The discourse highlighted the importance of professional conduct of the Bar warranting accesses to justice to the litigants. The right of a litigant to be effectively represented by a competent lawyer in a *lis* was emphasized. Professional misconducts and bullying the bench by the members of the Bar using disruptive tactics was admonished citing the recent apex court judgment *B Sunitha v. State of Telangana*, (2018) 1 SCC 638. It was highlighted that *Indira Jaising v. Supreme Court of India*, (2017) 9 SCC 766, made *pro bono services* a necessary precondition and one of the qualifying parameters for purposes of designating practicing lawyers as “Senior Advocate”. The scope and criteria for entitlement of legal services, and power and functions of the Legal Services Authority “NALSA” was discussed. The initiatives *viz.* “Tele Law Scheme” in July 2017, “*Nyay Mitra Scheme*” launched by NALSA in April, 2017, “*Nyay Sampark*” etc. were also elaborated upon. Discussing as to who generally suffers socio-economic impediments, a general overview projected a list including, transgender, trafficked women and children,

people from the lower caste, regional and religious minorities in a State, gender etc. were projected for discussion. While dealing with legal aid to victims of crime, aspects of relief in the form of compensation and rehabilitation and various queries relating victimology were taken-up and addressed by citing appropriate case law. It was highlighted that the Supreme Court in *Nipun Saxena v. Union of India*, 2018 (11) SCALE 350, laid down guidelines that, the NALSA Compensation Scheme should function as a guideline to the Special Court for the award of compensation to victims of child sexual abuse under rule 7 until the Rules are finalized by the Central Government.” The speakers also discussed the usage and potential of Information and Communication Technology (ICT) in enabling the judicial system to facilitate access to justice. It was informed that in the month of August 2018, the Supreme Court in collaboration with Ministry of Electronics and IT launched three specific applications to enable “access to justice” *viz.* A web portal www.efiling.ecourts.gov.in; NSTEP - National Service and Tracking of Electronic Processes; and “e-pay” application at www.pay.ecourts.gov.in.

SE-03

SEMINAR FOR FOREIGN JUDGES [BANGLADESH]

07th to 13th December, 2018

Ms. Shruti Jane Eusebius, Research Fellow

Mr. Shashwat Gupta, Law Associate



National Judicial Academy organized a seminar for Judicial Officers from Bangladesh in furtherance to a Memorandum of Understanding between NJA and the Supreme Court of Bangladesh with the objective of training and capacity building of the participant judges. The seminar included sessions on constitutional, civil, criminal, human rights law and correlative jurisprudence. The conference also aimed to acquaint participants with elements of judicial behaviour-ethics, neutrality and professionalism, skills of judging and judgment writing. The programme facilitated discussions on court and case management and use of ICT in administration of justice.

In discussions on *Overview and Architecture of the Indian Constitutional Arrangement*, the speakers emphasized on drafting of Constitution of nations as experiments in democracy and governance and referred to the early experiments in establishing a code by which nations were governed. The speakers dwelt on the relevance of the composition of the Constituent Assembly (representative or composed of elites) and its impact on the Constitution, its social acceptance, ratification and the longevity of the Constitution. The speakers dwelt on Constitutional divergences on account of the cultural, historical, social backgrounds and influences. The speakers stressed on the importance

of the endurance of the Constitution for social stability. The speaker discussed the important players in a constitutional structure and highlighted electoral representation as a significant feature common to most Constitutions. The speaker stated that the Election Commission, representative government and the Institutions of the President and the Prime Minister are the most important institutions in constitutional governance. The speaker discussed *AK Gopalan* case and highlighted that the existence of statutory law is not enough to permit an action, the law has to be just, fair and reasonable as mandated by the Constitution of India. The speaker also drew comparisons between the Indian Constitution and the Constitution of Bangladesh to highlight similarities in constitutional scheme. The speaker also threw light on the development of the Constitutional jurisprudence on Fundamental Rights, its scope and permissible restrictions on such rights under the Constitution of India.

On *Indian Judiciary: Organisational Structure and Jurisdiction*, the speaker discussed the important features of the framework of the Constitution of India and stated that the Constitution protects itself through the Constitutional agencies and the law makers. The speaker dwelt on the issue of whether inclusion of fundamental rights in the Constitution

gives these rights an enhanced status as compared to rights provided in a Charter (e.g., in Canada) or in a Bill of Rights (e.g., USA). The speaker discussed the right to directly petition the Supreme Court of India in cases of violation of fundamental rights, as a unique right of judicial redress for violation of fundamental rights. The speaker further elaborated on the development of jurisprudence on the Right to Life under Art. 21 of the Constitution of India through the judgments of the Supreme Court of India. The speaker also discussed the jurisdiction and powers of the Supreme Court and High Courts and dwelt on the rationale for giving wide powers to the High Courts and the Supreme Court. The speakers dwelt on the social contract theory and highlighted that the term 'We the People' signifies that the Constitution of India and the authorities under the Constitution have been constituted by the people as a social contract with the objective of regulating society for productive enjoyment of rights.

In discussions on *Goals, Role and Mission of Courts: Constitutional Vision of Justice*, the basic structure of the Constitution of India was discussed to highlight the vision enshrined in the Constitution, the values and goals that are to be upheld by the courts. The Constitution of India was likened to a social justice idea guaranteeing a certain way of life, and the necessity of freedom for achieving justice. The dimensions of constitutional justice – equality, removal of disabilities, freedom of religion etc. were discussed.

In the group discussion session, the participants were divided into groups and were engaged in discussion on the topics – 'Social Context Judging in Bangladesh' and 'Tackling Pendency in Bangladesh Judicial System'. The major points highlighted in the discussions are –

'Social Context Judging in Bangladesh'

- Public Interest Litigation has been used in Bangladesh for enforcing environment rights and protecting liberty of the people.
- Non-governmental organization including Bangladesh Legal Aid and Services Trust (BLAST) and Bangladesh Environmental Lawyers Association have played a significant role in public interest litigation which has lead to the establishment of guidelines for arrest.
- Industrial pollution has been reduced significantly

due to interventions by the Bangladesh judiciary through its orders in public Interest litigations.

'Tackling Pendency in Bangladesh Judicial System'

- ADR has proved to be very effective in reducing pendency as 80% of the cases are settled by the litigants in Bangladesh.
- Creation of special courts and tribunals for important areas of litigation have helped manage the judicial workload.
- Case management timelines are not strictly followed which adds to the delay.
- Diversion of cases to ADR in pre-trial stage should be considered to reduce the burden of the courts.
- Digitization of courts was suggested as a tool to expedite justice delivery.
- The need for strong judicial governance systems was emphasized as a measure to incorporate court management and case management skills in judicial administration.
- The challenges in tackling pendency highlighted were -
 - ✓ Lengthy procedures prescribed under the procedural laws result in delay in disposal of cases.
 - ✓ 80% of criminal cases are due to land disputes, so there is a need to minimize land disputes to reduce the influx of cases before the court.
 - ✓ Delay caused by advocates and non-cooperation by advocates were highlighted as road blocks to reducing pendency.
 - ✓ Non-induction of modern technology in judicial system was stressed as a cause for delay.
 - ✓ Lack of a separate and independent agency for investigation were highlighted as challenges expediting cases and the delay caused by investigating agency.
 - ✓ Infrastructural issues
 - ✓ Shortage of judges in Bangladesh Judiciary was cited as a challenge in tackling pendency.

In discussions on *Principles of Evidence: Appreciation in Civil and Criminal Cases*, the speakers emphasized that appreciation of evidence was a question of fact to be decided by the judge. The various types of evidences—documentary, oral and circumstantial, that is brought before the court

and the principles for appreciation of such evidence were discussed. The speakers distinguished between admissible and inadmissible evidence and explained how admissible and inadmissible parts of a report can be segregated. The speakers discussed the admissibility of evidence received from the accused and chance witnesses. The admissibility of statements made under Sec. 32, Indian Evidence Act, 1872 and the factors to consider while appreciating such statements were discussed.

In discussions on *Evidentiary Presumptions; Onus and Burden of Proof*, the speakers discussed the concept and rationale of burden of proof and presumptions under law. The speakers emphasized that in case of any plea of defence made before the court, the court has to start from the fact that these defences are not ordinarily available and the onus is on the person making such plea to prove that the defence applies in the case at hand. Presumptions under the Indian Evidence Act, 1872 were discussed and concept of reverse burden of proof was explained. The participants raised the issue of whether the presumption of legitimacy would continue to be applicable in light of newer scientific methods to prove legitimacy. In response, the speakers stressed on the social morality reasons, for continuing to adhere to such presumption under law.

In discussions on *Electronic Evidence: New Horizons, Collection, Preservation and Appreciation*, the relevance of electronics in crime detection and investigation was emphasized. The speaker stressed on the important factors in appreciating electronic evidence i.e. relevancy, admissibility, mode and manner of proof and authenticity. The speaker stressed on the need for uniform judicial practice in appreciating electronic evidence.

In the session on *Forensic Evidence in Civil and Criminal Trials; DNA profiling*, the speaker highlighted the significance of DNA profiling as evidence in criminal cases, especially in identification of victims, identifying and linking accused to the crime and determination of paternity and maternity of an individual. The speaker discussed the science of DNA profiling and the biological sources required to conduct the test for DNA profiling. The speakers discussed the importance and limitations of forensic evidence. The speakers highlighted the concerns in collection and preservation of DNA and forensic evidence which

results in contamination or destruction of evidence. The speakers also discussed the landmark judgements on appreciation of forensic evidence

In discussion on *Judge the Master of the Court: Court Management & Case Management*, the principles of management propounded by Peter Drucker – planning, organization, directing, co-ordinating and control, were highlighted and the significance of management, leadership and team work in judicial administration were emphasized. The administrative challenges in the judicial system viz. access to justice, backlog of cases, increasing cost of litigation and delay in disposal were discussed. The issue of corruption in the judicial system as a challenge in judicial administration was also discussed.

In the session on *Elements of Judicial Behaviour: Ethics, Neutrality and Professionalism*, the speakers stated that the judge as the master of the court should be driven by passion for his work. The speaker stressed that the judge must be innovative in his work and must have job satisfaction for the work done each day. The speaker attributed the waning faith in the justice system to the mechanical approach of the judiciary. The judges were advised to study their district and the court when taking charge in a new posting to understand the problems of the district and court. On ethics, it was emphasized that the persona of a judge should include traits of humility, helpfulness and compassion. The judges were advised to be aware of their personal bias and prejudices and to ensure that their bias does not influence their work.

In the session on *ICT and E-Judiciary: Indian Perspective*, the benefits of ICT and the innovations and achievements of the Indian judiciary in integrating ICT into the judicial system were discussed to provide a comparable standard of best practices which can be adopted by the judiciary in Bangladesh. The uses of National Judicial Data Grid were explained to the participants. The E-courts project, CIS and the E-filing system were explained and its achievement in inter-linking agencies in the criminal justice system, providing decision support systems, transparency and public convenience were highlighted.

In discussions on the theme *Criminal Justice Administration and Human Rights*, the initiation of the human rights discourse as a consequence of the atrocities witnessed in the World Wars and the exhaustive



documentation and recognition of human rights through international law was discussed. It was stated that human rights are not a creation of law but are vested in every individual from birth; and are necessary for conducive life and development. Human rights was emphasized as the core of democracy, rule of law, peace and tranquility. Recognition of human rights in the Constitutions of India and Bangladesh was discussed. The speakers drew the attention of the participants to the right to be heard as a facet of human rights in criminal justice. The speakers referred to human rights as an inbuilt mechanism of checks and balances in the criminal justice system.

In the session on *Human Rights: Fair and Impartial Investigation*, the speakers stated that adverse inferences should not be made against accused on account of his non-cooperation, as the accused has the right to have the charges proved against him without self-incrimination. The speaker also dwelt on the duty of the police to disclose inculpatory as well as exculpatory materials against the accused, as the objective of a trial is to arrive at the truth. The speaker also dwelt on torture, forcing confessions, arm-twisting and pressurizing suspects by police as a violation of human rights. The speaker also stressed on the constitutional rights under Art. 20 of the Constitution of India and Art. 35 of the Constitution of Bangladesh with regard to investigation and criminal trial.

In the session on *Judging Skills: Art, Craft and Science of Drafting Judgments* the speakers dwelt on the objective of writing a judgment and the necessary elements of a good judgment i.e. clarity, comprehensiveness, brevity, adequate preparation, planning and structuring of content, timely delivery, judicious and legal soundness. The practice of reliance on precedent without scrutiny and verification of its applicability was discouraged and the participants were advised to avoid unnecessary reliance on precedents and to avoid referring to

precedents on the basis of the head notes or digest notes.

In discussions on *Identification of Ratio in a Precedent*, the speakers elaborated on the precedents as a measure of judicial discipline and certainty and discussed the prerequisites of a binding precedent. The theory of precedent or *stare decisis* is founded on judicial discipline to stand by the decision of earlier court or superior court and is a generalization of the facts and reasoning of the earlier decision of the court. The speakers urged the participants to sift through the material and immaterial facts in a precedent and establish generalisations which can be applied to the case at hand. The wider the generalization, greater is the scope of application. It was stated that precedents should not be followed if it leads to unjust outcome. In such cases it should be distinguished. The concepts of *obiter dictum*, *ratio decidendi*, *per incuriam* and *sub silentio* judgements were discussed.

In the discussion on *Landmark Judgments in India*, the speakers dwelt on the recent judgments pronounced by the Supreme Court of India with specific emphasis on judgements relating to empowerment of women. The speaker critically analysed the reasoning of the Supreme Court in the judgments of *Indian Young Lawyers Association*, *Shayara Bano*, *Joseph Shine* and *Navtej Singh Johar*. The speakers also traced the development of law on muslim women's rights in marriage and discussed the landmark judgments viz. *Shah Bano*, *Danial Latifi* and *Shayara Bano*. The speakers stressed on the need to understand the rationale behind the judgment and stated that the law must be interpreted in light of the cultural, social and religious circumstances in India. The speakers also discussed the judgments on judicial appointments, from the *First Judges Case* to the *NJAC Case* to highlight the development of law on institutional integrity and the judiciary.

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CONFERENCE FOR HIGH COURT JUSTICES ON ARBITRATION INCLUDING INTERNATIONAL ARBITRATION

14th to 16th December, 2018

Mr. Prasadh Raj Singh, Law Associate



The National Judicial Academy organized a three day “Conference for High Court Justices on Arbitration including International Arbitration” from 14th to 16th December, 2018. The conference provided a forum to the participant judges to discuss and exchange views on themes - *The Arbitration and Conciliation Act: Changing Trends in Legislative Scheme, Balancing Conflicting Interests: “Public Policy” vis-à-vis Domestic Arbitration, International Commercial Arbitration: Role of Courts post BALCO Regime, Enforcement of Foreign Arbitral Award: Issues and Challenges, Jurisdictional Issues: Court Intervention vis-à-vis Competence of Arbitral Tribunal, Emergency Arbitration and Enforceability of its orders in India and Emergence of Third Party funding in International Commercial Arbitration: A New Scheme*. The conference was attended by 22 High Court Justices nominated by different High Courts.

During the conference it was deliberated that the

adjustments in the Arbitration and Conciliation Act, 1996 (The Act) is set to progress the institutional intervention in India. A reference was made to Sec. 8 of the Act and it was stated that application referred to in Sub-section (1) shall not be entertained unless it is accompanied with original arbitration agreement or a duly certified copy thereof. A reference was also drawn to Sec. 9 of the Act wherein the role of courts is restricted to the stage before constitution of the arbitral tribunal. The provision was discussed in detail.

Further, with regard to the appointment of arbitrator, it was stated that the Supreme Court or, as the case may be, the High Court or any person or institution designated by such court to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment. It was highlighted that the word “Chief Justice” was replaced by “Courts” in post 2015 amendment.

During the discussion various key features of Amendment Bill 2018 were discussed at length such as; creation of an Arbitration Council of India, appointment of arbitrators, exclusion of International Commercial Arbitrations from the purview of Sec. 29A, confidentiality in arbitral proceedings and immunity for the Arbitrator.

Subsequently, a reference was made to *ONGC v. Western Geco International (Western Geco)* where the Apex Court took a retrograde step and intervened to widen the ambit of 'fundamental policy of India' holding that while a tribunal or court should follow principles of natural justice as well as Wednesbury's principle of reasonableness, it should not act in an arbitrary or capricious manner or be influenced by extraneous considerations while determining the rights and liabilities of citizens or corporations.

The conference further deliberated upon the importance of Sec. 2(f) of the Act with regard to International Commercial Arbitration and to what extent courts in India have jurisdiction to decide matters relating to arbitration which is conducted outside India. During the course of discussion a reference was made to *BALCO case* where the Apex court addressed the issue of jurisdiction, overruling *Bhatia* and restored the principle of territoriality choice of seat as exclusive jurisdiction clause. Further, the court held that the country where seat of arbitration is located, and the country whose law is chosen by the parties, do not give concurrent jurisdiction over the proceeding. It further held that only the courts of the country where the seat of arbitration is located have jurisdiction to address any matter related to such arbitration.

It was deliberated that the Indian courts may refuse to enforce the foreign award on satisfactory proof of any of the grounds mentioned in Sec. 48(1) of the Act, by the party resisting the enforcement of the award. The provisions set out in Sec. 48 of the Act are in the nature of defences available to the party resisting the enforcement application. It was emphasized that once an award is found to be enforceable it may be enforced like a decree of that court. However parties would have to be mindful of the various challenges that may arise, such as frivolous objections taken by the opposite party, requirements of filing original/ authenticated copy of the award and the underlying agreement before

the court.

During the course of discussion it was emphasized that some jurisdictions such as France and India provide that an arbitral tribunal generally has competence to initially decide virtually all jurisdictional disputes, subject to eventual judicial review. A reference was also made to *Prima Paint Corp v. Flood and Conklin Manufacturing Co.* where the Court decided that, mediation statements can be made 'separable' from the contract in which they are incorporated.

The conference also focused upon the concept of 'third party funding' which is the arrangement whereby an unrelated party provides financial support to a party (normally a plaintiff) in return for a share of the eventual monetary award. A reference was made to *Ram Coomar Coondoo v. Chunder Canto Mookerjee* where the court held that "a fair agreement to supply funds to carry on a suit in consideration of having a share of the property, if recovered, ought not to be regarded as being, *per se*, opposed to public policy."

Further, with regard to liability and security for costs relating to third party funding a reference was made to *Yeheshkel Arkin v. Borchard Lines Ltd & Ors* where Lord Philips held that a professional funder, who finances part of a claimant's costs of litigation, should be potentially liable for the costs of the opposing party to the extent of the funding provided. The effect of this will be that, if the funding is provided on a contingency basis of recovery, the funder will require, as the price of the funding, a greater share of the recovery to succeed the claim. Overall justice will be better served through this method, rather than leaving defendants in a position where they have no right to recover any costs from a professional funder whose intervention has permitted the continuation of a claim which has ultimately proved to be without merit.

The conference further discussed that Sec. 29-B of the Act is a codification of a procedure that is predominantly featured in prominent arbitral institutions. However, its utility and effectiveness remain to be tested in the Indian scenario, since the time within which an award is to be pronounced in regular arbitral proceedings has already been capped by Sec. 29-A of the Amended Act.

P-1146

REGIONAL CONFERENCE (EAST ZONE-I) ON ENHANCING EXCELLENCE OF THE JUDICIAL INSTITUTIONS: CHALLENGES & OPPORTUNITIES

22nd & 23rd December, 2018

Mr. Rajesh Suman, Assistant Professor

Mr. Rahul I. Sonawane, Research Fellow



The National Judicial Academy in collaboration with the Jharkhand High Court and the Judicial Academy, Jharkhand organized the East Zone-I Regional Conference on “Enhancing Excellence of the Judicial Institutions: Challenges & Opportunities” on 22nd and 23rd December, 2018.

The Regional conference aimed to provide a forum for exchange of experiences, knowledge and dissemination of best practices from across the cluster of High Court jurisdictions in the eastern region; and amongst the hierarchy; to accentuate the experience of familial community between High Court and Subordinate Court judicial officers: re-visiting established and imperative norms of the constitutional vision of justice; revisiting norms for appellate review; consequence of frequent and excessive appellate interference and other specified topics. The conference also provided an opportunity to discuss several crucial issues relevant for a particular region.

Session 1: Constitutional Vision of Justice

The speakers initiated the discussion with relevance of the Constitution to judicial officers. The importance of ensuring due process and fair hearing in a trial proceeding was emphasized by the speakers. The question was asked to the participants regarding their understanding of the Constitutional vision of justice. Participants responded by providing different instances where the Constitutional rights of the parties are required to be protected, such as, rights guaranteed under Art(s). 14, 15, 20, 21 and 22 of the Constitution. A trial court judge is also required to refer disputes involving a question of law to the High Court. The speakers discussed balancing of individual rights of a person against the might of state in cases such as eviction suits, where the right to livelihood of a person is at stake. The court should check that whether the dispossession is by virtue of any law for depriving a person of his property. The

speakers discussed the issue, as to whether social and economic justice come within the ambit of the same. The speakers highlighted Sec. 166 of the Motor Vehicle Act, 1988 in issues related to award of interest and higher compensation. Sec. 437 of the Code of Criminal Procedure, 1973 and Art. 15 of the Constitution were discussed in the matter of granting bail to women accused. The discussion also included right to conduct a religious procession, public nuisance, difference between civil imprisonment and criminal imprisonment and injunction for restraining a publication.

Session 2: High Court and District Judiciary: Building Synergies

The session began with the concern that most of the time the communication pattern between High Courts and district judiciary is disciplinary in nature. At present there are two prominent channels of communication. One is when there is wrong judgment and another when there is complaint against a judicial officer. There is need to shift from 'monitoring' to 'mentoring' function with regard to administration of district courts. The speakers emphasized that synergy building is required for continued excellence. The discussion focused on the administrative practices in the High Court with regard to district judiciary. The benefit and impact of video conferencing for interaction between High Court and district judiciary was discussed. It was stated that the video conferencing is used in some High Courts to take stock of pendency and assess progress in disposal of cases according to action plan. The speakers emphasized on the use of data relating to cases from National Judicial Data Grid [NJDG]. The practice of organising divisional workshops by the State Judicial Academies for a cluster of 5 to 6 districts was discussed. These workshops are attended by one or more portfolio judge(s). The problems and challenges faced by judicial officers are considered in such workshop, and it has positive effect in building synergies between High Court and district judiciary. The speakers emphasized that High Court must gain confidence of the district judiciary. The practice of passing unwarranted strictures in judgements should be abolished and High Courts should not criticize too much in judgments. The speakers emphasized that the State Judicial Academies should act as a

bridge between district judiciary and High Court. The State Judicial Academies should enhance synergies between two levels of judiciary.

Session 3: Revisiting Norms for Appellate Review: Consequence of Frequent and Excessive Appellate Interference

The session began with the importance of appellate power in Indian judiciary. The speaker said that when a litigant is not satisfied with the trial court judgment then he can file an appeal against the same, thereby restoring faith in judiciary. All appeals are provided by law and interference with any order should be on the well-recognized principles. The appellate court should not interfere with lower court's order unless there is gross illegality and perversity. It has been observed that most of the time disputed questions of law actually turnout to be questions of facts, and the High Court should restrain themselves from interfering with the lower court's orders in such situation. The appellate court should not interfere with the lower court orders, unless there are defects which go to the root of the matter. The appellate court has power of remand and if there is a order, where the question of law is wrongly decided then the matter can be remanded back to the lower court.

The appellate courts should refrain from the practice of admitting second appeal and subsequently leaving it undecided for many years. In most cases of appeals there is hardly any disputed question of law. The appellate court should interfere only where the non-interference will amount to miscarriage of justice. There should be deference to the order of trial court as they have had the opportunity to observe demeanor of witnesses. The speakers expressed concern on interference with the interlocutory orders and bail orders by the higher courts. The speakers suggested that trial courts should write their judgments without thinking about the consequences at appellate level.

Session 4: Access to Justice: Information and Communication Technology in Courts

The session was introduced by emphasizing that digital world, ICT and Case Management/Court Management are contributing to a great extent in the process of access to justice as an enabling tool.

The speakers averred that most important aspect of justice delivery system in any country depends upon

the level of confidence the litigants have in the system. Therefore, the job of the judge is to keep that faith and confidence intact. The speaker said that “Access to Justice” should not be confused with “Access to Courts”. Access to court starts with filing of a case and access to justice is the ultimate end of the case. The period between access to court and access justice is very difficult and here lies the skill of a judge and the faith of litigant in a system. To keep and enhance this faith of litigant in the system, ICT tools are very useful. Through ICT in Courts, judges are having information available at the click of mouse. They can manage cases through ICT, upload data on the NJDG, manage daily board and do a lot of other things. Not only that, nowadays due to electronic journals, finding precedents and relevant case law has become easier than earlier.

Another speaker elaborated on the ‘Artificial Intelligence’ in the Judiciary. The example of China was shared where they are now working on a concept called “Photo-Genetic Judgments” where judgments can be delivered through artificial intelligence. As far as our country is concerned, we are much behind, but we cannot remain untouched by the ICT revolution taking place all over the world. In India, use of ICT started in 1980s. In 2004, Supreme Court of India established an ‘e-committee’ as a national level body to look after the policy matters in computerization of judiciary. At initial stages, ICT was used only for ‘data storage’ and ‘processing’ like uploading information on computer and generating cause-lists. But now a days there is an increase in the use of ICT. Today ICT is used for Case and Court Management, for clearing the arrears/backlog in courts and to monitor the progress of the cases etc. NJDG is a giant step in taking ICT in Indian judiciary to the next level. The speaker also mentioned about the increased use of video conferencing facilities for production of accused from jails, recording evidence etc. The speaker also referred to the judgment of Supreme Court of India directing the mandatory installation of CCTV cameras in all police stations, jails and Courts. Nowadays in other countries, court proceedings are being videographed entirely and soon the trend is going to come to India. In fact, Indian Supreme Court in a PIL has directed for the implementation of videographing of court

proceedings in two courts under each High Court on experimental basis, to assess the suitability and practicability of the same in Indian Courts. The speaker also talked about the concept of ODR i.e. Online Dispute Resolution, where the complaint and responses will be filed online and after conducting online trial, the judgement will be delivered online. The speaker concluded his speech by saying that till now we were talking about ‘paperless courts’ but now the time has come to think about ‘people-less courts’.

Session 5: Access to Justice: Court and Case Management

Before the regular speakers for the session, with the permission of dias, Justice D. N. Patel of Jharkhand High Court made a brief presentation on how in Jharkhand, Court and Case Management techniques are implemented to achieve the targeted disposals. He said that the key is that the collection of data is very important; as well as data feeding should be accurate. Then only targeted results can be achieved. He said that on the website of High Court of Jharkhand, there is a link called ‘Targets and Achievements’ which reflects various targets allocated to various districts and judges therein and the achievements are also made available online. He said that after the thorough study they came to realize that 80% of work in State of Jharkhand is in 10 districts only. So they concentrated on these 10 districts for initial achievement of targets and they got 80 to 90 percent of success. The judges of High Court are personally monitoring the targets allocated to various judicial officers and their achievements. He explained it with the help of a demonstration of the said system.

The speakers then said that there are almost more than 3 crore cases pending in Indian Courts. Out of which, 74 percent cases are less than five years old. We should organize the work in such a way that old as well as new cases are disposed of simultaneously. It was shared that at the Supreme Court, a comprehensive Court Management System is being developed, which will provide more inputs in this regard. He said that Human Resource Management in a court is also a very important issue. Judges should personally ensure equal distribution of work and human resources available with the court is utilized to the fullest extent. Expertise

of particular employee/staff should be utilized in best possible way. When accurate data pending cases, types of cases, stage of proceeding etc. are available, it will be easy to apply court and case management techniques more effectively. For the effective use of court and case management techniques, proper monitoring and mentoring at the High Court level is very important.

Thereafter, some of the participants raised their doubts about the court and case management and panel responded and resolved their doubts. After the discussion the Director, NJA concluded the conference expressing hope that participant judges will take with them learnings from the conference and try to implement them in day to day functioning of their courts.



RESEARCH ACTIVITIES

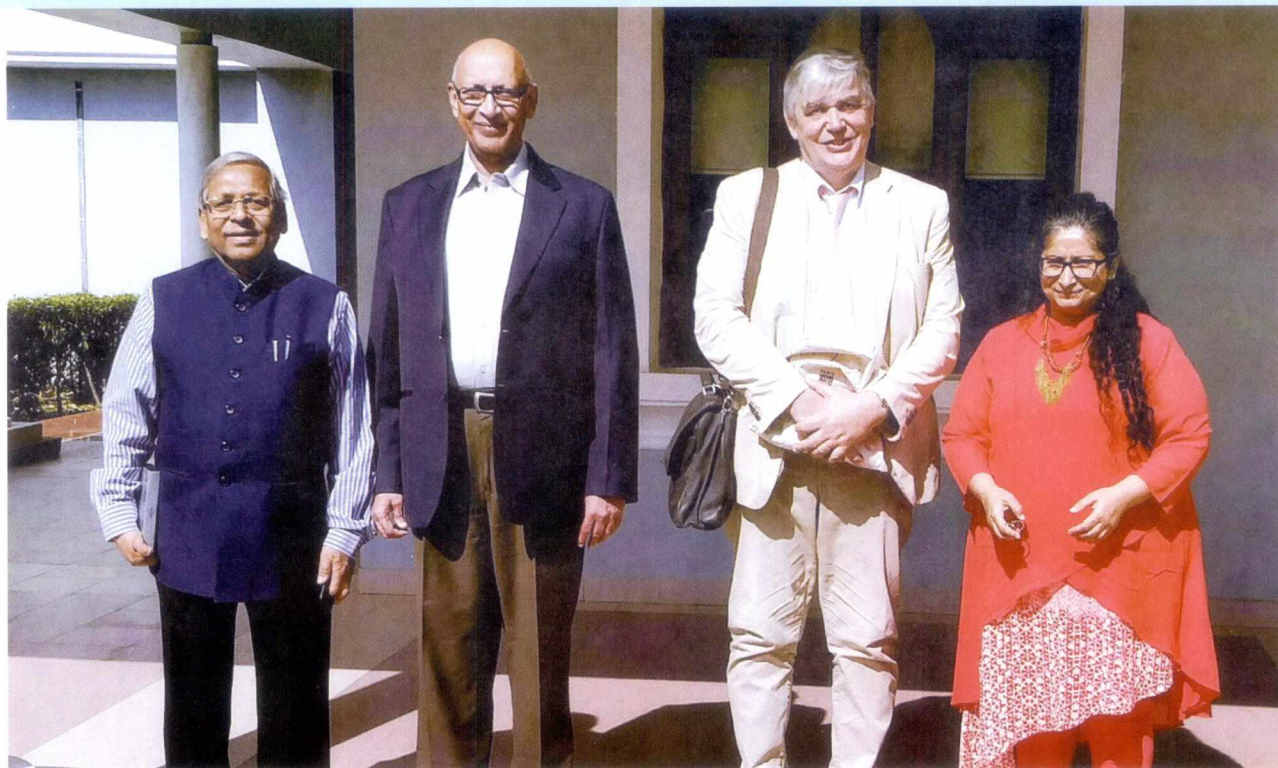
A research project of the NJA on “**An Analysis of Pendency of Cases in Family Courts of Madhya Pradesh and Methods to Reduce Pendency**” was approved by the Project Sanctioning Committee (PSC) of the Department of Justice (Ministry of Law & Justice), Government of India in its Tenth Meeting held at New Delhi on 29 October 2018. The research project was subsequently approved by the Hon’ble Supreme Court of India. The timeline of the research project is of twelve month and the research team -- consisting of Mr. S.P. Srivastava (Professor, NJA), Mr. Prasidh Raj Singh (Law Associate, NJA) and Ms. Nikita Jain (Law Associate, NJA), under the supervision of Prof. D.P. Verma (Additional Director, Research & Training, NJA) -- commenced its work from 18 December 2018.

APPOINTMENT



Ms. Sonam Jain joined as Research Fellow in the NJA on 21 December 2018. She is B.A. LL.B. (Hons.) from Barkatullah University and LL.M. from National Law Institute University, Bhopal. She is at present enrolled for Ph.D. study in law on “Problems and Issues in Investigations and Trials relating to Cyber Law in India: A Legal Analysis” in Barkatullah University. Earlier, she was teaching as Assistant Professor in Career College of Law, Bhopal. She has participated and contributed papers in 10 national and international seminars. Her research articles are published in various journals.

FACULTY NEWS



Mr. Frederic Clot, Substitute General, Court of Appeal, Poitiers, France visited the NJA on 15 November 2018 and had an interaction with the faculty members. The issues relating to the judicial functioning in India and France as well as judicial training in both the countries were discussed in the meeting. Hon’ble Mr. Justice G. Raghuram, Director of the NJA, welcomed the guest

UPCOMING PROGRAMMES

- **National Judicial Conferences for High Court Justices**
 - ✓ Direct Taxes (11-13 January 2019)
 - ✓ Intellectual Property Rights (8-10 February 2019)
 - ✓ Goods and Service Tax (1-3 March 2019)
 - ✓ Commercial Division and Commercial Appellate Division (22-24 March 2019)
- **Refresher Course on Prevention of Money Laundering Act**
 - ✓ (22-24 March 2019)
- **Workshop for Additional District Judges**
 - ✓ (8-10 March 2019)
- **National Orientation Programme for Junior Division Judges**
 - ✓ (4-10 January 2019)
 - ✓ (1-7 March 2019)
- **National Seminar for Members of the Income Tax Appellate Tribunal**
 - ✓ (4-6 January 2019)
- **National Seminar for Members of the Railway Claim Tribunal**
 - ✓ (16-17 February 2019)
- **Refresher Course for Commercial Courts Judges**
 - ✓ (8-10 February 2019)
- **Seminar for Bangladesh & Fiji Judges**
 - ✓ (11-17 January 2019)
- **Seminar for Bangladesh Judges**
 - ✓ (15-21 February 2019)
- **Regional Conferences**
 - ✓ South Zone-II (19-20 January 2019)
 - ✓ West Zone-II (23-24 February 2019)
 - ✓ North Zone-II (30-31 March 2019)



Governing Bodies of the NJA

A. The Governing Council

1. Chairperson of the NJA the Chief Justice of India
 - Hon'ble Mr. Justice Dipak Misra (till 02.10.2018)
 - Hon'ble Mr. Justice Ranjan Gogoi (from 03.10.2018)
2. Two Judges of the Supreme Court of India
 - Hon'ble Mr. Justice Ranjan Gogoi (till 02.10.2018)
 - Hon'ble Mr. Justice Madan B. Lokur (till 30.12.2018)
 - Hon'ble Mr. Justice Kurian Joseph (from 11.10.2018 till 29.11.2018)
3. Secretary, Department of Justice, Ministry of Law & Justice, GOI
4. Secretary, Department of Expenditure, Ministry of Finance, GOI
5. Secretary, Department of Legal Affairs, Ministry of Law & Justice, GOI
6. Secretary General, Supreme Court of India
7. Director, National Judicial Academy, Bhopal

B. The General Body

1. Chairperson of the NJA the Chief Justice of India
 - Hon'ble Mr. Justice Dipak Misra (till 02.10.2018)
 - Hon'ble Mr. Justice Ranjan Gogoi (from 03.10.2018)
2. Two puisne Judges of the Supreme Court of India
 - Hon'ble Mr. Justice Ranjan Gogoi (till 02.10.2018)
 - Hon'ble Mr. Justice Madan B. Lokur (till 30.12.2018)
 - Hon'ble Mr. Justice Kurian Joseph (from 11.10.2018 till 29.11.2018)
3. Chief Justice of a High Court
 - Hon'ble Mr. Justice R.S. Reddy, Chief Justice, High Court of Gujarat (till 02.11.2018)
4. Judge of High Court
 - Hon'ble Mr. Justice D.N Patel, High Court of Jharkhand
5. Ex- officio members:
 - i) Minister for Law & Justice, GOI
 - ii) Chairperson Bar Council of India
6. Secretary, Department of Justice, Ministry of Law & Justice, GOI
7. Secretary, Department of Expenditure, Ministry of Finance, GOI
8. Secretary Department of Legal Affairs, Ministry of Law & Justice, GOI
9. Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension, GOI
10. Two Law Academics
 - Dean, Faculty of Law, Delhi University
 - Director, National Law Institute University, Bhopal
11. Secretary General, Supreme Court of India
12. Director, National Judicial Academy, Bhopal

National Judicial Academy

Conceived in early 1990s by the Supreme Court of India, the NJA had to wait nearly a decade to get its infrastructure in place. On September 5, 2002 the then President of India, Dr. A.P.J. Abdul Kalam, formally dedicated to the Nation, the beautiful sprawling complex of the NJA, spread over a 62 acre campus overlooking the Upper Lake at Bhopal. The President on the occasion released a Second Vision for the Republic in which a new and dynamic role for the judiciary was envisaged with a view to make India a developed country by 2020. *"The Academy"*, he said, *"may aim at developing attitudinal changes to improve judicial integrity and efficiencies"*. The NJA commenced the rather challenging journey towards achieving higher standards of excellence in delivery of justice through human resource development and techno-managerial upgradation. Since 2003, NJA has successfully imparted training to more than 32,000 judicial officers of various levels.

Registered as a Society in 1993 under the Societies Registration Act (1860), the NJA is managed by Governing Council chaired by the Chief Justice of India. The Governing Council consists of two senior most Judges of the Supreme Court of India and three Secretaries to the Government of India from the Departments of Law and Justice, Finance and Legal Affairs. The mandate of the Academy under the Memorandum of the Society include following objectives:

- (i) to establish a center of excellence in the study, research and training of court management and administration of justice and to suggest improvements to the judicial system;
- (ii) to provide training and continuing legal education to judicial officers and ministerial officers of the courts; and
- (iii) to disseminate information relating to judicial administration, publish research papers, books, monographs, journals etc. and collaborate with other institutions both within the country and abroad.

With the support and guidance of the justices of the Hon'ble Supreme Court of India, the NJA has launched an ambitious plan of research, education and training activities to give the judiciary - the required intellectual inputs to assist the judicial system in dispensation of quality and responsive justice.



National Judicial Academy

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