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From the Desk of the Director, NJA

I am privileged to present this newsletter covering the activities of your Academy during August and September, 2018. We conducted fifteen programs, including six parallel programs during this period.

A workshop for Additional District Judges; and another for Magistrates on the Prevention of Cruelty to Animals Act, 1960 were organized at our campus during 17th to 19th August. A National Workshop on Court Administration, Management and Information and Communications Technology for Principal District and Sessions Judges; and a Refresher Course for presiding officers of special courts under the SC/ST (Prevention of Atrocities) Act, 1989 were held during 24th to 26th August. During 31st August to 2nd September two parallel events, a National Conference for High Court Justices; and a Workshop for Judicial Magistrates on the PC & PNDT (POSS) Act, 1994 were organized.

A National Orientation program for Civil Judges, Junior Division was organized during the 6th to the 12th; and a Workshop for Additional District Judges, from 7th to the 9th September.

In collaboration with the Federal Judicial Center, Washington and the CEELI Institute, Prague, your Academy facilitated interaction and sharing of experiences, between High Court Justices from India and Judges in the US, on adjudication in Counter-Terrorism cases and Court security related issues, as a Master Trainers' program, at the Federal Judicial Center Washington D.C; and the Ronald Reagan Federal Building and the U.S Courthouse, Los Angeles during 10th to 14th September. Eight High Court Justices, from amongst participants, in the 1st phase of training at our campus in October, 2017 were identified for the Phase II program in the U.S. These eight Justices along with expert delegates from the FJC would in turn impart training to District and Sessions Judges on adjudication of Terrorism and related offences and the court security protocols, as a follow up of the program.

A National Seminar for Principal District and Sessions Judges on Constitutional and Administrative Law was held during 14th to 16th September; alongside a Refresher Course for District Judges on the nuances, problems and challenges arising in cases pertaining to the POCSO Act, 2012. A Workshop for Magistrates on the Juvenile Justice (Care and Protection of Children) Act, 2015 was conducted at our campus during 21st to 23rd September. An integrated Court Excellence Enhancement Program for Judicial Officers and other duty-holders in the justice delivery system

was organized during 28th to 30th September. The South Zone Regional Conference involving participation of High Court Justices, Directors of State Judicial Academies and Junior and Senior Division judges from the Southern States was held during 29th and 30th at Bengaluru, graciously hosted by the High Court of Karnataka and the Karnataka State Judicial Academy.

The several programs organized during this period provided an excellent platform for participant judges from across India to meet, exchange views with counterparts and derive deep 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. As ever, all these events could not have succeeded without the gracious co-operation and immense guidance provided by the distinguished resource persons; and we gratefully acknowledge this contribution. I must also place on record our deep appreciation and gratitude to the FJC and the CEELI Institute, Prague for facilitating the Phase II exchange on adjudication of Counter-terrorism Trials and Court Security protocols, at Washington D.C and Los Angeles, U.S for our High Court Justices, in September, 2018.

Justice (Retd) G. Raghuram

Director

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P-1101

WORKSHOP FOR ADDITIONAL DISTRICT JUDGES

17th August 2018 to 19th August 2018

Dr. Amit Mehrotra, Assistant Professor



The workshop discussed critical areas concerning adjudication at the district level; explored challenges in implementation of ADR system; discussed sentencing practices; advantages of integrating court and case management systems in district courts.

Additional topics covered includes issues and practices pertaining to collection, preservation and appreciation of electronic evidence; advances and inadequacies in laws regulating cybercrimes. The workshop discussed, evaluated and shared best practices on exercise of appellate and revision jurisdiction of district Judges, in criminal and civil domains, as well.

The theme for session one was *Challenges in Implementation of the ADR System in Subordinate Courts*. The importance of ADR was explained. Advantages of application of ADR were discussed, which included :

- 1) To facilitate access to justice to the poor and disadvantaged;
- 2) To provide informal, quick and inexpensive resolution of disputes;
- 3) To take away cases inappropriate for adjudicatory process;
- 4) Remove petty cases, which do not require any adjudication by courts;
- 5) To reduce the burden of statistical load of cases

on the courts;

- 6) To help promote trade and commerce, "fair practice, good commerce and equality";
- 7) To maintain peace and harmony in society, by reducing hostility and promoting resolution of disputes in a peaceful manner;
- 8) Enhancing faith and confidence in the judicial system; and
- 9) To provide for dispute resolution by morals and not coercion.

It was deliberated that there is a mandatory requirement for the judges to consider at the appropriate stage, or at any stage, whether the dispute brought before them can be referred to any one of the five ADR processes, namely Arbitration, Conciliation, Lok Adalat, Mediation; or Judicial Settlement.

It was emphasized that arbitration is an adjudicatory dispute resolution process, by a private forum governed by the Arbitration and Conciliation Act, 1996. If there is pre-existing arbitration agreement, the matter has to be referred for arbitration invoking Sec. 8 or Sec. 11 of the Act. On referring to the process of arbitration the dispute goes out of the Court, the case stands decided, and does not require monitoring by the Court. It may come back to Court after arbitration for enforcement and challenge under Sec. 34 of Arbitration and Conciliation Act.



It was also deliberated that Conciliation is a non-adjudicatory ADR process and is also governed by the Arbitration and Conciliation Act 1996. The concept of Mediation was extensively deliberated upon.

It was suggested that the Court should make a short order preferably in few lines recording its satisfaction that the nature of dispute is not complicated, the disputes are easily sortable and may be settled by applying clear cut legal principles. It was stated that the order of permanent Lok Adalat need not be brought to the Court for its approval, and may be enforced as a decree of Court.

While discussing the challenges to ADR process, hesitation of the Court to make reference, confidence in adjudicatory process, absence of legislation for Mediation and Judicial Settlement, lack of infrastructure and lack of trained Mediators and staff were discussed and highlighted. The cases *Afcons Infrastructures Ltd. v. Cherian Varkey Construction Company Pvt. Ltd. & Ors.* (2010) 8 SCC 24 and *Shailash Dharyawan vs Mohan Balkrishna Lulla* (2016) 3 SCC 619 were also discussed during the discourse.

The theme for session two was *Court & Case Management : Role of Judge*. The role of judges in judicial decision making and adjudication according to law was discussed. It was stated that four words which prevail in bureaucracy; Do, Delay, Delegate and Dump does not apply to Judges. Judges have to "Decide" the case according to the law and doing

justice is a divine duty.

It was delineated that judges should be tactful while deciding a case. Being tactful means Rules are to be adhered. The sanctity of the Court must be maintained. It was highlighted that court management, peace and tranquility of the court is not disturbed.

Elaborating upon the tiers of management in our Court system it was stated that there are three levels of Management; Top, Middle and Bottom level were discussed. It was stated that the Supreme Court and High Courts are the top levels of the management. They lay down the Policy and Rules. They are courts of record. The subordinate courts are the middle level of the management. They have to translate policies, circulars or general Rules of civil and criminal law to function. The ministerial staff of the courts are said to be the bottom level of the management. Three types of management i.e. conceptual, human and technical were discussed.

Theories of management propounded by various philosophers and thinkers like Mc Gregors, Abraham Maslow, Bentham, and Peter Pan were discussed. It was stated that according to Lord Denning, a Judge should be a noble human being. There are many attributes of management which are to be kept in mind while managing a Court, i.e. mind management, time management, stress control etc. The session was concluded with the suggestion to make the best use of resources to manage things properly.

The theme for session three was *Fair Session Trial*.



It stated that Chapter 18 of the Code of Criminal Procedure, 1973 (Cr.P.C.) talks about the provisions of sessions trial. It was emphasized that fairness, justice and reasonableness are the heart and soul of adjudication. In order to bolster the faith of a common man in the judicial system, it is of paramount importance that the trials are carried impartially, applying sound principles of law. It was further stressed that justice needs to be done as well as seen to have been done to ensure public confidence in the justice system.

It was suggested that procedures like framing of charges should be done properly by the judges. Grouping of documents like police report, investigation reports must be done meticulously. Accused should be told about the crime for which he has been accused and the examination of witness should be done properly. Examination of the accused should also be carried out by the judge (as has been provided under Sec. 313 of Cr.P.C.). Evidence given by the handwriting expert, child witness and ballistic evidence should be properly appreciated. Principles of 'Natural Justice' i.e. '*Audi Alteram Partem*' and '*Nemo Judex in Causa Sua*' should be strictly adhered to. It was delineated that Constitutional validity of fair sessions trial can be traced under Art. 20, 21 and 20. *Pooja Pal's* case that includes right to speedy trial as fundamental right and *Ajmal Kasab's* case as right to Legal Aid as fundamental right was discussed during the discourse.

The theme for session four was *Laws relating to Cybercrimes : Advances and Bottlenecks*. It was stated that misuse of technology to do any unlawful activity is termed as Cyber Crime. The different types of cybercrime are cyber stalking, cyber contraband, cyber trespassing, cyber laundering, cyber vandalism, cyber slandering, cyber theft, cyber pornography, cyber fraud and cyber terrorism. It was stated that in the present world to detect cyber-crime is a big challenge. Cyber-crime attack takes place from different countries. Internet is not owned by anyone in this universe. In India no agency has been appointed to check whether any application (App) or mail or server is vulnerable. It was emphasized that the root servers are critical part of the internet infrastructure because they are the first step in resolving human readable host names into IP addresses that are used in communication between Internet hosts. There are 13 root servers, out of which 10 servers were originally in the United States. The question regarding the security of end to end encryption of 'WhatsApp', and vulnerability of the 'Truecaller' app was discussed.

The topic for session five was *Electronic Evidence : Collection, Preservation and Appreciation*. It was suggested that one should follow proper procedure while recording electronic evidence. Digital evidence can be easily altered. Precautions are required during search, collection, preservation, transportation and examination of evidence. Video documentation should be done with extra precaution. The procedure



for taking evidence from the computer was discussed so that no tampering of evidence takes place. All the acquired digital evidences should be stored in a manner to ensure the integrity of the evidence. It was emphasized that collected digital device(s) should be wrapped or placed in appropriate packaging and further stressed to label all potential digital evidence. It was deliberated that hashing is an irreversible cryptographic formula or function that converts the data into its digital fingerprint. Hashing is used to ensure the integrity of digital evidence and media content. If the evidence is altered in any way, the hash value will also change. Admissibility of electronic evidence and Sec. 65 (B) of the Indian Evidence Act 1872 was discussed during the discourse.

The theme for session six was *Sentencing : Issues and Challenges*. Theories of Punishment deterrent, retributive, preventive and reformative were discussed.

It was stated that Sec. 53 of Indian Panel Code, 1860 (IPC) talks about various types of punishments. Sections 28, 29, 30, 31, 432, 433, 433A, 434 and 435 of Cr.PC were discussed. It was opined that the problem arises when a judge is provided with discretion to award a sentence in a particular case. It was emphasized that determining the quantum of sentence is an important aspect of trial. With the lack of sentencing policy in India while exercising discretion it becomes extremely important that judges should exercise their power judiciously and

reasonably. Sec. 3, 4, 5 and 12 of the Probation of Offenders Act, 1958 were also discussed.

It was emphasized that there has been conflict of opinions regarding sentencing. It was stated that death sentence should be awarded in 'rarest to rare' case. It was deliberated that Sec. 235(2) of Cr.P.C mandates the court to hear the accused on sentencing after conviction. With regard to sentencing policy, mitigating and aggravating circumstances were discussed during the discourse. Various judgments *Bachan Singh v. State of Punjab* (1980) 2 SCC 684, *Jagmohan v. State of U.P.* 1973 AIR 947, *Machhi Singh And Others v. State Of Punjab* 1983 AIR 957, *Rajendra Prasad v. State of U.P* (1979) 3 SCC 646, *Mithu v. State of Punjab* (1983) 2 SCC 277, *Ediga Anamma v. State of Andra Pradesh* (1974) SCC 443 were the part of discussion during the session.

The topic for the session seven was on *Criminal Justice Administration : Appellate and Revisional Jurisdiction of District Judges*. It was stated that Chapter XXX of Cr.P.C. provides for revision power. In revision, acquittal cannot be turned into conviction and the matter can only be remanded. Special revision jurisdiction has been provided under Sec. 398 of CrPC.

It was stated that the appellate court has equal powers as of a trial court and appeals are of two types, appeal against acquittal and appeal against conviction. It was stated that revision does not lie against an interlocutory order but only against a final order. It

was deliberated that delay in itself cannot be used by the trial court as a ground for acquittal of an accused. The scope of corroboration of evidence was discussed. It was highlighted that corroboration is not a matter of law. Law does not provide for mandatory corroboration. It was deliberated that once the final report is accepted, the judge has only one option to decide the case and dispose it off. Judges have to be cautious while deciding a case. The judgments of *Madhu Limaye v. State of Maharashtra* 1978 SCR (1) 749, *VC Shukla v. State through CBI* 1980 SCR (2) 380, *Pala Singh & Anr v. State of Punjab* 1973 SCR (1) 964, *State of Himachal Pradesh v. Gian Chand* (2001) 6 SCC 71, *Amar Nath And Others v. State of Haryana & Others* 1978 SCR (1) 222 were discussed during the discourse.

The topic for session eight was *Civil Justice Administration : Appellate and Revisional Jurisdiction of District Judges*. It was stated that the word “appeal” is not defined under Civil Procedure Code (CPC). It must be construed in its plain and natural sense. In its natural and ordinary meaning an appeal is a remedy by which a cause determined by an inferior court is subjected before a superior court for the purpose of testing the correctness of the decision given by the inferior court. An appeal is a proceeding where a higher forum reconsiders the decision of a lower forum, on (a) questions of fact; (b) questions of law, with jurisdiction to confirm, reverse, modify the decision or remand the matter to the lower forum for fresh decision in terms of its directions.

Appeal is a creature of statute. Appeal lies only against the decree, or appealable orders. Right of appeal is a substantive right. It was stated that appeal abates on death of a party if legal representative is not brought on records in the prescribed period and suo moto appeal is not possible. It was emphasized that appeal is a continuation of the suit wherein the entire proceedings are left open before the appellate authority. Basic distinction between the right to sue and the right of appeal was discussed. It was highlighted that appeal should lie against a decree and not against mere adverse findings. It was stated that right to file first appeal against the decree under Sec. 96 of the CPC is a valuable legal right of the litigant, the whole case therein is open for rehearing both on questions of fact and law. The jurisdiction of

the first appellate court is very wide like that of the trial court and it is open to the appellant to attack all findings of fact or/and of law in first appeal. It is the duty of the first appellate court to appreciate the entire evidence. It was highlighted that appellate courts must reflect its conscious application of mind, and it should record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties. While reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its reasons for arriving at a different finding. O.41, R.27 CPC which speaks about the production of additional evidence in appellate court was discussed. It was stated that Order XLI Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist. Whenever the appellate court admits additional evidence it should record its reasons for doing so.

Furthermore the cases of *Smt. Ganga Bai v. Vijai Kumar* 1974 AIR 1126, *Deepchand v. Land Acquisition Officer* 1994 AIR 1901, *Banarsi and Ors v. Ram Phal* (2003) 9 SCC 606, *Union of India v. K.V. Lakshman* AIR 2016 SC 3139, *Madhukar And Ors v. Sangram* (2001) 4 SCC 756, *Shasidhar v. Ashwini Uma Mathad* (2015) 11 SCC 269, *Union of India v. Ibrahim Uddin* (2012) 8 SCC 148, *Mathad v. Rudrayya S. Mathad and Ors.*, AIR 2008 SC 1108, *Andisamy Chettiar v. A. Subburaj Chettiar* (2015) 17 SCC 713 were discussed.

Sec. 115 CPC vests the power of Revision in High Courts. It was stated that the power of revision is limited to keep subordinate courts within the bounds of their jurisdiction. Primary object of the revision is to prevent subordinate courts from acting arbitrarily, capriciously, illegally or irregularly in exercise of their jurisdiction. It was emphasized that those orders, which are interim in nature, cannot be the subject matter of revision under Sec. 115. Preferring an application under Sec. 115 of the Code is not a substantive right. It is a source of power for the High Court to supervise the subordinate courts. With reference to the above *Major S S Khanna v. Brig. F J Dillon* AIR 1964 SC 497 and *Shiv Shakti Coop. Housing v. Swaraj Developers* (2003) 6 SCC 659 were discussed during the discourse.

P-1102

WORKSHOP ON PREVENTION OF CRUELTY TO ANIMALS ACT, 1960

17th August 2018 to 19th August 2018

Mr. Yogesh Pratap Singh, Research Fellow



The Academy organized three day “Workshop on Prevention of Cruelty to Animals Act, 1960” (P-1102) from 17 – 19 August, 2018 at the National Judicial Academy, Bhopal.

The objective of the workshop was to enhance and update knowledge and skills of judicial officers dealing with issues involving trafficking in atrocities on and exploitation of, animals; procedural impediments perceived in adjudication of such cases; evolving strategies to deal with the challenges, in the context of The Prevention of Cruelty to Animals Act, 1960 hereinafter ‘Act’ and The Wildlife Protection Act, 1972 hereinafter ‘WL Act’ and notifications issued there under.

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

Jurisprudence and Ethics of Animal Welfare : Approaches to Legal Reform

The session began with discussion on jurisprudential aspects under two types of jurisprudence i.e. classical jurisprudence & modern jurisprudence with respect to animal welfare and on the question whether animals have legal rights and later on the concept of animals

as property was discussed. The historical aspects, origin and development of laws across the globe, right from common law system to the passing of Animals Act, 1960 in India and its objectives related to animal welfare were explained in detail to the participant judges. The concept of cruelty and development of laws to prevent cruelty across the world was also discussed with the participants. Provisions of law pertaining to animals under Indian Penal Code, Constitution of India, Animals Act and some landmark Judgments of the High Courts and Supreme Court were also discussed in the session. While discussing the judgment of the Supreme Court in *AWBI v. A. Nagaraja* (2014 7 SCC 547), it was emphasized that Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word “life” has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, fall within the meaning of Article 21 of the Constitution and in case of animals, “life” means something more than mere survival or existence or instrumental value for human beings, but to lead a life with some intrinsic worth, honour and dignity. Attention was drawn to some of the principles laid down by the Supreme Court with respect to treatment of animals such as, animals



are not merely for instrumental value for humans; spirit of humanism and scientific enquiry needs to be developed; Only acts “necessary” as provided under the Animals Act be permitted; Entertainment is not necessary and lastly statutory law overrides culture and tradition. The concept of animals as property and legal personhood to animals in light of Uttarakhand High Court judgment in *Narayan Dutt Bhatt v. Union of India & Others* (2018) was discussed with the participants.

The Prevention of Cruelty to Animals Act, 1960 : Understanding Cruelty

Speaker commenced the session by explaining the concept of ‘Cruelty’. It was underscored that there should be a clear distinction of pain, and emphasized upon difference between the unnecessary pain and suffering. Speaker, through various reports explained that there is a link between animal abuse and domestic violence in family. From a psychological perspective, he explained that children who are more exposed to cruelty or abuse on them or on their family members tend to be cruel on animals. The definition of animal and owner was elaborated in the session. It was stressed that if the animal is capable of changing its behavior in response to external *stimuli* to avoid some problem then the animal is capable to feel about certain things around. While defining Owner, speaker said that owner includes any person being in possession or custody of animal with or without it and animals that are not owned by anyone come under the state government responsibility. To define ownership further Sec. 3 of the Animals Act 1960 was explained and elaborated in detail. The theory of necessity and

rights of animals was explained to the participants, it was stressed that it will be the duty of person to know the animal’s rights. There is need of understanding the natural law and the ‘doctrine of necessity’. It was further explained that the main purpose of this Act is to restrict all sorts of cruelty upon animals particularly with respect to situation when owner sell the animal as property and purchaser acts as if he has all right of giving unnecessary pain and suffering to animals. Provisions of law pertaining to animals under Indian Penal Code, 1860 Constitution of India, Animals Act, 1960 and some landmark Judgments of the Supreme Court and High Court were also discussed in the session.

The Prevention of Cruelty to Animals Act, 1960 : Purpose Interpretation

In this session, the concept of case property was discussed with the participants, it was explained that case property deals with any living animal that has been either injured, sick or in case of some violation of its right and it, comes before the court in very bad condition and require some care and maintenance and in such cases court has to deal with the matter very differently and not like any other case, because here crime has been committed against an animal who cannot express his pain and suffering. Court’s must ensure that animal don’t get abused. While discussing the role of court, it was stressed that the court must assess the condition of an animal on the basis of tempered proof identification, flex tags etc and then health report must be made by jurisdiction veterinary officer of Animal Husbandry Department, in addition photographs can also help the court to understand



the condition of an animal. Speaker further discussed with the participants that the custody of a wild animal should not be given to any person, for the reason that, wild animals are quite different from domestic animals and are extremely scared of human. They might not be able to survive the human proximity and may die, that is why the forest department is the best custodian of wild animals. Attention was also drawn to some of the important principles laid down by the Supreme Court and High Court with respect to case property wherein court emphasized that when the matter is under trial, it is the responsibility of the State Government to ensure the well being of animals. Some important Rules under the Act with respect to maintenance of case property (2017) were also explained to the participants. These Rules were as follows: Rule 3: Custody of animals pending litigation; Rule 4: Cost of care and keeping of animal pending litigation; Rule 5: Execution of Bond; Rule 6: Abandoned animal; Rule 7: Voluntary relinquishment; Rule 8: Status of animal upon disposal of litigation; and Rule 9 Process of adoption or other disposition. At the end of the session, speaker also discussed about the roles and responsibilities of various departments under the Act. viz. Animal Welfare Board of India, MoEF & CC-PCA Act; State Animal Husbandry Department-District SPCA and State Animal Welfare Board (PCA Act and Orders of the Hon'ble Supreme Court); Local bodies-Kanjihouse and ABC Centers (State Municipal Corporation Acts and PCA Act); Health Department-Food Safety Inspectors (FSSA Act 2006); Department of Road Transport (Motor Vehicles Act); and Forest Department.

Wild Life Protection Act, 1972 : Purpose, Interpretation and Illegal Poaching and Hunting: An emerging threat

The Session began with introductory part of the WL Act. While elaborating the scope of the Act and its applicability, the speaker explained the meaning of various terms such as Wild life, Habitat, Hunting and Trade. Important provisions under the WL Act and the Constitution of India such as Article-48 A of the Constitution which was added by 42nd Amendment in 1976 were discussed in detail. Attention was also drawn to some important definitions under the WL Act. The definition of animal article was explained to the participant. Under the WL Act, animal article means an article made from any captive animal or wild animal, other than vermin, and includes an article or object in which the whole or any part of such animal has been used, and ivory imported into India and an article made there from. The definition of dealer in context of trade was explained to the participants; it means any person who carries on the business of buying and selling any captive animal, animal article, trophy, uncured trophy. In the definition, any person means if a person buys any animal ivory or demand any part of animal which is prohibited under the Act he would also come under the definition of dealer. The definition of hunting in context of killing animals for the purpose of trade was explained to the participants. The expression hunting includes; Capturing, killing, poisoning, snaring and trapping of any wild animal and every attempt to do so; Injuring or destroying or taking any part of the body of any such animal or, in the case of wild birds or reptiles, damaging the eggs of such birds or reptiles



or disturbing the eggs or nests of such birds or reptiles; Attention was drawn to other relevant provisions under the WL Act such as Sec. 30: taxidermy; Sec. 31: trophy etc. While elaborating the definition of trophy, speaker cited one judgment of Delhi High Court, *Cotton Industry Exposition Limited v. Union of India*, wherein the Court held that the definition of 'Incurred Trophy', 'Trophy' and 'Scheduled Animal Article' are not separate, distinct and exclusive compartments, but are complimentary to one another. Any other construction would defeat the object of WL Act and intention of the legislature. The speaker also highlighted one area of concern that, courts sometimes award less than the minimum prescribed punishment for the offences despite finding the accused guilty, as it will not help in curbing the offences under the WL Act. Various facts related to valuable species, hunting and unorganized trade were presented in the session. It was highlighted that more than 35000 species are valuable species, but our law only covers merely 8000 species. And out of these 8000 species most of them are totally degraded in our nature because of lots of pollution, change in the climate and hunting by the human for trade purposes. There are statistics regarding the illegal trade of animals which shows that in the past 35 years, 55% of the world's wild life was wiped out, due to human interference. Two types of wild life trade were also explained to the participants i.e. organised trade and unorganized trade.

Importance of Wild Life Investigation to Combat Organized Wild Life Crimes

The session began with a discussion on brief historical perspective of wild life crimes in India. It

was mentioned that India has a historical tradition of protection of wild life; however, over the past years it could not be materialized. The speaker cited various names of species that are extinct now in India due to wildlife related crimes. Special emphasis was given to tiger hunting wherein historical record indicate that between 1875 to 1925, over 80,000 tigers were killed. It was further discussed that forest don't have boundaries, and therefore, even after enactment of many new legislations and guidelines by the Supreme Court for the conservation of wildlife, forest and species, still the challenge for us is that law has changed but our attitude has not changed. It was highlighted that wildlife crimes like hunting, poaching are not small level crimes or limited only to wildlife & forest but also poses threat to national security, as lot of hunters, tribal people and militant groups consider wildlife trade as easiest option for raising funds and for anti-national activities. The speaker in his presentation also explained the misuse of internet in expanding illegal trade of wildlife and the urgency and necessity of good forensic examination. It was highlighted that due to lack of adequate equipment it becomes difficult for the court and forest department to check that the material that is found during the investigation falls under the schedule of the Act or not. Attention was drawn to some landmark judgments of the Supreme Court and High Courts. For instance in *Abdul Razak v. State of Maharashtra*, the Supreme Court held that the evidence of trainer of tracking dog is relevant and admissible but it can't be treated at par with the evidence of scientific experts analyzing blood or chemicals.



Case Studies and Overview of Animal Welfare Related Cases

This session began with the discussion on Sec. 40 of the WL Act which deals with a declaration. It reads that every person at the commencement of this Act in possession or custody of any captive animal specified in Schedule-I or Part- II of Schedule-II is required to declare it to Chief Wild life Warden. Sec. 39(3) of the Act was also discussed which says *"No person shall, without the previous permission in writing of the Chief Wild Life Warden or the authorized officer -*

- *Acquire or keep in his possession, custody or control.*
- *Transfer to any person, whether by way of gift, sale or otherwise, or*
- *Destroy or damage, such Government property."*

Therefore, under the said Sec. the Chief Wild life Warden has power to grant permission to any person. It was pointed out that in 2003 last opportunities was given by the government regarding the declaration of legal custody and since then no other opportunities had been given. It was mentioned that no person except the person having ownership certificate can keep or acquire any captive animal specified in Schedule-I or in Part-II of Schedule-II ,but in case of inheritance declaration of inheritance must be made within 90 days to Chief Wild life Warden. Inherited person can donate or gift the animal but cannot make sale deed of the same. It was further explained that certificate of ownership is to be granted only after ensuring that applicant has adequate facilities for housing, maintenance, and upkeep of animal ownership. The judgment of Bombay High Court in *Ajay Shankhai v. Union of India* was discussed wherein the court held that power to grant certificate includes the power to rescind or cancel the certificate

and Chief Wild life warden can exercise the power under Sec. 42 of the WL Act. Speaker also highlighted that Sec. 55 of the WL Act is essential in relation to the cognizance of an offence. It says that cognizance of offence can be taken by competent court only upon complaint of authorized government officer.

Animals as Property - Ownership and Liability

The Session commenced with the discussion on brief historical perspective of animal, ownership and liability. It was mentioned that property is defined as "possession" and it must be capable of being possessed. The judgment of the Supreme Court in *M.C Mehta v. Kamal Nath* was cited wherein it was observed by the court that Public Trust Doctrine applies in India and certain things however are not capable of private ownership. It was also mentioned that under common law, animals were treated as property. One had an absolute right to domestic animals and qualified right to wild animals. Then as law emerged, a welfare regime emerged where cruelty is defined in the context of what is necessary and useful for the humankind. In India, animal rights had been introduced by introduction of Prevention of Cruelty to Animals Act, 1960 which indicates that the concern of owner is not paramount and welfare of animal is essential. In *Laxmi Narayan Modi v. Union of India*, court issued the guidelines for transportation of animals, slaughter houses and responsibilities of animal husbandry department. Attention of the participants was drawn to the condition of slaughter houses all over India. It was highlighted that slaughter houses are not following the safety measures and guidelines given by the courts under the WL Act. Legal Provisions for regulation of slaughterhouses, meat shops and penalties for violations, duties of different stake holders, committees under the WL Act and corresponding Rules were also discussed during the session.

P-1103

SEMINAR FOR PRINCIPAL DISTRICT & SESSIONS JUDGES ON COURT ADMINISTRATION, MANAGEMENT AND ICT

24th August 2018 to 26th August 2018

Mr. Rahul I. Sonawane, Research Fellow



Object and Background of the Seminar :

The National Judicial Academy (NJA) organized a three day National Seminar for Principal District and Sessions Judges on Court Administration, Management and ICT from 24th - 26th August, 2018 at the NJA Bhopal. The workshop was conceived to provide a forum to the participant judges to deliberate contemporary themes like re-engineering court process through technology amalgamation; relationship management between stakeholders; court management; human resource management; performance assessment' significance of court managers, and time management to strengthen court administration. The sessions also incorporated discussions on National Court Management System in court management, case management and effective use of ICT for digitization of records to improve functioning of the National Judicial Data Grid (NJDG). Contemporary issues relating to connectivity and security which pose obstruction for efficient use of ICT at District Court levels were also discussed in the seminar. The seminar also facilitated discussion on integration of technology in court administration, towards better accessibility and transparency in justice delivery

Session 1: Reengineering the Judicial Process through effective use of ICT

The seminar was commenced by the Director of the Academy, with a brief introductory welcome address. Setting the theme of the session, Justice Ram Mohan Reddy emphasized that term Re-engineering refers to Efficiently, Evolution, Assessment etc. He said that in this technology era the job of Principal District Judges (hereinafter PDJ) is 24x7, not only in judicial aspect, but also in administrative aspect. He concluded by saying that whatever changes future brings, we must always remember that justice must be assisted and not dominated by technology. Technology doesn't improve the system, it is the people assisted by technology who make justice system work efficiently. Justice R. C. Chavan then expressed his views on the topic. He submitted that it is not that one has to do something extraordinary to use technology in court. He cited the example of Delhi High Court allowing service of summons through 'WhatsApp'. He said that PDJ's should take lead in integration of technology and others will definitely follow them.



Session 2: Implementing E-Courts Project at District Level

The theme of the session was set by Justice RM Reddy. Thereafter, Mr. Atul Kaushik presented on implementing E-Courts project at district level. He basically focused on two Aspects viz. Technology and Access to Justice. The history of Computerization in Indian Trial Courts was discussed. It was highlighted that Phase I of the E-Courts Project started way back in 1999. The current status is Phase II of the E-Courts Project. Initially the aim was to introduce computers to the courts, then data updating of computer started in the court. Computers and supporting required hardware to all the courts and laptops to all the judicial officers was provided. Then National Informatics Centre (NIC) developed Computer Information System (CIS) and courts are now using it. Speaker discussed about the fund allocations and the achievements of E-Courts Project Phase I and II. Lastly, he threw light upon National Judicial Data Grid (NJDG) and its utility to ascertain the number and types of arrears in every court of the country for better judicial monitoring and management. Thereafter, Justice R.C. Chavan expressed his thoughts in brief about the implementation of ICT at district level and concluded the session.

Session 3: Digitization and Paperless Courts in India

Justice Ram Mohan Reddy commenced the session by asking what do one understand by paperless Court? He added, when one talks about paperless courts, it would be totally digitalized like petition would be filed in soft copy, judgment would be given in digitalized manner and also examination and evidence would be taken digitally. But that is not possible in any court all over the world. That's why we can't consider it as paperless court rather we can consider it as "less paper court" because somewhere hard copy is involved in it. Then he discussed Integrated Court and Case Management



System (ICMS). It is a step towards using ICT to make the judiciary more accessible, equitable, transparent & speedy. ICMS consists of an Information Management System, Court Automation System and a reporting process. This system computerizes, records judicial information and monitors the progress of cases from the time since the time the case is registered, till it is disposed of with judgment. ICMS ensures easy search, easy retrieval and grouping of judicial information, judicial record processing and the disposal of cases in quicker and transparent manner. Further he threw light upon the E-filing process and related matters.

Justice R.C. Chavan discussed the experiments of Maharashtra judiciary after introducing ICT in courts. Then he suggested that CIS software contains many features, by taking recourse to which, one can reduce the use of paper in court and achieve the goal of a "Less Paper Court".

Session 4: National Judicial Data Grid : Role of Principal District Judges

Justice R. C. Chavan commenced this session and emphasized that NJDG is a part of ongoing e- courts integrated mission mode project. The NJDG works as a monitoring tool to identify, manage & reduce pendency of cases. The court data is made available through the NJDG at E-Courts website. The Supreme Court started this with a vision to transform the Indian judiciary through ICT enablement of Courts. There are certain objectives of NJDG which are as follows:-

- 1) The Judiciary would be able to use ICT enabled tools to improve courts and case management & performance management.
- 2) To make court data available through NJDG which will enable government to plan policy measures to reduce pendency of cases.
- 3) Case status information, Orders & Judgments will be made available online.

Then Justice Reddy took over and suggested that



NJDG is the best tool available to the PDJ to assess the performance of judicial officers working under them. It can also enable PDJs to plan strategies to reduce the pendency in their respective districts. Thereafter, both the resource persons gave live demo of the working of NJDG online and illustrated its use for PDJs. After answering the queries raised by the participants, the session concluded.

Session 5: Human Resource Management and Motivational Leadership

Justice Kurian Joseph commenced the session by setting the theme of the session and handed over the floor to Justice Ram Mohan Reddy. Justice Reddy started the session saying that quality in judicial system requires well trained managers who should be professional, transparent & responsible in their work. He said organizational excellence, diligence in every action, promptitude are the qualities that every PDJ should uphold and practice. He said that PDJ shall be a role model for all other judges in district. He should also be a role model for a staff and bar.

Justice Kurian Joseph stated that all human beings are equal with respect to status, equality in status, equality in dignity, equality in providing treatment by the State. He stated that in order to become a leader we should fit a concept permanently in our mind that we should always be clean with our hands and clean in our concept. Then he defined leader in three ways viz. a person who knows the way, a person who goes the way and a person who shows the way. Further he said that we should always seek to take collective measures to achieve something, wherein as to who will get the

credit or earn recognition should not matter. That's what team spirit and leadership is. He concluded the session quoting Mahatma Gandhi - "You should be the change that you want to see in others".

Session 6: Staff Management & Supervision: Inspiring Commitment & Catalyzing Performance

Justice Kurian Joseph started session stating that PDJ is the administrative head of the district and the team leader of the officers in the district, so it is the duty of PDJ to operate as a captain of the team. It is the obligation of PDJ to maintain proper judicial tempo of functioning in his district and be responsible for the efficiency in the district. Firstly, the PDJ has to maintain punctuality and to ensure the same in other judicial officers in the district. He also needs to supervise to ensure that during court hours, all judicial officers are on the dias. In case of any deviation district judge should personally warn the judicial officer to maintain punctuality and court timings. If such irregularities persist, it becomes the duty of the PDJ to bring it to the notice of the High Court. He also said that management of staff in the court is very crucial. He has to do proper allocation of work. Justice Reddy then expressed his views on the role of PDJ and urged all the participants that responsibility of the entire district lies on their shoulders to provide efficient results for the litigants in their district. He suggested that PDJs should take all stakeholders into consideration while taking the policy decisions. He should be considerate to judicial officers and staff as well as to local bar. The session concluded stating that PDJ should act as a catalyst in his district and should lead from the front and set an example for others.

Session 7: Court and Case Management : Case Flow Management for Docket Control

Justice Kurian Joseph started session stating that an independent and efficient judicial system is one of the basic structures of our Constitution. Our judiciary is accused of causing inordinate delays and creating arrears. Here the role of PDJ becomes most important for mechanizing effective court management system. He said that it is the duty of PDJ to see that proper allocation of work is done. For the purpose of this task, he can take the help of the Court Managers and/or other senior judges. He should see that cases are effective progress.

Justice Reddy added stating when we talk about Case Flow Management Rules, they are vital for the subordinate court as well as for the High Courts. Under these Rules, time limits should be fixed for every step, whether it is service of summons, recording of evidence of witness, costs, calling for cases, adjournments etc. He further suggested that PDJs should fix the time limit and should ensure that the timelines are followed.

Session 8: Performance Assessment of Judicial Officers: Ensuring Objectivity

Prof. Geeta Oberoi started the session with a PowerPoint presentation on the topic. She said that judiciary specially and society as a whole can benefit greatly from the collection of accurate performance data of the judges. Benefits include job enrichment and individual development through improved assignment practices, insights and refined judicial education programs. She said that there is no uniformity in the standards of performance evaluation for Magistrates in India. All 24 High Courts have their own criteria to evaluate the performance of the judges/magistrates. In some States, magistrates have to provide 10 judgments for performance evaluation and in some other states, only two are sufficient. Rather, in one State (i.e. Rajasthan), no judgment needs to be provided and only certificate by PDJ as to integrity of magistrate suffices the purpose. So we should try to have uniformity in performance assessment of judicial officers. Justice Kurian Joseph supported her view.

Session 9: Remedial Steps for Combating Delay and Making the Court Litigant Friendly

At the outset of this session, Justice Anjana Prakash divided all 35 participants into Seven teams of five PDJs each. They were asked to identify the causes of delay

in their districts and suggest the measures to tackle it and also to make the courts more litigant friendly. The common causes of delay and arrears identified from all the discussions were, lack of cooperation from Bar, non service of summons/warrants, frequent transfers of judges/magistrates, inefficient and inadequate staff etc. During the discussions it was suggested by Justice Anjana Prakash that participants should share their best practices to tackle these problems. It was suggested that in each district there should be one summons/warrants monitoring committee created, summons/warrants should be also sent by e-mail and also by post/courier. Proper trainings should be arranged for staff members. Unnecessary adjournments should be curbed/avoided. Unnecessary arguments should be curtailed. Regarding service of summons/warrants, help from the local police heads can be taken and they can be asked to monitor the service of processes. She further suggested that effective use of video conferencing facilities, proper and equitable allocation of work etc. should also be utilized as a measure to curb the delay in the courts. The session was concluded by Justice Anjana Prakash saying that PDJs can play a very important role in combating the delay and arrears in the courts.

Session 10: Bar Bench Relations and Role of Principal District Judges

Justice K. Chandru commenced the session saying that Bar and Bench conflicts have become routine matters in the courts. The Bar has become so aggressive that they are not allowing the courts to function. Boycotting the courts is the routine news now a days. In such scenario, role of PDJ gains much importance. He said that, punctuality should be maintained by judges as well as advocates. Proper listing of cases & no discrimination on the basis of advocate and senior advocate is a norm that should be followed by PDJs. PDJs should conduct a Bar & Bench meeting every month in the routine manner so that the conflict, if any, would get solved in that meeting and also the administration of justice would be done in proper manner.

Justice Anjana Prakash then suggested that both Bar and judges/judicial officers should be taken into confidence simultaneously for avoiding the bar bench conflicts.

Finally, the session as well as seminar was summed up by conveying the vote of thanks to all the resource persons & participants for making the seminar successful.

P-1104

REFRESHER COURSE FOR SC/ST (PREVENTION OF ATROCITIES) COURTS

24th August 2018 to 26th August 2018

Mr. Shashwat Gupta, Law Associate



The National Judicial Academy organized the Refresher Course for SC/ST (Prevention of Atrocities) Courts from 24th to 26th August, 2018 which was attended by 27 participants. The objective of the conference was to provide platform for the participants to share experiences and to facilitate discussions on vital issues relevant for Special Courts constituted under SC/ST (Prevention of Atrocities) Act, 1989 (hereinafter Act) including objectivity and neutrality in judging, challenges in trial process; rights of victims and responsibilities of special court. The course also aimed to initiate deliberations on constraints in effective implementation of the Act and to develop optimal solutions to the emerging challenges.

Session 1: Objectivity and Neutrality in Judging : Overcoming Bias and Prejudices

The speaker initiated the session by expounding upon the concept of objectivity in judging and stated that judges should adjudicate cases according to the law without imposing their personal views in their judgment. The principles of "*audi alteram partem*" and "*nemo iudex in re causa sua*" were discussed in detail and it was also stated that judges should always give a reasoned order. Thereafter the speaker stated

that no individual is completely unbiased and every judge should strive to recognize their inherent bias and prejudice which are formed due to various factors including their cultural upbringing, economic condition, caste, religion etc. This step would assist the judge in analyzing the case objectively. Subsequently it was discussed that the standards of law should be applied by the judge irrespective of their personal view regarding the veracity of any allegation made under the Act.

Session 2: Defects in Pre-trial Procedures and Investigation : Impact on Adjudication

The speaker focused on Rule 5, 6 and 7 of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995. The speaker elaborated upon the duty of the police officer in-charge of the a police station to record information relating to commission of offence under the Act and spot inspection of place of crime by officers. Thereafter, the speaker discussed about the investigation of the offence by an officer not below the rank of a Deputy Superintendent of Police as mandated by the Act and the consequence of non-observance of the Rules. Lastly, it was discussed that cognizance by the special court without committal by the magistrate would not vitiate the trial.



Session 3: Trial Process under SC/ST (POA) Act, 1989: Issues and Challenges (Group Discussion and Presentation)

The session involved group discussion and presentation by the participants on the challenges faced by them in cases under the Act. The major issues which were raised during the session included non-production of caste certificates by victims, dealing with large number of false cases filed by individuals due to property disputes, conflict between punishment provided in Act and the Indian Penal Code, 1860 difficulty in completion of trial within 2 months and complaint by a SC/ST who has converted to another religion.

Session 4: Contemporary Developments : The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015

The speaker commenced the session by discussing the Untouchability Act, 1955 and the Protection of Civil Rights Act, 1955 and stated that these legislations failed to fulfill their objective which resulted in legislation of the Act. The Act underwent a major overhaul in 2015 and several provisions were introduced for expeditious disposal of cases under the Act. The speaker highlighted the various new definitions inserted by the amendment apart from the new offences added under Sec. 3 of the Act. The session also involved discussion on the presumption introduced under Sec. 8 (c) and it was stated that the burden of proof to rebut the presumption is now on the accused. The participants also deliberated upon various methods to expedite the trial so that the trial is completed in the shortest possible period.

Session 5: Contemporary Developments : Dr. Subhash Kashinath Mahajan v State of Maharashtra and beyond

The session witnessed intense deliberation on the recent judgment of *Dr. Subhash Kashinath Mahajan v. State of Maharashtra* [(2018) 6 SCC 454]. It was followed by discussion on the changes brought by the Scheduled

Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018. Thereafter the participants discussed the enhanced punishment under Sec. 3(2) (v) to the accused for offence committed against a victim from a scheduled caste knowing that such person is a member of the Scheduled Caste or Scheduled Tribe.

Session 6: Protection of the Rights of Victims and Witnesses : Role of Courts

The session was initiated by the speaker by highlighting various important definitions under the Act i.e. “victim”, “dependent” and “witness”. The speaker stated the court should play a more proactive part and should ensure that the investigating officer provides adequate and necessary protection to the victim. Furthermore, it was discussed that the court has been given wide powers under Sec. 15A(6) (c) which can be used as a tool by the court to provide necessary monetary assistance to the victims.

Session 7: Responsibilities of Special Courts : Protection, Rehabilitation and Victim Compensation

The speaker emphasized on the 2015 Amendment Act and stated that the court should strive to provide immediate relief and compensation to the victims. It was discussed that the court should use their power to protect the victims since most victims come from the downtrodden section of society and accused utilize all means and measures to harass and intimidate them. The speaker also discussed that the courts should try to ensure that their directives are followed by the executives so that the victims are given the compensation at the earliest.

Session 8: Effective Implementation of the Act : Constraints and Solutions

The speaker initiated the session by stating that the implementation of the Act should be in accordance with the constitutional mandate and the legislative intent. He thereafter discussed the development of the Act and discussed that the Act was enacted because the previous legislations failed to have the desired effect. Subsequently, he discussed various reports and statistics regarding the Act and stated the present Act has also failed to achieve its desired objectives. Thereafter, the session focused on the role of the executive and the judiciary under the Act. It was stressed that courts can enhance productivity by case management. It was also discussed that the courts should frame rules so that the victim should get maintenance, travelling expenses and compensation at the earliest.

P-1105

CONFERENCE FOR HIGH COURT JUSTICES

31st August 2018 to 2nd September 2018

Mr. Prasadh Raj Singh, Law Associate



The Academy organized a three-day Conference for High Court Justices from 31st August – 2nd September 2018. The conference initiated discussion on various issues like- Social Context Adjudication within the Constitutional Framework; Precedents: Navigating through Conflicting Decisions; Contemporary Judicial Review and Separation of Powers; Construing the Sounds of Constitution's Speech and Free and Fair elections.

The objective of the conference was to provide a platform for justices to share experiences, insights and suggestions with a panel of distinguished resource persons from the judicial branch and other relevant domain experts. Identifying challenges and evolving optimal solutions/strategies to effectuate qualitative justice delivery were among the agenda during the conference. The conference was attended by 24 High Court judges.

The conference initiated discussion on various aspects of social justice and its norms prevailing in contemporary time. The speaker highlighted the constitutional scheme incorporated in the Preamble which ensures equality, cultural and religious rights. A reference was made to the Canadian jurisdiction where the concept of social context adjudication for judges have been introduced and implemented effectively. Further, during the course of discussion

a reference was made to the Shani Shingnapur case where the Apex Court upheld equality and discarded the ban prohibiting women to enter inside the temple. It was also deliberated that social context adjudication is a constitutional mandate reflected in Part III of the Constitution. The speaker further highlighted that a judge has to be not only sensitive to the inequalities of parties involved but, also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice.

The impact of media on public perception regarding vitality of justice delivery was deliberated upon. A reference was made to Ramesh Thapar case where the Apex Court identified various functions of media, such as; information, responsibility to connect, mediate the right news, debate, discuss and dialogue in order to aware the citizens in a rightful manner. The speaker further suggested few points on resolving the conflict between media and the judiciary.

- Educate the media, civil education
- Court news should be framed by an expert who knows the law
- Avoid 'Bench Bashing'

The conference further initiated discussions on the precedents and a reference was made to Article 141 of the Constitution. Article 142 was also discussed



which states that the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as necessary for doing complete justice in any case or matter is pending before it. Article 143 was also highlighted with regard to Rules of court. During the course of discussion following cases were deliberated upon; *Shankari Prasad v. Union of India*, *I.C. Golaknath and Ors. v. State of Punjab*, *Kesavananda Bharati v. State of Kerala*, *Sampathkumar v. Union of India*, *Shamsher Singh v. State of Punjab*, *Maneka Gandhi v. Union of India*.

On the theme of 'Separation of Power', the speaker stated that Montesquieu formulated this doctrine and, it is couched in terms of independence of judiciary. A reference was made to American Constitution where separation of power can be inferred from the first three Articles.

- Article I vests the legislative power in the Congress (consisting of Senate and House of Representatives)
- Article II vests the executive power in the President of the United States
- Article III vests the judicial power in the Supreme Court of America and the courts below

A reference was also made to Article 53 and 154 of the Constitution.

The speaker further deliberated that the role of the Election Commission is to ascertain free and fair election, independence of election commission, citizen's right to informed choice, equality and transparency. The speaker pointed out the case of *N. P. Ponnuswami v. Returning Officer* where the Supreme Court highlighted the central importance of "time schedule". Further, it was stated that "all controversial matters and all disputes arising out of elections must be postponed till the end of the elections, so that, the



proceedings are not unduly retarded or protracted and judicial intervention be barred till results are announced. The case of *Peoples Union for Civil Liberties v. Union of India* was also referred where the Apex Court empowered the Election Commission to direct candidates to disclose their criminal antecedents, assets, liabilities and educational credentials by affidavit which enabled electors to make an informed choice of their representatives.

On the theme 'Construing the Sounds of Constitution's Speech: Meanings Beyond Text', the speaker referred to the Organic theory of constitutional interpretation stating that the Constitution evolves with the society and interpretation also changes with the changing society. The speakers highlighted the difference between 'door-closing silences' and 'door-opening silences' in the Constitution and indicated the permissible limits of giving meaning. The speaker further deliberated on the interpretation of the Constitution by the Supreme Court through its judgments such as the inclusion of various rights under the right to life and enlargement of the scope of fundamental rights.

On the theme of 'Corporate Fraud & Manipulation: Repercussions, Deterrent Mechanism', the speaker stressed that corporate fraud is a generic term with wide scope. This term does not find mention in the statute. Under company law, there was no concept of fraud until recent amendments were made. Fraud was merely an offence under the Indian Penal Code, 1860. The speaker traced the genesis of corporate fraud and its development into a distinct category of crime and dwelt on the major corporate fraud cases in India. Further, the modus operandi of the perpetrators to beat the system and the failure of the regulators to check such crimes was also discussed during the course of discussion.

P-1106

WORKSHOP ON PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION OF SEX SELECTION) ACT, 1994

31st August 2018 to 2nd September 2018

Mr. Rajesh Suman, Assistant Professor



The Academy organised 3 days “Workshop on the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994” from 31st August, 2018 to 2nd September, 2018 for Judicial Magistrates from all States. The workshop was organized to enhance the capacity of Judicial Magistrates for better implementation of the provisions of the PC & PNDT Act [hereinafter Act] and the expeditious disposal of cases. The workshop involved discussions with and guidance from experts engaged in implementation of the Act including judges, advocates and civil society organizations. The workshop focused on issues regarding social context of the PC & PNDT Act; grey areas between medical termination of pregnancy and sex-selection; role and functions of authorities under the Act; jurisprudence concerning implementation of the Act; and trial process and appreciation of evidence under the Act. The emphasis in session was on clinical, case law analysis and interactive discussions.

Major Highlights and Suggestions from the Workshop

Session 1: Cultural, Social and Economic Factors that Promote Gender Bias : Context of PC & PNDT Act in India

The speakers initiated the discussion by sharing data on

missing girls in India. It was highlighted that child sex ratio in India is consistently falling over the decades. The sex selection has now pervaded into rural and tribal areas as well. The speakers said that prosperous States have worse sex ratio in India. The speakers discussed causes for sex selection which included patriarchal mindsets that prefer boys over girls, dowry system, family lineage, males being considered to be old-age support and last rites to be performed by males. One major cause is easy accessibility to technology for sex determination. The speakers further discussed implications of sex ratio decline which include increase in violence against women and sex related crimes (such as rape, polyandry, abduction and bride trafficking), adverse effect on the condition of women in society, increase in sexual exploitation of women, marriage squeeze and increase in male bachelorhood. The origin of the Act in India was discussed. The Constitutional roots of the Act was highlighted and the speakers discussed landmark judgments of the Supreme Court of India for proper implementation of the Act.

Session 2: Role & Functions of Authorities under the PC & PNDT Act

Appropriate authority plays a crucial role in the



enforcement of the Act. The speakers discussed the provisions of the Act concerning the powers and functions of the appropriate authority which included powers to grant, suspend and cancel registration of clinics, seek advice of Advisory Committee for registration/ renewal of clinics or suspension or cancellation of registration, ensure that standards prescribed for clinics are followed, investigate complaints of breach of provision of Act, take appropriate legal action against use of any sex selection technique by any person, create public awareness on related issues and to supervise implementation of the Act and Rules. Judgments of the Supreme Court of India and of various High Courts of the country were highlighted and issues concerning appointment, powers and functions of appropriate authority were discussed.

Session 3: Medical Termination of Pregnancy and Sex Selection : Grey Areas

The session focused on laws prohibiting sex selection and its implications on medical termination of pregnancy. The speaker discussed various aspects of termination of pregnancy and legal framework to regulate the termination. The speaker emphasized that due to fear of laws prohibiting sex selection, many times doctors decline intervention in genuine cases for termination of pregnancy such as in situation of rape cases and fetus having genetic abnormalities. The grey areas where services of abortion are declined were highlighted in the session. The speaker shared her experience dealing with such situations where doctors refuses to terminate pregnancies involving legitimate causes. The speaker said due to lack of facilities for safe abortions, most

of abortions are done in an unsafe environment and with improper methods of abortion which puts life of women at stake. Various causes for misuse of the diagnostic technology were highlighted such as high cost of equipments and scarcity of experts for operating sonography machine. The demand for sonography experts is very high and due to scarcity many times the machines are operated by less qualified people who do not make proper assessment. The speaker further highlighted lack of capacity to file proper complaint by appropriate authority and sub standard investigation undertaken by appropriate authority.

Session 4: Jurisprudence on Implementation of the PC & PNDT Act

The speaker initiated the discussion by explaining the meaning of “gender” and differentiated it with “sex”. The gender is attributes of male and female personality decided by society whereas sex is biological. The speakers discussed causes of declining sex ratio including social and cultural factors. The practice of giving dowry was discussed which is one of the major factor behind preference for male child. The historical origins of the Act was explained to the participants. The laws prohibiting sex selection was first brought in Maharashtra and PCPNDT was subsequently passed at national level. There were many challenges to the Act and speakers discussed judgments upholding the Constitutional validity of the Act. The Act witnessed many hurdles in its implementation and through public interest litigation, the Supreme Court framed many guidelines for effective implementation of the Act. The speakers discussed the jurisprudence of the Supreme Court in detail.



Session 5: Bail and Search & Seizure under the PC & PNDT Act

The speakers discussed provisions of Act for search and seizure of the medical premises. Sec. 27 and 28 of the Act and the role of appropriate authority were discussed at length. The difference in the role of police and appropriate authority in investigation was discussed. The role of police is limited under the Act but it is not totally excluded. The court can only take cognizance on the complaint filed by appropriate authority. The procedure for search and seizure to be followed by appropriate authority is given under Rule 12 of the PC & PNDT Rules. This rule gives power to the appropriate authority or any authorized officer to search and seize the property if there is reason to believe that it may furnish evidence of commission of an offence punishable under the Act. The offences are cognizable, non-bailable and non-compoundable under the Act. There is no express provision conferring role on police. Police has every right to investigate any offence committed in violation of any of the provisions of the Act. Court, however cannot take cognizance on the F.I.R. or Charge-Sheet filed by Police. Some landmark judgments on the point are *Dr. Arvind Pal Gambhir v. State of Punjab* [2012 Ind Law 4424] and *Dr. Varsha Gautam v. State of U.P.* [2006 (5) ALJ 221].

Session 6: Major Challenges in the Implementation of the PC & PNDT Act

The session was a round table discussion and involved discussion on challenges in implementation of the PC&PNDT Act. The participants asked a query about

regulation of advertisement on sex selection. The speaker explained laws and judgments on regulation of advertisement on sex selection. Sec. 22 of the Act prohibits advertisement on sex selection. One query from participant was on absence of victim in sex selection which was responded by resource persons. Many participants emphasized on enhancing awareness about the laws prohibiting sex selection, strengthening the capacity of appropriate authority, proper management of the witness production, strengthening capacity of prosecution services and provision of experts and senior advocates for supporting prosecution and use of active tracker in the sonography machines. The session was concluded by speaker after responding to the views and suggestions of participants.

Session 7: Trial Process under the PC & PNDT Act

The session was initiated by the speaker by explaining the processes to be followed by appropriate authority and police in executing the complaint of sex selection and presenting it before the court. The judicial role in ensuring timely and proper hearing of the complaint was highlighted by the speakers. The differences in the role of police and appropriate authority in trial process was discussed at length. The speakers said that although role of police is limited but police cannot be excluded from the process of executing complaint. The speakers suggested that if a judge observes that there is contradiction in legal principle concerning the Act then he/she should refer the question of law to respective high court. The speakers focused on various issues relating to trial of offences under the Act including production of evidences and witnesses, filing of charge sheet, examination of prosecution and defense



evidences, statement of witnesses and final arguments. The discussion also focused on whether pregnant woman can be an offender under this Act. The speaker said that pregnant woman cannot be an offender and presumption is made in favour of pregnant woman that she is compelled by her husband or other relatives to undergo the sex determination test. Husband or other relatives are therefore liable for abatement of such offences.

Session 8: Appreciation of Evidence under the PC & PNDT Act

The session focused on the appreciation of evidence under the Act. The speakers initiated the discussion by explaining the assessment of complaint filed by the appropriate authority. The burden of proving all elements of offences is on the appropriate authority. It was suggested that judges should refrain from filling gaps in prosecution version. The process of evidence gathered under decoy operation was discussed.

Evidence collected during decoy operation can be used for corroboration and contradiction. There should not be any illegality in search operation and evidence collected in illegal way is non-admissible in court. It was suggested that judges must use common sense in appreciation of evidence and should be guided by legal principles. Appreciation of various forms of evidence including, receipt, form "F", consent letter, sonography report, prescription, clip of audio-video recording etc. were discussed. It was emphasized that object of the Act must be kept in mind while appreciating the evidences. It was suggested that after charge, copy of the order should be sent to Medical Council for suspension of registration and after conviction, copy of the order should be sent to Medical Council for cancellation of registration. In the judgment, final order for confiscation of sonography machine should be mentioned. The speakers discussed many judgments of the Supreme Court concerning assessment of evidence under the Act.



P-1107

ORIENTATION PROGRAMME FOR JUNIOR DIVISION JUDGES

6th September 2018 to 12th September 2018

Mr. Sumit Bhattacharya, Research Fellow

Ms. Ankita Pandey, Law Associate



A seven day orientation programme was organized for the junior division judges from 6th to 12th September, 2018.

Session 1: Constitutional Vision of Justice

The session began with an introduction to 'Justice' that could be explained in the context to constitutional vision. The framers of the Constitution had socialist ideology and as the word "socialist" has been incorporated in the Preamble, these liberal theories of justice had been incorporated within its body, as our Constitution aims at social revolution. All these features of the Constitution promote justice (social, economic and political) which assures to the citizens. Both the criminal as well as civil laws deal with social, economic and political justice. Further, it was remarked that there are two concepts of equality i.e. formal equality and proportional equality. The former means that law treats everyone equal and does not favor anyone either because a person belongs to the advantaged section of society or to the disadvantaged while the latter expects the State to take affirmative action in favor of the disadvantaged sections of the society within the framework of liberal democracy. It was referred that Part IV of the Constitution would

also in one way or the other fall within the purview of judicial review, though there is no mention explicitly found in our Constitution. It is one of the pragmatic concept of bringing about social and economic justice. Thus, it could be stated that an idea of a just and egalitarian society remains one of the foremost objectives of the Constitution.

Session 2: Role of Judiciary in a Constitutional Democracy

The judicial system is part of the political process and it has been considered the protector or custodian of rights of the citizens. Judiciary under our Constitution is us watchdog. It looks into both law making and the law implementation by the other two wings of democracy. The functions and role of these institutions are essential for successful operation of constitutional democracy in our country. It instills the feeling of trust and confidence in the citizens towards the judicial system. Further, the doctrine of separation of powers was discussed and it was stated that it becomes significant to prevent excessive concentration of power in the hands of the government. There are two important aspect of constitutional democracy i.e. rule of law and respect for the minorities. It was remarked

that personal prejudices must never come in the functioning of the judges as the very concept of justice is lost if judges are partial.

Session 3: Adherence to Core Judicial Values

The session focused on the judicial values that must be adhered to by the judicial fraternity at all levels. Some of these values are: (a) Independence - A judge should exercise the judicial function independently on the basis of the assessment of facts and in accordance with a conscientious understanding of the law, free from any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason; (b) Impartiality - It is essential to the proper discharge of the judicial decisions. It applies not only to the decision itself but also to the process by which the decision is made; (c) Integrity - The behavior and conduct of a judge must affirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done; (d) Propriety - A judge shall in his personal relations with individual members of the legal profession who practice regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favoritism or partiality; (e) Equality - Ensuring equality of treatment to all before the courts is essential to due performance of the judicial office; (f) Competence and Diligence - The judicial duties of a judge take precedence over all other activities. A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

Session 4: Courtroom Technology : Use of ICT in Courts

The session was dedicated towards the introduction of the use of Information and Communication Technology (ICT) in the courts. The session began with an insight of what ICT is and how it is useful in bringing transparency in the courts. The discussion went on to analyse the historical background of the Information Technology and its arrival to the courts in India with special focus on the achievements of Phase I and II of the e-Courts project. Further, the following benefits of ICT were highlighted in the course of discussion:-

- ICT provides facilities for presentations in courts

instead of arguments and also makes video-conferencing possible.

- Introducing ICT to the courts can make the service of processes easier and allow the lawyers to address while sitting in their own offices.
- ICT can enable lawyers to be present for different matters in different courts, thus achieving time management.
- Digitized petitions will be introduced wherein the petitions could then be filed from the lawyer's office.
- ICT would ensure a systemic weeding out of corruption prevailing in the judicial system in due course of time.

Discussing the way further, it was stated that eCommittee has paved the way for Phase-III in which technologies such as 5G application, artificial intelligence, augmented reality, machine translation, mobile collaboration, speech recognition will be implemented to ensure a more transparent and accountable judiciary.

Session 5: Managing the Docket : Court and Case Management

The term "management" suggests judicious deployment of resources including human resource for optimum output. The session included discussion, on how judges and court administrators must work together and coordinate their efforts in key areas of court administration and management. Since the overall functioning of a court depends heavily on the interplay between judges and administrative staff, it is important to set up a system capable of building a shared responsibility between the head of the court and the court administrator for the overall management of the office. It was also pointed out that behaviour of the judge in the court is the one of the most important aspect in court management. Handling disruptive persons, aggressive lawyers, reluctant witnesses, sluggish staff, would go a long way in effective disposal of cases. The judge presiding over a court must monitor unnecessary delays and ensure that there are no uncalled for adjournments. The use of ICT is another way to support and automate case management practices of courts.

Session 6: Law of Precedents : Identification and Application of 'Ratio Decidendi'

In order to appreciate the law of precedents, the



hierarchy of courts must be clearly established and there must also be a proper reporting system in place. It was explained that precedent is a judicial decision which in itself is a principle. The underlying principle which forms its authoritative element is often termed as the *ratio decidendi* in a particular case. In other words, ratio is that part of the judgment which was absolutely necessary to resolve the said dispute. The concrete decision is binding between the parties to it. In order that an opinion may have the weight of a precedent, two things must concur i.e. 1) an opinion by a judge and, 2) an opinion the formation of which is necessary for the decision of a particular case. Thus, the law of precedents play a very important role in the decision making process of a judge and help the courts to stand as an adequate means in the disposal of the judicial administration system.

Session 7: Law relating to Cybercrimes : Advances and Bottlenecks

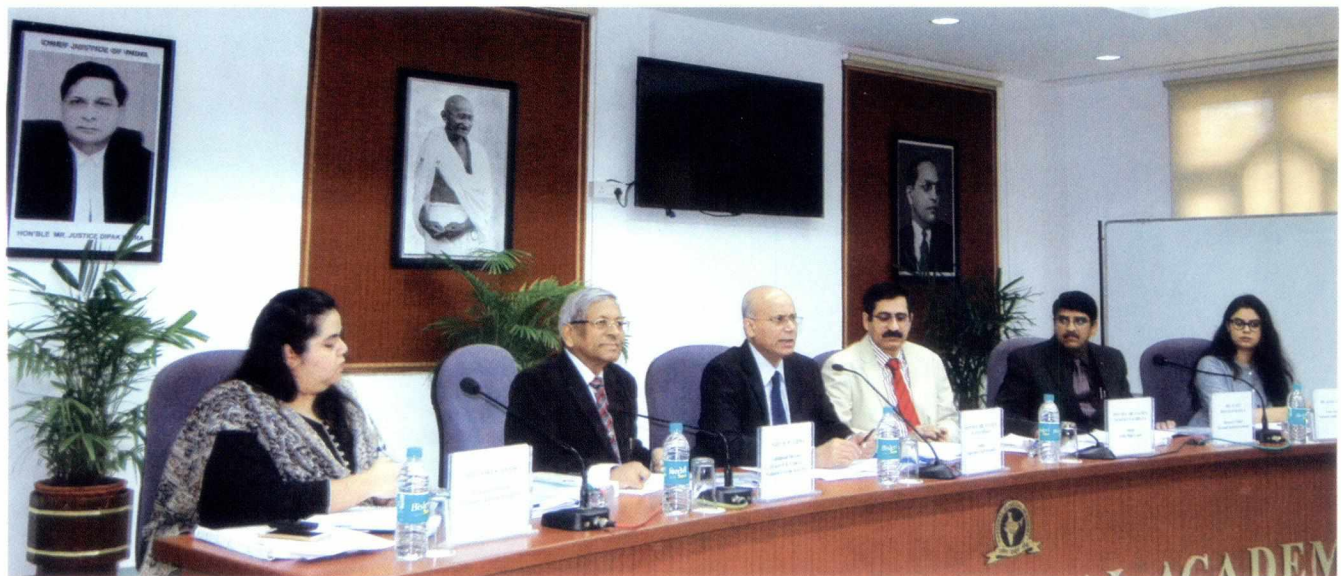
The session illustrated the history of internet and enlightened the participants on the pros and cons of social media. The current figures of users of social networking are quite astounding. Around 90% of the world population use Facebook or other social networking sites such as WhatsApp, Twitter etc. It has been seen that children below the age of 18 have accounts on various social networking. An inclusive account of the kind of cybercrimes was projected in detail such as –unauthorized use of trademark; identity theft; unauthorised use of copyright; defamation issues; disclosing of confidential data; corporate espionage; cyber bullying. It was stressed that one of the pragmatic problem is that the government does not own cyber space, and it is rather owned by private companies, hence, control over the technology crimes becomes

all the more intricate. On how the evidence can be collected from social networking sites the case *United States v. Joshua Meregildo* was cited. Discussion on process to block, deregister a website and as to what is to be done by the judges in this regard was also deliberated upon.

P.S.: The session has been clubbed with corresponding session of P-1108 and hence reported identically at page 31.

Session 8: Electronic Evidence : Collection, Preservation and Appreciation

The session highlighted the impact of digital footprints and appreciation of electronic evidence in contemporary times. It was emphasized that it is not conclusive in nature. Such types of evidence are generally found in storage device, digital files etc. Electronic evidence is classified into two types – volatile evidence and non-volatile evidence. It was iterated that before a digital evidence is accepted in a court of law, its relevance, veracity and authenticity must be ascertained. The concept of computer forensic is termed as a sequence of packets in a computer network and it explains the digital artefact. Significance of Metadata helps in establishing the originality of any electronic evidence was discussed with many visual examples and it was stated that on front end it is created by the user and the machine creates it at the back end. It was explained that Sec. 65B certificate is only required while producing secondary evidence of the copy of the original and not when the original itself is being produced. Further, the requirement of Sec. 65B certificate being procedural can be relaxed by the court whenever the interest of justice so requires. It was suggested that while appreciating evidence three things are to be kept: - standard of proof, source of



authenticity and best evidence rule.

P.S.: The session has been clubbed with corresponding session of P-1108 and hence reported identically at page 31.

Session 9: Forensic Evidence in Civil and Criminal Trials

This session was divided into three parts- issues relating to the potency test, the problem of negative viscera reports and with the legal aspects of DNA profiling. The issues relating to potency arises in civil cases such as adoption, validity of marriage and divorce; and in criminal cases such as rape, sodomy, molestation and other types of sex related offences. DNA becomes relevant in adjudicating matters relating to identification, disputed paternity/ maternity, abduction, inheritance, adoption, rape, murder etc. DNA as an evidence is scientific and unbiased and is thus highly reliable. The use of DNA in cracking down a case was demonstrated through a number of high profile cases such as the Rajiv Gandhi assassination, Sheena Bora murder, Arushi Talwar and Hemraj murder, Bodhgaya blast, Delhi gang rape, Priyadarshini Mattoo murder, etc.

Session 10: Judging Skills : Framing of Charges

The session focused on the skills necessary for correctly and accurately framing of charges. The purpose of framing a charge was asserted to the judicial officers. It was underscored that framing of charges is a cardinal judicial activity which cannot be delegated. It not only for informing the accused

precisely about the accusations against him/her, but also enabling him/her to prepare best for defense. Simulation and hypothetical problem solving exercise was performed and analysed during the session. It was stated that charges are framed at two stages 1) investigation & 2) inquiry. The differences between 'common intention' and 'common object' was discussed and clarified. The material bases of framing of charges were discussed as police report, document, examination of the accused, medical report, statement of witnesses. It was asserted that as provided by the Bombay High Court in *Ramakrishna Redkar v. State of Maharashtra*, 1980 Cri LJ 254 (Bom), in a criminal trial the charge is the foundation of the accusation & every care must be taken to see that it is not only properly framed but evidence is only tampered with respect to matters put in the charge & not the other matters.

Session 11: Judging Skills : Art Craft & Science of Judgment Writing

It was asserted that judgment is the ultimate asset of the court as an institution. It is indicative of the working of the judicial mind, the judge's approach, his grasp on issues of facts and law involved in the case, his analytical skills and the depth and breadth of his knowledge of law. The judgment is the clearest index of the personality of the judge. It is a product of long practice and persistent perseverance. It was suggested that language of the judgment must be simple, and must not be equivocal or vague, precedents or irrelevant quotations from arguments must be avoided



as citation. A judgment must ensure the narration of facts, framing of issues, analysis of the evidence and must ensure that the flow of the language is clear, logical and coherent.

Session 12: Art of Hearing : Promoting Rational Discourse in the Court Room

Hearing is the most important activity that a judge has to do in the court. Thus, it must be so inculcated in his lifestyle that it becomes an inseparable part of his demeanor as a judge. The skill and the art needs continuous and conscious practice so that it inevitably enables him or her to simultaneously filter and focus on what should (not) be heard which would affect the judgment. It was deliberated to listen to the arguments advanced, sort the facts which are deemed relevant for adjudication, weed out the irrelevant points which might influence the decision in any way, dispassionate hearing without personal prejudices must be practiced. The session was focused on how to develop the art of hearing by a judge with the purpose of reaching to the most appropriate conclusion. It was suggested the continuous process of elimination of the unimportant, prejudicial, impertinent, and distracting fractions of deliberations must be mastered by a judge to help him/her reach out a reasoned decision or opinion.

Session 13: Role of Judge in Securing Gender Justice

The session was aimed to sensitize the judges as to how to secure and promote gender justice in their capacity as a judge. It was emphasized that the single most important virtue which is basic to ensure gender justice

is 'appreciation' of a women in her various roles and facets. It is more important than any other value viz. identity, dignity, equality etc. From the cradle to grave, females are under the clutches of numerous evil acts as discriminations, oppressions, violence, within the family, at the work places and in the society. Despite having several enactments dealing with women atrocities, and judgments of the apex court enabling protection of women, the societal condition of women has not improved to the level wherein she is actually at par with her more dominant counterpart. It was discussed that gender justice is eminent because of the evolution of the institution of family from joint family on one end to surrogate motherhood on the other. The causative factors of dysfunctional family were discussed which included ego, generation gap, communication gap, disparity in backgrounds, expectations. In cases of battered women, it was explained as to how to word a protection order in an injunction plea. It was emphasized that in cases of child custody it is the child rights and the best interest of the child which has to be considered not that of the parents and the guardians. In cases of joint custody, the concept of custody must be more meaningful rather than limiting the same to mere access. Custody of the child must lead to value addition to the child via responsible parenting. It was insisted that compensation to a victim women is a must but it is not often enough, hence it is incumbent responsibility of the courts to help her take charge of her life in a dignified way to ensure meeting of the ends of justice. It was emphasized that justice should not to be gender

blind but gender sensitive.

Session 14 & 15: ADR and Plea Bargaining & Simulation Exercise

ADR system which is an alternative to the typical civil and criminal judicial system provides with a resolution which is essentially win-win for the contesting parties, as against the win-lose model often seen in a typical trial process. Mediation was argued to be the preferred ADR. The basic difference between Mediation and Conciliation was dealt with, wherein in the former model the external doesn't propose solution to the disputant parties and is neutral but the later model, the external may propose the positive solution and actively participate to help dispute resolution between the parties. It was suggested that the judge may also attempt to shift from mediation to conciliation if the situation so demands, thereby exhibiting flexibility. The concept of Med-Arb i.e. a hybrid model of both mediation and arbitration was discussed enlisting the benefits of the process. The types of suits which may be transferred to the *Lok Nyayalayas* was discussed which included, motor accidental claims, land references, banking related suits, summary suits, family disputes, Sec. 498A IPC cases, Sec. 138 NIA cases, or for that matter any other issue by consent of the parties. Typically speaking, cases suitable for ADR include Possession suits or recovery of possession, specific performance, commercial disputes, corporate litigations, matrimonial disputes like maintenance, custody of children. It is the discretion of the courts or tribunals to considering such matters for referring them to ADR for much speedier, socially acceptable amicable solutions saving enormous adjudicatory time and money.

The process of plea bargaining was discussed as an emerging and steadily accepted concept in India. A process wherein the accused may bargain with the prosecution for a lesser punishment. In simple words, 'Plea Bargaining' is an agreement (contract) between the accused and the prosecution regarding disposition of the criminal charge levelled by the prosecution against the accused. In layman's language, it is bargaining done by the accused of a serious and severe offence, with the authority for a lighter punishment in lieu of a full-fledged trial. The concept is slowly but surely catching up in Indian criminal law jurisprudence. The sessions included hypothetical



exercises to make participants aware of aspects and procedures to be followed by them under a controlled simulated situation.

Session 16 & 17: Occupational Stress in Judges : Identification and Consequences of Stress & Managing Judicial Stress: Institution Strategies and Techniques

The sessions were interactive and participative in nature. The speakers focused on clinical approach to deliberate on the subject matter. Deliberation was made to understand what is "stress"? What are the stressors? What are the commonly identified stress triggers amongst the judicial officers? What is work-life balance? How can it be achieved? It was explained that stress is a reaction to a stimuli and not per se the issues or problems that triggers them. It was explained that 21st century 'leaking bucket hypothesis' on "emotional wealth" and "emotional equity" are two vital objectives which needs to be nurtured to develop control over reactions propelling stress. While discussing various ways to reduce or control stress, it was suggested that slowing down one's autonomic nervous system is a cardinal way to reduce stress. It was suggested that one needs to consciously adopt practices to reduce stress. A few ways to do the same included, abdominal breathing; sleeping; meditation; mindfulness activities; exercise; journaling; Laughing; reframing negative experiences into a more positive light; doing activities that we enjoy; spending time with those we love and being present etc. Explaining emotions it was deliberated that anger is a positive emotion as compared to aggression which is negative emotion. It was underscored that "peace is difficult to find within, but impossible to find outside". It was shared that whenever one is not happy, and he/she



tracks back and analyzes to look out for the reasons, (s)he must be able to find one out of the following two bases: a) either (s)he is comparing or b) (s)he is not living in 'now'.

Session 18: Impact of Media on Judicial Decision Making

It was stated that freedom of press should neither degenerate into a license to attack litigants and close the doors of justice, nor can it include any unrestricted liberty to damage the reputation of respectable persons. It was remarked that freedom of expression is not absolute, unlimited or unfettered. The judges being human are occasionally motivated by considerations other than an objective view of law and justice. No judge is completely impervious from the influence of the hype created by the media. The media must exercise self-regulation. It is expected of persons at the helm of the affairs in the field of media to ensure that the trial by media does not hamper fair investigation, and more importantly does not prejudice the defence of accused in any manner whatsoever. It will amount to travesty of justice if either of this causes impediments in the accepted judicious and fair investigation and trial.

The Reardon Report and the Medina Report on assessment of impact of media was discussed. In order to stifle free speech and comments on the court, even an occasional exercise of the power of court to punish the condemners is enough to deter most persons from saying anything that might prejudicially affect any trial proceeding or tend to transgress the natural justice principles.

Session 19: Fair Trial Procedure

It was underscored that fair trials are the only way to prevent miscarriages of justice and are an essential part of a just society. The right to a fair trial has long been recognized by the international community as a basic human right. A fair trial is very important as it decides the fate of entire case. Attributes of fair trial was discussed. It was insisted that witness must be examined and cross examined on the same day as it would significantly reduce chances of witnesses turning hostile. A major problem for denial of fair trial is the contradiction between the said fact and writing those facts in records. Inability of the witnesses to understand a question posed by an advocate often leads to incorrect or inconsistent depositions, wherein judges need to enable the witness by helping him to properly understand the question posed. In *Mohd. Hussain v. State* [(2012) 2 SCC 584] the trial and judgment of the Court was questioned on the basis of incompetency of advocate that he was not sufficiently experienced to conduct such complicated case. The matter was referred to 3 judges bench and another counsel was appointed to prevent denial of the right fair trial. In *Mohd. Ajmal Amir Kasab v. State of Maharashtra* [(2012) 9 SCC 1] where it was observed that the accused should also be provided with defense counsel from the date of arrest itself to ensure fair trial. In *Asha Ranjan v. State Bihar* AIR 2017 SC 1079 Sahabuddin was convicted for murder. During trial he threatened witnesses by outside means in consequence to which all witnesses turned hostile. A petition was preferred to Supreme Court of India and Sahabuddin was transferred to another jail on the reasoning that if he continued to remain in Shiwan, fair trial could not be conducted.

P-1108

WORKSHOP FOR ADDITIONAL DISTRICT JUDGES

07th September 2018 to 09th September 2018

Ms. Paiker Nasir, Research Fellow



The NJA organized a three day “Workshop for Additional District Judges” from 07th September 2018 to 09th September 2018. The workshop focused on critical areas concerning adjudication at the district level; explored challenges in implementation of ADR system; deliberated upon sentencing practices and advantages of integrating court and case management systems in Subordinate Courts. The sessions covered topics including issues and practices pertaining to collection, preservation and appreciation of electronic evidence; advances and inadequacies in laws regulating cybercrimes. During the discourse, the participants discussed, evaluated and shared best practices on exercise of appellate and revision jurisdiction of District Judges, in criminal and civil domains as well. The emphasis was on facilitating deliberations through clinical analysis of statutory provisions, case studies and critical consideration of the relevant judgments and minimizing the lecture format.

The first session on the theme “*Challenges in Implementation of ADR System in Subordinate Courts*” underlined that mediation is considered to be the best form of ADR system, conversely in India it is not practiced in the manner in which it has been espoused by many other countries. There is dearth of proficient mediators in our judicial system. The discourse highlighted that mediation does not perpetually give

results, the reason includes:-lack of infrastructure since mediation needs a specific kind of atmosphere; parties are not willing for mediation; too much intervention by lawyers; huge variance between the interest of parties; lack of competent mediators etc. To do away with these systemic deficiencies a judge is desired to be a good mediator, and should know the mediation process, the elements of settlement, the appropriate stage for commencement of mediation process and how to encourage the parties etc. It was also emphasised that a judge should not follow up the matter once it is settled between the parties. Sec. 89 of the Arbitration and Conciliation, Act 1996 was comprehensively discussed along with other significant provisions.

The session on “*Court & Case Management: Role of Judges*” emphasized that if a judge desires to manage the court in the most effective manner, it becomes imperative for him/her to gain trust of all the stakeholders, which is conceivable only when the judge is empathetic towards them with the realization that, a court is an organization for the people. Other facets of court management elucidated upon during the discourse included - following strict docket timeframes; budgeting; role of court managers; national judicial data grid; human resource management etc. The speakers highlighted that communication and demeanor are essential parts of court management and

for which a judge needs to be cognizant of everything happening in his/her court. As far as case management is concerned it was stressed that the adherence with which a judge performs his/her work in the court gets reflected in his approach towards the disposal of cases. It was suggested that, for effective case management a judge must - verify substantially the number of pending cases in his/her court; verify the nature of case and required method for trial; find out required staff to handle the cases; take note of the fact that cases are not delayed; strike a balance between the category of cases and to ascertain the actual stage of the case and reasons for pendency, if any.

The session on "*Fair Sessions Trial*" accentuated on the duties of a judge and whether they comply with the Rule of Law or not. According to the speaker when a judge complies with the Rule of Law automatic effective functioning of the court; dispute settlement would be in accordance with law and most significantly dignity and integrity would be integral in such a court. Such a court will definitely attract public trust and confidence in the justice delivery system. Moreover, the discourse discussed the prerequisites of effective adjudication i.e., opportunity of hearing [*Audi Alteram Partem*], objectivity and reasoned verdict. It was stressed that the right to fair trial is essential but it is not absolute in nature. Nonetheless, it is constitutionally protected, which falls under Article 21 and also holds statutory protection under different statutes. To strike a balance, a judge needs to look into the interest of the society and should promote Rule of Law. It is necessary for a smooth trial process. A wrongful act of an individual cannot derogate fair trial.

The discourse suggested that in the administration of criminal justice a judge cannot be a mute spectator else, judgeship will become robotic. Relatively, a judge ought to search for relevant material and must participate in the trial process, then only will he know the demeanor of the witnesses. A judge can guarantee fair trial only when he ensures Rule of Law. It should be ensured that the criminal does not go unpunished, then only the victims will have confidence in the justice delivery system. It is also significant to balance the rights of the accused and the victims. Difference between speedy trial and fair trial was also discussed at length.

The fourth session on the theme "*Laws relating to Cybercrimes: Advances and Problem Areas*" illustrated on the history of internet and enlightened the participants on the pros and cons of social media.

The current figures of users of social networking are quite astounding. Around 90% of the world population use Facebook or other social networking sites such as WhatsApp, Twitter etc. It has been seen that children below the age of 18 have accounts on various social networking. An inclusive account of the kind of cybercrimes was projected in detail such as-unauthorized use of trademark; identity theft; unauthorised use of copyright; defamation issues; disclosing of confidential data; corporate espionage; cyber bullying.

It was stressed that one of the pragmatic problem is that the government does not own cyber space, and it is rather owned by private companies, henceforth, control over the technology crimes becomes all the more intricate. On how the evidence can be collected from social networking sites the case *United States v. Joshua Meregildo* [883 F. Supp. 2d 523 (S.D.N.Y. 2012)] was cited. Discussion on process to block, deregister a website and as to what is to be done by the judges in this regard was also deliberated upon.

P.S.: The session has been clubbed with corresponding session of P-1107 and hence reported identically at page 25.

The session on "*Electronic Evidence: Collection, Preservation and Appreciation*", highlighted the impact of digital footprints and appreciation of electronic evidence in contemporary times was established. It was emphasized that it is not conclusive in nature. Such types of evidence are generally found in storage device, digital files etc. Electronic evidence is classified into two types –volatile evidence and non-volatile evidence. The concept of computer forensic is termed as a sequence of packets in a computer network and it explains the digital artefact. Significance of Metadata helps in establishing the originality of any electronic evidence was discussed with many visual examples and it was stated that on front end it is created by the user and the machine creates it at the back end. The discussion elaborated that authenticity and veracity are the key factors to be considered by courts while appreciating electronic evidence. It was suggested by the speaker that while appreciating evidence three things are to be kept :- standard of proof, source of authenticity and best evidence rule.

P.S.: The session has been clubbed with corresponding session of P-1107 and hence reported identically at page 25.



The session on “*Sentencing: Issues and Challenges*”, emphasized that sentencing is the expression penned by a judge after an exhaustive consideration of the facts presented, established and applicable law. Sentencing is based on the facts of the case, nature of the offence and societal expectations. Thus the role of a judge is to adjudicate upon the crime and to see whether the person accused has committed the crime or not. It was pointed out that if the sentence is dependent on the personality of a judge, then it would be in violation of Article 14 of the Constitution, therefore a sentence should be based on concentrated principles. This is possible only when a judge is impeccable in the principles he is applying in determination of the sentence. The speaker suggested a few principles which if, applied can aid the judge in reaching out to the purposive choice of sentence namely: deterrence, retribution, reparation, reformation and that turpitude followed by atonement leads to salvation. Another speaker opined that the purpose of sentencing is to ensure that whoever guilty is suitably punished. The principles of punishment should be put together while pronouncing a sentence. It was suggested that biases should be done away with, by insulating one’s self, via looking into the constitutional obligations.

The session on “*Civil Justice Administration: Appellate and Revision Jurisdiction of District Judges*”, emphasized that appeal is the creation of a statute, which can be filed against the decree or appealable order. Appeal is not against the order or the judgment. It was stressed that the appeal cannot be filed by a person

in whose favour the decree has been issued by the court. Appeal has a continuing nature. It was accentuated that there are two ways to set aside the *ex-parte* decree i.e. when the appeal has been filed and disposed and by filing application under Order 9, Rule 13. Elaborate discussion on some of the leading case laws on the topic formed an integral part of the discourse.

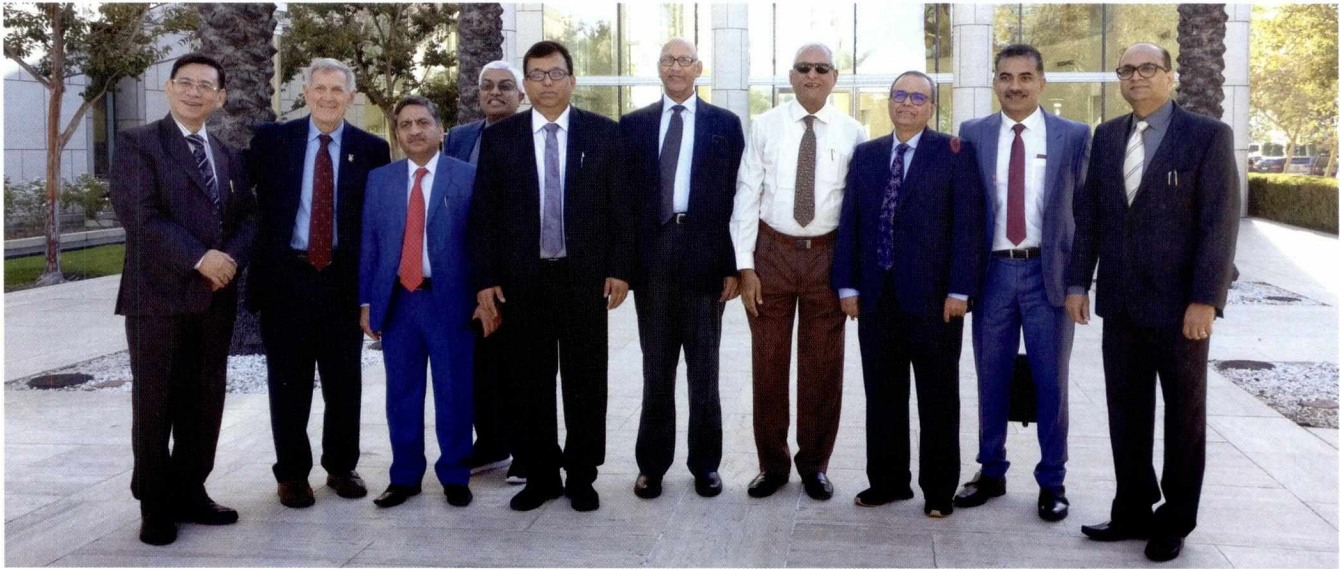
The last session “*Criminal Justice Administration: Appellate and Revision Jurisdiction of District Judges*”, commenced with discussion on the five principles of criminal revision viz; when the procedure is not followed by the trial court and there is defect in the decision; when the decision is grossly erroneous for instance - evidence not corroborated, witness is not corroborated etc; when the findings are not based on evidence; when the material evidence has been overlooked; and finally, when discretion has been used arbitrarily. The concept of interlocutory order was also discussed. It can be termed as an order enabling the parties to execute the work in a particular manner that it will not affect the rights of the parties. What type of orders can be placed under the head of interlocutory order also formed part of the discourse. The discussion also highlighted that a revision petition can be filed in court only when the records relating to the petition are not produced before the court. If at all it is heard, the time gets elapsed rendering the petition of no use. Importance of Sec. 397 was also discussed at length. The speakers opined that a judge must prevent miscarriage of justice, and differentiate between legality and illegality. There are two types of appeal filed in criminal matters i.e. against acquittal and against conviction. In case of acquittal, there must be in compliance to substantial reasons so as to accept the appeal and presumption of innocence is strengthened with evidence. It was opined that instead of plainly arriving at the conclusions, one should find his/her reasons for own conclusions, as it gives clarity to the parties and is applicable for all types of orders, be it interlocutory, final, acquittal or dismissal.

P-1109

WORKSHOP ON COUNTER TERRORISM IN COLLABORATION WITH CEELI INSTITUTE & FJC FOR HIGH COURT JUSTICES (PHASE II)

10th September 2018 to 14th September 2018

Ms. Nitika Jain, Law Associate



The Counter-Terrorism workshop is a multi-stage project to develop US-India partnership in applying steps outlined in “The Hague Memorandum on Good Practices for the Judiciary in Adjudicating Terrorism Cases” (Hague Memorandum). The first phase of the workshop was conducted at the National Judicial Academy, Bhopal during 27 – 29 October 2017, whereby 23 High Court Justices participated. The resource persons during the first phase included judges from the United States who were deputed by the Federal Judicial Center (FJC) and the CEELI Institute.

The next phase, Phase II was conducted in the United States from 10-14 September 2018. In this Phase, a delegation representing Indian Judiciary and the National Judicial Academy (NJA) travelled to the United States to get an overview of the U.S. Criminal Justice system applicable to terrorism cases including aspects relevant to implementation of Hague Memorandum of good practices and implementation of steps outlined in “the Rabat Memorandum on Good Practices for effective Counter-terrorism Practice in the Criminal Justice Sector”.

The objective of the workshop was to facilitate interaction and sharing of experiences between the US and the Indian Judges who are engaged in criminal adjudication, adjudication of terrorism cases, and other national security challenges posed by accelerating global phenomenon or related matters. The purpose of the workshop was to sensitize judges to contemporaneous best practices and jurisprudence pertaining to counter terrorism control norms, adjudication protocols and allied areas. The programme was based on the format of “Training of Trainers”, whereby participating judges assimilated knowledge on case management, essentials of adult education, security set up in high profile cases such as Counter-terrorism adjudication through sharing of best practices. The participant justices of Phase I & II are further expected to disseminate this knowledge and practices to officers of subordinate judiciary across the country through subsequent training sessions on the theme to be conducted at the NJA, Bhopal.

8 High Court Justices participated during Phase II training. The team comprised of – Justice G.S. Kulkarni, Justice Joymalya Bagchi, Justice P.N. Prakash, Justice



Atul Sreedharan, Justice N. Kotiswar Singh, Justice S. Talapatra, Justice Raja Vijayaraghavan and Justice Sanjeev Kumar from the High Court of Bombay, Calcutta, Madras, Madhya Pradesh, Manipur, Tripura, Kerala and Jammu Kashmir. The judges were nominated by the Supreme Court of India in consultation with the Director, National Judicial Academy.

Hon. Jeremy D. Fogel, Director (FJC); Hon. John R. Tunheim, Chief Judge U.S. District, District of Minnesota; John S. Cooke, Deputy Director and the incoming Director (FJC); Tim Regan, Senior Research Associate, Research Division; Mira Gur-Arie, Director International Judicial Relations office, Claire A. Smearman, Judicial Education Attorney, Education Division were the resource persons from the FJC and US Judiciary in the sessions at Washington DC.

Hon. David Carter, United States District Court Judge, Central District of California; Hon. Charles Margines, Presiding Judge, Superior Court of Orange County; Hon. Kimberly Menninger, Supervising Judge, Superior Court of Orange County; Hon. Rick King, Superior Court Judge, Superior Court of Orange County; Hon. Kathleen O'Leary, Presiding Judge, California Fourth District Court of Appeal Division III, guided the deliberations and discussions during

the on-site training held at Los Angeles, California. Hon'ble Justice G. Raghuram, Director NJA led the Indian delegation providing an overview of the Indian Judiciary and working at the National Judicial Academy. The group was also accompanied by Mr. Cristobal Dias, Program Manager CEELI Institute; Mr. Marek Svoboda, Director of Programs CEELI and Ms. Nitika Jain, Law Associate (Programme Coordinator NJA).

The training program was conducted in two parts, the first part was held at the FJC, Washington DC which involved standard classroom learning, in an adult education format. The second part was at Los Angeles, California where the participant judges had the opportunity to get an on-site observation, interaction with local judges and other courtroom personnel.

The theme of the training programme was "*Adjudicating Terrorism cases : Curriculum Design and Faculty Development*". The sessions in the first part held at the FJC focused on areas like - *Introduction & Overview of the FJC and NJA; Judicial Education at the FJC; Distance Education: Using Technology to Enhance Learning; Research at the FJC and the National Security Cases Project; Discussion on Recent Developments & Challenges in the Adjudication of Terrorism Cases*

in India; Principles of Adult Education; the Hague Memorandum; Judicial Competencies for Presiding at Terrorism Trials; Educational Objectives; Case Management and Pretrial Conferences: Skills Building and Problem Solving; Curriculum Design and the "What & How" of Teaching and Faculty Development.

The areas of discussion in the second part held at Ronald Reagan Federal Building and Courthouse, Los Angeles, California included *Case Management including Individual Case Management, Rings of Security, Personal and Courthouse Security, Pre-Trial Release Strategies, Media in High Security Threat Trials, Sentencing Considerations in High Profile Terrorism Cases*. The second portion further included a walk through the State Courthouse, Orange County Superior Court to understand the security setup and the working of the court. Also the participant justices had the opportunity to visit the Appellate Court and interact with the Judges of the Appellate Court.

During the discussion the participant also had the opportunity to meet the FBI Special Agent, US Supervising Marshall, Chief of Pre Trial Services, Court Executive officer along with the presiding Judges of the Superior Court and Appellate Court. These officers of the special branch presented their role in the judicial setup of the US and how they facilitate and provide their help in high profile terrorism and other national security related cases.

The entire delegation also visited the Supreme Court of United States to understand functioning of the Apex Court.

The discussions during the exchange could be summarized in the following key points :

- Judges need a mix of substantive knowledge and decision-making skills; adults learn and retain knowledge and skills most effectively through interactive teaching methods and active engagement. The effectiveness of programs and faculty should be evaluated in relation to measurable educational objectives.
- The sessions focused on how education technologies enable the FJC to provide information to a larger number of judges and court staff in a timely fashion than traditional workshops. It was suggested that efficient use of technologies could be done at the NJA for imparting judicial education and making the Academy more accessible to a larger judicial audience, at different levels of the country in a timely manner.
- The discussions facilitated faculty development program on Judicial competencies which included adult education principles, experienced interactive learning, developing and prioritizing goals for the NJA, developing learning module for the NJA, educational objectives for terrorism adjudication curriculum, and developing an action plan.

The first two phases of the workshop were successfully concluded which facilitated the partnership between the US and Indian judges through a dialogue, enabling identification of the best practices that could be implemented in countering terrorism and related issues by the judges presiding over these trials in India.



P-1110

SEMINAR FOR PRINCIPAL DISTRICT AND SESSIONS JUDGES ON CONSTITUTIONAL AND ADMINISTRATIVE LAW

14th September 2018 to 16th September 2018

Mr. Krishna Sisodia, Law Associate



The Academy organised a National Seminar for Principal District and Session Judges on Constitutional and Administrative Law from 14th-16th September, 2018, which was attended by 35 Principal District and Session Judges from across the country. The objective of the Seminar was to re-acquaint participant judges who are at the cusp of elevation with core Constitutional and administrative law principles and to provide a forum for participants to discuss, deliberate amongst themselves, share experiences, knowledge and best practices in exercise of jurisdiction evolving horizons of relevant law and jurisprudence. The Seminar was structured to facilitate deliberations on the art of hearing, overview of the Constitution, fair trial rights and the doctrine of *stare decisis*. The sessions also enabled discussions on core Constitutional principles such as the theories of judicial review, doctrine of basic structure and the rule of law.

On the theme of *The Art of Hearing*, the speakers dealt with the art of hearing as an integral part of the justice administration system; primarily the art of hearing pertains to encouraging or promoting rational discourse in the courtroom but in a wider sense it includes in

its ambit the principles of natural justice. Socrates, a Greek philosopher has enunciated four components of decision making process:

- ✓ Hear courteously
- ✓ Answer wisely
- ✓ Consider soberly
- ✓ Decide impartially

The second speaker on a lighter vein stated that the judges should spread light not heat in their judgments, light means the ability to go in depth of facts of the case, raise questions within and decide the truth of the matter. The session was concluded by discussing the case of *State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan*, (AIR 1981 SC 1623) wherein it was held that cross examination forms an integral part of principles of natural justice.

On the theme of Access to Justice and Rule of Law, it was pointed out by the panel that the concepts of access to justice and rule of law jurisprudentially might be distinct but in practice with the efflux of time are inextricably linked to each other as there can never be a



rule of law without access to justice i.e, access to justice precedes rule of law. In *Rudul Sah v. State of Bihar* (AIR 1983 SC 1086) it was held that the conglomeration of judicial activism and executive commitment can accelerate the means to achieve the ends of justice. The session was concluded by stating that the justice administration system needs reform with technology playing a significant role in removing obstacles to access to justice, e.g. online FIRs, e-summons, etc.

On the subject of *Fair Trial Rights : Role of a Judge*, it was highlighted that Fair trial is an integral part of justice administration system and is recognised under Article 21 of our Constitution; and includes in it the right to speedy trial which encompasses all stages, namely the stage of investigation, inquiry, trial appeal, revision and re-trial. The speaker emphasized that the judge should not be a mute spectator. Different cases need different approaches and the judge should be aware to make sure that the accused should be provided a fair trial and ensured all the rights that are a necessary ingredient to fair trial.

Sessions 4 and 5 were on the theme of *Overview of the Indian Constitution*, session 4 dealt with preamble, part III and part IV of the Constitution. The discussion was initiated by discussing the history of the various Constitutions and it was stated that the need of the constitution was felt in order to curb arbitrariness of the one in power; the Constitution is a 'grundnorm' which forms the order in the life of people and the lifeline

of a vibrant democracy. The Indian Constitution is partly federal in nature because of the Anglo-Saxon roots and has often been criticised as a "quilt of foreign clothes with several patches of principles derived from other countries". The speaker stated that although the principles have been borrowed from other countries, they have been fully developed and nourished in Indian soil. Session 5 dealt with the core constitutional principles and the silences in our Constitution. The silences also sometimes speak very tellingly as even a written Constitution does not expressly provide for every conceivable situation. They have to be sagaciously construed, not lazily assumed or piously hoped. The silences in some areas are deliberate; some open up possibilities of purposive construction; and some are advisedly so left. Most of the provisions of the Constitution particularly the various fundamental rights have no fixed content. They are merely empty vessels into which each generation pours its content by judicial interpretation in the light of its experience.

On the theme of *Theories of Judicial Review*, the panel stated that judicial review has its foundations under Article 13 read with Article 32, 226, 227 of the Constitution. The panel discussed in brief the various doctrines of judicial review viz., pith and substance, eclipse and severability. Thereafter, the panel stated that the concept of limited government and judicial review constitute the essence of the constitutional system which involves three core elements:



- Supremacy of Law
- Predominance of Constitution.
- Sanction by which any superior law may be prevented or restrained, and if found unnecessary, annulled.

On *The Doctrine of Basic Structure : Contours*, the speaker reiterated the constituents of basic structure by referring to *Kesavananda Bharati vs. State of Kerala*, (AIR 1973 SC 1461) wherein supremacy of the Constitution; republican and democratic form of government; secular character of the Constitution; separation of power, federal character, judicial review and free and fair elections were considered the basic structure of the Constitution. The panel thereafter discussed several landmark judgments of the apex court and concluded by opining that the concept of basic structure, as brooding omnipresence in the sky, apart from specific provisions of the Constitution, is too vague and indefinite to provide a yardstick to

determine the validity of an ordinary law.

On the topic of *Doctrine of Stare Decisis*, it was discussed that the doctrine of stare decisis has its roots in the maxim *Stare decisis et non queita movere* which means “to stand by and adhere to decisions and not disturb what is settled”. Historically, the law of precedents or *stare decisis* is not a codified law and has its origin from common law. On one hand, precedents may be considered as one of the greatest safeguards of rule of law and most effective check on judicial arbitrariness and uncertainty, on the other hand, the criticism of precedents is that the judgments are not computer outputs ensuring consistency and absolute precision but they are product of human thought based on the given sets of facts, interpretation of the law and the changing needs of the society. Thus, the doctrine of stare decisis is neither an inexorable command nor a mechanical formula of adherence to the latest decision, but is a principle of policy.

Prominent Suggestions by Participants (Principal District Judges)

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

- Scrutiny of Challan (Charge Sheet).
- Developing an App where the judges can be connected to all the stakeholders for regular updates.
- Designating certain police officers from every Police Station as Investigating Officers.
- Videography of the whole procedure of collecting evidence.
- Expert opinion in technical cases; quantification of damages in IPR cases, etc.

P-1111

REFRESHER COURSE FOR POCSO COURTS

14th September 2018 to 16th September 2018

Mr. Shivaraj S. Huchhanavar, Research Fellow



The National Judicial Academy organized a 3-day programme for District Court Judges on the Protection of Children from Sexual Offences Act 2012 (hereinafter the POCSO Act). The POCSO Act requires judges, prosecutors and advocates to modify/tune practices and attitudes to ensure that the proceedings are sensitive to the needs and rights of children; to adopt measures to prevent exposure of the child to the accused while ensuring that the rights of the accused are not jettisoned. Judges presiding over POCSO courts appear to face constraints in implementing the several provisions of the Act. The objective of the course was to acquaint the participants with international perspectives on sexual offences, victim protection, child-friendly court procedures, and identifying the best interests and well-being of the child: the role of POCSO courts.

The Refresher Course was designed to facilitate discussions on issues related to recording & appreciation of evidence, presumption & burden of proof under POCSO Act, age determination, and rehabilitation and compensation for child victims of sexual offences. The course also aimed to provide a platform for POCSO judges to share experiences, insights and suggestions with a panel of distinguished resource persons from the judicial branch and other relevant domains on issues

concerning POCSO adjudication.

The first day of the seminar was focussed on understanding the basics of children and childhood, child sexual abuse, child-friendly methods and techniques for interviewing children & adolescents. The subject experts shared their thoughts on the significance of childhood in shaping the personality of a child, impact of sexual abuse during the childhood and they also highlighted the challenges in interviewing a child victim of sexual abuse and how the judges can overcome these challenges by adopting child friendly attitude and procedures. Addressing the concerns of judges on child's retraction in telling his/her experience, the subject experts emphasized that for those children who report sexual abuse, they start to retract from their original statement because of pressure from disbelieving adults, which results in fear and anxiety in the child. Hence, retraction of the child's statement is not only because of the child's fear of the perpetrator (which undoubtedly is also true in many instances); it is the so called caregivers and protectors of the child, who are responsible for the child's failure to disclose abuse and for his/her retraction of the abuse statement later on—because of their intrinsic lack of belief in the child's experience and account. They



observed that younger children are unlikely to see the act of abuse as being exploitative, abusive (let alone criminal), therefore, the judges expect them to give evidence which suits the legal semantics.

The resource persons discussed the presumption and determination of age under the Act. Speaker highlighted the challenges in age determination. It was pointed out that in most of the cases birth is not registered, parents provide the wrong date at the time of school admission; schools do not maintain registers properly and often age is recorded by guesswork. Therefore, where there is a reasonable ground for doubt, the court may take the help of ossification test or any other latest medical age determination tests to determine the age of a person in question. However, as per the scheme of the Act, if the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination conducting authority, in absence of such certificates, birth certificate given by a corporation or a municipal authority or a panchayat shall be conclusive, and above mentioned tests shall not be ordered unless there are reasonable grounds challenging the authenticity of such documents. Landmark judgments on age determination from *Brij Mohan Singh v. Priya Brat Narain Sinha and Ors (1965)* to *Sri Ganesh v. State of Tamil Nadu and Ors. 2017* were discussed at length.

Recording and appreciation of evidence in POCSO cases was discussed. It was observed that the legal provision relating to evidence recording and appreciation needs to be taken seriously by all the duty-holders in the justice administration; the system must adapt to the special needs of children. Medical evidence, DNA and Forensic Science Laboratory (FSL) reports must be critically analyzed. It was opined that the tests employed in most of the FSLs are just basic

presumptive or screening tests, such as benzidine test, and rarely, in some laboratories-the luminal test. The tests are sensitive, but the accuracy is not very satisfactory. Many of the participants shared their concerns relating to lack of infrastructure, judicial time, lawyers' cooperation and lack of awareness amongst the guardians of the child victim. The issues relating to children lacking sufficient cognitive abilities to tell their story due to age, mental shock or psychological illness were highlighted. The resource persons drew the attention of the participants to one of the landmark Supreme Court judgment, in *Dattu Ramrao Sakhare v. State of Maharashtra*, reiterated that, "the only precaution which the Court should bear in mind while assessing the evidence of a child witness is that the witness must be reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored must be ensured."

In the session on presumption and burden of proof in POCSO cases, reference was made to the constitutional philosophy of presumption of innocence and fair trial. It was emphasized that why in cases of child sexual abuse, legislatures thought it to be fair to shift the burden of proof on the accused. After a long deliberation on the philosophy and rationale of presumption, it was observed that the statutory presumption is rebuttable one and it does not shift the burden of proof. It is merely an evidentiary rule whereby the accused must offer an explanation to rebut the permissive presumption. A statutory presumption cannot be sustained- (1) if there be no rational or perceptible connection between the fact proved and the ultimate fact presumed; (2) if the inference of the one from proof of the other is arbitrary because of lack of connection between the two in common experience. It was concluded that 'reverse burden of proof' where the law withdraws the presumption of innocence of the accused, albeit



temporarily, and replaces it with a presumption of guilt. Withdrawal takes place at the very commencement of trial on proof of certain facts. Various landmark decisions on the issues of presumption and burden of proof are discussed at length.

The session on rehabilitation and compensation for a child victim of sexual offence revolved around a question- whether judges have any role to play in the rehabilitation of victims of child sexual abuse. It was observed that the special judges have to act in the 'best interest of child' which could be made possible through rehabilitation process, under which judges has been provided special powers to go beyond strict protocol of the statute. It was emphasized that compassionate and caring treatment of the victim by a judge would go a long way in the process of rehabilitation. Dealing with questions on compensation- it was observed that, based on the Law Commission's recommendations, Cr.P.C. (Amendment Act) 2008 introduced Sec. 357-A, recognizing the duty of the State to compensate the victim. Compensation could be paid even if the accused is untraceable or trial did not take place. In such cases, the victim or his/her dependents apply to the State or District Legal Authorities (SALSA/DLSA) for compensation. The SALSA/DLSA should complete the inquiry within two months and award adequate compensation based on such an inquiry.

The amount of compensation is to be determined by the Special Court based on certain factors –

- 1) Type of abuse, the gravity of the offence and the severity of the mental or physical harm or injury suffered by the child



- 2) The expenditure incurred or likely to be incurred on the child's medical treatment for physical or mental health
- 3) Lack of educational opportunity as a consequence of the offence

The last session of the refresher course was on the challenges faced by judges in POCSO adjudication. It was observed that in spite of special law and procedures, the cultural resistance still prevents victims from seeking justice through courts in cases of sexual offences. The absence of a robust police and prosecution wings across the country was identified as one of the main reasons for less number of convictions. Lack of adequate training and understanding of the dynamics of child sexual abuse was also considered as one of the areas of concern. Infrastructure issues, additional burdens on judges dealing with POCSO cases, the absence of effective case management mechanisms and delays in reporting cases, etc. were also discussed at length.

P-1112

WORKSHOP ON JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

21st September 2018 to 23rd September 2018

Mr. Yogesh Pratap Singh, Research Fellow



The Academy organized a three day “Workshop for Magistrates on Juvenile Justice (Care and Protection of Children) Act, 2015 from 21 - 23 September, 2018 at Bhopal.

The workshop provided a forum for deliberations on recent changes in the law; interpretation and treatment of juveniles in conflict with law; psycho-social aspects of juvenile justice administration; role of judges; appropriate processes and strategies for care and protection of juveniles; audit and measures to accrete the efficiency of Juvenile Justice Boards and other duty holders.

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

Juvenile Justice in India : Understanding Non-Adversarial Nature of the System from Human Rights and Constitutional Perspectives

The session began with discussion on International Law and National Policy & Legal Framework in India with respect to rights of children. The speaker highlighted and discussed following conventions, rules and guidelines under International law for the protection of child rights.

Conventions

International Covenant on Civil and Political

Rights (ICCPR); Convention on the Rights of the Child (CRC); Convention against Torture (CAT).

Rules and Guidelines

UN Standard Minimum Rules for the Treatment of Prisoners, 1955; UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), 1985; UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), 1990; UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), 1990; UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), 1990; Guidelines for Action on Children in the Criminal Justice System (the Vienna Guidelines), 1997.

The constitutional provisions for children under constitution of India and national policy for children were also discussed during the session. Constitutional principles under the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter as the JJ Act), concept of adversarial system in light of Supreme Court judgments and history of juvenile justice in India right from the Apprentices Act, 1850 to the passing of JJ Act were briefly explained and discussed with the participants. The concept whether juvenile justice is criminal justice or social justice was also part of discussion in the session.



Changes Brought by the 2015 Act and the 2016 Rules : An Overview

Session began with a discussion on the question ‘why was the JJ Act 2000 repealed and re-enacted?’ It was pointed out that JJ Act was repealed to plug gaps in law and implementation including: Abuse of children in institutions, High pendency, Quality of care & rehabilitation measures, Delays in adoption, Accountability of institutions, Role confusion, Inadequate provisions to address offences against children, To address increasing crimes being committed by children between 16 and 18 years as the JJ Act, 2000 was “ill equipped to tackle child offenders in this age group.”

Thereafter, attention was drawn to the following key highlights of the JJ Act, 2015: Builds on progressive framework of JJ Act, 2000; Fundamental Principles now in parent statute; Rights framework strengthened; Greater emphasis on accountability; Child Protective framework strengthened; Rehabilitative framework strengthened; Definition and Classification of offences; Inclusion of Transfer System for children alleged to have committed a heinous offence for trial & sentencing as an adult; Recognition that Child in Conflict with Law can also be Child in need of Care and Protection; Procedures- age determination; Legal framework on Adoption strengthened; List of functionaries expanded; Enables greater involvement of civil society in implementation.

Objective of the JJ Act, its applicability, coverage, composition of Juvenile Justice Boards and its functions along with some important provisions with respect to social investigation report, individual care plan, institutional & non institutional care, duty of different stakeholders under the Act were discussed with the

participants in the session. The session concluded by highlighting various challenges with respect to implementing of the Act.

General Principles of Care and Protection of Children under the Act

Following general principles under Sec. 3 and other provisions under the Act and under international conventions were discussed in detail with the participants: Principle of presumption of innocence, Principle of dignity and worth, Principle of participation, Principle of best interest, Principle of family responsibility, Principle of safety, Positive measures, Principle of non-stigmatizing semantics, Principle of non-waiver of rights, Principle of equality and non-discrimination, Principle of right to privacy and confidentiality, Principle of institutionalization as a measure of last resort, Principle of repatriation and restoration, Principle of fresh start, Principle of diversion, Principles of natural justice.

While explaining the historical evolution of the general principles under the Act, attention was drawn to the following landmark judgments of the Supreme Court and High Courts: *Bhola Bhagat v. State of Bihar* (1997) 8 SCC 236; *Salil Bali v. Union of India* (2013) 7 SCC 705; *Krishna Bhagwan v. State of Bihar* AIR 1989 Pat 217; *Imtiyaz Hussain Mumtiyaz Sheikh v. State of Maharashtra* (2008) 116 BomLR 1645.

Presumption and Determination of Age under the Act and Rules

The session began with a fundamental question, who is child in conflict with the law under the Act? Attention was drawn to definitions part of the Act and provisions under Code of Criminal Procedure, 1993 to understand



the role of a Principal Magistrate, Juvenile Justice Board under the Act.

The concept of 'Gender Justice' and 'Tender/Kinder Justice' in light of juvenile justice in India was explained to the participants followed by highlighting diverse purposes for age determination such as for arrest/apprehension as an aspect of custodial justice, the Judgment of the Supreme Court in *Sanjay Suri v. Delhi Administration* (1988 Suppl. SCC 160) was pointed out wherein the apex court observed that every warrant authorizing detention specifies the age of the person to be detained. Judicial mind must be applied in cases where there is doubt about the age not necessarily by 'trial' and every warrant must specify the age of the person to be detained.

Categories of 'children in conflict with law' and procedure for age determination such as presumption in support of executive action in matter of age determination, Date of birth certificate from school or matriculation or equivalent certificate and birth certificate from Corporation, municipal authorities etc under the Act were also explained to the participants.

Following landmark judgments of the Supreme Court on juvenility here discussed and explained to the participants *Brij Mohan v. Priyabrat* (AIR 1965 SC 282); *Umesh Chandra v. Rajasthan* (AIR 1982 SC 1057); *Bhoopram v. State of UP* [(1989) 3 SCC 1]; *Daya Chand v. Sahib Singh* [(1991) 2 SCC 438]; *Ram Deo Chauhan v. Assam* (AIR 2001 SC 2231); *Vishnu v. Maharashtra* [(2006) 1 SCC 283]; *Babloo Pasi v. Jharkhand* [2008(13)SCALE 137]; *Pawan v. Uttaranchal* [(2009)15 SCC 259]; *Hariram v. Rajasthan* [(2009)13 SCC 211]; *Raju v. Haryana* [(2010)3 SCC 235]; *Shah Nawaz v. UP* (AIR 2011 SC 3107); *Om Prakesh v. Rajasthan* [2012 (4) SCALE 348]; *Ashwani Kumar Saxena v. MP* [(2012)9SCC 750]; *State Of MP v. Anoop Singh* [(2015) 7 SCC 773]; *State Of MP v. Munna@Shambhoo* [(2016) 1SCC 696]; *Parag Bhati*

v. State of UP [(2016)12 SCC 744]; *Mukarrab v. State of UP* (2016 SCC ONLINE SC 1413); *Sri Ganesh v. State of Tamil Nadu* [(2017) 3 SCC 280].

Juvenile Justice beyond Court Rooms, Monitoring Shelters : Role of Judges

The session began with a brief discussion on role of Judges in monitoring child care institutions, wherein sources of the power of monitoring in light of the judgment of the Supreme Court in *Bhanu Das* (AIR 1977 SC 102) and *Giasuddin v. State* (AIR 1977 SC 1936) were discussed. The speaker also discussed diverse strategies of monitoring and directions relating to setting up Child Care Institutions. Speaker stressed on unscheduled visit at child care home to know the real conditions and systemic lapses and suggested participants that they should visit shelter home at least once in a month. It was further emphasized that child must be in heart than in mind of the judges for greater justice and greater services to the children. It was pointed out that judges must ensure whether right amount of care is rendered by the person who has been assigned to take care of child. The speaker also highlighted the importance of interaction with children to build confidence so that they could speak out their problems openly. Participants were suggested to come out with innovative solutions for rehabilitation of the children.

Provisions under the Act with respect to reformation and rehabilitation of juvenile by establishing Child Welfare Committee, its role and responsibilities, provisions regarding skill development, individual care plan were also discussed in the session. It was further stressed that the child in conflict with law should not be sent to jail or lock, nor should be handcuffed.

Psycho-social aspects of Juvenile Justice Administration

This session began with conducting of a role play between a child and therapist to demonstrate participants about the



mindset of a juvenile who is alleged to have committed an offence and how judges should interact with them. The speaker highlighted different stages of development and characteristics of a juvenile right from puberty to adolescence. It was emphasized that development follows a definite pattern unless environment prevents. It was also stressed that every phase of development must consist of three A's i.e. acceptance, achievement and affection for better development of juvenile. The speaker also indicated common conditions contributing to deterioration in family relationships such as attitude of parents, parental expectations, authoritarians and permissive disciplinary practices, low socio economic status, comparison of parents with their friends parents, sibling friction etc. The speaker also discussed psychological hazards leading to maladjustment, common causes of family friction during adolescence and theories of personality with participants in the session. The treatment which can be imparted to the juveniles are – social skill training, problem solving training, methods to attain self control, anger management, improvement of interpersonal behavior etc.

Role of Duty-holders at various Stages of Inquiry/Trial of Juvenile

The session began with discussion of various theories of punishment such as retributive, reformatory and deterrent in context of child in conflict with law. It was pointed out that when it comes to the question of dealing with a child in conflict with law, the reformatory aspect of punishment comes to the fore. It was further stressed that the concept of reformation has to be widened by including therein rehabilitation and welfare. Welfare or best of interest of the child is the paramount interest to be kept in mind. Thereafter, attention was drawn to the social background report in Form 1 and social investigation report in Form 6 of the Act. Participants were probed about social investigation report and how it is prepared. Speaker discussed column in Form 1 & 6 in detail and stressed



on the importance of information furnished in the social investigation report in Form 6 for the purpose of trial of a juvenile. Role and duty of various stakeholders such as probation officer, police, psychologist, Juvenile Justice Board, Child Welfare Committee etc. under the Act were explained to the participants during the session. Participants were also asked to indicate different stakeholder and their duties under the JJ Act.

Individualized Care Plan for Comprehensive Development of Children under the Act

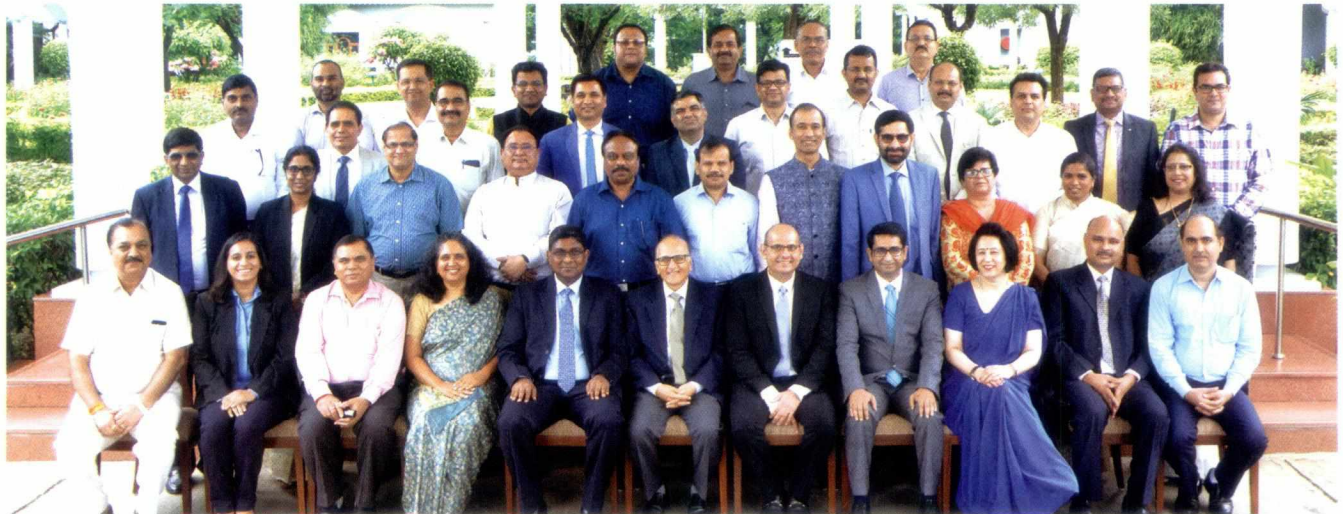
The session began with explaining what individual care plan under the Act is. The importance of Sec. 39 of the Act was discussed stating that Sec. 39 of the Act directs the States regarding the process of rehabilitation and social integration of children be undertaken, based on an individual care plan of the child and the process ought to be initiated as soon as the child comes before the Juvenile Justice Board. Speaker also discussed on monitoring of individual care plan. Speaker indicated following special needs of a child alleged to be in conflict with law : Legal; Psychological; Social; Emotional; Protection; Educational; Familial; Physical; Health; Re-integration. Thereafter, a role play consisting of two different cases was assigned to the participants wherein, they were divided into group of three members and asked to prepare an individual care plan for a child. 20 minutes time was allotted to prepare the same. Speakers then requested each group to present discuss their care plan. Each group was also asked to bring out five facts which are not mentioned in the case.

SE-01

SEMINAR FOR MEMBERS OF THE INCOME TAX APPELLATE TRIBUNAL

21st September 2018 to 23rd September 2018

Ms. Shruti Jane Eusebius, Research Fellow



National Judicial Academy organised the seminar for members of the Income Tax Appellate Tribunal (ITAT) with the objective of facilitating discussion and critical examination of the constitutional and statutory mandate of the ITATs, identification of the adjudicatory challenges faced by the ITATs and solutions for any bottlenecks in the effective functioning of the ITATs. The seminar also designed aimed to provide a perspective on emerging issues in tax law by engaging the participants in discussion with domain experts, on evolving jurisprudence in tax law, seminal rules of interpretation and evidentiary standards in tax law.

In Session 1 on the theme *Constitutional and Statutory Basis of Taxation*, the speakers emphasised the social interest rationale for tax. The speakers dwelt on the objectives of taxation i.e. equity, convenience, economy and certainty as the basis of a fair taxation system. The speakers dwelt on the social contract basis of taxation i.e. the people decide to be governed by the rule of law including being subjected to tax in the expectation that the State will provide for social welfare, security and development in return. The speakers discussed Article 265 as the basis of levy and collection of tax, and the statutory provisions enabling the State to levy tax. The speaker stressed on the 4 crucial elements of a valid tax

statute i.e. nature of taxable event, person on whom the tax is to be imposed, rate of tax and measure or value to which the rate will be applied for computing tax liability. The speakers also discussed the basis of applicability of taxation on the person – residence and source based (in cases of income arising outside India). The speakers discussed the *KT Moopil Nair* and *Azadi Bachao* cases to highlight the jurisprudence on the validity of taxing statutes and stated that challenge to taxing statutes could only be based on the grounds of legislative competence or violation of fundamental rights. The speakers also distinguished between concept of tax and fee.

In Session 2 on the theme *Assessment Proceedings : Role of the Tribunal*, the participants were engaged in group discussions to highlight challenges faced by the ITATs due to defects in the ‘Assessment Proceedings’ and to identify solutions to address such defects. The major concerns expressed were the manner in which the assessment is conducted, the failure to send requisite intimation or notice to assessee, improper approvals taken by the assessing officers, the assessing officer’s lack of technical expertise and knowledge, use of search orders to extend the time for investigation, failure to record grounds of satisfaction necessitating search by the assessing officer, failure to issue notice to



the assessee for visiting penalty under Sec. 271C of the Income Tax Act, 1961 (IT Act) specifying whether the penalty is attracted for concealment or for inaccurate statement of particulars resulting in striking down of penalties in most cases. The speaker stated that the assessing officer is bound to inform the assessee of the provisions attracting tax as well as the provisions beneficial to the assessee. The speaker referred to *ACIT v. Hotel Blue Moon* Case to emphasise that issuance of notice is mandatory in assessment proceedings. The speaker also stated that in cases of approvals taken from the improper authorities, approval from a lower authority is incorrect but approvals from higher authorities is okay. However, in cases of approval by higher authorities the possibility of bias or prejudice is a concern as the assessee is denied the effective right to appeal because the authorising and appellate authority are the same.

In Session 3 on the theme *Interpretational Issues in Tax and Treaty Law*, emphasis was placed on understanding the objective of the statute and the history behind the enactment of the statute to interpret its provisions. The participants were advised not to play with the words of the statute unless absolutely necessary, and if the import of the provision is clear and unambiguous then the provision must be interpreted strictly. The interpretation tool of 'reading down' should be used very rarely. The speakers elaborated on the 'Cardinal' and 'Subsidiary Rules' of Interpretation and their applicability. The speakers emphasised that taxing statutes must be interpreted strictly. In cases of ambiguity, taxation provision should be interpreted in favour of the assessee and exemption provisions should be interpreted in favour of the revenue. In cases of doubt, the charging provision in a taxing statute is to be strictly interpreted and the machinery provision is to be liberally interpreted. However, the charging



section and machinery provision are interdependent and if any one of the same is struck down, the other cannot survive. Exemption notifications and provisions creating deeming fictions are to be strictly interpreted.

In Session 4 on the theme *Jurisprudence of Tax : Neutrality and Professionalism*, the speakers discussed the basic principles of taxation as propounded by Adam Smith - equity, clarity, reasonableness in administration and convenience, and the constitutional principle that a person cannot be taxed without the authority of law. The role of the ITAT in the administration of justice as a fact finding authority and the first independent authority to analyse the case was discussed. It was emphasised that the powers of the ITAT are circumscribed by the statute and the ITAT are bound to decide cases as per law and to interpret law to ensure justice to the assessee and the revenue. The role of the ITAT in ensuring precedential stability in tax law was emphasised. The participants were encouraged to ensure that the assessee is given a fair hearing. This is beneficial to the ITAT as this gives the ITAT an opportunity to examine the case. Fairness in search and seizure process and imposition of penalties was stressed up on. The speakers also emphasised on ensuring equity, certainty and fairness in the methods and processes for collection of tax. The canons of tax - elasticity, productivity, simplicity, diversity and expediency were emphasised up on. The attributes of a fair taxation system i.e. equal distribution of burden of tax (progressive taxation), vertical equity (the rich pay more than the poor) and horizontal equity (persons on the same level bear the same burden of tax) in view of the mandate of Article 38 of the Constitution of India was discussed to emphasise the role of taxation in ensuring social and economic justice.

In session 5 on the theme *Transfer Pricing*, the speaker elucidated on the concept of transfer pricing as a system which treats your income on the basis of

another person's income. Transactions between related entities can be used to manipulate prices, reduction of tax liability and result in base erosion. The speaker discussed the concept of 'Associated Enterprise' which is the basis on transfer pricing. The methods adopted in transfer pricing and the methods of income attribution were discussed. The speaker discussed the concept of 'Arm's Length Price' and 'Formulary Apportionment'. The speaker also discussed the issues regarding determining the value of intangibles in transfer pricing. The speaker highlighted the major issues in transfer pricing - determining associated enterprise, concept of deemed associated enterprise, reference to transfer pricing officer, whether automatic or not, challenges in use of contemporaneous data, availability of proper comparables, faults in process adopted for transfer pricing, taxation of location savings and valuation of marketing intangibles.

In Session 6 on the theme *Evidence in Taxation Law*, the speakers discussed the basic principles of burden of proof in taxing statutes and the judicial precedents on this issue. Under taxing statutes, the onus in respect of inclusion of receipts in income is on the Revenue, while the onus of proving exemptions is on the assessee. The burden of proving that a transaction is sham lies upon the Revenue, unless statutorily shifted. The initial burden to prove concealment of income is on the Revenue. The speakers discussed the burden of proof and evidentiary standards in General Anti Avoidance Rules (GAAR) cases and in search, seizure, illegally collected evidence and tax avoidance cases. The speakers also discussed the provisions of the Evidence Act, 1872 and its application in tax cases. Electronic evidence, its sources and relevance in tax cases was discussed. The methods to check authenticity of electronic evidence, the standards of proof in cases involving electronic evidence were elaborated.

In Session 7 on the theme *International Tax Treaty Law and Double Tax Avoidance Agreements*, the rationale for Double Taxation Avoidance Agreements (DTAA) was discussed. Tax treaties are entered into to prevent juridical double taxation of cross border transactions in differing tax systems and to avoid situations where tax is imposed repeatedly due to differing definition of residence and jurisdiction overlap between countries. The speaker elaborated on the structure, application and distributive rules of international tax treaties. The speaker also discussed the 'Equalisation levy', which was introduced as a separate levy in the Finance Act, 2016 as a levy on online advertisement, provision for digital advertising space etc. and potential impact on DTAA. The speaker also discussed Sec. 90 of the Income Tax Act, 1961 regarding applicability of treaty as law in India. The speaker discussed the buyback of shares and its treatment under DTAA. The speaker also discussed the taxation of intangibles.

In Session 8 on the theme *General Anti-Avoidance Rules*, the speaker elaborated on the background of General Anti-Avoidance Rules (GAAR). Sham transactions, whether illegal in form or substance as a mode of tax evasion was discussed and tax evasion was distinguished from tax avoidance. The legislative provisions - Chapter X-A and Sec. 144BA of the Income Tax Act, 1961 were discussed. The applicability of GAAR, the procedure under Sec. 144BA of the Income Tax Act, 1961 and the concepts of 'Impermissible Avoidance Arrangements' and 'Commercial Substance' were discussed. The tax consequences for Impermissible Avoidance Arrangements were explained. The issues highlighted by the speaker were – the conflict between Rule 10U(1)(d) and Rule 10U(2) of the Income tax Seventeenth Amendment) Rules, 2013, invocation of GAAR provisions in court approved arrangements and retrospective application of GAAR.

Suggestions by Participants

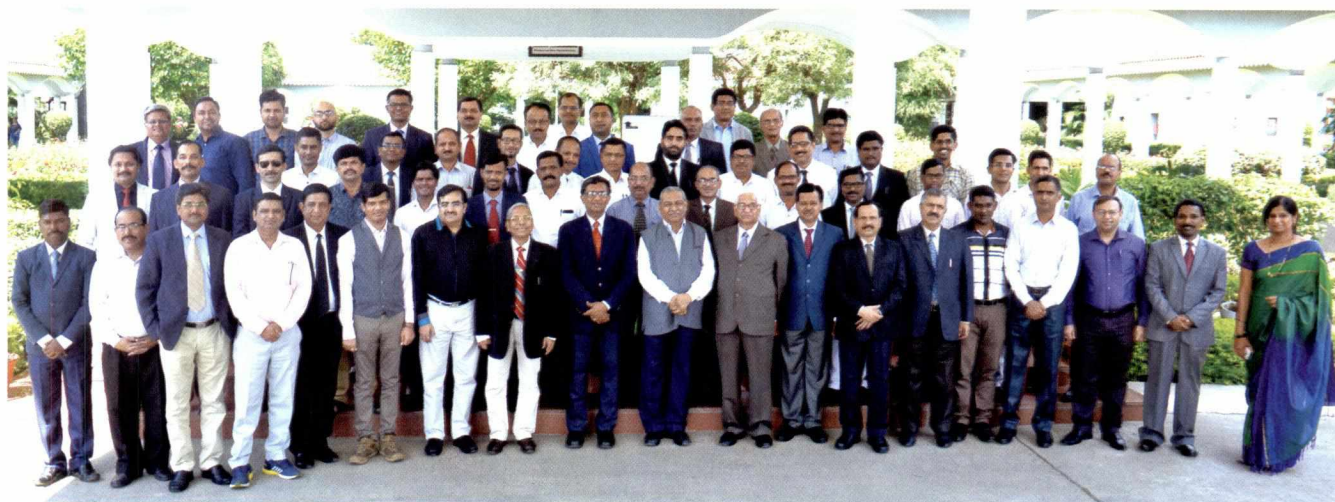
- Approvals taken by the Assessing Officer in cases of Re-assessment should be taken from the correct authority.
- Notice under Sec. 271C of the Income Tax Act, 1961 should specify whether the penalty imposed is for concealment of income or for inaccurate statement of income particulars so as to ensure that the penalties are not struck down in appeal.
- Request for Search Order by Assessing Officer should be used only in necessary cases and not as a means to extend the time for investigation.

P-1113-1122

COURT EXCELLENCE ENHANCEMENT PROGRAMME - I

28th September 2018 to 30th September 2018

Mr. Rahul I. Sonawane, Research Fellow



Object and Background of the Seminar :

The Academy (NJA) organized a three day Court Excellence Enhancement Programme - I from 28th to 30th September, 2018 at the NJA Bhopal. 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 first of 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. The participant High Courts for this first cluster of programmes were – Allahabad, Bombay, Calcutta, Chhattisgarh, Delhi, Gauhati, Gujarat, Himachal Pradesh, Hyderabad, Jammu & Kashmir, Jharkhand and Karnataka.

Session 1 : Assessing and Enhancing Court Performance

Workshop was commenced by Additional Director of National Judicial Academy, Prof. D. P. Verma, extending a warm welcome to all the resource persons as well as to the participants followed by a brief introduction of the speakers. Prof. G. Mohan Gopal then started his presentation. He said NJA is an institution that has 'Knowledge for Justice' as its main objective. He emphasized that running a court is a team game. A court is a judge acting judicially but a judge cannot act judicially without litigant, bar and ministerial staff in the system. He compared activity of a court to an orchestra where conductor and musicians cannot perform without each other. Therefore, the idea behind this programme is to bring all the stakeholders in the justice system together under one roof to discuss how they can contribute to the excellence of their own court. He concluded by saying that 'court exists for the litigants, not that litigants are for the Courts. Therefore, it is our responsibility to see that common litigant gets justice.'

Justice R.C. Chavan then took over and stated that our (court) system is intimidating, it does not deliver results within time and that we allow the system to be



hijacked by wrongdoers. Mostly, those who proclaim faith in the system are all crooks and criminals because even after conviction they have faith that system will do something for them. It is time for all of us to wake up and ensure that the system works for the common man. For that to be done, first we should know where we stand and then find a way that works best to enhance the quality of your own court functioning by mutual discussion. When a stakeholder in a court considers that it could be done in his own capacity, 90% of things would be solved without external aid by simply changing the attitude.

Thereafter, Justice Ravi Tripathi took charge and stated that the purpose of this programme is to end the blame game. Within the framework with some new ideas and change in attitude one could always improve. It does not need grant from the High Court or the Supreme Court. One must have that burning sensation towards his own work, for people in the society to discharge their duties effectively. This is the purpose of organizing this seminar.

Justice Vasanti Naik started her speech by stating that court is an institution setup by the government for settlement of disputes by legal process and in accordance with the rule of law. The role of the courts is to uphold the rule of law. There is no definition or bench-mark of an excellent court. We have to strive and work on certain areas for enhancing the performance of the court. She emphasized 'justice delayed is justice denied', but our Courts are infamous for huge pendency of cases. This programme is conducted for

the performance of the Court as a whole and not the judge alone. She emphasized that leadership quality of a judge matters much in the better performance of a Court. The session was concluded by Prof. G. Mohan Gopal urging all the participants to strive for providing justice to the poor and needy peoples.

Session 2 : Discussion on Court Excellence Indicators and Model Court Plan

The session commenced by showing a video clip on coordination to emphasize the importance of team work. Then, Prof. G. Mohan Gopal initiated the discussion by asking the participants as to what are the requirements of team work and court excellence. The participants replied saying that it includes dedication and commitment to shared idea; sense of belongingness; commonality; trust and sincerity; mutual understanding; hard work; unity and devotion; sharing the knowledge; no place for ego etc. He said that Constitution of India gives an important role to the legal system as a whole. Article 39-A talks about role of the court which is to promote justice in a legal system that applies to every person whether judges, advocates, staff, litigants or even citizens. Justice is the first goal of the republic. Article 22 (1) ensures that every accused gets a legal practitioner to defend his rights and liberties. The Constitution gives centrality to legal practitioners and judges. Every decision of a Court must defend, promote and protect the Constitutional values. Then he discussed seven areas of Court Excellence viz. leadership and management; planning and policies; resources; proceeding and

processes; client need and satisfaction; affordable and accessible court services; and public trust and confidence. These are the indicators of a model court or an excellent court. Every stakeholder should see that their court performs to the fullest extent. Justice R. C. Chavan and Justice Ravi Tripathi added to what is already said by Prof. Gopal and emphasized that model court should be such that one should feel good to visit a court.

Session 3 : Break-out Group Discussion (Duty-holder wise)

Stakeholders were divided into 4 groups viz. judges, prosecutors, advocates and ministerial staff and each group was instructed to fill a template through discussion among themselves. Each group was requested to discuss and suggest the measures for the improvement in the performance of the court and their group can contribute to it and to suggest how they can modify their functioning for improvement of functioning of other duty holders.

Session 4 : Presentation by Participants (Duty-holder wise)

Representatives from each group of the duty-holders made presentations on the challenges faced by them and gave suggestions to improve performance of the courts and the Resource persons shared their thoughts and ideas on the same. Important challenges as well as suggestions from each group are summarized below -

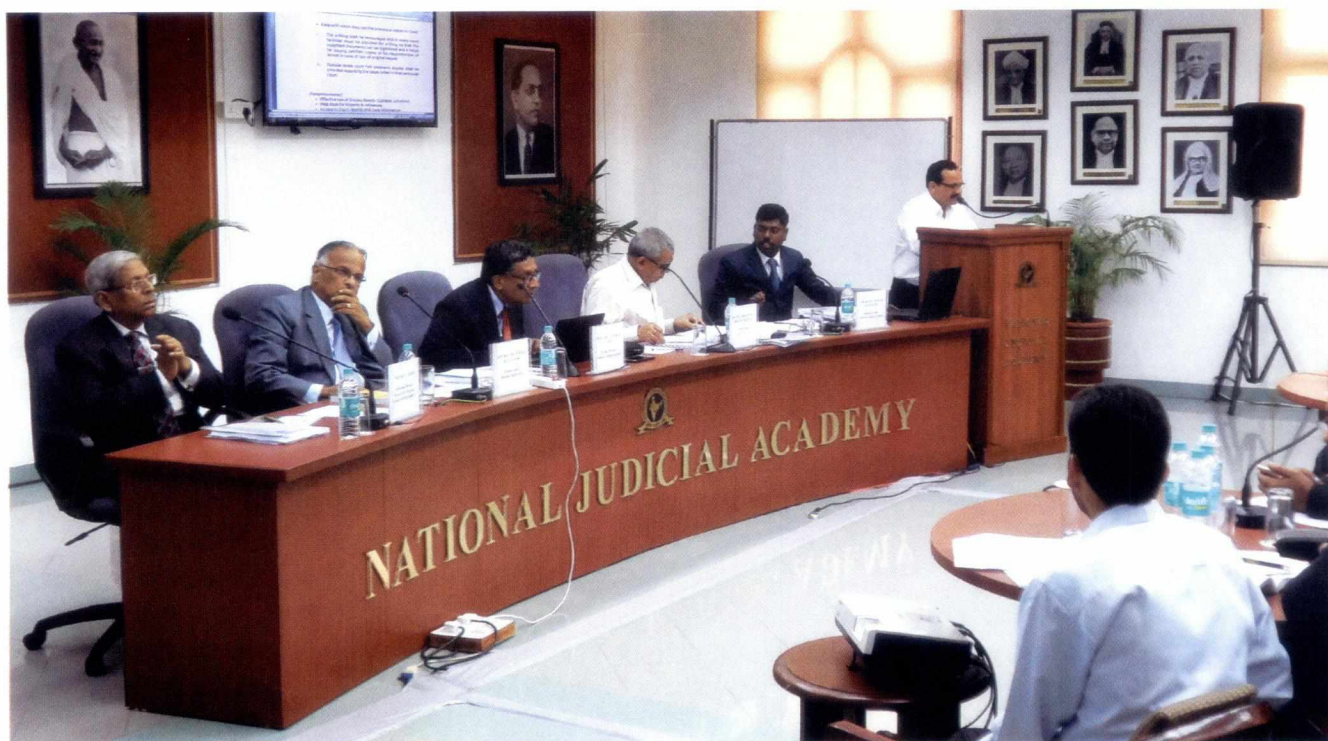
1) Judges/Judicial Officers -

- Challenges faced -
 - Huge pendency.
 - Inadequate supporting staff.
 - Infrastructure constrains like gadgets.
- Suggestions -
 - Motivation empathy and human resource skills from ministerial staff.
 - Training should be given to ministerial staff in context of work profile and human interface.
 - Target oriented appraisals.
 - Amiable and harmonious treatment for advocates and Public Prosecutors.
 - Sensitization in respect of human issues.
 - Prosecutor must ensure prior interaction/conference with witness before he/she deposes in Court.

2) Public Prosecutor -

- Challenges faced -
 - Hostile witnesses.
 - Lack of witness counselling room adjacent to the court.
 - Summons not duly served.
- Suggestions -
 - Judicial officers must avail all remedies up to





issuing of proclamation for securing presence of witness.

- Proper opportunity should be given for production of documents.
- Ministerial staff should properly manage the cases.
- Unnecessary adjournment should be avoided.

3) Advocates -

- Challenges -
- Court infrastructure including rooms, sitting arrangements, steno and staff.
- Entry of unauthorized persons.
- Delay in uploading evidences and Court order on Court website.
- Suggestions -
- Ministerial staff should not adopt any illegal practice in the Court.
- Serving advance copies of pleadings, ruling etc.
- Fair submission should be made by prosecutors in the court
- Judicial officers should be fully prepared for every case.

4) Ministerial Staff -

- Challenges -

- Work load.
- Listing of cases.
- Infrastructure problem.
- Suggestions -
- Introduction of training programme for staffs.
- Listing of cases should be bases on Priority and criticality.
- Adequate support from Judicial Officers and other stakeholders.

Session 5 : Open Discussion: Best Practice on Developing Court Excellence Enhancement Plan

Prof. G. Mohan Gopal initiated the discussion stating that judge is a captain of a court and the role of a captain is to make the team understand the nature of the game. The judge is the advocate of the Constitution. He stated that theoretically advocates/lawyers are officials of the court but at individual level the only thing a lawyer wants from Court is the relief that his client wants, whereas prosecutors are for obtaining a conviction. So, ultimately only judges are left to protect the Constitution. He mentioned three types of truth based on Gandhi's philosophy viz. first God's truth which we cannot access, second is man's truth based on which one could not be punished and third is law's truth where conclusions emerge with strict

application of evidence based on which punishments are given. Thereafter, suggestions regarding the practices that could enhance the court Performance from all stakeholders within their individual capacity was discussed. Some important best practices emerged from the discussion are – grouping of cases, special cause list system, summons/warrants monitoring systems etc.

Session 6 & 7 : Break-out Group Discussion (Court wise)

The participants were divided into 12 groups court-wise and they were asked to prepare a realistic Court Excellence Enhancement Plan for their respective Courts and also set 5 promissory steps/achievable objects which they would implement and strive to achieve in their respective courts for next years.

Session 8: Court wise Presentation on Developing Court Excellence Enhancement Plan

One member from each of the groups was supposed to make presentation on the Court Excellence Enhancement Plan prepared by them. In this session we could conclude only three groups' presentations and discussions thereon. Those were the presentations made by Allahabad High Court Team, Himachal Pradesh High Court Team and Assam High Court Team.

Session 9: Court wise Presentation on Developing Court Excellence Enhancement Plan

Remaining nine presentations and discussions thereon were concluded in this session. All the 12 Court Excellence Enhancement Plans dealt with some common aspects like, proper listing of cases will be made, help desk for litigants and witnesses will be made available, complaint box will be made available, ADR methods will be effectively utilized for effective disposal of cases, coordination between the stakeholders will be encouraged by organizing periodical meetings and addressing the grievances etc. Five promissory steps/achievable objects which they would implement and strive to achieve in their respective courts for next years as set by the teams are summarized as -

- They will try to reduce 5+ pendency at least by 40% till next year by prioritizing such cases.
- They will try to make their courts more litigant friendly by deploying at least one staff member to act as Public Relations Officer or Help Desk for litigants and witnesses in addition to his routine work.
- They will try to enhance the work culture amongst the stakeholders.
- They will set up process/summons/warrants monitoring system to properly monitor the effective services of processes. The assistance from prosecution wing and police authorities will be taken in this regard.



- They will maintain cordial relations between the Bar and the Bench.
- They will take special care of cases relating to women and children as well as of senior citizens.
- They will try to organize special training programmes for ministerial staffs in their courts to make them aware of their responsibility and to guide them in their work.
- They prioritize the cases of under-trial prisoners.
- They will try to provide basic facilities, which can be made available without asking from any special grants and permissions, to litigants and witnesses such as chairs, drinking water etc.
- They will strive to avoid unnecessary adjournments and discourage the adjournment culture in their courts.
- They will deliver judgments promptly and will make it available for litigants online and also in record.
- Will organize periodic meetings with all the stakeholders to discuss the problems/issues and redress the same at the earliest.
- Will conduct periodical inspections.

- Will try to utilize services of ADR whenever possible etc.

Resource Persons provided their inputs on the said Court Excellence Enhancement Plans and shared their experiences. Prof. G. Mohan Gopal concluded saying that this programme is devised to bring all the stakeholders together and get their best for the performance of Court as an Institution.

Session 10: Suggestions and Way forward

Justice R.Y. Ganoo started this session and suggested some methods for enhancement of Court performance in addition to the points raised by participants. He said participants should change their attitude towards the litigant public. This will solve most of the problems. Prof. G. Mohan Gopal suggested that all the groups should take the Court Excellence Enhancement Plans prepared by them to their respective headquarters and revise it by discussing it with higher authorities like Principal District Judges and thereafter, they should prepare final court excellence enhancement plan and send the same to the National Judicial Academy. Justice Ravi Tripathi gave his insights for the betterment of courts. Additional Director, NJA concluded the session as well as seminar by expressing vote of thanks.

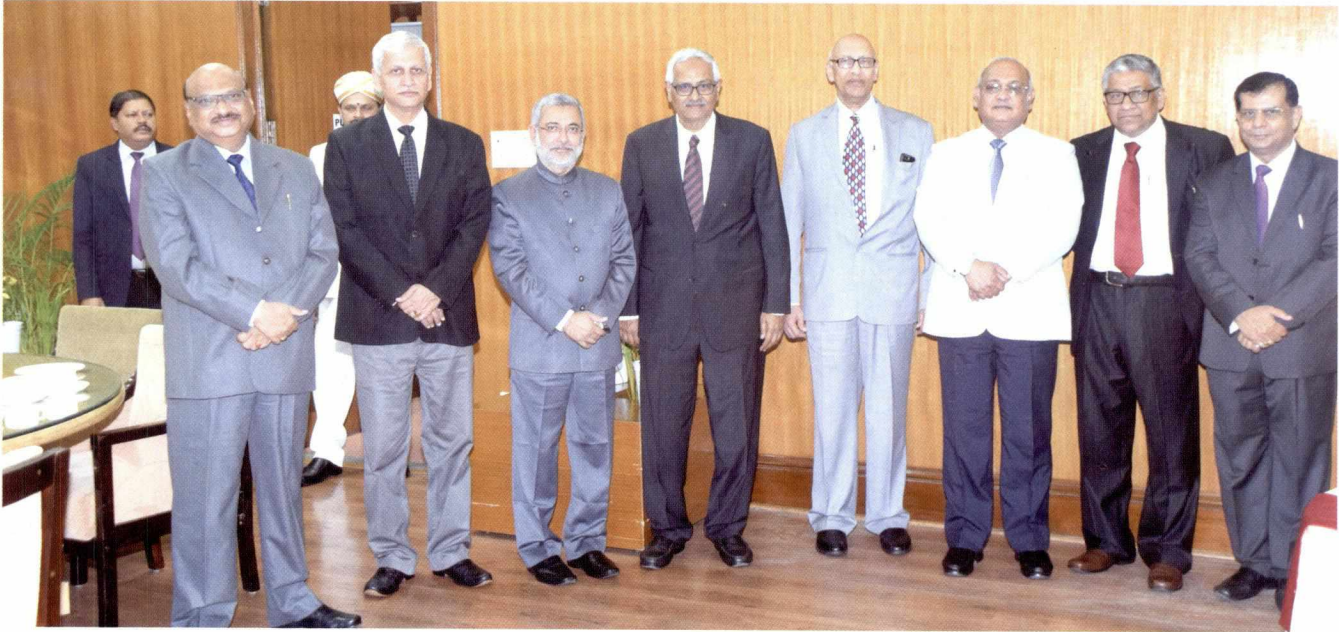


P-1123

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

29th September 2018 to 30th September 2018

Dr. Amit Mehrotra, Assistant Professor
Mr. Shashwat Gupta, Law Associate



The Academy, in collaboration with the High Court of Karnataka and Karnataka Judicial Academy organized the South Zone-I Regional Conference on Enhancing Excellence of the Judicial Institutions: Challenges and Opportunities on 29th and 30th September 2017 at Bengaluru, Karnataka.

Efficient functioning of courts is a non-derogable *necessitas* for proper and quality administration of justice. Continual dialogue, communication and exchange of evolving horizons of knowledge and best practices, between judicial hierarchies-the Higher courts and Subordinate Courts-conduces and nurtures quality justice delivery. Therefore, the Regional Conference was designed to provide a forum for exchange of experiences, communication of knowledge and dissemination of best practices from across clusters of High Court jurisdictions in regions of our country and amongst hierarchies; to accentuate the experience of familial community between the

High Court and Subordinate Courts judicial officers; besides revisiting established and imperative norms of a constitutional vision of justice and appellate review as well as other specified topics.

Justice Kurian Joseph, Justice U.U. Lalit, Justice Mohan M. Shantanagoudar, Justice R. V. Raveendran, Justice Thottathil B. Radhakrishnan, Justice Dinesh Maheshwari, Dr. Justice S. Muralidhar, Justice Raghvendra S. Chauhan, Justice P.S. Dinesh Kumar, Justice H.B. Prabhakara Sastry, Justice G. Narendar, Justice Devan Ramachandran and Justice B.A. Patil guided the discussion.

The theme for Session One was *Constitutional Vision of Justice*. the concept of justice as fairness, expressed in terms of 'liberty' and 'equality of opportunity' was discussed. It was emphasized that as per Amartya Sen, 'Justice' is absence of injustice. The constitutional provisions dealing with the concept of justice, the challenges in implementation and possible solutions



to overcome these challenges were discussed in detail. It was stated that justice is prominently placed in the Preamble to the Constitution. It was deliberated that access to justice is pivotal to the constitutional scheme of justice. For, without access to the courts, justice is illusory.

In order to facilitate easy access to justice, an elaborate web of courts from the Supreme Court to the Gram Nyayalaya is woven. It was stated that jurisprudentially, the concept of locus standi is diluted by creating Public Interest Litigation. Alternative Dispute Resolution mechanism has been invented in order to supplement the traditional judicial structure.

It was highlighted that the plethora of litigation is a clear indication of people's zeal to access justice and their faith in the judiciary. However, it was stated that the ultimate consequence of the failure of the judiciary in securing justice for the people is the popular perception that the State machinery has failed to protect the common man and the very political leaders, who are supposed to uphold the law usually more often end up violating it.

It was stated that the District Judiciary plays a pivotal role in implementing the constitutional vision of justice since most of the cases civil, criminal, or commercial are embedded in the constitutional fabric. It was highlighted that in this rather grim scenario, it is the District Judiciary which plays a vital role. It is, indeed, a misnomer that since the District Judiciary does not have writ jurisdiction, it has a minor role in implementing the constitutional vision of justice.

Sec. 91 of Civil Procedure Code, 1908 (CPC) was discussed and District Judiciary was reminded that it has the power to issue a declaration and injunction

in cases of public nuisance or other wrongful acts affecting the public. Similarly, under Sec. 92 of CPC, the District Judiciary is the guardian of all public trusts. It was also stated that under Sec. 133 Criminal Procedure Code, 1973 (Cr.P.C.), it can deal with public nuisance as well.

It was observed that matrimonial suits, domestic violence cases, from injunction suit to declaratory suits which may involve women and minority rights raise issues of social justice. On the other hand, labour disputes, partition suits, specific performance suits, Debt Recovery Tribunal cases, cases before Commercial Courts, raise questions of economic justice to the parties.

Lastly, the fresh crop of defamation suits, prohibitory injunctions against the writers, the artists and film makers raise constitutional issues of freedom of speech and expression. Considering the pivotal role played by the District Judiciary, the Apex Court has repeatedly emphasised that the Presiding Officers need to play a dynamic and pro-active role during the trial. They cannot sit like mute witnesses at a boxing match. Besides doing the judicial work in the Court, the Judicial Officers also play a crucial role in the Lok Adalats. It was suggested that at every step, it is for the judicial officers to ensure that the Constitutional philosophy is implemented, the faith of the people is secured, and the rule of law is strengthened. It was delineated that delivering justice is not only confined to the court premises, but also extends to our daily activities. Rationality, impartiality, objectivity, fairness are not just the hallmark of a Judicial Officer, it is more so the benchmark for being a good human being. It was stated that the constitutional vision of Justice is not something to be preached in our judgments, but to be practiced in our daily lives. The session was concluded with a remark that it is the duty of every Judicial Officer to implement the constitutional vision of justice not only through his judicial work, but also through his personal conduct and behaviour.

The theme for second session was *High Court and District Judiciary : Building Synergies*. It was deliberated that constitutional objective of justice for all has its true meaning in District Judiciary being qualitative and effective. Fine tuning of the District Judiciary in that regard is in the hands of the High Court. At the same time, effective discharge of its



constitutional obligation by the High Court is also equally contributory for a healthier society. To achieve this goal, a constant improvement in building synergy between the High Court and District judiciary, should be a continuous process.

Articles 214 and 216 of the Constitution of India which deals with the establishment of High Court, Article 233 which speaks about appointment of district judges, Article 234 that talks about the recruitment of persons other than district judges to the judicial service by the Governor of the State, Article 227 of the Constitution of India that enumerate the power of superintendence over all Courts by the High Court and Article 235 of the Constitution of India which explain the control over subordinate Court by the High Court were discussed during the session. It was stated that superintendence power of High Court is both administrative and judicial. But such power is to be exercised sparingly. Powers of superintendence cannot be exercised to influence the subordinate judiciary to pass any order/judgment in a particular manner. It was emphasized that the control, vested in the High Court under Article 235 of the Constitution of India is to ensure independence of the subordinate judiciary. It is exclusive in nature, comprehensive in extent and effective in operation and it is to sub-

serve the basic feature of the Constitution of India i.e. independence of judiciary.

It was highlighted that the Constitutional framework ensures the High Court and District Judiciary to work together with mutual compatibility and co-operation. The District Judiciary decides the matter based on the facts before it, guided by the judicial precedents laid down by the superior courts. The High Court being one of those superior courts helps the District Judiciary by laying down the correct preposition of law in the form of judicial precedents. It was observed that the High Court is the supreme judicial institution of the state judiciary in the state. It was stated that for the District Judiciary, High Court holds the position of not only an elder brother but that of a guardian. The subordinate judiciary is a most significant limb of the justice delivery system as it is the judiciary at the grass-root level. The principles laid down by the High Courts in its orders and judgments would be a guiding factors for the District Judiciary. Passing of a 'reasoned order' by the District Judiciary/Subordinate Courts is a primary duty of co-operation what it can extend to the High Court. Building synergy in the administration work between High Court and District Judiciary was also discussed during the conference.



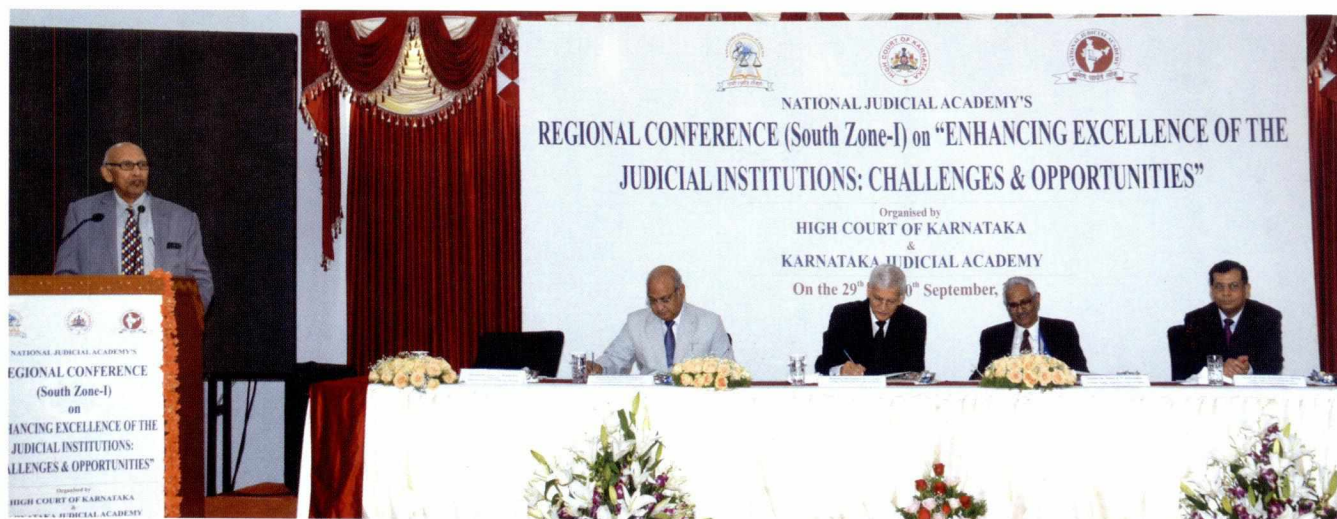
Furthermore the cases *T.G.N. Kumar v. State of Kerala* [2011(2) SCC 772], *Rajendra Singh Verma v. Lt. Governor of NCT of Delhi* [2011(10) SCC 1], *K' a Judicial Officer [Re 2001(3) SCC 54]*, *Guwahati High Court and Another v. Kuladhar Phukan and Another* [2002 (4) SCC 524], *High Court of Judicature for Rajasthan v. P.P. Singh and Another* [2003 (4) SCC 239], *Samsher Singh v. State of Punjab and Another* [AIR 1974 SC 2192], *Registrar General of High Court of Patna v. Pandey Gajendra Prasad and Others* [(2012) 5 SCC 357], *Amar Pal Singh v. State of Uttar Pradesh and Another* [(2012) 6 SCC 491], *Awani Kumar Upadhyay v. High Court of Judicature of Allahabad and Others* [(2013) 12 SCC 392] were discussed during the discourse.

The third session was on *Revisiting Norms for Appellate Review : Consequence of Frequent and Excessive Appellate Interference*. It was stated that the word appeal is not defined. A right of appeal is said to be the hallmark of any civilized system and a universal requirement of life and liberty. It was emphasized that absence of a right of appeal is a glaring lacuna in a system governed by Rule of Law. The concept of appeal in the light of *Nagendra Nath Dey's* case (AIR

1932 PC 165) was discussed during the discourse. It was deliberated that the Law Commission of India had repeatedly emphasized the futility of multiplicity of appeals as an assurance for justice. It was stated that an appellate court does not interfere if the judgment under appeal is shown to be incorrect but, only if it is shown to be wrong. Subjective and objective distinction between the ideas of 'correctness' and 'wrongness' was discussed. It was suggested that multiplicity of appeals and frequent interference is not an ideal solution.

It was stated that nearly every judge has a higher court looking over his or her shoulder, so a reversal should be expected from time to time. Occasional disagreement is simply the nature of a tiered system of legal decision making. Indeed, if appellate court never reversed lower court records perhaps, something would be amiss. It was stated that judge should not ignore adverse authority. If the authority is not distinguishable and is otherwise binding one should follow it. It was suggested that the judge should be very cautious while copying and pasting prior decisions and make sure to update the research to reflect the new developments.

Decision should be logical. It was stated that if sentences and paragraphs are inserted where they



interrupt a line of thought, or where they have no connection to what proceeds or follows, coherence is lost. It was recommended to use heading and sub headings to identify where treatment of one subject ends and another begins. It was stated that a judge in his judgment should use long sentences and paragraphs sparingly, as too much information may bog readers down and make it harder for them to follow the analysis. Lastly, it was suggested that judge should never take anything personally if his/her judgments get reversed, modified or remanded.

The topic for the fourth session was *Access to Justice : Information and Communication Technology in Courts*. The speaker initiated the session by elaborating upon the concept of "Access to Justice". He discussed various facets of the term and referred to the definitions of the term provided in various international legal conventions. Thereafter, various factors which impede access of justice i.e. inordinate delay, exorbitant legal costs, weak enforcement of laws, non-availability of adequate legal aid etc. was discussed. The speaker stated that technology is a necessary tool for expediting delivery of justice. The history of infusion of technology in the Indian judiciary starting from the efforts of Justice G.C. Bharukha in Patna High Court. The speaker also elaborated upon the two phases of the E- Courts Projects in India and discussed the benefits in detail. The last speaker discussed the status of implementation of ICT in Delhi High Court and the district court. The distinction between the concept of online filing and e-filing was drawn and it was stated that the High Court has introduced e-filing which has streamlined

the process of filing a case. The National Judicial Data Grid (NJDG) and the functioning of paperless courts under Delhi High Court was discussed. The speaker cautioned against compulsory imposition of technology and stated that paperless courts should be introduced in a phased manner since the lawyers and the judges would require time to become accustomed to the system.

The last session was on the theme of *Access to Justice : Court and Case Management*. It was discussed that the judicial officer should maintain a persona in the courtroom which should convey an impression of a leader to the court staff and the litigants. Thereafter, the speaker discussed various conditions which affect the productivity of a judge in the court i.e. infrastructure, quality of assistance from the bar, trained court staff etc. It was also discussed that judicial officer should frame a specific protocol or yardstick for dealing with a particular type of case and should follow it for quick disposal. The speaker also delineated various methods for better court management and the behavior which the judicial officer should maintain with the court staff. It was also discussed that the judicial officer should maintain the decorum of the court and should not be very expressive. Furthermore, it was discussed that judicial officers should control their temper inside the courtroom and should not get incensed easily. The speaker also emphasized on confidentiality and stated that the judge should strive to keep their judgments confidential before delivery. Lastly, it was discussed that the time period between the dictation, release and delivery of the judgment should be kept minimum in the interests of justice to prevail.



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
2. Two Judges of the Supreme Court of India
 - Hon'ble Mr. Justice Ranjan Gogoi
 - Hon'ble Mr. Justice Madan B. Lokur
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
2. Two puisne Judges of the Supreme Court of India
 - Hon'ble Mr. Justice Ranjan Gogoi
 - Hon'ble Mr. Justice Madan B. Lokur
3. Chief Justice of a High Court
 - Hon'ble Mr. Justice R.S. Reddy, Chief Justice, High Court of Gujarat
4. Judge of High Court
 - 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
 - Vice Chancellor, 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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