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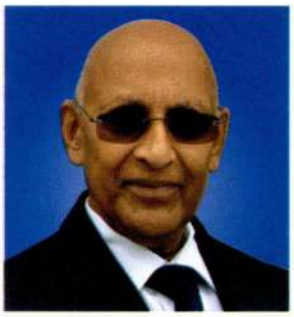
CONTENT



FROM THE DESK OF THE DIRECTOR

During the period covering August and September, 2016, the Academy organized seven programmes scheduled in our annual calendar and two special events, one, a training programme for judicial officers from Sri Lanka and the other, a workshop for Members of the Railway Claims Tribunal.

All nine programmes witnessed robust participation. Participant officers, both within the mainline judicial family, those serving in the Railway Claims Tribunal and judicial officers from Sri Lanka expressed wholesome satisfaction regarding the topicality, relevance, course content, reading material and academic presentations made at the several sessions in each of the events. This is evident from the written feedback received from participants. Several judicial officers and officers in charge of administration in High Courts requested that the duration of workshops be for a period of at least three days. These suggestions will be considered while working on the annual calendar for the next academic year.

As always the Academy is grateful to all our mentors, resource persons and guest faculty, in particular the Hon'ble serving judges, who spared valuable time to come and share their knowledge, experience and wise counsel, often at short notice, this support enriches and motivates us to serve the cause of judicial education, better.

Justice (Retd.) Raghuram Goda
Director
National Judicial Academy

P-986 : ANNUAL NATIONAL SEMINAR ON WORKING OF THE NDPS COURTS IN INDIA : AUGUST 13 & 14, 2016

Prasidh Raj Singh, Law Associate

The National Judicial Academy organized a 2 day seminar to discuss the working of the NDPS Courts as special courts in the judicial system in India. In the course of the seminar, the issues relating to provisions of search and seizure under the NDPS Act, presumption of "culpable mental state" vis-à-vis reverse burden of proof, pre-trial disposal of narcotics contrabands, procedural safeguards and immunities, sentencing policy for drug offenders under the amended NDPS Act, and measures for expediting disposal of NDPS cases. The seminar enabled the participating judges to comprehend the conceptual dimension of sentencing policy, considering the different facets of psychotropic & narcotics jurisprudence.

A view expressed in the deliberations in the seminar was that intention and knowledge play a very significant role in the NDPS cases, and that mere reading of the provisions of the NDPS Act is not enough to hold the accused guilty. The judges must satisfy their legal conscience while deciding the case.

The recent amendments to the NDPS Act, which have broadened the scope of the Act from containing illicit use to also promoting the medical and scientific use of narcotic drugs and psychotropic substances were discussed at length in the seminar.

It was also expressed that an immeasurable majority of litigants spend most of the time in incarceration as they are unable to access competent and timely legal representation. The unsympathetic and stringent provisions of NDPS Act makes their condition even worse. Analogously, Section 37 makes specific offences like those involving commercial quantity non-bailable. In such cases, unless the court is satisfied that he is not guilty, the accused is liable to detention for 180 days, which may go up to 1 year if the investigation is not complete.

The adversities faced by the judges while considering the commercial and small quantity of the narcotics & psychotropic substance such as diversified drugs was also deliberated in the course of the seminar.

The seminar was designed and organized to address the legal difficulties faced by the judges while presiding over the NDPS courts and to provide an equitable manifesto to understand the prominence of

emerging narcotics and psychotropic crimes across the state.

A pre-conference questionnaire was circulated to the participating judges to seek their responses. Out of 50 participating judges, 48 provided their responses to the questionnaire and herein below the responses are graphically analyzed.

Whether the samples are sent to the designated laboratory for analysis and report within 72 hours of seizure?

Yes	No	Not responded
17 (35.4%)	27 (56.3%)	4 (8.3%)

Is there a need for prior training before presiding over NDPS court?

Yes	No	Not responded
44 (91.7%)	4 (8.3%)	0 (0%)

Do you think provisions of the NDPS Act are very rigid and stringent?

Yes	No	Not responded
25 (52.1%)	19 (39.5%)	1 (2%)

Is there a National Fund for Control of Drug Abuse established in your jurisdiction?

Yes	No	Not responded
4 (8.3%)	39 (81.3%)	5 (10.4%)

Have you come across cases with regard to Section 31-A providing death penalty for subsequent conviction?

Yes	No	Not responded
1 (2.1%)	44 44 (91.7%)	3 (6.2%)

Do you think more forensic science laboratories (FSL) should be established for ensuring speedy disposal of NDPS cases?

Yes	No	Not responded
45 (93.7%)	2 (4.2%)	1 (2.1%)

Have you come across any case where police offcials have fabricated the facts and lodged a false complaint before your court?

Yes	No	Not responded
6 (12.5%)	39 (81.3%)	3(6.2%)

How often does an application for pre-trial disposal of contrabands come before you, under Section 52A of the NDPS Act?

Once in two months	Once in three months	On regular intervals	Not responded
5(10.4%)	6 (12.5%)	10 (21%)	27 (56.1%)

On an average, how many adjournments do you think a NDPS case requires?

On an average 2	On an average 4	On an average 6	On an average 7	More than 7
9 (19 %)	11 (23%)	3 (6%)	6 (12.5%)	19 (39.5%)

How often courts allow for re-testing of narcotics samples?

On regular basis	On frequent interval	Only extreme & exceptional circumstances	Not responded
0 (0%)	0 (0%)	38 (79%)	10 (21%)

P-987 : ANNUAL NATIONAL SEMINAR ON WORKING OF HUMAN RIGHTS COURTS IN INDIA : AUGUST 20 & 21, 2016

Nikita Jain, Law Associate

Human Rights is a widely accepted concept in the contemporary society falling within the framework of International as well as Constitutional law. Human Rights are identified as rights of human beings against abuse of power, aiming to promote humane living conditions and developing human personality with a centralized concept of dignity, liberty and equality. With this framework a two-day seminar was organized by the National Judicial Academy on working of human rights courts in India for the presiding officers of Human Rights Courts. The seminar provided a common forum to the presiding officers to discuss the inadequacies in the existing legislation and how to overcome these lacunas with the help of constitutional principles to achieve the purpose of speedy trial of offenses arising out of violation of human rights. The seminar had substantive sessions and case studies for the participant judges giving them an opportunity to focus on specific areas of human rights violations from their own perspective and experiences. Experts addressed the participants on challenges faced by them with regard to adjudication through discussions & their experiences.

On inadequacies in the Protection of Human Rights Act, 1993 (the Act) establishing Human Rights Courts, the deficiencies of Section 30 of the Act were highlighted which included absence of clear definition of offences arising out of violation of human rights, non-categorization of offences to be brought before Human Rights Courts and Commission, no procedure for filing of cases to these courts, lack of provision prescribing minimum punishment and compensation to the victim. Further, the participants shared the challenges faced with regard to taking cognizance of a human rights violation matter by the presiding officer of Human Rights Courts. It was pointed out that inspite of international conventions and constitutional courts, the Act faces lack of proper implementation and seems unsatisfactory in curbing human rights violations. It was suggested that there should be more clarity in the legislative framework so as to make the decisions more effective and speedy.

The constitutional principles of freedom, equality, dignity and fairness safeguarding human rights were discussed with the help of International conventions and landmark judgments. Some important judgments were deliberated upon to throw light on safeguarding Human Rights under Part III and IV of Indian Constitution. Following cases were a part of discussion explaining the concept of Human Rights - *PUCL v.*

Union of India & another AIR 1779 SC 568 and *DK Basu v. State of West Bengal AIR 1997 SC 610* (Concept of Human Rights include Right to dignity), *Delhi Transport Corporation v. D.T.C. Mazdoor Congress, Bhandua Mukti Morcha v. UOI (1984) 3SCC 161* and *Olga Tellis v. Bombay Municipal Corporation (1985) 3SCC 545* (Scope of Right to Life is wide and far reaching to include right to livelihood).

Various instances of human rights violation like custodial death, police excesses, child marriages, bonded labour, trafficking etc. were also deliberated upon. The discussions pointed out that public have high hopes in the judicial system to protect their human rights, however, the Act seems to be a toothless tiger. Also, the subject experts opined that the criminal justice system has turned a blind eye towards the victims falling prey to the compromised system.

The sessions on Protection of Human Rights through case studies were exercise based sessions. Hypothetical problems based on decided cases and practical incidents on common human rights violations in India were discussed. The sessions aimed to bring forward individual opinion of participant judges on the sort of punishment or compensation that could be granted in such matters as the provisions of the Act are silent in this regard. International conventions like ICCPR, ICESCR and UDHR covering broad set of economic, social and cultural rights were highlighted by the experts with the help of case studies on right to life, livelihood and right to healthy and safe environment as a human right.

On violation of human rights by police and armed forces by use of excessive force, resource persons discussed the case *EEVFAM v. Union of India & another (2016)* as an example to point out the incidents of extra judicial executions and forced disappearances by police causing human rights violation. Incidents of fake encounters and mass crimes were also addressed. The concept of 'Impunity' and 'Immunity' were explained, pointing out that immunity accounts for the good faith clause while impunity on the other hand discloses the daunting side of legal system where people abstain from filing the complaints because either they are afraid or they are aware that it would be paid no heed as those receiving the complaints are the ones involved in the crime and that the system itself is a perpetrator.

The session on rights of fair and impartial investigation focused on Section 197 of The Code of Criminal Procedure, 1973 with regard to sanction of Government to prosecute public servant. Various provisions relating to fair and impartial investigation were also discussed along with the doctrine of proportionality and Articles 20 and 22 of the Indian Constitution.

On the theme human rights and justice, it was pointed out that the NHRC was created to fill the gap between the violations of human rights by the state and judiciary's failure to provide redressal to rights. The correlation between rights and duties was discussed and the concept of 'justice' was elaborated upon defining the term as eternal values which are dynamic and keep changing. It was mentioned that the legal and political ideas arose from core values of struggle, sarvodaya, antyodaya, ahimsa, satya and swaraj.

The seminar concluded with many suggestions and recommendations by the participant judges to ensure better protection of human rights in the given legislative framework which included - a collective effort by the judges to eradicate and overcome the present situation, that even in the given legislative framework Human Rights Courts have the power to punish the perpetrators of crime and provide redressal to the aggrieved person. Some measures to control human rights violations emerged through discussion like writing a letter to the respective high courts and to address the grievances to the NHRC. It was also recommended that there is a dire need to amend the Act to include important provisions providing a clear definition of offences involving human rights violations, categorization of cases, providing filing procedure, punishment, compensation and further widening the scope of taking the cognizance by the presiding officer of Human Rights Court. Lastly, it was suggested that till no amendment is brought to the Act centralized rules must be framed and circulated in this regard.

P- 988 : CONFERENCE ON THE USE OF COURT ROOM TECHNOLOGY IN THE HIGH COURTS : AUGUST 27 & 28, 2016

Yogesh Pratap Singh, Research Fellow

The National Judicial Academy organized a conference on the use of Court Room Technology in the High Courts from 27th – 28th August, 2016. The main aim of this conference was to understand the ways in which technology can and is helping the judiciary and the effective ways to implement it. The conference offered various solutions to the concerns raised by participant justices.

On Technical Manpower

The conference began with a discussion on the question whether the High Courts have framed rules in their respective states for creating cadre of technical manpower or not. The issues concerning lack of technical manpower was recorded and discussed as follows :

- The remuneration that is provided to the technical staff is not sufficient and at par with other institutions.
- The lack of technical manpower in courts is one of the biggest problems in the digitization of courts and the State Governments should provide sufficient funds to overcome it.
- In some states, request for the technical appointments have been lying pending with the respective State Governments.
- Investing in e-court projects is necessary as over the years it may end up saving more money for the Courts than what they have invested.
- All the files from filing stage onwards should be digitized and the distribution of judicial work and assignment of cases to the judges should be done electronically to avoid large amount of paper work and file movements.
- In Phase-III, Digital System Integration is to be linked with external entities like police, treasury, jail, registration office, etc. and digital judicial system is to be upgraded so that data can flow seamlessly with other government entities.

On Technology and Functioning of Internet

Various technical details related to internet and its uses were discussed :

- The meaning and the difference between the terms IP, TCP, FTP, and HTTP was explained by the resource persons.
- Basic concepts like domain name and VPN were explained and discussed.
- The speaker also explained how to identify phishing mails and to analyze phishing e-mail header in addition to what IP and MAC spoofing is.
- On the question of finding out the originator of a viral picture, it was informed that the camera details and even longitudinal and latitudinal number can be found on an image to locate and catch the perpetrator. In addition to this, MX Record which is a Microsoft tool that can also be used to extract logs for email details.
- The difference between HTTP & HTTPS with the additional "S" which stands for 'Secured' was explained and its usage in secured environment like bank transactions were also discussed in the conference.

On E-Justice

- The process of complete digitalization from paper to paperless was presented. The benefit and use of technology such as SMS service, e-filing, e-file, display boards, e-post office were also explained in the conference.
- Prison Management System (proposed) that would contain all the personal details of the convict/accused was also discussed.

On Uniform Nomenclature for all High Courts

It was discussed that there are inconsistencies across states in terms of the data categories and criteria applied to the data and this makes it quite difficult to compare data across states. The resolution adopted in Chief Justices conference with respect to evolving a Uniform Nomenclature for all categories of cases in coordination with the e-Committee for the entire country also formed the part of discussion. It was stressed that a common nomenclature would help upgrade data on the National Grid and would be easier to gather information from everywhere and would lead to greater transparency in the system. If there is simplicity in nomenclature, it would be better for the people for whom the system is created, the litigants.

On Issue of Connectivity and National Judicial Data Grid

It was observed that the efficacy of government service provider is a problem in every state, therefore, the private players in the field may be explored but there are policy problems which can be resolved by the government. Participant justices pointed out that there are problems in uploading the data timely and unless there is a better network and better bandwidth, there will be problems.

On Digital Signature

The issues pertaining to digital signature, concept of cryptography, difference between symmetric and asymmetric cryptography, concepts of encryption, decryption and hash function were discussed in detail. The issue of privacy and the role of Computer Emergency Response Team in India were addressed in the conference.

On Information Technology and Computer Forensics

This Session highlighted cyber forensic life cycle which was divided into three parts: (i) Acquisition; (ii) Analysis; & (iii) Presentation.

The process of Digital Forensic Analysis was explained and a practical demo on using forensic tools was exhibited. The frequent errors in submission/review of electronic data were highlighted as some of the issues in computer forensics.

On Information Technology and Cyber Security

Typical human created issues relating to cyber security were highlighted. The concepts such as 'process', 'people' and 'culture' as the three pillars of cyber security were discussed in detail. The details and its sub categories discussed in the discourse were:

The issues covered under 'process' header were:

- Data access & encryption
- Access to external drives
- Backward compatibility of software
- Data storage & retrieval system && Evidence management
- Connection of systems to internet
- Enterprise anti-virus solutions
- Scalability of systems
- IT Security Audits

Key issues under 'people' were:

- Hiring of professionals
- Cost of training
- Public-private partnership
- Benchmarking

And the issues under 'culture' were:

- Use of personal computers/ PDAs for official work
- Use of personal emails/social media for official work
- Access of pornographic websites from official computers
- Handover of Private Key during official transfers
- Change of passwords/ other access control mechanisms during official transfers
- Exceptions to protocols
- IT security of external vendors/ contractors
- Rewards/ recognition/ penalty

P-989 : ANNUAL NATIONAL CONFERENCE ON ECONOMIC CRIMES : SEPTEMBER 3 & 4, 2016

Shruti Jane Eusebius, Law Associate

A two day annual national conference on Economic Crimes on September 3 & 4, 2016 was organized by the National Judicial Academy with the objective of providing the participant High Court Justices with a deeper understanding of economic crimes, the unique nature of economic crimes in various sectors and industries and the impact of such crimes on the industry and on the economic growth of the country. This conference was attended by 17 high court justices. The sessions were presided over by Hon'ble Ms. Justice Sujata V. Manohar, Hon'ble Ms. Justice Ruma Pal and Hon'ble Mr. Justice P. V. Reddi. In the conference, the discussions were focused on economic crimes in the securities market, the entertainment industry, Fast Moving Consumer Goods industry, aerospace and defence industry and the insurance industry. In each session, experts in the industry presented a snapshot of the situation in the industry with regard to economic crime, the impact it has had on the industry and the measures taken to tackle the menace of economic crime in each industry. Discussions were also undertaken on fraud in procurement process and the crime of bribery and corruption.

- The major crimes prevalent in the securities market are market manipulation and price lagging which accounts for 63% of the crimes while insider trading, takeovers and issue related manipulations account for around 20% of the economic crime in this sector. Another area of concern discussed in the session was the economic crimes in the secondary market and in money collection schemes like Chit Funds. The recent case of Subrata Roy Sahara was discussed as an example of crime in which the trade was conducted in a manner to evade the scrutiny of the Securities and Exchange Board of India (SEBI) and the stock exchange. The powers of SEBI as a regulator of the securities market was a focal point of discussion as the participants expressed their opinion on the wide range of powers given to SEBI as a regulator. Concerns were raised about the vesting of legislative, executive and judicial powers in SEBI in violation of the doctrine of separation of powers. The measures taken by SEBI to tackle economic crimes and the issues of concern in tackling economic crime in the securities market were discussed.
- With regard to the entertainment industry, the involvement of the mafia in the industry was highlighted as a major concern. Piracy was highlighted as a crime that is having severe impact on

the industry. The challenges in tackling piracy are manifold as several parties in the industry like theatre owners are involved in piracy and even ordinary people are involved in the trade of pirated movies. Another concern voiced was the involvement of the entertainment industry in money laundering and funding of illegal activities including terrorism. It was opined that though adequate laws exist to tackle crime in the entertainment industry, there are no visible results in curbing economic crimes.

- With regard to the Insurance industry, the measures taken by the General Insurance council to promote transparency and accountability were discussed. In the insurance sector, motor vehicle insurance and health insurance are the major areas where fraud is committed. In this regard, the need for efficient investigation and prosecution of insurance cases was stressed on.
- In the Fast Moving Consumer Goods industry, counterfeiting, grey imports and leakages in the supply chain has a great impact on the sector in terms of loss of profit and in lowering of standards of quality. These crimes also have an adverse impact on the consumer as the standards for quality of the product is not maintained and this affects the health of the consumer. To tackle economic crimes in this sector, there is need for strict enforcement of laws and standards prescribed for quality. Focus on compliance and educating the supply chain entities and the consumer is needed to address the problem.
- Economic crime in the Aerospace and Defense sector is one of the least reported in comparison to other sectors and the government is focused on making procurement transparent, but certain challenges with regard to tackling economic crimes still remain. Transparency and accountability in the procurement process is needed. The measures suggested to tackle the problem of economic crimes in the sector are creation of specialist procurement agency as multi-disciplinary specialists, encouragement/protection to honest officers, abolish section 13(1)(d) of the Prevention of Corruption Act, 1988, improve and speed up prosecution, conducting due diligence of third party before engaging for work with reliable partners and institutionalize out of court settlements. It was also stressed that the focus on prosecuting individuals and blacklisting of entire group company is counterproductive and should be resorted to as the last resort and for grave and serious offenses. The practice of blacklisting a party should be avoided as there are very few players in this sector and blacklisting one party creates a monopoly in the sector. Stricter corporate governance including zero tolerance policies, mandatory implementation of anti-fraud programmes and controls and whistleblower protection were also suggested to tackle economic crimes.
- In order to tackle procurement fraud, government organizations should not be allowed to work in secrecy in dealing with contracts, barring rare exceptions. The reasons for administrative decisions must be recorded and based on facts or opinions of knowledgeable persons, and to tender the Process of Public Auction is the basic requirement for the award of any contract. The weaknesses prevailing in the existing system of procurement are because of the absence of a dedicated policy making department, legal framework and standard documents. The two envelope system was suggested as an effective method to streamline the procurement process.
- Investigation of corruption cases and frauds is becoming increasingly complex and is technology driven especially financial crimes / frauds, cybercrimes and tracing laundering of proceeds of crime. It requires high degree of skill and expertise of investigators. Combating such financial and transnational crimes require domain expertise, knowledge of advanced financial instruments, investigation / asset recovery procedures in multiple jurisdictions, competence in digital forensics, forensic accounting and data analytics etc. The investigating agencies like CBI have inadequate manpower and alarming number of vacant posts which are a hurdle. Pendency of Prevention of Corruption Act cases in 132 Courts across the country is high, over 6,500 cases. And situation has improved since 2009 when on orders of Hon'ble Supreme Court, 92 additional Special Courts were

created. Quick and timely trial would have high deterrence to anti-corruption efforts. In order to effectively control corruption, agencies need to identify areas where scope for corruption is more such as in revenue earning departments, procurement, development departments and enforcement departments. It was also highlighted that in some areas of office administration, seats dealing with service matters, procurement and stores are also prone for corruption. It was further highlighted that periodical review of postings, transfer and job rotation would reduce corruption besides strengthening internal controls such as periodical inspections and provision of incentives for good work.

P-990 : WORKSHOP ON SENTENCING AT THE TRIAL COURT LEVEL : SEPTEMBER 10 & 11, 2016

Gawai Milind Bhaskar, Research Fellow

Sentencing is the culminating and most intricate aspect of every criminal trial. This intricacy is caused by number of factors such as lack of sentencing guidelines by the legislature, inconsistent application of precedents e.g. *rarest of rare principle*, etc., therefore, the National Judicial Academy, Bhopal, organised a two-day workshop for the Principal District Judges to share a common platform where some sort of convergence may be arrived at which would be relevant in deciding appropriate sentences. With this objective the programme was designed and divided into five sessions namely Jurisprudence of Death Penalty, Sentencing in Economic Offences, Sentencing Parameters in Trial of Sexual Offences against Women and Children, Sentencing Parameters in Major Offences against Human Body, Excluding Homicide and Sexual Offences against Women and Sentencing Parameters in cases of Young Offenders. Eminent personalities addressed the gathering on various issues relating to sentencing in various cases particularly capital offences, sexual offences and other major offences against individual and the State.

Following were the broad points discussed in this programmes:

1. **Disparities in Sentencing Practices :** Neither Indian Penal Code nor Code of Criminal Procedure provides guidelines to decide appropriate sentences. It was pointed out during discussions that with vast discretion, the judges decide sentences based on their judicial experience and precedents. Personal judicial experience(s) of judges and inconsistent application of precedents result into unwarranted disparities in sentencing. This is particularly evident in cases of death sentences. Every judge has his own understanding and appreciation of facts and evidence and the lack of converging lines for the judges sometimes results in disproportionate sentencing. A sentence becomes disproportionate if it is unduly severe or liberal, and balancing two parts of the scale of justice is of utmost importance for a judge, rather this is the fundamental task of the judges. Further, discussion centered around understanding and application of *rarest of rare principle* which was evolved in *Bacchan Singh V. State of Punjab AIR 1980 SC 898* which was further elaborated and explained in *Macchi Singh V. State of Punjab (1983) 3 SCC 470*. It was pointed out that this case held that capital sentence can be imposed in such *rarest of rare case wherein the alternative option is foreclosed unquestionably*. In this principle the stress is on the alternative available to death

sentence and if that alternative is foreclosed unquestionably, then only death sentence can be imposed. But this was not understood in its letter and spirit and it has become a fashion to say that on account of brutality, heinousness of the offence and some other grounds, it becomes rarest of rare case warranting death sentence. It was rightly pointed out by the Supreme Court in *Santosh Kumar Bariyar V. State of Maharashtra (2009) 6 SCC 346,* that it shall be the duty of the prosecution to prove that there is no alternative to death sentence in the given case then and then only death sentence shall be imposed. Similarly the accused can cite appropriate facts which support his claim for alternative to death sentence. Without reading the case of *Santosh Kumar Bariyar,* judges should not proceed to decide death sentence, similarly *Swami Shraddhananda V. State of Karnataka (2008) 12 SCC 288,* also needs to be looked into at the time of deciding quantum of sentence in capital cases.

2. **Sentencing in Economic Offences:** Parameters to sentencing economic offenders are supposed to be different because here the victim is not an individual directly but it is the State who is the immediate victim. Moreover, the cases of economic offences have greater adverse impact on the society, especially in today's context where we hear cases of scam of lakhs and crore rupees. The days are gone, where we used to hear corruption of some thousand rupees and rarely lakhs of rupees by the public servants. Therefore, these offences should be dealt with strict interpretation of penal provisions by the courts. It was pointed out that instead of having stringency of law and punishments for economic crimes, there is a lower rate of conviction and ultimately sentencing. Cases of corruption take several years to get final decision from the Apex Court and in the meantime either the accused becomes sick or old and accused claims these grounds for leniency in sentence and is often accepted by the courts too. Another facet discussed was the medium of economic offences. With the revolution in information technology, internet has become the medium of economic offences and there lies the difficulty, because tracing the perpetrator is a herculean task before the investigating agency.

3. **Sentencing parameters in Trial of Sexual Offences against Women and Children:** Here too, the norms of sentencing need to be different, because in maximum number of these offences, the victim is weak, they need protection and hence different parameters of sentencing need to be adopted by the judges. Minimal reference and concern to the victim has prevailed over the years in the independent Indian Judiciary. Very recently, the judiciary and the academia have turned their attention to the sufferings of the victim. Therefore, it was urged to have a separate conference on the rights of the victim. The scales of justice will be tilted towards accused if we ignore or give minimal reference to the agony of the victim. Therefore, the Hon'ble Supreme Court has given serious concerns about the victim's compensation in the notable case of *Ankush Shivaji Gaikwad v. State of Maharashtra AIR 2013 SC 2454* and directed to the registry of the Supreme Court to circulate a copy of this judgment to the courts all over India, but unfortunately, this is not being looked at with the seriousness that it requires. Compensation and rehabilitation of the victim is equally important, rather more important than the interest of the offender, because the victim has suffered at the culpability of the offender and it is the responsibility of a democratic government to ensure internal safety of its people. The very object of the criminal law is to ensure protection of life and limb of every individual, irrespective of religion, race, caste, sex, etc. It is a promise of constitutional democratic State to its people.

4. **Sentencing young offenders** is a delicate task. Young offenders are those who have crossed the age of juvenility but still are not that much matured as compared to hardened criminals. Therefore, sentencing parameters are supposed to be slightly different for them. There are more chances of reforming them into law abiding citizens. Nevertheless, a young offender who has depicted extreme culpability in committing major offences like rape, murder, rape with murder or offences under the POCSO Act, needs to be dealt with harsh punishment. In such cases it becomes difficult

for a judge to balance interest of the victim and young offender at the time of sentencing, because both the sides have competing and conflicting interest in criminal justice system. A judge needs to be very balanced in dealing with these kinds of cases especially, in today's scenario where the public is highly sensitive about such offences and legitimately expect that the holders of judicial power must act judiciously and quickly. This aspect was very evident in the Nirbhaya case of 2012, where the public came on the street demanding quick justice. Such cases may put moral or legal pressure on the judges to respond at the earliest and this may lead to inappropriate sentencing.

5. Since seminars on sentencing become invariably confined to cases of murder, rape, and theories of punishment, the discussions seldom pay attention to other major offences and hence, one separate session was devoted to sentencing parameters in major offences other than murder and sexual offences. Like Section 368-A of Indian Penal Code prescribes death sentence for kidnapping where the speaker pointed out that making a habit of writing at least one page improves judgment writing.

P-991 : ANNUAL NATIONAL SEMINAR ON FUNCTIONS OF THE REGISTRAR GENERAL IN DIFFERENT HIGH COURTS : SEPTEMBER, 17 & 18, 2016

Dr. Amit Mehrotra, Assistant Professor

The National Judicial Academy organized a two-day seminar for the Registrar Generals of the High Courts. The main aim of the seminar was to enhance the understanding of the application of management principles in an organization and to develop harmony and better co-ordination among judicial officers, ministerial staff and other stakeholders in judicial system. The seminar provided a forum to initiate discussions on vital issues related to functions of the Registrar General and to sensitize the participants on management skills training which includes importance of leadership, team building, augmentation of human resource skills and capacity for occupational stress management. The resource persons and participants shared the best ideas and experiences and came out with solutions to deal effectively with the administrative issues.

Broad Points and Takeaways from the Seminar

1. Skills required by a Registrar General: As a spokesperson of the High Court, the leadership and team-building skills of the Registrar-General are very important to maintain the relations between the High Court and the subordinate judiciary. The Registrar General holds a key position in the High Court and thus, good body language and cordial coordination with the subordinate judiciary is very important.
2. It was remarked that Article 235 is a legislative power to exercise the administrative power by the High court to control the subordinate courts. It was suggested that it is the administrative duty of the Registrar General to guide the subordinate judiciary properly. The Registrar General of the High Court is a controlling officer because he is a representative of the power under Article 235 of the Constitution of India and advise the Chief Justice in various administrative matters.
3. The participants were of the view that Registrars are the face of the High Court who express the functioning of the High Court. Registrar-General is a central figure who is instrumental in functioning of the High Court and can do effective planning resource allocation and scrutiny of the institution at various stages.

4. Registrar General should always think for institutional protection and before executing any work, they should always take the formal approval of the administrative committee. Registrar General should work on the present court procedure and practice and try to reform it to bring more smoothness and transparency in the judicial system.

5. Registrar General can play a very vital role to digitalize the judicial system and can bring uniformity in the nomenclature in the digital world. Registrar General could play a vital role in updating the old manuals and court procedures.

6. Registrar General should be very tactful while communicating with the media. Registrar General should prepare well and gather full facts before facing an interview before TV channel and while giving a press release the Registrar-General should make sure that the press release should be seen and approved by Chief Justice of the High Court.

7. Ethics is the most important aspect for a leader. It is very important for a leader to influence others and know the purpose for which an action is to be decided. Registrar General as a leader should have an ability to resolve the problems constructively. It was stressed that intelligent quotient and technical skills are important, but emotional intelligence is the sine qua non of leadership. The concept of task oriented leader and people oriented leader was explained. The different types of theories like Trait theories, Behavioral theories and Contingency theories were discussed. It was stated that the leader should act as a coach, conflict manager and as a troubleshooter. He further stated that leadership involves interpersonal roles, informational roles and decisional roles. It was opined that the Registrar General as a leader should act as an initiator, goal setter, team builder, motivator and a decision maker and should encourage the people to work together.

8. A judge should have an art for identifying trivial and critical case details and accordingly distribute their quality time.

9. The strategy for time management was explained. It was delineated that there should be a realistic and measurable timeline for judicial proceedings and administrative work and it is very important for a judge to follow that set time line. It was stressed that time frame helps to build common commitment among key players and develop an environment for innovative policies.

10. The concept of disaster management and time framework of Finland, Slovenia, Sweden, Denmark, Norway and UK were discussed. For managing time effectively, Covey's Time Management Matrix exercise was conducted.

11. It was stated that there should be effective judicial administration i.e. to make the best use of judge and staff time for efficiently resolving cases through case management process. It was emphasized that one should review the roles, sharpen the saw, read and analyze beforehand to save time and prioritize and schedule the work as per its importance. It was stated that procrastination is the thief of time and should be avoided.

12. It was opined that building up the relation is very important for the Registrar General as Registrar-General is a connecting link between all judges and are instrumental to their work.

13. Conceptual aspects of stress-management, eustress, distress and sources of stress and strategies/techniques for coping with stress were discussed during the discourse. It was stated that stress is a subjective feeling. Recent studies have shown that lawyers, judicial registry and judges are amongst the traditional professions most likely to suffer from alarming levels of tension, depression and stress. Thus, stress is important for any work but it should be balanced.

14. Role of the Registrar General, personality factors, quantity and quality of judicial-output, the aims for organizing the court and the key responsibilities of the human resource department were discussed. It was remarked that one should not be worried or scared of complaints pertaining to

actions taken with clear conscience because work invites it. Registrar-General should be ready to deal with routine issues and challenges and should hold regular meetings with all Branch Supervisors.

15. The importance of the human resources skills as a key factor for success of any organization was also discussed.

16. Various strategies for the preparation of budgets in different states were discussed. Some of the important aspects of the judicial budgeting to avoid unnecessary expenditure and to maximize outcomes were part of the deliberation. It was suggested that Judicial Councils should be in charge of the preparation of plans, both short-term and long-term, and for preparing the proposals for annual budget.

17. E-courts project and implementing the non-paper methodologies were discussed. In this light the exercise of case type uniformity and other important aspects in subordinate courts were the part of the deliberation in the seminar.

P-992 : ANNUAL NATIONAL SEMINAR ON WORKING OF THE FIRST LEVEL COMMERCIAL COURTS IN INDIA : SEPTEMBER 24 & 25, 2016

Rajesh Suman, Assistant Professor

The main objective of the seminar was to strengthen capacity of presiding officers of commercial courts and to facilitate sharing experiences, skills and resources to enhance the quality of justice in commercial courts. The deliberations were done on themes relating to disputes regarding Construction and Infrastructure, Intellectual Property Rights, Carriage of Goods, Distribution & Licensing, Insurance and Re-Insurance and Joint Venture Agreements. The seminar also focussed on procedures relating to collection and disclosure of data and case management. Experts from related domains shared their experience with participants and solutions for challenges faced by participants in adjudication were deliberated through mutual discussion.

Broad Points and Highlights from the Seminar

1. Regarding construction and infrastructure contracts, the definition of 'infrastructure' and different modes of creating infrastructure was discussed. The 'Public Private Partnership' (PPP) model was highlighted and reasons for its emergence as a preferred mode of project implementation, especially in infrastructure projects such as highways, airports, urban infrastructure, transit systems, and ports were discussed. Various features of concession agreements, various forms of PPP contracts, financing of PPP contracts and relevant laws to regulate them were also delved into.

2. Disputes relating to intellectual property rights and the impact of TRIPS on Indian legal system *inter alia* the response of Indian judiciary towards various forms of IPR violations was discussed with case law. Important foreign judgments dealing with emerging principles of IPR and international treaties were highlighted. The low level of innovation in India and positive efforts of Government to improve innovation was highlighted. Deliberation was made on major issues related to the concept of Copyright including automatic protection upon creation/invention in all member countries to the Berne Convention. The discussions covered, protected subject matters, moral rights, broadcast reproduction rights, performer's rights and exclusive rights. The best practices' for judiciary on proper protection of intellectual property includes studying and reliance on foreign laws and cases, insistence on NIL suppression, granting *status quo* orders in pre-launch cases of intellectual property, taking *suo motu* cognizance of reputation of trademarks through

material available in public domain, recognizing the importance of commercial disputes and the relevance of quick decisions to the Indian economy and international trade.

3. Regarding disputes related to carriage of goods, the legislative framework governing carriage of goods in India was highlighted. Various judgments addressing issues regarding carriage of goods were discussed.

4. Regarding distribution and licensing agreements, the current distribution channels focusing on three categories i.e. "supply", "supply and service" and "service" was highlighted. The key terms to be kept in mind while drafting licensing and distribution agreements were discussed. The shift in supply chain management, changes in distribution channels in information technology, communications sector and the music industry and evolving channels of distribution in the banking and financial sector were discussed. Various judgment dealing with disputes relating to licensing and distribution agreements were discussed.

5. Regarding interpretation of insurance and re-insurance agreements and disputes, issues discussed included evolution of insurance industry in India, regulatory framework in insurance and re-insurance sector, power and functions of Insurance Regulatory Development Authority and Insurance Ombudsman scheme. The principles including uberrima fides, proximate cause and contra proferentem were highlighted. The salient features of insurance policy were also discussed.

6. Regarding joint venture agreements and disputes, the discussion focused on elements of joint venture agreements, various clauses of joint venture agreements, shares and restrictions in joint venture agreements and various modes of disputes resolution related to joint venture agreements. The discussion was also done on the forms of disputes in joint venture agreements including issues related to call and put options, reserved/veto matters, control with respect to reserved matters, negative control rights, transferability of shares, non-compete/non-solicit clause, representations and warranties, indemnity and liquidation preference at the time of winding up of a joint venture company.

7. Regarding collection and disclosure of data and case management according to the new procedures of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 the issues discussed, focused on execution of decrees passed by commercial courts, costs to follow events, statement of facts in chronological order, verification of pleadings by an affidavit to reduce perjury or false statements, denial by defendant in prescribed manner and specific denials and disclosure, discovery and inspection of documents.

Suggestions and Learnings from the Seminar

1. Indian courts need to respond to rising global trade and commerce so that suitable environment for business can be created. The problem of delay in adjudication of commercial disputes therefore needs to be addressed at priority basis. The specialized commercial courts is a right step in addressing the issue of delay in adjudication of commercial disputes. This system should be able to create an expert group of judges having specialization in resolving commercial disputes which can enable faster adjudication and will reduce caseload.

2. India became a signatory to the TRIPS agreement in the year 1995 and consequently updated its laws to keep up with the growing demands of the global economy. The Indian justice delivery system should make suitable reforms for proper enforcement of rights provided by new laws in Intellectual Property Rights regime.

3. The high cost of litigation is becoming a growing concern for companies and individuals. The court may ask the parties to submit their estimate of future cost before the commencement of trial. This estimate would enable parties to make decision on how to conduct litigation and will prevent unnecessary litigation.

4. If the provisions related to submissions of documents and case management hearing of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 are implemented in letter and spirit, then there will be a great reduction in the number of cases that goes for trial.

5. There should be increasing use of summary judgments. Proper implementation of provisions related to submissions of documents and case management hearing will simplify issues involved in the case and some cases then can be decided through summary judgment.

6. Judges should frame a time-table for disposal of cases. It is good practice to maintain time-frames or case disposal schedules in courts. It will be of immense help to litigants, advocates, witnesses and judges. When litigants embark on a journey of litigation, the judiciary has a duty to inform the litigant of the time-frame or schedule of cases.

7. The judge should take control of the justice delivery system, not the litigant or any other entity. Judges' control over trial is of utmost importance. A judge should not abdicate his responsibilities for the sake of making a career. Judges should develop the ability to see through the parties' intention and tease out the actual dispute between the parties. This will make disposal of cases far easier than otherwise.

SE-1 : TRAINING PROGRAMME FOR JUDICIAL OFFICERS FROM SRI LANKA : (SPECIAL EVENT -1) AUGUST 20-24, 2016

Sumit Bhattacharya & Shivraj S. Huchhanavar, Research Fellow

The Training Programme for Judicial Officers from Sri Lanka was conducted by the National Judicial Academy, Bhopal (hereinafter NJA) from 20 to 24 August, 2016. The participating judges from the Sri Lankan contingent comprised of a mixed group of judges from High Courts and Subordinate Judiciary. The group was lead by a Hon'ble sitting Judge of the Supreme Court of Sri Lanka. The program deliberated on the emerging issues like cybercrimes, electronic evidence, discrimination and disparity in sentencing related to crimes against human body, economic crimes etc. Subject matter like doctrine of death penalty and its status on a comparative basis between Sri Lanka and India and judicial ethics, circumstantial evidence, reliability of witness and recording of witnesses were part of the seminal discourse. Cross cultural exposure through visit to world heritage religio-historic site "Sanchi" and a dedicated visit to experience the working of a District Court at Bhopal formed an integral part of the scheduled program. The programme provided a rare platform for the exchange of experience of the prevailing status and the contemporary development of the laws in specific domains in India and Sri Lanka. The Sri Lankan contingent of the judicial officers appreciated the endeavor put in by NJA and expressed their keenness to regularly revisit NJA for such continuous judicial education programs.

A brief detail of the day-wise/session-wise description may be encapsulated as under:

On the first day of the program "*Mapping of success of ADR Initiatives in India*" formed a session, wherein the meaning, utility and characteristics typical to Alternate Dispute Resolution (hereinafter ADR) systems were discussed. The session was charred by Hon'ble Justice A.K. Sikri, who deliberated on the success story of the ADR after initial teething problems post its implementation in India. The scope of Section 89 of the Code of Civil Procedure, 1908 (hereinafter CPC) and the advantages and the differences between mediation and conciliation was discussed in detail. It was explained to the visiting judges that the dispute resolution processes falls into two major categories:

- Adjudicative processes, such as litigation or arbitration, in which a judge, jury or arbitrator determines the outcome.
- Consensual processes, such as collaborative law, mediation, conciliation or negotiation, in which the parties attempt to reach agreement.

It was urged to adopt a similar mechanism in the judicial framework of the Sri Lankan judicial system. Answering the query as to what is the consequence of a failed mediation it was explained that Court is an ex –mediation in Section 89. If it fails matters go back to Court. In America, parties prefer to go to mediators than Court. It depends on trusting the process of mediation wherein unlike Court decisions are not enforced upon the parties. "BATNA" and "WATNA" (terms used in mediation was discussed.

Hon'ble Justice Swatanter Kumar deliberated on the topic of "*Case Management Methods Developed in India*". The idea of the topic serves the Constitutional requirement featuring in the Preamble itself, namely, to provide Social, Economic and Political justice. It was reiterated that the ultimate purpose of having a Case Management System in place is ensure satisfaction to the litigant. The efforts of the Supreme Court of India through the Justice Jagannada Rao Committee to identify the reasons for delay in disposal was discussed. It was explained that case management by the judge refers to effective handling of a case. It prompts a judge must foresee the progression of the case as a whole. For ease of understanding the case management process may be divided into three essential areas:

- Use of technology
- Management by the judge of the cases
- Management by the judge of the court and
- Relationship between Bar and the litigant. Litigant being the most important factor

Since the judge controls a court he must be in complete charge of the case and must adopt to the new generation ideologies of being active and not passive. Some of the fundamental issues in Case Management were discussed which included monitoring, adapting novel technologies, e-filing, expeditious disposals and levels of remedies available in form of appeals etc. Therefore the problem of *doctrine of finality* is compromised. Innovating procedural expediency within the established procedural laws was stressed. Exhibiting control over the court, it was recommended that the judge should interact, suggest for quicker disposals, and cut down on adjournments.

Ms. Nappinai deliberating on the Session on "*Cybercrimes and Laws dealing with Cybercrimes*", explained the popular connotation of the word "Cyber" to computers. It was discussed that generally there are two possible classifications, either the computer system is used for committing a crime or the system may be the target of some crime. Cybercrime has essentially has removed the concept of physical territory. It was discussed that as per international jurisprudence the Budapest Convention of 2001, drafted by Council of Europe (CoE) with Canada, Japan, South Africa and US, is the only binding multilateral treaty aimed at combating cybercrime providing a framework for international cooperation between state parties to the treaty. Cases were discussed ranging from *Talk Talk Cyberattack case* the attack was one of the biggest in Britain and may have led to the theft of personal data from among the firm's customers who total more than 4 million, *Ashley Madison Case, Target Targeted 2013 case* in which the departmental store was targeted for a super hack, *Estonia Attack 2007* a case of denial of service attack, *Light Bulb attack 2015*, *Russia virus Attack 2000* etc. The various forms of cyberattacks such as phishing, worms, and malware attacks were discussed. The types of hackers were discussed as *black, white & grey.* Pornography as the most emerging cybercrime quoting Section 67 of the IT Act, 2000 was also discussed.

In the Session on "*Appreciation of Electronic Evidence*" the discourse on the subsequent amendment to the Information Technology (IT) Act 2000, to accommodate the admissibility of digital evidence was initiated. It was emphasized that the appreciation of the electronic evidence and its examination by the Courts should primarily depend upon on the basis of its relevancy, integrity and authenticity. The Electronic Transaction Act No. 19 of 2006 of Sri Lanka was discussed parallel to the IT Act, 2000 on factors of appreciating electronic evidence in the respective countries. Differences between "electronic signature" and "digital signature" was addressed. Sri Lankan case law e.g. *Janashakthi Insurance Co. Ltd. v. Umbichy Ltd.*, *Marine Star (Pvt)Ltd v. Amanda Foods Lanka (Pvt) Ltd. etc.* were contextually discussed. A few leading Indian case law referred to on the topic were *Dharambir v. Central Bureau of Investigation*, 2008; *Ujjwal Dasgupta v State,* 2008; *Tomaso Bruno & Anr. v. State of U.P.*

The Session on "*Disparity and Discrimination on Sentencing Practices*" dealt with the core issue of unstructured discretion leading to "lawlessness" in sentencing. Allegations of "lawlessness" in sentencing reflect concerns about discrimination as well as disparity. The differences between "disparity" and "discrimination" of sentencing was drawn. A few key comparatives were e.g. (Sentencing) disparity exists when 'like cases' with respect to case attributes —regardless of their legitimacy—are sentenced differently whereas, discrimination is a difference that results from differential treatment based on illegitimate criteria, such as race, gender, social class, or sexual orientation. With respect to sentencing, discrimination exists when illegitimate or legally irrelevant defendant characteristics affect the sentence that is imposed after all legally relevant variables are taken into consideration. A participative discourse with respect to gender discrimination being less contradictory followed by citing the evidence that judges' assessments of offence seriousness and offender culpability interact with their concerns about the practical effects of incarceration on children and families to produce more lenient sentences for "familied" female defendants. Moreover, decisions regarding bail and pre-trial release, while structured to some extent by bail guidelines or schedules and by statutes, policies concerning preventive detention also are discretionary. At each of these decision points, discretion creates the potential for disparity. Discussions on sentencing disparity and sentence reform, indeterminate sentence was analysed in which discretion on, offender receiving a minimum and maximum sentence and the parole board determined the date of release was considered. It was concluded with the notion that there is, unfortunately, no way around the dilemma that sentencing is inherently discretionary and that discretion leads to disparities.

The session on "*Usefulness of Death Penalty*" was an interactive session wherein both the proponent and opponent views on preservation or discarding of the capital punishment was argued. The desirability of the sentencing scheme which is "certain" and of optimum "severity" was discussed. Reformative principles to the death row prisoners were argued, placing the collateral sufferings of kith & kin on one hand, whereas, the need of deterrence and retributive objectives being essential to order the society was debated by the other group. Support of leading Indian case law jurisprudence on the subject matter was discussed to construct and demolish arguments by either side. It was brought to the notice that in Sri Lanka:

- For certain criminal offences death penalty is certain.
- There has been a moratorium on the execution in Sri Lanka since 1976.

The Session on "*Sentencing in Economic Offences*" was conducted by Hon'ble Justice Mukundkam Sharma. After emphasizing as to how the economic offences directly has a nexus with the economy of the nation, these white collar crimes often committed by the criminals who had attained credibility and respect in the society were discussed citing infamous cases. The inclusive category of these offences were listed and discussed with exemplification of relevant case law developments. The categories discussed included:

- Money laundering or *Hawala* (a cross border crime).
- Tax evasion
- Sales Tax evasion
- Smuggling
- Illicit Drug Trafficking which destroys youth and include all types of drugs
- Corruption at various sectors and levels
- E-Commerce frauds
- Intellectual Property Rights such as copyright civil and criminal liability
- Bank Scam such as 2G, 3G scams etc.

Considering the specialized fields these crimes occur it was recommended that special investigation teams enabled and trained with special techniques, tools and powers must be considered. It was insisted upon

that, the process of capacity building for investigation, collection and appreciation of evidences to handling of such cases by the judiciary must be perpetual and modernized keeping pace with the demand of the evolving menace of these economic offences. Lifting of the corporate veil and protection and encouragement of the whistleblowers also formed part of the discourse. Relevant new legislations and amendments to suit the change in e.g. provisions for fast track courts, less cumbersome procedure, stringent legislations etc. were considered to be the need of the hour.

The session on "sentencing against human body" was aimed to understand how the objectivity in sentencing can be preserved under changed perception of crime against human body. Offences against human body as enumerated under Indian Penal Code and Penal Code Ordinance of Sri Lanka share common criminal law jurisprudence. In light of increase in sexual offences against women in both countries, subject expert drew the attention of the participants to the offences like Rape, Sexual harassment, Voyeurism and Stalking. It was discussed observed that socio-legal understandings of rape is typically based on the notion of consent. To consent to something is to reverse a prima facie supposition about what may and may not be done. In order to prove Rape offence in court it is necessary to establish *general criminal intent* required for first-degree sexual assault, it has to be proven beyond a reasonable doubt that the accused subjected another person to sexual penetration and overcame the victim by force, threat of force, coercion, or deception. Whereas, in a statutory rape trial, the burden of proof is on the prosecution to show that the victim was under age in a prosecution for rape, it is incumbent upon a state to show that the carnal knowledge was without the consent of the prosecutrix. During the discussion, *Nirbhaya 2013, Baldev Singh, Bharwada, Gurmit Singh and Tukaram cases were discussed at length.*

Law and judicial practice in India on circumstantial evidence was discussed in session-9 of the Programme. Subject expert explained that circumstantial evidence is used in criminal courts to establish guilt or innocence through reasoning. Giving the example of 'behavior of a person at the time of an alleged offense' as a relevant circumstantial evidence, Resource Person opined that the circumstantial evidence play an important role in civil courts to establish or deny liability. It was observed that the mode of evaluating circumstantial evidence has been stated in *Hanumant Govind Nargundkar v. State of Madhya Pradesh, 1952 AIR (SC) 343* and he explained the five principles laydown in this case:

- The circumstances from which the conclusion of guilt is to be drawn should be fully established;
- The facts so established should be consistent with the hypothesis of the guilt of the accused;
- The circumstances should be of a conclusive nature and tendency unerringly pointing towards the guilt of the accused;
- They should exclude every possible hypothesis except the one to be proved; and
- There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

"Recording of Confessions and Reliability of Witnesses" was the next topic of interaction. Commenting on 1930 Privy Council definition of confession, subject expert rightly remarked that 'Confession is nothing but admission of the guilt'. Next segment of the interaction was devoted to understand various forms of confession. It was deduced that there can be three types of confession:

- *Judicial confession* are those which are made before a magistrate or in court in the due course of legal proceedings as also stated in section 127 of the Indian Evidence Act 1972.
- *Extra-judicial confessions* are those which are made by the accused elsewhere than before a magistrate or in court. Extra-judicial confession is generally made before private person which includes even judicial officer in his private capacity.
- *Voluntary and non-voluntary* confession are those which should be free from any coercion or threat.

Striking issues in recent judgments of Supreme Court in *R.K. Anand v. Registrar, Delhi High Court,*

Balwinder Kaur v. Hardeep Singh, Nishi Kant Jha v. State of Bihar and judgments like *Kalawati and Another v. The State of Himachal Pradesh (1953) and Pyare Lal Bhargava vs State Of Rajasthan (1962)* discussed were discussed in detail.

The programme went through another interesting session on "Stages of Moral Development". The deliberation opened up with intense debate on theoretical underpinnings of ethical framework of different societies. Subject expert explained that moral development is the gradual development of an individual's concept of right or wrong, conscience, religious values, social attitudes and behaviour. The concept like 'Ethical Universalism', 'Law of Karma' and 'Divine Paradox' and their influence in shaping the *morality* was explained by the Resource Person. The trio of Indian ethical content: *Kaam*, *Artha* and *Dharma* were also discussed. One of the participant quarried about ethical dilemma, subject expert reflected that ethical dilemmas are situations in which none of the available alternatives seems ethically acceptable to take a decision and it is common that anyone who involved in adjudging the rights of the people often face such ethical dilemma.

Session- 12 of the programme focussed on "Transactional Analysis". Transactional analysis is the method of understanding communication between the people. It helps in analysing and understanding human relationships. Subject expert opined that, as a judge, one needs to quickly understand the ego state of a person before them, be it advocate, litigant, court official or colleague. Utility of understanding the parent, adult and child ego state was demonstrated through many examples. It was asserted that the above ego states are present in all of us simultaneously but, only one of these will be in command at any given moment in time. Furthermore, the *states* do not depend on the individual's age and each presents positive and negative aspects. Many of the participants were agreed to the view that, the skills of knowing the ego state of a person will help them in effective discharge of their adjudicatory, conciliatory and mediatory duties.

The session on "Art, Science and Craft of Judging" was combination of lecture and exercise based discourse. A legal problem based on decided case was distributed a day earlier to the session. With the help of that problem, utility of clear and precise reasons, implication of psychological, educational background and social orientation of a judge was explained.

The usefulness of management discipline in judicial decision making was highlighted in the next segment of the discourse. SWOT, UCHI, stakeholder analysis, group thinking, stepladder thinking and MBTI's four preferences were also explained to the participants.

In the next segment of the discussion Resource Person explained deductive reasoning along the side of deductive logic, inductive generalization and analogy. She opined that deductive logic is the process of reasoning from one or more statements (premises) to reach a logically *certain* conclusion. A syllogism is a kind of logical argument that applies deductive reasoning to arrive at a conclusion based on two or more propositions that are asserted or assumed to be true.

Resource person following cases as an illustration to explain the utility of logic in judging-*Marbury v. Madison (1803 US SC), Youngtown & Tube co. v. Sawger (1952 US, SC), Brown v. Board of education (1954, US, SC), Griswold v. Connecticut (1965, US, SC), Roe v. Wade (1973, US, SC), Jones & Laughlin Steel Inc. (1985).*

Inductive and Analogical reasoning were also discussed in detail. Inductive reasoning is reasoning in which the premises seek to supply strong evidence for (not absolute proof of) the truth of the conclusion. While the conclusion of a deductive argument is certain, the truth of the conclusion of an inductive argument is probable, based upon the evidence given.

Analogical reasoning is any type of thinking that relies upon an analogy. An analogical argument is an explicit representation of a form of analogical reasoning that cites accepted similarities between two systems to support the conclusion that some further similarity exists.

SE-2 : WORKSHOP FOR MEMBERS OF RAILWAY CLAIMS TRIBUNAL : SEPTEMBER 10 & 11 2016

Paiker Nasir, Research Fellow

The National Judicial Academy organized a two-day workshop for the Members of the Railway Claims Tribunal (hereinafter RCT) on 10th and 11th September, 2016. The workshop was attended by the Judicial and Technical members of the RCT. The workshop served as a common platform for the members to air their views and concerns about their day-to-day working and explore appropriate strategies for expeditious resolution of claims in RCT. The thematic areas covered in the workshop addressed issues like jurisdictional charter of RCT, overview of railway accidents and claims, norms of strict liability, components of decision making as well as statutory interpretation of some of the key concepts such as untoward incident, self-inflicted injury and criminal act etc. The workshop also discussed on the need for adopting a non-litigative approach under the superintendence of RCT, methodologies for securing investigatorial support for ascertaining genuineness of claims and approaches to identify appropriate strategies for expeditious disposals in RCT.

The workshop discussed interpretation of key statutory concepts under the Railways Act, 1989 (hereinafter the Act) vis-à-vis the principle of strict liability. It was stressed that section 124A is a radical departure from all principles of tort law which are based only on proof of negligence. Therefore, it was considered necessary to think about the issue from the perspective of the passenger. The Act is a welfare legislation. That must be kept in mind when interpreting the provisions of the Act. Negligence of the victim is nowhere in the consideration of Section 124A of the Act, 1989. On the other hand, while discussing about the evolution of the principle of strict liability, it was debated that the English courts began to evolve a rule – if a person undertook a hazardous activity, implicit in that activity is the principle that, if the activity causes any loss or injury, he was called upon to compensate for such injury. Whereas, in the United States there has been a movement from a fault liability standard to a no-fault liability standard. It was also stressed that in railway claim cases what is to be considered is the reality of the situation for the simple reason that an aggrieved passenger is not expected to be travelling with a camera to capture an accident or an untoward accident that could happen with him.

It was suggested that the problem of procuring and producing evidence is an insurmountable one in India. The most important consideration for a judge while hearing the case is the genuineness of the person

seeking the claim and that of his claim as well. It was also emphasized that negligence of the victim is nowhere in the consideration of Section 124A of the Act, 1989. The critical aspect is that in most cases, a person who stands casually at the door of a bogie or who tries to board a slow-moving train does not have the intention to kill himself or seriously injure himself. At best, he can be reasonably expected to know that there is a possibility of his falling, which may result in injuries or death. But, he certainly, does not have the intention to kill himself. Further, it was observed that even in a criminally negligent act on the part of the victim, the railways generally cannot escape liability.

In the course of discussion it was suggested that the rationale (legislative intent) behind the statute is moving away from negligence based principles to strict no fault liability principles which needs to be kept in mind while interpreting the provisions. The proviso should receive a very narrow and restricted meaning relevant to the object with which it was enacted. What is required is that, the law needs to be read in a manner so as to advance the so called insolvable contradictions which may arise, whenever people want to take undue advantage of the law. It was stressed that the acceleration of disposal of claims be a priority for RCT as an aspect of national importance.

The workshop further deliberated on the *doctrine of precedents*, which is coherent and what it proposes has survived the test of time and has become socially acceptable. The strict construct of the *doctrine of precedent*, which has evolved over centuries has its roots in ecclesiastical law. It was suggested that what is binding in the case of precedent is the principle upon which a particular case had been decided. It is not the case itself that is binding. The study of precedent is essentially the study of jurisprudence or the science of law, which comprises three aspects- legal theory, sources of law, analysis of legal concepts. It was also explored that a judgment consists of three basic aspects- findings on material facts – direct or inferential, statement as to principles of laws applicable to legal issues disclosed by the facts and conclusion and judgment based on the combined effect of the above two. It was also proposed that no judge should ever consciously harm or hurt anyone in the exercise of his/her duties. The elaborate process of reasoning would subsume all prejudices the judge may have.

The workshop also lamented the huge pendency of cases and the participants were urged to give their best to act upon and resolve this most-pressing problem. It was recommended that alternative methods of dispute resolution such as, Alternative Dispute Resolution (ADR) and Lok Adalats must also be explored for disposal of the cases.

The workshop was an attempt to derive a homogeneous approach to passing of orders and disposal of cases with respect to railway claims cases. This was fortified by discussion on a couple of High Court judgments which have attempted to lay down a uniform procedure for awarding compensation and settlement of claims. The participants were also suggested to be liberal in general while interpreting the provisions of the Act. It was stressed that for the dispensation of justice both the litigants must be equally placed.

New Acquisitions of the NJA Library

1. **Title: European Constitutional Law**
   Author: Robert Schutze
   Publisher: Cambridge University Press
   Year: 2016

   Professor Schutz is a scholar of constitutional law with expertise in the law of the European Union and comparative federalism. This book guides the readers through all the core constitution law topics of EU law. Classic case laws extracts are complimented with extensive discussion and critical discussion of the theoretical and practical aspects of the European Union and its laws. Part I of the book deals with constitutional foundations of Europeans Union comprising of constitutional history, constitutional nature, European law and governmental structure and Part II covers governmental powers comprising of legislative power, external power, executive powers and judicial powers. Colorful tables and figures are used to clarify complex topics and illustrate the relationships and processes.

2. **Title: Effective Legal Research**
   Author: John Knowles
   Publisher: Sweet & Maxwell
   Year: 2014

   John Knowles, a law librarian at Queen's University Belfast, explains how to do effective legal research and to get the required information. His experience in this field allows him to explain the core aspects and guide the reader on how to fill in the gaps. It is a practical guide to researching, tracing and understanding legal information, including UK, EU and ECHR materials. This book helps you to make effective use of law resources. It explains how to make best possible use of both online sources as well traditional print sources such as books, legislation, law reports, journals, UK official publication dictionaries etc. It guides the reader on how to make effective use of a law library and how to find information on any subject. The author has adopted an informal and user friendly style for writing this book.

3. **Title: Rights of Prisoners, Vol 1**
   Author: Michhael B. Mushlin
   Publisher: Thomson Reuters/WEST
   Year: 2015

   This book guides the readers with a balanced and comprehensive treatment of prisoners' rights issues. It covers the law affecting prisoners and their rights, and the latest developments resulting from the increase in prison litigation. Rights of Prisoners is a book in four Volumes divided into 18 chapters, this first Volume covers chapter 1 i.e. Prisoners' Rights – Historical Background and General Overview. The second chapter gives a brief overview of prison law. Chapter 3 through 8 concern the basic entitlement that make up normal prison life. It includes discussion of the Eighth Amendment's protection against cruel and unusual punishment, the right to medical care, discrimination issues, particularly with regard to racial and sexual discrimination.

4. **Title: Law and Judicial Duty**
Author: Philip Hamburger
Publisher: Harvard University Press
Year: 2014

Professor Hamburger is well known for his writings on the historical aspect of law, and is more commonly identified as a legal historian for American Constitutional and Administrative laws. The book, in the opinion of the reviewer is one of the most thorough mapping of how Judicial Duty and Judicial Review developed through the ages in America from the time of its colonization by the British to the post-Independence Era. The author takes us back to early modern England and then gradually to the position of law in the cases that were decided before the *Marbury v. Madison Case.* He presents his perspective of how the idea that 'Judges have a duty to decide cases in accordance with the law' is prevalent in the judicial oaths taken in the common law courts of England and America. The book in precise terms draws a distinction between "the power of the judiciary to hold statutes unconstitutional" and "the judge's duty to decide in accordance with the law of the land" The author tries to show how there is a never-ending importance for common law ideals of judicial duty in both colonial and Independent America. The central point of the book is that "judicial review has a wider connotation wherein it emphasizes the practice as a part of a wide-ranging judicial duty to follow the law."

This book is a must read for a Constitutional law enthusiast and for anyone interested in seeking a deep understanding of the evolution of judicial duty and the extent of judicial review in colonial and post-Independence America.

5. **Title: Is Administrative Law Unlawful?**
Author: Philip Hamburger
Publisher: The University of Chicago Press
Year: 2015

This book by Philip Hamburger gives a detailed picture of how the modern administrative state exercises powers in such a way that destabilizes the Anglo-American constitutional law and society. It is an argument that Philip Hamburger supports by extensive study into the present system and the history of what it was previously. The way the author challenges the very legality of the American Administrative Law makes the book a provocative read. The author tries to prove how the ideas that were cast-off during the American Revolution were the reason behind modern administrative law.

6. **Title: International White Collar Crime**
Author: Bruce Zagaris
Publisher: Cambridge University Press
Year: 2015

With the increasingly globalized nature of White Collar Crimes, it has become a matter of great importance in both domestic and international arenas to deal with these as and when they arise. This book focuses primarily on crimes categorized as tax and fiscal offences, customs crimes, extraditions, mutual assistance protocols, foreign corrupt practices act violations. The cases that have been discussed here are current and they considerably update the reader on white collar crime. It provides a thorough and wide-ranging treatment of an extremely specialized field that is rapidly attaining international prominence. This book is not limited to lawyers who deal with international

crimes, lawyers dealing with it at the domestic level would also be able to draw great insights from it.

7. **Title: I am Malala**
Author: Christina Lamb
Publisher: Weidenfeld & Nicolson
Year: 2015

I Am Malala, Malala Yousafzai's fearless memoir, is set in motion on Malala's drive home from school on the day she was shot in the head. The book begins by describing Pakistan's history as well as the history of her ancestors and the northern region of Pakistan, Swat where she lives. Malala shares stories of her family, giving the reader a glance into the culture of Pakistan. Malala's voice has a purity, but also the firmness of the righteous. This book is the remarkable tale of a family deracinated by global terrorism, of the fight for girls' education and of a father who, is a school owner and had encouraged his daughter to attend school and who has a fierce love for his daughter in a society that prizes sons.

Her father Ziauddin Yousafzai who defied Taliban orders by running a private school that promoted the education of girls, believed that the students could fight the enemy with pens, not swords. Malala's faith and her duty to the cause of girls' education is unquestionable, her admiration for her father as her role model and companion is moving and her pain at the violence carried out in the name of Islam is palpable. The book delivers a message to each reader about the value of education while describing about the complexities of women's rights in some countries and access to education. This book will make you believe in the power of one person's voice which inspired the world to change.

8. **Title: Wings of Fire**
Author: A.P.J. Abdul Kalam with Arun Tiwari
Publisher: Universities Press (India) Private Limited
Year: 2015(49th imprint)

Wings of Fire is the story of the former President of India, Dr. A.P.J. Abdul Kalam, about his rise from obscurity and his struggles. It gives a peek into the story of the missiles that have raised the nation to the level of a missile power of international reckoning. As chief of the country's defence research and development programme, Dr. Kalam demonstrated the great prospect for dynamism and innovation that existed in seemingly dilapidated research institutions. This book shows the strength of mind of India and its scientists in achieving excellence in space and missile technology. It also tells us about other great scientists like Vikram Sarabhai who was mentor to Dr. Kalam. The author through this book and the various chapters build a quick connection with the reader, who is enthralled. It strains on the point that the youth should not get discouraged by failures. The way he commits to memory his relatives, teachers who influenced him, makes one wonder. It tells us about his upbringing and about various people that made an impact on his life, and to have the vision, create a team, have self-belief and make it possible. According to Dr. Kalam, source of hidden knowledge is within us, with whom we should communicate.

9. **Title: Labour Law**
Author: Hugh Collins, K. D. Ewing & Aileen McColgan
Publisher: Cambridge University Press
Year: 2012

The book is a well-researched, compiled and organized material which gives a complete picture of the Labour Law scenario under the English Law. The method of presentation is such that it can be appreciated in both European and International contexts. The authors have seen to the fact that the book is appreciated by students and teachers alike. The book contains all relevant case laws which are required to keep pace with the developments in English Labour Laws. In the opinion of the reviewer, the book is a well-written and easily navigable study material which will give a clear understanding of employment laws in United Kingdom.

10. **Title: Principles of Cyber Crime**
Author: Jonathan Clough
Publisher: Cambridge University Press
Year: 2015

In today's world technology plays a very important role, a role which makes it a double edged sword. As we see an increase in the occurrence of cybercrimes, a book on the principles of the crime is a welcome addition to the limited knowledge available on this field. The author notes how the availability of computers is more common and its ease of use has increased over the years. This according to the author, has not only led to lack of accountability, but due to the increased use of bugs in programming and the veil of anonymity provided to the users, it is becoming more difficult to scrutinize the activities that happen on the internet. The author points to three categories of crimes that occur: First, where the computer is the target, second, where the crime is assisted by the use of computers and third, where the computer is the source of evidence, wherein it provides the proof of the crime. The author draws a comparison of positions in mainly four countries, US, UK, Canada and Australia, this in the opinion of the reviewer is a fitting sample, since it is mainly these countries which are both developed and have a high prevalence of cybercrimes. This book proves to be a comprehensive read and a valuable contribution to this remote but developing field of cybercrime.

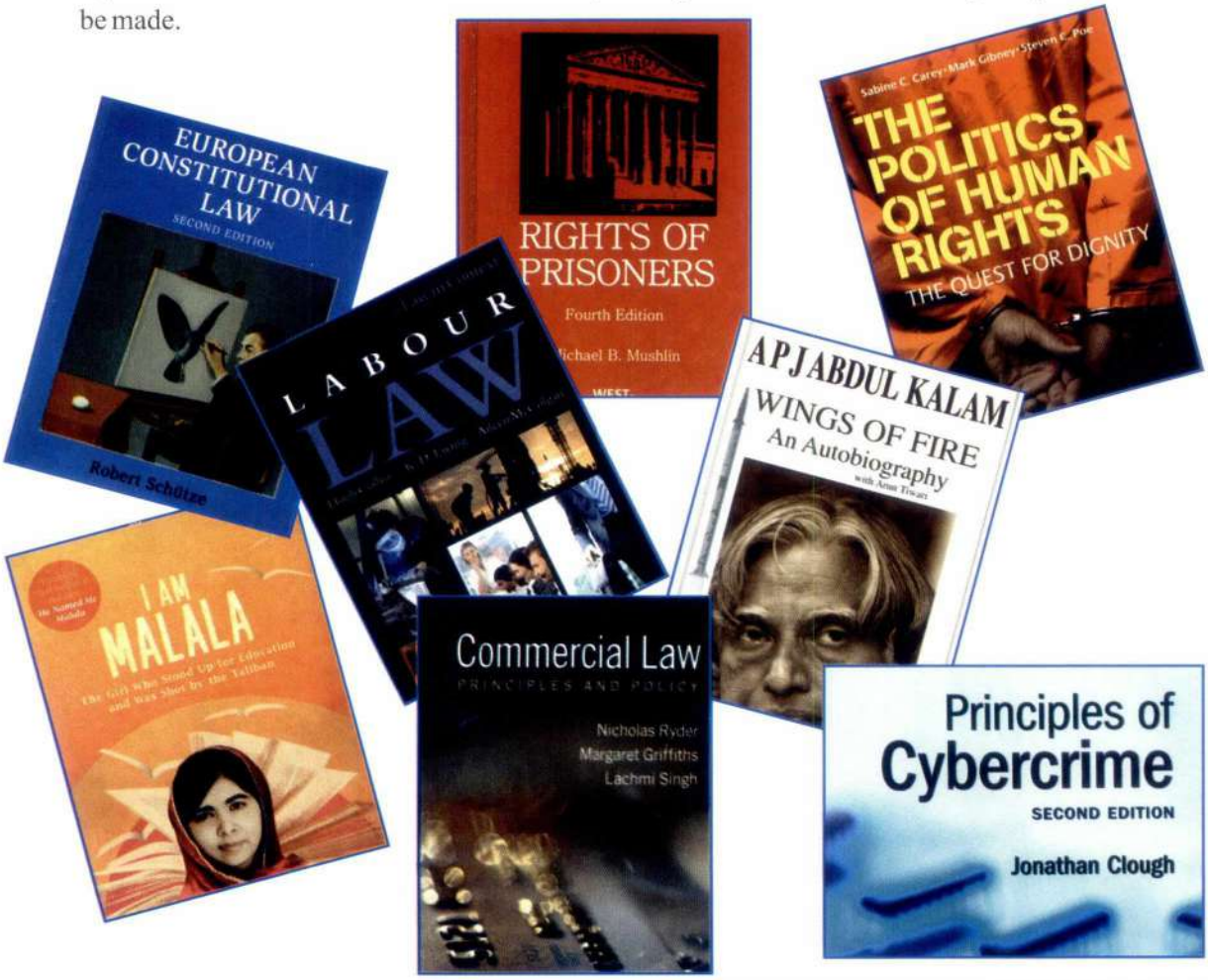
11. **Title: Commercial Law, Principles and Policy**
Author: Nicholas Ryder, Margaret Grifiths, Lachmi Singh
Publisher: Cambridge University Press
Year: 2012

This book explains principles and policies of the UK financial services industry and provides a detailed overview on commercial law and the social and political context in which it is developed. It covers, both emerging areas of commercial law as well as traditional commercial law. Part 1 of the book deals with traditional aspects of commercial law, the law of agency. The second part of the book deals with, the sale of goods including supply of goods and services and covering e-commerce sector as well. The third part of the book deals with international trade and sales law including standard trade terms, Vienna convention on the international Sale of Goods, payment in international sales and carriage of goods by sea. Part four of the book covers tortious liability in case of defective products also analyzing Consumer Protection Act, 1987. Part five of the book covers

issue of unfair commercial practices which include policy on unfair commercial practices, the Consumer Protection from Unfair Trading Regulations 2008 and Business protection from misleading marketing. Modern day commercial law in Part 6 and Part 7 of the book includes Banking and Finance law and Consumer Credit giving an overview of governmental policy, Banking Regulation, Consumer Credit Act, 1974 have also been covered.

12. **Title: The Politics of Human Rights: The Quest For Dignity**
Authors: Sabine C. Carey, Mark Gibney and Steven C. Poe
Publisher: Cambridge University Press
Year: 2010

Human rights is an important issue which strives to recognize, honour and protect human dignity, and the last few decades have also seen a noteworthy advancement in research and teaching on the subject. This book introduces the study of human rights and aims to build interest of the students who are concerned in making a positive contribution to the world. The authors examines the nature of human rights as well as the different responsibilities to protect these rights and introduces some quantitative measures of human rights to illustrate how the respect for, and violation of, human rights can be traced through time and be compared across countries. This book also focuses on how to reinstate human dignity when grave human rights violations have occurred. This is a good learning tool for the students as it not only discusses human rights violations, but also discusses how repression and its aftermath can be dealt with, making students aware of the ways improvement can be made.



Governing Bodies of the NJA

A. The Governing Council

1. Chairperson of the NJA the Chief Justice of India
   - Mr. Justice T.S. Thakur
2. Two Judges of the Supreme Court of India
   - Mr. Justice Jagdish Singh Khehar
   - Mr. Justice Dipak Misra
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, NJA Bhopal

B. The General Body

1. Chairperson of the NJA the Chief Justice of India
   - Mr. Justice T.S. Thakur
2. Two puisne Judges of the Supreme Court of India
   - Mr. Justice A.R. Dave
   - Mr. Justice J. S. Khehar
3. Chief Justice of a High Court
   - Mr. Justice S.K. Kaul, Chief Justice, Madras High Court
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
    - Director, NLIU, Bhopal
11. Secretary General, Supreme Court of India
12. Director, NJA 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 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 is now ready to commence that rather challenging journey towards achieving higher standards of excellence in delivery of justice through human resource development and techno-managerial upgradation.

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.

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