



## *Judicial Education*

# NJA

*Newsletter of the  
National Judicial Academy*

Vol. 08 No. 01  
September 2017

Vol. 08 No. 01 : September 2017

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Printed in India

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## *FROM THE DESK OF THE DIRECTOR*

**T**his newsletter covers academic activities at the National Judicial Academy, during the period August to September, 2017.

Four workshops were organized in August, two for Additional District judges and two for Magistrates; and a refresher course for judges presiding over family courts; a National seminar of Principal District and Sessions judges and different duty/stake holders whose synergies contribute to the quality of justice delivery at the District Court level; and one Court Excellence Enhancement Program involving the several stake and duty holders relevant to this level of justice delivery.

September commenced with a conference for Registrars of the several High Courts, facilitating deliberations on the different practices, procedures and processes followed at several jurisdictions in the matters litigated, with a view to identify best practices and move towards uniformity and standardization, to enhance efficiency, quality and transparency. During the same weekend there was a parallel conference of High Court justices for sensitization on the Goods and Services Tax regime that was recently introduced. A third parallel program was a refresher course held for presiding officers of POCSO Courts. During 15<sup>th</sup> to 17<sup>th</sup> September there were again three parallel programs organized by the Academy; a National Conference for newly elevated High Court Justices, a refresher course for judges presiding over C.B.I Courts and a workshop for Additional District judges. The month concluded with two parallel programs, conducted during 22<sup>nd</sup> to 24<sup>th</sup>, a National judicial conference for High Court Justices and a National seminar for Principal District judges on stress management.

Each of the fifteen programs conducted during these two months were cause for immense satisfaction to the Academy, due to the large number of participant judges and robust and fruitful deliberations during the several sessions. Despite commencing sessions on Fridays instead of Saturdays, as was the format followed during the previous academic year, a large number of judges could avail benefits of

judicial education and training at the Academy and in a variety of disciplines. This to us is very encouraging and a testimony to the immense support extended to the Academy by all the High Courts. We could also utilize the physical infrastructure, in a very substantial measure, on account of the increased participant footfall as a result of often three parallel programs most of the times.

Yet again, we place on record our deep sense of gratitude to the large number of resource persons; serving and retired Supreme Court and High Court Justices, senior members of the legal fraternity and other experts in other domains, who graciously spared time and effort to visit the Academy and enriched the sessions with contributions in terms of profound knowledge, vast experience and invaluable ideas, to enhance the quality of justice delivery. I also acknowledge the tireless and ungrudging effort put in by our staff and faculty to make the several programs a success.

**Justice (Retd) Raghuram Goda**  
**Director**

## P-1026: WORKSHOP FOR ADDITIONAL DISTRICT JUDGES, August 04 to 06, 2017

Yogesh Pratap Singh, Research Fellow



The National Judicial Academy (NJA) organized a workshop for Additional District Judges from **04-06 August, 2017** at the NJA, Bhopal. About 38 Additional District Judges nominated from High Courts participated in the workshop.

The objective of the workshop was to explore challenges in implementation of ADR system; to study sentencing practices and advantages of integrating court and case management systems in Subordinate Courts. The sessions covered topics including issues and practices pertaining to collection, preservation and appreciation of electronic evidence; advances and inadequacies in laws regulating cybercrimes. The workshop also facilitated deliberations on the intricacies and challenges relating to monitoring adoptions within the framework of the Juvenile Justice Law, in India. During the sessions, the participants discussed, evaluated and shared best practices on exercise of appellate and revision jurisdiction of District Judges, in criminal and civil domains.

The workshop was divided into 9 sessions over the duration of three days on *following themes*.

### Challenges in Implementation of ADR System in Subordinate Courts

- The workshop commenced with the introductory address by Prof. D.P. Verma, Additional Director, National Judicial Academy.
- In the first session of the workshop, the speakers highlighted various challenges in implementation of ADR system in subordinate courts such as lack of infrastructure, lack of human resources, untrained mediators, Advocates behavior and no effective legislative approach.
- They also emphasized that mediation is the best form of ADR, however certain category of cases were pointed out which must not be refereed for mediation which involve point of law, interpretation of documents, alleged frauds and act against society & human rights.
- Attention was also drawn to the key factors which can play an important role in effective implementation of mediation such as public awareness, stakeholder's involvement, consistent players and impact assessment.

- In order to have an effective mediation scheme, following suggestions came out from the session
  - ◆ Process of selection for potential Mediator must be systematic.
  - ◆ Adequate number of mediators, who have undergone 40 hour training as prescribed.
  - ◆ Regular refresher course / advance course/ orientation programmes for mediators to resolve various types of disputes.
  - ◆ Periodical review of performance of mediators.
  - ◆ Evaluation of mediation centre.
  - ◆ Review of panel of mediator.
  - ◆ Interaction between mediators of different states to share best practices.
  - ◆ Interlinking mediation centers
  - ◆ Separation of legal aid and mediation centre with positive coordination.
  - ◆ Increase in number of cases refereed for mediation in order to promote it.
- Speakers also mentioned key elements that are required for proper management in Judiciary. They are:
  - ◆ Specialized Judges and Court Managers.
  - ◆ Procedural simplification
  - ◆ Principle of decentralization must be followed.
  - ◆ Time must be properly managed
  - ◆ Continuous education.
- It was observed that no case is inherently complex. The areas that require improvement were pointed out for effective court management. They are:
  - ◆ Length of time for each case.
  - ◆ Defining issues in dispute.
  - ◆ Listing cases.
  - ◆ Setting deadline



### Court and Case Management: Role of Judges

- Discussion took place on how the Judges, as the captain of their boat should control and manage their court effectively.
- Attention was drawn to one of the most essential element of court management that is team work. In addition to that learned speakers also pointed out and explained five important stages of court management namely planning, organizing, directing, coordinating and controlling.
- Distinguished speaker commenced the session by deliberating necessary steps before sentencing.
  - Find out the section under which a person should be convicted
  - Find out the statute.
  - Find out bench mark sentence.
  - Find out mitigating and aggravating circumstances
  - Extent of injury suffered by Victim.
- It was further emphasized that Judgement should be based on the merits of each case and before convicting any person, the benefit of doubt and presumption of innocence must be completely eliminated.
- A Judge must be fully convinced that accused has committed an offence and he must go to jail, only then judgement carries some weight. Various examples were cited by the speakers by way of questions posed to the participants, to illustrate as to how each and every person

possesses certain pre-conceived notions that create an un-intentional bias in their thinking process.

- Judgement of *Virsa Singh v. State of Punjab* and *K.M. Nanavati v. State of Maharashtra* was cited to explain the difference between murder and culpable homicide and provocation respectively.
- Sentencing policy in case of crime against women and children was also explained. It was, however, pointed out that discretion must not be arbitrarily used but it must be used judiciously. Every aspect of the case must be taken into account before sentencing any person.

#### **Electronic Evidence: Collection, Preservation and Appreciation**

- Distinguished speaker commenced the session by citing various practical examples by way of questions posed to the participants, to illustrate as to how technology can be used to extract evidence and what should be the approach of courts in considering electronic evidences.
- The evolution of electronic evidence was explained. In 1984, FBI began to use computer evidence than in 1991, a new term called computer forensics was coined. In India Information Technology Act introduced in the year 2000. Consequently several amendments were made in Indian Evidence Act and other statutes.
- Regardless of whether the evidence is physical evidence, trace evidence, biological matter, or electronic evidence residing on a specialized device, all evidence must be treated the same.
- On where electronic evidence exist, It was explained that Electronic evidence can exist in any kind of storage device, Computers, CD's, DVD's, floppy disks, hard drives, thumb drives, Digital cameras, memory sticks and memory/ SIM cards, PDA's, cell phones, Fax machines, answering machines, cordless phones, pagers,

caller-ID, scanners, printers, copiers and in CCTV footage.

- Role of electronic evidence in crime investigation and various challenges during investigation were also explained.
- The legislative framework under Information Technology Act with respect to electronic evidence was explained in detail with the help of relevant provisions of law and landmark judgements of Supreme Court and High Court
- Various terminologies related to cyber crime were also explained in detail.
- Six essential characteristics of electronic evidence were also explained. Which are as follows:

- ♦ Is invincible
- ♦ Is easily altered or destroyed
- ♦ Requires precautions to prevent alteration
- ♦ Requires special tools and equipment
- ♦ Requires specialized training
- ♦ Requires expert testimony

#### **Laws Relating to Cybercrimes: Advances and Bottlenecks**

- Distinguished speaker commenced the Session by introduction of computers and technology and its effect & impact on our daily life. It was emphasized that how personal conversations and letters being replaced to a large extent by emails, sms, whatsapp, social media etc., which are carried instantly and to as wide an audience as desired, but through third party servers, and can be intercepted, changed, and even hijacked through the use of technology. Computers, smartphones etc., being linked through the internet making it possible for others to access information on your computer device remotely, including by sending you a virus.
- Thereafter, the concept of cyber crime was explained in detail to the participants by citing various recent instances of cyber crimes took place in India and around the globe.



- Various forms of cyber crime such as hacking, spamming, phishing, identity theft, cyber stalking, online defamation etc along with some significant threat vectors were also explained and discussed.
- Various provisions under Information and Technology Act dealing with cyber crimes were also highlighted by the speakers.
- Some questions were posed to the participants regarding their experiences in dealing with the cases of electronic evidence, its reliability and admissibility at the stage of trial.
- What a judge must do when the electronic evidence is tempered was explained to the participants by citing various examples.
- At the end of the session some suggestions were put forward to tackle cyber crime effectively by the court. It was emphasized that there is a need to educate people about the negative impact of internet and to spread awareness about how technology can be utilized in right direction and for the right cause and how through proper training it can benefit investigating agencies in tackling cybercrimes.
- Various provisions under Juvenile Justice Act dealing with adoption were also highlighted by the speakers.
- The difference between the adoption under Hindu Adoption & Maintenance Act and under Juvenile Justice Act was explained. It was emphasized that in institutions children may subject to abuse and will lose their identity in institutions that is why adoption is advocated. Under Juvenile Justice Act, 2015, any child can be adopted and at the same time nothing under J.J Act violates the provisions of Hindu Adoption and Maintenance Act. Even those parents who have a child can adopt a child.
- Speakers raised some important questions to the participants to think over such as whether the atmosphere of the court room is conducive for interaction with a child as the atmosphere of court is always very formal; whether parents are capable to adopt a child.
- Various landmark Judgments of the Supreme Court and High Court on adoption were explained and discussed in the session.

### **Issues relating to Adoption in India under J.J. Act**

- Distinguished speaker commenced the Session by highlighting various issues pertaining to adoption in India. It was pointed out that adoption is a beautiful way to build a family, earlier adopting a child was a need of the family but now the focus has changed now a child needs a family.
- The purpose, objective and meaning of adoption was explained to the participants. It was mentioned that adoption is meant to provide permanent, non institutional care within the family; to the children in need of care and protection namely orphaned, abandoned or surrendered.
- Various international laws, conventions with respect to protection child right were highlighted.
- The session was participative and interacting. Distinguished speakers highlighted and discussed many crucial areas pertaining to criminal justice administration.
- Distinguished speaker explained the difference between Appeal and revision. The scope of revision, Revisional power of court, scope of appeal, duty of appellate court was also explained in the session.
- It was mentioned that in exercise of revision power: the court is not permissible to go into findings of the fact recorded by lower court and the court is not to substitute its own view, simply because another is possible.
- Power of appellate court in Judgement against conviction, against acquittal was explained in detail by citing various provisions of Code of Criminal Procedure and landmark judgements

of the Supreme Court. It was mentioned that as a final court of facts, it has duty to examine evidence and arrives at its own findings.

### Civil Justice Administration: Appellate and Revision Jurisdiction of District Judges

- The session was participative and interacting. Distinguished speakers highlighted and discussed many crucial areas pertaining to civil justice administration.
- It was explained that in case of civil matters, there are two kinds of appeal. One is Regular Civil Appeals u/s. 96 – against judgment and decrees of original jurisdiction and other is appeal against the order. In such a case the court has to re-appraise entire evidence and has to give findings on all questions of facts and law, after appreciation of evidence and give detailed reasoning.
- Various powers of court in case of appeal against judgement were highlighted, they are:
  - ♦ Can set aside judgement of trial court.
  - ♦ Can confirm judgement of trial court.
  - ♦ Can remand the matter.
  - ♦ Can record the additional evidence.
  - ♦ No restriction on its powers.
- Judgement of Supreme Court in *U. Manjunath Rao v. U. Chandrashekhar* was mentioned wherein the court held that In all civil cases, while dismissing Appeal, Appellate Court has to do more than just quoting passages from the judgment of Trial Court. It has to elucidate, analyze and arrive at the conclusion that Appeal is devoid of merit. Another judgement of SC in *Gandhe Vijay Kumar v. Mulji @ Mulchand* was also cited wherein the court held that in Revision Jurisdiction, merely because another view is possible, the Court cannot upset the factual finding. Court is only expected to see whether findings of the Court below are illegal or perverse in a sense that a reasonably informed person will not enter such a finding.



### Fair Session Trials

- The session was participative and interacting. Distinguished speakers highlighted and discussed many crucial areas pertaining to fair session's trials.
- At the very outset the distinguished speaker proposed to conduct an interactive session which would be fruitful for the exchange of ideas and perceptions among the participants. The speaker then elaborately explained the meaning of fair trial and mentioned how fair trials can be conducted.
- The difference between the equal opportunity and fair opportunity was explained. Thereafter, emphasis was laid on the role of a Judge in a trial.
- The judgement of *Ram Chander v. State of Haryana* was cited in which court held that the presiding Judge must cease to be a spectator and mere recording machine. Judge must become a participant in the trial by evincing intelligent & active interest by putting questions to the witnesses in order to ascertain the truth.
- The court has wide powers and must actively participate in the trial to elicit truth and to protect the weak and innocent.
- It is a duty of a Judge to discover the truth and for that purpose he may ask any question in any form, at any time, to any witness, or of parties, about any fact, relevant, personal or irrelevant. It was further mentioned that the discretion of a court does not mean a personal discretion; it is the duty of a court to decide that what should be done and what should not be done in the interest of justice.

**P-1027: WORKSHOP FOR ADDITIONAL DISTRICT JUDGES, August 11 to 13, 2017**

**Sumit Bhattacharya, Research Fellow**



A three day National Workshop for the Additional District Judges was organized on August 11<sup>th</sup> to 13<sup>th</sup>, 2017, attended by nominated judges providing them with a unique platform to share experiences and assimilate 'Best Practices'.

The objective of the workshop was to explore challenges in implementation of ADR system; to study sentencing practices and advantages of integrating court and case management systems in Subordinate Courts. The sessions covered topics including issues and practices pertaining to collection, preservation and appreciation of electronic evidence; advances and inadequacies in laws regulating cybercrimes. The workshop also facilitated deliberations on the intricacies and challenges relating to monitoring adoptions within the framework of the Juvenile Justice Law, in India. During the sessions, the participants discussed, evaluated and shared best practices on exercise of appellate and revision jurisdiction of District Judges, in criminal and civil domains.

The workshop commenced with the introductory address by Justice (Retd) G. Raghuram, Director, National Judicial Academy. In the first session of the workshop the speakers emphasized that mediation is the best form of ADR system and

strategy upon which it is based may be listed as the acronym POS. POS stands for identifying Problems, generating Options, and reaching out for Solutions. On the question as to which time is right for reference of cases to mediation? It was explained that any time is a good time for reference of cases to mediation. A brief account of the major challenges faced in mediation was discussed including infrastructure, human resource, management and procedural issues such as inadequate case management, excessive interlocutory orders etc. Reasons behind failures of mediation processes was delved. What can't be referred to mediation was also discussed e.g. cases which involve point of law, interpretation of documents, alleged fraud, acts against society/human rights etc.

Dealing with case management, the five elements of management i.e. planning, organizing, directing, co-coordinating and controlling were underscored. The essentials for a court to optimize management was dealt in detail touching on the important points such as: a) need to remove non-value added items, b) the "Pareto Principle" (also known as the 80/20 rule, the law of the vital few, or the principle of factor sparsity) states that, for many



events, roughly 80% of the effects come from 20% of the causes was relied to explain the work load in the court, c) Principle of Paradigm (foundation) shift, which needs to apply in work, d) sharing of “best practice” to assist in proper management and e) use of judging resources in a good and optimum way, f) application of procedural simplification, g) decentralization, h) latest first principle etc. Requisites for case management helps to improve efficiency in work, reducing delays and cutting the costs. In addition to above, detailed discussions on stages of case management by referring to the relevant provisions of CPC, Indian Evidence Act pertaining to the recording of evidences, admission of correspondence etc was done.

While dealing with the issues and challenges in “Sentencing Policy” it was discussed that following broad points may be adhered to: a) Personal views should not be reflected in an order, b) a level of consistency must be observed, c) a standardized format is often helpful, d) reasoning and justification for quantum is an integral part and must form a part of sentencing. Both aggravating and mitigating factors must be considered before sentencing. The implications of sentencing owing to the media ramifications remains a sensitive issue for branding a judge. The meaning and scope of sentencing was discussed. Stages requiring sensitivity while sentencing i.e. “bail” was pondered.

The session on “Law relating to Cybercrime” was conducted using video and presentations. The speaker at the outset landscaped the session by a brisk updating on the historic perspective of the digital world and enlightened the participants about pros and cons of social media. The current statistics of users of social networking was projected to astonishment, that 91% of adults and 84% of children have 'facebook' (FB) accounts, and are keen users to these online sites. Moreover, 5-6 % of these accounts are fake. One-third of the child accounts are under 13 years. An inclusive account of the kinds of commonplace cybercrime was projected and discussed in detail such as:

- Unauthorized use of trademark.
- Identity fraud.
- Unauthorized use of copyright.
- Online defamation. Privacy v. Publicity issues.
- Disclosure of confidential information.
- Corporate espionage.
- Cyber bullying.



One of the pragmatic problem is that the Govt. does not own the cyber space, it is owned by private corporates, hence control over it by the Govt. becomes all the more difficult. Absence of uniform rules at the international level makes it further cumbersome. The Govt. of India notification of the “E-Mail Policy” on 18<sup>th</sup> February, 2015 was discussed. The effects of e-commerce including the contractual issues posed by click wrap, browse wrap and shrink wrap was discussed. The case law *Banyan Tree Holding (P) Ltd. v. A Murali Krishna Reddy* and *WWE v. M/S Reshma Collections* was highlighted while discussing the jurisdictional issues. On how evidence can be collected from social networking sites *United States v. Joshua Meregildo* was cited. Discussion on process to block, deregister a website and the as to what is to be done by the judges was dealt. The points of blocking were discussed as a) end-user level (using end-user filters e.g. parental filters), b) Organizational level, c) State or national level (e.g. Saudi Arabia 86% success rate), d) Completely & indiscriminately. As to the question of who can block? It was mentioned that a) individual (e.g. user or uploader), b) an aggrieved person (Grievance Officer, intermediary Rules), c) An

artificial person. Those who have been empowered to de-register or block are a) An intermediary (Grievance Officer appointed under law), b) ISPs/ Dept. of Telecom (Licensed by DoT, therefore by Court Order), c) Uploader of the content, d) Investigating Officer, e) Group Coordinator, Ministry of Electronic and Information Technology (MeitY), f) CERT-In (computer emergency response team), under Section 70B of Information Technology (Amendment) Act 2008., g) NIXI (The National Internet Exchange of India) a government non-profit company established in 2003 to provide neutral Internet Exchange Point services in India. It was established under section 25 of the Companies Act 1956, with the Internet Service Providers Association of India (ISPAI) to become the operational meeting point of Internet service providers (ISPs) in India., and h) A police officer under section 79(3)(d) of the IT Act, 2000 without a Court Order (A police officer not below the rank of inspector) or any law enforcement agent of appropriate Govt.

Dealing on electronic evidence, it was discussed that meta-data helps established originality of any electronic evidence. On the creation of evidence it was explained that a) on front end it is created by the user and b) the machine creates it at the back end. It was discussed in details citing a number of case law as to what has been recognized by the

Supreme Court of India as an electronic evidence (e.g. e-mails, digital photo, video, IMEI nos. etc.). It was narrated that “source” and “authenticity” are the two key factors to be considered by Courts while appreciating electronic evidence. Best evidence must be considered as relied upon by *Tomaso Bruno v. State of UP*. Three basics to be considered as repeatedly emphasized in various cases while appreciating electronic evidences are a) Standard of Proof, b) Source of authenticity and, c) Best evidence Rule referred *Omychund v. Barker* (1745) 1 Atk, 21, 49; 26ER 15 33.

The Session on Issues relating to Adoption in India with special reference to the J.J. Act followed as the last session of the second day. It was expressed that adoption is a beautiful way to build a family, earlier focused was made on the interest of parents but due to changing scenario, it shifted to interest of child. Distinction between the adoption under Hindu Adoption and Maintenance Act and under Juvenile Justice Act was discussed. The purpose of bringing the concept of adoption in Juvenile Justice Act is to make it secular so that everyone and child should get a family. Three points to be considered by courts before issuing adoption order by the Courts are:

- Adoption is for welfare of child.
- Due consideration to wishes of the child.



- No payment or reward has been made in consideration for the adoption.

As per Section 61(2) of JJ Act proceedings must be in camera and disposal of case within a period of two months. Discussions at length on the procedure laid down under the JJ Act for adoption of orphan, abandon and surrender children was done and three categories of adoptions were dealt with:

- In- country adoption
- Inter- country adoption
- Adoption by step- parents/ relative adoption

A comparison of meaning of adoption defined in Section 2(AA) of JJ Act of 2002 and Section 2(2) of JJ Act of 2015 was done. At the end, it was suggested that the adoption cases must be looked with sensitivity and accorded due priority. Moreover, statutory timelines as stipulated must be strictly adhered to in the interests of the children who can't represent for themselves.

The third day of the workshop was dedicated to the appellate and revision jurisdiction of the district and the sessions court and fair trial. The speaker deliberating on the jurisdiction, based the point of discussion by exemplifying the statutory provisions of Protection of Women from Domestic Violence Act, 2005 (hereinafter DV Act) and Sections 23, 28, 29 and 36 of the statute were discussed with reference to Sections 179, 372, 378 of CrPC. *Kunapareely v Krinapareddy Swanna* (2016) 11 SCC 774 has cited while discussing and affirming the power of magistrate to grant permission regarding amendment of a complaint. In case of the procedure to obtain relief under the aforementioned Act, it was stated that if there is no explicit mention made under the Act then as per Section 28 and 36 and Section 5 of the Cr.PC will prevail. Discussions on how to write a judgment wherein difficulties are apparent owing to 'precedent' of higher courts, thereby a conflict arises in the minds of a judge in a particular case, as to how to deliver justice which is the primary duty of a judge was debated and discussed. Various

operational queries were aired by the participating judges which was effectively argued, debated and answered by the resource persons. While discussing magistrates power to review or recall etc. para 64 and 65 of *Super Cassette Industries Ltd. v. Music Broadcast Pvt. Ltd.* (2012) 5 SCC 488 was discussed. In *Shalu Ojha v. Prashant Ojha*, (2015) 2 SCC 99 explaining the power of a magistrate to grant interim relief under the DV Act, *vis a vis* power and the limitations on the Sessions Court in its appellate jurisdiction was been discussed with reference to para, 18, 19, 20, 21 and 23 of the case law. On a separate note it was emphasized that since the participants are from the last or ultimate Court of facts, they should not remand the cases unless under situations wherein issues are not framed by the trial Court etc. It was also discussed that cognizance can be taken at various stages, it should not be understood that cognizance can be taken only once.

Objectives and best practices on "Fair Trail" was discussed in a participatory manner by citing various case law including *Thakur Das v. State of Madhya Pradesh*, AIR 1978 SC 1, a Sessions Court is duty bound to was consider in details the facts of each case and then frame charges. Cr.PC provisions i.e. Sections 193, 203, 204, 209, 227, 228 and 226 were discussed and debated in detail citing relevant portions of many leading Supreme Court case law such as:

*Dharmpal v State of Haryana* (2014) 3 SCC306; *Chandra dev Singh v Prakash Chandra Bose* 1963 AIR 1430; *State of Bihar v prof. Ramesh Singh* 1978 SCR(1) 257; *Sailendra Kumar v State of Bihar* Order dated November 11, 2001; *R. Rama Subbaraya Reddier v Rengammal* AIR 1962 Mad.450; *Kelaka Ramana @ Standyjohe v State* 2003 CrLJ 322; *State of M.P v Khiza Mohammad* 1996 SCC Online MP76; *Amarnath v State of Haryana* 1978 SCR (1)222; *Thakur Das v State of M.P* 1978 SCC (cri)21 etc.

The sessions were participative engaging dialogue and arguments.



**P-1028: REFRESHER COURSE FOR FAMILY COURTS, August 11 to 13, 2017**

**Ms. Paiker Nasir, Research Fellow**



The National Judicial Academy organized a three-day Refresher Course for Family Courts. The course was attended by 36 participants. Family Courts are conceived with a view to facilitate conciliation and speedy settlement. The 59<sup>th</sup> Law Commission Report recommended that Family Courts adopt a radical approach distinct from other courts. This was reiterated in the 230<sup>th</sup> report of the Law Commission. In the light of these recommendations, the Academy has been organizing programmes for Family Court Judges. These refresher courses are designed to facilitate Family Court Judges comprehend Family Law jurisprudence. During the discourse participant judges shared experiences on various issues and concerns that arise during family disputes and identified the best practices in dealing with them satisfactorily and expeditiously. Deliberations were made on several optimal approaches for settling family disputes and proper role of judicial officers while addressing family law issues. Effective use of ADR/Mediation methods in resolving disputes formed an integral part of the discourse. Psycho-social requirements in the judicial persona dealing with disputes coming up for resolution was also a part of the deliberations.

The first session, “*Family Courts Functioning: The Constitutional and Legislative Mandate*”, discussed the need to understand the concept of equality, development of constitutional rights and how these rights have translated to family law. There are *various* issues involved in the functioning of family courts like- challenges in boxing emotions in the framework of law; understanding a rights based approach; creative interpretation of evidence to reconcile them with a wider objective of gender justice. Therefore, it is significant to understand the difference between Constitutional Equality and Equality in family law. The discussion stressed that family court judges should know how to balance rights and how to deal with discrimination, which could be understood in the light of Article 14 of the Constitution of India that provides for equality and Article 15 that talks about prohibiting discrimination.

Session two “*Judging Family Disputes : Appropriate Judicial Attitudes*” emphasized that the task of family court judges is much different and difficult as compared to other judges since they adjudicate matters that involve human beings and their emotions. It was suggested that appropriate judicial attitude may be attained when a judge

possesses sense of justice; is a good listener; quick to grasp; free from emotional biases; analytical abilities; good communication skills; mental flexibility and knowledge of life. It was also opined that a family court judge should be open to devise new solutions and they must possess a sense of propriety. A judge should work and derive values from legislations and not from his inherent social values. Law is to be implemented with fidelity. Judges should not be prejudiced otherwise the judge is not doing his duty because then the judge is not performing the functions of law.

The third session "*Gender Justice and Gender Bias: Maintaining Equilibrium*", elaborately discussed the meaning of "Bias" and how it can be identified in oneself. It is inevitable for a judge to be unbiased. It was suggested that to eliminate bias a judge, while adjudicating should conceive every case without leaning towards any of the parties be it aged litigants, children, women etc. or any other thing that is based on impression. Rather a judge must go deep into the facts, records and related law in every case.

The session on "*Resolving Family Disputes Through Effective ADR Methods*", discussed the importance of ADR and how it can be used to impart timely justice. It was highlighted during the discourse that in case of reference to mediation it is not the case but the parties who are referred to mediation and therefore it is the duty of the judge to determine the cause of conflict and perceptions of

the parties before making any referral to mediation. In the light of many case laws it was stressed that mediation is well adopted in matrimonial disputes because such pragmatic approach takes into account emotions, sentiments, social compulsions and responsibilities of the parties; it is different from other forms of conflicts; there is always a win-win situation in mediation which helps in amicable settlement of disputes. The session also discussed Mediation Process like- Introduction: Neutrality and Rapport Building, Joint Session: Relevant Information, Single Sessions: Anger Management and Flexibility and Agreement: Contents and Language.

Session five "*Maintenance and Divorce Proceedings: Radical Approach of Family Courts*", underlined that in family disputes, time is the essence and it is very important for judges of the family courts to give timely decision so as to reduce the trauma faced by the parties. It was discussed that there is a lot of difference in the working of family court and regular courts. A family court judge needs to inculcate and cultivate different virtues since it is not just the application of law that is important rather it is how a judge conducts her/himself and what kind of approach s/he has towards matrimonial disputes. Judges should be radical in handling matrimonial disputes and the focus should not be just on saving the marital bond rather, they must understand that marriage is not something that needs to be preserved from outside







pressure. It's a decisional autonomy, and nobody should be forced to live in an unhappy relationship.

The session on *“Role of Family Courts in Protecting Rights and Interests of Children”*, stressed that a family court judge should be able to understand psychology of children and must be acquainted with good communication skills in dealing with children. The rights and interest of a child are inter-dependent. It was suggested that in number of cases custody becomes a lethal subject matter of litigation. In such matters it is the duty of the judge to reduce the hostility between the parents and to make them realize that the child is not to be used as pawn to win the game. It was stressed that parenting plan is significant for the welfare of a child. In matters where the child is depressed, abused or ill-treated the judges should make all possible efforts to provide for counsellors who can handle the matter in a gentle and non-threatening atmosphere. Most importantly while deciding the best interest of a child, the judge must

keep in mind the consequences of his decision on the very existence of the child.

The session on *“Couple Therapy: Significance & Efficacy”*, started with the note that complications in any matrimonial relationship results in loss of faith, warmth, respect and bonding between the parties. Couple Therapy help couples overcome these immediate problems and improve their relationship. Therefore, a family court judge must refer the couples to therapy sessions with an expert counsellor. It was suggested that treatment through couple therapy is very effective and motivates the parties to recognize their individual contribution to the problem. Couple therapy helps in- resolving the problem, reducing problem symptoms, increases intimacy, increases role flexibility, better communication, balance of power and better relationship with the family. It was also pointed out that when matters are not resolved through mediation then, couple therapy can be preferred as it has the potentials to go deep into the matter and subsequently, resolve it.

The last session was an open discussion on *“Challenges and Constraints Affecting Working of Family Courts”*. Participants elucidated that: many courts do not have counselors or psychologists attached to family courts; difficulty in handling civil side attached to family disputes; lack of proper infrastructure, for instance- absence of visitation rooms etc.; no video conferencing facility for family courts; insensitive ministerial staff etc. are some of the many challenges that are faced by family court judges across the country.



## P-1029: WORKSHOP FOR MAGISTRATES ON ANIMAL RIGHTS

August 18 to 20, 2017

Mr. Prasadh Raj Singh, Law Associate



The National Judicial Academy organized a three-day workshop for Magistrates on Animal Rights from 18<sup>th</sup>-20<sup>th</sup> August 2017. *The Workshop initiated discussions on various issues like- Jurisprudence and Ethics of Animal Welfare: Approaches to Legal Reform, The Prevention of Cruelty to Animals Act, 1960: Understanding the Concept of Cruelty, The Prevention of Cruelty to Animals Act, 1960: A Welfare Legislation for Animals, Wild Life Protection Act, 1972: Forfeiture of Property, Prevention and Detention of Offences, Illegal Poaching and Hunting: An Emerging Threat, Importance of Wild Life Investigation to Combat Organized Wild Life Crimes and Animals as Property: Ownership and Liability.* The workshop was attended by 39 Magistrates of High Courts.

During the course of discussion it was deliberated that animals working in the films have to be registered with the Animal Welfare Board of India. Further the experimentation on animals can be used by an institution for the purpose of advancement of new discoveries. However, it is mandatory that institutions conducting experiment

must be registered with CPCSEA, otherwise it will be illegal and would attract penalties.

It was deliberated during the workshop that illegal slaughtering should be stopped and if it is to be done, it must be done without unnecessary pain and suffering on animals. Rules to prevent unnecessary pain and suffering must apply in all cases. A reference was also made to the judgment of *Lakshmi Narain Modi v. Union of India* where repeated instructions were given by the Hon'ble Supreme Court to all State Government to strictly comply with all statutes pertaining to slaughter houses and ensure that cruelty should be discarded. It was further emphasized that magistrates while handing over the custody to an infirmary, SPCA etc. determine an amount sufficient to cover all cost incurred or anticipated to be incurred for transport, maintenance and treatment of the animals and the accused owner shall execute a bond of the determined value. Failure to do so, the animal shall be forfeited.

During the course of discussion the judgment of *Cotton Industry Exposition Limited & Anrs v. Union of India* was discussed where, Delhi High

Court held that “the definition of Incurred Trophy, Trophy and Scheduled animal Article are not separate, distinct and exclusive compartments, but are complimentary to one another. Any other construction would defeat the object of Wild Life Act and intention of the legislature.

It was further deliberated that section 40 is one of the most important section of the Wild Life Protection Act as it deals with the declaration that every person at the commencement of this Act in possession or custody of any captive animal specified in schedule-1 or part- II of schedule-II is required to declare the same to the Chief Wild Life Warden or the authorised officer. The person is also required to give the details of the number, description of the animal, or article of the foregoing description under his control, custody or



possession and the place where such animal or article is kept. It was also discussed that no person except the person having ownership certificate can keep or acquire any captive animal specified in Schedule-1 or in Part-II of Schedule-II. In cases of inheritance, declaration of inheritance must be made within 90 days to chief wild life warden. Inherited person can donate or gift the animal but cannot make sale deed for the same.

It was further discussed that Certificate of ownership could be granted only after ensuring that applicant has adequate facilities for housing, maintenance, and upkeep of animal. The workshop further deliberated upon the Bombay High Court Judgment i.e *Ajay Shankhai v. Union of India* where court held that power to grant certificate includes the power to rescind or cancel the

certificate and chief wild life warden can exercise the power under section 42 of the Act. It was also highlighted that section-55 of the Act is very essential in relation to taking cognizance of an offence.

It was also pointed that tribal people are primarily involved in illegal trade as they are well aware of the forest locations and interiors. So in order to prevent them from such activities, rehabilitation is required on the part of tribes along with a law to regulate the entry of outsiders inside the forest for the welfare of wild animals. It was also discussed that Wild life Crime Control Bureau plays a vital role to work against organized wild life trade, supplying actionable information to state law enforcement agencies and work along with them to conduct seizures, raids and rescues.

*Some of the suggestions made by the resource persons during the course of discussions are as follows:*

- Our approach must be animal centric rather than accused centric for the reason that, victim here is an animal who cannot speak for itself.
- The penalties imposed by The Prevention of Cruelty Act of 1960 are grossly inadequate and need amendments.
- While using animals for religious purposes adequate care must be taken into consideration.
- It was also observed that sometimes animals are transported in pathetic and inhumane conditions which results in causing injuries. Therefore in cases of transportation the court shall check the health certificate given by jurisdictional veterinary officer and motor vehicle regulations which gives dimension of vehicle required for transport of any animal.
- Every species has an inherit right to live and it should be protected by law subject to the exceptions provided out of necessity.
- Animals also have honor and dignity which cannot be arbitrarily deprived of and their rights and privacy have to be respected and protected.



## P-1030: WORKSHOP FOR MAGISTRATES ON PRE- CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES ACT, 1994, August 18 to 20, 2017

Mr. Rahul Sonawane, Research Fellow & Mr. Krishna Sisodia, Law Associate



The National Judicial Academy organized a three day workshop for Magistrates on Pre-Conception and Pre- Natal Diagnostic Techniques Act, 1994 from 18<sup>th</sup> - 20<sup>th</sup> August, 2017, which was attended by 38 Magistrates from across the country. The object of the workshop was to sensitize the magistrates dealing with such cases and to discuss and deliberate various issues pertaining to Pre Conception & Pre-Natal Diagnostic Techniques Act (PCPNDT), Medical Termination of Pregnancy Act (MTP) and Surrogacy (Regulation) Bill 2016 which would further help in evolving solutions.

On the theme of *Jurisprudential and Socio-Cultural Foundations of PCPNDT Act*, the deliberations on following points took place - The speaker initiated the discussion by quoting trends of child sex ratio in India from census of 1991 till 2011. As per census 2011, child sex ratio ranged from 972 in Arunachal Pradesh to 834 in Haryana. Ironically, it was pointed out that women with no education have better sex ratios as compared to women with some education. The predominant reasons for sex selection were discussed at length. Some of them were as follows:

- Patriarchy.
- Desire to have small families but not without sons.
- Two child norms imposed by certain state governments combined with strong son preference.
- Easy accessibility to technology for sex determination at affordable price.
- Religious reasons (son's pious obligation).

Further, the speaker discussed the jurisprudential foundation of PC and PNDT Act and stated that in the year of 1978, Union Ministry banned sex determination in government hospitals but it was rampant in private hospitals as people made it as an alternative to government hospitals. Therefore, Maharashtra Government felt the need to regulate such practice and became the 1<sup>st</sup> State to enact Maharashtra Regulation of PC PNDT Act in 1987.

She also threw some light on the provisions of International Conventions addressing sex selection and provisions of Indian constitution regarding gender equity and equality. For proper implementation of PCPNDT Act, Supreme Court

and High Courts issued numerous guidelines from time to time in certain important judgements:

- *CEHAT v. Union of India* – Supreme Court directed to states that must appoint appropriate authorities by notification and list of appropriate authorities must be published in gazette.
- *CEHAT v. Union of India*- In this case, Supreme Court issued directions to government for creating public awareness against the practice of sex determination and sex selection.
- *Hemant Rath v. Union of India*- High Court gave directions to government for appointment of appropriate authorities, advisory committee for effective implementation of provisions of act.

On the theme of *Role and Functions of Authorities under PC & PNDT Act*, the speaker explained at length the functions, duties and powers of appropriate authorities under the Act. She stated that chief functions of appropriate authorities are to grant, suspend and cancel registration of clinics after seeking advice from advisory committee. Moreover, creating rules, spread public awareness and to supervise the implementation of PC & PNDT Act are also functions of appropriate authorities. Elaborating further, the case *Dr. Surjit Govind Dange v. State of Maharashtra* was referred in which court stated that it is the responsibility of appropriate authority to take adequate legal actions against use of any sex selection technique by any person and in exceptional circumstances appropriate authorities can suspend the registration of the clinic and seize the sonography machines without giving show cause notice.

On the theme of *Appreciation of Evidence: Scientific/Electronic Evidence under the PC&PNDT Act*, the speaker provided a simulation exercise to the participants by dividing them eight into groups. After getting opinions from each group the speaker stated that ultrasound/sonography machines is the most vital evidence, therefore, it was suggested that the rule of *Ejusdem Generis* should be applied while dealing with accuracy of

records maintained in hospitals.

On the theme of *Trial Processes under the PC& PNDT Act*, the speaker initiated the session with the discussion of Section 28 of the PC & PNDT act which reads as “court shall not take cognizance of an offence except on complaint made by (a) the appropriate authority concerned or any officer authorised by central government or state government or the appropriate authority or (b) a person who has given notice of not less than 15 days in the manner prescribe to the appropriate authority, of alleged offence and of his intention to make a complaint to court.

Furthermore, the speaker pointed out that Section 28 of Act must not be read as constituting a narrow class of person but it must be subjected to purposive interpretation and given a wider meaning to pave way for the provisions of this beneficial legislation to be set into motion. With the purpose to make more clarification on this point, she cited *Preetinder Kaur v State of Punjab* case wherein court clearly stated that Section 28 of the act doesn't narrow down the class of person who can initiate action under act.

On the theme of *Seizure and Release of Property under PC&PNDT Act*, the speaker initiated the discussion with Section 4(3) of PC&PNDT Act by quoting various judgements. Any deficiency or inaccuracy found regarding maintenance of record shall amount to contravention of provisions of Section 5 and 6 of Act. In this concern, speaker mentioned *Suo Moto v. State of Gujarat* and *Dr. Surjit Dange v State of Maharashtra* cases wherein court emphasized for proper maintenance of records in clinics otherwise, it will create suspicion regarding misuse of machinery. Furthermore, speaker posed a query to the participants related with interim custody of the seized sonography machines. After getting various responses, speaker drew comparison of seized sonography machines and seizure of arms and weapons which are not returned on bond in a pending trial, on account of their high probability of its repeated use in committing a subsequent offence. With the purpose to make more

clarification on this point, she referred *Dr. Vandana Ram Chandra Patel v. State of Maharashtra* wherein court stated that sonography is an important component of offence and while making order pertaining to custody of seized sonography machines, court must keep in mind the impacts of such order.

On the subject of *Medical Termination of Pregnancy and Sex Selection: Grey Areas*, the speaker initiated the discussion by giving insight of the Medical Termination of Pregnancy Act and stated that only under the subsequent conditions the women is entitled to Medical Termination of Pregnancy:

- Grave risk to the life of pregnant women.
- Risk of physical injury and mental injury to women.
- Risk of physical and mental abnormality in child.

Further, it was emphasized that there is need to distinguish the basis of MTP & PC PNDT Act. The purpose of PC&PNDT act is to prevent sex selection and sex determination, while the MTP Act is aimed at preventing unsafe abortion and to promote safe abortion. The speaker stated that large percentages of abortions are unsafe which is conducted by unregistered, untrained providers under unsafe conditions. As per the data 56% of 6.4 million abortions in India are conducted in unsafe condition and 10 women die due to abortion complications each day. She also remarked that any communication addressing sex selection should not be such as to jeopardise a women's right to access to safe and lawful abortion, neither any other of her reproductive rights.

On the theme of *Surrogacy, Genetic Engineering and Sex Selection: A futuristic Approach*, the speaker stated that Surrogacy means hiring the uterus of another woman, in the circumstances when couples are infertile to have their own children in a natural way. She also threw some light on the divergent types of surrogacy such are:

- Partial Surrogacy.
- Full surrogacy.

- Gestational surrogacy.
- Altruistic surrogacy.

Further, the speaker pointed out the names of celebrities who gone for surrogacy like Tushar Kapoor, Amir Khan, Karan Johar etc. She also discussed the physical and mental impacts on surrogate mothers and society from which they commonly belong. As per revelation by study, 68% of surrogate mothers in Delhi and 70% in Mumbai are working as domestic worker.

Some of the provisions of the Surrogacy (Regulation) Bill 2016 were highlighted by the speaker:

- Single parent, foreigners, unmarried couples, Indian resides overseas, gay, Indian residents having own child through adoption or natural process can't go for surrogacy.
- Secondly, infertile couples after 5 years of their marriage with the medical proof can go for surrogacy.
- Thirdly, married women up to 35 ages or more who is blood relative of wising couples can be a surrogate mother once in a life with the consent of her husband.
- Fourthly, commercial surrogacy is banned.

On the subject of *Enforcement Challenges under PC& PNDT Act*, the speaker initiated the session by highlighted numerous hurdles coming in the way of implementing PC&PNDT Act. It was stated that it is very difficult to detect offence and lack of awareness among people are the major challenges for non- enforcement of the act. Further, the judiciary made a lot of efforts from time to time for proper implementation of act by issuing directions as in the case of *Voluntary Heath Association v Union of India* and in *S.K Gupta v Union of India* in which court directed to conduct seminars, workshops and training programmes with the purpose to spread awareness in public and also directed to government to appoint appropriate authorities which will help to achieve this goal. The speaker stated that laws should not be interpreting to hinder the object of act but interpret in such way it advances the object.



**P-1031: NATIONAL SEMINAR OF PRINCIPAL DISTRICT AND SESSION JUDGES:  
JOINT COURSE FOR DIFFERENT STAKEHOLDERS (RG, PDJ, Court Manager),  
August 25 to 27, 2017**

**Ms. Shruti Jane Eusebius, Law Associate**



The National Seminar of Principal District and Sessions Judges: Joint Course for Different Stakeholders was organised by the National Judicial Academy, Bhopal with the objective of discussing the role and responsibility of Registrars General/Registrars Administration of High Courts, Principal District Judges, and Court Managers in the administration of District Courts and the challenges in ensuring seamless and efficient functioning of the District Judiciary. The Seminar sought to engage the participants in deliberations on the creation of digitalized and paperless courts, development of efficient and speedy judicial processes, and augmentation of management skills relevant to the functioning of Registry at High Courts, Principal District Courts and at the level of Court Managers vis-a-vis administration of District Courts.

**Developing Efficient Judicial Systems- Role of Registrar General, Principal District Judges and Court Managers**

- It was emphasised that in order to develop an efficient judicial system, four aspects are to be

taken into consideration - accountability, performance from all stakeholders, efficiency and effectiveness. To achieve these 4 aspects of an efficient judicial system, leadership from the judges is a necessity.

- The lack of clarity and uniformity in the role and responsibilities of court managers has proved to be an issue as the expertise of court managers has not been utilised to its full extent by the courts.
- Court Managers having knowledge of managerial skills as well as computer software can contribute to make the judicial system user friendly by creating applications for litigants and also can create software to streamline the judicial process.
- The role that can be played by court managers includes-
  - ♦ Developing and suggesting process-improvement strategies in administrative and operational areas of the judicial system.
  - ♦ Conducting system study, analysis and assessment of pending works.

- ♦ Preparation and submission of analysis report and implementation strategies to the committee.

### Caseflow Management for Docket Control

- Most High Courts have framed their own rules for case-flow management. These rules provide a guide for the judge to develop an efficient court. The rule provide specific timelines for major stages of a case and seek to ensure that a case is disposed off in time.
- While the rules act as a guide, it is for the judge to ensure that his court functions efficiently and is a litigant friendly court. The judge as the leader of the court must motivate his staff to function effectively and to meet the timelines prescribed in the rules.

### Objectivity and Impartiality in Management and Court Administrations

- Objectivity and impartiality are necessary elements and inter-related elements of an efficient judicial system. Objectivity can only be achieved if person is impartial. Objectivity and impartiality come from good structure and procedure. If judges are seen biased, then it will not only affect the confidence of the people in judiciary, but also damages the whole judicial system. So, we should try to impartiality is required for acting as a manager as well as an administrator.
- There is an urgent need to solve the problem of workload on judges by rationalising structure and allocation of responsibilities differently.
- It was suggested that state academies must come forward for the training of Court Managers.
- A crucial element of objectivity and impartiality in justice administration is timeliness of justice. Judges must develop time management skills.
- There is a need to build integrity within every non-judicial employee also so that the court as a whole is efficient.

### Digitization and Paperless Courts in India: Role of various Stakeholders

- Scanning is a sub-sect of digitization. Scanning old records and putting them into the system reduces the chances of misplacing of records. It was also observed that through electronic transmission .i.e. sharing of papers by e-power, we are saving manpower. Computerisation of work flow management serves better in courts.

### Record Management in Courts

- Record management is one of the areas which is often neglected in the High Courts as well as in the trial courts. The problems regarding this field may differ from one High Court to other and from one trial court to another. The computerisation is the only solution to all these problems, but unfortunately, even today it is not complete and has solved only seventy five percent of the problems. Thousands of legal problems have been pending before High Courts for scrutiny because of no proper maintenance of records.



- Revamping is a one-time exercise but helps enormously. The purpose of revamping exercise is to have a litigant-centric approach. The ultimate test of good record management programme is whether records are available to those who need them, when and where they are needed, the manner in which they are made available and at what cost.
- In order to avoid such confusion and missing of records, segregation of unnecessary things is required. Identification and classification of

cases in accordance with their title and nature will help in narrow down the confusion. Unnecessary file movement should be curtailed by segregating them and putting them at one place. By scanning documents and putting them in computer, they will never be lost. It was also observed that, in trial courts the process of folding of file destroys the whole file. So this must be avoided.

- Indexing helps us to manage the documents in perfect way. But if is neglected it can be a problem. So it must be done regularly with due care and diligence. At the time of inspection it is also important to see whether the indexing has been done or not
- On the administrative side, there must be a proper maintenance of register for the reason that, if the register is properly maintained then the management will get better. Every column of the register must be properly filled up and new columns can also be added. Non-destruction of records sometimes also creates hurdles for the effective record management system. It is a high time to look into the documents and recognise as what is to be preserved and what is to be destroyed.

### **Administrative Correspondence and Co-ordination**

- Co-ordination is an essential skill for any administrator. This is especially true in the case of judicial administration as the various persons involved in the day-to-day administration of the court. A Judicial officer have a completely different mindset while working on the administrative side. It was also suggested that administrative training should also be given to Principal District Judges
- To have good coordination, we have to drop the idea of superiority and at the same time good way of communication is required to deal with the staff. It is also necessary that important work must be communicated to a person through whom it is going to be executed. Decentralisation of power, teamwork and leadership by the judge are necessary to have an efficient system at the court.

### **Efficacious Resource Allocation in Courts: Optimal Utilization of Manpower, Technology, Infrastructure and Finances**

- Improving judicial infrastructure involves improvement of processual, technical and legal systems. Case and Court management will be





part of processual dimensions of Model Court while the technical aspects include deployment of audio-video facilities in the courtroom, digitization of records, introduction of e-filing, electronic delivery of summons and notices etc. On the legal side, examination of the current rules of procedure of each court and suggestions for amendments for standardisation, if any, may be required.



- The judicial system must be citizen friendly. There must be a citizen service centres or facilitation centres as a part of e-court infrastructure for receiving applications and cases online. Apart from that functional and clean toilet, affordable canteen, disabled friendly building and enough staff is also required for the convenience of litigants.
- Foundational as well as researcher training of judges and court managers is a necessary requirement of human resource management.
- There is a need to strengthen the judiciary from the perspective of poor as well as from the point of view human rights violated day to day. He also mentioned that it is an investment of public trust in the office of judiciary and this public office has to answer all the short, middle and long term questions of the public.
- In case of budget plans, there is a need to form a committee headed by Senior Judge of the High Court and must include an expert in finances in order to get expert advice.

- The court managers' institution was recommended with the idea that the court managers was to do planning and development of administration, but initially they were entrusted with the protocol duties only. Underutilization of manpower provided by the government in the form of Court Managers is a problem that needs to be addressed.
- One of the major hurdles in the efficacious resource allocation in courts is the underutilisation of funds.

### **Staff Control and Supervision: Role of Registrar General, Principle District Judges and Court Managers**

- Inefficiency of staff members is one of the main challenges, but the problem of inefficiency can be removed by adopting efficient recruitment process. Immediately after recruitment, there must be training programmes to enhance their knowledge, efficiency, and communication skills.
- There is no straight jacket formula to deal with indiscipline. It is a human issue, but one can correct him by giving an opportunity to improve himself or take an action suitable to the situation. One shouldn't give an impression to his staff that, they are in the hands of stubborn boss. There is a need to drop the idea of seniority from our minds.



## P-1032-P-1041: COURT EXCELLENCE ENHANCEMENT PROGRAMME

August 25 to 27, 2017

Dr. Amit Mehrotra, Assistant Professor



A three days Court Excellence Enhancement Programme was organized by National Judicial Academy, Bhopal from 25<sup>th</sup> to 27<sup>th</sup> August, 2017 with the aim to provide a forum to several stakeholders for identifying challenges and constraints to efficiency and evolve standard working models for delivery of quality justice. The Programme seeks to develop a comprehensive Court Excellence Plan for enhancing qualitative and timely justice through harnessing the synergies of various stake and duty holders in the system. Twelve courts participated in the programme. Prof (Dr.) G. Mohan Gopal, Justice Ravi R. Tripathy, Justice Dr. Shalini Phansalkar Joshi and Justice R Y Ganoo were the Resource Persons of the Programme.

Prof. D.P Verma, Additional Director, National Judicial Academy (Research & Training) welcomed the resource persons and participants. A brief introduction with the objective of Court Excellence Enhancement Programme was given. Participants were requested to discuss the issues related to impediments of the justice delivery system freely and asked to institutionalize the learnings from the programme. It was emphasized

that the Academy is a place of silence where actions are reflected together.

The theme of session one was *Assessing and Enhancing Court Performance*. The definition of the court was discussed in detailed. It was explained that court is a team activity which upholds the rights of society and judges are like a captain of the court. It was pointed out that if courts are not working properly then responsibility lies on all the stakeholders which includes the judges, advocates and ministerial staff. Sections 20 of IPC was discussed. It was emphasized that every court within judicial system is a court of justice. The scope of fact- in issue was discussed. It was stated that the court has exclusive power to determine the existence, non-existence, nature or extent of any right or liability as per the constitutional values.

The theme for session two was *Court Excellence Indicators and Model Court Plan*. Indicators of the court excellence were discussed. It was stated that following are the indicators of court excellence:

- A. Sharing information on pendency, filing, disposal and arrear amongst all the duty holders.



- B. Delegation of responsibilities from judges to non-judge staff.
- C. Fair and efficient allocation of workload between judges.
- D. Expeditiously disposal of cases
- E. Monthly monitoring the workload of each court.
- F. Defining main role, standards and tasks for each duty holders.
- G. Transparency in the allocation of files to judges.
- H. Adequacy between the judges' functions and the files entrusted to them (training periods, specialization and classification of cases).
- I. Good infrastructure and sufficient staff.
- J. Coordination meeting and other occasions in which all stakeholders participate for discussing common issues.

Discussions on the indicators for Management with respect to hearing of cases were deliberated. It was highlighted that there are no such measureable instruments which can determine a good judge. However, required number of judges can be determined by applying a formula i.e. total number of present judges divided by number of pending cases or total number of present judges divided by total number of disposed cases in last year. Further, it was emphasized that out of 3 crore cases pending in Indian courts only 40% of cases are one year old. It was delineated that actual number of pendency in the Indian courts is 1.8 crores.

It was emphasized that in the year 2012, National Court Management Committee was established with the purpose to set up Court Excellence Programme. This committee prepared numerous baseline reports which needed implementation. Four indicators were referred through which effectiveness & quality of a legal system may be evaluated that includes:

- 1. Public Trust and Confidence,
- 2. Access to Courts for the purpose of protecting Constitutional, legal and contractual rights,

especially by the weakest and the poorest who are least able to protect their rights without the assistance of courts.

- 3. Degree of adherence by courts to ten core judicial system values that determine the internal integrity of the institution such as Integrity; Competence; and Propriety (three Individual Values applicable to judges, advocates, ministerial staff; executive agencies which are essential for the effective functioning of any court), Independence; Equality, Fairness; Impartiality; and Certainty (five Judicial Decision Making Values applicable to judges); and Faith in, and allegiance to, the Constitution; and the Rule of Law, Transparency and Accountability (two sets of institutional values applicable to all stakeholders of the judicial system).
- 4. Expedition, efficiency and efficacy of court proceedings.

Reasons for delay in disposal of cases were also discussed during the session that includes inadequate judge- strength, lack of supporting staff and essential infrastructure, lack of coordination between the bench and bar and repeated adjournment of cases. It was suggested that time must be framed for disposal of particular nature of cases.

In session 3 the duty holders (Judges, Advocates, Public Prosecutors and Ministerial Staff) were divided into four groups and each group was requested to discuss and suggest the measures for the improvement in the performance of the court.

In session 4 one representative from every group made presentation on challenges faced by them and suggestion to improve performance of courts.

*Important Suggestions made by the duty holders are:*

- 1. Raise the standard of infrastructure with the facilities of E- courts, E- governance and E- service.
- 2. Providing E- messaging facility regarding hearing date, proceedings, name of the advocate

etc. Court should be digitalized and internet connection must be provided to the court as well as to the prosecutors.

3. Practice of granting unnecessary adjournment should be discouraged.
4. Orientation courses for ministerial staff and for junior advocates.
5. Nodal officer may be appointed for proper execution of summons.
6. Interactive sessions on weekends beyond court hours shall be encouraged. The presiding officer and the staff members shall be free to exchange views on enhancing the court excellence. Valuable suggestions of the senior members of the BAR shall be given due weightage.



7. Duty holders should follow time line
8. Atmosphere of the court should be friendly.

The theme of session five was the *Best Practices for Improving Court Performance*. Concept of justice was discussed during the discourse. It was stated that judicial system is based on rightness and wrongness of conduct and court is an activity which upholds the right conduct. One must feel constitutional value while working in the court. It was highlighted that the failure of legal system in the society is because of non- acceptance of the values of the constitution. It was emphasized that when court stands with constitutional values, there will be equality.

It was suggested that if one wants to bring solidarity then informally, CEEP Working Group should be created which should be chaired by judge and must meet once in a month for discussion on how performance of the court can be improved. It was suggested that one has to enhance its performance then only the performance of others will improve which will in turn improve the efficiency and efficacy of court performance.

In session 6 and 7 duty holders prepared court wise court excellence enhancement plans.

In session 8, 9 and 10 twelve chief judicial magistrates (judicial officers) gave presentations on the court excellence enhancement plan for improving the quality of justice delivery which the court delivers to all the litigants. They also discussed the proactive steps taken by them and gave recommendations for improvements in the court to make the system more effective and efficient keeping in view the constraints and challenges.

Following observations and suggestions were deliberated by the judicial officers on different parameters that may be adopted by all the courts for smooth functioning of the justice delivery system:

### **Observations:**

1. Most of the cases remain untraced.
2. Sometime, investigation is not completed within time and CDs are not made available at the time of hearing.
3. The infrastructures of courts are generally poor except in three or four states.
4. Categorization of cases is necessary.
5. Time taken to dispose the same case can be different for two courts in the same district, if the pendency of cases before the court is different.
6. Filing of interlocutory applications by the advocates is proving to be a stumbling block in disposing of the old cases on civil side.

7. Unnecessary questions in the cross examination consumes lot of time.

**Suggestions:**

*Court Management:*

- a) Ten and five years old cases need to be prioritized and a record of the same should be maintained.
- b) A brief description of the cases and the main reasons for delay should be mentioned.
- c) Case Information System is to be made up-to-date so that the litigants may access the case status.
- d) Unnecessary adjournments should not be granted either the prosecution or to the defense counsel.

*Access to Court:*

- a) User Friendliness- For security point of view only relevant parties are permitted to enter the court premises. There should be separate waiting room and toilet for the witnesses. There should be facility for providing food at reasonable rate in the court premises for the litigants, witness and advocates.
- b) Responsiveness- It should be mentioned in the summons that accused and witnesses should come to court with their Identify Cards/Aadhar Cards for their identification. There should be display boards showing the location of each court.
- c) Witness should be treated as honored guest of the court who should not be made to wait unnecessarily.

*Accountability:*

There should be a complaint register or a box at a conspicuous place and complaint should be redressed effectively through proper redressal mechanism.

*Court Infrastructure:*

- a) There should be a display board showing case number and specification.

- b) There a requirement of waiting room for witnesses and children.
- c) Need for E-messaging system, counselling room for witnesses adjacent to the court room are also required.

*Effective use of ADR Measure*

- a) Offenders should be encouraged to participate in Plea Bargaining process and they should be informed about the provisions of Probation of Offenders Act.
- b) By segregating compounding and minor offences, court should issue special notice to the complainants and accused with a direction to appear before the lok-Adalats and to settle their matters amicably.

*Expectations from the Judge:*

- a) Every Judge is expected to be an honest, fair, duty minded and impartial.
- b) Judges should be cordial and friendly with the local bar, prosecution and with all concerned in the process of speedy and effective disposal in accordance with law.
- c) Judges should dispose of bail application/ Miscellaneous Application & urgent Application on the same day.
- d) Judges should be updating their knowledge.
- e) Judges should allow the stakeholders to express their opinions for achieving court excellence.

*Cooperation and Expectations:*

*Cooperation from the Bar-* Advocates are boycotting the courts at the drop of a hat, this tradition should be curbed to save court's time so that disposal of the case may take place expeditiously.

*Cooperation from Prosecutor-*

- a) Public Prosecutors should assist the court and provide an action plan for the disposal of old cases.
- b) Prosecutors should prepare file with written notes that may be tagged with police file so that

it becomes easy for him as well as for any new prosecutor to understand the complication in the case.

- c) Prosecutors must be honest and need to strictly follow the provision of Section 294 of the Code of Criminal Procedure.

*Cooperation from Police-*

- a) Police constables should be made accountable for producing the witnesses as per schedule.
- b) Police should use mobile phones to record the video of the spot and arrests photographs should be taken.
- c) Police should send all the reports to the court in time and should also inform the complainant about status of investigation.
- d) Police agency may constitute special cell for execution of summons and warrant of the Case.

*Expectations from Court Staff-*

- a) Court staff should be skilled and maintain files properly.
- b) Staff members should be fully aware of the procedure of the Court and should have basic knowledge of computer.
- c) Staff should always show minimum courtesy to public litigants.

*Focal areas need urgent requirement Arrears and pendency*

Weightage should be given to the disposal of oldest matters and unnecessary adjournment should not be granted.

The guideline under Section 309 of Cr. PC is too be followed strictly. CIS is being maintained properly.

Old cases to be classified and should be dealt with separately.

Once the classification is done then monitoring of cases is required and for that a separate plan has to be framed under the heading of case management.

The points to be taken under consideration are:

Avoiding Delay in Serving Processes:

- a) Avoiding partially filed charge sheets and ensuring contact details and photographs of accused and witnesses
- b) With regard to the witnesses it was suggested that the copy of aadhar card & phone numbers may be placed on record by IO in a sealed cover in addition to charge sheet and not as part thereof to prevent the supply of the same to the accused.
- c) Ensuring Fair and timely investigation:
- d) Ensuring Copies of all Police records along with the final report-
- e) Examination of accused and witnesses on the day of their presence-
- f) Avoiding unnecessary adjournment-
- g) Ensuring Proper examination of accused and witnesses and avoiding lengthy cross examination-
- h) Controlling Oral Arguments-
- i) Managing Verification of bail bonds in an effective manner-
- j) Avoiding strike/boycott by advocates-
- k) Management of non-judicial work & protocol duties- Administrative work should be separated from judicial work and a particular day should be fixed for the same.

*Coordination with stakeholders-*

There should be frequent co-ordination meetings between Bar Members and Judges, Police Officers and Judges to discuss the bottlenecks in the speedy delivery of justice. CEEP Working Group should be there in each court comprising of all duty-holders and meeting should be held every 15 days to review the steps taken to enhance excellence of the court. The meeting should end with preparation of a table indicating the steps taken and proposed to be taken for enhancement of excellence. The District Judge should hold the District Level CEEP Working Group meeting every month to know the problems faced by duty-holders and to find solutions for the same.



### *Use of Information Technology in Court Processes*

For fair efficient transparent justice system :

- a) E-justice information system should be developed carefully.
- b) Video conferencing services should also be used for witnesses who are far away from judgeship.
- c) Latest technology with expert may be provided from time to time.
- d) Legal data bases should be uploaded regularly.

### *Role of Court*

- a) Rights of the accused should be ensured.
- b) Ensuring proper facilities & protection to witnesses.
- c) Prison should be inspected by Judge In charge (Prisons) on regular basis.
- d) CC TV should be fixed in court rooms.
- e) Court should ensure that effective legal aid and other services are provided by District Legal Service Authority.

### *Performance Assessment*

- a) The performance can be assessed in CEEP meetings both at the respective court's level and District Level. The assessment should be on the

qualitative and quantitative basis and not only on the basis of quantitative disposal.

- b) Performance of a judge may be measured or managed owing to his skill of court crafting, avoiding delays and managing arrears and reducing arrears.

### *Expectations from Higher Authorities*

Sufficient budgetary allocation should be made. Unit Criteria should be modified in such a manner that old cases are taken on priority basis.

It was emphatically emphasized that court is an institution meant ultimately to promote justice which is a mandate for the entire legal system.

The conference was concluded with the concluding remarks of Hon'ble Justice (Retd) G. Raghuram, Director National Judicial Academy. Justice remarked that this programme is a hope of creating better working of court system with the object to achieve the justice delivery system which is a continuous work. It was delineated that duty holders should act as mentors of the institution and should strive together to meet the ends of justice as per the constitutional values. The Director Hon'ble Justice (Retd) G. Raghuram thanked all the resource persons and participants representing the twelve courts.





**P-1042: CONFERENCE FOR REGISTRARS DEALING WITH COURT PROCEDURES AND PROCESS REENGINEERING, September 8 to 10, 2017**

**Mr. Shivaraj S. Huchhanavar, Research Fellow**



**I. Introduction**

Timely, efficient, and fair justice delivery, within the framework of the constitutional vision of justicesocial, economic and political, is the mandate for the judicial branch. To attain these objectives—expediting the judicial process through the capacity building—is the need of the hour.

To revise court procedures and processes several High Courts have constituted committees on “judicial process re-engineering”. In this backdrop, the Chief Justices Conference 2016 has requested the National Judicial Academy to undertake a study of different practices and procedures in High Courts. To evolve model protocols on “Court Procedures and Processes”; two conferences are scheduled during this Academic year, and High Court Registrars dealing with court procedures and processes at the High Court level are invited to be part of this exercise. In the first conference held on 8th to 10th September 2017, 30 participants from all the 24 High Courts participated.

The Registrars of different High Courts and Resource Persons with domain expertise in the field shared their experiences and provided inputs on the topics. Participants were divided into sub-groups to deliberate on a specific aspect of court procedures and processes. The scope of the conference was, with a view identify best practices and need for uniformity of such practices/ procedures, restricted to eight thematic frameworks viz. Writ Jurisdiction, Civil and Criminal Appellate Jurisdiction and Civil Original side, Revisional Jurisdiction and matters covered U/S 482 Cr.P.C, Listing and Mentioning of Matters. Adjournments and Backlog. Use of ICT in enhancing the efficacy of judicial institutions.

The 3-day conference witnessed intense discussions on the topic identified, and under the able guidance of Resource Persons namely, Justice Ram Mohan Reddy, Justice Ravi R. Tripathi, Justice Manju Goel, Justice R. C. Chavan, Justice Dharnidhar Jha and Mr Y. V. Ramakrishna, following best practices, processes and procedures are identified.

## **II. Summary of Best Practices and Suggestions**

### **Writ Jurisdiction: Best Practices**

- In almost all the High Courts there is a practice of supplying 'brief synopsis', which in the opinion of participant Registrars and Resource Persons is unnecessary. It was observed that in most of the cases 'synopsis' hardly pinpoints question of law involved and the relief sought. Hence, it was suggested to do away with the practice of supplying 'synopsis'; it was concluded that the 'Table to Index' is sufficient to know the content of the petition.
- To enable speedy service of summons and court notices three practicable solutions are presented.
  - ◆ As practicable, parties filing a petition or advocate(s) may be asked to share their email address or mobile numbers for the purposes of receiving court summons or notices.
  - ◆ A dedicated website for all types of court notices may be launched with due publicity; wherein all court notices mandatorily be uploaded. This practice is more useful than the publication of notices in newspapers. All the High Courts may create a link on their official website (homepage) so as to help court user access the notices or summons online.
  - ◆ Use of e-POST - By using ePOST, litigants may send their messages to any address in India with a combination of electronic transmission and physical delivery through a network of more than 1,55,000 Post Offices. ePOST sends messages as a softcopy through email and at the destination, the same will be delivered to the addressee in the form of hard copy. Presently, ePOST costs just Rs. 10 per page of A4 size.
- A key challenge in calibrating court processes is—obviating human interference. For this purpose, it is essential to have different formats for different types of petitions/applications.

Extracting relevant information at the initial stage viz. filing, helps to classify, listing, and prioritizing the cases. It is indispensable to drill down certain procedures, processes, nomenclature, categorization, codification etc., so as to bring uniformity in practices. Sub-categorization of writs on the basis of law/rules involved, the relief sought, or reasons presented would help speedy disposal of writ petitions.

### **Process Engineering as regards to Registers**

In the High Courts, generally, not less than 40 Registers are maintained. The ICT infrastructure, which is in place in most of the High Courts, takes care of many of the data, as a result, there is no need for maintaining so many registers in the physical form.

It was also observed that in many of the High Courts, E-registers—that are maintained in word-files—are regularly printed in hardcopies and affixed to physical registers. This practice is redundant and may be stopped. NIC 2.0 provides backup facility to save data (registers) in softcopies elsewhere, enabling its retrieval whenever necessary.

The Registers that are unavoidably maintained in physical forms may be printed yearly/monthly from the data stored on the server. It was also perceived that many manual registers have no heading, some of them are in such a torn and mutilated condition that they are of no practical value. Entries are sometimes made in a running order across several columns. It is impossible to maintain any register properly unless it has a regular heading in good condition. Therefore, it was observed that each column may be filled-up separately. It was also suggested that the particulars of the orders passed may be entered in greater detail to show exactly how the case was disposed of or why it was consigned to the record room.

### **Appeals**

Whether the paper book is essential for filing.

- It was unanimously agreed that, unless judges call for record in case of the Second Appeal,

where a substantial question of law is involved, there is no need for a paper book. However, in case of First of Appeal, the paper book is indispensable. Hence, the practice of calling for the paper book in the Second Appeal may be stopped.

- It was also observed that pleadings, issues, evidence, charges, orders, judgments etc. may be uploaded to the CIS system. With the help of documents available online an e-paper book can be prepared and placed before the Court by the registry.

#### **Call for records from the Lower Courts**

- Generally, the High Courts in case of appeal call records from the lower courts to appreciate, analyze facts, and proceedings of the cases. However, under the Prevention of Corruption Act, the High Court shall not ordinarily call for the record of the proceedings - without giving the other party an opportunity of showing cause as to why the record should not be called for, such exception needs to be meticulously followed by the High Courts. For this purpose, the Registry may indicate in a marginal note such bar from seeking records in the first instance.
- Whenever an appeal is filed when permissible against an appealable order or a revision is filed against an order which does not dispose of the proceedings in the lower court, calling for record would result virtually staying the further proceedings without the appellate court having granted stay, as the trial court would not be able to proceed without record. Therefore, as for as appeals against orders or revisions which do not challenge orders finally disposing the case before the lower court, records may not be called as a rule.
- Main Petition and Interim Application may be registered, numbered, and placed together before the court. This will avoid delay and excessive human interference.

#### **Reminders of Pending Appeal by Lower Courts**

- A practice of sending a reminder once in six months, to the higher courts by lower courts about the pending appeals against the interim orders etc., may be followed across India and the same be reflected in the cause list, so that the appeals may be taken on priority and be disposed of expeditiously. This practice is followed in the Patna High Court.
- The most efficient mode of alerting higher courts about pending appeals against lower court orders would be customizing the listing software in such way that it automatically features the pendency of the cases.

#### **Revision**

- Main Petition and Interim Application may be registered, numbered, and placed together before the court. This will avoid delay, need for fresh notice, and there will be less human interference.
- To avoid forum hunting by filing simultaneous revisions in both First Appellate Court and High Court it is necessary to seek a declaration to this effect in the affidavit itself. Moreover, there shall be ICT mechanism to signpost concurrent filings in different courts. This will help dismiss cases at the initial stage itself and also discourage parties/advocates misusing courts.
- Section 115 of CPC, in case of IA (Interim Application) it does not specify issuance of notice again on the main petition, so fresh notice on IA may be avoided.
- Stamp duty for civil revision in most of the High Courts is very minimal. Stamp duty (Civil Revision), as has been done in Karnataka, may be completely waived off.
- When a revision is filed before higher courts an auto-generated SMS/email may be sent to the concerned lower court whose order is under challenge. It will enable lower courts to keep ready the files/case documents to be sent to the High Court.

- In case of criminal revision, if the relief is provided in specific provisions of Cr. P. C., whether it is appropriate to employ Section 482 (inherent powers to secure ends of justice) and admit the revision application under the said section, has to be relooked. In light of conflicting judgments of the Supreme Court, it may not be appropriate to make suggestions on marrying any one of the interpretation and discard another. However, High Courts may in their collective wisdom follow the best (uniform) practice of not employing Section 482 in such cases.

### Listing of Revision Applications before the Administrative/Portfolio Judge

Performance assessment of lower court judges is one of the critical issues calling improvements. If the revision application is posted before the administrative judge it will provide him with an opportunity to assess the judging and judgment writing skills of a judicial officer whose ACR he would write. However, this entails two fold difficulties, firstly, what if the lower court judge whose order is in question is transferred to another district? Secondly, whether the perception of constant surveillance affects the performance of the lower court judges. An answer to the first question would be- as soon as a judge is transferred revisional application may be listed before the concerned administrative judge. However, this solution may not be apt in all the cases. It may so happen that a matter is partly heard by the Administrative Judge and in the meantime, lower court judge gets transferred. As far as the second question is concerned, there is no definite answer. It depends on the perception of a judge concerned. Thus, as much as practicable the practice of listing revisional application before the Guardian Judge may be adopted in all the High Courts. This practice is followed in Jharkhand, Karnataka and Hyderabad High Courts.

### Listing and Mentioning

#### Listing: Types

- Monthly List/Warning List. It is useful to

publish the monthly list as it serves a warning that the case may be called anytime in the ensuing month. Nonetheless, it is necessary to mention tentative serial nos. which are likely to be called in a particular week of the month. Otherwise, parties or lawyers will be compelled to hang onto every weekly-list to know whether the case will be listed in that week or not.

- Weekly List. It serves a very important purpose. However, it would be convenient for the parties and advocates, if the weekly list specifies the serial nos... to ... which may be called not later than (particular day) of the week.
- Daily Cause List. Many of the High Courts have computerized daily cause list. Besides, with the approval of Chief Justice or committee, supplementary cause lists are supplemented to daily cause list.



- In some of the High Courts, (eg. Delhi) criminal matters are listed randomly with the help of ICT. This practice may be followed in all High Courts.
- The Daily Cause List may indicate the length of pendency (months), number of adjournments so far granted, and stage of the case (with definite nomenclature).

The following nomenclature may be used in the cause list so as to indicate the appropriate stages of the cases pending. (per MP High Court Rules)

- “Fresh Admission”
- For the vacation of Ex-parte Order/Condonation of Delay may be listed under caption “Order”.



- Interlocutory Application for vacating Stay- “IA”
- For Vacating Ex-parte Stay- “Fresh/After Notice/Final Disposal”
- Interlocutory orders [other than para (3) and (4)]-“Order Category”
- Urgent/leftover matter- may be listed as- “supplementary list”
- Non-compliance of the orders of the Registrar- “Common Order”
- If the default is not removed within given time- “Common Conditional Order”
- For correcting petition/amendments- “Spoken To”
- Reserved for pronouncement of judgment- “For pronouncement of judgment”
- Reserved for pronouncement of oral judgment – “for oral judgment”
- Reserved for judgment dictation – “for dictation”
- In case dictation continued to next sitting - “continuous dictation”
- For in camera hearing- “in camera”

For every stage of a case, nomenclature may be incorporated in order to facilitate the litigants, lawyers, and judges. This will indeed save the time and make the system work more methodically.

### Prioritization of cases in Listing

- Almost all the High Courts follow the prioritization based on the urgency of the matters, pendency, and type of parties involved.
- In the course of deliberation, it came to light that many High Courts are listing a huge number of cases, which a judge (bench) cannot hear in a day. As a result, the cases listed are adjourned inevitably. The mechanical listing of a huge number of cases puts the burden on judges, advocates, and inconvenience is also caused to the litigants. To avoid such situations it was suggested to list, in consultation with the

particular bench, a reasonable number of cases which can be heard on the day.

### Mentioning

The Madhya Pradesh High Court Rules comprehensively deal with mentioning of matters and in the course of deliberation following practices of Madhya Pradesh High Court are accepted as best practices which other High Courts may follow.

- Mentioning for urgent listing or change of assigned dates of all Division Bench/Single Bench matters not notified in the Daily/Weekly List shall be entertained only by Division Bench-I. But, Mentioning of all such Division Bench matters related to Commercial Appellate Division shall be made before the respective Commercial Appellate Division.

However, mentioning of matters already notified in the daily/weekly list can be made before the concerned Division/Single Bench, where the matter is listed.

- Mentioning of pre-admission matters to which specific date has already been assigned by the Court or auto-generated through the computer, must be avoided except in matters which cannot wait till the assigned date, for preponing the date or for the change of date, if the same is not convenient to the Advocate or the parties. This can be done without a formal application for urgent hearing, on moving mentioning slip/memo before Division Bench-I or concerned commercial appellate division.
- Mentioning of Single Bench Arbitration/ Company/Taxation/Election matters be made before the designated Judge(s).
- To streamline the procedure for mentioning and to obviate the Court pressure for mentioning of matters, the mentioning memo should be first presented between 10:30 AM to 11:30 AM before the Presentation Centre/Registrar (J-II), who Shall make endorsement on the mentioning slip about (a) date of institution (b)

date of removal of office objection (c) last date of the listing of the case (6) type of Case — Fresh / After Notice / Final Hearing (e) if Final Hearing Case, whether ready for hearing and the serial number in the concerned category of the quarterly list (f) the assigned returnable date given by the Court or generated by the computer. However, exceptionally urgent matters can be mentioned on the same day before the Division Bench-I.

- The concerned Registrar shall send all mention memos to the Reader of the Court in the evening on the same day.
- Advocates/Litigants must peruse the endorsement of the Registrar in the next morning before 10:30 AM.
- The computer generated date as authenticated by the Principal Registrar/Registrar (Judicial) of pre-admission matters, will be treated as Court given date and the matter will be listed on that date before the concerned Bench as per the assignment, without any exception. There is no need to mention these cases before the Court.

### **Adjournment and Backlog of Cases**

#### **Adjournment**

- Adjournments are to be granted in exceptional circumstances by way of “adjournment motion” making a special reason before the court at least a day prior to the date of hearing with advance notice to the opposite counsel.
- No adjournment shall be granted except on good cause shown. The consent of the parties shall not or itself a good cause for adjournment. However, it is very important to ensure that both the parties are present at the time when such application for adjournment is heard.
- In conformity with the CPC, the maximum numbers of adjournment that a party/advocate can avail in a particular case may be fixed and the same shall be rigorously enforced by the judges.
- To help judges identify the number of

adjournments already availed in a pending case, daily cause-list may indicate the number of adjournments in a separate column.

- To avoid adjournments sine a die, all adjournments shall be to a day certain. No suit or matter shall be adjourned sine die except for reasons recorded in writing (as practised in Delhi High Court).
- Any matter adjourned by the Court to a date in the same week shall be retained in its place on the daily cause list with a note stating the date to which it is adjourned.
- Adjournment memos may be heard at the beginning of the day and oral requests for adjournment may be discouraged.
- Imposing costs is one of the options with the courts, however, such costs may not discourage the advocates from seeking unnecessary adjournments, partly because ultimately it is party who pays the costs and in many cases, if delay is more advantageous to one of the parties that the redressal of the matter, it may so happen that parties may be willing to pay costs. Thus, imposing costs may not be an effective way tackling the problem of adjournment.

#### **Backlog of Cases**

- The oldest cases may be taken on day to day basis.
- There may be separate Bench(es) for hearing of old cases on priority. The Roster of the Judges/Bench(es) may be changed after a specific period of time so as to maintain speedy disposal of old cases without compromising the disposal of other pending cases.
- At least 2 cases, which are the oldest each category, shall be listed on each day. They shall continue to appear in the cause list till disposal, and thereafter, next oldest cases shall replace the disposed of cases in the cause list.
- Identification and weeding out of stale and ineffective cases is also necessary to know the real pendency. In this regard identification and

grouping of cases which may easily be disposed of such as (a) infructuous matters; (b) matters covered by earlier judgments; (c) writ petitions filed for registration of FIR under Section 154 Cr.P.C; and (d) cases fit for mediation and settlement before the Lok Adalats. In the same manner, identification of criminal petitions which are pending for 2 years and wherein the criminal proceedings are sought to be quashed. Grouping of cases where there are common issues for consideration may be carried out in all High Courts which will reduce arrears, may be done. For this purpose, the Registry may, on physical verification, prepare before the end of the summer vacation a list of all matters which are in arrears.

- Classification of cases and melting/grouping of cases should be done in the first instance. The practice of Supreme Court of India with reference to Case Classification of Central Acts may be followed by all High Courts.
- The High Courts may also encourage the increased use of ADR mechanisms to settle cases outside the litigation process, and request the State Government to increase the number of Fast Track Courts for expediting the trial of special categories of cases.

### **Court Processes and Procedures Reengineering through ICT**

- Official website of the High Courts may, among other things, enlist all necessary details of cases pending and disposed; and judgments, orders, directions, check-lists, jurisdiction, cause-list, weekly-list, monthly-list, details of the process of summons, updated and legible rules of the High Court, legal services available to the litigants, and details of the Bar may be uploaded on day-to-day basis.
- There may be standardized, proper check-list format for the different types of petitions. Such check-lists may be uploaded to the official website of the High Courts, same may be verified by the Advocates before filing the

petition. It will reduce defects in the filing. It is also necessary to have different checklists for different types of petitions. Examples- Checklist for Writ Petition, Criminal Appeal, Civil Appeal, and Revisions.

- As the digitization of court records is under process, to better exploit digitized data, it is very much necessary to have an internal search portal which helps search Act-wise pending cases in a High Court.
- In many District and Lower Courts, and in some High Courts problems of connectivity still persisting, which need to be addressed on a priority basis.

To overcome the problem of connectivity it was suggested to use locally available internet network with proper firewalls at the server end.

- To do away with Manual Registers, Forms, Reports, and Returns it is necessary that all relevant information is duly collected and assimilated into the computer system.
- If there are frequent problems with the central server, it is advisable to save an extra copy of the information collected in the backup systems, it enables retrieval of information as and when required.
- In spite of huge investment in resources, energy and time in building robust e-platform for the judiciary, still there is a duplication of work in the form of preparation of manual records. It was suggested that the practice of maintaining physical registers/reports/returns may be done away with and the staff deployed for that purpose may be utilized for productive activities.
- At the level of High Courts, most of the advocates and many of the litigants are having ICT infrastructure at their end. But presently, the petitions/applications are filed manually which are scanned and uploaded in the system subsequently. However, the best means of utilizing the ICT infrastructure would be encouraging the advocates to feed the data by

filling up the presentation forms. Nevertheless, for this purpose, it is necessary to design required software applications to capture relevant data from the registered clerks, petition writers, stamp vendors, litigants, advocates, and other stakeholders. It is also necessary to enrol all the above-mentioned duty-holders with user-id and log-in password to upload the data from the place of their convenience, by using a one-time password to ensure authenticity.

As a requirement of enrollment, photo identity proofs (Aadhaar/Passport), advocates enrollment numbers, etc. may be made mandatory and should invariably be auto-crosschecked at the time of sign-in.

The succeeding phase of ICT enablement may focus on integrating data collected from all the actors and present it directly to the desktop of the Judge. Therefrom the judge may pass appropriate orders/judgment/directions which are fed directly to the server which can be retrieved as and when required. In the same manner, granting adjournment, admission, dismissal, hearing, and other adjudicatory and administrative functions can be performed with the least human interference.

- Once an advocate establishes an interface with ICT enablement he can file online motion petitions for mentioning, adjournments etc. which can be sent in real time to opposite parties/advocates who would respond online; based on such responses judge may decide such applications without consuming too much of the judicial time. If such interface work 24x7 it will be very easy for all duty-holders to access the court facilities efficiently and timely.
- Advocates who are cooperating with the court in the implementation of ICT may be encouraged and rewarded. For example-advocate presenting the application in soft copies may be dispensed with printout-cost of petitions to be presented before the Bench(es). It encourages young advocates to use ICT

frequently. By doing this space for storing records is saved and manpower for physical movement of the file is also reduced. In this manner, both bar and bench can reap the benefits of the ICT.

- Enrolment Number of advocates may be made mandatory during filing and it is also necessary to devise ICT mechanism to verify identity credentials of Advocates signing the *Vakalatnama*.
- Digital signatures may be provided to the Bar members for signing the petition and the *Vakalatnama*.
- Automatic allotment of stenographers through a customized software, as practiced in the Madras High Court, may be adopted in other High Courts.
- Process Fee, a minimum of ₹2 etc. are collected, administrative and processing cost of which exceeds the amount collected as fee vis-à-vis consumes a lot of time. Kiosks may be set-up in High Court premise enabling e-stamps. In Patna, franking machines are used for the collection of court and process fee. This practice may be replicated in other High Courts.
- It may also be effective if lawyers are requested to have e-wallet through which they can pay court fees.
- To amplify the efficiency of paperless courts it is very much necessary to develop a software module for online-filing and processing of the matters.
- In Gujarat, there is the online interface between jails and courts to help the department to see and verify the status of the proceedings; besides, online certified copies can also be extracted. To fully utilize ICT in the court administration it is necessary to integrate all stakeholders with Courts (Jails, Police Stations, Courts, Observation Homes, and Government Hospitals etc.)
- All charge sheets, FIR, and other reports from police station may be called in digital form. In



Karnataka, there is a practice of sending E-FIR to the magistrates on the very same day of its registration, it can be introduced in other States as well.

- In Sikkim, through a software application, file tracking with the help of mobile phone is made available for court users. It can be replicated in all other High Courts.
- There is an urgent need to scan and upload all relevant documents in the NJDG system, for this purpose backup capacity of NJDG may be enhanced.
- SMS alerts to remove defects at all stages, as practiced in Andhra Pradesh and Telangana High Court, may be introduced in other High Courts.
- To ascertain the stamp duty payable, it was suggested to use scanned pdf (portable document format) file, and search relief sought by using the search button. As the ordinary scanning software do not have search features, it is advised to build a customized software, which a local software personnel may design for courts, and it is not very costly also.
- At the time of filing the petition and other documents bookmarking in pdf reader may be made like, Court Fee, Prayers, Act, Section, Rule, Circular, Notification, the name of the Court, and Departments. It facilitates the Registry to navigate the documents, and verify the mandatory compliances. It also helps the reader drop down to the particular sections of the document without scrolling.
- If the ICT infrastructure is fully utilized, need for calling documents from lower courts becomes obsolete as all the documents can be retrieved from the central server. However, until such time, the practice of calling documents electronically may be encouraged.
- Process servers should be equipped with handheld devices (simple smartphones with GPRS) which can notify electronically whether the said notice is served to a particular person residing at a particular address or not. The GPRS system would help to ascertain whether process server visited the said address or not; at the same time process server may be asked to take a photograph of the person received the notice. The GPRS update of the compliance or noncompliance along with photograph may be uploaded on the website. This ensures punctuality and unfailing compliance with the service.
- There may be a separate e-court fee counter as followed in Chhattisgarh High Court to aid e-filing. Mobile application for disseminating information of case status as practiced in Chhattisgarh High Court which may be replicated in other High Courts.



## P-1043: NATIONAL JUDICIAL CONFERENCE FOR THE HIGH COURT JUSTICES ON THE REGIME OF GOODS AND SERVICES TAX, September 8 to 10, 2017

Nitika Jain, Law Associate



The National Judicial Academic Council (NJAC) has approved three National Judicial Conferences for the High Court Justices on the regime of Goods and Services Tax (GST) for the Academic Year 2017-18. These conferences are of three days duration each. The National Judicial Academy organized the first three-day Conference on the regime of GST during September 8<sup>th</sup> to 10<sup>th</sup>, 2017 which was attended by 28 High Court Justices from different jurisdictions. The Resource Persons for the conference were senior officials of the Government who were involved in formulation of the policy leading to relevant amendments to the Constitution and framing of the GST Legislation as indicated by the Hon'ble Chief Justice of India and Senior Justices of the Supreme Court of India. The resource persons were drawn from the Ministry with a view to ensure that participant High Court Justices are adequately sensitized to administrative perspectives subtracting the Constitutional and legislative policy, underlying the GST Regime.

The workshop during the course of three days provided a forum for discussing normative issues pertaining to the evolution of indirect taxes, from a regime of discrete and multiple taxation to one

substantial uniformity across different tax domains and jurisdictions. The conference included following sessions:

- On *GST: Economic Policy Bases; Federal experiences elsewhere and navigating the shift in India*, the failures and drawback of the previous tax regime was highlighted. The session dealt with the history of evolution of the GST Regime. It was pointed out that GST was a collective effort of State and Central and that the tax regime was a step towards the Concurrent list scenario. The new tax regime was formulated with the aim to address challenges of multiple taxes such as tax cascading, contribution of revenues etc. The speaker highlighted that GST is a value added tax taxed on supply of Goods and Services and that India follows the concept of dual GST. The session gave an insight to the international experiences of GST regime, significant elements of prior Central and State laws; and its borrowings from VAT/GST legislation of EU, Australia, Malaysia etc. along with International VAT/GST guidelines of OECD. The concept of origin versus destination based tax was also

discussed and the speaker stated that GST brought a paradigm shift from origin to destination based tax i.e. moving towards ultimate point of consumption tax.

- On *Constitutional Evolution: Levy & Collection of taxes; Pre & Post GST*, the Constitution Amendment (One Hundred and First Amendment) Act, 2016 to incorporate GST regime was discussed in detail. Other major areas discussed included the applicability of GST on registered and unregistered person, rate of taxes on different commodities and compensation cess. The concept of “business vertical” and how it will be taxed was explained to the participants. The constitutional validity of Section 18 of the Constitutional Amendment Act was deliberated upon. The session also focused on treatment of Inter-State trade in Pre GST era and GST era, the constitutional challenges from GST law and administrative constraints of implementation of GST and legal issues resulting from it. The speaker highlighted various central and state taxes which have been subsumed under GST.
- The session on *Overview of GST Legislation (CGST, IGST & SGST)*, focused on the definition of Goods and Services as provided under Art 366 (12), Article 366 (26A) of the Constitution, legal provisions common to the GST law(s) and legal provisions specific to IGST Act & Compensation Cess Act. It was highlighted that the IGST Act is a mirror image of CGST Act and the concept of Anti profiteering is unique in the Indian Tax regime. The definitions of aggregate turnover, business, composite supply, mixed supply, consideration, electronic commerce, electronic commerce operators, exempt supply, fixed establishment, location of supply and reverse charge under the CGST Act were interpreted and discussed. The speaker gave a comparative insight to the important provisions of CGST, IGST, SGST and UTGST Acts. Participants pointed out that there is no check on officers for violation of Section 158 of the GST Act.
- In the session on *Comparative Analysis of Concepts: GST vis-à-vis Central Excise, Service Tax & VAT*, the speaker limited his presentation to the concepts and important features of the GST Legislation, comparison between major taxes viz Central Excise, Service Tax and VAT. A comparative overview with regard to the concept of compliance verification – audit, return, scrutiny, anti-evasion (search/seizure), penalties, prosecution, refunds, treatment of exports and dispute resolution under the old and the new tax regime was discussed. The rates of duty under the Central Excise, VAT, Service Tax and the GST was highlighted. The deliberation further included the liability to pay tax under the different regimes of taxes. The concept of Input tax credit, TDS, Export and Advance ruling authority was also deliberated upon during the session.
- The session on *Administering GST: Inspection, Search, Seizure & Arrest; Adjudication, Demand & Recovery*, involved deliberations on power of inspection, search and seizure (section 67), safeguards and basic requirements to be observed during search, Inspection of goods in movement (section 68), power to arrest (section 69), safeguards in relation to arrest, difference between cognizable and non-cognizable offence, power to summon (Section 70), CBEC guidelines on issuing summons, access to business premises (Section 71) and officers required to assist CGST/SGST officers (Section 72) under the Central Act. How to distinguish between search and inspection was discussed by the participants. Other issues raised were that, if there are more than one Joint Commissioner in a place, what criteria is adopted to depute one among them? Whether the centre can intervene when the state does not take forward the assessment search to be carried out?
- Next session was on *Administering GST: Offences, Penalties, Prosecution & Compounding* which dealt with how various



goods and services are taxed under the CGST, IGST & SGST, offences and penalties provided under the act and the procedure for prosecution. It was pointed that intricacies of fiscal offence can be appreciated with a reference to salient features of tax laws which broadly includes, chargeability – authority to tax, tax rates – rates at which tax has to be paid, tax collection mechanism and tax compliance. Landmark judgements on valuation i.e. *UOI v. Bombay Tyre International (1983) [14 ELT 1896 (SC)]*, *MRF Ltd. v. Collector of Central Excise, Madras (1997) 92 ELT 309 (SC)* and *CCE v. Fiat India Pvt. Ltd (2012) [283 ELT 161 (SC)]* were highlighted. The speaker further gave an overview of the offences under the old tax regime and the GST Act. For cognizance of offence under the Central Excise Act 1944, *Om Prakash v. Union of India 2011 (272) E.L.T. 321 (S.C.)* was also discussed. Various offences which are liable for fiscal penalties and the penalties for them were pointed out in detail. It was stated that Section 126 of CGST Act 2017 prescribes general disciplines of imposing penalty. Other areas of discussion included offences for cognizable and non-cognizable offence, prosecution for repeat offenders, prosecution for companies by companies and compounding of tax offences.

- On *Administering GST: Dispute Resolution – Appeal & Revision*, the speaker broadly dealt with the concept of supply of goods and services, returns in GST, filing returns and the penal provision in case of non-filing of returns to explain the dispute resolution mechanism under the GST legislation. The process of appeal under CGST & SGST up to the Tribunal was further discussed. It was stated that if one of the issue relates to place of supply then the matter will go to national bench and regional and when the issue relates to other than Place of Supply the jurisdiction will fall under the state and area benches.
- On *Potential Areas of Conflict & litigation under GST*, two broad areas deliberated upon in the session were, likely areas of Conflict under

GST between the Centre and States and the possible areas of litigation. Following areas of dispute were highlighted by the speaker and the participants during the course of discussion: Centre and state relation, GST Council is mere recommendatory body which is not binding, issues relating to revenue implications, classification of goods and services, issues pertaining to interpretation of law such as business, scope of supply and issue of cross-empowerment to avoid dual interface under the GST regime. One of the issue raised by the participant was whether IGST can be applied to exports of goods and services? It was stated that IGST could be put on exports as well. Various cases which have come up so far in regard to GST were as follows:

- In *Mohit Mineral v. UOI 2017* (Delhi High Court): Challenges the constitutional validity of the GST compensation Act.
- *Zarina Israrkhan v. Union of India (W.P.(c) No. 0034 of 2017*: PIL under Article 226 before Hon'ble High Court of Delhi for levy of tax at the rate of 12% Goods & Service Tax on sanitary napkins.
- PIL in Hon'ble Supreme Court of India Nipun - *Malhotra v. Union of India* W.r.t. levy of GST on equipment meant for differently abled persons.
- PIL before Hon'ble Madras High Court, challenging the GST Act & rules and prayed for postponement of implementation.

The speaker also deliberated upon the taxability in the Special Economic Zones under the GST Regime.

- The last session dealt with *Criticality of “Place and Time of Supply “for Determination of Liability under GST*. The speaker discussed the determination of time of supply for goods & services, relevance of Place of Supply in GST and the determination of place of supply for goods & services. The concepts of Intra-state supplies, Inter-state supplies and Import / Export were broadly discussed.



**P-1044: REFRESHER COURSE FOR POCSO COURTS, September 8 to 10, 2017**

**Ankita Pandey, Law Associate**



A three day Refresher Course for POCSO Courts was organized on 8<sup>th</sup> to 10<sup>th</sup> September, 2017 by the National Judicial Academy, Bhopal. The participants were nominated presiding judges of POCSO Courts in India. The objective of the programme was to explore issues faced by POCSO Courts while adjudicating cases under the POCSO Act, 2012. The idea was to provide participants a unique platform to share experiences and assimilate best practices.

Following issues were highlighted and deliberated upon during the Conference:

- Child friendly justice is justice which is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity.
- Traditional courts of law do not take into account developmental needs of children. Legal proceedings in a traditional court are stressful and time-consuming. Language used

in legal proceedings can be difficult for a child to comprehend. Therefore, child-friendly procedures can make the legal process less daunting for a child and also enhance the quality of the child's testimony. Dedicated courts, judges, and prosecutors can ensure speedy and child-friendly trial. Courts are required to apply the principle of best interests by considering how the child's rights and interests are, or will be, affected by their decisions. The best interests of the child demand that children should be shielded from the trauma that may arise from giving evidence in criminal proceedings. Statement of Objects and Reasons of the POCSO ACT, 2012 also ensures safeguarding the interest and well being of child at every stage of judicial process, incorporating child friendly procedures.

- Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details. Therefore, minor discrepancies can be ignored. Statement must be recorded the exact language spoken by the

child and in the presence of parents or any other person whom the child trusts. Assistance of a qualified translator or interpreter can be taken, if required. The assistance of a qualified special educator or person familiar with the manner of communication of child with disabilities can also be sought. Magistrate must try and ensure that statement is recorded by audio-visual means. Copy of documents being relied upon by the prosecution must be provided to the child, his or her parents or representative.

- While appreciating the evidence of a witness the approach must be to ascertain whether the evidence of the witness read as a whole appears to have a ring of truth. In cases of sexual assault conviction can be founded on the sole testimony of the victim unless there are compelling reasons for seeking corroboration. Seeking corroboration as a rule amounts to adding insult to injury. Medico legal evidence should not be taken just as corroborative evidence. In fact, in cases where the child is of such tender age that oral evidence is not possible, then medical evidence must be taken as primary evidence and proceeded upon.
- Rule 12 of the Juvenile Justice (Care & Protection of Children) Rules, 2007 details the procedure to be followed in determination of the age. Rule 12(3) provides that in every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining – (i) the matriculation or equivalent certificates, if available; and in the absence whereof; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a local authority; and only in the absence of either above mentioned documents, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. The provision laid down herein can be imported to POCSO cases as well. Medical opinion could

be looked into only in the absence of documents referred to under Rule 12.

- In criminal jurisprudence, an accused is presumed innocent until proven guilty and the entire burden of proof lies upon the prosecution to prove the guilt of the accused. However, in certain exceptional cases the burden of proof is reversed thereby casting the burden of proof of innocence on the accused himself. The idea is to balance the personal rights of the accused with community's broader interest in law enforcement. The provisions of Section 29 and 30 of the POCSO Act does not imply that the prosecution need not adduce any evidence and that it will be for the accused to prove that he has not committed an offence. The basic principle remains the same, that is, the fundamental facts and the evidence would still need to be adduced by the prosecution after which the burden will shift on the accused to prove that he did not commit the act with sexual intent. Also, presumptions are merely rules of evidence and not evidence itself. Therefore, merely on the basis of presumption, an accused cannot be convicted.
- About 80% of child sexual abuse cases are committed within the four walls of the house and 90% of these are committed by someone known to the child. However, despite this child sexual abuse is one of the least reported crimes in India. Therefore, POCSO Act makes provision for mandatory reporting of such offences so that the object of the Act is not defeated. Any person who comes to know about any incident of child sexual abuse or an apprehension of such incident is liable to report about it. However, the child who is a victim of such an offence is exempted from the purview of this provision. Trauma faced by victims of sexual offences, especially children, is immense. They need counseling by psychologists etc. But such facilities can only be provided once the case is reported. However, there does not seem to be a conducive and non-judgmental environment for such disclosures.

- India is the second largest user of internet in the world. There has also been an increasing number of incidents relating to child pornography. In this regard, Section 67-B of the IT Act is as good as a legislation. It takes care of all the aspects relating to child pornography. However, in order to prosecute offenders for child pornography and related offences there should be proper preservation of electronic evidences. But, the kind of 'maalkhanas' we have, the electronic evidence would not survive for long due to dust, humidity and other factors. Also, given the fact that cases go on for a long time in our country, production of such evidences at some later stage before the court might not be possible. For this, forensic teams should create a replica of electronic evidence and preserve it in a sustainable environment.



- At any stage after receiving the copy of the FIR, interim compensation can be provided by order of the court in appropriate cases. Such interim compensation is not independent of conviction or acquittal. The object is to alleviate the sufferings and challenges faced by the victim and the family at that time. Rule 7 of the POCSO Rules, 2012 also makes provision in this regard. Also the question of recovery of compensation should not arise in such cases for the reason that even if the case results in acquittal of the accused it does not necessarily imply that the case was a false one. It could be due to several reasons beyond the court's control in such cases. Also, at the primary school level, we must have a system of personal safety education with the help of child psychologists and

counselors. This would enable them to differentiate between 'good touch' and 'bad touch.'

- Some recommendations for special courts:
  - Reduce waiting time for children outside the court. Children's examinations should be scheduled for a specific time, either in the forenoon or afternoon session.
  - Invest in an electronic intimation mechanism that will alert victims and their families at least 24 hours in advance, if the hearing is being rescheduled.
  - Complete the examination-in-chief on the same day. Breaks should be allowed if necessary. Admit the statement of a child with disability recorded under Section 164(5A)(a) as examination-in-chief.
  - Do not delay or deprive child victim in need of interim compensation. Proactively consider compensation application and not hesitate from exercising suo-motu powers in this regard.
  - Examine the child in the chamber or any other room in the court complex, if the courtroom intimidates the child.
  - Questions should be posed by the judge and not the lawyer or prosecutor. It must also be ensured that there are no aggressive questions or character assassination of the child.
  - If the infrastructure of the court does not allow for a separate room for the victim and the accused, then judge may use his chamber for recording the statement of the child.
  - Judges holding POCSO courts as well as other courts at the same time can give priority to the recording of evidence of the child victim over other matters.
  - Best Interest of the child is of paramount importance in such cases. Therefore, judges can exercise their discretion to ensure the same to the maximum possible extent.



**P-1045: NATIONAL JUDICIAL CONFERENCE FOR NEWLY ELEVATED  
HIGH COURT JUSTICES ON PUBLIC LAW, September 15 to 17, 2017**

**Mr. Rahul Sonawane, Research Fellow & Mr. Krishna Sisodia, Law Associate**



The National Judicial Academy organized National Judicial Conference for Newly Elevated High Court Justices on Public Law from 15<sup>th</sup> - 17<sup>th</sup> September, 2017, which was attended by 22 High Court Justices from across the country. The objective of the Conference was to facilitate deliberations among participant Justices on contemporary topics such as Information and Communication Technology in Courts and Court Management Techniques to improve efficiency and strengthen justice administration; core constitutional principles such as the concept of Judicial Review, Federal Architecture, Separation of Powers, Theory of Basic Structure and Fundamental Rights under our constitutional arrangement. The sessions were organized in a manner to provide for interaction and round table discussions based on designated theme among the participant justices.

On the theme of *Role of ICT in Courts*, the deliberations on following points took place - the speaker initiated the session with the history of computerization of Courts. It was stated that computerization began way back in 1990s when the first computerized Cause List was prepared in

the Patna High Court. It was suggested that the judiciary as an organ of the state stands far behind in the application of technology for swifter justice administration. Therefore, it was felt that litigant oriented use of technology should be adopted by the judiciary to improve the efficiency of courts.

On the topic of *Court Management*, the speaker explained at length the significance of court and case management and suggested that a judge should manage his docket in such a manner that old matters are given priority but at the same time it should be considered that the new cases do not become old. It was emphasized that in order to prioritize our work we should apply the concepts called Tracking, Clubbing and Grouping of Cases. The second speaker highlighted the significance of 'National Court Management Committee' (NCMS) which was formed to provide institutional framework to the Court Management in India. Furthermore, it was suggested that the success of the Court depends upon the Quality, Responsiveness and Timeliness of Justice and hence the management of court is an integral aspect of the justice administration system.

On the theme of *Constitutional Vision of Justice*:



*Round Table Discussion*, the moderator initiated the session by asking three questions to the participant justices:

- What is meant by Justice?
- What is the Constitutional Vision of Justice?
- Is Indian Constitutional Vision of Justice is unique?

Some Participant said that “Justice for her is what is according to Law”. The other participant said that “Finding the Right Balance between what is right and what is wrong is the Justice” and so on.

Then the moderator discussed that “Justice” according to dictionary meaning means “A Judicial Officer”. He said that for him “Justice in itself means nothing”. It is like an empty glass of water and one has to pour meaning into it and that is the justice. The moderator quoted Justice Krishna Iyer who said “Centre of gravity of Justice should shift to the Society”. Furthermore, the moderator suggested that our Constitution is a document of Social Justice which demands Judges to stand for the poor, oppressed and the downtrodden.

On the subject of *Theories of Judicial Review*, the speaker initiated the discussion by elaborating the three forms of Judicial Review viz. “Judicial Review of Executive/Administrative Action” in which Court can review and strike down the administrative action is known as weak form of Judicial Review. The second is “Judicial Review of Legislative Action” in which court can strike down the Law Made by the Legislature is known as Strong form of Judicial Review. Third is that when the High Courts and Supreme Court reviews the decisions rendered by its subordinate courts, that is also a judicial review. Thereafter, the speaker stated that the judiciary is criticized for judicial review and judicial overreach and it being undemocratic, but our country needs it to have a check on the governmental abuse of power and to further authenticate the democracy through progressive interpretations by the judiciary.

On the theme of *Separation of Powers*, the speaker initiated the discussion by citing the Montesquieu's

Theory of Separation of Powers wherein if all the powers lie in an organ of the state; leads to tyranny. Furthermore, the speaker stated that separation of powers in India has two facets viz. separation of powers between Judiciary, Legislature and Executive (which is also the basic structure of the constitution) and separation of powers between States and the Union (Schedule VII of Indian Constitution), but at the same time there are some overlapping provisions in the Indian Constitution, e.g. Art. 123 – President's Power to promulgate ordinances, Art. 357 – Exercise of Legislative power during emergency.

On the subject of *Allocation of Legislative Powers: The Federal Architecture*, the speaker initiated the discussion by suggesting that the legislature has the power to make the laws subject to legislative competence and constitutional limitations. The distribution of powers between Union and States is based on two things i.e. Legislative Competence and Territorial jurisdiction. Further, the speaker discussed the Distribution of powers under Art. 246 of the Indian Constitution viz. Union List, State List and Concurrent List. The Speaker discussed the Doctrines of Repugnancy, Pith and Substance, Colourable Legislation and various landmark judgements viz. *Kartar Singh v. State of Punjab*, *State of Bihar v. Kameshwar Singh*, *K C Gajapathi Narain v. State of Orissa*.

On the theme of *Fundamental Rights and Restrictions on Entrenched Rights*, the speaker splitted the Supreme Court into 5 periods:

- 1950 to 1975 – Supreme Court had the traditional approach concentrating on the civil and political rights of the individuals and distancing itself from the policies of the State.
- 1975 to 1977 – The period of emergency: The Supreme Court tried to protect the fundamental freedoms but the Supreme Court's ADM Jabalpur judgement was totally against the expectations of the people.
- 1977 to 1989 – Post Emergency period: The Supreme Court realized its significance in the Indian Democratic setup; Justice Krishna Iyer,

Justice Bhagwati, Justice O Chinappa Reddy are some of the prominent judges of this period who through Judicial Activism protected the rights of the individuals through unprecedented extent. Therefore, some of the scholars describe this period as the Golden Era of the Indian Judiciary.

- 1989 to 2013 – Period of Coalition Governments: The Supreme Court started to have impact on the policy matters. The appointment of Supreme Court and High Courts Justices through a strong collegium began in this period. Judicial overreach through activism was the major criticism of the judiciary during this period.
- Post 2014 period – In 2014, National Judicial Appointments Commission Act was passed by the government with a view to assert rights in appointments to the Higher Judiciary since after a long gap a full majority government at the centre came to power. The Supreme Court struck down the constitutional amendment stating the Independence of Judiciary is part of the basic structure of the constitution, hence cannot be abrogated.

On the theme of *Theory of Basic Structure: Contours*, the speaker initiated the session by stating that it is popularly known that theory of basic structure has been devised from Kesavananda Bharati case, actually seeds of the basic structure were sown in the Dissenting

judgement of Justice Mudholkar in case of *Sajjan Singh v. State of Rajasthan*. The same theme has been propagated by Justice H R Khanna in Kesavananda Bharati's case. It was further stated that there is no unanimity between the judges themselves as to what forms the “Basic Structure of the Constitution of India”. Various judges have defined basic structure differently. In various cases such as *Indira Gandhi v. Raj Narain*, *Minerva Mills v. Union of India*, *Waman Rao's case*, *L. Chandrakumar's case*, *I R Coelho's case* and recently in *NJAC Judgement* Supreme Court has defined the basic structure differently. Furthermore, the speaker stated that one of the main criticism against the theory is that a body which says that there is a basic structure of the Constitution which cannot be amended, only they know what the basic structure is. Therefore, taking recourse to this doctrine they have become a self-regulatory body which framers of the constitution never intended.

On the theme of *The Art of Hearing*, the speaker initiated the session by discussing that most of the judges who are elevated to High Courts come from the bar and it takes some time to change their argumentative approach. The speaker suggested that a Judge is expected to patiently hear the case of the litigant. Furthermore, a Judge should be open minded and shall not look as to who is arguing the case or the manner of argument, but should try to look at the litigant who is waiting for the relief.



**P-1046: REFRESHER COURSE FOR CBI COURTS, September 15 to 17, 2017**

**Shashwat Gupta, Law Associate**



The National Judicial Academy organized a three day Refresher Course for CBI Courts from 15<sup>th</sup> and 17<sup>th</sup> September, 2017. The objective of the course was to sensitize the judges with contemporary developments in law and to accrete their knowledge base and skills to enable qualitative and timely delivery of justice. The refresher course was divided into eight sessions and included sessions on combating corruption in India, prosecution of civil servants, cybercrimes, appreciation and preservation of electronic evidence, economic offences and extradition of fugitives.

**Session 1- Combating Corruption in India: Legal Framework and Judicial Approach**

The speaker initiated the discourse by briefly discussing the history of the Central Bureau of Investigation (CBI) and highlighting the salient features of the Prevention of Corruption Act, 1988. The speaker further delineated the improvements made in the Act vis-à-vis the Prevention of Corruption Act, 1947 which included widening the ambit of the term “public servant” and modifications of various provisions of the Code of Criminal Procedure, 1973. Thereafter the speaker explained the role of Central Vigilance Commission

including its power of superintendence over Central Bureau of Investigation. It was stated by the speaker that the introduction of Public Interest Litigation (PIL) and the Right to Information Act, 2005 has supplemented the fight against corruption since they have aided in unearthing various scams in India. It was discussed that if the trial is undertaken according to Section 4(4) of the Prevention of Corruption Act, 1988 it would result in expeditious disposal of cases. The speaker also observed that effective functioning of both the special courts and investigative agencies is pivotal in combating corruption.

**Session 2- Prosecution of Civil Servants: Sanction for Prosecution**

The speaker commenced the discussion by stating that sanctioning authority has to apply its mind since the decision of the sanctioning authority cannot be reviewed. It was further deliberated that if trial is initiated without obtaining sanction then the trial is vitiated. It was discussed that a prosecution of a private person does not require a sanction. It was also discussed that if sanction is not given by the authority within a period of 3 months, then it is deemed that the sanction has been given by the authority.



### **Session 3- Prosecution of Civil Servants: Arrest and Investigation**

The speaker initiated the discussion by stating that under Section 17 of the Prevention of Corruption Act, 1988 investigation into cases should be done by police officers not below the rank of Deputy Superintendent of Police. The speaker stated that the before arrest the investigative agency conducts preliminary enquiry for ascertaining and verifying the facts alleged in a complaint. It generally involves collection of documents, obtaining statement of witnesses including their verification and scrutiny by the officers. The speaker stated that once a case has been referred to and taken up by the CBI for investigation, further investigation should be entrusted to them and a parallel investigation by the Departmental agencies should be avoided. On completion of investigation, if the C.B.I. comes to a conclusion that sufficient evidence is available for launching a criminal prosecution, the report is forwarded to the Central Vigilance Commission if previous sanction for prosecution is required under Prevention of Corruption Act, 1988.

### **Session 4 – Cyber Crimes**

The speaker apprised the participants about the dangers associated with smartphones and explained that fake messages could be sent through some applications so as to cheat unsuspecting individuals and data can be stolen from their phones by clicking on malicious links. It was discussed that various technological innovations enable hackers to remotely access smartphones after physical possession of those mobile phones for a few seconds. The speaker also explained the participants the concept of “Dark Net” and the illegal activities which are completed through that network apart from discussing the major hacking incidents which have taken place across the globe.

### **Session 5 – Economic Offences: Corporate, Insurance and Bank Frauds**

The fifth session of the course was devoted to the theme of economic offences. The speaker expounded upon the concept of fraud which was followed by discussion on corporate frauds and

various contemporary chit fund scams in India. The different types of insurance fraud which include internal fraud, intermediary fraud and customer fraud were also discussed at length. The speaker explained the various types of bank frauds in the country and the different doctrines under which responsibility can be attributed to the offenders. The session also dealt with the impact of such frauds on the national economy and the sentencing policy which should be applied in cases of such crimes.



### **Session 6 – Electronic Evidence: Appreciation and Preservation**

The session involved discussion on the use of Call Data Records [CDR] as evidence of the geographical location of an individual. The CDR is generated when a call is made/text message is sent through a mobile handset and it can be analyzed to determine the approximate location of an individual by the investigative agencies. The speaker also discussed the process of using the Google account location history to observe the movement of the smartphone user over a period of time. The procedure used by law enforcement agencies to collect information from Facebook and Twitter was also demonstrated to the participants to enrich their knowledge.

### **Session 7– Extradition of Fugitives**

The session was initiated with a discussion on the concept of extradition and the basic principles of extradition, i.e. the principles of double criminality and specialty. Thereafter the speaker gave a brief outline of the Indian Extradition Act, 1962 along with the U.N. Model laws on extradition (UN





Model Treaty on Extradition, 1990 and the UN Model Law on Extradition, 2004). The speaker discussed the approach of different jurisdictions toward extradition based on likelihood of torture and death penalty in the nation requesting extradition of the individual. In India, the punishment of death penalty is reduced to life imprisonment if the state from which the individual has been extradited does not support death penalty. The concept of political exception was also elucidated under which politically motivated request for extradition can be rejected. The role of courts in the process of extradition was highlighted by the speaker who also explained the procedure of execution of summons outside India. He also

briefly explained the provisions relating to mutual assistance with foreign states provided under the Code of Criminal Procedure, 1973 and the advantages of the various Mutual Legal Assistance Treaties (MLAT) that India has signed with various foreign states.

#### **Session 8: CBI Courts (Flaws in Investigation and Methods to Improve Efficiency of Courts)**

The last session of the course was an interactive session wherein the participants discussed various issues faced by them as presiding officers of CBI courts. The speaker analyzed the various issues raised by the judges which included submission of incomplete chargesheet by the investigative agencies, non- production of original documents, inclusion of unnecessary and irrelevant witnesses , failure in scrutiny of documents, lack of assistance to the court by the investigating officers and failure in submission of original documents. The speaker also examined the problem faced by the judicial officers regarding seizure of electronic devices by the investigative agencies and stated that the court should ensure that the agencies keep the devices in tamper proof sealing and that the chain of custody is maintained by the agency in a proper manner to avoid inadvertent damage to the data.



## P-1047: WORKSHOP FOR ADDITIONAL DISTRICT JUDGES

September 15 to 17, 2017

Mr. Rajesh Suman, Assistant Professor



The National Judicial Academy organized a “Workshop for Additional District Judges” [P-1047] during 15<sup>th</sup> to 17<sup>th</sup> September, 2017. The participants were Additional District Judges nominated by respective High Courts. The Workshop discussed critical areas concerning adjudication at the District level. The sessions involved discussions on issues related to challenges in implementation of the ADR system, Sentencing, Role of Judges in Court and Case Management, Electronic Evidence, Cybercrime and Fair Sessions Trial. The Workshop also focused on appellate and revision jurisdiction of District Judges under civil justice administration.

### Major Highlights and Suggestions from the Workshop

#### Session 1: Challenges in implementation of ADR system in Subordinate Courts

- The jurisdiction of courts concerning Alternative Dispute Resolution system is supposed to be limited but in practical terms it is huge. Section 89 of the Code of Civil Procedure [C.P.C.] was brought with a specific purpose of blending the judicial and non-judicial system in

the sense that whenever a civil matter is brought to the court, the court should see whether a settlement option is available in the matter. The matter can be referred under the four category provided under section 89 i.e. conciliation, mediation, arbitration and judicial settlement including lok adalat.

- The basic idea behind the Arbitration and Conciliation Act, 1996 [Act] is to enhance the autonomy of parties regarding choice of dispute resolution and least interference of the court. Section 5 of the Act clearly says that no court shall interfere with the matter which is not provided under part one. But still after this Act the court interferes with the arbitration process.
- Under Section 9 of the Act, the court can interfere any time before the execution of arbitration process. The application U/S 9 of the Act can be filed before a district court. But after amendment of the Act, if a matter is brought before court U/S 9 before the commencement of the arbitration, then the party which has sought the order has to commence arbitration within 90 days after the order is made.

- According to a recent order of the Supreme Court, if an order U/S 17 of the Act by the arbitrator is not complied by the parties, then the court can take contempt against the parties under Section 27 of the Act. Section 29 A in the amended Act prescribes the time frame for completion of arbitration process.

### **Session 2: Court & Case Management: Role of Judges**

- The schedule of cases should be prepared for hearing cases. Judges should only put those cases for hearing which can be heard on scheduled date. Such practice can considerably reduce burden of the court. The time schedule should be prepared in consultation with parties and once fixed it should be adhered to strongly.
- The judge should take control of court proceedings and not the advocate or any other stakeholder. An effective case management system displaces the advocate's control from court process and court ensures that trial progresses according to fixed time schedules. The elements of successful case management include early court intervention and continuous court control of case progress.



- The court manager system has failed because of lack of acceptability. Because of lesser remuneration of court managers, the other regular staff have not given any importance to court managers. But judges cannot do everything by themselves. In West neither the Chief Justice decide roster formally nor the judges decide what they have to hear.

- There is resistance among court staff in adopting to changes brought by e-court project. Proper training to court staff should be provided regarding court and case management. The coordination of competent retired court staff should be taken for providing training to new staff.

### **Session 3: Civil Justice Administration: Appellate and Revision Jurisdiction of District Judges**

- The role of the appellate court is not just supervisory and it is an opportunity to reexamine the decree in all its aspect. The only limitation is that the appellate court do not have the opportunity to look at the witness and his demeanor by which it can determine the intensity of truth and falsehood. But despite the witness not being there, on the basis of material on record, the appellate court can independently arrive at a different conclusion. However the appellate court should give due credence to the findings of facts.
- Appeal is a creation of a statute and only if the statute provide right to appeal the litigant can file an appeal. For civil appeals the right to file an appeal by the litigant has been conferred by the Code of Civil Procedure [C.P.C.]. The defendant also has a right to appeal against findings regarding issue framed by the trial court. Section 96 of the C.P.C. and procedural rules under Order 41 deals with appeals against original decrees. Section 96, C.P.C. lays down the grounds on which appeals can be filed and four grounds are mentioned.
- Under Order 41 there are four Rules which are important. These Rules mentions when the decree of the lower court has to be stayed, under what circumstances decree can be stayed, whether a money decree can be stayed and if it is to be stayed then what are the circumstances under which it can be done. Money decree normally should not be stayed and only if the appellant deposit the entire amount or gives



security to the satisfaction of the court or gives a bank guarantee then only in such cases money decree can be stayed.

#### Session 4: Electronic Evidence: Collection, Preservation and Appreciation

- The initiative of the UN Commission on International Trade Law in 1996 made a Model Law and based on that India has framed legislative framework regarding electronic evidence. The Supreme Court of India has recognized the validity of electronic evidence since 1960s and has enunciated guidelines for ensuring authenticity and admissibility of such evidence.
- The crime scene evidence must be captured through electronic medium such as video recording. Judges must check authenticity, relevancy and reliability of every electronic evidence before rejecting its admissibility. The court should see that such evidence has not been tampered with and all norms and guidelines should be followed to ensure authenticity.
- The courts are not getting adequate assistance from prosecution concerning electronic evidence as most of the time the prosecution lacks expertise to understand the complexity of electronic evidence and how to ensure its authenticity. There is need for comprehensive training of investigation and prosecution for proper presentation of electronic evidence.
- Preservation of electronic evidence is a major issue and it is difficult to preserve electronic evidence *quay* its authenticity. Proper guidelines should be followed by courts in ensuring proper preservation of electronic evidence.

#### Session 5: Laws relating to Cybercrimes: Advances and bottlenecks

- There have been several cases in the past of WhatsApp spoofing and e-mail spoofing whereby messages were sent by a non-existent user masquerading as a known user to spread

confusion and to steal data. This is done through VOIP-Voice Over Internet Protocol. The communication on VOIP happens not through towers but through internet cables.

- The WhatsApp spoofing can be detected by clicking on the forward link. Usually after click of forward link certain signs are shown in the header. In case of spoofed messages such signs are not shown. Similarly to catch spoofed email, the email headers should be checked. In email header the word message id should be looked. The revealed email address should be read down to top and not top to down. The domain name should be checked and if the domain name is not that of the internet service provider then it is a mail sent from spoofed server.
- The ownership of internet data is a big issues concerning internet security and regulating internet traffic. The internet at global level is controlled through root servers which are based in United States. India do not have a root server and this create a disadvantage to India in term of internet control and regulation.

#### Session 6: Digital Evidence

- The digital footprints of a person can be tracked through call data records [CDR]. The call data records can tell the tower locations which can indicate the movement of suspected person. The tower location is shown by the call data record about the person's movement whose CDR has been called. For investigation now the google map is also probed and the accuracy of google map is 99.9%.
- As a convention the CDR of phone communication is kept for one year by the service providers. There is a circular from BSNL for the keeping of CDR for one year and other telecom companies have adopted that as a rule. In some instances service providers do provide details of communication beyond one year as well.
- There is growing incidence of misusing of the IMEI number of mobile phones. The police



investigation do not go into the details of checking IMEI number. The police makes mistake about properly identifying first cell id and last cell id in the analysis of call data records.

- Under the Forensic examination performed by the Investigating Agency there is a special need to properly look into the role played by proxy servers. There is need of proper training to police and prosecution in this regard. Awareness regarding the misuse of technology must be promoted.

### **Session 7: Fair Sessions Trials**

- There are international human right conventions and declaration such as UDHR and ICCPR which prescribe certain minimum rights to be safeguarded. These rights include right of accusation told to the accused, right to consult lawyer of his own choice, expeditious trial, trial in presence of the accused, opportunity to lead evidence and cross examination, right to have an interpreter, right against self-incrimination, *autrofois acquit* and *autrofois convict*, right of compensation against wrongful arrest and no application of retrospective penal laws. These rights are inalienable process of justice.
- The presumptions regarding guilt of accused in dowry deaths and domestic violence and reverse burden of proof in economic offenses and sexual offences against children creates advantages in favour of prosecution and trial of such offences can result in unfair trial if safeguards are not applied. The standard of proof beyond reasonable doubt is taken away in such offences but the prosecution has a duty to propose the facts which have to be rebutted by defense because the basic assumption is that negative cannot be proved.
- There has been a rise in the jurisprudence relating to compensation to victim. The court need to be cautious in compounding of serious offences where compensation is offered to victim by accused. The victim should not enter

into settlement because of influence of power of accused.

- The stage of charge is very important and at this stage proper scrutiny must be done. The case where the accused get convicted by trial court but the evidence do not sustain at appellate stage suggest lapses on the part of trial court. The innocent should not be compelled to undergo the ordeal of trial and at the stage of charging courts must ensure fairness.

### **Session 8: Sentencing: Issues and Challenges**

- Sentencing is the end result of trial. It is easy to convict but difficult to come to just and fair sentence. Section 235 (2), CrPC mandates court to hear the accused on sentencing after conviction. If court do not hear the accused after conviction then there is a statutory violation. Court must assess the circumstances and situation of convict.
- Court must not sentence an accused in a way which will make him a more hardened criminal. Court must see that how much of sentence can help an offender to move out of criminality and move to a domain where he will become worthwhile to society.
- In India the courts seems to have developed personalized sentencing rather than objective sentencing. This personalized sentencing has given rise to inconsistency and disparities in sentencing. Depending on the approach of the judge concerned cases having similar kind of facts can have widely varying sentencing. The Supreme Court of India has suggested some guidelines for objective sentencing to fill the legislative void.
- Non-execution of death sentence is becoming a major problem and it has led to creation of mercy jurisprudence where due to non-execution of death sentence, the accused is approaching Supreme Court for relief due to unreasonable delay in disposing of mercy petition.

## P-1048: NATIONAL JUDICIAL CONFERENCE FOR HIGH COURT JUSTICES

September 22 to 24, 2017

Dr. Amit Mehrotra, Assistant Professor



A three days National Judicial Conference for High Court Justices was organized by the National Judicial Academy, Bhopal from 22<sup>nd</sup> – 24th September 2017

The conference for High Court justices are conceived with a view to provide a platform, for the judges to share their experiences, insights and come up with suggestions with a panel of distinguished resource persons from the judicial branch and other relevant domain experts. These conferences are designed to facilitate discussions on developments in constitutional law, economic crimes, supervisory powers of High Courts over subordinate courts, laws governing Intellectual Property, and Impact of tribunalisation on justice in India.

Identifying challenges and evolving optimal solutions/strategies to effectuate qualitative justice delivery has been agenda of the conference.

Nineteen High Court Justices participated in the conference. Hon'ble Mr. Justice Kurian Joseph Judge, Supreme Court of India, Hon'ble Mr. Justice P.V.Reddi Former Judge, Supreme Court of India, Hon'ble Dr. Justice S. Muralidhar Judge, Delhi

High Court, Hon'ble Mr. Justice Rajesh Bindal Judge, Punjab & Haryana High Court, Mr. O. P. Gupta, IAS Controller General of Patents, Designs & Trade Marks, Intellectual Property India, Mr. Shamnad Basheer Former Professor, National University of Juridical Sciences, Kolkata, Ms. Abhilasha Nautiyal Anand and Anand, Managing Associate, Litigation, Mr. Somasekhar Sundaresan Counsel, Mr. Rajiv Awasthi Advocate were the Resource Persons of the Programme.

The theme of session one was Developments *in the Area of Constitutional Law*. It was emphasized that law is dynamic and the fabric of constitutional and legal space. There are inherent and implied limitations as pointed out in Keshvananda Bharti case where it was held by the Supreme Court that Right to property was not a part of the basic structure. The aspects of various freedom and right to life and liberty as enshrined in the constitution of India were discussed during the discourse. It was stated that so far as legislative monitoring is concerned the Supreme Court is fairly strict in its scrutiny and whenever there was an application of legislative responsibility and framing out the essential legislative powers to the executive, the

courts intervened. But post 70s the court have been more accommodative. It was stated that India has a robust interpretation of the constitution by the generation of great lawyers/judges who came from essentials civil background to interpret the constitution. It was highlighted that language of the law is much more precise than the language of literature. It was delineated that knowledge is the progressive elimination of ignorance.

It was stated that in our democracy, the highest is not above the people and humblest is also not below the people. Throughout the constitution as interpreted by the Supreme Court the evolution of constitutional law in our country as demonstrated as not a static document but a vibrant instrument and is for the progress of the nation. As per the necessities of the times, there are constitutional amendments and judicial pronouncements. There



has been a tremendous development in constitutional law especially with respect to the concept of fundamental rights which has undergone sea change. Significant developments in constitution legislations and judicial trends were discussed during the discourse. It was delineated that history of the Indian constitutional law is, in essence, the history of the power of judicial review as exercised by the constitutional courts. Our Constitution has withstood the test of times retaining all its basic features and with value based amendments coupled with the judicial contribution. Article 14, 21 with regard to rights jurisprudence were highlighted. The relationship between the directive principles of State policy and fundamental rights were discussed with reference to Minerva Mills case.

The theme of session two was *Evolution of economic crimes: Money Laundering, Bribery and Corruption*. It was deliberated that Prevention of Money Laundering Act, 2002 is an Act passed by the Indian Parliament to prevent Money Laundering and to provide for confiscation of property derived from, or involved in, money laundering and for matters connected therewith or incidental thereto and also the prosecution of the persons involved in money laundering. The Prevention of Money Laundering Act 2002, provides two parallel action; First, attachment of properties derived or obtained from proceeds of crime. Second, upon completion of investigation the prosecution of persons for committing offence under Section 3 of the Act. Briefly the scheme of the Act was discussed during the discourse. The three stages of money laundering which includes Placement, Layering and Integration were also discussed. It was stated that money laundering often involves five different directional fund flows Viz. Domestic money laundering flows, Returning laundered funds, Inbound funds, Out-bound funds and Flow-through. It was emphasized that the Act is a special Law and a self-contained code intends to address the increasing scourge of money laundering and provides for confiscation of property derived from or involved in money laundering. The Act also provides a comprehensive scheme for investigation, recording of statements, search and seizure, provisional attachment and its confirmation, confiscation and prosecution. It was delineated that elaborate and fair procedures are incorporated in the Act. The order of provisional attachment shall be only by the Director or any other officer not below the rank of a Deputy Director, specifically authorized by the Director. Various other important sections of the Act were discussed during the discourse. It was stated that shifting of the incidence of the burden of proof, which is rebuttable, is an essential component of the scheme of the Act. The session highlighted some major effects caused by economic crimes such as: Increase in inflationary pressure, uneven distribution of resources and creation of elitism, marginalization of tax base, generation of abundant



black money, creation of parallel economy, undermining of developmental works/efforts, becomes a breeding ground for corruption, weakens morale and commitment of citizens and includes the country's economic equilibrium at stake.

The theme of session three was *Supervisory power of High Courts over Subordinate Courts: Monitor and Mentor*.

It was an open discussion session. Justices expressed that there is a lot of communication gap between the higher judiciary and subordinate judiciary which makes difficult for the higher judiciary to assess the performance of subordinate courts. It was suggested there should be a mechanism where smooth communication may take place between these two tiers of the judiciary so that optimal and holistic delivery of justice may take place. It was stressed that judiciary as a whole should be treated as one family. Higher judiciary should act as a mentor and guide subordinate judiciary when in need. It was emphasized that reflective office is the need of the hour.

The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. It was stressed that there is no specific guidelines for effective implementation of Article 227 of the Constitution of India and every judge act per his own wisdom.

The importance of Article 235 and Article 237 of the constitution of India which speaks about the supervisory power to the High Courts in order to have a control over subordinate courts was discussed. True role of the High Courts in relation to district judiciary for fulfilling its constitutional responsibilities and measures to be taken to improve the function of the district judiciary was also emphasized during the discussion.

It was stated that majority of people know only district judiciary. It is the collective responsibility of the High Court as well as of the district judiciary to come up to the expectation of the people. The

support, the parental care bestowed by the High Court goes long way in achieving the goal of efficient and effective justice dispensation. Building of a work culture is a key factor to sustain the justice delivery system. District Judiciary works under the gaze and watchful eyes of the High Court, if control and supervision has to be effective there shall never be communication gap between the district judiciary and High Court. That's why the system of reporting, review, inspection and conferencing has been devised. Interacting with the judicial officers on continuous basis is very important. The performance appraisal and disciplinary control are important facets of the High Courts. It was stressed that power of control vested in the High Courts carries enormous responsibility. Frank and free expression of views, understanding the problems, issues raised by



subordinate judicial officials and try to find solutions in consultation with the district judge or registrar concerned are all expected with the inspecting/ guardian judge. It was suggested that parental care as well as the monitoring role is required by the High Court Justices.

The theme of session 4 was *IPR in India: Emerging Trend*. During the discourse introduction to IPR the historical Perspective & Evolution of IP Laws, Indian IP Laws, TRIPS & International IP Regime, Unique legislative provisions in Indian patent law, Trends and Technology challenges in current patent laws and National IPR Policy were discussed. It was stated that Intellectual property rights is the creation of human minds and IPR play more important role as assets for an enterprise than



physical assets. It was further deliberated that international conventions ensure minimum rights and provide certain measures for enforcement of rights by the contracting states. The concept of patent, Design, Trademark, Geographical Indications and Copy right were discussed in detail. The landmark cases *Southern v. How*, 1617, *Darcy v. Allein*- (1602) 74 ER 1131, The British Trademark Act of 1875, Venetian Patent Act of 1474, U.K.: Statute of Monopolies, 1623-24, Statute of Anne 1710 also became a part of the discourse. The resource person delineated IPR laws that includes The Patents Act, 1970, The Trade Marks Act, 1999, The Copyright Act, 1957, The Designs Act, 2000, The Geographical Indications of Goods (Registration & Protection) Act, 1999 (GI), The Semiconductor Integrated Circuits Layout- Design Act, 2000 are administered by the Controller General of Patents, Designs and Trademarks whereas laws administered by other ministries includes Ministry of Environment and Forests, Department of Agriculture and Cooperation, Biological Diversity Act, 2002 and The Protection of Plant Varieties and Farmers' Rights Act, 2001. It was emphasised that the object of the patent law is to encourage scientific research, new technology and industrial progress. The salient features of the TRIPS and Paris Convention were discussed. It was stated that Paris convention provides equal treatment to applicants from member countries, and does not differentiate nationals of member countries, for the purpose of grant and protection of industrial property. Thus, applicants from member countries shall have the same protection after grant and identical legal remedies against any infringement. It was sated that TRIPS establishes minimum standards for the availability, scope, and use of seven forms of intellectual property: copyrights, trademarks, geographical indications, industrial designs, patents, layout designs for integrated circuits, and undisclosed information (trade secrets). It was stated that the policy lays down seven objectives along with the steps to be undertaken by the identified Nodal Ministry/

department that includes IPR Awareness: Outreach and Promotion, Generation of IPRs, Legal and Legislative Framework, IPR Administration and Management, commercialization of IPR, enforcement and Adjudication and human Capital Development.

The theme of Session 5 was *Role of the judiciary in IPR Evolution and Adjudication*. The concept of creative courts was discussed whereby it was suggested that to dispense with “interim” phase when the matter is complex and dispute may be settle expediently and in this regard *TVS v. Bajaj case* was discussed in detail. Vardhman Mills case was also been deliberated where the Supreme Court held that matters relating to trademarks, copyrights and patents should be finally decided very expeditiously by the trial court instead of merely granting or refusing to grant injunction. In matters of trademarks, copyrights and patents, litigation is mainly fought between the parties about the temporary injunction and that goes on for years and years and the result is that the suit is hardly decided finally which is not proper. *Merck v. Glenmark*, *Baba Zarda case*, *Loreena Mckennitt v. Deepak Dev and Roche v. Cipla* were discussed during the discourse. The concept of Public interest and participatory justice were also deliberated upon.

The theme of the Session 6 was *Jurisdictional Issues in Trademark, Copyright & patent disputes: Law and practice*. Section 20 of CPC was deliberated which states the jurisdiction filing of suits by the plaintiff. It was delineated that the suit can be filed were the cause of action arises or were the defendant actually and voluntary resides/ carries on business/ personally works for gain. In this reference Section 134 of the Trade Marks Act and Section 62 of Copyright Act was discussed. The case of *Patel Roadways v. Prasad Trading* was emphasized which stated that if cause of action and defendant's subordinate office overlap, then corporation deemed to carry on business only at such place and not at its sole or principal office whereas when there is no such overlap, then at its

sole or principal office. It was deliberated that principal place of business is the nerve center of the corporation; where the governing power of the corporation is exercised.

It was delineated that when an objection to jurisdiction is raised by way of demurrer and not at the trial, the objection must proceed on the basis that the facts as pleaded by the initiator of the impugned proceedings are true. It was further deliberated that while in the case of an O. VII R. 10 application, the issue of jurisdiction is decided on the basis of what is stated in the plaint and, that too, after assuming the statements to be correct, an application under O. XXXIX R. 1 & 2 requires the examination of the contentions of the defendants in written statement, reply, and other material placed before court. It was stated that O. 6 R. 2 requires every pleading, which includes a plaint, to contain, "and contain only", a statement in concise form of the material facts on which the party pleading relies for his claim, but not the evidence by which they are to be proved. In the light of these provisions the cases of *Expfar SA v. Eupharma*, *Ford Motor Co. v. CR Borman*, *RSPL v. Mukesh Sharma and Allied Blenders v. RK Distillers* were discussed. It was stated that cause of action not only refers to the infringement but also the material facts on which the right is found. The cases *Casio India v. Ashita Tele Systems*, *India TV v. India Broadcast*, *Banyan Tree v. A. Murali*, *WWE v. Reshma* were discussed.

The theme of Session 6 and 7 was *Tribunalization of Justice in India: Boon or Bane* and *Effect of Tribunalisation and judicial Review* respectively. Reasons for Establishment of Tribunals were discussed. It was stated that Tribunals may work rapidly and more efficiently than ordinary courts and there is a need for specialization and speedy justice. It was emphasized that tribunals follow principles of natural justice and has less procedural delay and legal obligations. It was stated that there are more tribunals as per State Acts. 42<sup>nd</sup> amendment in the Constitution of India that added Articles 323A and 323B were discussed during the discourse. It was

stated that Art. 323A provides for the establishment of Administrative Tribunals by the Parliament for adjudication of service matters. Article 323B provides for the establishment of Tribunals, to adjudicate on the matters with regard to which the respective State Legislature has power to make laws, as specified in Article 323 B(2). After the 42<sup>nd</sup> Amendment, The Administrative Tribunals Act, 1985 was enacted under which Central Administrative Tribunal was established. It was stated that in *R.K. Jain v. Union of India* the Supreme Court opined that these tribunals could not be effective substitutes of High Courts under Articles 226 and 227. This case reflect the dissatisfaction of the Supreme Court with regard to functioning and effectiveness of Administrative Tribunals. It was further stated that the Constitution Bench Judgment of Hon'ble Supreme Court in *S.P. Sampath Kumar*, was referred to be considered by a larger Bench in *L. Chandra Kumar v. UOI* in which it was held that that Articles 323A (2) (d) and 323B (3) (d) of the Constitution were held to be unconstitutional which excluded jurisdiction of High Courts. It was stated that the powers of judicial review vested in the Supreme Court and High Courts under Arts. 32 and 226 form part of the basic structure of the Constitution. *Union of India v. Delhi High Court Bar Association*, Recommendations by Law Commission after L. Chandra Kumar's case, *UOI v. R. Gandhi*, *UOI v. Debts Recovery Tribunal Bar Association*, *Appellate Tribunals and Other Authorities* (Conditions of Service) Bill, 2014, *Madras Bar Association v. UOI*, *Union of India v. Major General Shri Kant Sharma*, *Madras Bar Association v. UOI*, Inter-State River Water Disputes (Amendment) Bill, 2017, Finance Act, 2017 which deals with Merger of Tribunals were discussed during the course of discussions.

Hon'ble Justice (Retd) G. Raghuram, Director National Judicial Academy concluded the conference and extended vote of thanks to the resource persons and participating justices.

**P-1049: NATIONAL SEMINAR FOR PRINCIPAL DISTRICT JUDGES ON STRESS MANAGEMENT, September 22 to 24, 2017**

Ms. Paiker Nasir, Research Fellow



The National Judicial Academy organized a three-day National Seminar for Principal District and Sessions Judges on Stress Management. The course was attended by 27 participants.

The variegated functional responsibilities that judges' discharge, increasing work pressures, the ever evolving laws and social conflicts, and accelerating societal expectations from the judiciary impose enormous physical and psychosocial stress on our judicial officers. These phenomena have brought judicial offices into the company of highly stressed occupations. Recent studies indicate that the legal profession, jury duties and judgeship are intrinsically stressful occupations. Occupational stress among judges in India is recognized as an inevitable occupational pathology. Efforts to augment resilience or manage judicial stress, identifying indicia of psychosomatic disorders are not adequately addressed.

The Seminar provided a platform to enable participants understand judicial stress and its impact on the physiological and emotional health of judges. The objective was to provide tools and

techniques to help handle cognitive, emotional and behavioural symptoms of occupational stress, which affects decision-making capacity as well. Participants deliberated on how to negotiate systemic and discrete barriers and operationalize institutional assistance for affected officers. The sessions were conceived to facilitate categorization of pre-emptive, restorative and rehabilitative institutional measures that aid and combat the detrimental effects of occupational stress in judicial office.

The first session, "*Understanding 'Stress'*," focused on the meaning of stress. It was discussed that stress is of two kinds- EUSTRESS – positive eg, promotion, marriage and DISTRESS – negative eg, bereavement, loss of job. Stressors are demands made by the internal or external milieu that upset balance, thus disturbing corporeal and psychosomatic well-being and requiring action to reinstate equilibrium. The physical, emotional, cognitive, behavioural and social/interpersonal manifestations of stress were also discussed in details during the discourse. Ways to cope up with stress formed an integral part of the session. The speaker suggested that stress can be managed by -



Problem focused coping that involves direct efforts to modify the problem causing the distress; Emotion focused coping which is directed toward regulating the feelings or affect surrounding a stressful experience; and by Social Support Seeking which has Problem Focused and Emotion Focused components.

Session two "*Why and Wherefore of Stress in Judicial Officers*", emphasized that a judge himself is on trial when he is conducting a trial in the court. Judges deal with people who are stressed and this stress passes over to them, knowingly or unknowingly. It was deliberated that stress may be caused by environmental, organizational and personality related variables. Organizational factors maybe- factors intrinsic to the job; relationship at work; organizational role; career development; organizational structure and personal and professional interface. These stressors serve as agents that trigger various stress in judges. It was suggested that firstly, if a judge is diligent and honest towards his duty then most of the problems are solved through tactful handling however difficult they may be. Secondly, a judge should make a list of major and minor problems and work on them simultaneously and lastly, delegation of work also helps in doing away with occupational stress.

The third session "*Documentary Screening: Stress, Portrait of a Killer*", exemplified how prolonged exposure to stress can ruin ones health in a multitude of ways. It also illustrated that a person is more vulnerable to the adverse effects of stress if he/she feels like they have no control, no way out, feel like things are getting worse, and have little social support. Common health conditions caused or worsened by stress include heart disease, hypertension, impaired immune function, infertility, and mental illness. The documentary further elaborated that Emotional Freedom techniques (EFT) is an excellent stress management tool that has been scientifically shown to significantly reduce cortisol levels and psychological distress. The documentary

suggested that stress is an extremely significant player in one's overall health. The better a person gets at managing stress on a daily basis, the better his/her health will be.

The session on "*Consequences of Occupational Stress in Judges*", emphasized that the judicial occupation makes the judges experience regular encounters with prolonged work hours, substantial workload, occasional traumatic cases, the making of important decisions etc. Further judges may also experience negative physical (e.g. becoming overweight) and emotional (e.g. boredom, burnout) outcomes from sitting on the bench for countless hours. Therefore it is important to understand and account for these experiences as they have the potential not only to affect judges' personal lives negatively but also to impede them from performing their duties to the best of their abilities. It was submitted that stress takes its toll on the body—whether an individual perceives that stress as "good" or "bad." Science has established that stress can lead to cardiovascular disease, stress-induced weight gain typically involves an increase in belly fat, which is the most dangerous fat for the body to accumulate, and increases cardiovascular risk. Stress alters the way fat is deposited because of the specific hormones and other chemicals which the body produces when stressed.

The following most common health conditions that are caused by or worsened by stress were discussed:

- Cardiovascular disease
- Hypertension
- Depression
- Anxiety
- Sexual dysfunction
- Infertility and irregular cycles
- Frequent colds
- Insomnia and fatigue



- Trouble concentrating
- Memory loss
- Appetite changes
- Digestive problems and dysbiosis

Session five "*Stress Management through enhancing Emotional Intelligence*", underlined that the capacity to recognize own feelings and that of others is "Emotional Intelligence". Recent researches indicate that emotions play an integral part in managing stress at the workplace. It was emphasized that since judges are expected to be multitaskers therefore it is essential for them to realize their potentials so that they can manage stress through enhanced Emotional Intelligence. Thereafter, the Emotional and Social Intelligence Competencies were elaborated upon that includes self-awareness through emotional self-awareness; self-management through emotional self-control and adaptability; social awareness through empathy; and relationship management through conflict management, inspirational leadership and team work.

The session on "*Managing Judicial Stress: Approaches and Techniques*", emphasized that Stress occurs when the pressure is greater than the resource. There are two major reasons of stress i.e., when a person perceives a situation as dangerous, difficult, or painful and two, when the person does not believe that he/she has the resources to cope with a situation. Therefore the most important point is to recognize the source of negative stress. It is a way to identify the Problem and plan measures to overcome it. It was further suggested that stress management/stress control can be done through ABC Strategy, where 'A' is Awareness, 'B' is Balance and 'C' is Control. It was further suggested that coping skills can be enhanced by - *Emotion-focused coping strategies* which includes efforts to manage or reduce the emotional distress that is aroused in stressful situation and *Problem-focused coping strategies* which includes efforts to manage or modify the source of stressful situations, such as finding a solution to the problem. Keeping the

above strategies in mind it was deliberated that judicial stress can be reduced when judges find a support system to talk about their feelings and experiences be it with respect to Self-perception, Society/ media expectation, decision making – lawyers, decision reviewed etc., change attitude and find other ways to think about stressful situations. , be realistic and set practical goals, get organized and take charge, take breaks, give yourself "me time, take good care of yourself, get regular exercise, laugh, use humor, do relaxation exercises and most importantly learn to relax.

The session on "*Judges' Perspectives on Stress in the Courtroom*", was an activity based session where the participants were divided into groups and were asked to identify the stressors in their courtrooms. Thereafter, the identified stressors were discussed at length and the most common stressors were identified. The idea was to cull out the system centric stressors in the courtroom. The three most common stressors that were identified are- issues related to lawyers; pressure of time bound disposals and pendency of old cases.

The last session "*Institutional Strategies to Identify and Combat Occupational Stress*", suggested various approaches that can be of immense use to combat stress at the institutional level. These included building up of such organizational culture where there is trust, honesty and fairness; providing psychological and social support; to have clear leadership and expectations; to have civility and respect among coworkers; to have psychological competencies and requirements; growth and development of employees; recognition and reward ; good involvement and influence by staff; workload management by providing necessary resources and time; maintaining work balance by providing choices and opportunities for flexible working arrangements to accommodate work, family and personal priorities; psychological protection so that there is sense of safety that if a cause is raised appropriate action will be taken and most importantly, to provide physical safety.

## **Governing Bodies of the NJA**

as on September 30, 2017

### **A. The Governing Council**

1. Chairperson of the NJA, the Chief Justice of India
  - Hon'ble Mr. Justice Dipak Misra
2. Two Judges of the Supreme Court of India
  - Hon'ble Mr. Justice Jasti Chelameswar
  - Hon'ble Mr. Justice Ranjan Gogoi
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
  - Hon'ble Mr. Justice Dipak Misra
2. Two puisne Judges of the Supreme Court of India
  - Hon'ble Mr. Justice Jasti Chelameswar
  - Hon'ble Mr. Justice Ranjan Gogoi
3. Chief Justice of a High Court
  - Hon'ble Mr. Justice R.S. Reddy, Chief Justice, High Court of Gujarat
4. Judge of High Court
  - Hon'ble Mr. Justice D.N. Patel, High Court of Jharkhand
5. Ex- officio members:
  - i) Minister, Ministry of 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 commenced the rather challenging journey towards achieving higher standards of excellence in delivery of justice through human resource development and techno-managerial upgradation. Since 2003, NJA has successfully imparted training to more than 26,000 judicial officers of various levels.

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

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

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



### National Judicial Academy

Suraj Nagar, Bhopal-462044

Tel. : 0755-2432500 Fax : 0755-2696904

Website : [www.nja.gov.in](http://www.nja.gov.in)

Email : [njabhopal@nja.gov.in](mailto:njabhopal@nja.gov.in)