

National Orientation Programme for Additional District Judges

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Report of the Programme

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The National Judicial Academy is organizing the National Orientation Programme for Additional District Judges from 25th-27th July, 2014. The main objective of the programme is not only to equip the participant judges with skills and capacities to meet the challenges involved in their day to day adjudication work but also to discuss Constitutional vision of justice with them. The programme will be attended by about 25-30 judges of the District Judiciary from all over the country.

The programme was chaired by Justice V.M. Kanade and Justice M.L. Tahiliani from Bomay High Court. The Resource Persons of the Conference included Ms. Renu Sharma, Ms. Geeta Ramaseshan and Ms. Anu Malhotra. The presentation was also made by the internal faculty which included Mr. S.P. Srivastava and Mr. Rajesh Suman.

Following were the main issues discussed in the Programme

- Judges must guide themselves by the constitutional principles while adjudicating and they should interpret the legal provisions in the light of constitutional jurisprudence. They must intervene wherever required to avoid the dereliction of the Constitutional principles. All the parties to the litigation must get justice according to the Constitutional law of the country.
- With the disinvestment, many industries have been established and we should assess that whether we have the capacity to handles such crisis of environmental

disaster or not. The judiciary is required to coordinate with the expert assistance in adjudicating such issues which involve complex issues of chemical and medical area.

- The victims of industrial disaster are not compensated properly in India. It is very difficult for the poor litigants to go to civil court for getting compensation. Proper legal assistance is required to be given to victims in such circumstances. The District Judiciary also should not be hesitant in invoking the inherent power available in the Code of Civil Procedure to provide adequate interim relief to the victim of such disaster.
- Judges must be proactive in ensuring fair investigation. If there are new facts or evidence comes before a judge then due deliberation should be given whether further investigation would be required in the case or not. Judge must ensure that fundamental rights of the parties are protected during the trial. If the victim requires proper police protection then it should be provided to the victim by ordering police in this regard.
- The adjudication process is severely affected if prosecutor does not prosecute properly. For instance sometimes the public prosecutor does not ask statements of witness. In such situation a judge can intervene if the prosecutor is not present or he is not performing his duty properly. Government should also appoint more prosecutors so that few prosecutors would not overloaded with lot of cases. Because of presence of few prosecutors the justice system suffers.
- There is need of proper review of the documents which are submitted by the police in the court. Judge must see that there are sufficient evidence to prosecute the accused persons. All the documents which are relied upon by the prosecution must be supplied to the accused person. The prosecutor and the trial court judges are under an obligation to provide to an accused any evidence or material useful to him. It has been observed that accused persons approach High Court to obtain the evidence useful to them which has been denied to them by the prosecutor and the

trial court. Such cases show the weak adherence to the constitutional principles by the functionaries in the justice system.

- The legal aid provided to the poor accused person is not very effective. In serious cases where there is possibility of life imprisonment or death penalty the legal assistance provided by the legal aid penal advocate should be proper. It has been observed that many times the legal aid panel advocate does not cross-examine the prosecution witnesses and neither scrutinize the prosecution evidence. Such situation affects the fact finding function of the court and puts a question mark on the credibility of the system.
- Section 89 of the Code of Civil Procedure is not used by the trial court as it should be used for proper use of the Alternative Dispute Resolution system. The judges should proactively intervene to refer suitable cases to mediation. The Supreme Court guidelines as enunciated in the Afcons judgment should be followed by the judges in this regard. The care must be taken to first analyze that whether case comes under the category as mentioned in the laws and jurisprudence on ADR. Many times mistakes are committed in identifying the suitable cases to be referred to mediation and therefore due care must be taken in this regard.
- The executive branch is not making the due efforts in the implementation of the laws made for protection of woman. For instance the rehabilitation of women either in domestic violence cases or in trafficking cases is highly inadequate. The government is not fulfilling its responsibility in this regard.
- Although the arrest in the 498-A cases is now required to be reviewed by the magistrate but non-arrest of the accused person does not mean that police cannot undertake the investigation to enquire into the culpability of the offenders. Therefore in every complaint of 498-A, police even without any arrest can investigate the matter.

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