

**National Orientation Programme for Additional District Judges P-850**

**Date: October 17-19, 2014**

**Venue: National Judicial Academy**

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National Judicial Academy organized three days National Orientation Programme for Additional District Judges which was held from October 17-19, 2014. The programme was focused on capacity building of individual judges in order to ensure enhancement in the individual performance of the judicial officers.

These Orientation programmes which have been welcomed by every group of participant over the years, offered a unique opportunity to judicial officers of the district judiciary to meet their counterparts from different parts of the country and share their experiences, discuss problems and introspect the gray areas of adjudication so as to come out with constructive suggestions and meet the challenges that come across while adjudicating the cases in justice delivery system. The programme also ensures to motivate the judicial officers to play an important role in ensuring the independence of the district judiciary at all tiers. Total 35 judicial officers have participated in the programme. Hon'ble Mr. Justice S. Nagamuthu Judge, Madras High Court, Hon'ble Dr. Justice B. B. Parsoon Judge, P & H High Court, Hon'ble Mr. Justice M. Seetharama Murthi Judge, A. P. High Court, Hon'ble Ms. Justice Manju Goel Former Judge, Delhi High Court, Hon'ble Mr. Justice B. Seshasayana Reddy Former Judge, A. P. High Court, Dr. Balram K. Gupta, Director, NJA, Prof (Dr.) Geeta oberoi and Prof S.P. Srivastava were the resource persons of the programme.

**Session 1** was started with the brief self introduction by the participants followed by the discourse of Dr. Balram K. Gupta, who delineated on the various aspects of being a **Judge in a Constitutional Democracy**. The session was chaired by Hon'ble Ms. Justice Manju Goel. The resource person of the session delineated that it is very important to uphold the constitutional values while adjudicating any criminal or civil case and a judicial officer should know that how the provisions of the Constitution is interpreted by the higher Constitutional courts. He stressed that comprehensive dealing with the matter and to do justice in wholesome manner while interpreting the relevant laws is the basis of justice delivery system. The session went interactive and the judicial officers shared their inputs and expressed that Constitution is the father of the

law and a judge has to work without fear and favour and has to be updated with latest judgments of the higher courts. The resource person delineated that extra efforts need to be done in those cases where assistance from the Bar is not effective and in those cases the deficiency need to be filled by the judicial officers for administering the effective justice delivery system. It was further delineated that it's true that the judicial officers are bound by the different provisions of the Statute and cannot go into the realm of the validity of the provision of any Statute which are there in the statutory books; however a judicial officer has to see that how the said provisions are to be interpreted by the High Courts and Supreme Court and need to follow the same so as to give the real meaning to Justice. The mandate of Article 142 was also discussed in the light of Complete Justice.

In **Session 2** Hon'ble Justice Manju Goel, Former Judge, Delhi High Court and Prof (Dr.) Geeta Oberoi enumerated the scope of **Logic and Reasoning in Adjudication Process**. It was delineated that judgment should always be well reasoned. Prof (Dr.) Geeta Oberoi sensitized the judicial officers as to why the reasoning should be there in a judgment. It was discussed that the competence and output can be determined through the judicious judgments. The resource person quoted the words of Gopal Ghandi, a former diplomat and an IAS officer, who stated that the parliament is elected by the people whereas Judiciary is being appointment for the public, therefore people treat courts as for them. Landmark High courts and Supreme Court Judgments as well as examples were deliberated and discussed during the discourse to sensitize the importance of reasoning in a judgment. It was delineated through the Apex Court Judgment that absence of reasons is a cardinal sin. An exercise is being conducted by the resource person whereby judicial officers were sensitized to ponder upon certain principles which helped them to support the facts of the case and facilitate to achieve the process of judicious decision making. Three components of Judicial decision making process were deliberated and discussed which includes the Clear articulation of injustice, involves reasons scrutiny of injustices and analysis of ways of advancing justice.

In **Session 3 Film** screening “In the name of Father” was shown to the participants which sensitizes on the fair disclosure of the evidence and on the fair trial. The movie depicts the atrocities the whole family suffered due to the wrong conviction which was due to the suppressing of the evidence by the prosecution.

In **Session 4** the judicial officers were divided into five groups and were asked to discuss the major issues in the film that lead to miscarriage of Justice and the challenges they encounter during trial. The participants after the discussion presented their views with regard to the scope and role of a judge in ensuring fair disclosure of evidence and also suggested pro active steps to ensure fair trial. The panelists in the session include Hon'ble Ms. Justice Manju Goel, Dr. Balram K. Gupta and Prof S.P. Srivastava. The cases like Sidhartha Vashisht @ Manu Sharma v/s State (NCT of Delhi) 2010 6 SCC 1 and V.K. Shasikala v/s State rep. Superintendent of Police (2012) 9 SCC 771 were also discussed during the discourse.

In **Session 5** Hon'ble Dr. Justice BB Parsoon dealt with the **Scope of Revision and Appellate Jurisdiction for District Judges** with regard with both the Criminal and Civil Justice Administration. The session was chaired by Hon'ble Ms. Justice Manju Goel. He stressed and congratulates the subordinate judiciary for the tremendous effort they are putting in while adjudicating a case and expressed that many Judgments of the district court has create histories in the country. He further deliberated that district judiciary plays a very important role in administering the justice delivery system and as such Article 233- 237 of the Constitution of India deals with the subordinate judiciary. The resource person delineated that what we do at the cutting edge level with the people at large is more important. 20% or 30% of the litigation comes to the High court and only 10% or even less than that goes to the Supreme Court of India. Thus, 70 to 80 percent of litigation ends up with the district judiciary, so the role of district judiciary is of utmost important to uphold the temple of justice.

The resource person further carried forward his discussion and stated that in justice system there are many interrelated and interdependent agencies like crime prevention, investigation, prosecution, and all are funded and controlled by different sectors but still they are correlated to each other to dispense the justice delivery system. He deliberated that district judge is a role model for others and with his knowledge and acumen the judiciary can repose the confidence in the litigants. He stressed that it only the positive attitude and multidimensional role in the judicial officers that can uphold the integrity of justice in the common mass. Article 38 and Article 39 of the Constitution of India was also discussed in the light of justice. Parameters of the Appellate jurisdiction and revisional jurisdiction was being deliberated and Chapter 29 which deals with appeal and chapter 30 which deals with reference and revision were being

discussed in detail. The resource person asked the opinion of the judicial officers for dismissing the criminal appeal at the first stroke and stressed that many of the judicial officers admit the criminal appeal mechanically suspend the sentence under section 389 of Code of Criminal Procedure (Cr.pc) and call for record and issue notice. He emphasized that section 384 of Cr.pc specifically speaks that at preliminary hearing if judicial officer feels that nothing important is to be adjudicated and if the order is well written and the grounds of appeal taken by the party in terms of section 381 of Cr.pc are not substantiated from the evidence on the record then the appeal should be dismissed straight away. He further deliberated that appellant has a statutory right to go to the appeal but there is no right that it has to be admitted. Similarly, it was also deliberated that in revisional jurisdiction under section 403 of cr.pc Judicial officers are not even required to hear the party as it is a supervisory jurisdiction and can make its judicious decision. The concept of and importance of interlocutory orders were also being discussed by the resource person.

In **Session 6** Hon'ble Dr. Justice BB Parsoon and Prof (Dr.) Geeta Oberoi dealt with the **Role of Courts in appreciating Electronic Evidence**. The session was chaired by Hon'ble Ms. Justice Manju Goel. It was deliberated by the ultimate object of every legal system is to secure justice. It is thus has been seen that with the increasing impact of technology in everyday life, the production of electronic evidence has become a necessity in most of the cases to establish the guilt of the accused or the liability of the defendant. It was deliberated that now in India all electronic records are considered as relevant documents. It was emphasized that there is a need to ensure that electronic evidence being admitted is relevant to the fact in issue and is in accordance with the Constitution and other laws of the land. In this light section 65A and section 65 B of The Indian Evidence Act was discussed. Presumptions regarding the electronic evidence which include the gazettes in electronic form, secure electronic records and digital signature, electronic agreements, electronic messages, five years old electronic records were being deliberated by the resource person. Participants were divided into five groups and Prof (Dr) Geeta Oberoi gave five different simulation exercises to solve which was based on appreciation of electronic evidence. Through this simulation exercises the resource person deliberated on the concept of electronic evidence and discuss its admissibility and relevance of electronic evidence with reference to the effective justice delivery system. The cases which were discussed during the discourse were Dharambir v/s Central Bureau of Investigation 148(2008) DLT289, K.K. Velusamy v/s N. Palanisamy, Bodala Murali Krishna v/s Smt. Bodala Prathima 2007(2) ALD72, Amitabh Bagchi

v/s Ena Bagchi AIR 2005 Cal 11, Ashwinbhai Somabhai Patel and Anr. v/s Nrugendraprasadji Ajendraprasadji Pandey and Ors. 2009GLH (3)138, Mohinder Singh v/s Baljit Singh and others CR No 1350 of 2012 decided on 4<sup>th</sup> August 2014; State of Punjab v/s Amritsar Beverages Ltd. (2006)7SCC607, Jagjit Singh v/s State of Haryana AIR 2007 SC 590, State (NCT of Delhi) v/s Navjot Sandhu AIR 2005 SC 3820, State of Maharashtra v/s Dr. Praful B Desi AIR 2003 SC2053 and Anvar P.V. v/s P.K. Basheer (2014)10SCC473.

The theme of the **session 7** was on Criminal Justice System: Ensuring Fair Session Trial. Hon'ble Justice S. Nagamuthu, delineated on the various aspects for ensuring fair sessions trial. The session was chaired by Hon'ble Ms. Justice Manju Goel and by Hon'ble Dr. Justice BB Parsoon. The resource person stressed on the steps that is be taken by the judicial officers for effective criminal justice system. He delineated that the fair disclosure of the evidence, proper appreciation of the facts and evidence as well as expedite hearing of the cases are some of the measures for fair trial. The discussion in the session were interactive and the judicial officers have also suggested pro active steps that can be taken for ensuring fair session trail.

In **Session 8** Hon'ble Justice B. Seshasayana Reddy, Former Judge, AP High Court spoke on the **Law and Practice of Sentencing**. The session was chaired by Hon'ble Ms. Justice Manju Goel and by Hon'ble Dr. Justice BB Parsoon. It was delineated by the resource person that the final aspect of every criminal trial is sentence. The sentence follows the conviction. The resource person delineated that punishment is the end produce of the criminal process and stressed that the prime objective of the criminal law is imposition of an appropriate, adequate, just and proportionate sentence which commensurate with the nature and gravity of the crime and the manner in which the crime is done. The resource person further deliberated that it is the duty of a judge to see that the sentence shall consists element of reformation of the criminal and also the reparation of the victim along with the elements of deterrence, prevention and retribution. He stressed that judge has to balance all these conflicting interests and choose the right and appropriate sentence to get the justice done. He further emphasized that while imposing sentence, proportion between the gravity of the offence and the punishment has to be maintained. The resource person discussed the twin objects of punishment, first to prevent a person who has committed a crime from repeating it and second to prevent others from committing similar crimes. The resource person stated that an excessive sentence sometimes defeat the object of justice system and suggested that first offenders and youthful offenders should invariably be

treated leniently and liberally and the provisions of the law like Probation and Offenders Act or section 360 of Cr.PC should be used. He further delineated that deterrent sentence is only justifiable when the offence is the result of deliberation and pre planning and is committed for the sake of personal gain at the expense of the innocent and is a menace to the safety, health or moral well being of the community. He further expressed that Supreme Court in *Dr. Bharge v/s State of Maharashtra AIR 1974 SC476* and in *Ramashraya chakravarti v/s State of Madhya Pradesh AIR 1976 SC392* held that the question of sentencing is always a matter of judicial discretion subject to any mandatory punishment prescribed by the law.

It was delineated that currently, India does not have structured guidelines that have been issued either by the legislature or by the judiciary. In March, 2003, the committee on Reforms of Criminal Justice System (the Malimath Committee), a body established by the Ministry of Home Affairs, issued a report that emphasized the need to introduce sentencing guidelines in order to minimize uncertainty in awarding sentences. It was stated that in 2008, the committee on Draft National Policy on criminal Justice, (the Madhava Menon Committee), reasserted the need for statutory sentencing guidelines. *Soman v/s State of Kerala (2013) 11 SCC 382* was discussed in which it was stated that while exercising the discretion of sentencing such as proportionality, deterrence and rehabilitation; as a part of the proportionality analysis, mitigating and aggravating factors should be considered. Various land mark judgments with regard to the sentencing were discussed by the resource person during the discourse with includes: *State of Punjab v/s Prem Sagar & Ors. (2008) 7 SCC 550*, *State of M.P. v/s Bablu Natt (2009) 2 SCC 272*, *Alister Anthony Parerira v/s State of Maharashtra (2012) 2 SCC 648*, *Jagmohan Singh v/s State of U.P. (1973) 2 SCR 541*, *Bachan Singh v/s State of Punjab (1980) 2 SCC 684* and *Sangeet & another v/s State of Haryana, 2013 (2) SCC 452*.

In **Session 9** Hon'ble Justice M. Seetharama Murthi and Hon'ble Dr. Justice Bharat Bhushan Parsoo highlighted the key area of the Civil Justice Administration: Scope of Revision and Appellate Jurisdiction for District Judges. It was delineated that first appeal had to be decided strictly in adherence with the provisions contained in Order XLI Rule 31 of the Code of Civil Procedure, 1908. It was stressed that the said provisions provide guidelines for the appellate court as to how the court has to proceed and decide the case. It was suggested that the provision should be read in such a way as to require that the various particulars mentioned

therein should be taken into consideration. It was further deliberated that it must be evident from the judgment of the appellate court that the court has properly appreciated the facts/ evidence, applied its mind and decided the case considering the material on record. It was further stressed that it would amount to the substantial compliance of the said provisions if the appellate court judgment is based on independent assessment of the relevant evidence on all important aspects of the matter and the findings of the appellate court are well founded and convincing. It was stated that it is mandatory for the appellate court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication. It was further stressed that being the final court of fact, the first appellate must not record mere general expression of concurrence with the trial court judgment rather it must give reasons for its decision on each point independently to that of the trial court. It was emphasized that a judicial officer should always adhere to the requirement of the statutory provisions. The Session was concluded with a note that the judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put-fourth and pressed by the parties for decision of the appellate court.

In **Session 10** Hon'ble Justice M. Seetharama Murthi and Hon'ble Dr. Justice Bharat Bhushan Parsoon emphasized on the key challenges in Civil Litigation and the response of the Courts. The session was chaired by Hon'ble Justice A.K. Sikri. It was deliberated that it is settled legal proposition that not only administrative order, but also judicial order must be supported by reasons. Thus, judicial officer is bound to give reasons for its conclusion. The absence of reasons renders an order indefensible/ unsustainable particularly when the order is subject to further challenge before a higher forum. It was stressed that reasons ensure transparency and fairness in the decision making. The person who is adversely affected must know why his application has been rejected.

It was also deliberated that application for taking additional evidence on record at belated stage cannot be filed as a matter of right. It was stressed that the court can consider such an application with circumspection, provided it is covered under either of the prerequisite condition incorporated in the statutory provisions itself. However, it was emphasized that such discretion is to be exercised by the court judiciously taken into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such evidence could not be lead in the court below. It was further stressed that it should also be seen, as to whether

the applicant has prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the Judgment by the appellate court. In case the court comes to the conclusion that the application file comes within the four corners of the statutory provisions itself then the evidence may be taken on record. However, the court must record reasons as on what basis such an application has been allowed. It was emphatically emphasized that the application should not be moved at the belated stage. It has also been deliberated that an application under Order XLI Rule 27 of Code of Civil Procedure is to be considered at the time of hearing of appeal on merits so as to find whether the documents and /or the evidence sought to be adduced have any relevance/ bearing on the issue involved. The cases which were deliberated during the discourse where The Premier Automobiles Ltd Bombay v/s Kabirunissa and others AIR 1991 SC 91, K. Venkataramiah v/s A. Seetharama Reddy and ors. AIR 1963 SC 1526, Soonda Ram and Anr. v/s Rameshwaralal v/s and Anr AIR 1975 SC 479, Syed Abdul Khader v/s Rami Reddy and Ors. AIR 1979 SC 553, State of Orissa v/s Dhaniram Luhar AIR 2004 SC 1794, State of Uttaranchal and Anr v/s Sunil Kumar Singh Negi AIR 2008 SC 2026 and Sant Lal Gupta and Ors. v/s Modern Cooperative Group Housing Society Limited and Ors (2010) 13 SCC 336.

The conference was concluded with the concluding remarks of Dr. Balram K. Gupta, Director NJA. He expressed his heartfelt thanks to the judicial officers for their active and vibrant participation in the programme and making the programme meaningful and also acknowledged and expressed his gratitude to all the resource persons who have shared their great insights in the programme and sensitized the judicial officers in strengthening the justice delivery system.

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