NATIONAL JUDICIAL ACADEMY

NATIONAL WORKSHOP FOR HIGH COURT JUSTICES
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PROGRAMME REPORT

PROGRAMME COORDINATORS

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Objective of the Workshop

National Judicial Academy organized a two-day National Workshop for High Court Justices on 21st & 22nd January 2023 at NJA, Bhopal. The workshop deliberated on the knowledge and expertise in areas pertinent to the exercise of jurisdiction by High Court Justices and identified novel approaches to justice dispensation in order to meet emerging challenges. The workshop familiarized participant justices with jurisprudence pertaining to environment and wildlife protection and explored the various dimensions of the law with a view to identifying the role of the judiciary in such matters. The workshop engaged participant justices on the nuances and intricacies of bail jurisprudence. The various factors which have contributed to docket explosion and backlog and innovative modes and initiatives to reduce delays and pendency with a view to delivering prompt and inexpensive justice without compromising on the quality or elements of fairness, equality, and impartiality were discussed.

The workshop sensitized the participant justices with the gamut of laws governing medical practitioners while acquainting them with the moral and legal issues relating to medical practice along with their jurisprudential basis. The workshop also focused on the origin and scope of the law of contempt, its constitutional aspects, and its relevance to the rule of law and democratic society in contemporary times. The programme was conducted to evolve innovative approaches and instil sensitivity towards global and national concerns to promote progressive and effective adjudication of cases.

Session 1

Protection of Environment and Wildlife: The Judicial Approach

The protection of the environment as a constitutional mandate was emphasized. The role of the judiciary in developing environmental jurisprudence was discussed. It was stressed that fresh water, air, and healthy food are vital for a healthy life and it can only be possible if human being lives in a pollution-free environment. It was emphasized that Article 48-A of the Constitution of India speaks that *The State shall endeavor to protect and improve the environment and to safeguard the forest and wildlife of the country.* Article 51-A (g) of the constitution of India was also highlighted which states that *It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, and wildlife,*

and to have compassion for living creatures. In *Sachidanand Pandey v. State of West Bengal*, (1987) 2 SCC 295 the Supreme Court observed "whenever the problem of ecology is brought before the court, the court is bound to bear in mind Article 48-A and Article 51-A (g). It was highlighted that ancient Indian texts highlight that it is the dharma of each individual in the society to protect nature and the term 'nature' includes land, water, trees, and animals which are of great importance to us. It was stated that the life of a human being is precious and it gets adversely affected due to the contaminated atmosphere and pollution caused by the human being itself. Pure water gets adulterated with sewage water; the RO water is usually deficient in potassium and calcium. The participant justices were advised to read the article "*There is no planet B"* which highlights that earth is unique and the only home in the cosmos. It was iterated that there is a recognition of environmental rights under the right to life and liberty enshrined in Article 21 of the Indian Constitution. It was emphasized that former judges of the Supreme Court of India like Justice P.N. Bhagwati and Justice Krishna Iyer enlarged the meaning and scope of Article 21 of the Constitution through their creative interpretation of the legal text.

It was remarked that the remedies available in India for environmental protection comprise of tortuous as well as statutory law remedies. The tortuous remedies available are trespass, nuisance, strict liability, and negligence. Apart from this, a writ petition can be filed under Article 32 in the Supreme Court of India or under Article 226 in the High Court. The judiciary has played an indispensable role in expanding the legislation associated with environmental protection by interpreting the constitutional provisions. It was stated that public interest litigation has been prominently relied upon to tackle environmental problems. Articles 14, 19, and 21, more commonly known as the Golden Triangle of the Indian constitution have been used time and again to emphasize the need for the protection of the environment. The expansive interpretation of the three articles has made the right to a clean and healthy environment to be recognized as a fundamental right.

Some remarkable principles and doctrines propounded by the Indian judiciary like the doctrine of absolute liability, Polluter Pays Principle, Precautionary Principle, Public Trust Doctrine, and Doctrine of Sustainable Development were discussed in the light of various reports and case law jurisprudence. The concept of the doctrine of Sustainable Development was deliberated upon in the light of the Brundtland Report. As per Brundtland Report, sustainable development signifies development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It was emphasized

that there is a need for the courts to strike a balance between development and the environment. In the light of the judgment *M.C. Mehta v. Kamal Nath & Ors.* (1997) 1 SCC 388 It was stated that the Public Trust doctrine primarily rests on the principle that certain resources like air, water, sea, and forests have such great importance to people as a whole that it would be wholly unjustified to make them a subject of private ownership.

The judgment of *Union Carbide Corporation v. Union of India,* has been discussed in which the Supreme Court laid down the principle of absolute liability without any exemption. The polluter-pay principle and precautionary pay principle were discussed in the light of *Vellore Citizen's Welfare Forum v. Union of India*, (1996) 5 SCC 647 as in this case, the Supreme Court has declared that the polluter-pays principle is an essential feature of sustainable development.

Innovative approaches to meet the global challenges and in this light Stock home Conference in 1972, Rio conference in 1992, Kyoto Protocol in 1997and Paris conference in 2015 were deliberated upon. The judgments Rural Litigation and Entitlement Kendra v. State of U.P., *(1985) 2 SCC 431, Virender Gaur v. State of Haryana*, (1995) 2 SCC 577, Municipal Council, Ratlam v. Vardichan, *(1980) 4 SCC 162*, Narmada Bachao Andolan v. Union of India, *(2000) 10 SCC 664*., *Animal Welfare Board of India v. A. Nagaraja,* (2014) 7 SCC 547, *M.C. Mehta & Anr. v. Union of India & Ors.,* (1987) 1 SCC 395, *Hanuman Laxman Aroskar v. Union of India,* (2019) 15 SCC 40 were also referred and discussed during the discussion.

Session 2

Bail Jurisprudence: Nuances and Intricacies

It was emphasized the fundamental principles of bail. It was stated that the concept of bail was prevalent in ancient India too. During the Mughal period, bail was practiced in the form of Zamanat and Muchalaka (bond). Bail is not explicitly defined in Cr.P.C. but the terms bailable offense and non-bailable offenses are defined. Liberty is the most cherished fundamental basic human right and should not be put in peril without following the procedure prescribed by law. It was stated that personal liberty cannot tamper with arbitrarily. It should be in a just, fair, and reasonable manner. Thus, as a matter of right bail is a rule and jail is an exception. It was suggested that there is a need to develop a comprehensive law on bail. It

was stated that the grant of bail is an act of balancing personal liberty with societal interest. How to deal with bail matters in money laundering cases and in white-collar crimes was discussed. It was suggested that bail applications should be disposed of as expeditious as possible. *Hussain v. Union of India,* (2017) 5 SCC 702 was referred to where the Supreme Court gave directions to High Court to frame guidelines for expeditious disposal of bail applications. The decision on the bail application for under-trial prisoners was deliberated. It was emphasized that there are many stances where the under-trial prisoners are detained in jail for a period exceeding the maximum imprisonment term awarded on conviction. The judgment Supreme Court Legal Aid Committee Representing Under trial Prisoners, (1994) 6 SCC 731 was referred where the Supreme Court held that unduly long periods of under-trial incarceration violate Articles 14 and 21 of the Constitution. It was suggested that where the trial is not possible to be concluded then bail should be granted. The judgment of *Gopisettey Harikrishna v. State of Andhra Pradesh,* 2022 SCC Online SC 654 was referred where the Supreme Court granted interim bail as the trial had not commenced for 9 years.

It was emphasized that Article 22 of the Constitution of India provides a right for a person detained in custody to be defended by a legal practitioner of his choice. A person arrested and detained shall be produced before the nearest Magistrate within 24 hours of such arrest. A Constitution Bench of the Supreme Court in *Bihar Legal Support Society v. Chief Justice of India,* (1986) 4 SCC 767 was highlighted where Supreme Court held that High Court is the final court for bail matters and Supreme Court should not normally entertain the bail application when the matter is pending below the courts unless there are exceptional circumstances.

It was stated that every accused is presumed to be innocent unless the guilt is proven. The presumption of innocence is a human right. However, subject to statutory exceptions, the said principle forms the basis of criminal jurisprudence. Factors to be taken into consideration while granting bail were discussed. It was highlighted that among other circumstances, the factors to be borne in mind while considering an application for bail are: (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offense; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction;(iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offense being repeated; (vii) reasonable apprehension of the witnesses being influenced; (viii) danger of justice being thwarted by grant of bail; and (ix) frivolity in prosecution i.e. there cannot be

any doubt as to the genuineness of prosecution. The judgments *Gurcharan Singh v. State* AIR 1978 SC 179*; Meena Devi v. State of U.P.*, 2022 SCC OnLine SC 676 and *Sarbajit Singh & Anr. v. State of Punjab*, AIR 1980 SC 1632 were referred to and discussed in this regard. Participation of victims in criminal proceedings was also discussed. The concept of default bail was deliberated upon. It was stated that the right to bail under Section 167(2) Cr.PC first proviso is absolute. It was iterated that there should be no onerous conditions for the grant of bail. The condition imposed should neither be arbitrary nor discriminatory nor should lead to a miscarriage of justice. It was emphasised that while granting bail reasons for prima facie concluding why the bail was being granted have to be indicated. The law on anticipatory bail and disposal of bail application with respect to special statutes were discussed. The judgments *Bihar Legal Support Society v. Chief Justice of India*, (1986) 4 SCC 767, *Mallikarjun Kodagali v. State of Karnataka*, (2019) 2 SCC 752, *Prathvi Raj Chauhan v. Union of India*, (2020) 4 SCC 727, *Tirupati Balaji Developers (P) Ltd. v. State of Bihar*, (2004) 5 SCC 1, *Satender Kumar Antil v C.B.I*, 2022 SCC Online SC 825 and Shri *Gurbaksh Singh Sibbia & Ors. v. State of Punjab*, 1980 AIR 1632 were also discussed during the discourse.

Session 3

Developing Efficient Judicial System: Court and Case Management

It was stated that though technology is very important, machines cannot be supplanted by human beings. Technology helps and assists in expediting the judicial process. It was highlighted that digitalization is the first step that should be adopted in the judicial system. The platform and tools of digitalization which are provided and available should be used to the fullest for assisting in the aid of justice. It was emphasized that the justice system should also adopt the technology for getting the expeditious disposal of cases and ease of doing judicial work. Systematic planning and preparation to adopt the technology are very important for this purpose. It was iterated that the establishment of the infrastructure i.e. hardware and software system is very important for the successful integration of the e-court project. How the technology gets integrated with the judicial process was discussed. It was emphasized that apart from the case information system of which the National Judicial Data Grid is an apt example, the case management system should also be focused upon.

The successful implementation of Information and Communications Technology at the Kerala High Court was highlighted. The model adopted and the initiatives by the Kerala High Court on the e-court system were deliberated upon. The features of dashboard developed by the Kerala High Court which provides all information related to cases pending in the court were discussed. According to this model, every stakeholder has a dashboard and through it, everybody can interact with each other. It was suggested that dashboard should replace the need to have a physical office and it can be accessed from any place. It was stated that technology means ease of use and the judiciary has to adopt it in its day-to-day judicial work. Various aspects of E-filing, digital case scrutiny, subject-wise mapping, generation of the electronic roaster, hybrid and physical court hearing, and preparation and delivery of judgments in electronic form were discussed during the discourse. The automated filling system was displayed. Work assessment of the staff, pendency chart, and listing of cases electronically were demonstrated. It was stated that this model can be displayed with a click. It was iterated that this model is successfully implemented in Kerala and can be adopted by the other High Courts which may in turn save cost and time.

In the effective implementation of the e-courts, it was suggested that effective training of staff and good communication between the stakeholders is important. The upcoming bottlenecks and problems that the judiciary may face in adopting the technology in the judicial process were invited and discussed during the deliberation. It was remarked that once the challenges in embracing the technology are known, the possible solutions can be worked out. The main point that was stressed was the change of mind set making the courts virtual and paperless. It was iterated that identifying the good practices in adopting the technology in the judicial system is the need of the hour. It was stated that digitization will bring more accessibility and transferability to the justice delivery system. Participant justices interacted and shared their views and experiences on the integration of the case management system in the judicial process.

Session 4
Law of Contempt

As the session began, it was clarified that contempt of court has its roots in Latin words, contemptus curiae. Contempt is the result of combining the words "contemner" and "tempier", and it means to "value little.” Keeping in mind the different dimensions of civil

and criminal contempt, how to understand the law of contempt as a weapon to protect the majesty of the court was underscored. Contempt has always been referred to as the "legal thumb screw" and thus for a long time the law on the subject remained in a confused state. From the very beginning of the common law system, Superior Courts (Courts of Record) had the power to punish contempt of court. It was highlighted that the Contempt powers of all Courts of Record are inherent, necessary, and incidental to maintaining the dignity of the Court and enforcing its Order. In *Pritam Pal v. High Court of Madhya Pradesh, Jabalpur*, AIR 1992 SC 904, it was mentioned that power conferred upon Supreme Court and the High Court, being "courts of record" under Articles 129 and 215 of the Constitution of India respectively, has an inherent power and only these courts can deal with contempt of itself. A reference was made to Section 18 of the Act, wherein it is mentioned that criminal contempt is to be heard by a Division Bench. It was clarified in the light of *Own Motion v. Kasturi Lal*., AIR 1980 P&H 72 (FB), if the ex-facie contempt is committed before a single Judge, the same Judge can commit and punish on its own motion. No motive or intention is required to be proved in ex-facie contempt cases. There is a procedure to be followed to punish the contemnor and courts are advised to follow the rules. Further, provisions relating to appeals and limitations were discussed. Other relevant issues like contempt applications moved by a non-part, against a non-party, contempt jurisdiction cannot be invoked on the basis of impression and contemnor cannot enjoy the fruits of contempt, and dismissal of contempt does not destroy the substantive right were also formed part of the discussion.

In the light of *K.A. Mohammed Ali v. C.N Prasannan* 1994 Supp (3) SCC 509, it was mentioned that even though an order passed by a court does not have jurisdiction yet absolute obedience to the said order is required. The mere corporate entity is not sufficient, the corporate veil had to be lifted to see the actual person in control who is guilty of contempt was discussed in the light of *DDA v. Skipper Construction Co. (P) Ltd*., AIR 1996 SC 2005. The issue of whether an order passed by the High Court is canceled by the Supreme Court was discussed in reference to *Sita Ram vs Balbir @ Bali* case. It was emphasized that the scope of contempt cases had become too broad. Even third parties can be convicted. In yet another case of *V.C. Mishra, Senior Advocate v. Bar Council of U.P*. 2009 SCC OnLine All 1219, the participants were made to understand that power of the court in contempt cases is not to supplant what the statute says but to supplement what the statute says.

Further, explaining the intricacies of section 10 of the Contempt of Court Act, it was opined that through the constitutional set up High Court has the power of superintendence over the

subordinate courts. With the power to punish the contempt of his own court, he also has the power to punish the contempt of his subordinate court. A reference was made to *Delhi Judicial Service v. State Of Gujarat And Ors*. 1991 AIR 2176, stating that the Supreme Court has inherent power and jurisdiction to take action for contempt of subordinate or inferior courts. The difference between the exercise of jurisdiction and the existence of jurisdiction of the Supreme Court was accentuated. Lastly, building upon the jurisprudential edifice of the kind of orders which can be passed was discussed in the light of *Firm Ganpat Ram Rajkumar v. Kalu Ram and Others* 1989 Supp (2) SCC 418. The question was does the power of the court stopped once the punishment for contempt is passed. The speaker answered that a court should also check whether the order is being implemented or not. Further, Contempt is Sui Generis and should follow the principles of equity and good conscience. It was advised that the principle of restraint should be followed and contempt being quasi-criminal the court should always hear the parties on sentencing.

Session 5

Dimensions of Law Governing Medical Practitioners vis-à-vis Morality and Ethics.

Since the Consumer Protection Act was enacted, many doctors have been prosecuted under the act, and now very few High Courts have jurisdiction. In cases where the High Court exercises its original jurisdiction and in writ petitions, they usually take action against doctors. There has been a change in the law relating to the liability of doctors and the judicial response. According to the speaker, the formative principle of fixing liability is that there is a duty of care, which when breached leads to harm/injury, which in turn leads to damages. It was mentioned a doctor is expected to deliver a standard of care, which if not provided, can be viewed as negligence. Further, a reference was given to *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582 which lays down the typical rule for assessing the appropriate standard of reasonable care in negligence cases involving skilled professionals i.e the Bolam Principle. In this light, *Samira Kohli v. Dr. Prabha Manchanda & another* (2008) 2 SCC 1 was discussed. It was stated that in India, the extent and nature of information required to be given by doctors to the patient in order to obtain valid consent is governed by the Bolam test and not by the "reasonably prudent patient" test evolved in *Canterbury v. Spence* 464 F 2d 772 (1972). The confusion to choose between the Bolam test or Canterbury test was settled in *Arun Kumar Manglik v. Chirayu Health and Medicare Private Limited and another* (2019) 7 SCC 401 by clarifying that Cantebury Principle should

be the law i.e. the doctor should disclose all reasonable information about a proposed treatment to his patients. The session discussed the Montgomery principle, which was laid down in *Montgomery v Lanarkshire Health Board* [2015] UKSC 11, as it pertains to informed consent that requires a patient-centric approach. Further, the principles of confidentiality, consent, reasonable fees, patient priority, patient autonomy, and DNR – Do not resuscitate were discussed in light of keeping the patient-centric approach paramount. Patient autonomy was further discussed in light of *Aruna Ramchandra Shanbaug vs Union of India* (2011) 4 SCC 454 where passive euthanasia was permitted i.e. withdrawal of life-sustaining treatment from patients not in a position to make an informed decision. In order to prevent terminally ill people or those with deteriorating health from remaining in a vegetative state with life support systems if they become incapable of expressing their wishes, the procedure for a 'Living Will' or an 'Advance Directive' is being proposed in *Common Cause v. Union of India* (2018) 5 SCC 1 was also formed part of the discussion. It was highlighted that the court acts as *Parens patriae* in situations where the donor is a relative of the patient, any advance directive has been provided by the patient, genuine interest to help the patient to survive, and most importantly there is an absence of commercial consideration. Further, a detailed discussion was held on the fallibility of forensic evidence about its collection, preservation, limitations, and challenges mainly in cases of sexual offenses. The session concluded with DNA analysis in criminal trials and balancing of public interest v. right to privacy As a final explanation, the distinction between negligence and judgment error was demonstrated by referring to two examples: a surgeon performing surgery and leaving a scissor inside is definitely negligent, but if a surgeon goes ahead with the operation and there is a slight error in judgment on the part of the doctor, he or she should be spared, otherwise a doctor's life would be miserable. It was explained that merely borrowing principles from foreign jurisdictions and applying them to India makes no sense given the fact that foreign countries have universal health insurance, whereas India does not. It was recommended to give the medical professional some leeway to develop their own jurisprudence and make informed choices.