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From the Desk of the Director, NJA

The Academy organized 24 programs during the quarter, October to December 2017. Over 900 judicial officers, law officers, presiding officers of Tribunals and other stake/duty holders attended the several programs during the period. Judges, serving and former of the Supreme Court, High Courts; and experts drawn from other domain were associated with guiding the sessions in the several programs, and these distinguished resource persons shared knowledge, skills and experience; and made presentations on a variety of subjects and disciplines intrinsic to adjudication and the administration of justice.

Four Workshops were held during the quarter, two for Additional District Judges; one workshop for High Court Justices on counter-terrorism trials conducted in association with the Federal Judicial Centre (FJC), Washington and the Central European and Eurasian Law Institute (CEELI); and one for Magistrates on the Juvenile Justice (Care and Protection of Children) Act, 2015.

The Academy organized six Special Events during this quarter, two for Junior and Senior Judges and for District and Additional District judges of Bangladesh, in collaboration with the State Judicial Academies of Punjab and Haryana; and West Bengal. The other four special events covered Presiding Officers of the Income Tax Appellate Tribunals, Debt Recovery Tribunals and Central Administrative Tribunals; and senior law officers of the State Bank of India.

Three National Judicial Conferences for High Court Justices were held including one for newly elevated judges; and one of the conferences was exclusively on the theme – Intellectual Property Rights.

Four Refresher courses, one for First Level Commercial Courts, one for Courts dealing with NDPS laws; one for Presiding Officers of MACT, one for Courts dealing with Human Rights issues were also held during this period.

Three Regional Conferences for the South Zone, North Zone and East Zone -1, organized during this quarter, at Kochi, Lucknow and Raipur, respectively involved participation of High Court Justices and the Senior and Junior Division judges working in and within the ambit of the participating High Courts of the three regions.

Two National Orientation programs for Junior Division judges, one Court Excellence Enhancement Program and a Conference on Court Procedures and Processes for Registrars of High Courts rounded off the quarters' academic agenda.

This was quite a crowded academic calendar and saw three parallel programs some weekends besides through the week sessions for judges of Bangladesh. Your Academy has received a warm letter of appreciation from the coordinator of the Bangladesh judicial delegation for the program quality, course content and hospitality provided during the sessions.

The increase in the duration of the programs, from the hitherto two days, to the current three days, was uniformly appreciated as this provided adequate time and opportunity for participants to study, reflect and internalize the thematic content and research material provided by the Academy in relation to each of the programs. The learned resource persons also had adequate time to cover the several themes structured into the various programs.

Justice (Retd.) Raghuram Goda
Director

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WORKSHOP FOR ADDITIONAL DISTRICT JUDGES

OCTOBER 06 to 08, 2017

Mr. Sumit Bhattacharya, Research Fellow



A three day National Workshop for the Additional District Judges was organized on October 06th to 08th, 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 important issues and topics forming the discourse are pointwise highlighted hereunder.

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

In the first session emphasis was laid on the "alternate" yet effective forms of approaching a problem or a situation as against conventional ways to attain more productive resultants.

- It was asserted that, mediation is the best form of ADR system and is based upon the acronym POS. POS stands for identifying Problems, generating Options, and reaching out for Solutions.
- Amendment to Section 89 of the Civil Procedure Code, 1908 (CPC) has significantly changed the Indian position in resolution mechanism through ADR. It brought in the mandatory requirement for judges to consider referring disputes to any of the ADR processes.
- Under situations wherein, the referred cases return back to the Courts undecided (poses problem), courts may follow the hybrid models/procedures of "med-arb" (Mediation-Arbitration) or "med-con" (Mediation-Conciliation). In the UK, the USA and

Canada such procedures are followed by the parties in case of an impasse. Thus, in a “med-arb” scenario there would be flexibility (of mediation) plus finality (of arbitration). However, it should be remembered that the condition precedent is that the parties have agreed to such a procedure.

- The reasons, which, have not made ADR successful to its full potential were cited as:
 - ✓ Unawareness of the bar. Less than 10% lawyers know about the ADR process completely.
 - ✓ Unawareness of the litigants. They do not know about alternative dispute resolution mechanisms.
 - ✓ Mindset of the honorable judges. They are skeptical as they think as to what is the need of refer, if they can decide the dispute themselves.
- Discussing on the conciliation proceedings, it was opined that conciliation is as old as 1947 as adopted under the Industrial Disputes Act, 1947 and is noticed to be rarely followed. This is mainly because parties are not fully aware and willing to resolve dispute through conciliation.

Session 2: Court & Case Management: Role of Judges

The Session was initiated by pondering over the reasons of high pendency in the Indian Courts.

- Ambit of case management is both procedural and substantive. It involves infrastructure and sensitivity. It entails handling cases in such a way that it uses less resources and less time in dispensing justice. It is done for increasing efficiency, reducing delay and cutting the costs. For proper and effective case management, judges should not be hyper technical in compliance with court procedures.
- It involves pre-determination of time by a judge within which he wants to dispose of the case. Judges should practice differential treatment of cases w.r.t listing, clubbing, use of ADR, curbing adjournments etc.

- Discussions on adaptation of new technology in order to expedite service of notice was done by citing the 2017 Delhi High Court judgment in *Tata Sons Ltd. v. John Doe* (notices can be sent using *WhatsApp*).
- Emphasizing on the core values and advantages of management principles, it was illustratively discussed as to how these principles apply the Indian judicial system.
- The Scheme of National Court Management Systems (NCMS) as approved by Hon’ble Chief Justice of India on 02.05.2012 was referred. Objectives of this scheme were discussed in detail.

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

- It was asserted that, two important aspects of appellate jurisdiction are revision and appeals. The main causes of delay in disposal of appeals were discussed. Discussing over the concept of appeal as a right, it was stated that appeal is a creation of a statute. It is not a Constitutional or inherent right.
- Right of appeal is preserved till the rest of the tenure of the suit. It exists from the date of filing of the the suit. It is a vested right which continues till the decision on appeal is given. The two categories of appeal were discussed i.e. First appeal- on both question of law and fact. Second appeal- only on substantial question of law. It is filed to the High Court.
- Scope of revision is limited to the 3 instances as provided under Section 115 of C.P.C. It was insisted that, attempt should be made to dispose off a revision petition on the very date of its institution. Certain restriction have been provided under Section 115 like “the High Court shall not, under this section vary or reverse any decree or order against which an appeal lies either to the High Court or to any court subordinate thereto.”
- The difference between revision and appeal was explained. An appeal is available on question of law and fact while revision deals with substantial question of law. Revision petition can be disposed off with certain directions without serving notice to

opposite party, however, in an appeal this cannot be done.

- It was categorically stated that the judges should be extremely careful in passing interim orders in matters of appeals. Reference to certain judgements like *Union of India v. KV Lakshman* and *Banarasi & Ors. v. Ram Phal* were made. It was stated that in Ram Phal's case it was held by the Supreme Court that an appellate court cannot grant decree of specific performance when no cross appeal has been filed.

Session 4: Laws relating to Cybercrimes: Advances and Problem Areas

- It is a virtual world where one is not necessarily known as his/her existing identity (as it exists in the real world). One can create his/her own identity. There are no laws, countries, properties, territories in this virtual world having a strict control. There is no governmental control. It is the result of huge corporate houses who owns the virtual control in space and time e.g., one cannot tract the history of cryptocurrency.
- Various types of cybercrimes (e.g. Identify theft; child abuse; unauthorized IP infringements; money laundering; cyber bullying; extortions; cyber frauds in e-commerce etc. etc.) with their socio-legal impacts and implications were discussed.
- Absence of uniform rules at the international level was highlighted. Government of India's notification on 18.02.2015 insisting all government officials to use the official mails for all official communications was cited (only to project its extremely limited implementation).
- Discussions regarding to jurisdiction in cybercrime cases included reference to the *Banyan Tree Holding Ltd. v. A. Murali Krishna Reddy case*.
- Addressing the issues of cybercrime in India was discussed in detail with reference to the relevant statutory provisions of the Information Technology Act, 2000.

Session 5: Electronic Evidence: Collection, Reservation and Appreciation

- Electronic evidence can be classified into volatile and non-volatile evidence. Volatile electronic evidences vanishes as soon as the power is switched off, for e.g., RAM (Random Access Memory). Non-volatile electronic evidence are retrievable from storage devices, hard disk, CD, pen drive, mobile etc.
- Before appreciating an electronic evidence the three things which needs to be are: the a) relevancy, b) authenticity and c) veracity.
- Computer forensics explain the state of digital artefacts. As a best practice, instead of immediately switching on the computer while making an investigation, cloning of hard drive should be done at its outset, as the log details change every time the machine is switched-on.
- Metadata is the data which gives information about other data. Explaining the concept it was stated that, e.g. in a photo, metadata tells about the camera used, lens used, while, in a file, metadata tells about author, number of characters, when file was created, when it was edited etc. Judges can ask for metadata of a specific file or picture. Even when a photo is copied, metadata does not change until any editing has been done.

Session 6: Criminal Justice Administration: Appellate and Revision Jurisdiction of District Judges

- Chapter XXX of Code of Criminal Procedure (Cr.P.C.) provides for revision power. In revision, acquittal cannot be turned into conviction and the matter can only be remanded. In Chinnaswamy Reddy case following principles have been laid as the grounds on which a judge can interfere with the decision of trial court in revision:
 - ✓ Decision of trial court is grossly erroneous.
 - ✓ Finding of trial court was based on no evidence.
 - ✓ Material evidence overlooked by trial court.
 - ✓ Glaring miscarriage of justice to parties.

- Revision does not lie against an interlocutory order but only against a final order. Special revision jurisdiction has been provided under Section 398 of Cr.P.C. Revision jurisdiction is generally a call for records to see if order has been correctly arrived at. However, in appeal jurisdiction a judge's powers are wider as compared to in a revisional jurisdiction. *Jessica Lal's* case dealt with the procedure to be followed in deciding an appeal. The question that arises is, whether acquittal can happen on grounds: a) delay in lodging the First Information Report or b) submitting report to the magistrate.

Session 7: Sessions Trials: Fair Processes

- Contemporarily, the focus is equally on the victim in addition to the accused as per conventions. Justice needs to be done as well as seen to be done to ensure public confidence over the judicial system.
- The importance of Sessions Court as the all-important and competent court of trial empowered to award punishments of highest order needs to ensure impartiality, capability and transparency.
- Difference between omission and contradiction was discussed and explained. Omission occurs when the person does not state an event before the police but does that in the court for the first time. In case of contradiction, there is a variance between the fact said before the police and the thing said in the court. Citing the *Govinda Reddy case*, wherein, the constitutional bench of the Supreme Court talked about the precautions which need to be taken while admitting circumstantial evidence:
 - ✓ All circumstances must be firmly established.
 - ✓ All circumstances should point towards the accused.
 - ✓ There should be all probability that the accused has committed the crime.
- A few hypotheticals were discussed in order to clarify the differences, confusion in application of statutory provisions. These hypotheticals clarified jurisdiction issues (e.g. in case of an SC/ST child and sexual abuse, which special court will have jurisdiction etc.), taking of cognizance etc.

Session 8: Sentencing Policy: Issues and Challenges

It was underscored that the following main points must be considered while sentencing:

- ✓ Doctrine of proportionality.
- ✓ Judicial discretion.
- ✓ Considerations should be given to special reasons, as motive too plays an important role in sentencing policy.
- ✓ Fair and reasonable opportunity should be given to the accused to present his case before deciding the quantum of sentence.
- However, at the same time doing so makes the sentence, judge specific and not case specific. In *State of Punjab v. Prem Sagar & Ors.* it was noted by the Supreme Court that there is an absence of judiciary-driven guidelines in India's criminal justice system. The superior courts except for making observations with regard to the purport and object for which punishment is imposed upon an offender, had not issued any guidelines." Moreover, Supreme Court, in the case of *Soman v. State of Kerala*, also observed the absence of structured guidelines.
- Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the administration of criminal justice. There are no legislative or judicially laid down guidelines to assist the trial court in meting out the just punishment to the accused facing trial before it after he is held guilty of the charges.

P-1051

SOUTH ZONE REGIONAL CONFERENCE ON ENHANCING EXCELLENCE OF THE JUDICIAL INSTITUTIONS : CHALLENGES & OPPORTUNITIES OCTOBER 07 to 08, 2017

Mr. Rahul Ishwar Sonawane, Research Fellow
Ms. Ankita Pandey, Law Associate



The National Judicial Academy (NJA) organized its first Regional Conference for the academic year 2017–2018 at Kochi, Kerala in coordination with the High Court of Kerala and the Kerala Judicial Academy on 7th & 8th October, 2017. The Regional Conference was designed to provide a forum for exchange of experiences, communication of knowledge and dissemination of best practices from across clusters of High Court jurisdictions in south zone region of the country and amongst hierarchies. Its aim was to accentuate the experiences of the High Courts and Subordinate Courts, besides revisiting established and imperative norms of a constitutional vision of justice, elements of judicial behaviour, social context judging and other specified topics.

Session – 1: Constitutional Vision of Justice

The constitutional vision of justice is not only important for the higher judiciary but also for the subordinate judiciary. Members of the subordinate judiciary are not invested with powers to declare the laws unconstitutional, but they are the ones who handle constitutionally relevant important cases. Ratlam Municipality case was cited as the best example of the kind. Therefore, even the judicial magistrate first class

is guided by the basic constitutional values and principles while deciding the cases before him. The concept of constitutional morality and its difference from our notion of morality was also discussed. The characteristics of a good judge with references from the upanishadas were also discussed. It was envisaged that the entire vision of the Indian Constitution can be perceived by just reading the Preamble of the Indian Constitution. The preamble was included after the entire constitution was drafted. It is for this reason the preamble encompasses the basic ideals of the Constitution. Thereafter the ancient Indian theories of Justice and also the western theories of natural law, utilitarianism and Rawl's Theory of Justice were also discussed.

Session – 2: High Court and District Judiciary: Building Synergies

The session commenced with a brief introduction of the theme. It was discussed that, while talking about justice and equality, senior judges must look as to how they behave with their junior officers. It was realised that there is no communication between the High Court and the District Judiciary except with respect to the departmental proceedings. This is certainly not a sign of



a healthy judiciary which needs to be changed before it turns out to be completely Manuwadi hierarchical model. It was opined that now a days quality of Bar has really gone down and to some extent the judges are also responsible for the same. Therefore, something definitely needs to be done to nurture the next generation of the Bar. It was also discussed that the Indian Judicial set up is almost feudal as stated by Justice U L Bhatt in his autobiography. An appeal was made to all the participant justices that they should look into the matter and appreciate the work done by their subordinate judicial officers. They should stand by the juniors who are doing appreciable work. Thereafter, it was also stated that even the subordinate judicial officers should understand that their performance appraisal is done by the High Court only on merit and they should try to deliver best to the expectation of their respective High Courts.

Session – 3: Elements of Judicial Behaviour: Ethics, Neutrality and Professionalism

The session by making reference to the three “I’s” viz. Integrity, Impartiality and Independence. To this list, the speaker added three more “I’s” viz. Industrious, Innovative and Imaginative. It was opined that every judge, be it a Judge of the High Court or Subordinate Court, has to have these “I’s”. As far as Independence is concerned, it is of two kinds, i.e. Institutional Independence of a Judge and Individual Independence of a Judge. Impartiality is another necessary

characteristic of a judge. It was further stated that integrity of a judge should reflect in his day to day conduct. The open mindedness of a judge should be reflected in his/her judgements/orders. These are the core judicial values of a judge. It was agreed that Impartiality, Integrity and Independence of a judge is the most important value for smooth functioning of the justice delivery system. A judge’s duty is to decide the case and to see that justice is rendered. The example of Justice Felix Frankfurter was also cited to elaborate upon the issue of integrity and impartiality of a judge.

Session – 4: Social Context Judging as a controlling element in Statutory Interpretation and Exercise of Discretion

The oath of a judge is to do right to all manner of people without fear of favour, affection or ill will. A judge should be concerned with shifts in public policies and community expectations from courts. Judging is not just deciding, it is strengthening the social cohesion and maintaining the rule of law. Social context judging also helps in bridging the gap between law and justice. Constitution being a socio-political manifesto of the people and courts being the guardians of the Constitution it is to be expected that social context forms an indispensable tool of judging in constitutional courts. It is even more important to implement social context judging in the trial courts where more number of people seek justice. However, it is difficult in this case owing to the fact that precedents cannot be easily

ignored by judges and lawyers. Further, the role of a judge is to help bridge the gap between the needs of the society and the law without allowing the legal system to decline or collapse into anarchy. The ground realities prevailing in the society must never be ignored by the judicial community whether at the grass root or the higher level. It was interestingly pointed out that sometimes in spite of a written constitution we are unable to read it in its true spirit. In such times, there comes a need for interpreting the law with the changing needs of the society.

Session – 5: Access to Justice: Information and Communication Technology in Courts

Courts across India have started using computers in Case Management and Court Management but we can make extensive use of computers in improving quality and speed of justice. The power of technology is unlimited. Though it has potential dangers, its comparative rewards are still greater. Verbatim record, accurate and immediate access to transcript, extensive use of digital audio and video recording, document imaging with Optical Character Recognition (OCR) are going to become regular features of a high-tech court. The evidence presenting system is also changing radically. Use of video for evidence recording would help in protecting victims and witnesses. The use of technology in courts around the globe has made judicial functioning more efficient and further attempts are being made to incorporate new technologies. At the same time we need to see as to how the use of technology can be useful in the dispensation of justice in courts. The overall impact of establishment of e-court will result in quick disposal of cases, ease of record maintenance, reliability of the evidence recorded and to bring more transparency in the functioning of the District Courts. Lastly, reference was also made to the website www.ecourts.gov.in wherein

all the database information with respect to every court in India is available.

Session – 6: Access to Justice: Court and Case Management

The session was by and large made an interactive session so as to allow participant judges to place before the house the limitations that they face with respect to the management of their courts as well as to share their experiences and assimilate best practices. It was widely agreed that the effective administration of justice depends critically upon a successful partnership between the judiciary and those responsible for the administration of the courts. The main issues that were raised during the discussion were high rates of case pendency across India and that there are not enough judges to dispose of the cases before them, lack of other necessary infrastructure, the tendency of giving frequent adjournments, fragmented hearings and other related issues. At present, a number of technologies can support different areas of court operation. Such technologies have been used for the automation of administrative tasks like case tracking, case management system, office automation, etc. It was pointed out that in spite of all odds, determined efforts are required at every level and ways have to be found out by constant thinking and monitoring. Presiding Officer of a court cannot rest in the state of helplessness. It is the constitutional responsibility of the State to provide necessary infrastructure and of the High Courts to monitor the functioning of subordinate courts to ensure timely disposal of cases. The first step in this direction is preparation of an appropriate action plan at the level of the High Court and thereafter at the level of each and every individual judicial officer. Implementation of the action plan will require serious efforts and constant monitoring.

SE-2
TRAINING PROGRAMME FOR BANGLADESH
JUDICIAL OFFICERS
OCTOBER 11 to 15, 2017

Mr. Shivaraj S. Huchhanavar, Research Fellow
Mr. Shashwat Gupta, Law Associate



The training and capacity building programme for Bangladesh Judicial Officers in India, under the aegis of the Academy, was formalized during the recent visit of the Hon'ble Prime Minister of Bangladesh to India. MOU was entered into between the Academy and the Supreme Court of Bangladesh, for the training of about 1500 officers, during 2017 to 2023. During the academic year 2017-18, 4 batches of about 40 officers each are expected to participate in a course of 15 days training programme.

The Training Programme for the first batch of 38 Judicial Officers of Bangladesh was held in two phases from 11th to 24th October 2017. First phase of the programme was organized by NJA at Bhopal from 11th to 15th October and the second phase was organized by Chandigarh Judicial Academy from 17th to 24th October, as per the training module and curricula designed by the NJA.

The first phase of the programme included sessions on judicial skills, constitutional, civil, criminal,

environmental and human right laws and correlative jurisprudence. The topics spread over 17 sessions for the period of 5 days. To address the participants, the domain experts included former & sitting Justices from High Courts and the Supreme Court as resource persons.

The first day of the programme was aimed to acquaint participants with overview and architecture of the Indian constitutional arrangement; organizational structure and jurisdiction of courts in India; and goals, role and mission of courts: the constitutional vision of justice. Justice A. K. Ganguly, Justice K. Chandru and Prof. Mohan Gopal discussed with the participants the socio-economic and political background of India at the time of Independence and its impact on the constitution making. Justice A. K. Ganguly elaborated various provisions of the constitution and explained how the constitution of India (through a delicate balance of power) aims at protecting rights of its people and thereby sustains the constitutional democracy in a multi-plural society. Justice K. Chandru highlighted the



contemporary challenges facing India and Bangladesh. He expressed that judicial responses to socio-economic problems in India has been very vigorous; pro-poor, oppressed, and marginalized. Justice Chandru observed that unlike India, Bangladesh is a diverse country unified by one language and it is free from caste divisions. He remarked that political maturity coupled with constitutional stability would bring prosperity to Bangladesh. Prof. Mohan Gopal explained the role of judges in a democracy. He emphasized the significance of constitutional vision of justice and working of the judiciary. He said a both India and Bangladesh witnessed *Raja, Raj* and *Swaraj era*. He opined that in a democracy the judiciary has to work for the protection of rights of the people, thereby upholding the constitutional vision of social, economic, and political justice.

The overarching aim of day-2 of the programme was to discuss and share skills of judging, judgement writing and court management in participating judges. It also aimed at sensitizing judicial officers on elements of judicial behaviour: ethics, neutrality and professionalism. Justice B. S. Chauhan while emphasizing on the importance of judicial ethics, explained the Bangalore Principles of Judicial Conduct, namely: independence, impartiality, integrity, equality, propriety, and competence and diligence. He

advised the participants that the elements of fear, favour, affection or ill-will should not play any role in the formation of a judicial opinion or affect the judicial behaviour of a judge. Justice K. Chandru quoted *Magana Carta* which proclaimed that “we will not appoint justices, constables, sheriffs or bailiffs except such as know the law of the kingdom and are willing to keep it well”. He observed that Judges are servants of the law, their conduct must be unquestionable if they were to command respect and restore diminishing public trust and confidence in the judiciary. In his concluding remarks, he recalled Justice Krishna Iyer, who decreed: “His (judge’s) integrity and freedom from personal predilections and class biases must be of a high standard, secular to the core, socialist in faith and democratic even in its spiritual dimensions. Corruption, ambition, callousness, the craze for the position, promotion and five-star craving plus graft, nepotism and other vices are infiltrating into the hallowed place of Justice, Justices and Justicing. This affluenza craze add passion for tax-free perks are creeping into court culture. After all, when society degenerates and values slowly whether we cannot expect judges angle unless we put special emphasis or character and commitment as part of the judicial office.”

Justice R.C. Chavan said efficiency of court largely depends on how a judge conducts himself with lawyers



and court staff. He assisted that most of the judicial officers struggle to manage the Bar and the best way to manage the advocates is taking them into confidence by probing them to understand & resolve their issues. It is only the advocates who intentionally misuse the process of the court, try to bully the judges, and delay the cases are to be treated sternly. Prof. Mohan Gopal explained the recent developments in India on court and case management.

Day-3 of the programme was tailored to share with the participants the fundamentals of appreciation of evidence and latest legal developments in the areas of collection, preservation, and appreciation of evidence. There were detailed discussions on the subthemes namely, Principles of Evidence: Appreciation in Civil and Criminal Cases; Evidentiary Presumptions: Onus and Burden of Proof; Electronic Evidence: New Horizons, Collection, Preservation and Appreciation; Forensic Evidence in Civil and Criminal Trials: DNA profiling. Justice K.C. Bhanu, with the help of case laws, explained the differences in nature of appreciation of evidence in civil and criminal cases. He also stressed the importance of circumstantial evidence and explained the modes of evaluating circumstantial evidence.

Justice B. S. Chauhan, deliberating on the evidentiary presumptions and onus and burden of proof observed that there is an essential distinction between burden of proof and onus to prove; burden of proof lies upon the person who has to prove a fact and it never shifts. Whereas, the burden of proof lies upon the plaintiff to establish. The circumstances do not alter the incidence of the burden of proof. Having regard to the circumstances of a particular case, the onus of proof

may shift. He remarked that the burden of proof is used in three ways: (i) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (ii) to make that of establishing a proposition as against all counter-evidence; and (iii) an indiscriminate use in which it may mean either or both of the others. During the course of discussion, Justice Chauhan referred to various landmark judgments on presumption, burden and onus of proof.

Ms. N.S. Nappinai deliberated on *Electronic Evidence: New Horizons, Collection, Preservation and Appreciation*. Information and Communication Technology 2006 (Bangladesh) and its Indian counterpart IT Act 2000 was discussed at length. The definition of *electronic evidence, electronic record, computer, signature, cybercrime* etc. are critically evaluated. Landmark judgements on the topic namely, *Dharambir v. CBI; State of Gujarat v. Shailendra Kamal Kishor Pande & Ors; Mohammed Ajmal Mohammad Amir Kasab v State of Maharashtra & Ors; Shreya Singhal v. Union of India; and Anvar P.V v. P.K. Basheer* were discussed at length. Dr. Gandhi P. C. Kaza speaking to the participants on *Forensic Evidence in Civil and Criminal Trials: DNA profiling*, stressed the importance of forensic science in both civil and criminal matters in general and DNA technology in particular. He observed that DNA science yield accurate and reliable results only when the procedures and technicalities relating to collection, preservation and appreciation of samples are meticulously followed. The conclusiveness of the evidence (DNA) lies in the scientific approach we adopt in testing the samples. He also extensively spoke on pros and cons of DNA profiling.

On Day-4 issues relating to criminal justice administration and human rights were taken up for discussion. Dr. Usha Ramanathan speaking to the participants emphasized that 'access to justice' is a key concerns for both India and Bangladesh. Poverty, ignorance, nonresponsive administrative and adjudicatory machineries etc. deprive the downtrodden from accessing courts. Courts in India and Bangladesh has a dual role to play—(i) ensure that the adjudicatory process is pro-poor, less-complex and responsive; (ii) throw open the judicial institutions to all sections of the



society (not just on the basis of passive equality but with the help of affirmative initiatives) to ensure that the legal system is accessible to all, irrespective of their economic and social incapacities. Protection of human rights is always crucial for the judiciary as in the process, often, it confronts the State. ‘Impartial investigation is equally important as of impartial judiciary’, she said. Investigation, detentions, traffic stops, arrests, searches and seizures, etc. must be based on reasonable suspicion, supported by credible information, circumstances, and conclusions that support such detention.

Last session of the day-4 was on *ICT and E-Judiciary: Indian Perspective*, Justice Dr. G. C. Bharuka and Justice Dr. S. Muralidhar were the Resource Persons. Justice Bharuka briefly presented ICT reform initiatives of early 2000s and explained phase-wise development of ICT infrastructure and facilities in Indian Courts. Justice Bharuka asserted that success of the ICT enablement lies in collection of relevant information at the initial stages, and that data will be collated, disseminated, and transformed into a source material for speed-up of the judicial business. He advised the Bangladesh judges, (as they are at the initial stages of the ICT enablement) to draw lessons from Indian experience by avoiding repeating mistakes and optimize the process. Justice Muralidhar highlighted the ICT developments in Delhi Courts. He said less-paper courts improve the efficiency enabling proper use of judicial time and resources of the judiciary, lawyers,

state machineries, and litigants. He explained to the participants the ICT services availability of to Litigants, Advocates and Judges in India.

Last day of the programme witnessed intense discussions on importance of ratio and ways to identify it in a precedent. Justice Dr. S. Muralidhar guided the session. He discussed various definitions of ‘precedent’ and ‘*stare decisis*’, distinguished binding and non-binding precedent, and spoke on vertical and non-vertical precedents. He elaborated the differences between the *ratio* and *obiter*. He also discussed the views of—Goodhart, Wambaugh, Halsbury, and Julius Stone on ratio and ways to identify it. Session 16 & 17 of the programmes aimed at discussing landmark judgments in India. Justice V. Ramasubramanian and Mr. R. Venkatramani elucidated landmark judicial pronouncements and their legal and jurisprudential fallouts in India. Unprecedented judgments viz. *Kesavananda Bharati v. State of Kerala*, *Maneka Gandhi v. Union of India*, *Minerva Mills Ltd. & Ors. v. Union of India & Ors*, *I.R. Coelho (Dead) By Lrs v. State of Tamil Nadu*, *Supreme Court Advocates on Record Association v. Union of India*, *Shayara Bano v. Union of India & others* Justice K S Puttaswamy & Anr. v. *Union of India* are discussed at length.

As a part of training programme, the Bangladesh Judicial Officers were taken to Regional Forensic Laboratory, District and Sessions Court, and Central Jail, Bhopal.

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NATIONAL JUDICIAL CONFERENCE FOR NEWLY ELEVATED HIGH COURT JUSTICES ON PUBLIC LAW OCTOBER 13 to 15, 2017

Mr. Rajesh Suman, Assistant Professor



The National Judicial Academy organized “National Judicial Conference for Newly Elevated High Court Justices on Public Law” on 13th – 15th October, 2017. The participants were newly elevated High Court Justices nominated by respective High Courts. The conference facilitated deliberations among participant justices on contemporary topics such as Information and Communications 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, Doctrine of Basic Structure and Fundamental Rights under our Constitutional arrangement. The Conference included interactive sessions and round table discussions on designated themes among participant justices.

Major Highlights and Suggestions from the Conference

Session 1: The Constitutional Vision of Justice

- The Constitution is a document of governance with certain objectives. The primary object of the

Constitution is to secure the rights of people. These rights consists of both justiciable rights and non-justiciable rights. Apart from this, other parts of the Constitution create certain posts and functions and determine how those function have to be exercised. The first objective of the Preamble of the Constitution is to secure justice- social, economic and political.

- The idea of justice responds to the search of human beings about what is right and what is wrong. The word ‘JUSTICE’ comes from the word ‘JUS’. ‘Jus’ is a sense of right or wrong that is validated or sanctified by some process. Judges cannot be guided by their own sense of right or wrong. We need a validation for this sense of ours and this must be objective.
- The root for the word ‘judge’ consists of two words ‘jus’ and ‘decire’- it means to decide. The righteousness of conduct can be judged according to a set standard of human conduct. Law is a set of hypothetical fact pattern and the value which

creates this fact pattern is what matters. Judges should know whether their sense of right or wrong is sanctified or not as judges are the guardian of the sanctified values. Justice is the sanctified sense of right or wrong. In this sense, constitutional visions of justice becomes important because we need to locate what is right and what is wrong and this has to be located in the Constitution.

Session 2: Court Management

- Court management involves managing the court requirements like number of judges, infrastructure, support systems, filling of vacancies etc. In *Imtiyaz Ahmad v. State of U.P.* ((2012) 2 SCC 688), the Court set out the norms for finding out how many additional courts were required in the country. The 120th Law Commission Report titled 'Manpower Planning' recommended that the number of judges should be decided according to the population of the place. All high courts were required to give a report on infrastructure.
- In this age of technology, challenge of judicial time management is a feasible challenge which needs to be addressed. With the Supreme Court judgment making CCTV mandatory in courts, problems of case management in some areas can be dealt in an effective manner. It was observed that sometimes judges do not sit on time and most of the time is lost in calling hours. Courts need to manage case progression. Furthermore, at least 20-30% time of judges goes in administrative work. This type of work can be effectively addressed by proper use of information and technology in courts.
- Due to the effort of NCMS, there has been an increase of 25% judge strength in the high courts and an increase of 50% judge strength of subordinate courts. The website of the Supreme Court has NCMS reports, where performance reports on infrastructure and other minimum standards to be followed by the Indian judiciary have been uploaded.

Session 3: Information and Communication Technology in Courts

- The victims of delayed disposal of cases are the litigants. Vision of justice entails court management and case management and this management can be done using information and technology in courts. Information technology was not present in the courts in the 1990s. All management decisions involve data reading capability. Thus, we must have reliable data taken from various sources.
- All high courts are independent to develop their own software for managing their affairs. These days, high courts have their own software development teams. E-filing centres have been opened up where all documents pass through the computerised network. The data is fed by the subordinate staff and not the judge himself and this data goes to the national server. The system then auto generates data e.g. cases disposed, case filed etc.
- Nowadays, digital evidence is being accepted as evidence by the courts. Under-trial prisoners are appearing in the court through video conferencing. Thus, we are steadily moving in the direction of virtual courts.

Session 4: Theories of Judicial Review

- Judicial review puts a check on State action. Judicial review is necessary for keeping public authorities in bounds and upholding the Rule of Law. Constitutionalism is 'limited government' and 'limited government' has divine roots in natural law. The power of judicial review also has its roots in common law.
- No Constitution in the world has defined the limits on the power of judicial review of courts. A sizeable part of the world follows the European political traditions and thought processes. The Magna Carta symbolises the liberty of people. Over a period of time, European thought has occupied jurisprudence too.
- The line drawn between constitutional powers of the courts and civil and criminal powers of the courts is an artificial line. Whenever there is any lacuna in the existing law, constitution plugs in. It is often said that the courts cannot legislate. When



we try to engraft the role of courts in an established political framework, there is a mismatch because of which conflict occurs.

Session 5: Separation of Powers

- There is no strict demarcation of powers between the three organs under the Indian Constitution. The distinction between judicial power and legislative power is recognised in almost all the countries of the world. Legislature can any day come up with a law which overturns the judgement of a court. There is a need to come up with a limit on this judicial power, which can be done by the judges themselves by way of their experience.
- In the process of tendency of the courts to legislate, many breaches like violation of distribution of powers happen. The people of India become accustomed to see Supreme Court acting like an institution for reforms. Article 142 of the Constitution is a source of power for the Supreme Court to do complete justice only in accordance with power conferred on it by the Constitution. The judges cannot use their own interpretation in doing so. A certain amount of latitude has been granted to courts to ascertain that the human rights of people are protected.
- The authority of courts to intervene comes from the duty cast upon it to resolve the case at hand. However, to what extent the court can intervene, is a question where separation of powers becomes necessary. Judicial despotism should not happen. Separation of powers entails that the legislature cannot legislate in an arbitrary way.

Session 6: Allocation of Legislative Powers: The Federal Architecture

- The Constitution of India provides for allocation of powers between the centre and the States. Under Article 1 of the Constitution, India has been held to be a 'Union of States' and not a 'Federation of States'.
- Federal supremacy is seen in the provision of Article 246. It states that in case of overlap between List I and List II, List I shall prevail whereas in case of overlap between List II and List III, the union law prevails. Union and States legislatures are sovereign in their own spheres. However, more powers are provided to the Union legislature. Article 249 gives Parliament the power to legislate with respect to a matter in the State List in the national interest.
- Supreme Court comes in as a guardian of the federal structure of the Constitution. No other Constitution of the world contains such an elaborate fiscal relationship between the Union and the States as has been provided in the Indian Constitution. The federation between the Union and the States has moved forward in the last 25 years with the enactment of Panchayati Raj under 72nd and 73rd amendment to the Constitution. These reforms can be considered as the birth of 3-tier federalism in India and can be called a 'federation of federations'.
- Schedule V and VI of the Constitution are also concerned with allocation of legislative powers. Under both these schedules, governors have the legislative powers. Schedule VII of the Constitution is the source of allocation of legislative powers. If we remove this schedule, there would be no distribution of powers.

Session 7: Fundamental Rights and Restrictions on Entrenched Rights

- The restrictions can be categorised into two categories - firstly, expressed restrictions provided in the Constitution and secondly, restrictions which can be implied or inferred in national public interest. Restrictions provided under Article 19 (2)

of the Constitution are express restrictions whereas the interpretation that no rights are absolute, can be taken to be an implied restriction. The implied restrictions have been put because it is said that certain limitations are engraved on the right itself.

- Even silence in the Constitution has become source of Constitutional developments. In *Maneka Gandhi v. Union of India* (AIR 1978 SC 597), interpretation of Article 14, Article 19 and Article 21 was done in a wide manner. The interrelation between Articles 14, 19 and 21 which started from the *Maneka Gandhi* case has been explained in cases decided by the courts even today. Recently in *Justice K.S. Puttaswamy v. Union of India* (2017 (10) SCALE), Justice Chelameshwar has opined that “Article 21 is the bedrock of privacy”.
- The fundamental rights are not the gift of law or the elected government. Though, in *ADM Jabalpur* case it was held that fundamental rights were given by law, it was then decided wrongly. Article 32 of the Constitution which Dr. Ambedkar referred as the ‘heart and soul of Constitution’ is itself a fundamental right. Thus, to enforce a fundamental right is itself a fundamental right.

Session 8: Theory of Basic Features: Contours

- The theory of basic features as propounded by the Supreme Court in the *Kesavananda Bharati* case is unique. The theory of basic features confers power to the judiciary to expound sounds of silence in the Constitution.
- Basic feature doctrine was a product of experience. It was a high point of judicial craftsmanship. By way of basic features doctrine, certain implied limitations were put on the amending power of the legislatures. Way before *Kesavananda Bharati*, the cases of *Sajjan Singh v. State of Punjab* (AIR 1964 SC 464) and *Golak Nath v. State of Punjab* (AIR 1957 SC 1643) paved the way for consideration on the issue of

requirement of basic structure doctrine. Although *Kesavananda Bharati* case came up with the doctrine of basic features, it was *Indira Gandhi v. Raj Narain* where this doctrine was applied for the first time.

- Politically motivated measures to undermine judicial independence was struck down by the basic features doctrine. Judicial review and judicial independence as constitutional values are always respected by the Supreme Court and these values have been kept intact by working in this direction.
- The Supreme Court many a times held that, Constitutional amendments only can be tested on the parameters of basic structure. However, it has been observed that courts have also been using the basic features theory to ascertain the validity of ordinary laws. Doing so results in passing of *per incuriam* decisions.

Session 9: Art of Hearing

- Training of a lawyer is combative in nature. However, as a judge, he has to play many roles. A judge has to understand the case and the facts manufactured by the parties. Lawyer is the one who presents the case in a palatable format to the judge.
- A judge has the responsibility of nurturing the next generation of lawyers and for that it is very necessary that they let the lawyer speak. Art of hearing involves the art of letting the lawyers speak. This makes it easier for the judge to write a well-reasoned judgment. Judges need to act like a catalyst.
- A judge should make sure that the case is disposed after hearing the parties properly. It is so because the litigants should have the satisfaction that their case was decided properly. Certain amount of humility needs to be shown by the judges so that the litigants get a sense of belongingness.

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REFRESHER COURSE FOR FIRST LEVEL
COMMERCIAL COURTS
OCTOBER 13to 15, 2017

Mr. Krishna Sisodia, Law Associate



The National Judicial Academy organized a Refresher Course for 'First Level Commercial Courts' from 13th-15th October, 2017, which was attended by 23 District/Commercial Court Judges from across the country. The objective of the refresher course was to strengthen the capacity of the 'First Level Commercial Courts', of the by way of discussions and deliberations on the contours of jurisdiction of commercial courts vis-à-vis arbitration; Disputes Apropos Construction and Infrastructure Contracts; Intellectual Property Rights; Distribution and Licensing Agreements; Insurance and Re-Insurance agreements.

On the theme of *Jurisprudential Charter of Commercial Courts; Contours of jurisdiction of Commercial Courts*, the speaker initiated the session with the 188th Law Commission Report for speedy disposal of high value commercial disputes. The 253rd Report of the Law Commission of India which recommended the establishment of Commercial Courts, Commercial Division and the Commercial

Appellate Division in the High Court (hereinafter the Act) for disposal of commercial disputes of a specified value was referred subsequently. Furthermore, the speaker elaborated over the nature and scope of commercial disputes which are in the jurisdiction of first level commercial courts. Relevant statutory provisions were referred which included Sec. 2(c) of the Act to understand the meaning of commercial disputes statutory defined. Moreover, the definition of "Specified values was discussed wrt. Sec. 2(i) of the Act to implicate the jurisdiction of 1st level commercial courts.

On the topic of *Distribution and Licensing Agreements: Disputes & Resolution*, the speaker explained at length the types of distribution and licensing agreements:

Supply which includes:

- Food products
- Pharma products
- Convenience products

- Steel, cement, petrol etc.

Supply and Service which includes:

- Electronics
- Automobiles

Service which includes:

- Travel services (hotels, flights, cars)
- Technology
- Accounting and legal

For illustrating judicial interpretation and application of the provisions certain important cases were discussed which included:

Cadbury India Ltd. vs. L. Niranjan, I (2007) CPJ 40 (NC) before the National Consumer Disputes Redressal Commission (NCDRC): Case of worms in Cadbury chocolates. It was the case of the manufacturer that the liability was with the retailer/vendor under the distribution agreement. NCDRC held that not only Local Authority should take action and verify such chocolates but also it is the duty of the manufacturer that such things do not occur. To prevent this practice Cadbury in their advertisements, as a matter of routine, should make it clear that consumer shall not purchase such chocolates from a retailer who is not having fridge or visi-cooler.

In *Gujarat Bottling Co. Ltd. & Ors. vs. Coca Cola Co. & Ors.*, 1995 SCC (5) 545; It was held that negative stipulation in an agreement for grant of franchise viz. a commercial agreement where under both the parties have undertaken obligations for promoting the trade for their mutual benefit is enforceable if it operates only during the period the agreement, except in cases where the contact is wholly one sided.

On the theme of *Insurance & Reinsurance Agreements: Disputes & Resolution*, the speaker initiated the session by discussing the history of the modern insurance business which began in the 16th century in England's Lloyd's Café (Marine Insurance) and the history of insurance in India which started in 1818 with Oriental Life Insurance Company which was established to cater the needs of the European Community. Thereafter, the speaker discussed in brief the objectives, scope & remedies under the various statutes pertaining to insurance in India such as:

- Insurance Act, 1938
- Life Insurance Corporation of India Act, 1956
- General Insurance Business (Nationalisation) Act, 1972
- Insurance Regulatory and Development Authority Act, 1999

On the subject of *Commercial Courts vis-à-vis Arbitration*, the speaker initiated the session by discussing the history of arbitration in India and the reasons for Amendment Act, 2015. Further, the speaker highlighted the intrinsic nexus between the commercial courts and arbitration. Section 15 of the Act states that "All suits and applications, including applications under the Arbitration and Conciliation Act, 1996, relating to a commercial dispute of a 'Specified Value' shall be transferred to the Commercial Division or the Commercial Court as the case may be".

The same was corroborated by referring to certain:

In *Bharat Aluminium Company v. Kaiser Aluminium Technical Services (2012) 9 SCC 552 (BALCO)*: SC it was held that in cases of international commercial arbitrations, where the seat of arbitration is outside India, Part I of the Act would not apply – heralding a new dawn for Indian arbitration. whereas in,

In *New Tirupur Area Development Corporation Ltd. v. M/s Hindustan Construction Co. Ltd.*: Held that S. 26 of the Amendment Act, 2015 is not applicable to post arbitral proceedings. Separate application under S. 36 needs to be filed.

On the theme of *Amendments to CPC in Application to Commercial Courts*, the speaker initiated the discussion by explaining Section 16 of the Act which states that "The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908, as amended by this Act, in the trial of a suit in respect of a commercial dispute of a Specified Value".

Thereafter, the speaker discussed at length the amendments to CPC and its application to the commercial disputes. The major points discussed were:

Suit/Plaint

- Plaintiff may seek leave to file additional documents within 30 days of filing the Suit

- Order XI(4)
- Written Statement/Counter-Claim: to be filed within 30 days and not later than 120 days from the date of service of summons.
- Proviso to Order V Rule 1
- Inspection/Filing of Documents: Parties to complete inspection of documents within 30 days from the date of filing the Written Statement or Written Statement to the Counter Claim whichever is later. The Court may extend the time limit upon application at its discretion, but not beyond 30 days in any event. (Therefore a maximum of 60 days)
- Order XI(3)(1)
- Statement of Admission/ Denial of Documents: to be completed within 15 days of completion of inspection or any later date fixed by the Court.
- Case Management hearing: Court shall hold first case management hearing not later than 4 weeks from the date of filing of Affidavit of admission or denial of documents by all the parties to the suit.
- Order XV-A
- Framing of issues and conclusion of oral arguments: Court shall ensure that arguments are closed not later than 6 months from the date of the first case management meeting.
- Order XVA(3)
- Written Arguments: Party to submit written arguments 4 weeks prior to commencement of oral arguments
- Order XVIII (Substitution in Rule 2 for Sub-Rules (3A) TO (3F))
- Judgment: Commercial Court, Commercial Division or Commercial Appellate Division shall within 90 days of conclusion of arguments pronounce judgment
- Order XX (Substitution for Rule 1)

On the subject of *Intellectual Property Rights disputes relating to Copyright, Patent, Trademark & Design*, the speaker initiated the discussion by providing an overview of the genesis of IPR dealing with International Conventions. Further, the speaker

discussed the significance of IPR in daily life, and the way we are captivated by it knowingly or unknowingly viz., from toothbrush (Design) to cell phones (Semiconductor chips, designs, patent etc) to clothes (Trademark) to car (Patent, design, etc). Jurisprudential aspects were highlighted to the participants with the help of the following landmark judgment:

- *S. Syed Mohideen v. P. Sulochana Bai (2016 (2) SCC 683*: A Halwa shop from Tamil Nadu called ‘Iruttukadai Halwa’ fought right till the Supreme Court to protect its brand. Respondent-registered owner of trademark ‘Iruttukadai Halwa’. Appellant opened a shop in the name of ‘Tirunelveli Iruttukadai Halwa’. Supreme Court observed that rights conferred by registration are subject to the rights of the prior user of the trademark. Passing off rights are considered to be superior to that of registration rights, registration merely recognizes the rights which are already pre-existing in common law and does not create any rights.
- *Prius Auto Industries Ltd & Ors. v. Toyota Jidosha Kabushiki*: Single Judge of the Hon’ble Delhi High Court awarded permanent injunction against the defendant restraining them from using, in relation to auto parts and ancillaries, the mark PRIUS and other registered trademarks of the plaintiff. The Court also awarded damages of rupees 1 million.
- *Department Of Electronics And Information Technology v. Star India Pvt. Ltd.* : As many as 73 websites which were illegally streaming “pirated” videos of cricket matches were banned by the Court. The Court held that Rogue websites are indulging in rank piracy and thus prima-facie the stringent measure to block the website as a whole is justified because blocking a URL may not suffice due to the ease with which a URL can be changed. It would be a gargantuan task for the respondent to keep on identifying each offending URL and especially keeping in view that as and when the respondent identifies the URL and it is blocked by the ISP, the rogue website, within seconds can change the URL thereby frustrating the very act of blocking the URL. It was the “duty

of the government” and its agencies to “assist in the enforcement of court orders”

On the theme of *Construction & Infrastructure Contracts*, the speaker initiated the session by discussing the scope and judicial interpretation of the vital clauses in construction contracts, which included:

- Scope of work
- Step down Provisions
- Conditions Precedent
- Obligations of the Parties
- Contract Price
- Payment Terms
- Financial Obligations
- Extension of Time (source of dispute)
- Claims and Procedure of Claims
- Event of Defaults and Cure Period
- Termination & Termination Payments
- Dispute Resolution

Thereafter, the speaker discussed at length the types Public Private Partnership Contracts (PPP). The sub theme was covered under the following broad points of standard operating procedures:

- build- own- operate- transfer (BOOT)
- build- operate- transfer (BOT),
- design- build- operate- transfer (DBFOT),
- build- lease- transfer (BLT),
- operate- maintain- transfer (OMT),
- management contracts,

On the theme of *Procedure for Collection and Disclosure of Data; Case Management under the Act*, the speaker initiated the session by discussing Section 17 of the Act which mandates that the number of cases disposed off shall be maintained and updated every month by each Commercial Court, Commercial Division, Commercial Appellate Division and shall be published on the website of the relevant High Court. Subsequently, 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 age out. Lastly, the speaker 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.

Prominent Suggestions by Participant Presiding Officers of Commercial Courts for achieving the object of the Commercial Courts Act, 2015.

- Many participants suggested that the competent judge should be made presiding officer of Commercial Courts exclusively i.e, they should not be given additional portfolios.
- The Act makes certain amendments to CPC but does not amend Order 21; which is quintessential as execution of the decree is the most crucial aspect.
- The Act should provide for Expert Opinion as “commercial disputes” are technical in nature. For eg: quantification of damages in IPR infringement cases.

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**NATIONAL JUDICIAL CONFERENCE FOR
HIGH COURT JUSTICES**
OCTOBER 27 to 29, 2017

Ms. Shruti Jane Eusebius, Law Associate



National Judicial Academy organised the second National Judicial Conference for High Court Justices On October 27-29, 2017. The objective of the conference was to facilitate discussion on the areas of Constitutional Law, Judicial Review, Supervisory Powers of the High Courts over Subordinate Courts, Intellectual Property Law and Economic Crimes. The programme aimed to engage the participant high court justices in discussion on the evolving jurisprudence in these areas, the challenges and possible solutions for such challenges. 19 High Court Justices participated in this Conference.

Highlighting the “*Emerging Issues in the Intellectual Property Regime in India*”, the speakers threw light on the area of pharmaceutical patents and the concerns as to striking a balance between incentivising invention and protecting public interest especially the right of access medicines at reasonable cost. The speakers also discussed the concept of Patent Evergreening and its repercussions for invention incentivising. Another development in the commercial world of making

money on the intellectual property of others (the premise of social media like Facebook) was highlighted. Another issue that was highlighted in the discussions was the challenge of protecting IPR in digital media in view of the fact that perfect copies can be made of digital media and it is difficult to identify the infringing copy. The speakers also dwelt on the trend of invention harvesting as a commercial practice. The challenges in deployment of intellectual property were also stressed upon. Another major issue discussed was the issue of data privacy, wherein the absence of clear policy on data privacy and the need for data protection law was under scored.

On the theme of “*Judicial Role in Effective Enforcement of IPR*”, the speaker stressed upon the fact that the servers were located outside India thereby causing a major challenge to implementation of Intellectual Property Law, as they lie outside the court’s jurisdiction. Another emerging area that concerns the courts is the liability of internet intermediaries for content and activities hosted by them which potentially

infringe upon the intellectual property rights of others. It was stated that the '21 day' period prescribed under the Information Technology (Intermediary Guidelines) Rules, 2011 is too long as the duration that the offending content is online is crucial to the interests of the person whose rights have been infringed. The speaker also threw light on the dispute resolution system governing. The intellectual property related disputes. It was emphasised that the award of damages in intellectual property disputes, like disputes related to domain names proves to be a hindrance, as it results in the delay in execution of the order of the court. The same is detrimental to the commercial interest of the owner of the Intellectual Property, as it delays the withdrawn of the infringing material. Another issue highlighted was the trend of forum shopping in IPR disputes, and the jurisdictional challenges in tackling transnational and transboundary cases of IPR infringement. Yet another major issue in Intellectual Property disputes is the challenge in identifying copies of Intellectual property in digital media, owing to the fact that as technology has enabled the making of perfect virtual copies.

Stressing on the role of the "*High Courts as Guardians of the District Judiciary*", the speaker stressed that effective administration of the subordinate judiciary as mandated by Article 227 of the Constitution of India is the collective responsibility of the High Court. Administrative control over the subordinate judiciary is a basic feature of the Constitution. This function must be exercised by the High Courts in a circumspect manner, to ensure that the independence and accountability of the judiciary is upheld, and the dignity and respect of the Judiciary is protected. Asking a judicial officer to appear before police officers or before outside agency is against the dignity of the Court. Discipline in Courts is a crucial element of the administration of justice. The major elements of a disciplined court is efficiency, timeliness, respect of the Court by the Bar. The speaker stressed that complaints against judicial officers must be handled discreetly (especially anonymous complaints). Before proceeding with the complaint, the High Court must conduct a discreet enquiry to ascertain the legitimacy of the complaint received to weed out the false complaints. The High Court must stand with the judicial officers as a guardian and guard against judge bashing. The speaker



also discussed the crucial role of a judge in judicial administration and stressed on the need for administrative training for judges. It was opined that lack of administrative integrity is worse than lack of judicial integrity, since administrative inefficiency affects a larger number of people. A suggestion made in the discussions was, reasons should be recorded even in administrative tasks to ensure fairness in administration.

In the discussions on the theme "*Developments in the Area of Constitutional Law: Entrenching the Constitutional Vision of Justice*", it was pointed out that major developments in constitutional law happened in cases of small factual scenarios. The recent jurisprudential developments were discussed in detail. The contours of judicial powers *vis-à-vis* the executive and the legislative's powers and functions was discussed. It was stated that the judiciary cannot supplant the executive and the legislature and must not enter into the domains of the executive and the legislature. The issue raised by the speaker was – Under Article 142 can the court by a judicial order render something which is statutorily legal to be judicially illegal? The speaker also stated that the Indian Constitution has endured because of its qualities of specificity of provisions, flexibility and inclusiveness. It was further stressed that access to justice and the removal of inequalities is the constitutional vision of justice. The speakers also advocated the need for self-imposed restraints on the exercise of judicial power. There is a need to have a system of checks and balances between the Judiciary and Executive and to ensure that one wing of the State does not overtake the other wing's functions.



On the theme of “*Construing the Sounds of Constitution’s Speech: Meanings Beyond Text*”, the speakers pointed out that originalism/ textualism which has been discarded in most countries was never followed in India. The speakers referred to the ‘Organic theory’ of constitutional interpretation stating that the Constitution evolves with society and the interpretation also changes with the societal changes. In the interpretation of the Constitution, care has been taken in interpreting the silences of the Constitution. The speakers differentiated between ‘door-closing silences’ and ‘door-opening silences’ in the Constitution and indicated the permissible limits of giving meaning beyond text in such cases. The speakers traced the interpretation of the Constitution of India by the Supreme Court such as inclusion of various rights, under the right to life and the enlargement of the scope of the fundamental rights.

On “*Corporate Fraud & Manipulation: Repercussions, Deterrent Mechanisms & Judicial Approach*”, the speaker stressed that corporate fraud is a generic term with wide scope. This term does not find mention in the statute. Under company law, there was no concept of fraud until recent amendments were made. Fraud was merely an offence under the Indian Penal Code, 1860. The speaker traced the genesis of corporate fraud and its development into a distinct category of crime. The speaker dwelt upon the major corporate fraud cases in India; highlighted the *modus operandi* of the perpetrators, to beat the system; and the failure of the regulators to check such crimes. The speaker stressed on the need for greater vigilance by the regulators to check corporate fraud. The speaker was of

the view that corporate fraud investigation requires in-depth knowledge of financial laws. Our investigators are not sufficiently trained to tackle such investigations. There is need for a trained cadre of investigators who are skilled in corporate fraud investigation. Similarly the judges handling corporate fraud cases also need to be trained in financial laws. The speaker made the following suggestions –

- Bigger players in the corporate fraud are most often not caught and only the small players are caught. There is a need to check and keep tabs on the investigation to ensure that the bigger players are caught.
- It is not enough to charge the Chief Administrative Officer and other administrative officials in a company. The Board members should also be held accountable, and there should be a provision for ‘deemed awareness’ of the Board members, where awareness and acquiescence should be equated with consent.
- A separate cadre of investigators should be created to investigate corporate fraud cases.

On the theme “*Superior Courts: Managing Judicial Review within the Democratic Framework*” the speaker quoted the Supreme Court of Israel – ‘judicial review is the soul of the Constitution’. The speaker traced the development of judicial review through the judgments of the Supreme Court and stated that judicial review was a legal doctrine as well as a political power. Judicial review does not mean the judiciary is supreme, rather it means that the Constitution is supreme. However, usurpation of the powers of one wing of the

State by another wing is anti-democratic. The issue discussed at length was ‘Assuming a decline in the credibility of political executive, can the judiciary act as ‘co-governor’ of the nation?’. It was stated that there is a need for imposition of self-restraints by the judiciary on the power of judicial review and a need to exercise the power of judicial review in a circumspect manner.

Suggestions by Participants

- There is need for a clear policy on data privacy.
- 21 days period prescribed under the Information Technology (Intermediary Guidelines) Rules, 2011 is too long as the duration that the offending content is online is crucial to the interests of the person whose rights have been infringed.
- Reasons should be recorded by Judges even in administrative tasks to ensure fairness in administration.
- There should be a check on frivolous Public Interest Litigation by imposing costs.
- There is a need for self-imposed restraints on the exercise of judicial power. There is a need to have a system of checks and balances between the Judiciary and Executive and to ensure that one wing of the State does not overtake the other wing’s functions.
- There is need for a trained cadre of investigators who are skilled in corporate fraud investigation.
- Bigger players in the corporate fraud are most often not caught and only the small players are caught. There is a need to check and keep tabs on the investigation to ensure that the bigger players are caught.
- It is not enough to charge the Chief Administrative Officer and other administrative officials in a company. The Board members should also be held accountable and there should be a provision for deemed awareness of the Board members where awareness and acquiescence should be equated with consent.

In the discussion on the theme “*Precedents: Challenges of Managing Conflict; Evolving Doctrinal Coherence*” the speaker stated that a divided Court signifies an absence of structural leadership and leads to

individualisation of the Court. There is a need for stability in the decisions of the Court, principalisation of decisions and standardisation of the output of the Court as an institution. There must be a sense of continuity. The speaker stated that in case a Court is departing from or disagreeing with the previous judgment of the Court or the superior Court, it must distinguish the judgment with reasons or refer the matter to a larger bench. The Court is an institution that must reflect a common view of justice rather than a collection of varied views of judges.

Suggestions by Participants

- There is need for a clear policy on data privacy.
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- There is need for a trained cadre of investigators who are skilled in corporate fraud investigation.
- Bigger players in the corporate fraud are most often not caught and only the small players are caught. There is a need to check and keep tabs on the investigation to ensure that the bigger players are caught.
- It is not enough to charge the Chief Administrative Officer and other administrative officials in a company. The Board members should also be held accountable and there should be a provision for deemed awareness of the Board members where awareness and acquiescence should be equated with consent.

P-1055
WORKSHOP ON COUNTER TERRORISM IN
COLLABORATION WITH CEELI INSTITUTE/FJC
OCTOBER 27 to 29, 2017

Ms. Nitika Jain, Law Associate



The National Judicial Academy, Bhopal organized a three day Workshop on Counter Terrorism in collaboration with The Central European and Eurasian Law Institute (CEELI) Institute and Federal Judicial Center for High Court Justices from October 27th to 29th, 2017 which was attended by 23 High Court Justices. The Resource Persons for the conference were Judges from different districts of the United States name By, Hon. John R. Tunheim – Chief Judge of Minnesota, Hon. David O. Carter – US District Court Judge, Central District of California and Hon. Loretta A. Preska – US District Court Senior Judge, Southern District of New York. Representatives from CEELI Institute Mr. Cristobal Dias and the US Embassy in New Delhi, Mr. Christopher Jester - First Secretary, Political Section, Counter terrorism Coordinator for South Asia were also the panelists.

The workshop was organized to facilitate dialogue and to share the experiences between the US and Indian Judges engaged in adjudication of cases involving terrorism and other national security challenges posed

by the accelerating global phenomenon, with special reference to and emphasis on principles evolved in the relevant Global Counterterrorism Forum (GCTF) Good Practice Memorandum; and to sensitize Indian Judges in contemporaneous best practices and jurisprudence pertaining to counter terrorism control norms, adjudication protocols and allied areas.

The workshop included sessions on the following themes - The Judicial Role in the Fight against Terrorism, GCTF Overview and Introduction to the Hague Memorandum, Case Management, Continuous Trials: Implementation of the GCTF Good Practices in the Courtroom, Fair and Just Trials: Ensuring Adequate Legal Representation for the Accused while Protecting National Security, Security – Courtroom and Personal Judicial Security, Protection of Witnesses, Use and Protection of Evidence from Intelligence Sources/Methods, Managing Media attention on High Profile Cases: Developing Guidelines and Articulating Expectations while Ensuring Justice for Victims and Judicial Tools: SARC Regional Tool Kit.

The workshop commenced with a brief introduction of the participants and their experiences in dealing with terrorism cases. Participant Justices pointed out that they have majorly dealt with cases involving insurgency, Naxalism, Illegal Immigrants, problem of Hostile Witness and bail matters. *On Judicial Role in Combatting Terrorism* Judge Tunheim highlighted some key and unique areas involved in critical judicial role while handling terrorism cases i.e. knowing and understanding the law and how to apply it, security, management of confidential or classified information, management and control of the cases, witness security, ensuring fairness for the defendant and handling pressure. He stated that a judge must never give in to the pressure. Further, the resource person gave a brief overview of The Hague Memorandum stating that it is the best document Developed by (Global Counterterrorism Forum) for judges handling terrorism cases.

On Case Management of Terrorism Trials, Hon. Judge Carter stated that, what constitutes a terrorist attack is not always easy to define but identifying a case as a “terrorism” case makes a huge difference in case management. The session further led to deliberation on the challenges of case management complex terrorism trial and corroborating it with relevant Hague Practices Memorandum such as; identify and Assign Specially Trained Judges, Continuous Trials, Effective Trial Standards, Supporting Right of Accused to Fair Trial and Protection of Evidence from Intelligence Sources/Methods. It was stated that sentencing policies plays a great role in case management.

On Continuous Trials: Implementation of the GCTF Good Practices in the Courtroom, it was highlighted that the principle to ensure a trial is continuous from its inception to end is an important component of Hague Good Practice 3: Develop Effective Trial Management Standards. It was expressed that justice system is affected during long trials. Continuous trial is not a regular practice in many countries as there is no power to sanction lawyers. It was opined that continuous trial principle has long been recognized as an important case management tool and it should be the goal of all judges handling the terrorism cases.

On Fair and Just Trials: Ensuring Adequate Legal



Representation for the Accused while Protecting National Security, Hon. Judge Loretta Preska asked the participant justices, how to ensure fair and just trial in terrorism cases. She deliberated that adequate legal representation to the offenders must be provided to ensure the principles of Natural Justice. Various cases were discussed to elaborate how the defense lawyer has acted in terrorism trials like *The Blind Sheikh's case*, *Somali Pirates case*.

On Security – Courtroom and Personal Judicial Security, Judge David Carter deliberated on the needs and concerns of security inside and outside the courthouse for Judges, their families, courtroom staff and witnesses. An image of Mexican mafia trial was shown by the judge to demonstrate the security arrangements in the US courtrooms. It was pointed out by Judge Carter that defendants have belly chains while they are seated in the courtrooms with the attorney during trial which is not a practice prevailing in the Indian courts. Witness protection techniques were also discussed during the session. It was suggested that regular meetings with the security in-charge and personnel must be done throughout the trial. The participant High Court justices highlighted that in India judges do not have much role in Security arrangements, it is the security agency which is responsible. Speedy and continuous trial is important to avoid security concerns and, protecting the home and family is as important as protecting the judge.

Dealing with the subject of *Protection of Witness*, it was emphasized separating witness and the defendants in the courtroom is important. In US there are various programmes for witness protection to change their identity, location etc. Use of pre-trial techniques, video conferencing, removing of witness name from being



published in the newspaper, videotaped testimony are some of the techniques practiced in the US for witness protection. In this regard the participant Justices highlighted Section 44 of the Unfair Activities (Prevention) Act, 1967. The participants enquired whether in the US state pays for the Rehabilitation of witness once he is uprooted from the family. The US judges mentioned that there is a witness protection programme known as *18 U.S. Code § 3521 - Witness relocation and protection* which provides for the same.

In the session on *Use and Protection of Evidence from intelligence*, three types of intelligence based evidence were emphasized by Judge Preska i.e. physical evidence like documents; witness testimony and confidential source; intercepted communication and electronic devices. Example of Osama Bin Laden trial was given in this regard. It was highlighted that in the United States judges have an option of not having public proceeding, although, it violates an important right of open public hearing. *Classified Information Procedure Act* of US protects the government against the defendants.

On the theme *Managing Media Attention on High Profile Cases: Developing guidelines and articulating Expectations while ensuring Justice for Victims*, media Guidelines laid down by Hague Memorandum was emphasized upon. It was further pointed out that California Judicial Education has drafted the best

media Rules. The case of O.J. Simpson was highlighted to discuss how much transparency should be allowed. Participants shared their experiences while dealing with media in their respective jurisdictions. It was pointed out that in India photography and video recording is not permitted, only the newspaper reporters are permitted inside the courts. Further the participant Judges have discretion in this regard as provided under Section 44 of UAPA, 1967. It was expressed that wrong reporting is an interference with the administration of justice. Practical Solution for managing media were suggested by Judge Carter such as, media should not be allowed to take any matter from either witness or evidence, make them aware of the rules, allow one camera in one court room and only the presiding judge of the court must be given charge of the camera. It was expressed that video recording of the court proceedings will increase transparency and there will be less chances of tampering the case. Lastly, it was opined that the less transparent Judiciary will be vulnerable to accusations of corruption.

In the last session on *Judicial Tools: SARC Regional Tool Kit*, Judge Tunheim gave an overview of the South Asia Regional Toolkit Supporting Development of National Bench book for the effective adjudication of terrorism cases. It was mentioned that it is being prepared under the direction of the United Nations Executive Directorate on Counter-Terrorism for use by



SAARC countries in developing country specific bench books.

Suggestions by Participants :

Following suggestions were made by the participant High Court Justices during the three day workshop:

- Witness Protection programs should be focused upon and court layout maybe addressed to rule out possibility of compromised witness.
- Case studies from India must be considered to give contrast comparison with US & other advanced countries.
- Issues relating to better investigation of such cases with a paradigm shift on just witness based on oral evidence to scientific based evidence with a larger focus on forensic sciences in the gathering and interpreting evidence in such cases.
- Addressing the issue of collecting and sharing intelligence with the judiciary especially in cases when there have been preventive and timely action to avert a terrorist operation.
- Continuing exchange programme between agencies & members of judiciary to have a common platform to fight against terrorism is required.
- The laws dealing with terrorism should be made more stringent and it should not be static but dynamic. Ease of electronic laws qua admission of electronic evidence; especially qua interceptive communications.
- Though the law has been already amended but further legislative changes would be required with greater powers to the investigating agencies while providing safeguards to prevent its abuse.

SE-3
**NATIONAL SEMINAR FOR MEMBERS OF THE
INCOME TAX APPELLATE TRIBUNAL**
OCTOBER 28to 29, 2017

Ms. Paiker Nasir, Research Fellow



The National Judicial Academy organized a two-day National Seminar for members of the Income Tax Appellate Tribunal (hereinafter ITAT). The course was attended by 29 participants.

The ITAT is a quasi-judicial Tribunal which functions under the Ministry of Law and Justice. World over, continuing judicial education and training is recognized as an imperative for efficient and quality justice delivery. The product (judgments, orders) of Appellate Tribunals, whether ITAT or CESTAT are subject to appellate or revision scrutiny or judicial review before High Courts and the Supreme Court. Relevant legislations also have provisions for statutory appeals to Higher Courts. The operative quality of these Tribunals thus impacts the appellate load of superior courts besides indexing the quality of tax administration. Periodic judicial education and training of presiding officers of such Tribunals is an essential element of a robust justice delivery system.

The National Seminar intended and designed to provide a forum for learned Members of the ITAT to discuss, deliberate and share experiences, knowledge and best

practices in exercise of jurisdiction; revisit with the help of domain experts, evolving horizons of relevant law and jurisprudence; seminal interpretive principles; the incessant problem of objectivity in decision making; the art, science and craft of drafting reasoned orders and like themes.

The first session, “*Constitutional Authority to Tax and Basis of Taxation*”, emphasized that tax law is a branch of law which requires knowledge of several other laws. The functions of the ITAT members are specified in the statute, but it is essential to have an understanding of the wider aspects associated with the statute i.e., the importance of constitutional authority to tax. At the same time it is imperative to realize that the power to tax cannot be tested on the same latitude as other powers of the government. The constitution is to be interpreted by the tribunals as well. The silences in the constitutional text is an area for the judiciary to explore. The spirit of the Constitutional mandate should work at the back of the mind of a judge while deciding cases.

Session two “*Interpretation of Tax Statutes: Core Principles*”, briefly discussed the principles of

interpretation which included literal construction, strict interpretation, contextual interpretation, mischief rule, harmonious construction, principle of beneficial interpretation and the golden rule. It was deliberated that there are two types of tools for interpretation viz., the “external” and “internal” aids. External aids include - legislative history, circulars, instructions, speech of the finance minister, other parliamentary material, previous judicial interpretation or legislation, provisions of other statutes and subsequent enactments, dictionary meaning or ordinary meaning and leading commentaries. Whereas, the internal aids include- provisos, explanations, non obstante clauses, marginal notes and headings, punctuation and definition clause and undefined words. Interpretation of International Law / Treaties vis-à-vis Taxation was an integral part of the discourse.

The third session “*Endemic pathologies in Assessment Proceedings and Role of the Tribunal*”, highlighted the practical problems and issues that arise in assessment proceedings and how the tribunal may address them. It was stressed that the assessing officer is usually not bothered about the theories of natural justice and is often unaware of the law of evidence as well. This undoubtedly creates some irreversible damage. Then there are some awful system of TARGETS that creates issues like- how many assessment proceedings have been conducted, target with respect to the money involved and reopening of cases. In high value cases the assessment officers tend to get biased. However, in small value cases they work neutrally. It was stressed that faulted assessments violates Article 14 as well and this is how it impacts the poor people. It was highlighted that the appraisal report is resubmitted as assessment orders, this of course is a systematic defect which needs to be done away with. The deliberation emphasized that the constitutional interest of revenue needs to be revisited.

The session on “*Judicial Discretion and The Art, Science and Craft of Reasoned Adjudication*”, emphasized that reasoning is essential since it puts a check on human conduct. The essence of the

Constitutional text is reasoning. Recording reasons brings in discipline and reduces arbitrariness. Distinction between legitimate alternative choices is judicial discretion. It was submitted that a reasoned order gives the litigants a clear picture of the decision; it demonstrate fairness and correctness of the decision; it excludes arbitrariness and bias; and enables the appellate court to pronounce upon the correctness of the decision. It was proposed that since the adjudicatory authorities perform quasi-judicial function therefore, it is their duty to give reasons.

The last session “*Appreciation of Evidence including Electronic Evidence in taxation proceedings*”, explained the admissibility, indisputability, genuineness and reliability of Electronic Evidence and how to differentiate between original and duplicate database. The discourse was elaborated citing case law jurisprudence in India viz. of *Gajraj v. State of Delhi*, *Sanjay Kumar Kedia v. Narcotics Control Bureau & Anr*, *Tukaram S. Dighole v. Manilerao Shivaji Kokate and Md. Ajmal Kasab v. State of Maharashtra*. Discussion on Section 65 B of IEA (Admissibility of Electronic Records) formed an integral part of the session. It was suggested that the tribunal may do appreciation of evidence by questioning the source, by seeking standard of proof and by checking whether the evidence fulfills the evidence rule. The case of *Anwar v. P.K. Basheer & Ors* was discussed at length where it was held that certificate should be produced for the admissibility of electronic evidence.

The discourse suggested that- It is inevitable for ITAT members to comprehend the significance of constitutional authority to tax. They need to recognize spirit of the Constitutional mandate while deciding matters. In addition, theories of natural justice and importance of writing reasoned orders should also be an area of concern for the members of ITAT. It was suggested that the constitutional interest of revenue needs to be revisited.

P-1056
NATIONAL ORIENTATION PROGRAMME
FOR JUNIOR DIVISION JUDGES
NOVEMBER 10 to 16, 2017

Mr. Rahul Ishwar Sonawane, Research Fellow
Shashwat Gupta, Law Associate



The National Judicial Academy organized a seven day National Orientation Programme for Junior Division Judges from 10th to 16th November, 2017. The programme was attended by 39 participants representing 20 states. The programme was organized with the objective of capacity building of judicial officers and to provide a forum for the participants to deliberate on various issues apart from sharing their experiences and knowledge with other judges.

The theme of the first session of the programme was “Constitutional Vision of Justice”. The speaker initiated the discourse by giving a brief outline of the mandate and objective of the National Judicial Academy to the participants. Thereafter, the speaker requested the participants to express the problems faced by them in their capacity as a judge. The participants put forth various questions inquiring for methods to reduce pendency of cases, quick disposal of old cases, maintaining a balance between administration of justice and number of disposals, handling stringent

requirements of the unit system, dealing with under-qualified staff and dilapidated infrastructure.

In the second session, four volunteers from the participants representing different states were invited by the speaker and were requested to provide the facts of a difficult case which was encountered by them during their service. Then the remaining participants were requested to provide their response to the question that whether they would acquit or convict the accused based on the facts provided to them. Thereafter, the speaker analyzed the response received from the participants and demonstrated that different individuals give different opinion based on the same facts.

In the third session the speaker stated that judgment should depend on the facts and law and not the judge hearing the matter. He stated that judicial officers are human and their judgments tend to portray their subjective bias and prejudices. Thereafter he discussed the jury model followed in the United States of America

and the various facets of the jury system. He stated that the role of court is to determine the extent of right and disability and the judge is the guardian of the rights. He referred to the judgment of *Ram Lakhan v State* [(2007) 137 DLT 173] and applauded the interpretation put forth by Justice Badar Durrez Ahmed. He also applauded the order of interim compensation for mass tort which was given in the Bhopal Gas Tragedy case. He put forth the idea that the word “Justice” is an empty word and it should be filled with meaning by the judge. He discussed that the word “justice” can be equated to a “Standard of Human Conduct” and that the right principles of human conduct have been imbibed in the Constitution of India.

The fourth session of the conference dealt with the topic of “Judging Skills”. The speaker discussed that the two most important attributes of judicial officers around the world are “independence” and “impartiality”. He stated that every decision of the court should be backed by reason. He also stated that the judges should always keep an open mind while adjudicating upon disputes and should not allow their personal bias or prejudices to affect their judgments. It was delineated that two elements should be kept in mind while writing judgments i.e. style and presentation. He further discussed that the judgment should expose the reasoning of the court and should not be dictated by popular appeal.

The fifth session was on the theme of “Adherence to Core Judicial Values”. The speaker discussed the core values of a judge which include impartiality, integrity and independence. He stated that institutional as well as individual integrity, impartiality and independence of a judge is the heart of the judicial process. The oath taken by judicial officers that they will decide the cases without fear and favour is also part of core judicial values. He further stated that adherence to procedure is the best way to be fair and impartial. It was discussed the conduct of judge both in the private and public sphere is equally important. The society reposes a confidence on judges and they should sustain the confidence reposed in them.

In the sixth session of the programme, the speaker answered the various queries of the participants which on issues like unit system, pressure of disposal of cases

older than five years, speedy disposal while adhering to the timeline provided in procedural laws, pressure to send a specific percentage of cases for mediation irrespective of the quality of the available mediation facility and lack of co-operation by other government agencies.

The seventh session was on the theme of “Courtroom Technology: Use of ICT in Courts”. The speaker expounded the concept of C.I.S. (Case Information System) and the various benefits arising of the usage of the system. He further described the work undertaken by the Supreme Court E-Committee in incorporating ICT in courts. The implementation of the two phases of the “E-Courts Project” i.e. “Phase -1” and “Phase-2” was also elaborated by the speaker in the course of his discourse. The speaker discussed the advantages of inter-operable criminal justice system wherein online integration of jail, forensic science laboratory, police station and hospital with the court would be undertaken. He then focused on the precautions which should be taken by the courts in witness examination through video conferencing.

The eighth session of the programme dealt with the topic of “Cyber Crimes”. The speaker discussed the various cyber crimes including phishing, credit/debit card fraud, software piracy, hacking etc. He then elaborated the concept of digital signature along with public key and private key. The speaker stated that threats emanating from cyber space are not properly understood by most citizens and therefore they easily fell prey to cyber-crimes. He discussed the role of CERT (Computer Emergency Response Team) which monitor cyber activities around the world. The contemporary issue of “Blue Whale” game was also discussed and it was stated the awareness among the public should be increased to prevent such incidents in the future.

The ninth session was on the theme of “Electronic Evidence”. The speaker discussed the position of law after the judgment of the Supreme Court in the case of *Anvar P.V. v P.K. Basheer* [(2014) 10 SCC 473]. He further discussed the intricacies of the procedure provided under Section 65 B (4) of the Indian Evidence Act, 1872 and the impact of non-compliance on the admissibility of electronic evidence.



The tenth session of the programme was based on the theme of “Environmental Law: Sustainable Development and Role of Courts”. The speaker provided a range of statistical data regarding deaths caused due to pollutants and chemicals and thereafter discussed the report of “Lancet Commission on Pollution and Health”. He stated that environment pollution has become major problem all over the world due to over exploitation of the natural resources by various corporations. He gave the example of Bhopal Gas Tragedy and stated that thousands of people are still suffering from various diseases due to contamination of the ground water around the Union Carbide factory. He stated that judges should be stringent towards individuals or corporations who pollute the environment. The other speaker discussed various provisions relating to pollution provided in the Indian Penal Code, 1860 and stated that the judges should strike a balance between environment protection and development while adjudicating cases related to pollution.

The next two sessions of the programme involved group discussion and presentation by the participants on the topic of Bench-Bar Relationship. After the conclusion of presentations by the various groups, the speaker expressed various methods which could be followed by the participants to ensure smooth relationship with the bar. The attributes as delineated by the speaker included providing patient hearing to the advocates, courteous behaviour, punctuality and

fairness. He also discussed that the judge should maintain the decorum of the court and should never behave in a manner unworthy to the position held by him. Moreover the judges should avoid conflict with the bar and should cooperate with them.

The theme of the thirteenth session of the programme was “ADR and Plea Bargaining”. The speaker initiated the discourse by elaborating upon the different ADR mechanisms provided under the Civil Procedure Code, 1908. The speaker stated that plea bargaining has a better chance of success because it applies to a wide range of offences. He suggested to the participants that they should convince the litigants for plea bargaining in trivial criminal cases instead of indulging in a full-fledged trial. He thereafter provided certain reasons regarding reluctance for plea bargaining by the accused which includes possibility of acquittal under regular trial and reluctance on part of lawyers. It was also discussed that a large number of partition disputes come before the civil courts which can be easily settled by efforts at conciliation by the judge.

The fourteenth session was on the topic “Role of Courts in securing Gender Justice”. The speaker stated that the women should always be treated with respect and dignity. She further urged that all the participants should have sensitivity and understand the perspective of women in gender related cases. She discussed that in cases of domestic violence the judges should pass appropriate order for financial assistance for

unemployed women at the earliest. The speaker further discussed the methods which the judges should employ while dealing with cases under Immoral Traffic Prevention Act, 1986 and Protection of Children from Sexual Offences Act, 2012. The speaker also discussed that the trial should not result in “re-victimization” or “secondary victimization” of the offender.

The speaker in the fifteenth session deliberated upon various judicial methods which could be employed by the judges. The speaker stated that the judges should be well versed in the language in which they are required to write their judgment. It was further discussed that it is the duty of the judge to mention the judgments refereed by the advocates in the judgments written by them. The speaker stated that while writing judgments the judge should pay attention to Statutory law, Precedents and Proved Facts. He discouraged the practice wherein sometimes judges first analyze the proved facts; formulate a moral judgment and thereafter try to apply the statutory law and precedents to it to make it credible.



The sixteenth session of the programme was on the topic of “Stress Management”. The speaker discussed various methods whereby the participants can lower their stress levels. He also demonstrated different techniques to the participants for reducing stress levels. Thereafter the second speaker provided a questionnaire to the participants and based on the score of the test conveyed to the participant whether they were feeling stressed or not. She stated that a certain level of stress is

important for every individual since it pushes us to perform our task to perfection. She also discussed that we always forgive and forget to lower our stress level.

The seventeenth session of the conference was on the “Law of Precedents”. The speaker discussed the meaning of precedent and the necessity of precedents. He thereafter discussed the circumstances under which the Supreme Court can deviate from its previous decision. He dealt with the concept of “Stare Decisis” and prospective overruling. He also discussed the various tests used for ascertaining ratio including the reversal test and elaborated upon the meaning of “per incuriam” and “sub silentio”.

The eighteenth session dealt with the topic of “Impact of Media on Judicial Decision Making”. The speaker initiated the session by stating that the nature of contemporary social media has resulted in increase in incidence of media trial. He discussed the misreporting of the “Triple Talaq” judgment by the media and the impact of social media on dissemination of news. Thereafter he discussed the concept of open court and the relevant statutory provisions under the Civil Procedure Code, 1908 and the Indian Penal Code, 1860. The speaker also dealt with incorrect media reporting and invocation of contempt proceedings. Lastly, he discussed the measures which were available to judges to ensure administration of justice while respecting the rights of the media to report court proceedings.

The last session of the conference was on the theme “Forensic Evidence in civil and criminal Trials: DNA Profiling”. The speaker discussed the use of forensic science as tool for establishing the presence of an individual at the crime scene and for apprehending criminals. Thereafter, he discussed about the various physical attributes, biological substances and chemicals which can be used in forensic analysis. He also discussed various innovative forensic technologies which have come into prominence and elaborated upon various types of forensic analysis including ballistics, chemical analysis, cyber forensics, document analysis, D.N.A. profiling, serology and toxicology.

P-1057
WORKSHOP FOR ADDITIONAL DISTRICT JUDGES
NOVEMBER 10 to 12, 2017

Mr. Prasidh Raj Singh, Law Associate



The National Judicial Academy organized a three-day workshop for Additional District Judges from 10th-12th November 2017. The Workshop initiated discussions on various issues like- challenges in implementations of the ADR system in the Subordinate Courts, Court and Case management: Role of Judges, Sentencing: Issues and challenges, Laws relating to Cybercrimes: Advances and bottlenecks, Electronic Evidence: Collection, Preservation and Appreciation, Fair Session Trial: Best practices, Criminal Justice Administration: Appellate and Revision Jurisdiction of District Judges and Civil Justice Administration: Appellate and Revision Jurisdiction of District Judges. The workshop was attended by 32 judges from different Jurisdictions.

The conference deliberated upon the importance of Section 89 of Civil Procedure Code, 1908 (CPC) and Section 8 of the Arbitration & Conciliation Act, 1996 (ACA). During the course of discussion the judgment of *Afcons Infrastructure Ltd. vs. Cherian Varkey Construction Co. (P) Ltd.* was discussed where

Hon'ble Court held that after the completion of pleadings, a hearing to consider the recourse to ADR process under Section 89 CPC is mandatory, but actual reference to an ADR process in all cases is not mandatory and where the case falls under an excluded category there is no need for a reference to ADR process. In all other case reference to ADR process is a must.

Further, it was discussed that the primary difference between Section 8 of ACA and Section 89 of CPC is that under Section 8, the parties would be referred to arbitration whereas under 89 CPC, the Court asks the parties to voluntarily choose one or other ADR mechanism, including Arbitration. During the course of discussion Justice Prabha Sridevan considered the importance of court managers in case and court management and requested that all the Additional District Judges must try to make optimum utilization of the court managers.

The conference further deliberated upon the availability/scarcity and importance of infrastructure

facilities. The participants were of the opinion that speedy disposal of cases is much easier if sufficient staff and proper infrastructure facility is provided by the High Court. The participants further suggested to bring uniformity amongst the High Courts with regard to 'Service Rules' and 'unit system'.

Professor Mrinal Satish discussed the guidelines laid down in four models of sentencing such as, Legislative Model, Judicial Model, Sentencing Commission Model and Israeli Model of Proportionality. A reference was also made to the judgment of *Union of India vs. Kuldeep Singh and BHEL vs. Chandrasekhar Reddy*, where-in the Court upheld its judicial discretion by stating that, reasoning is necessary for every sentence passed. During the course of discussion the 47th Law Commission Report was referred instantly. Prof. Mrinal Satish further discussed in detail the seven mitigating factors laid down in the *Jagmohan Case*, such as "(1) the minority of the offender; (2) the old age of the offender; (3) the condition of the offender e.g wife, apprentice; (4) the order of a superior military officer; (5) provocation; (6) when offence was committed under a combination of circumstances and influence of motives which are not likely to recur either with respect to the offender or to any other; (7) the state of health and the sex of the delinquent.

It was also pointed out that the court must always consider certificate required under Section 65 (B) of the Indian Evidence Act, 1872 for admitting electronic evidence during trial. A reference to this effect was made to the judgment of *Anvar v. P.K. Basheer*, where the apex court clarified that certificate is mandatory for admitting electronic evidence. Further Section 62, 63, and 65 of Indian Evidence Act were discussed while dealing on the subject matter of electronic evidence. The workshop further deliberated upon the emerging



and continuous threat from cyber world and how to counter it *vis-à-vis* strengthening the judiciary to stand tall while dealing with such crimes in the most effective manner, with the help of modern technology. The importance of fair session trial was discussed, wherein, various international human right conventions and declarations such as UDHR and ICCPR were discussed at length.

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

- Adjournments should be avoided.
- Quality of judgments should be considered not the quantity.
- Communication gap should be reduced between High Court and Subordinate courts
- Efficient and adequate staff should be given to all the courts.
- Judges should make use of National Judicial Data Grid
- Unequal sentence should not be given.

SE-4
**TRAINING PROGRAMME FOR BANGLADESH
JUDICIAL OFFICERS**
NOVEMBER 10 to 16, 2017

Mr. Rajesh Suman, Assistant Professor
Mr. Sumit Bhattacharya, Research Fellow



The National Judicial Academy, India (NJA) and the Supreme Court of Bangladesh signed a Memorandum of Understanding (MoU) for organising Training and Capacity Building programmes for Judicial Officers of Bangladesh. In pursuance to the said MoU, a 7 day programme for District Judges/Sessions Judges, Additional & Joint Sessions Judges and Additional District Judges nominated by Bangladesh, was organized by the NJA from 10th to 16th October, 2017. The programme was divided into 17 sessions spread over five days. The programme included sessions on Constitutional law, civil justice system, criminal justice system and human rights laws. The programme aimed to acquaint participants with elements of judicial behaviour- ethics, neutrality and professionalism, skills of judging and judgment writing. The programme also facilitated discussions on court & case management and use of ICT in the administration of justice.

Major Highlights and Suggestions from the Programme

Session-1: Overview and Architecture of the Indian Constitution Arrangement

In the first session emphasis was laid on the architecture of the Constitution of India (hereinafter Constitution). After a summarized overview of the composition of Constitution of India (in terms of number of Parts; Articles; Schedules; Amendments; its nature etc.), the doctrine of “basic structure” was discussed in detail. Speakers discussed the jurisprudential evolution of concept of the Fundamental Rights as a basket of rights interlinked with one another e.g. Article 14, 19, 21; Constitution as a charter for social reforms and Article 38; the concept of relaxation of the “Rule of *Locus Standi*” and systemic growth of Public Interest Litigation (PIL). The discourse included a comparison between the Constitutional provisions of India and Bangladesh.



Session-2: Indian Judiciary: Organizational Structure and Jurisdiction

The session covered various aspects of structure and jurisdiction of Indian judiciary. It was initiated by narrating the historic preview of court system as it evolved from the British Raj to present time. Speakers gave an overview of history and foundation of the judiciary in India and the development of the common law jurisprudence by the Indian Supreme Court; The hierarchical and the civil and criminal bifurcations of the Indian judiciary; Modes of recruitment (both public and direct) and the doctrine of *stare decisis* and precedents was explained; Writ jurisdiction of the High Courts and the Supreme Court of India was briefed; Epistolary jurisdiction of the Supreme Court and the High Courts, waving off or diluting the procedural mandates; Judicial activism and its unique success in the Indian democracy was discussed citing case law jurisprudence.

Session-3: Goals, Role and Mission of Courts: Constitutional Vision of Justice

The session was premised on the vision of justice as set out by the Constitution of India and the guiding principles that govern the Courts in achieving the same. It was deliberated that the preamble of the Constitution lays down the Constitutional vision to be achieved by judiciary which is a part of the three major pillars of a democracy. The session covered various aspects *viz.* the essence of having Fundamental Rights and the Directive Principles of the State Policy (DPSP) and goals, role and mission of Courts to uphold the same while deciding cases; sensitivity of Courts to uphold the Constitutional vision and mandate of social justice

through gender and vulnerable classes.

Session-4: Group Discussion

The session commenced with the idea of group dynamics. The participants were staggered into five groups and were given five different issues. Within allocated timeframe they represented the group advisory and solutions to handle the extant issue assigned. Elaborate discussions ensued on the following five issues: a) Methods of dealing with backlog in Bangladesh; b) Improvement in dealing with judicial problem; c) Changes which have taken place in the judiciary in last 10 years; d) Decision which have had social impact; and e) Gender sensitization.

Session-5: Principles of Evidence: Appreciation in Civil and Criminal Cases

After a brief introduction to the law of evidence, the basic architectural pivots of the Indian and the Bangladesh evidence statute was explained. Basic principles such as “What constitutes an evidence?” “What can be admissible as evidence?”; “Reliability of evidence”; “What is meant by an expert evidence and when should it be called for?” etc. were discussed and argued. The key provisions providing for the appreciation of an evidence was discussed with relevant Indian case law. It was underscored by the panel of speakers that one of the golden rule to be followed by the judges is to read the Evidence Act as a whole and never in piece meal.

Session-6: Evidentiary Presumptions; Onus and Burden of Proof

The Session commenced with recapitulating the legal concepts of ‘presumption’, ‘onus’ and ‘burden of proof’. Concepts such as who is a ‘reasonable’ and a ‘prudent man’ under law were explored. It was explained, as a standard used to judge the conduct of an ordinary person, especially in cases of negligence by a hypothetical person “prudent or reasonable man” as a legal fiction is employed to determine whether an act was negligent. Essentials of circumstantial evidence and its necessary and sufficient procedural aspects were discussed. Distinction in the “standard of proof” in the two classes of cases i.e. criminal cases and civil cases and its degree i.e. “*proof beyond reasonable doubt*” and “*preponderance of probability*” was discussed in detail.

Session-7: Electronic Evidence: New Horizons, Collection, Preservation and Appreciation

The Session initiated with exhibition of certain practical problems in deciphering the genuineness of source of origin of an electronic evidence. The importance of establishing as to whether an 'SMS' or a 'WhatsApp' message has been sent from the device of the victim was demonstrated. A few smart procedures to investigate originality was shared with the judicial officers. It was underscored that speed and observance of standard procedures to collect and preserve the electronic evidence are cardinal. "Best practices" to preserve electronic evidence and decipher "digital foot prints" were shared. Documentary, oral and "shadow evidence" was elaborated upon. Case law jurisprudence on evolution of appreciation of electronic evidence was discussed.

Session-8: Forensic Evidence in Civil and Criminal Trials; DNA Profiling

The session commenced by highlighting that there exists two techniques which are normally followed to establish conclusive proof when it comes to a dead body viz. i) Superimposition examination, which has its own limitations and may sometimes lead to incorrect or imprecise conclusions, and ii) DNA profiling, which is more reliable and is 99.99% accurate. A few important issues discussed in the session includes, discussion on best practices of collection and preservation of DNA, true object of Section 112 of the Indian Evidence Act, to shield the children from the blame of illegitimacy and various other aspects of burden of proof.

Session-9: Elements of Judicial Behaviour- Ethics, Neutrality and Professionalism

The session focused on basic tenets of ethics, neutrality and professionalism among judges. The origin and meaning of ethics were discussed and emphasis was laid on values of neutrality, independence, professionalism and sensitivity to the needs of litigants. The cardinal objective of the preamble of the Indian Constitution were discussed including social, economic and political justice, liberty of thought, expression, belief, faith and worship, equality of status and equality of opportunity and value of fraternity. Various sources of ethical norms for judges were discussed that included Constitution of India, Magna

Carta, Bangalore Principles of Judicial Conduct, Recruitment Rules Conduct Rules, Bar Council of India Rules and Restatement of the Values of Judicial Life.

Session-10: ICT and E-Judiciary: Indian Perspective

The session was initiated with a brief discussion on the establishment of e-Committee in the Supreme Court of India. The e-Committee was established in the year 2005 for monitoring use of Information Technology in the Indian Judiciary. In first phase the e-committee focused on hardware provisions, establishment of judicial service centers and development of Case Information system [CIS 1]. The second phase started in the year 2014 and all districts were integrated in one system which gets updated every day. The speakers explained various advantages of using ICT tool in court which results in expeditious justice and enhances access to justice to ordinary citizens. The speakers emphasized the need to calibrate ICT system in courts with latest changes in technology.

Session-11: Judge the Master of the Court: Court Management & Case Management

The speakers highlighted necessary steps for court management and case management which included planning, organizing, directing, coordinating and controlling. They discussed various principles related to court management. Further there was emphasis on requirements and challenges regarding effective court management. The speaker discussed about the establishment of National Court Management System (NCMS). The State Court Management System (SCMS) and in some states, District Court Management System have been established. All reports of the subcommittees under NCMS are available on the website of the Supreme Court of India. There has been an increase in judges' strength in district court and high court due to the efforts of NCMS.

Session-12: Criminal Justice Administration and Human Rights

The speaker initiated the discussion with sources of human rights obligations at national and international level. The features of international Bill of Rights, part III of the Indian Constitution and Protection of Human

Rights Act, 1993 were highlighted. The forms of human rights violations and the steps required to prevent and report such violations were discussed. The speaker focused on national system for protection of human rights and various statutes under it. There was emphasis on bringing changes in the criminal justice system for victims such as victim support centres, victim examination centres, video recording of statements and video recording of evidence. The steps for proper trial of cases involving human rights violation were discussed.

Session-13: Human Rights: Fair and Impartial Investigation

The session was initiated with discussion on factors necessary for protection of human rights which included impartial investigation, prevention from illegal arrest and detention, torture and various types of discrimination. The speaker emphasized on the role of judges to ensure that investigation happens according to legal provisions and that no deviations from legal provisions should be allowed. The judges cannot direct the mode of investigation but they can ensure that no violation of law happens during investigation. It was highlighted that the use of scientific methods of investigation should be promoted over conventional ones. The government must establish proper facilities for DNA and forensic analysis and proper training should be given to investigating officers regarding collection and handling of evidence during investigation.

Session-14: Judging Skills: Art, Craft and Science of drafting judgments

The speakers emphasized that judges must consider the expectation of common person from their judgements which included positive impact of judgement in country, impact on non-violence society and clarity. The speakers explained situation which can lead to reversal of a judgement such as when facts have not been understood properly, legal issues not considered, binding precedents not followed and the language of the order is not understandable. The speakers stated that after drafting judgment correcting, thinking and revision of judgment is important. Judgments should be precise, clear and brief. Judges must always consider

admission of facts and record it and then should draft judgements. The speakers highlighted that the *language of a judgement should be simple and with reason and the judge should not be bothered about the style. Rather it should be very simple and with reasons.*

Session-15: Identification of Ratio in a Precedent

The speakers commenced the session by stating three principles including proof of fact, statutory provision and ratio decidendi. It was emphasized that Ratio decidendi guides a judge to arrive at right conclusion according to law. The speaker explained the method of identifying ratio from a binding precedent through discussion on Indian judgments. The difference between ratio decidendi and obiter dicta was explained to the participants. The issues that whether high court decision is binding on all the States was discussed with the participants. The judgment of *Keshavananda Bharti v. State of Kerala* was discussed and various aspects of the ratio of this judgment were highlighted. The speaker referred to judgment of *Ankush Shivaji Gaikwad vs State Of Maharashtra* that emphasized on payment of compensation to victim. The speaker discussed various aspects of identifying ratio decidendi through this judgement.

Session-16 & 17: Landmark Judgement in India

The speakers initiated the discussion with Article 32 of the Indian Constitution which provides safeguard against violation of fundamental rights in India. Various landmark judgements pronounced by the Supreme Court of India were discussed including *Maneka Gandhi v. Union of India*, *Shyara Bano v. Union of India*, *Mohd.Ahmed khan v. Shah Bano Begum*, *Vishakha v. State of Rajasthan*, *Air India v. Nergesh Meerza*, *Hussainara Khatoon v. Home Secretary, State of Bihar* and *Justice K S Puttaswamy (Retd.) v. Union of India*. The speaker made brief reference to many other important judgments of the Supreme Court of India. The speakers also discussed judgment of District Court of Bhopal on Bhopal gas tragedy as well as *Kailas v. State of Maharashtra* dealing with atrocities against scheduled tribe woman.

The participant also visited District Court of Bhopal, Forensic Science Department, AIIMs, Bhopal and Central Prison, Bhopal as part of the program.

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NATIONAL JUDICIAL CONFERENCE FOR HIGH COURT JUSTICES ON INTELLECTUAL PROPERTY RIGHTS (IPR) NOVEMBER 17 to 19, 2017

Yogesh Pratap Singh, Research Fellow



The National Judicial Academy (NJA) in collaboration with the Department of Industrial Policy & Promotion (DIPP) and the World Intellectual Property Organization (WIPO) organized a three day “National Judicial Conference for High Court Justices on Intellectual Property Rights” from 17 – 19 November, 2017 at the National Judicial Academy, Bhopal.

The aim of the conference was to sensitize judges on Intellectual Property Rights, to facilitate effective adjudication of IPR disputes, strengthening enforcement and combating Economic Crimes.

The NJA and The Department of Industrial Policy & Promotion (DIPP) agreed to work on this conference wherein DIPP suggested modules spread over 8 technical sessions.

21 Hon’ble High Court Justices from different High Courts participated in the conference.

Intellectual Property Rights: Genesis, Benefits, Importance

- This session focused on the socio-economic benefits of the Intellectual Property Rights, its

importance in trade and industry of the country and how it directly and indirectly benefits the society.

- The history of Intellectual Property Laws was traced from first statute relating to Patent Rights passed in 1856 to agreement on Trade related aspects of Intellectual Property Rights (TRIPS) in 1999.
- Distinctive economic characteristics of Intellectual Property were pointed out during the session.
- The consequence of excessively strong & excessively weak IPR regime and importance of striking a balance between the two was highlighted.
- Differences and similarities between Intellectual Property Rights and other Property Rights were discussed.
- The obligations and flexibilities under the international treaties and agreement (to which

India is a party) were discussed in brief during the session.

- The role of State and Judiciary with respect to IP protection, and benefit of IP protection were explained to the participant justices.

Intellectual Property Rights Regime in India: Government Policies

- This session provided general overview of government policies and practices in the field of Intellectual Property Rights.
- Hon'ble Judges were apprised with the Intellectual Property Rights (IPR) regime in India and the interplay with IP regimes globally.
- TRIPS agreement, Doha declaration and Post TRIPS, evolution of IP Laws in India were part of discussion during the session.
- Post-independence development & silent features of Patents Act, its objectives and the amendments. Thereafter, were discussed chronologically.
- Key issues in patent such as 'Evergreening, Compulsory Licence', 'Data Exclusivity', 'Patent Linkage', 'Standard Essential Patents' (SEP) and working of patents formed part of the discourse.
- Strengthening and modernization scheme for intellectual property offices such as IT enablement and automation; and Comprehensive e-filing was discussed.
- 'National IPR Policy and bringing IP regime in consonance with world standards was discussed. Various government initiatives such as IPR awareness and promotion, IPRs in school curriculum, capacity building of enforcement, commercialization, police training, national workshop on enforcement of IPRs, and civil & criminal remedies under IP legislations were elaborated and discussed with the participant justices.
- On strengthening enforcement mechanism, speaker emphasized and explained about a robust, coordinated and responsive enforcement set-up such as working closely with State Governments,



specialized cells for IPRs, providing regular training, enhancing assistance, creating awareness, technology based solutions, Inter-agency coordination and undertaking fact finding studies etc.

Challenges of Intellectual Property Rights in Digital Age

- With the increase in technology and cyber space, intellectual property has gained tremendous significance. In recent times cyberspace has produced different types of infringements including domain names, digital copyrights and other related concepts. Keeping this in mind, during this session, various challenges and possible solutions were discussed in detail.
- Emphasis was made on some vulnerable sectors like music, film and other publication areas.
- Impact & effect on creative community, various challenges and responses therein were also highlighted during the session.

Emerging Issues on IP regime in India and Globally

- With the change in technology, the landscape of IP laws and policies also keeps evolving. It was asserted that proper understanding of these concepts and various related intellectual property issues will stimulate innovation and creativity in the country.
- Considering, various issues pertaining to pharma which have severe impact on health of the people need attention, the session highlighted emerging issues in the IP regime like Standard Essential Patents and the Pharma sector etc.



Role of the Judiciary in effective Enforcement of Intellectual Property Rights

- Intellectual Property Rights for effectiveness are highly dependent upon how they are enforced in Courts. The session focused on the role of the judiciary, not only for effective enforcement of IPRs but also in balancing rights among right holders and the society.
- There was a brief discussion on the basket of remedies available under various IP legislations.
- Landmark judgments by the Hon'ble Supreme Court and various High Courts were also discussed.

Resolving Intellectual Property Disputes via Commercial Courts and ADRs

- The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 provide a major fillip to disposal of IP related litigation in India.
- Alternate Dispute Resolution (ADR) techniques for resolving IPR related disputes are also emerging globally. Therefore, the session focused on resolving IP related disputes through Commercial Courts and employment of ADR Techniques.
- Various methods of resolving IPR disputes through ADR were discussed and elaborated during the session.

India's IP-related Treaty Obligations

- India is a signatory to various treaties and agreements related to Intellectual Property Rights. These treaties/ agreements while setting the norms on IP, cast obligations and flexibilities upon the member parties.
- These obligations/ flexibilities play a critical role in taking various legislative and executive decisions. During this session while discussing obligations and flexibilities, brief history and importance of major IP related treaties/ agreement was also discussed based on the above idea.
- Some important treaties, conventions and agreements such as Berne Convention, Universal Copyright Convention, Paris Convention, Patent Cooperation Treaty (PCT), Trade related aspects of Intellectual Property Rights (TRIPS), Budapest Treaty and Madrid Agreement were discussed in relation to their compliance by the Indian Courts.

Landmark Judgments on Intellectual Property Rights in India and abroad and their Impact

- The law of Intellectual Property has evolved historically. Judgments by the Supreme Courts and various High Courts of India helped shape Intellectual Property law in India. Courts have very interestingly interpreted various facets of the Trademark, Copyright, Patent laws and came up with innovative solutions. Therefore, the session focused on emerging IPR jurisprudence globally with special emphases on landmark cases in India.

P-1059

WORKSHOP FOR MAGISTRATES ON JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

NOVEMBER 17 to 19, 2017

Shivaraj S. Huchhanavar, Research Fellow



The National Judicial Academy organized 3-day programme for Magistrates on Juvenile Justice (Care and Protection of Children) Act 2015. Provisions of the Act deal with apprehension, detention, prosecution, penalty and sentencing of juveniles alleged or found to be in conflict with law. The legislation also incorporates provisions for children in the need of care and protection, by catering to their basic needs through proper protection, development, treatment and social reintegration. The Act defines a “Juvenile” and provides for reformatory and rehabilitative measures for a juvenile in conflict with law. With increase in instances of juvenile criminality, the “appropriate age for assuming criminal responsibility” is widely debated and consequent changes are incorporated in criminal laws. In the light of the evolving socio-legal milieu, it is required to study the social, cultural and economic causes for deviant behaviour among juveniles and the changes brought about in legislation. The workshop aimed to provide a forum for deliberations on recent changes in the laws; interpretation and treatment of juveniles in conflict with law; appropriate processes and strategies for care and protection of juveniles; audit and measures to accrete the efficiency of Juvenile

Justice Boards and other Duty Holders. High Court Justices (sitting and retired), subject experts and academics working on juvenile welfare issues were invited to guide the sessions.

First session of the programme—*understanding non-adversarial nature of juvenile justice system*—was aimed at acquainting the participants with distinct nature of juvenile justice system and need for non-adversary, rehabilitative and parental approach in treatment of children alleged or found in conflict with law and in need of care and protection. Justice S. Vimala explained to the participants the reason and need behind avoiding rigidities, technicalities, and harshness in the substantive and procedural criminal law. She opined that youth crimes are not just law and order problems but are socio-psychological problems of children, their family and society. Therefore, judicial, legal, and administrative machineries dealing with children must act in the best interest of the child by adopting child friendly approach in the adjudication and disposal of cases. Justice V. M. Kanade addressing the participants observed that balanced and restorative justice for juveniles is the need of the hour. Interest of victims, offenders and community members are to be

reconciled to ensure community safety and reinforce productive child behavior. He explained how the philosophical framework of the Act embrace restorative justice to enforce youth accountability and community responsibility. He reiterated that restorative justice involves the victim, the offender and the community in a search for solutions which promote repair, reconciliation, and reassurance.

In the second session, Prof. Geeta Oberoi discussed important changes brought by 2015 Act. She pointed out that the Act allows children between 16 and 18 years alleged to have committed heinous offences to be tried and sentenced as adult. The Act consciously avoids 'juvenile' and uses 'child' in its place. She observed that 42 new concepts namely abandoned child, adoption regulations, administrator, aftercare, authorized foreign adoption agency, authority, central authority, child, child friendly, child legally free for adoption, registered, relative, sponsorship, surrendered child, etc. are defined under the Act. Besides, many new authorities are also established under the Act, viz. child welfare officer, child welfare police officer, children's court, child care institution, childline services, district child protection unit, fit facility, foster care, foster family, group foster care, open shelter. She also explained to the participants the heinous, serious, and petty offences. Addition of two new principles: principle of diversion, and of natural justice in section 3 and their implications on the working of juvenile justice system is discussed. She also explained among other things, the concept of preliminary assessment, procedure and its significance.

In the third session, with help of case laws and international instruments on child rights and juvenile justice, Prof. Geeta Oberoi and Justice S. Vimala elucidated the Principles of presumption of innocence, dignity and worth, participation, best interest of child, family responsibility, safety, positive measures, non-stigmatising semantics, non-waiver of rights equality and non-discrimination, right to privacy and confidentiality, institutionalization as a measure of last resort, repatriation and restoration, fresh start, diversion, and natural justice.

Human Rights and Constitutional Perspectives of Juvenile Justice were discussed in fourth session. Prof.

D. P. Verma elaborately discussed the international instruments on rights of children and administration of juvenile justice. Jurisprudential undercurrents of survival, developmental, protection and participation rights of children were also discussed. Referring to judicial pronouncement on relevance of international law he reiterated that the international conventions and norms are to be read into laws relating to children in the absence of enacted domestic law occupying the field when there is no inconsistency between such legislations and international instruments. Justice S.S. Phansalkar Joshi evoked various Articles of the Constitution to explain to the participants the constitutional background of the legal developments on child rights, treatment, care and protection.

In the fifth session Prof. S. P. Srivastava and Justice S. Vimala discussed *presumption and determination of age under 2015 Act*. Prof. Srivastava highlighted the challenges in age determination. He pointed out that in most of the cases birth is not registered, parents provide wrong date at the time of school admission, schools not maintain registers properly and often age is recorded by guess work. Therefore, where there is a reasonable grounds for doubt the Board may take the help of ossification or any other latest medical age determination tests to determine age of person in question. However, as per the scheme of the Act, if the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, in absence of such certificates, birth certificate given by a corporation or a municipal authority or a panchayat shall be conclusive, and above mentioned tests shall not be ordered unless there is reasonable grounds challenging the authenticity of such documents.

In the sixth session, Justice S. S. Phansalkar Joshi reiterated the Beijing Rules (on juvenile justice) and observed that detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time. Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home. She said except as otherwise provided in the Act, and notwithstanding anything said in Cr. P. C. grant of bail

is not only as a matter of right, but also mandatory. Referring to cases where bail cannot be granted, Justice Joshi referred to *Shimil Kumar v. State of Haryana* wherein it was held that, “Apprehensions as to whether a release of a juvenile would be detrimental to him and bring him in association with moral or physical danger, would depend upon the facts of each case. But in cases where a juvenile has been accused of aggravated offences, which shock the conscience of the society, it would be safer to protect him from collective wrath of a community or a society, on account of retribution such a dastardly act may possibly invite. Factors preceding the commission of an offence, his collaborators and accomplices would be the indices for a person being endangered by evil influence, and likewise the Board and the Court have to imaginatively conceive of succeeding consequences to the offence, to conclude regarding the safety of a juvenile.” Justice Joshi concluded that all these aspects are extremely significant for they would reflect and play upon the mind of a judge, while considering the application for grant of bail.

Role of various duty-holders in juvenile justice is discussed in seventh session. Justice R Basant and Mr. Kulbir Krishnan were the Resource Persons. Justice Basant observed that the Act tries to reconcile the interest of the Child (in conflict with law or in need of care and protection), community, and the victim. For this purposes it tries to hold child accountable for his deviant behaviour, build competence and reintegrate him into the main stream of the society. Institutions or authorities or individuals dealing with child in need of care and protection and child in conflict with law where discussed at length. It was observed that the Act aims to deinstitutionalize the child care and protection. Therefore, rehabilitation and reintegration of child with the help of Fit Person, Fit Facility, and Place of Safety is envisaged by the Act. It was concluded that success of the Act lies in effective and efficient functioning of the duty-holders established under the Act.

Individualized care plan for comprehensive development of children: Role of JJB and other Duty-holders was the last session of the workshop. Justice S.S. Phansalkar Joshi and Mr. Kulbir Krishnan conducted the session. Justice Joshi observed that



individual care plan plays a very important role in rehabilitation and reintegration of a child. The juvenile magistrates must play an active role in formulating the care plan. Often the individual care plan are mechanically drawn without considering the peculiar circumstances of the child. The resource person observed that individual care must be based on reliable psychological assessment of children. It was suggested that multiple stakeholders consisting such as Magistrates, JJB members, legal cum probation officers, district child protection officers, social workers and counselors must be consulted before formulating the individual care plan and such plan must be periodically reviewed.

The success of the juvenile justice system depends on effectively addressing the socio-psychological problems of children, their family, and neighborhood. Many of the participants observed that the restorative justice model yet to be full ingrained in the functioning of various authorities established under the 2015 Act and Rules made thereunder. The participants recommended that an adequate emphasis on deinstitutionalization of rehabilitation and reintegration process of a child in conflict with law or in need of care and protection. Many of the participants suggested for the appointment of an adequate number of probationary officers for the purpose the Act. The participating magistrates insisted that the magistrate in-charge of juvenile boards must play an active part in formulating individual child care plan.

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REFRESHER COURSE FOR NDPS COURTS
NOVEMBER 24 to 26, 2017

Ms. Shruti Jane Eusebius, Law Associate



National Judicial Academy organised the Refresher Course for the judges presiding over the special courts constituted under the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). The seminar was organised with the objective of discussing the functioning of the NDPS Courts in India to comprehend the bottlenecks and the issues of concern in the adjudication of NDPS cases. The seminar aimed to discuss the core objectives and purposes of establishing NDPS Courts, with a view to reorient the NDPS Courts in the mission with which NDPS Courts were established. The seminar also aimed to discuss aspects regarding the legal framework on drug addiction and drug trafficking, and the effectiveness and limitation of statutory provisions dealing with drug abuse. Special focus was sought to be given to the crucial areas of concerns for the NDPS Courts i.e. provisions of search and seizure, presumptions of culpable mental state, determination of drug quantity, irregularity of investigations in NDPS cases, framing of charges and sentencing practices in NDPS cases.

On the theme of *Combating Illicit Drug Traffic and Drug Abuse: Critical Role of NDPS Courts* discussions

were undertaken on the problem of drug trafficking and drug abuse in India, its cross border dimensions, the impact of drug abuse on the people especially the children. The participant judges were exhorted to exercise this jurisdiction with sensitivity and gravity keeping in mind that they play an important role in shaping the future of the country and are deciding cases, which have far reaching national consequences. The Court is an important party in the effort to curb the menace of drug trafficking and the judge must play a proactive role in this regard. Deterrence as the objective of the NDPS Courts was stressed upon in the discussion.

On *Presumption of Culpable Mental State under Section 35 of the NDPS Act* the standard of proof in criminal law was explained and difference between the standards of 'preponderance of probabilities' and of 'proof beyond reasonable doubt' was discussed. The concept of 'culpable mental state' as mentioned in Section 35 of the NDPS Act was discussed. The standard of proof in several statutes and the applicability of 'culpable mental state' to certain statutes was pointed out. The jurisprudence on

‘culpable mental state’ under Section 35 was traced through the judgments of the Supreme Court.

In the group discussion on *Irregularity in Investigation: Impact on Court Proceedings*, the participants in their discussions made the following observations –

- The provisions relating to search and seizure under the NDPS Act are not followed by the investigating authorities which adversely impacts the case, as it results in acquittal of the accused.
- The secret information received from the accused is not noted down, hampers the case when the case comes before the court.
- Section 50 compliances are not made in investigation. The requirement of making the accused aware of his legal rights under Section 50 is not followed.
- The ‘Investigating Officer’ does not deposit the seal of seizure to the Court. Seals should be provided to rule out corruption and tampering.
- Compliance of requirement to send the sample to the Forensic Science Laboratory within 72 hours is often not done by the investigating officer.
- It is unclear as to who is designated as ‘Authorised Person’ with respect of conduct of search and seizure.
- In most cases, the ‘Investigating Officer’ is not provided with weighing machines to weigh the contraband. Hence, they have to resort to making arrangements to procure a weighing machine from other places. In most cases the weighing machine procured is not up to the mark and the investigating officer is forced to *estimate* the actual weight of the contraband.
- The Investigating Authorities do not adhere to the prescribed methods of sampling of contraband.
- The Investigating Authorities do not follow the prescribed methods of destruction of contraband.
- In cases of cultivation of drugs, the details of the land involved are missing.
- Contrary to Section 42, the investigating officer first communicates secret information to the senior officer, then records the information and thereafter provides a copy to the senior officer.



- The language used by the ‘Investigating officer’ is not known to the accused. Communication is required to be made in the language known to the accused.
- For transparency, the ‘Investigating Officer’ should take the accused to the Magistrate.
- Videography of seizure proceedings should be done.
- The officer who apprehends the accused, continues as the investigating officer. It is suggested that two separate persons should be the investigating officer and the apprehending officer.

In the discussions on the *Search and Seizure Provisions under the NDPS Act*, the development of the law on drug abuse and trafficking to the currently applicable NDPS Act was traced. It was stated that investigation is a process of finding of truth and is not a decision making process. The role of the investigating officer is to search, explore, find out reasons and bring out the truth in the matter. The biggest problem in NDPS cases is that the investigation is inefficient so the truth in the case is not unearthed. The search and seizure provisions under Chapter 5 of the NDPS Act were explained and the mandatory and directory provisions in Chapter 5 were differentiated between. The issue as to who is authorised to conduct search under the NDPS Act was debated on. The landmark judgments on search and seizure under NDPS Act were highlighted to trace the jurisprudential development and the precedential standards on this issue.

On *Framing of Charges by NDPS Courts: Issues and Challenges* Sections 201(1), 203, 204, 227 and 228 of the Code of Criminal Procedure, 1973 were discussed



and the term ‘sufficient ground proceeding’ as used in the CrPC was explained to mean that the Court must have a grave suspicion that the alleged offence has occurred. It does not mean the Court conducts a trial at this stage but means that there is sufficient basis to presume that the case is likely to be proved. The speaker then discussed how cases under the NDPS Act should be proceeded with, by the Courts. While framing charge in a case, the judge must not go into proof and conviction. Sifting through the evidence to find sufficient ground and sifting through evidence for proving beyond reasonable doubt are separate jurisdiction and functions and the judge must be vigilant to not mix up the two functions. The human rights of the accused in a criminal trial must be protected. If the case is not made out then the Court should discharge as the consequences of the NDPS Act are stringent. The speaker stated that sufficient grounds for proceeding should be based on something more than the FIR.

On the theme *Sentencing in NDPS Cases* the objective of deterrence by imposition of harsh punishments for drug trafficking was pointed out. The sentencing scheme under the NDPS Act was elaborated upon and the relevance of quantity of drug and purpose or use in sentencing was explained. The alternatives to punishment under Sections 39 and 64A were discussed. Discussions were undertaken on factors to be taken into account for imposing higher than the minimum punishment under Section 32B. It was stressed that in

order to impose higher sentence, other factors besides the quantity are needed. Section 32B alludes to additional factors that the Court may deem fit; and enumerated factors as specified in Section 32B.

On *Determination of Drug Quantity by Courts* the various types of drugs that are in the market and their sources were explained. It was stated that drugs need not be in pure form; it may be in the form of a preparation, solution or a mixture. A mixture containing narcotic drug is a contraband itself. Merely because there is a neutral material in which the narcotic drug or psychotropic substance is contained does not mean it is not a narcotic drug or psychotropic substance in itself. The speaker then discussed the scope of the terms ‘Narcotic Drug’ and ‘Psychotropic Substance’ and the schedule to the Act. It was stated that the table to the NDPS Act is significant, as it provides the small and commercial quantities for the purposes of sentencing. The important judgments on determination of drug quantity were discussed to elaborate on the standards laid down by the Courts. On the issue of possession of drugs and presumption of culpability, it was stated that possession depends on the facts of the case. It involves an element of consciousness and awareness.

On *Challenges before the NDPS Courts in the Application of Sections 42 & 50 of the NDPS Act* the issue of whether there is a requirement for the investigating officer to record his personal knowledge and reduce it in writing under Section 42(1) of the NDPS Act. The speaker stated that in the judgment in

Karnail Singh v. State of Haryana, the order of words in Section 42(1) has been reversed and hence, the confusion remains whether personal knowledge needs to be reduced in writing. The case of *Babubhai Odhavji Patel v. State of Gujarat* was discussed to state that vague information is not required to be reduced in writing. The provisions of Sections 42 and 50 were discussed and it was stated that substantial compliance should be made of these sections. In Section 42 and 50, non-compliance of the provisions would vitiate the conviction. The trial goes on but the evidence used in the conviction is set aside. On requirement to disclosure of name of informer who has given secret information, the speaker stated that we must rely on the wisdom of the legislature. The name is not required to be disclosed



under the NDPS Act with the objective of protection of the informer.

Suggestions by Participants

- It is unclear as to who is designated as 'Authorised Person' with respect of conduct of search and seizure.
- the Investigating Officer is not provided with weighing machines to weigh the contraband. Hence, they have to resort to making arrangements to procure a weighing machine from other places. In most cases the weighing machine procured is not up to the mark and the investigating officer is forced to estimate the actual weight of the contraband.
- For transparency, the Investigating officer should take the accused to the Magistrate.
- Videography of seizure proceedings should be done.
- The officer who apprehends the accused continues as the investigating officer. It is suggested that two separate persons should be the investigating officer and the apprehending officer.

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CONFERENCE OF REGISTRARS DEALING WITH COURT PROCEDURES AND PROCESS REENGINEERING NOVEMBER 24 to 26, 2017

Dr. Amit Mehrotra, Assistant Professor



In the series of conferences on court procedures and process reengineering, the NJA organized a conference of Registrars of High Courts from 24th November to 26th November 2018 at NJA Bhopal. The objective of the conference was to focus on process reengineering within the framework of the constitution which is necessary for efficient and fair justice delivery.

The conference deliberated on the best practices, process and procedures of the High Court. Participants were divided into sub-groups; each sub-group was given a specific topic and was asked to deliberate on court procedures and processes on that subject. The scope of deliberations was, restricted to eight themes, viz. (1) Writ Jurisdiction, (2) Civil and Criminal Appellate Jurisdiction, Civil Original side, (3) Revisional Jurisdiction and matters covered u/s 482 Cr.PC, (4) Listing and Mentioning of Matters, (5) Adjournments and Backlog, (6) Use of ICT in enhancing the efficacy of judicial institutions. Hon'ble Mr. Justice Ram Mohan Reddy, Hon'ble Mr. Justice R.C. Chavan, Hon'ble Mr. Justice R. Y. Ganoo, Hon'ble Mr. Justice U.C. Dhyani and Hon'ble Mr. Justice Dharnidhar Jha guided the discussion.

In first session *need, scope and limits of procedures and process reengineering* were discussed. It was stated that one has to focus on the rules which are redundant and has to done away with the practice that impedes the justice delivery system. It was further delineated that the Registrars have to play a proactive role in adhering to and adopting the best practices of the other High Courts to make the procedures and processes simpler and smooth. Inconsequential procedures and practices has to be taken off to ease the business of courts and utilization of the digitalization and litigant interest should be kept in mind. High Courts are established under constitution and every High Court has framed rules with respect to the court process and procedure. Rules were framed when ICT was not evolved and number of cases were small. Therefore, there is a need to amend the rules from time to time to make the process and procedure litigant friendly and transparent with the help of ICT mechanism. There is a need for a proper understanding of rules and practice in different High Courts in order to cull out the best practices that are relevant to other High Courts. It was stated that where the rules are silent the court has to be very

judicious while exercising its discretion so that the interest of the litigants is protected. It was stressed that uniformity in nomenclature at national level is very important for making the system uniform. It was highlighted that the rules and procedures which are old and cumbersome be replaced with the best practices.

In second session participants were divided into six groups. They deliberated on the best practices, rules, court procedures and process on the topic allotted to them. In the forthcoming sessions participants were requested to present their views on the best practices and the procedures and practices/processes of respective High Courts that require, in their view, revision to enhance efficacy and time-specific justice delivery.

In third session participants deliberated on the *Court procedures and process reengineering relating to writ jurisdiction*. It was agreed that MP High Court rules may be replicated/adopted as an ideal practice. Qualitativeness, Responsiveness and Timeliness are key for delivery of justice and which can be achieved only by adopting the best practices as followed in different High courts. It was suggested that following practices may be adhered by the High courts:

1. There should be classification and sub-categorization of writs. Classification of writ would help in prioritization and speedy disposal of writ petition.
2. Format of writ petition filed under Article 226 of the Constitution of India may be as per the Rule 23 of Chapter X of the High Court of M.P. Rules, 2008.
3. Check List of High Court of Judicature at Hyderabad may be followed by other High Courts.
4. The practice of processing the writ petition should not more than 3 days from the date of presentation.
5. There may be uniformity in court fee structure.
6. Caveat format as provided in the High Court of M.P. Rules 2008 may be adopted.
7. Advance copy should always be served upon by the other party.
8. Court at the first instance should look for possibilities of settlement by mediation process.



9. Interim order can claim in same petition.
10. High Court of M.P. Rules 2008 may be adopted for filing of Regular Public Interest Litigation.
11. There should be no security deposits for PIL. However, later if PIL found to be frivolous heavy penalty can be levied by the court. Separate Affidavit format should be provided for PIL as mentioned in the M.P High Court Rules. Verification of Affidavit should be adopted by all High Courts as best practice.
12. Defects, if any, in the petition should be removed by the concerned advocates only in the office premises itself and the practice for giving court files to advocates for their residence once case gets registered may be discouraged. Temporary Number or tender number may not be given to any writ petition.
13. Interim Application and Main Petition should be numbered and marked separately so as to make clear distinction between the two of them. Interim Application should never be numbered as Main Petition number so as to avoid depiction of wrong data.
14. The practice of putting synopsis can be replaced with table of index.

In fourth session best practices for *Civil, Criminal Appellate Jurisdiction and Civil Original Side* was discussed. Following best practices emerged which may be adopted in the High Courts.

1. List of under trials cases should be maintained according to NALSA Guidelines.
2. There may be separate counters for filling civil and criminal matters. In Gujarat and Patna High Court



it is already in practice.

3. Synopsis in second appeal may be dispensed with and may be replaced by list of dates as only substantial question of law is required to be raised.
4. The practice for placing of second bail application before the same judge who dismissed the first bail application may be followed.
5. Grouping of similar cases may be adopted in order to avoid conflicting orders as practiced in Delhi High Court.
6. The practice of preparation of E-paper book by the registry may be adopted.
7. In Delhi High Court, recording of evidence in original civil suits is done by the judicial officers of Delhi higher judicial service who are on deputation to the Delhi High Court as Joint Registrars (Judicial). This practice may be followed by the other High Courts.
8. Call for record by the High Courts should only be done after giving opportunity to the opposite party. In pending matters court should be very cautious while calling for records as it indirectly results in stay of proceedings in the trial court without any express order.
9. There should be a facility of auto-generated SMS/email to the concerned lower court whose order is under challenge.
10. Practice of sending a reminder to higher court once in six months, for pending appeals against the interim orders should be followed and the same may be reflected in the cause list. Listing software may be customized so that it automatically reflects the pendency of cases.

The fifth session focused on the *Revisional Jurisdiction and matters covered u/s 482 CrPC*. It was stated that in many High Courts writ petition under Article 227 are treated as Civil Revision. Following best practices emerged during the discourse.

1. In Madras High Court there is a practice of sub-classification of revision petition into pending matters and non-pending matters which may be followed in other High Courts.
2. Declaration in the affidavit with respect to filling of revision and appeal may be made mandatory. CIS may provide auto-checking system.
3. Court fees for civil revision in the High Courts may be waived off.
4. When there is no specific provision is provided for relief then only section 482 Cr.pc may be invoked.

Sixth session highlighted the best practices with reference to *Listing and Mentioning of Matters* which are as under:

1. There may be practice for giving advance notice to all parties before mentioning any matter before the court.
2. High courts follow different practices for listing of cases. Delhi High Court have exhaustive rules on listing of cases that may be adhered by other High Courts. Following types of cause list were discussed - Daily cause list, Weekly cause list, Supplementary cause list and Advanced/Monthly cause list.
3. The cause list inter alia should reflect the length/period for which the matter is pending, number of adjournments as practiced by Patna High Court, stage at which the case is for hearing.
4. Prioritization of cases in the cause lists, listing of cases during court vacations and listing of urgent cases after court hours/non-working days may be adopted.
5. No case should be left undated.
6. Practice of listing criminal matters randomly with the help of ICT may be followed.
7. Appropriate nomenclature may be used in cause list to indicate the stage of the case as followed in the MP High Court.

8. Listing should be done selectively and only those cases which can be heard by the bench may be listed.
9. There should be a specific time for mentioning. Mentioning may be made through a memo and reason should be made meticulously for preponing/postponing the case. M.P. High Court rules comprehensively deals with mentioning matters which may be followed by other High Courts.
10. Matters that are not notified may be mentioned before divisional bench-I. However, the mentioning of notified matters may be made before the concerned court.

In seventh session there was deliberation on *Adjournments and Backlog of Cases*. The best practices that came out during the discourse are as under:

1. Bombay High Court has rules on adjournments that may be followed by other High Courts as codification of these rules serve guidelines to the litigants and lawyers.
2. Adjournment should be treated as an exception and may be granted on discretion of the judge. Oral adjournments may also be permitted after considering the urgency.
3. Part heard cases should be listed on priorities and adjournment may not be granted.
4. In many High Courts the committees are constituted to deal with the backlog of cases. The backlog cases can be disposed of by fixing a timeline and all similar cases can be grouped together.
5. There is need to ensure the case flow management for backlog of cases.
6. A particular day may be allocated as per convenience of judge to deal with dealing 10 year+ cases. ADR mechanism may be encouraged for the disposal.

Eight session emphasized on the *ICT and Process Reengineering*. ICT is the best mechanism for storage, archiving and retrieving the data. Best practices emerged from the discussions are as under:

1. ICT enhances the capacity of Bar and Bench. The

advocate(s) should share their email address and mobiles numbers for speedy service of summons or notices.

2. There may be an e-post services and E-post integration.
3. There may be an E-Court Module, an E-Office and E-audit.
4. There may be a facility for online Bail application.
5. There may be paperless court in every High Court as it is there in Delhi High Court.
6. Cause List should be in Digital form and printing of cause list should be dispensed with.
7. There may be a case tracking system that benefits the stake holders of the court.
8. There should be Integration of ICT with various departments.
9. Kiosks may be set-up in High Court premise enabling e-stamps. Print option in the E-Kiosks should be made available in all High Courts.
10. There should be an email ID through which notice can be send to the government officers.
11. Official website of High Court should display all details relating to the case so as to make the system more smooth and transparent. There should be an internal search portal.
12. There is a need to do away with manual registers and maintained e-registrars with backup facilities.
13. There may be facility for digital signature for advocates to facilitate e- filing. In e filing the petition and other documents should be bookmarked.
14. There may be a separate e-court fee counter and central filing section.
15. Facility for file tracking with the help mobile phone may be provided.
16. SMS alerts may be given to remove defects in the petitions.
17. If possible documents may be called electronically. Mobile application may be used for checking the case status.
18. Training for operating ICT should be provided to all stakeholders.

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NORTH ZONE REGIONAL CONFERENCE ON ENHANCING EXCELLENCE OF THE JUDICIAL INSTITUTIONS : CHALLENGES & OPPORTUNITIES NOVEMBER 25 to 26, 2017)

**Ms. Paiker Nasir, Research Fellow
Ms. Ankita Pandey, Law Associate**



The National Judicial Academy organized a two-day regional conference on the theme 'Enhancing Excellence of Judicial Institutions: Challenges & Opportunities', in collaboration with the High Court of Judicature at Allahabad and the Judicial Training & Research Institute, Lucknow. The conference was attended by High Court Justices and Judicial Officers from the High Court of Delhi, High Court of Himachal Pradesh, High Court of Jammu & Kashmir, High Court of Punjab & Haryana, High Court of Uttarakhand and High Court of Allahabad.

Efficient functioning of Subordinate Courts is a paramount necessity for the proper administration of justice and quality justice delivery. Continual dialogue, communication and exchange of evolving horizons of knowledge and best practices, between judicial hierarchies - the Higher and Subordinate Courts,

conduces and nurtures quality justice delivery. The Regional Conference was designed to provide a forum for the exchange of experiences, communication of knowledge and dissemination of best practices from across clusters of High Court jurisdictions. The purpose was to accentuate the experience of familial community between High Court and Subordinate Courts judicial officers; besides established and imperative norms of a Constitutional vision of justice were also revisited; elements of Judicial behaviour; Social context judging; Access to Justice: Information and Communication Technology in Courts as well as Court and Case Management formed an integral part of the discourse.

The purpose of having these regional conferences is to enable more robust participation of judges from the high courts and judicial officers, so as to energize the communication between the hierarchies within the

judiciary i.e., between the High Courts and the subordinate courts.

The first session was on the theme “*Constitutional Vision of Justice*”. It exemplified the notion of justice in the Constitution. It was stressed that although we have tremendously failed in achieving social and economic justice in the country still the people of India have faith in the judiciary. Therefore, it is important for the judicial officers to understand the constitutional philosophy and that the heart and soul of the constitution are in its Preamble. Various aspects associated to justice were discussed like- the significance of certainty of law, issues related to cases involving masses and individuals, competent legal aid, social consciousness etc. It was suggested that magistrates should focus on providing access to justice rather than chasing principles.

The second session was on the theme “*High Court and District Judiciary: Building Synergies*”. It was perceived that the only communication that takes place between the high courts and the subordinate courts is disciplinary communication and that is conceived to be not the robust way of going about. To accentuate democracy a continuous course of communication between the hierarchies is required which also contributes to increasing the efficiency of the deliverables. It was deliberated that for building synergies the responsibility of High Court Judges is more than the district judiciary. It was suggested that to build synergies between the high court and the district judiciary it is important that – the district judges should prudently handle the appeals of junior judicial officers and thereafter guide them to ratify; the administrative judges should decide appeals under Article 227 against their subordinates so that it helps them in writing their Annual Confidential Reports; National Judicial Data Grid should be optimally used by judges as well as judicial officers; means of communication needs to be open so as to have proper interaction among the judges and judicial officers. It was opined that synergies cannot be built if there is no mutual respect for each other. It was also pointed out that the judges should be open to accepting dissent from the judicial officers. It was highlighted that the amount of disempowerment is too much among the district judiciary and this, in turn,

affects the amount of justice they impart. Other aspects that create tension in the district judiciary such as- fear of complaints against orders; unnecessary reactions from the bar also formed an integral part of the discourse.

The third session was on the theme “*Elements of Judicial Behaviour: Ethics, Neutrality, and Professionalism*”. It highlighted that judicial demeanor plays an integral role in upholding public trust and confidence in the justice system. The demeanor of a judge must embrace ethics, neutrality, and professionalism. It was emphasized that ethics are the basic principles of the right actions of a judge that may be in relation to moral action, conduct, motive or character of judges as well as what is correct and appropriate for them. It is significant for all judges to realize that they honor the judicial office, which they hold as a public trust. Moreover, judges must constantly examine the ethics-intensive situations that challenge them and the contending deliberations involved in handling those situations. This will help them evaluate their role and conduct.

The fourth session was on the theme “*Social Context Judging as a Controlling Element in Statutory Interpretation and Exercise of discretion*”. While judging a case, the social context or the trends of the society cannot be altogether ignored. The reason being that society is changing so law cannot remain static. Such changes in society need to be recognized and catered to by the judges and that the social context in which the case is presented must always be analysed before a judgment is made. The main judicial activity is the interpretation of a legal text according to which the dispute is to be resolved. If a legal norm is embodied in a literal text, the interpretation process is necessary, and every interpretation process requires the recognition of judicial discretion. Judicial discretion is never absolute. Even when the judge has the freedom to choose between one interpretation and another, he cannot choose between them however he pleases. He must employ his discretion within the boundaries set out by the law

The fifth session was on the theme “*Access to Justice: Information and Communication Technology in Courts*”. It deliberated upon the technological advancement made in the functioning of the Allahabad



High Court through effective use of ICT. Various positive changes that have been brought about by the introduction of technology in the day-to-day functioning of the court system. A reference was also made on the use of ICT with regard to the advancements made in this respect in the Delhi High Court. The ease and efficacy which has been brought about by holding hands with technology were pointed out, such as the entire record of decided cases upto the year 2012 have been digitalized, 40,000 sq. ft. land has been vacated due to digitalization, certified copies of digital records with digital signature is available within 15-20 minutes of the order, installation of kiosks for information, and introduction of the system of e-court fee, digital display boards in and outside the courtrooms, e-cause list etc.

The sixth session was on the theme “*Access to Justice: Court and Case Management*”. It included discussion of how judges and court administrators must work together and coordinate their efforts in key areas of court administration and management. The foremost reason for India to introduce case management in its

courts is without doubt the ever increasing number of cases pending at all levels in the judiciary. The effective use of case management techniques and practices improves the efficiency in the use of justice system resources, hence reducing the costs of justice operation. By reducing the time required for resolving disputes, the appropriate use of case management may also help build public confidence in the effectiveness of the courts and the accountability of judges. It must be ensured that laws, regulations, and court policies are followed, that the needs of court employees are properly addressed, and that administrative tasks are carried out. The judge presiding over a court must monitor unnecessary delays and ensure that there are no uncalled for adjournments. The use of ICT is another way to support and automate case management practices of courts.

The discourse suggested that- To accentuate classlessness an incessant course of communication among the hierarchies is essential which likewise subsidizes in increasing efficacy of the deliverables. Similarly, to build synergies between the high court and the district judiciary it is imperative that the district judges discreetly handle the appeals of junior judges and subsequently guide them to ratify. The portfolio judges should decide appeals under Article 227 against their juniors so that it helps them in writing Annual Confidential Reports of the concerned juniors. The National Judicial Data Grid should be optimally used by judges as well as judicial officers.

SE-15

TRAINING PROGRAMME FOR SENIOR LAW OFFICERS OF THE STATE BANK OF INDIA

NOVEMBER 28 to 30, 2017

Mr. Rahul Ishwer Sonawane, Research Fellow



Object and Background of the Programme

The National Judicial Academy organized a three day Training Programme for Senior Law Officers of the State Bank of India from 28th to 30th November, 2017 at the NJA Bhopal. The programme was conceived and designed by the Academy at the request and in consultation with senior management of the SBI. The programme was structured to provide a working knowledge of legal and procedural aspects relating to the banking sector to 'Law officers' and other senior management personnel. Sensitization to the nuanced laws and procedures of Commercial Courts, Bankruptcy Code; Banking Frauds and Cyber-crimes; Adjudication of Debt Recovery Claims; PMLA, were among areas covered. In the introductory session Hon'ble Director, National Judicial Academy, Bhopal set the theme of the conference and introduced the Speakers for the day.

Session - 1: Evolution of Banking in a Global Scenario: Opportunities and Challenges

The speaker started her session with history and evolution of world banking system; how the banking

system has emerged in the Indian context. Prior to 1991, Indian banking sector was not liberalized and was somewhat conservative. But after the era of globalization, liberalization (in 1991), it started to align itself with the global trends. Then impact of Bitcoin (a crypto currency) on the world economies and the strategies framed by the central banks all over the world to deal with it was discussed Reserve Bank of India is studying the impact of and trying to frame guidelines on Bitcoin.

The globalization and the impact of technology on the banking sector was discussed. In this era of globalization, it has become necessary for security reasons to have updated database of KYC of their customers/account holders. The new concept of "Universal Banks" was discussed.

The Director, NJA suggested reading of the book "Lucifer's Banker".

Session - 2: RBI & Banks : Monitor; Mentor; & Regulator

The session was initiated with a brief background of RBI. Then it moved on to discuss the role of RBI citing

the preamble of the RBI Act, i.e. “to regulate the issue of bank notes and the keeping of reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage.” Thereafter, the organizational structure and main functions of RBI viz. Monetary authority, Issuer of currency, Banker, Agent and Financial Advisor to the Govt., Banker to the Banks, Regulation and supervision of the banking and financial system, Management of Foreign Exchange and Regulation and Supervision of the Payment and Settlement were discussed in detail. The relationship between the RBI and Commercial Banks alongwith the developmental and Educative role of RBI for being a mentor for the other Banks formed part of the discourse.

Session - 3: Credit Appraisal : Red Flags and Best Practices

Speaker started the session with introduction to the term ‘credit appraisal’. He said that credit appraisal is a process to estimate and evaluate the risks associated with the extension of the credit facility. It is generally carried by the financial institutions which are involved in providing financial funding to its customers. Proper credit evaluation of the customer measures the financial condition and the ability of the customer to repay the loan. This is an important factor which can curb the menace of Non-Performing Assets (NPA), a big issue troubling the Indian banking sector. He said that rising levels of NPA and increase in frauds in advances are the key concerns for the banking sector. Inadequate screening viz. promoters/company, inadequate review of financial statements, overdependence on certifications, lack of adequate due diligence, lack of in-person verification/site visits, trust-based lending etc. are the key loopholes in the credit appraisal systems and factors responsible for NPA. The common types of frauds related to sanctioning of a loan was discussed. Thereafter, some relevant case studies about the credit appraisals and NPAs; Pre-sanction process and ‘Best Practices’ to be followed by banks while approving the loan proposal were discussed. The various methods to do the credit appraisal of the proposed borrower formed the concluding part of the deliberation.

Session - 4: Declaration of NPA : Eliminating Subjectivity & Evolving Transparent Norms

The session started with introduction to concept of NPA i.e. assets are classified into four categories, viz. :-

- 1) **Standard** - Regular account which does not show more than normal risk at any time.
- 2) **Substandard** -NPA for a period not exceeding 12 months;
- 3) **Doubtful** -NPA for a period exceeding 12 months; or if the value of security is eroded by more than 50% of the outstanding.
- 4) **Loss** - Classified by the Branch/ Internal/ external auditors, or value of security is less than 10% of the outstanding.

Discussing the session impacts of NPAs, it was understood that the banks are not able to generate income, its capital gets blocked, lowering its image & rating, its disclosure reduces investors’ confidence, it increases costs/difficulties in raising resources and it also affects the morale and decision making ability of the employee. Speaker stressed that, banks should try to understand the early warning signals which serve as wake up calls to show that a particular account is leading towards becoming a NPA. These early warning signals are - Frequent irregularities, Default in meeting commitments frequently, Delayed/Non-submission of stock statements/financial data, Return of cheques/Bills, Invocation of BGs/Devolvement of LCs, Declining Sales/Profit/Erosion of Net Worth and Non-compliance of terms & conditions of sanction etc. Then the methods to reduce the NPA were discussed, stating that there are broadly some legal and some non-legal options to reduce the NPA. The non-legal options are effective follow up and recovery, recovery through external agencies, restructuring/re-phasing, compromise, RBI/SBI One Time Settlement, write offs/AUCA and Sale of Assets of the borrower. The legal options are to approach forums such as DRT, Civil Courts etc. under Debt Recovery Tribunals (DRT) Act, enforcement under SARFAESI Act, BIFR cases and Lok Adalat.

Session - 5: Living in the Cyber-World : A Checklist on Cyber-Crimes for Bankers

Speakers who were (Cybercrime investigation & ethical hacker) gave brief introduction about the world of cyber-crime to the participants. They then discussed various types of cyber-crimes viz. ransom-ware, phishing/vishing, hacking, e-mail spoofing, ATM skimming and point of sale crimes, spamming, denial of service etc. with the help of slides and the actual

photographs. During the said session the practical experiences of the said crimes were cited. Then session went on to discuss the methods to prevent these kinds of crimes, and what the bankers can do for the same. During this session most of the participants raised their problems and issues about the cyber security and cyber-crimes and resource persons answered their queries.

Session - 6: Living in the Cyber-World : Decoding Technology for Data Protection

The session started with a brief introduction to the world of “hacking”. What is hacking and “ethical hacking” was elaborated. Role of ethical hackers in investigation and prevention of cyber-crimes was emphasized simulating live on screen, illustrating as to how the hacking really works. The high risk and prospect of access to personal details leading to cyber theft, extortion, fraud etc. was demonstrated. A demo of how the skimming works was illustrated. Speaker went on to discuss the importance of data protection for the bankers. He said that once the data of the account holders of the bank is stolen by the hackers, it may be sold in the black market over the internet and through which cyber criminals can wash out your entire bank account. Then he discussed the data protection methods and concluded his session.

Session - 7: Layered Transactions & Money Laundering: An Overview for Bankers-Interactive Session

A brief introduction to the Prevention of Money Laundering Act, 2002 (PMLA) was given. The speaker asserted that out of his experience in practice of the domain, he realized that without the active involvement of the Bank no money laundering is possible. Then he discussed the overall scheme of the PML Act and gave some practical examples to show as to how the bankers are actually involved in the money laundering cases. He said that there are three stages of money laundering viz. Placement, Integration and (*what comes out is*) White Money. Then he discussed various leading case laws on the subject including *Aman Gandhi's case*, *Radhamohan Lukotia's case* etc.

The second speaker for the session discussed the theme of the Act. He narrated the history of how PML Act came into force and how it is being implemented now. He said that there is cycle of money laundering viz. predicative crimes – placement – layering – and

integration. He discussed the case law – *Ram Jethmalani v. Union of India (2010)*. Thereafter, resource persons answered the queries put forth by the participants.

Session - 8: L. C. / Bank Guarantee for Foreign Loans Syndication : The Global Scenario

Speaker started her presentation with explaining the concept syndication. Syndicated loans are credits granted by a group of Banks to a borrower. The borrower selects an agent to facilitate communications and transactions between the him and the banking institutions ‘the syndicate’. Generally, it will be a bank that has the necessary syndication capability and experience to obtain market credibility. This bank will be the lead bank or the syndicate manager. Syndications are generally required when loans are for large amounts and long term. It is generally used for new projects loans, large equipment leasing and enterprises’ M&A financing in transportation, petrochemical, telecommunication, power and other industries. These syndicated loans are used for working capital credit (refinancing of small lines of credit, etc.); Export finance (including ECAs); Capital goods financing (machinery, etc.); Mergers & Acquisitions; Project finance (SPVs, structured according to cash flow); Stand-by facilities; Trade finance (Letters of credit, forfaiting); Guarantees (supply, service) etc. and for other similar reasons. Speaker went on to discuss the process of loan syndication and its intricacies. Then she discussed the global scenario with respect to the loan syndication. She gave the examples of USA and China to explain how they are using the syndication for loan market. Then she discussed the Indian examples of syndication viz. Yes Bank is raising \$400 million through two syndicated loan transactions in Taiwan and Japan, comprising of \$ 250 million from Taiwanese banks and \$150 million from Japan.

Session - 9: Addressing Insolvency : Hearing the Sounds of Wake-up calls

Speaker discussed the concept of insolvency with the help of his presentation. Thereafter, he went on to describe the scheme and structure of The Insolvency and Bankruptcy Code, 2016. He said the Act deals with reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of

such persons. It also intends to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto. Then major case laws on the subject was discussed. Speaker said that the area is still in the stage of development and law on the subject is infantile. There is still great scope for interpretation. With this remark he concluded the session.

Session - 10: Insolvency : The Insolvency and Bankruptcy Code, 2016

This session commenced as a panel discussion on request of the participants and with the permission of the dais. Adv. Alok Dhir and Adv. R. Raghunandan expressed their views on the insolvency laws and then invited the queries from the participants. Most of the participants raised their queries and problems about the insolvency proceedings and the panel tried to clear their doubts. The major problem which came out from the discussion was the availability of good insolvency professionals and good lawyers to deal with the cases. It was said that it is the responsibility of the banks and banking management and other officers to take the lead and try to find out new ways and nurture the Bar in this area. Another area of concern for the participants was the smooth functioning of the insolvency proceedings and timely orders from the tribunals. For this it was said by the panelists that as discussed earlier the area is still developing and one has to wait for some more time to get the same concretized.

Session - 11: Navigating Recovery Litigation: DRT Act and SARFAESI Act

The aim of this session was to provide working knowledge of the DRT and SARFAESI Act to the participants.

Speaker discussed the framework of DRT Act as well as SARFAESI Act. He said that both these Acts are enacted to securitize the bank loans. The money which bank lends to the borrower is the public money and should not be kept unrecovered for longer period. It is a burden on the exchequer. These are the special forums and bank officers have to use them to navigate their

recovery litigation. He said that initially DRT Act was brought in to help the banks to recover their dues, but after some time it was felt that said Act is inadequate to deal with the issue and hence the new Act i.e. SARFAESI Act was enacted in. When again it was felt that said Act is also inadequate to deal with the issue, Insolvency and Bankruptcy Code, 2016 has been recently introduced. Thereafter, he said that though these are the options for banks for recovery of their dues from the borrowers, the banker should not directly go under IBC i.e. Insolvency and Bankruptcy Code. In fact, it should be used as a last resort and the initial litigation should be always under DRT and SARFAESI Act. Thereafter, speaker expressed his views about the Acts and floor was left open for the discussion on the issue.

Most of the participants raised their concerns about the functioning of the Debt Recovery Tribunals and the Civil Courts. These were addressed by the panelists.

Session - 12: The Daily Menu of Bank Administration Disputes: Legal Heirs'/Succession, Fraud & Misrepresentation

This was the session meant for the participants to express their concerns regarding their day-to-day working in the banks and other related matters. Speaker started this session with a question "what is the difference between Lawyer and Law Officer?" He said that in a bank recovery litigation both Lawyers and Law Officers have their individual and distinct role to play. The job of the law officer is to look after the legalities in recovery before the litigation starts. On the contrary, the role of the lawyers comes in only when the actual litigation starts. In this sense the role of the law officers is to see that the dispute between the bank and the borrower ends before the litigation itself. Thereafter, the floor was left open for the participants. The participants shared asked their question to the panel members which were mainly relating to Nil Encumbrance Certificate, Consumer Cases, Audit Reports of the Banks, Problems with respect to the Gift Deed of the amount in accounts, Title-Deed related frauds etc.

At the end Justice G. Raghuram expressed the vote of thanks and concluded the conference.

P-1063
NATIONAL ORIENTATION PROGRAMME
FOR JUNIOR DIVISION JUDGES
DECEMBER 08 to 14, 2017

Mr. Prasidh Raj Singh
Ms. Nitika Jain, Law Associate



The National Judicial Academy Bhopal, organized a 7 day Orientation Programme for Junior Division Judges from 8th–14th December, 2017. The orientation programme initiated discussion on various themes like - Constitutional Vision of Justice, Role of Courts in Constitutional Democracy, Discovering Current Judicial Methods, Adherence to Core Judicial Values, Judging Skills: Art, Craft and Science of Drafting Judgment, Managing the Docket: Court and Case Management, Courtroom Technology: Use of ICT in Courts, Information Technology and Cyber Crimes, Electronic Evidence: Collection, Preservation and Appreciation, Environmental Law : Sustainable Development and Role of Courts, Role of Courts in Securing Gender Justice, ADR and Plea Bargaining, Stress Management, Law of Precedents, Impact of Media on Judicial decision Making and Forensic Evidence in Civil and Criminal Trials: DNA Profiling. The orientation programme was attended by 38 judges from different jurisdictions.

During the course of discussion, it was emphasized that the preamble to the constitution is an enduring symbol of social justice. The programme threw light on the importance of social justice with regard to fair treatment. Justice A. K. Mathur stated that people are born free, but chained in taboos of society which results in inequality. A reference was made to the judgments of *Olga Tellis*, *Bandhuva Mukti Morcha* and *Maneka Gandhi* cases where the Apex Court upheld the importance of social justice. During the discussion Articles 21A and 14 of the constitution were analyzed and discussed among the participant judges.

Discussions were undertaken on the prominence of *Constitutional Vision of Justice* in the emerging democracy. The speaker mentioned that various references have been made with regard to justice, but the term is not defined in the constitution. The distinguished speaker further deliberated on various parameters for mapping vision of justice such as - challenges to economy, globalization, policy and



politics, governance, education, parliamentary powers, judicial standard and administrative interference. To elucidate, the speaker narrated few instances where the Supreme Court has played an important role in upholding the rights of citizens like:

- i. In *Nyamgiri case*, dispute arose because of mining in Nyamgiri Hills in Odisha. Dongria tribe was affected as they worshipped the Nyamgiri Mountain. Water in the surrounding area became polluted and resulted in diseases and deaths. Dongria community approached the SC for protection of bio diversity and of environment and ultimately the project was stopped.
- ii. In another case relating to *Women's Right to Worship*, the right to worship of a priest was to be inherited after the death of the priest. There was no male heir. It was the custom that only male heir will take the position of priest. But, the female heir wanted to be the priest as a successor. The issue was whether a woman can be prevented from worshipping a goddess. Supreme Court allowed the daughter to worship as priest.
- iii. In another case, right of a priest was shared by two brothers. One of the brothers did not have any son. Daughter was denied right to worship. The issue was how will she perform the duty during her menstrual cycle? HC said that she has right to worship, she can appoint an attorney for those days.
- iv. In *Buddha dev Karmaskar's case*, sex worker was assessed murdered in red light area. The Supreme Court appointed a committee to reflect on condition of sex workers and their family. Another part of the judgement directed every state to constitute

committee to report on status of sex workers in the state.

On the theme *Discovering Current Judicial Methods*, various characteristics of judicial method were discussed including stating reasons for decision by giving justification, independence of judiciary, impartiality, political neutrality, and standard of fairness. It was stated that our current judicial system is independent and impartial. Accountability was touted as the core concept of the constitution. It was also pointed out that rule of law is essential in judging and it has significance in parliamentary democracy as well. It was highlighted that future of judicial methods depends on three elements - fairness, accuracy and efficiency. The core judicial values including fearlessness, integrity, impartiality, humanity and humbleness. The speaker pointed out that integrity is an important part of dispensation of judicial function. A reference was also made to the judgment of K.P Singh where the court stated that integrity means adherence to moral, ethical principles, soundness of moral character and honesty. It was also stated that adherence to contemporary social norms and morals is equally important.

On the theme *Managing the Docket: Court and Case Management*, it was emphasized that apart from discharging judicial function, judicial officer is also required to manage his court and supporting staff. Managing the court is a vital function for making optimal use of human and material resources. It was emphasized that ongoing court structure put a huge workload upon the judicial officers, and it was suggested that judges must set practical targets for themselves to achieve the maximum productivity and efficient court functioning. Further, to maintain cordial relation with the court staff, the resource persons suggested various methods which could be inculcated as best practices such as: training of staff, right man on the right job, ensuring each person does the work allocated to him, incentives, encouragement, periodical scrutiny, regular monitoring, ensure discipline, ensure punctuality and time management. Three tools of case management were discussed i.e. fix the similar cases, maintain proper docket and follow case law rules.

In the session on *Judging Skill: Art, Craft and Science*

of *Drafting Judgment*, the speaker highlighted the key elements for writing sound judgments. It was stated that a judgment should consist of facts, reasons, result portion, evidence finding and issues. It was also suggested by the speaker that judges must avoid copying irrelevant portion from another judgment. Facts should be articulated by marshalling the facts with evidence as they form an important part of the judgment. The language of the judgment should be simple so that even a litigant can understand it. It was stated that judgment writing is more of an art than science.

On the theme *Court Room Technology: Use of ICT in Courts*, The utility of technology in courts was emphasized. It was pointed out by the speaker that Court Information System (CIS) has been developed for all the stake holders such as judges, clerks and stenographers and all must make optimum use of it for proper case and court management. A reference to e-court website was also made and various phases of e-courts mission mode project was discussed upon in detail. The speaker further deliberated upon the importance of National Judicial Data Grid (NJDG) which provides collective and static data. During the course of session CIS tutorial was shown to the participants.

On the theme *Information Technology and Cyber Crime*, The changing dimension of law especially after introduction of 2G and 3G technology was emphasized. Numerous instances of crimes committed through the use of technology such as hacking, phishing, theft, industrial espionage etc. were discussed. The speaker made a reference of Esafe Service Commission established by Australian government which works for protection of privacy of people and suggested that the same could be adopted in our legal system.

During the session on *Electronic Evidence: Collection, Preservation and Appreciation*, analysed the provisions pertaining to electronic evidence. It was suggested that the court must always consider the certificate required under Sec. 65B of the Evidence Act for admitting electronic evidence during the trial. Further, the physical condition of electronic evidence should also be considered and court should ensure that such evidence are preserved in non-contaminated



environment. During the discussion it was recommended that a judge must check authenticity, relevance and reliability of every electronic evidence before rejecting its admissibility.

The next two sessions were taken by Professor Dr. Geeta Oberoi which included *break out group discussion* followed by *participant's presentation*. The sessions were participative and interactive, the speaker highlighted and discussed areas pertaining to Juvenile Justice Act. An exercise was circulated amongst the participant judges which initiated discussions on the decision making process and justification of the decision. Further, during the session a questionnaire consisting of twelve questions was given to the participants. These questions were related to test identification, appreciation of evidence, legal aid to the litigant and decision making process. Pertaining to this exercise participants were divided into groups and a representative from each group presented which were further deliberated upon by Dr. Geeta Oberoi. The session concluded with a presentation by the speaker.

On the theme *Environmental Law: Sustainable development and Role of Courts*, the speaker dealt on the provisions for environment protection such as The Water (Prevention and control) of Pollution Act, 1974, Forest conservation Act, Environment Protection and National Green Tribunal Act. A reference was made to the *T.N Godavarman's* judgment wherein the term 'forest' was defined for the first time. While dealing with sustainable development, the speaker stated that it is the basis of environmental law and highlighted Section 20 of NGT Act 2010 which includes sustainable development, precautionary principle and polluter's pay principle.

On the theme *Role of Courts in Securing Gender Justice*, the speaker referred to various landmark judgements by the Apex Court to ensure justice in gender sensitive issues like right to maintenance, rape, dowry, bigamy, prohibition of child marriage and guardianship of child. During the course of discussion following cases were deliberated upon which included *C. B. Muthamma, Air India vs Nagesh Meerza, Mohd. Ahmed Khan vs Shah Bano Begum, Daniel Latifi vs UOI, State of Maharashtra vs Chander Prakash Kewal Chand Jain, Independent thought vs UOI, Dr. Upendra Baxi and ors vs State of U.P, Ms Githa Hariharan and another v. Reserve Bank of India and another etc.* Lastly the Judgement on Triple Talaq was discussed at length amongst the participants.

In the session on *ADR and Plea Bargaining*, participants were asked to share their experience relating to ADR. Participants pointed out that litigants are not convinced about mediation and advocates are not supportive. It was stated by the participants that parties go for ADR as a delaying tactic and they do not appear for proceedings. It was pointed out that dispute adjudication and dispute resolution are completely different. In ADR parties select mediators or arbitrators and when a dispute is resolved there is win-win situation for both the parties. If mediation is not successful, parties are sent back to the trial. The speakers suggested that a judge can motivate and prepare parties for ADR by encouraging lawyers and litigants, highlighting its benefits like confidentiality and right to self-determination etc. The Concept of plea bargaining was also discussed in detail. A simulation exercise on mediation was taken up by Justice Manju Goel and Dr. SK Jain and discusses were undertaken on the issue raised in the exercise.

On the theme *Law of Precedents*, Ms. Hema Sampath emphasized upon the doctrine of Judicial Precedents developed by the common law countries. It was pointed out by the speaker that there may be situations where previous judgments are overruled. In such cases judges and lawyers are required to be updated. Further, reference to various landmark cases pronounced by the Supreme Court pertaining to precedents were made such as *National Insurance Company Limited vs*

Narayan Sethi and Chandra Prakash vs State of Uttar Pradesh. The doctrine of Stare Decisis was also highlighted during the course of discussion. The speaker dealt with constitutional provision relating to law of precedent i.e. Art 141 and discussed the cases, *Dwarka Das Srinivas v. Spinning Company, Kesavananda Bharati v. State of Kerala and Reshma Kumari v. Madan Mohan* in this regard.

On the theme *Impact of Media on Judicial Decision Making*, the speaker stated the advantages and disadvantages of media. She pointed out that there are cases where media has played a crucial role in dispensation of justice by making the public aware. At the same time there are instances wherein the media has obstructed the judicial proceedings in rape cases as the victim's identity is often disclosed by media. It was pointed that, on many occasions media trial hike up the matter and prejudices the purpose of court proceedings. There are possibilities of influence which cannot be overlooked completely. The speaker mentioned that there are no strict laws for punishment in cases of publication of false statement by media as in UK where publication of arrest is prohibited. Such mechanism could be incorporated in Indian Legal system as suggested by the speaker.

In the last session on the theme *Forensic Evidence in Civil and Criminal Trial: DNA Profiling*, Ms. Nisha Menon stated that forensic science deals with evidences which plays an important role in judicial proceedings. During the session she dealt with the types of circumstantial evidences, methods used in DNA profiling, what is DNA profiling, how DNA profiling is done and the Legal issues in DNA profiling. The speaker mentioned that, application of basic science for the purpose of legal proceeding is called forensic science. Further, Ms. Menon gave examples of Indian cases where DNA profile were taken up as evidence like *Sheena Bora murder case* and *Neeraj Grover murder case*. Lastly, the emerging technologies in DNA profiling like LCN DNA/touch DNA were pointed out during the discussion.

SE-07
NATIONAL SEMINAR FOR PRESIDING OFFICERS
OF DEBTS RECOVERY TRIBUNAL (DRT)
DECEMBER 09 to 10, 2017

Mr. Krishna Sisodia, Law Associate



The National Judicial Academy organized a National Seminar for Presiding Officers of Debts Recovery Tribunal (DRT), which was attended by 25 Presiding Officers from across the country. The objective of the Seminar was to provide a platform to the participants to exchange their experiences, knowledge and best practices in exercise of jurisdiction and to revisit with the help of domain experts evolving horizons of relevant law and jurisprudence. The programme deliberated on emerging issues with respect to the filing and disposal of DRT cases in an effective and efficacious manner; infrastructural deficit, acute shortage of staff and need for expertise on judicial and administrative side.

On the theme of *Recovery of Debts by Banks and Financial Institutions: Legal Framework and Jurisdictional Issues*, the speaker initiated the session by stating that DRT was established with the object to dispose of cases in a speedy manner by creating a friendly regime. However, the object is not achieved because of the problems arising with respect to the provisions of the SARFAESI (The Securitisation and Reconstruction of Financial Assets and Enforcement of

Security Interest) Act, 2002 and RDDBFI (The Recovery Of Debts Due To Banks And Financial Institutions) Act, 1993. For Instance, Section 14 of the SARFAESI Act, which empowers the District Magistrate to assist the secured creditor in taking the possession of secured asset; section 17, under which even the borrower has an option to file an application if the secured creditor has taken action against the borrower u/ section 13(4) etc. are some provisions which require significant changes amendment.

On the topic *Procedural Issues and Challenges faced by Debts Recovery Tribunals*, the speaker discussed various case laws like *AR Venugopal v. Jothesswaran* ((2016) 16 SCC 588) where court that observed DRT has no power to condone delay with respect to securitization applications. The panel also discussed section 14 and section 17 of SARFAESI Act in the light of the case *Standard Chartered Bank v. V. Nobal Kumar* ((2013) 9 SCC 620). Furthermore, the panel highlighted two principal issues for non-adherence to section 14:

- District Magistrate either take possession by



himself or direct the sub-ordinate authority.

- District Magistrate delegates his authority to Additional District Magistrate.

On the theme *Role and Responsibilities of DRT post SARFAESI Act*, the panel discussed the causes responsible for the enactment of the SARFAESI Act. One such cause was that RDBFI Act was unable to efficiently recover debts from the borrowers. The enactment of the SARFESI Act, 2002 with an attempt to revamp the slow pace of recovery of defaulting loans and mounting levels of non-performing assets (NPA) of the banks and financial institutions. Further, the panel stated that the rights under the RDBFI Act and SARFESI Act are independent of each other. Relief can be sought under both the statute parallel to each other, subject to the law of limitation. Thereafter, the panel also discussed in brief the Insolvency and Bankruptcy Code, 2016 which empowers DRT to adjudicate the matter with respect to natural persons and partnership firms; the panel alerted the presiding officers with the nature of cases that are likely to come before the DRT for adjudication.

On the subject *Case Management: Improving Efficiency & Efficacy of DRT*, the panel discussed 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 measured that new cases do not become old. It was emphasized that in order to prioritize work, one should apply the technique of Tracking, Clubbing and Grouping of Cases. The panel also highlighted the significance of 'National Court Management System' (NCMS) which was formed to provide institutional framework to 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 *Judicial Discretion; and the Art, Craft and Science of Drafting Judgments/ Orders*, the panel discussed the importance of scientific and technical intricacies in writing judgment since it is a qualitative process where judges put their ideas and express their views. Furthermore, the panel stated that Judgment should be written in a simplistic way so that it is understandable to all the stakeholders as well as to the common people. Furthermore, the panel cautioned the presiding officers to write normally, naturally keeping their limitations in consideration. Thereafter, the panel emphasized that every judgment is the command to the society which connotes that in a certain set of circumstances or facts, such will be the consequences, therefore, it is necessary that every judgment/order passed must be clear, correct and connected.

Summary of Grievances and Suggestions by Participant Presiding Officers for improvement of working of Debts Recovery Tribunals

The Panel during having interaction with Presiding Officers of DRTs from across of the country, the following problems, deficiencies or suggestions emerged:

- Most of the DRTs felt acute shortage of administrative staff like judicially trained registrars, stenographers, stamp reporters and recovery officers for efficient working of DRTs. The ad-hoc work by persons from different departments on deputation, including some staff provided by Banks, who are secured creditors or applicants before the DRTs, was presented as the main cause of delay in disposal of cases by DRTs despite hard work put in by Presiding Officers.
- At many places where there are no appointment of stenographers, the Presiding Officers and Chairpersons of DRTs are themselves required to type their own orders.
- The requirement of training of the available staff for uniform and harmonized working by NJA Bhopal and even State Judicial Academies was mooted by several Presiding Officers. On a lighter vein, one of the members described DRT as 'DISCIPLINE REQUIRED TRIBUNAL'.
- One of the significant suggestions was that the Recovery Officer be a judicial officer of the Rank of Civil Judge and/ or there should be a full fledged DRT-PO as Executing Court. This would facilitate speedy and efficient recoveries, fulfilling the object of the legislations.
- The six-day working in a week, instead of usual five-day working, was yet another concern raising issues of efficiency and employee morale.
- The lack of financial grants on divisional requisition basis instead of annual budgetary allocation even for administrative support like outsourcing of staff was a stated reason for falling short of the targets.
- Some DRTs also face problems in the area of wholly deficit buildings and other infrastructure facilities.

Besides various legal issues which were discussed in a very proactive and interactive manner in the presence of panelists, which clarified several doubts of Presiding Officers to improve their working, the aforesaid suggestions require urgent attention and expeditious decision on the part of the Central Government for putting DRTs on a respectable pedestal of a Tribunal of significance to discharge their onerous job of adjudication and enforcement of security interest while deciding various conflicting and pressing issues for recovery of debts/public money due to Banks and Financial Institutions which significantly contribute to the index of 'Ease of Doing Business' which the country so resolutely aspires to achieve.

P-1064
REFRESHER COURSE FOR PRESIDING
OFFICERS OF MACT
DECEMBER 15 to 17, 2017

Mr. Shashwat Gupta, Law Associate



The National Judicial Academy organized a Refresher Course for Presiding Officers of Motor Accident Claims Tribunal from 15th to 17th December 2017 which was attended by 37 participants. The refresher course was organized with the objective of capacity building of the presiding officers to facilitate expeditious adjudication of motor accident claims and included discussions on liability of insurance companies, assessment of disability, determination of compensation in cases of injury and death, role of presiding officers in expeditious settlement of claims and challenges in enforcement of awards.

The first session of the refresher course was on the topic- “Jurisdiction of Motor Accident Claims Tribunal”. The speaker reflected upon the scope of subject matter jurisdiction of motor accident claims tribunal and dealt with various circumstances wherein the jurisdiction of motor accident tribunal can be invoked. He also dealt with the doctrine of election of remedy and various situations wherein it can be employed in relation to motor accident compensation claims.

The second session of the course was on the theme of

“Liability of Insurance Companies in MACT Cases”. The speaker discussed the differences between ‘third party insurance policy’ and ‘comprehensive insurance policy’ and elaborated upon the defenses that an insurer can take under the Motor Vehicles Act, 1988. He further discussed the various features of the Motor Vehicles (Amendment) Bill, 2016 which is pending before the Parliament. He specifically discussed about the Motor Vehicle Accident Fund which would provide insurance cover to victim in case of road accident. Subsequently there were deliberations on the procedure for disbursement of compensation in situations involving public transport buses wherein the number of actual passengers is more than the maximum passengers insured under the policy of the vehicle.

The third session was on the theme “Interplay between Section 140, 163A and 166 of the Motor Vehicles Act, 1988. The speaker dealt with various kinds of liability provided under the Act i.e. Section 140, Section 163A and Section 166. Thereafter he dealt with the history behind the insertion of Section 163A in the Act. He also dealt with the concept of comprehensive policy and the coverage offered by such a policy. He stated that to invoke Section 166, it is necessary to prove negligence

of driver. The speaker also stated that Section 140(4) curtails only one of the defenses i.e., defense of negligence on part of the claimant and it does not mean that no defence at all can be taken by the insurance company or the owner. The speaker commented on the monetary cap of¹ 40,000 per annum which is fixed by the Second Schedule with respect to Section 163-A of the Act and opined that the government can change the compensation amount provided under the Act by passing a Government Order and no amendment in the Act is required for increasing the compensation.

The fourth session of the conference dealt with the topic- "Assessment of Disability". The speaker discussed the components of disability and thereafter distinguished between disability and loss of earning capacity. Subsequently the speaker proceeded to deliberate upon translating disability in financial terms. The speaker further distinguished between pain and suffering. He stated that the purpose of assessment of disability was to examine the loss of earning capacity and examining the loss of amenities. The speaker proceeded to discuss the method for disability assessment based on government guidelines. It was discussed that disability for each organ must be seen in relation to its functionality i.e. functional disability. The participants were also asked to understand the basic skeletal structure of the human body to so to better understand the medical reports and the nature of injuries sustained by the victim. The wide divergence among judges while granting compensation for injury to the victim was deliberated in detail during the session.

The fifth session of the course dealt with "Determination of Compensation in Cases of Injury". The speaker initiated the session with discussion on the concept of damages and compensation. The speaker further discussed the meaning of the term "Just Compensation" It was stated the driving license of the offender should always be checked along with the registration of the vehicle to check whether it was being used for the purpose mentioned in the registration papers. The speaker also asked the participant to provide certain amount of compensation under the head of medical expenses by ascertaining the normal cost of hospital fees in the city.

The sixth session of the course dealt with the "Determination of Compensation in Cases of Death". The concept of "legal representative" was discussed in detail with the participants. Thereafter the speaker discussed the various guidelines given in the case of *Sarla Verma and Others v. Delhi Transport Corporation and Another* [(2009) 6 SCC 121]. The deduction from the compensation amount on ground of personal expenses and its reliance on the number of dependents was discussed during the session. Subsequently, deliberations on method for calculating compensation for future prospects of the deceased also took place in the session. Lastly, the speaker discussed various directions given in the case of *Rajesh Tyagi v. Jaibir Singh* by the Delhi High Court.

The seventh session of the course was on the theme "Role of Presiding Officers of MACT in Expeditious Settlement of Claims". The session was initiated by the speaker by comparing the Motor Vehicles Act, 1988 with several other enactments and pointing out that no timeline is provided under the act to complete the proceedings. The directions given by the apex court in the case of *Jai Prakash v. National Insurance Co. and Others* [(2010) 2 SCC 607] were discussed in detail in the session. The speaker stated that the judges should examine the bare minimum of witnesses in such kind of proceedings since examination of a large number of witness would unnecessary prolong the trial. Thereafter there was a spirited discussion on the various models followed by different states in disbursement of the compensation amount to the victim.

The last session of the conference was on the topic- "Challenges in Enforcement of Award of Motor Accident Claim Tribunal". The speaker dealt with procedure to be adopted in case of nonpayment of compensation by the offender. There was also a discussion on enforcement of award in certain situations wherein the respondent was residing in a place outside the jurisdiction of the tribunal. Thereafter there were deliberations on the rate of interest which has to be provided on the compensation amount. Lastly, the speaker advised the participants to decide the cases before them at the earliest since delay in such matter would result in irreparable damage to the victims.

SE-08
NATIONAL SEMINAR FOR MEMBERS OF THE
CENTRAL ADMINISTRATIVE TRIBUNAL
DECEMBER 16 to 17, 2017

Mr. Rahul Ishwer Sonawane, Research Fellow



The National Judicial Academy organized a National Seminar for Members of the Central Administrative Tribunal on 16th and 17th December 2017. The entire programme was divided into Five Sessions over the duration of these two days. The participants of the seminar came from the Administrative Tribunals across the country viz., Kolkata Bench, Chennai Bench, Jabalpur Bench, Principal Bench, etc.

The objective of the programme was to explore the scope, contours and limits of the judicial review in the Tribunal; to deliberate on Constitutional and Administrative law principles relevant to adjudication at the level of the tribunal. The seminar also facilitated deliberations on the processes and procedures that ought to be integrated into CAT working as a consequence of the move towards e-Courts by introduction of Information and Communications Technology into administration of justice. Sessions provided a forum for learned members to share experiences, develop robust professional harmony

between technical/service Members and learned judicial Members; and identify good that enable speedier and efficacious disposal of cases in CAT.

SESSION-1

CAT: Contours of Jurisdiction; Relevant Constitutional & Administrative Law Principles

The first session commenced with the welcome address by Additional Director, National Judicial Academy, Bhopal. He said that the purpose of holding this seminar is knowledge sharing wherein not only the speakers but the other participants may also contribute. Then he gave a brief introduction of both the speakers for the day and handed over the floor to them.

Justice Naolekar welcomed all the Participants and asked each participant to introduce themselves. After the introduction, Justice Naolekar started his session. Talking about the Jurisdiction of Central Administrative Tribunal, he said that it is well settled that the CAT has the exclusive jurisdiction over the

service related matters and no other court can exercise its jurisdiction, but some exceptions can be found under the 1985 Act, in relation to particular matters. Thereafter, he went through a number of Sections in The Administrative Tribunals Act, 1985 and analyzed each section relating to the exceptions to the exclusive jurisdiction of the Central Administrative Tribunal. Two main judgments of the Supreme Court were discussed to understand the jurisdiction of the Central Administrative Tribunal viz. *S.P. Sampat Kumar v. Union of India* and *L. Chandra Kumar v. Union of India*. As the Sampat Kumar case was overruled by *L. Chandra Kumar*, the latter was analyzed in details.

Justice Mukundakam Sharma supplemented to Justice Naolekar's views by adding that in UK, there is no written constitution and the Parliament is supreme. But in India, the Constitution is the supreme and the Parliament is a product of the Constitution. Constitution speaks of establishment of different organs and each one of them is given separate powers. Judiciary includes various tribunals. Both Judiciary and Quasi-Judicial authority has been empowered to dispense justice and also to check the legality of executive action. Then he enunciated some Administrative Law Principles i.e. Principles of Natural Justice, Fairness etc. and opined that Justice should not only be done but also seem to have been done.

SESSION-2

Judicial Discretion in Adjudication

The Second session commenced with a series of questions raised by the participants regarding the topic of the first session. Most of the participants asked the questions to the resource persons relating to the jurisdiction of CAT and other related topics. Resource persons tried to clear their doubts. After a brief discussion on the similar line, Justice Mukundakam Sharma commenced his speech on the theme of the session 'Discretion'. He stated that every alternate probabilities you have, they should be legal probabilities also. From those you have to choose one, by applying your mind with reasonableness, which is fair and just. That is the discretion of a judicial mind. Unless extreme, you have to apply and accept the

discretion exercised by the administrative authority. Justice Sharma read out some guidelines to exercise discretion, viz. facts must be clearly understood, know the law well and apply it to the facts, when a hazy picture comes in your mind about the case do not take a decision, research on those matters, when you take a decision out of all the alternatives, ask yourself again if your decision is right and fair? Then only you will be able to take a judicial decision in the proper perspective. He quoted Lord Mansfield saying - *Discretion when applied to a court of justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful but legal and regular.*

Justice P. P. Naolekar then narrated his personal experience when he felt difficulty in coming to the conclusion in one case and to exercise his discretion. He also opined that the court can also take into consideration the social needs while passing orders citing the example of other jurisdictions where 'Community service' orders are passed as punishment. He asserted that the society is changing, thus the interpretation should also be changed in a manner where they can serve the social needs. Then the session was left open for the questions from the participants and resource persons answered their queries.

SESSION-3

The Art, Craft and Science of Judgment Writing

Justice Sharma commenced the session by acknowledging that the theme is interesting and by asking a question to all the participants, i.e. whether the judgment writing is an Art or Craft Or Science? After a brief discussion, he concluded that the judgment writing is all of the above. He gave the example of Justice Krishna Iyer, whose judgements are tough to understand, but beautifully written. He added that judgment is the creation of judge, which is like giving birth to a child. One can improve his judgment writing with time, but for that he should read as many judgments as possible.

A judgment should be written in the following parts:

- a. State the facts of the case. Understand it well and write it clearly, so u can analyze the law later on the basis of those facts.



- b. Laws, which are brought to the notice of the court.
- c. Issues framed, or points for determination should be delineated.
- d. Apply the law to the facts of the case.
- e. Refer, to some extent, contentions of the counsels.
- f. Appreciation of these contentions, and reasons for accepting or rejecting the contentions.
- g. Conclusion

Justice Sharma gave some practical suggestions to the members for writing a judgment that you have to do research on the applicable law as well. He urged to not to take cases as mere statistics and not to treat them as disposable commodities. They are sacred, as they are coming to the judges for their decision. Sometimes you become disposal minded, which should not be the perception.

Justice P. P. Naolekar then added that the proper and best judgments can be created by judges not after hearing the matter, but the preparation for that starts before the argument commences. If you read the file before hearing the argument, you will be clear with the facts, pleading of the parties, and the response given by the respondent. Then it will be easy to analyze and decide the issue. Once the initial preparation is made out, then you will understand the counsel better and you will be better prepared for forming points involved in the case for determination. That will save your time and will not require the lawyers to repeat things. Please note down the arguments advanced by the counsel in your own language. When a particular law or rule is to be analyzed, quote down the relevant judgment, and then analyze according to the pleading of the parties. Then it

will be easy for the higher court to understand whether the rule has been analyzed and it will also look precise, and to the point. Best way to cite a judgment is to quote the principal enunciated in it, rather than merely quoting the paragraphs; then the judgment would become precise. If the law is settled by the decision of Supreme Court or your High Court, then you need not quote the other relevant judgments. Thereafter, participants asked their questions on the topics which were dealt with by the panelists.

SESSION-4

Precedents: Identifying the *Ratio Decidendi*

Additional Director, NJA commenced the session with the welcome address. He mentioned in brief about the discussions which took place the previous day. Then he introduced the topic for the fourth and fifth session as well as both the speakers for the day, and handed over floor to them.

Justice Rajive Bhalla commenced the session by explaining hierarchy of Courts, distinguishing between facts and the law, reason, obiter and stare decisis. He mentioned that the Supreme Court judges feel that the subordinate judges disregard the precedents. Justice K. Kannan shared his personal experience saying that while being in High Court, he realized that he never made a law at all. Talking about the theme of the session, he began by telling about the evolution of precedents. He said it started in England in the 13th century. What was decided by judges over a period of time was collected, and that was made the basis for further decisions. In India, law is governed by precedents. To emphasize on his point, he read Art. 141 and 142 of the Constitution of India and observed that Supreme Court has jurisdiction over the whole of India and all the subordinate courts are bound by its decisions. Talking about the stare decisis, he mentioned that Stare Decisis is rooted in policy. We should decide some issues in same manner in which someone else before us is likely to, which gives a kind of certainty and impartiality of approach. Non-speaking orders will not be a precedent.



From this point, Justice Bhalla continued by enunciating that ratio decidendi literally means reason for the decision. The reason does not necessarily mean the facts. Each judgment contains findings, statement of principle of law and the judgment. The judgment is what the parties are concerned with. Principle of law is the ratio, which is binding on parties and the subordinate courts. Subsequently the floor was left open for the questions and participants raised many questions relating to the binding nature of judgement of high court at some other jurisdictions as well as within the same jurisdictions. They also raised the questions about the inconsistency between the two High Court judgements and also in between High Court and Supreme Court. Panelists answered their questions saying that all these problems are there because after the judgment of Supreme Court in L. Chandrakumar's case, the law has not been suitably amended by the legislature to accommodate the changes, which could have solved many problems. With this session 4 was concluded.

SESSION-5

Courtroom Technology: Moving towards "e-courts"

Considering the length of issues to be covered from the

previous session and the present issue having relatively lesser points to cover, the speakers decided to continue the discussion from the previous session. Justice Bhalla continued, that the Ratio Decidendi means the reason for deciding; or the principle or law in which the ruling opinion is founded. Ratio Decidendi and binding precedents are different. 'Declaration of law' is the key which we have to look for. Many judgments may not have 'declaration of law', but there cannot be any judgment without law. The enforcement part is always a judgment. Talking about the Obiter Dictum, not every statement of law in a judgment is binding. Statements which are not based on law is not binding, and is described as Obiter Dictum. Obiter has a persuasive value. There is a theory that even the obiter of the Supreme Court is binding, but we will not go deep into that.

Now moving to the present theme of 'E-Courts', a participant opined that this is an issue in which a work is in progress. Developments in CAT in this regard cannot be compared to that of in the Supreme Court and High Courts. Justice Bhalla suggested that he can write a letter to his Chairman for some initiative to be taken. Justice Bhalla also suggested that the High Courts are far ahead with regard to E-Court facilities. So you can make a request to your respective High Court.

After a brief discussion on the poor condition of E-Courts in the Administrative Tribunals all over the country, Justice Bhalla briefly enquired about the developments of Administrative Tribunals with regard to the E-courts and suggested some measures to improve the same. He said that today or tomorrow the tribunals have to accept the technology which is going to change the entire court system. Then he gave his write up to the participants on the use of ICT in courts and concluded the session.

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EAST ZONE-I REGIONAL CONFERENCE ON ‘ENHANCING EXCELLENCE OF THE JUDICIAL INSTITUTIONS : CHALLENGES & OPPORTUNITIES’

DECEMBER 16 to 17, 2017

**Dr. Amit Mehrotra, Assistant Professor
Mr. Shivaraj S. Huchhanavar, Research Fellow**



The NJA, in association with High Court of Chhattisgarh, Chhattisgarh State Judicial Academy organized East Zone-I Regional Conference on Enhancing Excellence of the Judicial Institutions: Challenges and Opportunities on 16th and 17th December 2017 at Raipur, Chhattisgarh.

Efficient functioning of courts is a non-derogable *necessitas* for proper and quality administration of justice. Continual dialogue, communication and exchange of evolving horizons of knowledge and best practices between judicial hierarchies—the Higher and Subordinate Courts—conduces and nurtures quality justice delivery. Therefore, the Regional Conference is designed to provide a forum for exchange of experiences, communication of knowledge and dissemination of best practices from across clusters of High Court jurisdictions in regions of our country and amongst hierarchies; to accentuate the experience of familial community between High Court and Subordinate Courts judicial officers; besides revisiting established and imperative norms of a constitutional vision of justice; elements of Judicial behavior; Social

Context judging and other specified topics. Justice Dr. B.S. Chauhan, Justice Thottathil. B. Radhakrishnan, Justice Prashant Mishra, Justice S. K. Mishra, Justice Dr. S. Muralidhar and Justice P. Sam. Koshy guided the discussion.

Session one focused on the *Constitutional Vision of Justice*. It is observed that the socio-economically challenged sections of the society are entitled to equality before the law and equal protection of the law. The covenant of justice is ensured when every citizen is entitled to justice. The greatest guarantee under the Indian constitution is the consistency of the institution i.e. the judiciary. The judiciary cannot stand as an umpire and it has to take an active role in pushing the goal of socialist, secular justice to its fruition. It was emphasized that greatest value in the constitution is the eligibility to dignity. It is not the judicial officer's duty to merely apply the precedents but rather use the discretion afforded to him by the legal system. Justice in its truest form has to be time-centric i.e. relevant to the time; space-centric i.e. relevant to the area; and issue-centric i.e. relevant to the issue. The unison of the three

leads to the fulfilment of the goals of socialist, political and economic justice and liberty. It was stated that Indian Constitution is the *Grundnorm* and subordinate courts are the face of the Indian judiciary. The justice has not been defined anywhere but in his view, injustice is when the litigant is forced to compromise. It is the judiciary's duty to compensate for the lawyer's incompetence by taking extra care of the interests of the litigant.

In second session *High Court and District Judiciary: Building Synergies* were discussed. It was deliberated that judiciary is the most important constitutional organ and Articles 233–235 constitute a part of the Basic Structure. The Constitution treats “High Court” and “Chief Justice” as two separate entities. The control over Sub-ordinate Courts vests in the High Court, but the High Court administration vests in the Chief Justice. The importance of Article 235 and Article 229 of the constitution of India was emphasized which speaks about the supervisory power of the High Courts. It was stated that Article 235 of the Constitution not only vests total and absolute control over the subordinate courts in the High Court but also confers a constitutional duty upon them to keep a constant vigil on the day to day functioning of the subordinate courts. The High Courts should act as a guardian of the lower judiciary. The High Court must protect an honest judicial officer and must take action against dishonest officers. Departmental enquiry against a Judicial Officer can only be made if there is proof that he has acted in gross recklessness in the discharge of his duties or that he failed to act honestly or in good faith or omitted to observe the prescribed conditions which are essential for the exercise of the statutory power. It is the responsibility of the High Court to administer justice strictly according to the law. High courts should exercise all administrative powers in good faith. It was remarked that judges should discharge their duty objectively and impartially, a judge shall not abuse any person. Importance of ACR and intra and inter-court discipline was discussed during the discourse.

The third session was on *Elements of Judicial Behavior: Ethics, Neutrality and Professionalism*. It was stated that judicial behaviour is not something which is restricted to the courtroom as it is not a closed



door affair. Judicial behaviour is mind management as there may be many reasons in the courtroom which might irritate a judge but proper mind management or mental state is very important for delivering good judgment. Neutrality is also very important in adjudication. Judges should have virtues of balance, courtesy and detachments; judgments must not reflect judge's ego, anger etc. and a judge should not allow his personal notions and bias to overwhelm his decisions. The role of ethics, discipline and professionalism in a judge's decision making was emphasized and it was concluded that decision making power is not genetic, therefore continuous judicial education is necessary to sharpen the decision making abilities and skills.

The fourth session was on '*Social Context Judging as a controlling element in statutory interpretation and exercise of discretion*'. The term 'social context' refers to an idea that judging is grounded in the human conditions and the society in which it takes place. 'Social context' must be used as a tool of adjudication by the trial courts, and their approach must be guided by the social realities *vis-a-vis* constitutional values. Therefore, judges need to expand their horizon of knowledge: societal and legal. It was advised that while adjudicating any matter on social security judges needs to be sensitive to protect the interest of the plaintiff and especially when the opposing party is strong enough to breach the interest of the plaintiff. Judges must defend the powerless against powerful and protect the rights of people according to the constitution and laws. It was also emphasized that in order to increase the efficiency, a judge must not compromise with the quality of the judgments.

The session five was on *Access to Justice: Information*



and Communication Technology in Courts. Information and Communication Technology is key for court systems for enhancing the efficacy, transparency and expand access to justice to the needy. History of ICT in Indian Court System, the objective of the E-committee, the concept of E-court, and National Policy and Action Plan for implementation of Information and Communication Technology 2005 was discussed. It was deliberated that 1st Phase of e-Court was started with an aim to make the staffs well acquainted with the system so that it will be easy to bring them under one umbrella. Training of judicial officers and court staff equip them with the computer and Case Information System (CIS) was emphasized. It was stated that CIS Master Trainers train District System Administrators who further train all the court staff.

Phase-II of E-Court project provides Cloud Computing Architecture which is efficient and cost-effective while retaining the present Server Rooms as Network Rooms and Judicial Service Centres as Centralized Filing Centres. It was emphasized that in Phase-II, Court Complexes are provisioned to be connected with Jails and Desktop based Video Conferencing. Phase-II provides for Judicial Knowledge Management System including Integrated Library Management System and use of Digital Libraries.

National Judicial Data Grid (NJDG) was discussed in detail. It was opined that NJDG will be useful for policy planners and policymakers and facilitate evolving

effective case management systems. It was further stressed NJDG can also be used for Data Mining, Online Analytical Processing (OLAP), Business Intelligence Tools, and it can be integrated with Interoperable Criminal Justice System (ICJS).

Session six was on *Access to Justice: Court and Case Management*. It was stated that word 'Access' means right to use something and 'justice' means the quality of being fair. It was emphasized that the justice system is a mirror of society, it reflects the values of the society; for efficient judicial system proper adjudicatory mechanism is necessary and the mechanism must be speedy, affordable and efficient.

It was stated that "*Access to justice is the hallmark of the society*" and justice is guaranteed by ensuring proper protection and enforcement of rights and duties. Highlighting the importance of the performance of the judicial system, it was pointed out that it also governs economic aspects of the country. It was emphasized that case and court management plays the most important role in eliminating the delay in the justice delivery system. In order to ensure speedy disposal of cases, a judge must not compromise with the quality of judgments. The public perception of the court is of great importance. The way a judge treats his staff, litigant, accused and witness also matters. They all must be treated with dignity and the staff must not be afraid of the judge. A judge must be calm and maintain a balance between his personal and professional life.

Followings suggestions were from the deliberations:

It was recommended that rules may be framed to use video conferencing facility for court proceedings.

Some of the subordinate courts working in rural/tribal areas are facing connectivity issues that are to be addressed to enable optimum utilization of ICT infrastructure.

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REFRESHER COURSE FOR HUMAN RIGHTS COURTS
DECEMBER 22 to 24, 2017

Ms. Ankita Pandey, Law Associate



A two and a half day Conference was organized as the refresher course for Human Rights Courts in India by the National Judicial Academy from 22nd December to 24th December, 2017. The creation of Human Rights Courts at the district level is among the objectives of the Human Rights Act, 1993. The refresher course was designed to assess/audit the working of Human Rights Courts within the framework of the Act and identify and evolve strategies for meeting the challenges and bottlenecks encountered while adjudicating the cases arising thereunder.

Session 1 - Concept and Development of Human Rights: A Jurisprudential Analysis

The ideas of Aquinas, Hobbes and J.S. Mill along with the ancient Greco-Roman and Indian scriptures were discussed to reiterate the concept of co-existence as an integral part of human rights. The French Revolution was duly acknowledged for the secularization of human rights principles. It was further discussed that any nation cannot be considered as legitimate if it denies its population the basic human rights. Therefore, judges

must ensure protection of human rights through proactive judgments. The issue of custodial violence and use of torture by police as a grave offence against human rights was raised. The legal history of Bhopal Gas Tragedy was also discussed to attribute the sorry state of human rights in India and the insensitive approach by the executive and legislature. In this regard, it was strongly stated that the judiciary is the only institution in the country with credibility. The session went on further to discuss the issue of recent killings by cow-slaughter vigilantes, massacre of Kashmiri Pandits, caste-based violence as instances of human rights violence. The session also lamented upon the lack of practical implementation on human rights in India despite having great conceptual and prescriptive understanding of these principles. The judges were requested to understand, recognize and realize their duty of protecting human rights in India through their innovative approach in delivering judgments.

Session 2 – General Principles of International Human Rights Law and its adoption in the Indian



Legal System

It was explained about how the feudal system created problems for people in enjoying rights all over the world including India & England and that the human struggle and conscience against the feudal system laid the foundation of Magna Carta. The Magna Carta played a significant role in the development of human rights principles at international level. It was also mentioned that the Universal Declaration of Human Rights had much inspired the makers of our constitution. It was stated that all principles of international human rights covenants cannot be enforced by Indian courts directly since India, unlike the United States or other European nations, follow the British model of Dualism in which the Parliament has to make a law along with the ratification of the covenant by India in order to enforce any provision of the covenant. For better explanation of the relationship between international law and the domestic law in India, reference was made to Article 253 and Article 51C of the Indian Constitution. It was stated that the Indian Supreme Court could ensure implementation of international law principles through its power of declaring law under Article 141 of the Indian Constitution and contended that many environmental legal principles such as polluter pays, public trust and sustainable development came to be enforceable in our country by this mechanism. The history of human rights at international level post-UDHR was lucidly explained in terms of strong opposition by member nations over surrendering their sovereignty in lieu of abiding by the principles of human rights. This led to the formation of two different covenants i.e. ICCPR and ICESCR. It was

explained how the Indian Constitution moves beyond Jeremy Bentham's utilitarian principle and depicts the crystallization of human rights principles through the provisions of writs.

Session 3 - Establishment of Human Rights Courts in India: Mandate, Mission and Vision

The definition of 'human rights' under Section 2(d) of the Protection of Human Rights Act, 1993 was analysed. Section 2(d) was considered as far too wide for the purpose of taking cognizance of matters by the human rights courts in the absence of proper classification of offences under the PHRA. The procedural inadequacies in the Act were stated and it was further discussed about why the Act faces lack of proper implementation, resulting in unsatisfactory results in curbing the Human Rights violations. The mandate of the human rights courts was discussed with reference to the term 'speedy trial' used in Section 30 of the Act. It was remarked that the human rights courts have failed significantly in the fulfillment of its mandate for the reason that neither have they been given the magistrate's power of investigation nor do the Act makes clear reference to the classes of offences that the human rights courts would take cognizance of.

Session 4 - Addressing anomalies in the Protection of Human Rights Act, 1993

The session commenced by addressing the history of the Protection of Human Rights Act, 1993 in the context of turbulent phases of 1990's when India was facing international pressure through United Nations Commission for Human Rights (UNHCR) for human rights violations. As a reaction to the same, the said Act was passed in a hurried manner with many loopholes. The major inadequacies of the Protection of Human Rights Act were listed out as follows:

- Section 30 of the PHRA lacks the definitions of terms such as 'offence', 'public servant' which creates jurisdictional complications for the human rights courts while taking cognizance of matters involving human rights violations.
- Lack of substantive and procedural mechanism for the human rights courts while referring the provisions of Section 12 & 30 of the Act.
- The National Human Rights Commission



(NHRC) & State Human Rights Commission (SHRC) have been reduced to report making body whose task is to place their reports before the Parliament/Legislative Assembly only to be disregarded by the executive and legislature.

- In many of the states such as Jammu & Kashmir, Himachal Pradesh, Bihar, the state governments have not even given the notification for establishment of designated District Courts as Human Rights Courts.

Further, reference was also made to Article 32 (3) of the Constitution, Section 40 & 41 of the PHRA as well as concept of compensation in tort law in order to consider these provisions as potential solution for human rights courts in the context of the procedural anomalies under the PHRA. It was emphasized that mere academic literature on human rights & zero practical application makes the functioning of human rights courts difficult.

Session 5 - Visualizing the role of Human Rights Courts vis-a-vis the Human Rights Commissions under the 1993 Act

The provisions of Section 30 of PHRA is related to creation of human rights courts and should not be mixed with the powers of the Commissions (NHRC & SHRC). The session lamented upon the lack of awareness about the existence of human rights courts among the people which forces them to file writ petitions before the Supreme Court & High Court under Article 32 and 226 of the Indian Constitution respectively in cases of human rights violations. The instance of Ryan International School murder case was discussed to reiterate the powerlessness nature of the Human Rights Commission. The session further

deliberated upon how the harmonious reading of the Constitutional principles and the PHRA along with proper coordination between the Human Rights Commission and the Courts could ensure the speedy trial in the cases involving human rights violations.

Session 6 - Protection of rights of women and children by Human Rights Courts

The session commenced by emphasizing upon the need for proper functioning of human rights courts in India since the groups most adversely affected by human rights violations are women and children. The concept of “multiple vulnerabilities” faced by women in general and specific groups such as sex-workers in our country was discussed. The term “Multiple Vulnerabilities” refers to certain factors which not only weakens the status of women but also prevent them from raising their voice against human rights violations due to factors such as poverty, illiteracy, lack of legal awareness, corruption among state department, etc. There is also need to curb the stereotypes faced by man and women alike when their cases are before the judges and it was also emphasized about how these stereotypes could potentially affect the legal positions of the victims/accused. The session also discussed in detail on child-friendly policies under POCSO and proper functioning of the Child Welfare Committees.

Session 7 - Human right of Fair and Impartial Investigation & Trial: An Audit

The term “Human rights” involves fair and impartial investigation and trial in an inherent form. The terms “Good Policing” and “Democratic Policing” were discussed in view of the growing complaints of custodial violence & torture before the National Human



Rights Commission (NHRC) and concerns expressed by the International community over this issue. Individual rights occupy a prime position in the Indian Constitution and the incidents of non-filing of FIR, extra-judicial encounters as well as use of torture by police are grave example of non-democratic policing. This is the reason why the condition of human rights in India is deplorable and feelings of distrust between public and police as well as image of police as an authoritarian and undemocratic force is rampant. For better understanding of the relationship between human rights and role of police during investigation and trial reference was made to the provisions of the UDHR such as Article 1,3,5,9 and 14 in conjunction to Article 21 of the Indian Constitution. It was further discussed how there is absence of mandatory compensation mechanism for the cases related to miscarriage of justice and it was considered as major impediment in fair and impartial investigation and trial.

Session 8 - Experiences and Challenges in the functioning of Human Rights Courts: Open House Discussion

Following suggestions/experiences were shared by the participants during the course of discussion:

- The judge presiding over a human rights court must be given the powers of a Magistrate, similar to the powers possessed by the Special Courts of NDPS, POA or Prevention of Corruption Act in order to tackle the cognizance loophole.
- The definition of various terms such as “Offence”, “Civil Servant”, etc in the Act must be framed and the compensation mechanism under the PHRA must also be formulated.
- The investigating powers should be provided to the human rights courts instead of the police for investigating the cases of human rights violations by the members belonging to the state such as police so that impartial investigation of the case can take place.
- The creation of special procedure for the purpose of prosecution under Section 18(a) and Section 30 of the PHRA would go a long way in facilitating speedy trial of offences arising out of human rights violations.
- The protection of human rights is misused by the terrorists & Naxalite groups as shield against police action and to carry out their illegal activities. To prevent this, it was suggested that there is need for separation of people belonging to terror/Naxalite groups from the purview of victims under the Protection of Human Rights Act, 1993.
- The National Human Rights Commission and the State Human Rights Commissions must be further empowered to tackle the instances of human rights violations more effectively.
- The human rights courts must have the power to take cognizance of the problems faced by the prisoners under the provisions of the Criminal Procedure Code.

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COURT EXCELLENCE ENHANCEMENT PROGRAMME-II
(CEEP-II)
DECEMBER 22 to 24, 2017

Mr. Rajesh Suman, Assistant Professor



The National Judicial Academy organized Court Excellence Enhancement Programme-II [CEEP-II] on 22-24 December, 2017. CEEP is conceived to develop a comprehensive framework for enhancing the excellence of courts involving all duty-holders of a Court i.e. Chief Judicial Magistrate, members of the Bar, Public Prosecutors and ministerial staff (Reader and Clerk). CEEP is an attempt to bring all duty-holders on one platform with a view to gain insights through discourses on challenges and constraints in achieving excellence in court. Participants from twelve high courts participated in this programme.

Major Suggestions and Highlights from the Programme

Session 1: Assessing and Enhancing Court Performance

The session began with opening remarks from Hon'ble Ms. Justice Manju Goel followed by Hon'ble Mr. Justice R.C. Chavan. Hon'ble Mr. Justice G. Raghuram also added his valuable inputs on his idea of Court

Excellence Enhancement. It was emphasised that the goals to be set out for Court Excellence Enhancement must not be generalised and should be court specific and practicably achievable. The speakers said that all duty holders should devise a Citizen's Charter which will be a significant step towards overcoming various milestones in the progress of a case by facilitating disposal of cases within a fixed time schedule. It will also go a long way in spreading the awareness among the citizens about the best services rendered by the judicial system. All the duty-holders including the judge, advocates, public prosecutors, clerks and staff of the court are an integral part of the entire system and it is not solely the judge but it is the combined efforts of all the duty-holders that contribute to the quality of the justice that is being delivered by the courts. The court staff must understand that the task assigned to them is vital and must also understand the purpose of the work that has been assigned to them. Towards this continuous training of court staff is required. Lack of coordination among the duty-bearers leads to significant loss of time.



Hence, there has to be team work, coordination, confidence in one-self as well as the other duty-holders, balancing of situations, devotion and dedication to the work and a set target to achieve.

Session 2: Discussion on Court Excellence Indicators and Model Court Plan

The second session was an interactive session with inputs from the participants. The speakers highlighted that all duty holders should strive to make their court excellent. An excellent court is that where every litigant coming to the court returns home satisfied. Such satisfaction would arise when the litigant is given proper attention and given an opportunity of being heard. Another feature of an excellent court is that cases should be heard on the day fixed for them and only few adjournments should be granted on rational and rare grounds. The speaker also highlighted various issues which prevent a court from becoming excellent. Other issues discussed in this session included that the judges and public prosecutors may mutually decide about the matters to be taken up by them on particular dates and on specified time, examination of witnesses through video conferencing, access of public prosecutors to the Bar library and offices for court staff with arrangement of information desks for litigants to reduce unnecessary disturbance to court staff.

Session 3: Challenges faced by the Duty Holders and Suggestions to Improve Performance of Courts

In this session the participants were divided into four groups- Chief Judicial Magistrates, Public Prosecutors, Advocates and Ministerial Staffs (Readers and Clerks). The groups were dispersed to four different places for Break-Out Group Discussions and filling the templates given to them.

Session 4: Challenges faced by the Duty Holders and Suggestions to Improve Performance of Courts

Based on the break out group discussions the representatives of the four groups came forward to present their respective suggestions to improve the performance of the courts. The suggestions focused on vision of an ideal court, key constraints and challenges in relation to the performance of court and how to improve functioning of duty holders.

Session 5: Open Discussion- Best Practice Solutions for Improving Court Performance

This session was chiefly devoted towards facilitating an open discussion between the resource persons and participants about the best practice solutions for improving court performance. The speakers highlighted importance of making court litigant



friendly and improving performance of court. An improvement in the performance of court will enhance the trust of the litigants in the court system. All duty holders should strive for improving their capacity through continuous learning. The speakers emphasised that all duty holders should improve management of their court and should ensure that cases are heard when listed for particular dates. The key concerns of discussions were improving storage facilities in courts, ensuring bar coding of files, ensuring availability of help desk, understanding of roles by duty holders, classification of cases according to nature of cases and priorities, regular mutual discussion among duty holders towards improving performance of court and avoidance of frivolous and vexatious litigation.

Session 8 & 9: Court Wise Presentation on Developing Court Excellence Enhancement Plan

In these two sessions, 9 trial courts made their presentations on Developing Court Excellence Enhancement Plan. Briefly discussing the situations of their respective courts, the presentations were mainly

directed at providing suggestions in relation to various aspects of court environment for improving the quality of service which the court delivers to the litigants. The major issues discussed included effective court management, access to courts, Court infrastructure, effective use of ADR measures, coordination among all duty holders, strategies to reduce arrears and pendency, avoiding delay in process service, use of information technology in court processes and human resource management.

Session 10: Way Forward

In this session remaining 3 trial courts presented their ideas and suggestions for developing Court Excellence Enhancement Plan. The Chief Judicial Magistrates first discussed the situation in their respective courts and then proposed various strategies to address issues affecting the performance of their courts. The session ended on a note of positive enthusiasm, hope and promise from all the participants to make best efforts for ensuring the successful implementation of the plan of an excellent court.

Governing Bodies of the NJA

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, Cheif Justice, High Court of Gujarat
4. Judge of High Court
 - Mr. Justice D.N Patel, High Court of Jharkhand
5. Ex- officio members:
 - i) Minister for Law & Justice, GOI
 - ii) Chairperson, Bar Council of India
6. Secretary, Department of Justice, Ministry of Law & Justice, GOI
7. Secretary, Department of Expenditure, Ministry of Finance, GOI
8. Secretary, Department of Legal Affairs, Ministry of Law & Justice, GOI
9. Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension, GOI
10. Two Law Academics
 - Dean Faculty of Law, Delhi University
 - Director, NLIU, Bhopal
11. Secretary General, Supreme Court of India
12. Director, NJA Bhopal

National Judicial Academy

Conceived in early 1990s by the Supreme Court of India, the NJA had to wait nearly a decade to get its infrastructure in place. On September 5, 2002 the then President of India, Dr. A.P.J. Abdul Kalam, formally dedicated to the Nation, the beautiful sprawling complex of the NJA, spread over 62 acre campus overlooking the Upper Lake at Bhopal. The President on the occasion released a Second Vision for the Republic in which a new and dynamic role for the judiciary was envisaged with a view to make India a developed country by 2020. *"The Academy"*, he said, *"may aim at developing attitudinal changes to improve judicial integrity and efficiencies"*. The NJA 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

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