

National Judicial Academy



REPORT

Workshop for Additional District Judges [P-1027]

11 – 13 August, 2017

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August 11th to 13th, 2017

PROGRAMME REPORT

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A three day National Workshop for the Additional District Judges was organized on August 11th to 13th, 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.

Justice Roshan Dalvi, Justice Ravi Tripathi, Justice Sanjeev Sachdeva, Mr. Vakul Sharma, Justice K. Hema, Mr. Deepak Kumar, Mr. A Raghunathan, Justice R.C. Chavan, Justice Dharnidhar Jha guided the sessions as “Resource Persons”.

Session-wise Programme Schedule

Day-1

Session 1- Challenges in implementation of the ADR system in Subordinate Courts.

Session 2- Court and Case Management: Role of Judges.

Session 3- Sentencing: Issues and Challenges.

Day-2

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

Session 5-Electronic Evidence: Collection, Preservation and Appreciation.

Session 6- Issues relating to Adoption in India J.J. Act.

Day-3

Session 7- Criminal Justice Administration: Appellate and Revision Jurisdiction of District Judges.

Session 8- Civil Justice Administration: Appellate and Revision jurisdiction of District Judges.

Session 9- Fair Session Trials

Session-1

Theme - Challenges in Implementation of the ADR System in Subordinate Courts.

Speakers: Justice Roshan Dalvi and Justice Ravi Tripathi

The workshop commenced with the introductory address by Justice G. Raghuram, Director, National Judicial Academy. Justice Raghuram explained the role played by National Judicial Academy in Judicial education and the vision and mission of the academy which is dedicated towards the enhancement of the justice delivery system. He informed the participants and the speakers present that the current programme would be the 1027th programme in the Academy since 2004. The Academy has been involved in the process of training judges from all the ranks of judiciary. He also brought to the notice of the participants that NJA has conducted programmes for SAARC countries, wherein many foreign dignitaries attended the programmes. Justice Raghuram handed over the session to the speakers Hon'ble Justice Roshan Dalvi and Hon'ble Justice Ravi Tripathi.

In the first session of the workshop the speakers emphasized that mediation is the best form of ADR system and strategy upon which it is based may be listed as the acronym POS. POS stands for identifying **P**roblems, generating **O**ptions, and reaching out for **S**olutions. On the question as to which time is right for reference of cases to mediation? It was explained that any time is a good time for reference of cases to mediation. A brief account of the major challenges faced in mediation was discussed including infrastructure, human resource, management and procedural issues such as inadequate case management, excessive interlocutory orders etc. Reasons behind failures of mediation processes was delved. What can't be referred to mediation was also discussed e.g. cases which involve point of law, interpretation of documents, alleged fraud, acts against society/human rights etc. In addition to it, she pointed out some reasons behind the failure of mediation Centre and also gave valuable suggestions such as:

- ✓ Mandatory reference to ADR.
- ✓ Proper case management by judges.
- ✓ Require committed teams of lawyers and judges.
- ✓ Create more and more public awareness.

Second Speaker Justice Ravi Tripathi probed to initiate an interactive session with the participants. He answered the queries of participants and provoked them to share their experiences to make discussion more productive. Best practices were summarized as take away.

Session-2

Theme - Court and case Management: Role of Judges.

Speakers: Justice Roshan Dalvi and Justice Ravi Tripathi

The speaker split the topic and explained the three ingredients in a systematic fashion. The ingredients chronologically dealt was in the order:

- a) What is meant by the word "Management"

- b) What constitutes “Court Management” and how can it be achieved effectively within the available means.
- c) How a judge needs to think innovatively to maximize output in one’s own Court.

Dealing with case management, the five cardinal elements of management i.e. planning, organizing, directing, co-coordinating and controlling were underscored. The essentials for a court to optimize management was dealt in detail touching on the important points such as: a) need to remove non- value added items, b) the “Pareto principle” (also known as the 80/20 rule, the law of the vital few, or the principle of factor sparsity) states that, for many events, roughly 80% of the effects come from 20% of the causes was relied to explain the work load in the court, c) Principle of paradigm (foundation) shift, which needs to apply in work, d) sharing of “best practice” to assist in proper management and e) use of judging resources in a good and optimum way, f) application of procedural simplification, g) decentralization, h) latest first principle etc. Requisites for case management helps to improve efficiency in work, reducing delays and cutting the costs. In addition to above, detailed discussions on stages of case management by referring to the relevant provisions of CPC, Indian Evidence Act pertaining to the recording of evidences, admission of correspondence etc. was done.

Session-3

Theme - Sentencing: Issues and Challenges.

Speakers: Justice Roshan Dalvi and Justice Ravi Tripathi

Sentencing is the expression penned by the trial judge after comprehensive considerations of the facts presented, established and the applicable law. It was asserted that unlike the western countries India awaits a policy on sentencing. Hence, there exists a discretion of certain degree available to the judge to arrive at a correct sentence in a case. While dealing with the issues and challenges in “Sentencing Policy” it was discussed that following broad points may be adhered:

- a) personal views should not be reflected in an order,
- b) a level of consistency must be observed,
- c) a standardized format is often helpful,
- d) reasoning and justification for quantum is an integral part and must form a part of sentencing.

Both aggravating and mitigating factors must be considered before sentencing. The implications of sentencing owing to the media ramifications remains a sensitive issue for branding a judge. The meaning and scope of sentencing was discussed. Stages requiring sensitivity while sentencing i.e. “bail” was pondered.

Session-4

Theme - Laws relating to Cybercrimes: Advances and Problem Areas.

Speakers: Justice Sanjeev Sachdeva and Mr. Vakul Sharma

The session on “Law relating to Cybercrime” was conducted using video and presentations. The speaker at the outset landscaped the session by a brisk updating on the historic perspective of the digital world and enlightened the participants about pros and cons of social media. The

current statistics of users of social networking was projected to astonishment, that 91% of adults and 84% of children have 'facebook' (FB) accounts, and are keen users to these online sites. Moreover, 5-6 % of these accounts are fake. One-third of the child accounts are under 13 years. An inclusive account of the kinds of commonplace cybercrime was projected and discussed in detail such as:

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

One of the pragmatic problem is since the govt. does not owns the cyber space, which is owned by private corporates, hence control over it by the Govt. becomes all the more difficult. Absence of uniform rules at the international level make sit further cumbersome. The Govt. of India notification of the "E-Mail Policy" on 18th February, 2015 was discussed. The effects of e-commerce including the contractual issues posed by click wrap, browse wrap and shrink wrap was discussed. The case law *Banyan Tree Holding (P) Ltd. V. A Murali Krishna Reddy and WWE v M/S Reshma Collections* was highlighted while discussing the jurisdictional issues. On how evidence can be collected from social networking sites *United States v. Joshna Meregildo* was cited. Discussion on process to block, deregister a website and the as to what is to be done by the judges was dealt. The points of blocking were discussed as a) end-user level (using end-user filters e.g. parental filters), b) Organizational level, c) State or national level (e.g. Saudi Arabia 86% success rate), d) Completely & indiscriminately. As to the question of who can block? It was mentioned that a) individual (e.g. user or uploader), b) an aggrieved person (Grievance Officer, intermediary Rules), c) An artificial person. Those who have been empowered to de-register or block are a) An intermediary (Grievance Officer appointed under law), b) ISPs/ Dept. of Telecom (Licensed by DoT, therefore by Court Order), c) Uploader of the content, d) Investigating Officer, e) Group Coordinator, Ministry of Electronic and Information Technology (MeitY), f) CERT-In (computer emergency response team), under Section 70B of Information Technology (Amendment) Act 2008., g) NIXI (The National Internet Exchange of India) a government non-profit company established in 2003 to provide neutral Internet Exchange Point services in India. It was established under section 25 of the Companies Act 1956, with the Internet Service Providers Association of India (ISPAI) to become the operational meeting point of Internet service providers (ISPs) in India., and h) A police officer under section 79(3)(d) of the IT Act, 2000 without a Court Order (A police officer not below the rank of inspector) or any law enforcement agent of appropriate Govt.

Session-5

Theme - Electronic Evidence: Collection, Preservation and Appreciation.

Speakers: Justice Sanjeev Sachdeva and Mr. Vakul Sharma

The session involved video illustrations of the various aspects of electronic evidence. The impact of digital foot prints were illustrated and highlighted. The criticality of the proper appreciation of electronic evidence in current day scenario was established. The various

nuances of handing and dealing with the evidence when it is presented and made available in electronic form is of paramount importance particularly at the trial stage. Dealing on electronic evidence, it was discussed that meta-data helps established originality of any electronic evidence. On the creation of evidence it was explained that:

- a) on front end it is created by the user and
- b) the machine creates it at the back end.

It was discussed in details citing a number of case law as to what has been recognized by the Supreme Court of India as an electronic evidence (e.g. e-mails, digital photo, video, IMEI nos. etc.). It was narrated that “source” and “authenticity” are the two key factors to be considered by Courts while appreciating electronic evidence. Best evidence must be considered as relied upon by *Tomaso Bruno v. State of UP*. Three basics to be considered as repeatedly emphasized in various cases while appreciating electronic evidences are:

- a) Standard of Proof,
- b) Source of authenticity and,
- c) Best evidence Rule

The resource person *inter alia* referred *Omychund v. Barker* (1745) 1 Atk, 21, 49; 26ER 15 33 to explain the subject matter.

Session-6

Theme - Issues relating to Adoption in India J.J. Act.

Speakers: Justice K.Hema and Mr. Deepak Kumar (CARA)

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

- ✓ Adoption is for welfare of child.
- ✓ Due consideration to wishes of the child.
- ✓ No payment or reward has been made in consideration for the adoption.

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

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

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

The third day of the workshop was dedicated to the appellate and revision jurisdiction of the district and the sessions court and fair trial.

Session-7

Theme - Criminal Justice Administration: Appellate and Revision Jurisdiction of District Judges.

Speakers: Justice R.C. Chavan and Mr. Raghunathan

The session was premised on the procedural law and jurisprudence evolved by the case law in India. The speaker deliberating on the jurisdiction, based the point of discussion, by exemplifying the statutory provisions of Protection of Women from Domestic Violence Act, 2005 (hereinafter DV Act) and Section 23, 28, 29 and 36 of the statute was discussed with reference to Sections 179, 372, 378 of CrPC. *Kunapareely v Krinapareddy Swanna* (2016)11 SCC 774 has cited while discussing and affirming the power of magistrate to grant permission regarding amendment of a complaint. In case of the procedure to obtain relief under the aforementioned Act, it was stated that if there is no explicit mention made under the Act then as per Section 28 and 36 and Section 5 of the Cr.P.C. will prevail. Discussions on how to write a judgment wherein difficulties are apparent owing to 'precedent' of higher courts, thereby a conflict arises in the minds of a judge in a particular case, as to how to deliver justice which is the primary duty of a judge was debated and discussed. Various operational queries were aired by the participating judges which was effectively argued, debated and answered by the resource persons. While discussing magistrates power to review or recall etc. para 64 and 65 of *Super Cassette Industries Ltd. V. Music Broadcast Pvt. Ltd.* (2012) 5 SCC 488 was discussed. In *Shalu Ojha v. Prashant Ojha*, (2015) 2 SCC 99 explaining the power of a magistrate to grant interim relief under the DV Act, *vis a vis* power and the limitations on the Sessions Court in its appellate jurisdiction was been discussed with reference to para, 18, 19, 20, 21 and 23 of the case law. On a separate note it was emphasized that since the participants are from the last or ultimate Court of facts, they should not remand the cases unless under situations wherein issues are not framed by the trial Court etc. It was also discussed that cognizance can be taken at various stages, it should not be understood that cognizance can be taken only once.

Session-8

Theme - Civil Justice Administration: Appellate and Revision Jurisdiction of District Judges.

Speakers: Justice R.C. Chavan and Justice Dharnidhar Jha

The revisional power of courts in civil matter were discussed threadbare, based on case law. The session was oriented more like a problem solving exercise. The participants were encouraged to ask issues and problems faced in their working as a judge. Section 115 of CPC was discussed, wherein parameters for exercising revisional power has been dealt. It was emphasized and suggested that judges should be very sensitive towards matter in which loss may be occurring, due to pendency of cases. Moreover, it was urged and suggested that

injunctions should not be granted, if it is against public policy. It was reiterated that in its jurisdiction as a judge s/he must be fearless and independent in order to appreciate appeal. Speaker R.C Chavan carry forwarded deliberations on revisional and appellant jurisdictions and explained distinction between both. It was explained that appeal is a matter of right of parties to the suit and revision depends on the discretion of the court. Further, it was also pointed out that the provisions in the “Provincial and Small Causes Court Act” which is specifically related with the revisional jurisdiction of civil courts must be carefully read and understood. At the end of the session, speakers answered the specific queries raised by the participants.

Session-9

Theme – Fair Sessions Trial.

Speakers: Justice Dharnidhar Jha and Mr. A. Raghunathan.

The session was largely premised on the major principles of fair trial as laid down by the case law jurisprudence in India. Objectives and best practices on “Fair Trail” was discussed in a participatory manner by citing various case law including *Thakur Das v. State of Madhya Pradesh*, AIR 1978 SC 1, a Sessions Court is duty bound to was consider in details the facts of each case and then frame charges. Cr.P.C. provisions i.e. Sections 193,203,204,209,227,228 and 226 were discussed and debated in detail citing relevant portions of many leading Supreme Court case law such as:

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

The sessions were participative engaging dialogue and arguments.