



**NATIONAL JUDICIAL ACADEMY**

## **Programme Report**

**P- 1101**

**Workshop for Additional District Judges**

**August 17 to 19, 2018**

**Prepared by Programme Coordinator:**

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A three-day National Workshop for the Additional District Judges was organized from August 17<sup>th</sup> to 19<sup>th</sup>, 2018.

The workshop discussed critical areas concerning adjudication at the District level; explored challenges in implementation of ADR system; discussed sentencing practices, advantages of integrating court and case management systems in district 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 discussed, evaluated and shared best practices on exercise of appellate and revision jurisdiction of District Judges, in criminal and civil domains, as well.

The theme of the sessions were challenges in implementation of ADR system in subordinate courts; court & case management: role of Judges; fair session trials; laws relating to cybercrime: advances and bottlenecks; electronic evidence: collection, preservation and appreciation; sentencing: issues and challenges; criminal justice administration: appellate and revisional jurisdiction of District Judges; civil justice administration: appellate and revisional jurisdiction of District Judges.

Hon'ble Justice Sunil Ambwani, Hon'ble Justice Dr. S. Muralidhar, Hon'ble Justice UC Dhyani, Hon'ble Justice RC Chavan, Hon'ble Justice Dharnidhar Jha, Hon'ble Justice K.C. Bhanu, Mr. Harold D'Costa and Prof S.P. Srivastava were the resource persons of the conference.

### **Session 1: Challenges in Implementation of the ADR System in Subordinate Courts.**

**Resource Persons:** *Justice Sunil Ambwani, Justice RC Chavan*

The theme for session one was on *Challenges in Implementation of the ADR System in Subordinate Courts*. The importance of ADR was been explained. Following advantages of the ADR were discussed:

- 1) To facilitate access to justice to the poor and disadvantaged;
- 2) To provide for informal, quick and inexpensive resolution of disputes;
- 3) To take away cases inappropriate for adjudicatory process;
- 4) Remove petty cases, which do not require any adjudication by courts;
- 5) To reduce the burden of statistical load of cases on the courts;
- 6) To help promoting in trade and commerce, "fair practice, good commerce and equality";
- 7) To maintain peace and harmony in society, by reducing hostility and promoting resolution of disputes in a peaceful manner;
- 8) Enhancing faith and confidence in the judicial system; and
- 9) To provide for dispute resolution by morals and not coercion.

It was deliberated that there is a mandatory requirement for the judges to consider at the appropriate stage, or at any stage, whether the dispute brought before them can be referred to any one of the five ADR processes, namely Arbitration, Conciliation, Lok Adalat, Mediation; or Judicial Settlement.

It was emphasized that Arbitration is an adjudicatory dispute resolution process, by a private forum governed by the Arbitration and Conciliation Act. If there is pre-existing arbitration agreement, the matter

has to be referred to arbitration invoking Section 8 or Section 11 of the Act. On referring to the process of arbitration the dispute goes out of the Court, the case stands decided, and does not require monitoring by the court. It may come back to court after adjudication for enforcement, and challenge under S. 34 of Arbitration and Conciliation Act.

It was also deliberated that Conciliation is a non-adjudicatory ADR process and is also governed by the provisions of the Arbitration and Conciliation Act 1996.

It was suggested that the Court should make a short order preferably in a few lines recording its satisfaction that the nature of dispute is not complicated; the disputes are easily sortable and may be settled by applying clear cut legal principles. It was stated that the order of Permanent Lok Adalat need not be brought to the court for its approval, and may be enforced as a decree of court.

It was highlighted that mediation is a structured process of dispute resolution in which a mediator, a neutral person trained in the process of mediation, works with the parties to a dispute, to bring them to a mutually acceptable agreement (settlement). The settlement must satisfy the requirements of a valid contract. It was emphasized that the mediator does not decide the dispute or give an award but act as a facilitator.

It was also delineated that the Court may at the stage of Section 89 looking at the nature of dispute and on being satisfied that there are elements of settlement, refer the dispute for judicial settlement.

The challenges to ADR process that includes understanding of the ADR process, hesitation of the court to make reference, confidence in adjudicatory process, absence of legislation for Mediation and Judicial settlement, lack of infrastructure and lack of trained Mediators and staff was also discussed and highlighted.

The cases *Afcons Infrastructures Ltd. v. Cherian Varkey Construction Company Pvt. Ltd. & Ors.* (2010) 8 SCC 24 and *Shailash Dharyawan vs Mohan Balkrishna Lulla* (2016) 3 SCC 619 were also discussed during the discourse.

## **Session 2: Court & Case Management: Role of Judge**

**Resource Persons:** *Justice RC Chavan, Justice UC Dhyani, Justice Sunil Ambwani*

The theme for session two was *Court & Case Management: Role of Judge*. The role of Judges in judicial decision making and adjudication according to law was discussed. It was stated that four words which prevail in bureaucratic society; Do, Delay, Delegate and Dump does not apply to Judges. Judges have to “Decide” the case according to the law and Doing Justice is a divine duty.

It was stated that people are the most precious assets in Human Resource Management. It was delineated that judges should be tactful while deciding a case. Being tactful means rules are to be adhered. The sanctity of the Court should be maintained. It was highlighted that court management means peace and tranquility of the court is not disturbed.

It was stated that there are three levels of ‘Management’; Top, Middle and Bottom. The Supreme Court and the High Courts are the top level of the management. It lays down the policy and rules. They are court of records. The subordinate courts are the middle level of the management. They have to translate policies, circulars or general rules of civil and criminal laws into functional language and knowledge. The staff of the courts are said to be the bottom level of the management. Their job is to implement the same. There are three tiers of management; conceptual, human and technical were discussed during the discourse.

Theories regarding management of various philosophers and thinkers like Mc Gregors, Abraham Maslow, Bentham, and Peter Pan were discussed. It was stated that according to Lord Denning, a Judge should be a

noble human being. There are many types of management which are to be kept in mind while managing a court. They are mind management, time management and stress control. The session was concluded with the suggestion to make the best use of resources and manage things properly.

### **Session 3: Fair Session Trails**

**Resource Persons:** *Justice RC Chavan, Justice UC Dhyani, Justice Sunil Ambwani*

The theme for session three was *Fair Session Trails*. It stated that Chapter 18 of the Code of Criminal Procedure 1973 talks about the provisions of session trial. It was emphasized that fairness, justice and reasonableness are the heart and soul of adjudication. In order to bolster the faith of a common man in the judicial system, it is of paramount importance that the trials are carried impartially applying sound principles of law. It was further stressed that justice needs to be done as well as seen to have been done to ensure public confidence in the justice system.

It was suggested that procedures e.g. framing of charges should be done properly by the judges. Grouping of documents like police report, investigation reports must be done meticulously. Accused should be told about the crime for which he has been accused and the examination of witness should be done properly. Examination of the accused should also be carried out by the judge (as has been provided under Section 313 of Cr.P.C.). Evidence given by the handwriting expert, child witness and ballistic evidence should be properly appreciated. Principles of Natural Justice i.e. 'Audi Altem Partem' and 'Nemo judex inre Causa Sua' should be strictly adhered to. It was delineated that Constitutional validity of fair session trial can be traced under Art. 20, 21 and 20. Pooja Pal's case that include right to speedy trial as fundamental right and Ajmal Kasab's case as right to Legal Aid as fundamental right was discussed during the discourse.

### **Session 4: Laws relating to Cybercrimes: Advances and Bottleneck.**

**Resource Persons:** *Mr. Harold D'Costa, Justice Dr. S. Muralidhar*

The theme for Session four was *Laws relating to Cybercrimes: Advances and Bottleneck*. It was stated that misuse of technology to do any unlawful activity is termed as Cyber Crime. The different types of cybercrime are cyber stalking, cyber contraband, cyber trespassing, Cyber laundering, cyber vandalism, cyber slandering, cyber theft, cyber porn, cyber fraud and cyber terrorism. It was stated that in the present world to detect cyber-crime is a big challenge. Cybercrime attack takes place from different countries. Internet is not owned by anyone in this universe. In India no agency is appointed to check whether any app or mail or server is vulnerable or not. It was emphasized that the root name servers are a critical part of the internet infrastructure because they are the first step in resolving human readable host names into IP addresses that are used in communication between Internet hosts. There are 13 root servers, out of which 10 servers were originally in the United States. The question regarding the security of end to end encryption of WhatsApp, and vulnerability of the Truecaller app was discussed.

### **Session 5: Electronic Evidence: Collection, Preservation and Appreciation.**

**Resource Persons:** *Mr. Harold D'Costa, Justice Dr. S. Muralidhar*

The topic for session five was *Electronic Evidence: Collection, Preservation and Appreciation*. It was suggested that one should follow proper procedure while recording electronic evidence. Digital evidence can be easily altered. Precautions are required during search, collection, preservation, transportation and

examination of evidence. Video documentation should be done with extra precautions. The procedure for taking evidence from the computer was discussed so that no tampering of evidence can take place. All the acquired digital evidences should be stored in a manner to ensure the integrity of the evidence. It was emphasized that collected digital device(s) should be wrapped or placed in appropriate packaging and further stressed to label all potential digital evidence.

It was deliberated that hashing is an irreversible cryptographic formula or function that converts the data into its digital fingerprint. Hashing used to ensure the integrity of digital evidence and media content. If the evidence is altered in any way, the hash value will also change. Admissibility of electronic evidence and section 65 (B) of the Indian Evidence Act was discussed during the discourse.

#### **Session 6: Sentencing: Issues and Challenges.**

**Resource Persons:** *Justice Dharnidhar Jha, Justice UC Dhyani, Justice Dr. S. Muralidhar*

The theme for session six was on *Sentencing: Issues and Challenges*. It was emphasized that determining the quantum of sentence is an important aspect of trial. Theories of Punishment which includes deterrent, retributive, preventive and reformative were discussed.

It was sated that Sec 53 of IPC talks about various types of punishments. Sections 28, 29, 30, 31, 432, 433, 433A, 434 and 435 of Cr.pc was discussed. It was opined that the problem arises when a judge is provided with discretion to award a sentence in a particular case. With the lack of any sentencing policy in India for awarding a sentence while exercising discretion it becomes extremely important that judges should exercise their power judiciously and reasonably. Section 3, 4, 5 and 12 of the Probation of Offenders Act 1958 were also discussed.

It was emphasized that there has been conflicts of opinions regarding sentencing. It was stated that death sentence should be in rarest to rare case. It was deliberated that Section 235(2) of Cr.P.C mandates the court to hear the accused on sentencing after conviction.

With regard to sentencing policy mitigating and aggravating circumstances were discussed during the discourse.

Various judgments that includes *Bachan Singh vs State of Punjab (1980) 2 SCC 684 Jagmohan v. State of U.P. 1973 AIR 947, Machhi Singh And Others vs State Of Punjab 1983 AIR 957, Rajendra Prasad v. State of U.P (1979) 3 SCC 646, Mithu Vs. State of Punjab (1983) 2 SCC 277, Ediga Anamma Vs. State of Andhra Pradesh (1974) SCC 443* were the part of discussion during the session.

#### **Session 7: Criminal Justice Administration: Appellate and Revisional Jurisdiction of District Judges.**

**Resource Persons:** *Justice K.C. Bhanu, Justice Dharnidhar Jha*

The topic for the session seven was on *Criminal Justice Administration: Appellate and Revisional Jurisdiction of District Judges*. It was stated that Chapter XXX of code of criminal procedure provides for revision power. In revision, acquittal cannot be turned into conviction and the matter can only be remanded. Special revision jurisdiction has been provided under section 398 of CrPC.

It was stated that the appellate Court has equal powers as of trial courts and appeal is of two types that is appeal against acquittal and appeal against conviction. The discussion on introductory order and final order took place. It was stated that revision does not lie against an interlocutory order but only against a final

order. It was deliberated that delay in itself cannot be used by the trial court as a ground for acquittal of an accused. The scope of corroboration of evidence was discussed. It was highlighted that corroboration is not a matter of law. Law does not provide for mandatory corroboration. It was deliberated that once the final report is accepted, the judge has only one option left to decide the case and dispose it off. Judges have to be cautious while deciding a case. It was stated that in criminal cases dismissing of revision is a case of default does not arise.

The judgments of Madhu Limaye vs State of Maharashtra 1978 SCR (1) 749, VC Shukla vs State through CBI 1980 SCR (2) 380, Pala Singh & Anr vs State Of Punjab 1973 SCR (1) 964, State of Himachal Pradesh v. Gian Chand (2001) 6 SCC 71, Amar Nath And Others vs State Of Haryana & Others 1978 SCR (1) 222 were been discussed during the discourse.

### **Session 8: Civil Justice Administration: Appellate and Revisional Jurisdiction of District Judges**

**Resource Persons:** *Justice Dharnidhar Jha, Prof S.P. Srivastava, Justice K.C. Bhanu*

The topic for session eight was on *Civil Justice Administration: Appellate and Revisional Jurisdiction of District Judges*. It was stated that the word “appeal” is not defined under CPC. It must be construed in its plain and natural sense. In its natural and ordinary meaning an appeal is a remedy by which a cause determined by an inferior court is subjected before a superior court for the purpose of testing the correctness of the decision given by the inferior court. An appeal is a proceeding where a higher forum reconsiders the decision of a lower forum, on (a) questions of fact; (b) questions of law, with jurisdiction to confirm, reverse, modify the decision or remand the matter to the lower forum for fresh decision in terms of its directions.

Appeal is a creature of statute. Appeal lies only against the decree, or appealable orders. Right of appeal is a substantive right. It was stated that appeal abates on death of a party if legal representative is not brought on records in the prescribed period and suo moto appeal is not possible. It was emphasized that appeal is a continuation of the suit wherein the entire proceedings are left open before the appellate authority.

Basic distinction between the right of suit and the right of appeal was discussed. It was highlighted that appeal should lie against a decree and not against mere adverse finding.

It was stated that right to file first appeal against the decree under Section 96 of the Code is a valuable legal right of the litigant, the whole case therein is open for rehearing both on questions of fact and law. The jurisdiction of the first appellate Court is very wide like that of the trial court and it is open to the appellant to attack all findings of fact or/and of law in first appeal. It is the duty of the first appellate Court to appreciate the entire evidence.

It was highlighted that Appellate Court must reflect its conscious application of mind, and it should record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties. While reversing a finding of fact the Appellate Court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding.

O.41, R.27 CPC which speaks about the production of additional evidence in Appellate Court was discussed. It was stated that Order XLI Rule 27 CPC enables the Appellate Court to take additional evidence in exceptional circumstances. The Appellate Court may permit additional evidence only and only if the conditions laid down in this rule are found to exist. Whenever the appellate Court admits additional evidence it should record its reasons for doing so.

Furthermore the cases of Smt. Ganga Bai vs Vijai kumar 1974 AIR 1126, Deepchand vs Land Acquisition Officer 1994 AIR 1901, Banarsi and Ors vs Ram Phal (2003) 9 SCC 606, Union of India vs K.V. Lakshman AIR 2016 SC 3139, Madhukar And Ors vs Sangram (2001) 4 SCC 756, Shasidhar vs Ashwini Uma Mathad (2015) 11 SCC 269, Union of India vs Ibrahim Uddin (2012) 8 SCC 148, Mathad v. Rudrayya S. Mathad and Ors., AIR 2008 SC 1108, Andisamy Chettiar vs A. Subburaj Chettiar ( 2015) 17 SCC 713 were discussed.

Section 115 CPC invests the power of Revision in High Courts. It was stated that the power of revision is limited to keep subordinate courts within the bounds of their jurisdiction. Primary object of the revision is to prevent subordinate courts from acting arbitrarily, capriciously, illegally or irregularly in exercise of their jurisdiction.

It was emphasized that those orders, which are interim in nature, cannot be the subject matter of revision under Section 115. Preferring an application under Section 115 of the Code is not a substantive right. It is a source of power for the High Court to supervise the subordinate courts.

With reference to the above Major S S Khanna vs Brig. F J Dillon AIR 1964 SC 497 and Shiv Shakti Coop. Housing vs Swaraj Developers (2003) 6 SCC 659 were discussed during the discourse.

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