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National Judicial Academy



**Workshop for Additional District Judges
(07th - 09^h September, 2018)**

Programme Report

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Introduction-

The NJA organized a three day “Workshop for Additional District Judges ” from 07th September 2018 to 09th September 2018. The workshop focused on critical areas concerning adjudication at the District level; explored challenges in implementation of ADR system; deliberated upon 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. During the discourse, the participants discussed, evaluated and shared best practices on exercise of appellate and revision jurisdiction of District Judges, in criminal and civil domains, as well. The emphasis was facilitating deliberations through clinical analysis of statutory provisions, case studies and critical consideration of the relevant judgments and minimizing the lecture format.

SESSION 1

Challenges in implementation of ADR system in Subordinate Courts

Speakers

Justice Manju Goel

Mr. Anil Xavier

Chair

Justice Ram Mohan Reddy

The first session on the theme “*Challenges in Implementation of ADR System in Subordinate Courts*” underlined that mediation is considered to be the best form of ADR system, conversely in India it is not practiced in the manner in which it has been espoused by many other countries. There is dearth of proficient mediators in our judicial system. The discourse highlighted that mediation does not perpetually give results, the reason includes:-lack of infrastructure since mediation needs a specific kind of atmosphere; parties are not willing for mediation; too much intervention by lawyers; huge variance between the interest of parties; lack of competent mediators etc. To do away with these systemic deficiencies a judge is desired to be a good mediator, and should know the mediation process, the elements of settlement, the appropriate stage for commencement of mediation process and how to encourage the parties etc. It was also emphasized

that a judge should not follow up the matter once it is settled between the parties. Section 89 of the Arbitration and Conciliation Act 1996, was comprehensively discussed along with other significant provisions.

SESSION 2

Court & Case Management: Role of Judges

Speaker

Justice Ram Mohan Reddy

Chair

Justice Manju Goel

The session on “*Court & Case Management: Role of Judges*”, emphasized that if a judge desires to manage the court in the most effective manner, it becomes imperative for him/her to gain trust of all the stakeholders, which is conceivable only when the judge is empathetic towards them with the realization that, a court is an organization for the people. Other facets of court management elucidated upon during the discourse included - following strict docket timeframes; budgeting; role of court managers; national judicial data grid; human resource management etc. The speakers highlighted that communication and demeanor are essential parts of court management and for which a judge needs to be cognizant of everything happening in his/her court. As far as case management is concerned it was stressed that the adherence with which a judge performs his/her work in the court gets reflected in his approach towards the disposal of cases. It was suggested that, for effective case management a judge must - verify substantially the number of pending cases in his/her court; verify the nature of case and required method for trial; find out required staff to handle the cases; take note of the fact that cases are not delayed; strike a balance between the category of cases and to ascertain the actual stage of the case and reasons for pendency, if any.

SESSION 3

Fair Session Trials

Speakers

Justice Sunil Ambwani

Justice Ram Mohan Reddy

Chair

Justice Manju Goel

The session on “*Fair Sessions Trials*” accentuated on the duties of a judge and whether they comply with the Rule of Law or not. According to the speaker when a judge complies with the Rule of Law automatic effective functioning of the court; dispute settlement would be in accordance with law and most significantly dignity and integrity would be integral in such a court. Such a court will definitely attract public trust and confidence in the justice delivery system. Moreover, the discourse discussed the prerequisites of effective adjudication i.e., opportunity of hearing [*audi alteram partem*], objectivity and reasoned verdict. It was stressed that the right to fair trial is essential but it is not absolute in nature. Nonetheless, it is constitutionally protected, which falls under Article 21 and also holds statutory protection under different statutes. To strike a balance a judge needs to look into the interest of the society and should promote the Rule of Law. It is prominent for a smooth trial process. A wrongful act of an individual cannot derogate fair trial.

The discourse suggested that in the administration of criminal justice a judge cannot be a mute spectator else, judgeship will become robotic. Relatively, a judge ought to search for relevant material and must participate in the trial process, then only will he know the demeanor of the witnesses. A judge can guarantee fair trial only when he practices Rule of Law. It should be ensured that the criminal does not go unpunished then only the victims will have confidence in the justice delivery system. It is also significant to balance the rights of the accused and the victims. Difference between speedy trial and fair trial was also discussed at length.

SESSION 4

Laws relating to Cybercrime: Advances and Bottlenecks

Speaker

Justice Sanjeev Sachdeva

Chair

Justice Navin Sinha

The fourth session on the theme “*Laws relating to Cybercrimes: Advances and Problem Areas*” illustrated on the history of internet and enlightened the participants on the pros and cons of social media. The current figures of users of social networking are quite astounding. Around 90% of the world population use Facebook or other social networking sites such as WhatsApp, Twitter etc. It has been seen that children below the age of 18 have accounts on various social networking. An inclusive account of the kind of cybercrimes was projected in detail such as –unauthorized use of trademark; identity theft; unauthorised use of copyright; defamation issues; disclosing of confidential data; corporate espionage; cyber bullying.

It was stressed that one of the pragmatic problem is that the government does not own cyber space, and it is rather owned by private companies, henceforth, control over the technology crimes becomes all the more intricate. On how the evidence can be collected from social networking sites the case *United States v. Joshua Meregildo*¹ was cited .Discussion on process to block , deregister a website and as to what is to be done by the judges in this regard was also deliberated upon.

¹ 883 F. Supp. 2d 523 (S.D.N.Y. 2012)

SESSION 5

Electronic Evidence : Collection, Preservation and Appreciation

Speaker

Justice Sanjeev Sachdeva

Chair

Justice Navin Sinha

The session on “*Electronic Evidence: Collection, Preservation and Appreciation*”, highlighted the impact of digital footprints and appreciation of electronic evidence in contemporary times was established. It was emphasized that it is not conclusive in nature. Such types of evidence are generally found in storage device, digital files etc. Electronic evidence is classified into two types –volatile evidence and non-volatile evidence. The concept of computer forensic is termed as a sequence of packets in a computer network and it explains the digital artefact. Significance of Meta data helps in establishing the originality of any electronic evidence was discussed with many visual examples and it was stated that on front end it is created by the user and the machine creates it at the back end. The discussion elaborated that authenticity and veracity are the key factors to be considered by courts while appreciating electronic evidence. It was suggested by the speaker that while appreciating evidence three things are to be kept: - standard of proof, source of authenticity and best evidence rule.

SESSION 6

Sentencing: Issues and Challenges

Speakers

Justice R. Basant

Justice Anjana Prakash

Chair

Justice Navin Sinha

The session on “*Sentencing: Issues and Challenges*”, emphasized that sentencing is the expression penned by a judge after an exhaustive consideration of the facts presented, established and

applicable law. Sentencing is based on the facts of the case, nature of the offence and societal expectations. Thus the role of a judge is to adjudicate upon the crime and to see whether the person accused has committed the crime or not. It was pointed out that if the sentence is dependent on the personality of a judge, then it would be in violation of Article 14 of the Constitution, therefore a sentence should be based on concentrated principles. This is possible only when a judge is impeccable in the principles he is applying in determination of the sentence. The speaker suggested a few principles which if, applied can aid the judge in reaching out to the purposive choice of sentence namely: deterrence, retribution, reparation, reformation and that turpitude followed by atonement leads to salvation. Another speaker opined that the purpose of sentencing is to ensure that whoever guilty is suitably punished. The principles of punishment should be put together while pronouncing a sentence. It was suggested that biases should be done away with, by insulating the self, via looking into the constitutional obligations.

SESSION 7

Civil Justice Administration: Appellate and Revision Jurisdiction of District Judges

Speaker

Prof. S.P. Srivastava

Chair

Justice Anjana Prakash

The session on “*Civil Justice Administration: Appellate and Revision Jurisdiction of District Judges*”, emphasized that appeal is the creation of a statute, which can be filed against the decree or appealable order. Appeal is not against the order or the judgement. It was stressed that the appeal cannot be filed by a person in whose favour the decree has been issued by the court. Appeal has a continuing nature. It was accentuated that there are two ways to set aside the ex- parte decree i.e. when the appeal has been filed and disposed and by filing application under Order 9, Rule 13. Elaborate discussion on some of the leading case laws on the topic formed an integral part of the discourse.

SESSION 8

Criminal Justice Administration: Appellate and Revision Jurisdiction of District Judges

Speakers

Justice Anjana Prakash

Justice K.C. Bhanu

The last session “*Criminal Justice Administration: Appellate and Revision Jurisdiction of District Judges*”, commenced with discussion on the five principles of criminal revision namely; when the procedure is not followed by the trial court and there is defect in the decision; when the decision is grossly erroneous for instance - evidence not corroborated, witness is not corroborated etc; when the findings are not based on evidence; when the material evidence has been overlooked; and finally, when discretion has been used arbitrarily. The concept of interlocutory order was also discussed. It can be termed as an order enabling the parties to execute the work in a particular manner that it will not affect the rights of the parties. What type of orders can be placed under the head of interlocutory order also formed part of the discourse. The discussion also highlighted that a revision petition can be filed in court only when the records relating to the petition are not produced before the court. If at all it is heard, the time gets elapsed rendering the petition of no use. Importance of Sec 397 was also discussed at length. The speakers opined that a judge must protect miscarriage of justice, and differentiate between legality and illegality. There are two types of appeal filed in criminal matters i.e. against acquittal and against conviction. Conviction in case of acquittal, there must be in compliance to substantial reasons so as to accept the appeal and presumption of innocence is strengthened with evidence. It was opined that instead of just accepting the conclusions, one should find reasons for own conclusions, as it gives clarity to the parties and is applicable for all types of orders, be it interlocutory, final, acquittal or dismissal.