



NATIONAL JUDICIAL ACADEMY

Programme Report

P-1155

WORKSHOP FOR ADDITIONAL DISTRICT JUDGES

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The Academy organized a three day workshop for Additional District Judges. 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 such as issues and practices pertaining to collection, preservation and appreciation of electronic evidence; and 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 on 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 the Implementation of the ADR System in the Subordinate Courts.

Resource Persons: *Justice R.C. Chavan, Justice Dharnidhar Jha*

The theme for Session One was *Challenges in the Implementation of the ADR System in the Subordinate Courts.*

In the first session the speakers discussed the need and advantage of ADR System in our legal system; as there are approximately four crore cases pending in the courts which may get settled amicably through the proactive approach of the judges. Emphasis was laid on Section 89 of the Arbitration and Conciliation Act, 1996 and Order 10 of Civil Procedure Code, 1908 (herein after CPC). Some of the major challenges faced in the implementation of ADR System was also explained, such as: advocates pressuring their client not to settle, non-appearance of parties, lack of orientation of litigants, officers and advocates not considering or not knowing the importance and advantages of ADR, no faith in the ADR System and anti-ADR attitude of the party.

The speakers also gave some suggestions to address the challenges of ADR System, such as: personal indulgence of judicial officers, as judge's indulgence is more effective than that of a trained mediator, direct communication with the parties, jointly or separately, use of unambiguous and comprehensible language, informing the parties about the importance and benefits of ADR and to make a genuine attempt for settlement. It was highlighted that Legal Service Authority Act 1987, which has given the statutory status to Lok Adalats was a result of *Hussain RR's* judgment. It was explained that only those cases which come under section 19 and section 20 of the Legal Service Authority Act, can be referred for Lok Adalats.

Session 2: Court and Case Management: Role of Judges

Resource Persons: Justice K. T. Sankaran, Justice R.C. Chavan

The theme for Session Two was *Court and Case Management: Role of Judges.* In this session the speakers emphasized that proper time management is very vital for better court and case management. The punctuality of a judge is very important. It was suggested that proper notes must be maintained by the judge regarding the date of cases and urgent matters must be taken urgently.

The concept of Time-Motion Study was explained and it was emphasized that court time should not be wasted in unproductive work which is irrelevant to the justice delivery system. It was highlighted that there should be a specific time-line for disposal of a case. Suggestions made in the session for good court and

case management, included - Posting of cases in cause list be limited to cases that can be entertained by a particular court, Adoption of special list system as followed by Kerala High Court, Developing skills of dealing with lawyers, giving fair hearing to lawyers to argue the case, Managing stress, Avoid getting emotionally involved with the matter in proceedings before the court and Positive attitude.

It was stated that District Court Monitoring System (herein after DCMS) was introduced to help in assessing and remarking the judges on daily basis. However, it was opined by the participants that DCMS increases their stress level which in turn affects their efficiency in court.

It was suggested that judges need not to worry about the remarks and assessment if they are working sincerely and honestly, and it was recommended that judges should also devote their time towards their family. The case of *Sharad Birdhi Chand Sarada vs State of Maharashtra* (1984) 4 SCC 116 was discussed during the discourse.

The session further highlighted Kerala's 'Special List System' introduced by Chief Justice P.D. Dinakaran, which aims at reducing stress in judges. According to this system, only two cases, that has to go for hearing before the court should be listed on the same day apart from the interlocutory and other miscellaneous applications.

The speaker discussed 'Case Flow Management' as another criteria for case management. It was stated that case flow management was introduced in *Salem Advocate Bar Association vs. Union of India* (2005) 6 SCC 344, when Civil Procedure Code Amendment Acts 1999 and 2002 were passed and provisions like Order 6 Rule 17 of Civil Procedure Code, 1908 were amended and reintroduced. The constitutional validity of both the amendments were cross-challenged by Salem Advocate Bar Association in the same case and this case changed the course of civil litigation in India.

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

Resource Persons: *Justice K. T. Sankaran, Justice Dharnidhar Jha*

The theme for Session Three was *Civil Justice Administration: Appellate and Revision Jurisdiction of District Judges*. In the third session the speakers elucidated that appeal is the creation of a statute, which can be filed against the decree or appealable order. In order to get a brief understanding, three aspects of appeals were explained:

- a) Appeal from Decrees- Related provisions: Sections 96,97,99,99A and Order 41 CPC,
- b) Appeal from Order- Related provisions: Sections 104,105,106 and Order 43 CPC,
- c) General provisions related to appeal: Section 107 and 108 CPC.

It was stressed that the appeal cannot be filed by a person in whose favor the decree has been issued by the court. It was stated that there are two ways to set aside an ex-parte decree *viz.* firstly, when the appeal has been filed and disposed and secondly, by filing application under Order 9, Rule 13 CPC.

The speaker posed a question to the participants as to whether Section 5 of Limitation Act, 1963 is in conflict with Rule 3A Order 41 CPC. After obtaining views of the participants, it was explained that there is no case of conflict between the two and both provisions will prevail separately. It was highlighted that an appeal can only be filed against a decree. Under Section 96 CPC an appeal is not permissible if there is a judgment and in that light the case of *Smt. Ganga Bai vs Vijay Kumar* AIR 1974 SC 1126 was discussed.

The case of *Deep Chand vs. Land Acquisition Officer*, AIR 1994 SC 1901 was also discussed wherein it was held that findings cannot to be considered as a decree. The case of *Banarasi and Ors vs. Ram Phal* (2003) 9 SCC 606 wherein it was emphasized that the decree, to the extent to which it is against the respondent cannot be interfered, set aside or modified to his advantage unless he files an appeal or takes cross objection was discussed in the session.

The importance of Order 41 Rule 27 CPC was emphasized which provides for production of additional evidence in the appellate court. There are two remedies available to set aside an ex-parte decree either a person can go under Order 9 Rule 13 CPC or the person can directly approach the first appellate court.

The speaker discussed revisional and appellate jurisdictions and explained distinction between the two. It was explained that appeal is a matter of right of parties to the suit and revision depends on the discretion of the court. The provisions of Section 115 CPC was also stressed upon which enables the High Court to call for records of any case decided by the court subordinate to the High Court. The session concluded with discussion on the case of *Suryadev Rai vs. Ram Chander Rai* (2003) 6 SCC 675 in which it was held that the curtailment of revisional jurisdiction of the High Court does not take away the constitutional jurisdiction of the High Court to issue the writ of *certiorari*. It was also asserted that the writ of *certiorari* is directed against the act and order of proceedings of the subordinate court and can also be issued between two private parties.

Some of the leading cases such as *U.O.I. vs K.V. Lakshman* (2016) 13 SCC 124; *Madhukar and Ors vs Sangram* (2001) 4 SCC 756; *Chintamni Ammal vs Nandagopal Gowder* (2007) 4 SCC 163 were also discussed during the discourse.

Session 4: Criminal Justice Administration: Appellate and Revision Jurisdiction of District Judges.

Resource Persons: *Justice Joymalya Bagchi, Justice Meenakshi Madan Rai, Justice S.Nagamuthu*

The theme for Session Four was *Criminal Justice Administration: Appellate and Revision Jurisdiction of District Judges*. It was stated that right to appeal is not an inherent right but is a statutory right provided in the Chapter XXIX of Code of Criminal Procedure (herein after CrPC). Right to appeal against acquittal and conviction was discussed during the discourse. It was stated that if right to appeal does not prevail then only revision is applicable. The case of *Murgesan and Ors vs State through Inspector of Police* (2012) 10 SCC 383 was discussed where the general principles regarding the powers of appellate court while dealing with appeal against the order of acquittal was enunciated.

The power of appellate Court was discussed and in that light the interpretation of Section 386 CrPC was deliberated upon. Appeal by the State government against sentencing was discussed The procedure for filing of appeal when the appellant was in jail was also discussed. The resource person emphasized the grounds on which the appeal may be summarily dismissed and the procedure for hearing of such appeals. Special right of appeal in certain cases were also deliberated upon.

Provision of revision enunciated in Chapter XXX CrPC was elucidated and in that light, revisional powers of the sub-ordinate court was discussed in detail. The case of *Popular Muthiah vs State represented by the Inspector of Police* (2006) 7 SCC 296, was deliberated upon whereby it was held that the revisional powers of the High Court and the Sessions Court are pointed out in the Code separately. It was stated that High Courts exercises larger revisional power than session's court. The revisional court during pendency of the trial may exercise its revisional jurisdiction under Section 397 CrPC and may also direct further inquiry in terms of Section 398 CrPC. It was further stressed that in the event of any conviction by a court of sessions,

an appeal would lie before the High Court. It was further emphasized that an appellate court while exercising its power under Section 386 CrPC may also take further direct evidence under Section 391 CrPC in order to cull out the truth.

Right of filing a revision petition and revisional jurisdiction of court were also discussed in the light of *Girish Kumar Suneja vs CBI* (2017) 14 SCC 809. While the text of sub-section (1) of Section 397 of the CrPC appears to confer very wide powers on the court in the exercise of its revision jurisdiction, this power is equally severely curtailed by sub-section (2) thereof. There is a complete prohibition in a court exercising its revision jurisdiction in respect of interlocutory orders.

Session 5: Fair Sessions Trials

Resource Persons: *Justice Joymalya Bagchi, Justice Meenakshi Madan Rai, Justice S.Nagamuthu*

The theme for Session Five was *Fair Sessions Trials*. The session commenced by putting a question to the participants as to, what should be the first issue which should be raised in the minds of the judges when a sessions trial commences. Different views emerged but the speaker opined that, when a trial commences, the first thing a judge must see in relation to fair trial is whether the accused is represented by a lawyer or not, and if he is not, the trial becomes *void ab initio*. Reference was made to *Mohd. Ajmal Amir Kasab vs State of Maharashtra*, (2012) 9 SCC 1, in which it was held that absence of lawyer is a breach of human and fundamental right under Article 21 of the Constitution but it does not vitiate the trial. The Supreme Court held that at any stage of a trial if the parties are not represented by an advocate, it will be a good ground to hold that the trial is in violation of 'fair trial'.

It was also emphasized that in order to have fair trial, every individual must be informed about his right to be represented by a competent lawyer. Two suggested methods to appoint a lawyer in case of absence of the same are, firstly, lawyer can be appointed through Legal Service Authorities, and secondly, appointment can be done according to Section 3 and Section 4 of the Code of Criminal Procedure, 1973. Various provisions of CrPC that included Sections 313, 321, 193, 203, 204, 209, 227, 228 and 226 were also discussed during the discourse.

Significant points stressed by the speakers with relevance to fair trial are:-

- The rights of the accused has to be considerably protected, opportunity must be given to prepare and present the case.
- Supply of all the relevant materials/ documents to the accused.
- Examination of witness under Section 164 of CrPC and recording of the statement of accused under Section 313 must be done in a fair manner. The question put to the accused under Section 313 of CrPC should be short and comprehensible language should be used.
- The trial should be practical, pragmatic and must arrive at correct decision at the earliest.
- Delay and slowing down tactics and practices must be avoided.
- Protection of witness is also a crucial part in conducting of fair trial as held in one of the leading case of *V.K. Sasikala vs State represented by the Superintendent of Police* (2012) 9 SCC 771.
- In order to protect the witness from exploitation, the court has the power to restrict the cross-examination if any dilatory, or harassing question are asked.

The cases of *Nagaraj vs State* (2015) 4 SCC 739 and *Parshuram vs State of Bihar* (2002) 8 SCC 16 were also highlighted where the Supreme Court held that the court is not supposed to assume that the accused is guilty.

Session 6: Sentencing: Issues and Challenges.

Resource Persons: *Justice Joymalya Bagchi, Justice Meenakshi Madan Rai, Justice S.Nagamuthu*

The theme for Session Six was *Sentencing: Issues and Challenges*. The session initiated with a brief introduction on sentencing. It was stated that the provisions for sentencing comes into play when the judge convicts the accused.

The provisions regarding sentencing were discussed. Section 235(2) CrPC was emphasized which provides that, if the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of Section 360 CrPC, hear the accused on the question of sentence and then pass sentence according to law. It was asserted that unlike the western countries, India awaits the policy on sentencing. The main focus of sentencing must be on the attributes of criminals and an accused must be sentenced considering the gravity of the offence committed. It was also stressed that no adjournment should be given to the accused on the point of hearing as per Section 309 of CrPC. While dealing with the issues and challenges in sentencing policy following broad points may be adhered:

- A level of uniformity and consistency must be observed,
- There should be lack of arbitrariness,
- A standardized format is often helpful and may be followed,
- Certainty of punishment is a bigger deterrent than quantum of punishment.

The speakers also discussed the provisions of death penalty by referring to the case of *Bachan Singh vs State of Punjab* (1982) 3 SCC 24. It was emphasized that the punishment of death penalty must only be given in the rarest of the rare case and where there is no other option left with the judge, otherwise it would lead to the failure of judicial system as there is no uniform rule to decide the same. It was also stated that the aggravating and mitigating factors are to be decided by the judge. The speaker also cited the example of Saudi Arabia, where imposition of death penalty does not result in the failure of the deterrent theory. In *Santosh Kumar Satishbhushan Bariyar vs State of Maharashtra* (2009) SCC 498, the Supreme Court held that where only the gravity of the offence is seen, are perhaps not the right indicator for determining the rudiment parameters for imposing death penalty. It was emphasized that the Apex Court, in the number of decisions, has taken aggravating and mitigating factors into consideration for deciding the sentence. Some examples for migrating factors that were discussed are education, adolescent age, offence committed due to grave and sudden provocation, co-operative and sociable approach of the convict. Many provisions like Sections 432, 242(2), 319 of CrPC were also examined and discussed. The session was concluded by giving a brief on the case of *Jogendra Yadav vs State and Ors* (2015) 9 SCC 244. It was suggested that a matured system of sentencing would be, a grown sentencing guideline which creates fields of operation for the judges open for judicial creativity in appropriate cases.

Session 7: Laws relating to Cybercrimes: Advances and Problem Areas

Resource Persons: *Justice Atul Sreedharan, Ms. N.S. Nappinai.*

The theme for Session Seven was *Laws relating to Cybercrimes: Advances and Problem Areas*. The session started with a brief introduction about cybercrimes and its historical aspects. It was stated that according to the Oxford English Dictionary, cybercrime is a scientific study of communication and control especially concern to compel human and animal brains with machines and other electric devices. An inclusive account of the kinds of commonplace cybercrimes was projected and discussed in detail such as: cyber-bullying, abuse, coercion or harassment, cyber piracy, cyber spotting, cyber stalking, identity-theft, unauthorized use of trademarks, corporate espionage, financial crimes, internet terrorism.

The speaker also provided with the definition of Cybercrimes as, offences committed by using computers or other electronic devices, or where such computer or such device is a victim or merely a facilitator of commission of an offence. It was stressed that copying and removing of data from a computer or any other device also amounts to ‘theft’ under section 43-B Information and Technology Act, 2000.

Number of instances with respect to illicit use of technology were illustrated. Non-registration of a complaint is one of the major reasons for increase in cybercrime. It was also emphasized that in the cases of cybercrimes, time plays a crucial role as now a days ‘proximity crimes’ are very prevalent.

One of the major challenges in the government does not own cyber space, hence control over it by the government becomes difficult. Absence of uniform rules at the international level also poses a challenge. Examples of Estonia (2007) and Georgia (2008) where a series of cyber-attacks occurred targeting the websites of parliaments, ministries, newspapers and broadcasters were discussed. The concepts of ‘*Denial of Service attack*’ and ‘*Distributive Denial of Service attack*’ was also explained by citing the example where the website of the Apex Court was hacked and all the e-filings were blocked and as a result everything came to stand-still for a day. The legislators firstly accorded punishment to such acts only as a civil penalty under Section 43 Information Technology Act, 2000. It was only by 2008 amendment that it was converted into criminal penalty by converting the provisions of section 66 of the I.T.Act. The case of *Shreya Singhal vs U.O.I.* (2015) 5 SCC 1, was also discussed in which the provisions of Section 66A Information Technology Act, 2000 were struck down.

There were innumerable cases with reference to the provisions related to Cybercrimes such as: *Kartar Singh vs State of Punjab* (1994) 3 SCC 569; *Ramesh Rajgopal vs Devi Polymers Pvt. Ltd.* (2016) 6 SCC 310; *Vishal Kaushik vs State (Govt. of NCT of Delhi)* 2016 SCC Online Del. 1631; *Shashank Shekhar Mishra vs Ajay Gupta* 2011 SCC online Del.374; *Ronald D’ Mello vs State of Maharashtra* (2016) SCC Online Bom 3424; *Prajwala vs Union of India* (2018) SCC Online SC 775 – Supreme Court orders whatsapp to improve redressal system to curb circulation of rape videos; *Sharat Digumarti vs Govt. (NCT of Delhi)* (2017) 2 SCC 18.

Session 8: Electronic Evidence: Collection, Preservation and Appreciation.

Resource Persons: *Justice Atul Sreedharan, Ms. N.S. Nappinai.*

The theme for Session Eight was *Electronic Evidence: Collection, Preservation and Appreciation*. The session included visual illustrations on various aspects of electronic evidence. Section 3 and 29 Indian Evidence Act, 1872 defines the term ‘Document’ which includes electronic documents. It was stressed that

the authenticity, integrity and non-repudiation of documents are important factors. It was emphasized that every document including electronic record which the prosecution rely on should be supplied to the accused. The speaker also enlightened the participant on the concept of 'hashing'. Hashing is a system which ensures the integrity and the authenticity of the data, it reads the document very precisely and then it creates a unique number which is considered to be the coding or the cryptography of that particular document. The impact of digital footprint were also elucidated with the help of illustrations.

The provisions of Section 65B Information Technology Act, 2000 and number of case laws as to what has been recognized by the Supreme Court of India as an electronic evidence (e.g. e-mails, digital photo, video, tape recordings, ATM machines etc.) were discussed and debated including *Sujoy Mitra vs State of West Bengal* (2015) 16 SCC 615; *Preeti Jain vs Kunal Jain* 2016 SCC online Raj 2838; *Puneet Prakash vs Suresh Kumar Singhal and Ors* 2018 SCC online Del. 9857; *Tomaso Bruno vs State of U.P.* (2015) 7 SCC 178; *Vikram vs State of Punjab* (2017) 8SCC 518; *Shafhi Mohd. Vs State of Himachal Pradesh* (2018) 2 SCC 801; *Pramod E.C. vs Louna V.C.* (2019) SCC Online Ker 165; *Anwar P.V. vs Basheer P.K.* (2014) 10 SCC 473; *CBI vs Abhishek Verma* (2009) 6 SCC 300; *Sri Padmanabha vs Syndicate Bank* 2007 SCC Online Kar. 547.
