

**NATIONAL JUDICIAL ACADEMY**



**[P-1166]**

**Orientation Programme for Junior Division Judges**

**06-12 September 2019**

**PROGRAMME REPORT**

**PROGRAMME COORDINATORS:**

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**Faculty, NJA**

The National Judicial Academy organized a seven days Orientation Programme for Junior Division Judges from 06-12 September, 2019. The Programme was conceived for capacity building of judicial officers at the primary tier, viz. Civil judges (Junior Division). The sessions provided a forum for the participants to share experiences and views with counterparts from other States. The programme facilitated participants in comprehending judicial role and understanding their responsibility in a constitutional democracy. Alongside, recent developments in juridical thinking and technological advances relevant to accrete performance standards were discussed. Several aspects of law and practice relevant to enhance the quality of performance in judges formed an integral part of the deliberations.

### **Session 1- Constitutional Vision of Justice**

*Speakers- Justice Ram Mohan Reddy and Prof. V.K. Dixit*

The session commenced by highlighting the meaning of *Justice*. It was stressed that ‘justice’ is a virtue that transcends all boundaries and it is this very virtue which is the philosophy of our constitution. The purpose of justice is to bring down inequalities in the people. In other words, philosophy of the constitution is to provide justice to all. Thereafter, the basic structure doctrine was discussed. The discussion further stressed that to impart justice judges need to imbibe flavors of the constitution within. The role of the judiciary is to protect the rights of the people against the ever expanding powers of government. The only check that the constitution has provided to this runaway inflation of power is the judiciary. In other words, judiciary is guardian of the conscience of the people as well as of the law of the land. The discussion also emphasized the significance of Article 14 of the Indian Constitution, which prohibits the state from denying any person equality before the law or equal protection of laws.

## **Session 2- Role of Courts in a Constitutional Democracy and Adherence to Core Judicial Values**

*Speakers- Justice Ravi Tripathi and Prof. V.K. Dixit*

The session commenced by emphasizing that the idea of justice is significant. To understand the idea of justice it is utmost important to understand the different levels at which law operates. Namely- at the normative level which includes the precedents, at the cultural level and at the behavioral level. The discussion further highlighted that law contains a lot of irregularities and the purpose of courts is to remove those irregularities. It was emphasized that in contemporary times glorification of irregularities or violation of law has become a common aspect. The new challenges or tendencies that are posed before judges needs to be addressed properly. Therefore, it is necessary for courts to maintain and respect the content of the rule of law at both the behavioral and institutional level. For doing the same, the values of the constitution needs to be internalized. It was suggested that the rule of law is related to the liberty, equality and cooperation. On the contrary, poverty deprives people of these rights. While discussing practical issues faced by the magistrates in the course of their work it was suggested that sometimes there might arise situations where the superior courts do not like or accept the comments or certain conduct of the judicial officer at the lower court when they transcend judicial limits. Such situations should not mar the zeal of the judicial officers rather they should understand that there might be times where the superior court may also commit an error. The participants were asked to share their viewpoint on the role of a judge in a constitutional democracy. Thereafter, the participants were suggested to read the role of a judge in a constitutional democracy as has been mentioned in the Constitution of India. It was emphasized that the essence of a democracy is that the decision is taken by the majority but the views of the minority are taken into consideration. The participants were advised not to cross the expressed jurisdiction provided to them.

## **Session 3- Discovering Current Judicial Methods**

*Speakers- Justice Ravi Tripathi and Prof. V.K. Dixit*

The discussion initiated by highlighting that access to justice for majority of litigants is not easy and therefore, it is important for judges to know their role in safeguarding the legal rights of the

vulnerable sections of the society else poor people will not have their voices being heard in a republic. It is important for the judges to discover how contemporary judicial methods help in reaching justice. It was stressed that judicial method is an uncertain term because it has many dimensions. Judicial method with respect to decision making maybe of two types that is, literal interpretation and purposive decision making. The purposive decision making method was discussed in detail along with illustrations from certain landmark judgments like- *Narmada Bachao Andolan v. Union of India* (2000) 10 SCC 664, *Navtej Singh Johar & Ors. v. Union of India* (2018) 10 SCC 1, *Indian Young Lawyers Association & Ors. v The State of Kerala Writ Petition (Civil) No. 373 of 2006 [Sabarimala Case]*etc. the discussion further suggested that laws are made for generic problems of the public at large. The role of the judge is to identify principles and facts, the outcome thereafter is a neutral exercise.

#### **Session 4- Courtroom Technology: Use of ICT in Courts**

***Speakers- Justice Roshan Dalvi and Justice Ram Mohan Reddy***

The session commenced by underlining the significance of ICT in courts and how the use of technology has strengthen the court systems. In other words ICT has brought a paradigm shift in court and case management. Laptop distribution is another vital reason for the enhanced use of ICT among judges. Various ICT related best practices and systems that have enhanced the court systems like- use of video conferencing techniques that have reduced the litigation expenses, display systems outside the courtrooms, kiosk systems, Judicial Service Centre [JSE] from where a litigant can gather his case related information etc. were discussed in detail.

#### **Session 5 – Managing the Docket: Court and Case Management**

***Speakers- Justice Roshan Dalvi and Justice Ram Mohan Reddy***

The discussion emphasized that foundation of success is teamwork which is possible when the team incorporates elements of management that is – planning, organizing, directing, coordinating and controlling. All these elements are required in court and case management as well. It was suggested that case management is required to improve the efficiency of judges and their staff,

reduces delay and arrears and most importantly aid in cost cutting. The discourse accentuated that the ambit of case management is both procedural and substantive which requires infrastructural sensitivity. The participants were suggested to have some case management strategy for instance-judges may endeavor to dispose off all proceedings filed at one time when all parties are represented and heard on merit or may endeavor to dispose off the main proceeding at the first available opportunity when all parties are represented and heard on merits. With respect to court management the participants were suggested that a judge is the master of the court and therefore, his duty is to be aware about everything that is happening in the court. A judge must ensure that all the stakeholders of the court have faith in him and must be sure that they are at the right place to seek justice. Such public trust in the eyes of the public can only be achieved when court and case management is done with sincerity.

#### **Session 6- ADR and Plea Bargaining**

*Speakers- Justice Roshan Dalvi, Justice Ravi Tripathi and Justice Ram Mohan Reddy*

The session accentuated 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. It was underlined that substance of mediation is connection between people. The participants were suggested that in case of pending matters they can refer for mediation at the time of hearing of interim application or after issues are framed and evidence is recorded or even after part trial. In case of new matters mediation can be referred at the time of the filing itself (in case of all referable matters) or after the first hearing (as deemed fit by the judge). However, the judges must keep in mind that there are matters which cannot be referred to mediation like matters involving point of law, interpretation of documents, alleged fraud/forgery, relief in rem or representative suits, and acts against society or human rights. The participants were suggested to have an attitudinal change while looking into matters before them and must always remembers that courts should not be the place where resolution of disputes begin rather courts should be the place where alternative methods of resolving disputes have been considered and tried. The session concluded by highlighting the reasons why mediation fails and what is required to have fruitful mediation.

## **Session 7- Law relating to Cyber Crimes: Advances and Bottlenecks**

*Speakers- Prof. S.P. Shrivastava and Adv. Debashish Naik*

The session initiated with a brief illustration on the history of internet and how cyber-crimes are committed using the internet. A comprehensive account of the kind of cybercrimes was projected in detail such as –unauthorized use of trademark; identity theft; unauthorized use of copyright; defamation issues; disclosing of confidential data; corporate espionage; cyber bullying etc. The scope of the word “computer” under Section 2(1)(i) and “computer resource” under Section 2 (1)(k) as defined under the Information and Technology Act, 2000 (hereinafter the IT Act) was discussed. Elaborate discussion on Chapter IX of the IT Act which deals with penalties, compensation and adjudication formed an integral part of the session. 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. 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.

## **Session 8 – Electronic Evidence: Collection, Preservation and Appreciation**

*Speaker- Adv. Debashish Naik*

The session emphasized that in the age of technology, electronic evidence is inevitable and judiciary has been put at a task to appreciate the electronic evidence. Thereafter, the stages of leading electronic evidence and the standards of proof with reference to section 65B of Indian Evidence Act, 1872 was elaborated. The problems in proving and appreciating the magnetically recorded confessions and their evidentiary value in criminal trials was discussed. The session highlighted the effect of digital footprints and appreciation of electronic evidence in present times. It was underlined that it is not conclusive in nature. Electronic evidences are generally found in storage device, digital files etc. Electronic evidence is classified into two types –volatile evidence and non-volatile evidence. Importance of Meta data in establishing the novelty of any electronic

evidence was discussed. The discussion elaborated that authenticity and veracity are the key factors to be considered by courts while appreciating electronic evidence. It was suggested that while appreciating evidence standard of proof, source of authenticity and best evidence rule are very significant.

### **Session 9 – Forensic Evidence in Civil and Criminal Trials**

*Speaker- Dr. Jayanthi Yadav*

The session initiated with a brief introduction to forensic science and its significance in criminal trials. It was highlighted that forensic has two wings viz. Forensic Medicine and Forensic Science and both are useful for the judiciary in arriving at the right conclusion in a trial before them. Forensic evidence is based on Locard's Exchange Principle which says - "Every contact leaves a trace". The job of forensic expert is to trace and render its evidence before the court. During the course various sub-categories of forensic experts and their role was discussed. Those categories included Forensic Narcotics, Forensic Toxicology, Forensic DNA analysis, Forensic Serology, Forensic Ballistics etc. Concepts like DNA fingerprinting, DNA profiling and DNA data banks were discussed in detail and its importance in the justice delivery system. Furthermore, the advantages and disadvantages of forensic evidence were discussed. Major advantages included scientifically proven evidence because man may lie but circumstances may not, conclusive nature of forensic evidence, reliability etc. whereas disadvantages included improper collection of evidence may vary the result, improper sampling etc.

### **Session 10- Judging Skills: Framing of Charges**

*Speaker- Justice B.S. Chauhan*

The session commenced by emphasizing that as per Supreme Court the purpose of framing of charges is to give intimation to the accused of clear, unambiguous and precise notice of the nature of accusations that the accused is called upon to meet in the course of a trial. It was suggested that the magistrates must look into the fact that sec.226 of Cr.P.C.1973 is complied with by the prosecution so that the accused may be discharged when there is no prima facie case. In this regard,

the case of *Satish Mehra vs. Delhi Administration and Another* 1996 9 SCC 766 was discussed. The significance of reasons for charge i.e., at the stage of framing of the charge the court should apply its mind as to whether there is any ground for presuming the commission of offence by the accused or not was discussed. Thereafter, the purpose of framing of a charge as laid down by the Supreme Court in *Mohan Singh vs. State of Bihar*, (2011) 9 SCC 272 was elaborated upon. It was suggested that in criminal trials charge is the foundation of indictment and every care must be taken to see that it is accurately framed.

### **Session 11- Judging Skills: Art, Craft and Science of Drafting Judgment**

***Speaker- Justice B.S. Chauhan***

The session commenced by emphasizing upon the definition of 'Judgment' as defined under section 2(9) of the Code of Civil Procedure, 1908 as a statement given by the Judge on the grounds of a decree or an order. It was accentuated that a judgment is the final decision of the court intimated to the parties and to the world at large by formal "pronouncement" or "delivery" in open court. It is a judicial act which must be performed in a judicial way. The substance of the thing must be there- that can neither be bluffed nor left to inference and conjecture nor can it be vague, it must be an expression of the mind of the court at the time of delivery. It was discussed that the final operative act declared in open court constitutes the "judgment" (*Surendra Singh & Ors v. The State Of Uttar Pradesh*, AIR 1954 SC 194). The discussion further stated that writing of a judgment is an art. In addition to the command of language, it demands the knowledge of law and procedure. Judgment is based mainly on three components: findings of fact, application of principles of law, and decision on issues by the combination of both. Thus, while delivering a judgment, the court must precisely state the factual matrix of the case and principles of law applicable therein and its finding on each issue. Facts (F) and Law (L), Arguments (A), Considerations (C) and Conclusions (C), thus FLACC are the essential elements to determine a controversy. Discussing about the language of the judgment it was opined that the language of the judgment must be simple, yet elegant. It should contain phrases and expressions which convey clearly the analysis of law and fact and the process of reasoning; the language should not be equivocal, vague, intemperate or capable of multiple interpretations. Care should be taken not to dramatize the circumstances of the case. Judicial pronouncements must be judicial in nature and should not depart from sobriety,

moderation and reserve. In this regard, the cases of *State Of Karnataka v. The Registrar General, High Court, AIR 2000 SC 2626*, and *State of UP v Mohd. Naim, AIR 1964 SC 703* were discussed.

### **Session 12- Art of Hearing: Promoting Rational Discourse in the Courtroom**

*Speaker- Justice B.S. Chauhan*

The session commenced by emphasizing that all the powers that are bestowed upon the Supreme Court and the High Courts are also given to the district judiciary. It is very important for the judges to have highest integrity because they are respected by the people and they represent the society as a whole. Judges render justice, which should be speedy, effective and in an impartial manner, maintaining the highest standard of integrity. Courts are temples of justice and judges do not identify themselves with the causes before them or those litigating for such causes. The discussion further suggested that judges while hearing matters before them ought to follow principles of natural justice, should not travel beyond pleadings and must always remember that object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. The case of *Ritesh Tiwari v. State of UP, AIR 2010 SC 3823* where while discussing section 165 of the Evidence Act, 1872 it was held that the judge has the power to ask any relevant/ irrelevant question. Such power has been conferred so that the judge may be able to find out the truth. It was stressed that a judge must participate in the proceeding by posing questions to the witnesses in order to ascertain the truth. It was suggested that a Court should not pass different interim orders/final orders in similar cases as it leads to agitation, loss of confidence in the judicial system and public feels confused and result creates chaos.

### **Session 13- Role of Magistrates at First Production of Arrested Person**

*Speakers- Justice R. Y. Ganoo and Justice U.C. Dhyani*

The session commenced by highlighting that a magistrate should keep in mind that putting a person in police custody should be with sincere application of mind. The time for police remand should be reasonable and nobody should be in the police remand for more than the required time. It was stressed that initially the magistrate has to strive hard to understand the implications of remand. At

first production of the arrested person a magistrate should keep in mind to – ascertain the age, whether the offence is bailable or not, whether the person arrested under separate enactments, should see whether the guidelines for the police as laid down in the case of D.K. Basu have been followed or not. The participants were suggested to give order only in consonance with law and should not flow with the emotions. At the same time participants were also suggested not to be mechanical in passing orders for remand. In order to follow timeframes judges ought to be punctual and cases for remand should be put first.

#### **Session 14- Fair Trial: Fair Processes**

*Speakers- Justice R. Y. Ganoo and Justice U.C. Dhyani*

The discussion began by underlying the meaning of fair trial. It was emphasized that by way of natural justice a trial that is fair to the complainant as well as to the accused is a fair trial. It was emphasized that procedural justice is very important aspect of a fair criminal trial. Thereafter, various attributes of fair trial viz. speedy trial, presumption of innocence, right of representation by lawyer of choice, right to silence of accused, importance of public trial and public hearing, fair investigation, independent and impartial courts etc. were discussed. Some practical problems like hostile witnesses, weak investigation were also elaborated with day to day illustrations. It was suggested that a judge should not be a mute spectator in a trial rather a judge whenever required should take a lead to do the ultimate justice, this is a fair trial principle. It was submitted that most of the attributes to fair trial are provided in the constitution and judges should try their best to follow those constitutional ideals during trial.

#### **Session 15- Role of Courts in Securing Gender Justice**

*Speaker- Justice Dr. Shalini P. Joshi*

The session emphasized the need of gender justice in courts. The difference between gender and sex was explained. There is need to bridge in the gap between the practicalities and the existing law. This will make it possible for the judges to be gender sensitive and do not handle the cases

mechanically. Various instances of gender bias existing in the courtrooms were highlighted and need to overcome those biases was stressed upon. Elaborate discussion on the concept of gender justice enshrined in the Constitution of India in Part III and Part IV, international treaties and convention and landmark judgments of the Supreme Court formed an integral part of the discourse.

### **Session 16- Law of Precedents: Identification and Application of *Ratio Decidendi***

***Speaker- Justice Dr. Shalini P. Joshi***

The session commenced with discussion on the meaning of *Ratio Decidendi* and how it is different from *Obiter Dicta*. It was stressed that the underlying principle upon which the authoritative element of a precedent is formed is often termed as *ratio decidendi*. Judges were asked to be cautious in understanding the difference between the two. The difference between judicial precedents and legislative rules was emphasized i.e., judicial precedents gets evolved with due course of time however, legislative rules are endorsed and are specific in principle. It was also pointed out that precedents are persuasive and binding whereas *Stare Decisis* means, standing by the things decided. It was also explained that it is for the judge to interpret which part of the former decision is binding. Even the binding judgement need not be binding if they can certainly extricate it.

### **Session 17- Occupational Stress in Judges: Identification and Consequences of stress**

***Speakers- Justice Dr. Shalini P. Joshi, Dr. Harish Shetty and Dr. Prem K. Agarwal***

The session commenced by discussing the meaning of stress, what makes something stressful and that not all stress is bad. It was emphasized that occupational stress among judges is due to long work hours, extensive workload, intermittent traumatic cases, pressure of making important decisions etc. Judges also experience negative physical (e.g. becoming overweight) and emotional (e.g. boredom, burnout) outcomes from sitting on the bench for countless hours. Therefore, it is important to understand and account for these experiences as they have the potential not only to affect judges' personal lives negatively but also hinder them from performing their duties to the best of their abilities. Stress takes its toll on the body—whether an individual perceives that stress

as "good" or "bad." Science has established that stress can lead to cardiovascular disease, stress-induced weight gain typically involves an increase in belly fat, which is the most dangerous fat for the body to accumulate, and increases cardiovascular risk. It was accentuated that recent researches indicate that emotions play an integral part in managing stress at the workplace. It was emphasized that since judges are expected to be multitaskers therefore, it is essential for them to realize their potentials so that they can manage stress through enhanced Emotional Intelligence.

### **Session 18- Managing Judicial Stress: Institutional Strategies and Techniques**

*Speakers- Justice Dr. Shalini P. Joshi, Dr. Harish Shetty and Dr. Prem K. Agarwal*

The session highlighted that the most important point is to recognize the source of negative stress. It is a way to identify the problem and plan measures to overcome it. It was suggested, that to reduce stress find a support system i.e., finding someone to talk about feelings and experiences; bring change in attitude; be realistic and set practical goals for dealing with situations and solving problems; get organized and take charge because being unorganized or engaging in poor planning often leads to frustration or crises which further enhances stress; to take breaks and give oneself 'me time', this helps in rejuvenation; take good care of oneself by eating right and exercising. The discussion further recommended different methodologies that can be of immense use to combat stress at the institutional level. These comprised of building up of such structural culture where there is trust, morality and impartiality; providing psychosomatic and societal support; to have vibrant management and prospects; to have courteousness and admiration among colleagues; to have psychological proficiencies and necessities; progress and growth of employees; acknowledgement and incentives ; good contribution and inspiration by staff; workload management by providing essential means and time; sustaining work equilibrium by providing choices and opportunities for flexible working measures to accommodate work, family and private priorities; psychological security so that there is sense of security that if a cause is raised suitable action will be taken.