

NATIONAL JUDICIAL ACADEMY



TRAINING PROGRAMME FOR JUDICIAL OFFICERS FROM SRI LANKA

20th to 24th August, 2016

PROGRAMME REPORT

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Introduction

The Training Programme for Judicial Officers from Sri Lanka was held from 20th to 24 August, 2016 was conducted by the National Judicial Academy, Bhopal (hereinafter NJA). The participating judges from the Sri Lankan contingent comprised of a mixed group of judges from High Courts and Subordinate Judiciary. The group was led by a Hon'ble sitting Judge of the Supreme Court of Sri Lanka. The program deliberated on the emerging issues like, cybercrimes, electronic evidence, discrimination and disparity in sentencing related to crimes against human body, economic crimes etc. Subject matter like, doctrine of death penalty and its status on a comparative basis between Sri Lanka and India and judicial ethics were discussed at length. Areas like, circumstantial evidence, reliability of witness, and recording of witnesses were part of the seminal discourse as dedicated 'Sessions' in the five day conference. Cross cultural exposure through visit to world heritage religio-historic site "Sanchi" and a dedicated visit to experience the working of a "District Court" at Bhopal formed an integral part of the scheduled program. The programme provided a rare platform for the exchange of experience of the prevailing status and the contemporary development of the laws in specific domains at India and at Sri Lanka. The Sri Lankan contingent of the judicial officers appreciated the endeavor put in by NJA and expressed their keenness to regularly revisit NJA for such continuous judicial education programs.

List of Resource Persons

1	Hon'ble Mr. Justice A. K. Sikri	Judge, Supreme Court of India
2	Hon'ble Mr. Justice Swatanter Kumar	Chairperson, National Green Tribunal (Principal Bench)
3	Hon'ble Dr. Justice Mukundakam Sharma	Former Judge, Supreme Court of India

4	Hon'ble Mr. Justice K. C. Bhanu	Former Judge, High Court of Andhra Pradesh
5	Dr. K. Chockalingam	Vice President, World Society of Victimology
6	Ms. N. S. Nappinai	Advocate, NSN & Associates
7	Dr. Mrinal Satish	Associate Professor (Law), National Law University, Delhi
8	Dr. Anup Surendranath	Assistant Professor (Law), National Law University, Delhi
9	Dr. Parul Rishi	Associate Professor, Indian Institute of Forest Management, Bhopal

List of Participants

Sl. No	High Court	Name of Participants	Address
1	Sri Lanka	Hon'ble Justice K.S.J. De Abrew	Judge of the Supreme Court, Sri Lanka
2	Sri Lanka	Hon'ble Judge Chandramanie	Judge of High Court, Batticalou, Sri Lanka
3	Sri Lanka	Hon'ble Judge A.A. Champa Janaki Rajarathna	Judge of High Court, Avissawella, Sri Lanka
4	Sri Lanka	Hon'ble Judge P. Wickramasinghe Maturata	Judge of High Court, Negomba, Sri Lanka
5	Sri Lanka	Hon'ble Judge S.U.B. Karalliyadde	Judge of High Court, Ratnapura, Sri Lanka
6	Sri Lanka	Hon'ble Judge Manilal Waidyatileke	Judge of High Court, Colombo, Sri Lanka

7	Sri Lanka	Hon'ble Judge D.N. Samarakoon	Judge of High Court, Sri Lanka
8	Sri Lanka	Hon'ble Judge Mohan Indrajith Senevirathne	Judge of the High Court, Sri Lanka
9	Sri Lanka	Hon'ble Judge B. Sasi Mahendran	Judge of High Court, Vavuniya, Sri Lanka
10	Sri Lanka	Hon'ble Judge M.S.K.B. Wijeratne	Judge of High Court, Rathnapura, Sri Lanka
11	Sri Lanka	Hon'ble Judge Muhammad Ahsan Razik Marikar	Judge of High Court, Matara, Sri Lanka
12	Sri Lanka	Hon'ble Judge W.K. Sumudu U. Premchandra	Judge of High Court, Kurunegala, Sri Lanka
13	Sri Lanka	Hon'ble Judge M.T.M Laffar	Judge of High Court, Kalutara, Sri Lanka
14	Sri Lanka	Hon'ble Judge K.P. Fernando	Judge of High Court, Ratnapura, Sri Lanka
15	Sri Lanka	Ms. Srinithy Nandasekaran	District Judge, Chavakachcheri, Jaffna, Sri Lanka
16	Sri Lanka	Mr. G.S.P. Hemachandra	District Judge, Horana, Sri Lanka
17	Sri Lanka	Mr. W.M.M. Thalgodapitiya	District Judge, Kandy, Sri Lanka
18	Sri Lanka	Mr. V. Ramakamalan	District Judge, Kolmunai, Sri Lanka
19	Sri Lanka	Mr. M.A.A. Anawaratne	District Judge, Nugegoda, Sri Lanka
20	Sri Lanka	Mr. B.A.R. Somasinghe	District Judge, Moratuwa, Sri Lanka

21	Sri Lanka	Mr. P.P.R.E.H. Singappulige	Additional District Judge, Sri Lanka
22	Sri Lanka	Mr. R.S.A. Dissanayake	Addl. District Judge, Homagama, Sri Lanka
23	Sri Lanka	Mr. D.A.R. Pathirana	Additional District Judge, Pugoda, Sri Lanka
24	Sri Lanka	Mr. Rashantha Godawela	Additional District Judge, Panadura, Sri Lanka
25	Sri Lanka	Ms. N.K.D.K.I Nanayakkara	Magistrate/Additional District Judge, Gampaha, Sri Lanka
26	Sri Lanka	Mr. H.S. Ponnampereuma	Judicial Officer, Kegalle, Sri Lanka
27	Sri Lanka	Ms. Sellahandi Indrika Kalingawansa	Judicial Officer, Kalutara, Sri Lanka
28	Sri Lanka	Mr. Ruchira Weliwatta	Magistrate, Nagombo, Sri Lanka
29	Sri Lanka	Ms. M.M. Jayasekera	Registrar, Supreme Court of Sri Lanka/Judicial Officer, Colombo, Sri Lanka
30	Sri Lanka	Mr. P.M.T. Bandara	Senior Assistant Secretary, Judicial Service Commission, Colombo, Sri Lanka
31	Sri Lanka	Mr. Gihan Aruna Bandara Pilapitiya	Chief Magistrate Court, Colombo, Sri Lanka
32	Sri Lanka	Mr. A.M.A. Wasantha Kumara	Academic Co-ordinator, Colombo, Sri Lanka

Outlines of the Programme

Day-1

Session-1: Mapping of success of ADR Initiatives in India

Session-2: Case Management Methods Developed in India

Session-3: Cybercrimes and Laws dealing with Cybercrimes

Session-4: Appreciation of Electronic Evidences

Day-2

Session-5: Disparity and Discrimination in Sentencing Practices

Session-6: Usefulness of Death Penalty

Session-7: Sentencing in Economic Offences (Crime against State)

Session-8: Sentencing in Offences against Human Body

Day-4

Session-9: Circumstantial Evidence

Session-10: Recording of Confessions, Reliability of Witnesses

Session-11: Judicial Ethics: Stages of Moral Development

Session-12: Transactional Analysis

Day-5

Session-13&14: Art, Science and Craft of Judging

Day-1

Session-1: Mapping of success of ADR Initiatives in India

Speaker-Justice A.K. Sikri

On the first day of the program “*Mapping of success of ADR Initiatives in India*” formed a Session, wherein the meaning, utility and characteristics typical to Alternate Dispute Resolution (hereinafter ADR) systems were discussed. The Session was deliberated by Hon’ble Justice A.K. Sikri, who in turn deliberated on the success story of the ADR after initial teething problems post its implementation in India. The scope of Section 89 of the Code of Civil Procedure, 1908 (hereinafter CPC) and the advantages and the differences between mediation and conciliation was discussed in detail. It was explained to the visiting judges that, the dispute resolution processes falls into two major categories:

- Adjudicative processes, such as litigation or arbitration, in which a judge, jury or arbitrator determines the outcome.
- Consensual processes, such as collaborative law, mediation, conciliation, or negotiation, in which the parties attempt to reach agreement.

It was urged to adopt a similar mechanism in the judicial framework of the Sri Lankan judicial system. Answering the query as to what is the consequence of a failed mediation it was explained that, Court is an ex –mediation in Section 89. If it fails matters go back to Court. In America parties prefer to go to mediators than Court. It depends on trusting the process of mediation wherein unlike Court decisions are not enforced upon the parties. “BATNA”¹ and “WATNA”² (terms used in mediation was discussed.

¹ BATNA: Best Alternative to a Negotiated Agreement.

² WATNA: Worst Alternative to a Negotiated Agreement. Generally a situation of deadlock.

Session-2
Case Management Methods Developed in India
Speaker- Justice Swatanter Kumar

Hon'ble Justice Swatanter Kumar, deliberated on the topic of "*Case Management Methods Developed in India*". The idea of the topic serves the Constitutional requirement featuring in the Preamble itself, namely, to provide Social, Economic and Political justice. It was reiterated that the ultimate purpose of having a Case Management System in place is ensure satisfaction to the litigant. The efforts of the Supreme Court of India through the Justice Jagannada Rao Committee to identify the reasons for delay in disposal was discussed. It was explained that Case Management by the judge refers to effective handling of a case. It prompts a judge must foresee the progression of the case as a whole. For ease of understanding the Case Management process may be divided into three essential areas:

- Use of technology
- Management by the judge of the cases
- Management by the judge of the court and
- Relationship between Bar and the litigant. Litigant being the most important factor

Since the Judge controls a Court he must be in complete charge of the case and must adopt to the new generation ideologies of being active and not passive. Some of the fundamental issues in Case Management were discussed which included monitoring, adapting novel technologies, e-filing, expeditious disposals and levels of remedies available in form of appeals etc. Therefore the problem of *doctrine of finality* is compromised. Innovating procedural expediency within the established procedural laws was stressed. Exhibiting control over the Court, it was recommended that the judge should interact, suggest for quicker disposals, and cut down on adjournments.

Session-3
Cybercrimes and Laws dealing with Cybercrimes
Speaker- Ms. N.S. Nappinnai

Ms. Nappinnai deliberating on the Session on “*Cybercrimes and Laws dealing with Cybercrimes*”, explained the popular connotation of the word “Cyber” to computers. It was discussed that generally there are two possible classifications, either the computer system is used for committing a crime or the system may be the target of some crime. Cybercrime has essentially removed the concept of physical territory. It was discussed that as per international jurisprudence the Budapest Convention of 2001, drafted by Council of Europe (CoE) with Canada, Japan, South Africa and US, is the only binding multilateral treaty aimed at combating cybercrime providing a framework for international cooperation between state parties to the treaty. Cases were discussed ranging from *Talk Talk Cyberattack case* the attack was one of the biggest in Britain and may have led to the theft of personal data from among the firm’s customers who total more than 4 million, *Ashley Madison Case*, *Target Targeted 2013 case* in which the departmental store was targeted for a super hack, *Estonia Attack 2007* a case of denial of service attack, *Light Bulb attack 2015*, *Russia virus Attack 2000* etc. The various forms of cyberattacks such as phishing, worms, and malware attacks were discussed. The types of hackers were discussed as *black, white & grey*. Pornography as the most emerging cybercrime quoting Section 67 of the IT Act, 2000 was also discussed.

Session-4
Appreciation of Electronic Evidences
Speaker- Ms. N.S. Nappinnai

In the session on “*Appreciation of Electronic Evidence*” the discourse on the subsequent amendment to the Information Technology (IT) Act 2000, to accommodate the admissibility of digital evidence was initiated. It was emphasized that the appreciation of the electronic evidence and its examination by the Courts, should primarily depend upon on the basis of its relevancy,

integrity and authenticity. “The Electronic Transaction Act No. 19 of 2006” of Sri Lanka was discussed parallel to the IT Act, 2000 on factors of appreciating electronic evidence in the respective countries. Differences between “electronic signature” and “digital signature” was addressed. Sri Lankan case law e.g. *Janashakthi Insurance Co. Ltd. v. Umbichy Ltd.*, *Marine Star (Pvt)Ltd v. Amanda Foods Lanka (Pvt) Ltd. etc.* were contextually discussed. A few leading Indian case law referred to on the topic were *Dharambir v. Central Bureau of Investigation*, 2008; *Ujjwal Dasgupta v State*, 2008 the case was on sensitive documents; *Tomaso Bruno & Anr. v. State of U.P.* the was the best electronic evidence.

Day-2

Session-5

Disparity and Discrimination in Sentencing Practices Speakers-Prof. K. Chockalingam and Dr. Mrinal Satish

The session on “*Disparity and Discrimination on Sentencing Practices*” dealt with the core issue of unstructured discretion leading to "lawlessness" in sentencing. Allegations of "lawlessness" in sentencing reflect concerns about discrimination as well as disparity. The differences between “disparity” and “discrimination” of sentencing was drawn. A few key comparatives were e.g. (Sentencing) disparity exists when 'like cases' with respect to case attributes —regardless of their legitimacy—are sentenced differently whereas, discrimination is a difference that results from differential treatment based on illegitimate criteria, such as race, gender, social class, or sexual orientation. With respect to sentencing, discrimination exists when illegitimate or legally irrelevant defendant characteristics affect the sentence that is imposed after all legally relevant variables are taken into consideration. It exists when black and Hispanic offenders are sentenced more harshly than similarly situated white offenders or when male offenders receive more punitive sentences than identical female offenders. A participative discourse with respect to gender discrimination being less contradictory followed by citing the evidence that judges' assessments of offense seriousness and offender culpability interact with their concerns about

the practical effects of incarceration on children and families to produce more lenient sentences for "familied" female defendants. Moreover, decisions regarding bail and pretrial release, while structured to some extent by bail guidelines or schedules and by statutes, policies concerning preventive detention, also are discretionary. At each of these decision points, discretion creates the potential for disparity. Discussions on sentencing disparity and sentence reform, indeterminate sentence was analysed in which discretion on, offender receiving a minimum and maximum sentence and the parole board determined the date of release was considered. It was concluded with the notion that there is, unfortunately, no way around the dilemma that sentencing is inherently discretionary and that discretion leads to disparities.

Session-6

Usefulness of Death Penalty

Speakers

Justice Mukundkam Sharma

Dr. Anup Surendranath

Prof. K. Chockalingam

The session on "*Usefulness of Death Penalty*" was an interactive session wherein both the proponent and opponent views on preservation or discarding of the capital punishment was argued. The desirability of the sentencing scheme which is "certain" and of optimum "severity" was discussed. Reformative principles to the death row prisoners were argued, placing the collateral sufferings of kith & kin on one hand, whereas, the need of deterrence and retributive objectives being essential to order the society was debated by the other group. Support of leading Indian case law jurisprudence on the subject matter were discussed to construct and demolish arguments by either side. It was brought to the notice that in Sri Lanka:

- For certain criminal offences death penalty is certain.
- There has been a moratorium on the execution in Sri Lanka since 1976.

Session-7
Sentencing in Economic Offences (Crime against State)
Speaker-Justice Mukundkam Sharma

The Session on “*Sentencing in Economic Offences*” was conducted by Hon’ble Justice Mukundkam Sharma. After emphasizing as to how the economic offences directly has a nexus with the economy of the nation, these white collar crimes often committed by the criminals who had attained credibility and respect in the society were discussed citing infamous cases. The inclusive category of these offences were listed and discussed with exemplification of relevant case law developments. The categories discussed included:

- Money laundering or *Hawala* (a cross bordered crime).
- Tax evasion
- Sales Tax evasion
- Smuggling
- Illicit Drug Trafficking which destroys youth and include all types of drugs
- Corruption at various sectors and levels
- E-Commerce frauds
- Intellectual Property Rights such as copyright civil and criminal liability
- Bank Scam such as 2G, 3G scams etc.

Considering the specialized fields these crimes occur it was recommended that special investigation teams enabled and trained with special techniques, tools and powers must be considered. It was insisted upon that, the process of capacity building for investigation, collection and appreciation of evidences to handling of such cases by the judiciary must be perpetual and modernized keeping pace with the demand of the evolving menace of these economic offences. Lifting of the corporate veil and protection and encouragement of the whistleblowers also formed part of the discourse. Relevant new legislations and amendments to suit the change in e.g. provisions for fast track courts, less

cumbersome procedure, stringent legislations etc. were considered to be the need of the hour.

Session-8
Sentencing in Offences against Human Body
Speaker- Dr. Mrinal Satish

The session on “sentencing against human body” was aimed to understand how the objectivity in sentencing can be preserved under changed perception of crime against human body. Offences against human body as enumerated under Indian Penal Code and Penal Code Ordinance of Sri Lanka share common criminal law jurisprudence. In light of increase in sexual offences against women in both countries, subject expert drew the attention of the participants to the offences like Rape, Sexual harassment, Voyeurism and Stalking. It was discussed observed that socio-legal understandings of rape is typically based on the notion of consent. To consent to something is to reverse a prima facie supposition about what may and may not be done. In order to prove Rape offence in court it is necessary to establish *general criminal intent* required for first-degree sexual assault, it has to be proven beyond a reasonable doubt that the accused subjected another person to sexual penetration and overcame the victim by force, threat of force, coercion, or deception. Whereas, in a statutory rape trial, the burden of proof is on the prosecution to show that the victim was under age in a prosecution for rape, it is incumbent upon a state to show that the carnal knowledge was without the consent of the prosecutrix. During the discussion, *Nirbhaya 2013, Baldev Singh, Bharwada, Gurmit Singh and Tukaram cases were discussed at length.*

Day-4

Session-9
Circumstantial Evidence
Speaker-Justice K. C. Bhanu

Law and judicial practice in India on circumstantial evidence was discussed in session-9. Subject expert explained that circumstantial evidence is used in

criminal courts to establish guilt or innocence through reasoning. It was observed that the mode of evaluating circumstantial evidence has been stated in *Hanumant Govind Nargundkar v. State of Madhya Pradesh, 1952 AIR (SC) 343* and he explained the five principles laydown in this case:

- The circumstances from which the conclusion of guilt is to be drawn should be fully established;
- The facts so established should be consistent with the hypothesis of the guilt of the accused;
- The circumstances should be of a conclusive nature and tendency unerringly pointing towards the guilt of the accused;
- They should exclude every possible hypothesis except the one to be proved; and
- There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

Session-10
Recording of Confessions, Reliability of Witnesses
Speaker- Justice K. C. Bhanu

“Recording of Confessions and Reliability of Witnesses” was the next topic of interaction. First segment of the interaction was devoted to understand various forms of confession. It was deduced that there can be three types of confession:

- *Judicial confession* are those which are made before a magistrate or in court in the due course of legal proceedings as also stated in section 127 of the Indian Evidence Act 1972.
- *Extra-judicial confessions* are those which are made by the accused elsewhere than before a magistrate or in court. Extra-judicial confession is generally made before private person which includes even judicial officer in his private capacity.

- *Voluntary and non-voluntary* confession are those which should be free from any coercion or threat.

Striking issues in recent judgments of Supreme Court in *R.K. Anand v. Registrar, Delhi High Court, Balwinder Kaur v. Hardeep Singh, Nishi Kant Jha v. State of Bihar* and longstanding judgements like *Kalawati and Another v. The State of Himachal Pradesh (1953)* and *Pyare Lal Bhargava v. State of Rajasthan (1962)* discussed were discussed in detail.

Session-11

Judicial Ethics: Stages of Moral Development

Speaker- Prof. Parul Rishi

In this session, subject expert explained that moral development is the gradual development of an individual's concept of right or wrong, conscience, religious values, social attitudes and behaviour. The concept like 'Ethical Universalism', 'Law of Karma' and 'Divine Paradox' and their influence in shaping the *morality* were deliberated. The trio of Indian ethical content: *Kama, Artha* and *Dharma* were also discussed. One of the participant queried about *ethical dilemma*, subject expert reflected that ethical dilemmas are situations in which none of the available alternatives seems ethically acceptable to take a decision and it is common that anyone who involved in adjudging the rights of the people often face such ethical dilemma.

Session-12

Transactional Analysis

Speaker- Prof. Parul Rishi

Session- 12 of the programme focussed on "Transactional Analysis". Transactional analysis is the method of understanding communication between the people. It helps in analysing and understanding human relationships. Subject expert opined that, as a judge, one needs to quickly understand the ego state of a person, be it advocate, litigant, court official or colleague. Utility of understanding the parent, adult and child ego states was demonstrated through

many examples. It was asserted that the above ego states are present in all of us simultaneously but, only one of these will be in command at any given moment in time. Furthermore, the ego states do not depend on the individual's age and each presents positive and negative aspects. Many of the participants were agreed to the view that, the skills of knowing the ego state of a person will help them in effective discharge of their adjudicatory, conciliatory and mediatory duties.

Session-13
Art, Science and Craft of Judging
Speaker-Prof. Geeta Oberoi

The session on “Art, Science and Craft of Judging” was combination of lecture and exercise based discourse. A legal problem was distributed a day earlier to the session. With the help of that problem, utility of clear and precise reasons, implication of psychological, educational background and social orientation of a judge was explained.

The usefulness of management discipline in judicial decision making was highlighted in the next segment of the discourse. SWOT, UCHI, stakeholder analysis, group thinking, stepladder thinking and MBTI's four preferences were also explained to the participants.

In the next segment of the discussion Resource Person explained deductive reasoning along with deductive logic, inductive generalization and analogy. She opined that deductive logic is the process of reasoning from one or more statements (premises) to reach a logically *certain* conclusion. A syllogism is a kind of logical argument that applies deductive reasoning to arrive at a conclusion based on two or more propositions that are asserted or assumed to be true.

Resource person used following cases as an illustration to explain the utility of logic in judging-*Marbury v. Madison (1803 US SC)*, *Youngtown & Tube co. v. Sawyer (1952 US, SC)*, *Brown v. Board of education (1954, US, SC)*, *Griswold v.*

Connecticut (1965, US, SC), Justice Blackman Roe v. Wade (1973, US, SC), Jones & Laughlin Steel Inc. (1985). Inductive and analogical reasoning were also discussed in detail. Inductive reasoning is reasoning in which the premises seek to supply strong evidence for (not absolute proof of) the truth of the conclusion. While the conclusion of a deductive argument is certain, the truth of the conclusion of an inductive argument is probable, based upon the evidence given. Analogical reasoning is any type of thinking that relies upon an analogy. An analogical argument is an explicit representation of a form of analogical reasoning that cites accepted similarities between two systems to support the conclusion that some further similarity exists.