

Orientation Programme for Junior Division Judges

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The National Judicial Academy organized a seven days “Orientation Programme for Junior Division Judges” from 04th -10th January, 2019. The programme was conceived for capacity building of judicial officers at the primary tier, viz. Civil Judges (Junior Division). The sessions were designed to facilitate participant officers share experiences and views with counterparts from other States; better appreciation of the judicial role; responsibility of judicial officers in a constitutional democracy; recent developments in juridical thinking and technological advances relevant to accreting performance standards; and to deliberate on several aspects of law and practice relevant to enhancing the quality of performance. The idea was to provide participants a unique platform to share experiences and assimilate best practices.

Major Highlights and Suggestions from the Workshop

Session 1: Constitutional Vision of Justice

The speakers initiated the session by questioning the need to study the constitution vision of justice. They also emphasized the role of the preamble in interpreting the Constitution. Referring to the judgment in *All India Judges' Association case*, the speakers emphasized that judges are not subordinate to anyone rather, they are subordinate to the laws and the Constitution. The speakers discussed Article 20 (2) of the Constitution read with Section 50 of the Criminal Procedure Code (Cr.P.C.) regarding rights of arrested person. The speakers accentuated that though the magistrates are not deciding Constitutional matter hitherto they have to see the Constitutional aspects of the cases before them. Referring to the judgments in *Hussainara Khatoon vs State of Bihar* and *Sheela vs State of Maharashtra*, the speaker stressed upon the expansion on rights of poor persons by the Supreme Court. The speakers discussed that law should meet the demands of changing society and judges should interpret law accordingly. The participants shared their concern regarding the ignorance of police towards the Constitutional guidelines as framed the Supreme Court especially in remand matters. The speakers suggested that the magistrates should not issue remand orders until they are satisfied that all the required and established procedure has been followed by concerned police officers. The speaker also opined that if judges start refusing remand in cases of violation of procedure then automatically the police will start following the procedures as established in the guidelines.

Session 2: Role of Court in Constitutional Democracy and Adherence to Core Judicial Values

The speakers initiated the session by discussing concept of justice and the rule of law. While explaining Constitutionalism, the speakers stressed that it is necessary to internalize values and ideas of the Constitution. It was emphasized that minority is not those who are numerically less in number but are those who are weak in relation to the power for instance- farmer, transgender and women and that protection of rights of these minorities results in certain conflicting situations. The speaker expressed concern that people these days openly challenge the majesty of law and disobey it due to their own reasons. We must not only think on the normative level but also on the behavioral and cultural manner to increase obedience to law. The speaker emphasized importance of Article 39A of the Constitution concerning the responsibility of the State to ensure proper support to marginalized groups in the matters of providing justice. The speaker referred to the decisions of the Supreme Court which resulted in framing of the National Legal Service Authority Act 1989. The speakers concluded by discussing that democracy is sustaining in the country only because of the Constitution and judges are the ones who have the responsibility to protect and safeguard Constitutional rights.

Session 3: Discovering Current Judicial Methods

The speakers started the session by discussing various aspects of adjudication at the trial court level and the methods that judges follow. The speaker emphasized that fairness and expeditiousness are the two fundamental values which governs adjudication at trial court level. The speakers discussed literal interpretation and purposive interpretation as methods of adjudication. Judges should rely on either of two methods i.e. take the rule as it is or to interpret it according to the situation. The purposive interpretation will be balancing of the interest. If there is two conflicting ideologies then it depends on the personality of the judge as to which she/he will choose. The judges must ensure adherence to these values while adjudicating cases in their respective courts. The speakers suggested that to sort cases in their respective courts judges should classify cases in the order in which a case is ready to heard, under which cases charges are to be framed and in which cases, issues have to be framed. According to the speaker if there is absence of expert/medical witness, magistrates should report the same to the district judge for ordering Superintendent of Police or other civil servant for the presence of expert/medical witness. The speaker also insisted the use of latest technology like video conferencing for interacting with witnesses. The session concluded with discussion on role of magistrates in ensuring effective legal aid.

Session 4: Courtroom Technology: Use of ICT in Courts

The speaker stated that many courts are becoming technologically advance while some are trying to improve but there is shortage scarcity of funds. The speaker highlighted some methods by using ICT and how by adoption of new techniques, efficiency of the court process can be improved. The speaker referred to the Supreme Court's decision where it ruled that live streaming of court proceedings in matters of national importance can be done. Various information such as the details of case, the issues at hand, the details of accused and witnesses and the source of information can be easily managed through data management techniques. The speaker focused on docket

management, case tracking system and e-filing. The use of ICT to provide the judgement instantly to concerned authority/parties was also underlined. The speaker also emphasized the use of bio-metric system to identify the accused or the witnesses. The participants also discussed their experiences of using laptops for writing orders, making cause list and e-mailing. The SMS alerts to the lawyers for their dates of listing is ensured by courts. The speaker discussed the future of legal practice which will be artificial intelligence, cognitive computing and conducting legal research that is capable to predict the outcome of litigation. Videos were shown to the participant judges over increasing the usage of techniques of ICT in the courtroom.

Session 5: Managing the Docket: Court and Case Management

The speakers started the session by discussing various aspects of managing the docket. The efficient docket management requires identification of cases into various categories depending upon the complications of each case and this will result in better court management. The speakers referred to Lord Woolf's Report which supports categorization of case for better case management. The simpler case can be fast tracked and the difficult ones must be allocated in different category. Thereafter, the speaker emphasized developing synergy between all stakeholders for proper docket management. There should be immediate listing of the case as soon as the case is filed and the time limit must be fixed in consultation with the counsels. The speaker insisted on framing issues on facts and then resorting to pleading. If the facts are such that the case needs to send to mediation, it must be immediately sent. The judge should ask for written submission from the counsels. The judges must communicate with the stakeholders and should attempt to understand their concerns. Mediation is the biggest tool which can be used by the judges for case management. The speakers emphasized on minimizing the roll call time and adjournments. The speakers said that every judge has his/her own docket where he/she manages by his/her own thought process and work conditions. The judge must not be affected by the external condition and must adhere to the procedural law.

Session 6: Law of Precedent: Identification and Application of Ratio Decidendi

The speakers started the session by highlighting the importance and the origin of law of precedent. The basis of precedent started with the commencement of reporting of judgments. The main assumption behind the system of precedent was that like cases should be treated alike. Precedent must be understood in the light of the facts of the case. The judge must conduct the legal research that must be read with the facts of the case for application of the precedent. If the precedents are applied without proper understanding of the facts of cases then it may result in wrong judgement. The reasoning of a particular judgement should be analyzed and then it should be used as a precedent. The reasoning which leads to the decision i.e. ratio decidendi must be understood. The speakers also explained obiter dicta and said that the observation of higher courts with respect to matters which do not directly lead to decision are obiter dicta and are not binding over any courts. The speakers discussed various nuances about ratio decidendi and obiter dicta and referred to various Supreme Court judgments to explain the same. Precedent must be applied when there is an ambiguity in the position of law. The speaker gave an example related to habits of lawyers citing various precedents in a pleading. The speaker suggested the participants to question the lawyers whether the cited precedents have any relevance to the case. The speaker said that judges must have good coordination with bar and bar must be disciplined. The speaker concluded the

session by highlighting Article 141 of the Constitution according to which the decision of the Supreme Court is binding on all courts.

Session 7: Law Relating to Cyber Crime: advances and Bottlenecks

The session started with issue of emergence of cyber world and its legal implication. Giving a brief history of cyber world, the speakers expressed concern regarding emergence of complex cybercrimes and inadequacies to address them effectively. The speaker explained different types of cybercrimes such as malicious programming, causing disruption, assisting in unauthorized access, destroying, deleting or altering information residing in the computer and diminishing its values. The speaker explained computer source code which include aspects like listing of programs, computer commands, design, layout and program analysis. The speaker discussed the provision dealing with source code theft i.e. Section 65 of the Information Technology Act. This provision is related to the action to conceal, destroy and alter source code. The speaker also explained the term Logic Bomb which are programmes to detonate in pre-defined manner. The speaker also explained the importance of internet service provider in tracking sources of crime. According to Section 67C internet service provider required to retain the information in manner and format as per the direction of central government. However still the central government needs to notify the manner and the format in which the information has to be retained. The speaker also focused on the Interception Monitoring Decryption 2009 where the competent authority is the secretary in Ministry of Home Affairs.

Session 8: Electronic Evidence: Collection, Preservation and Appreciation

The speaker started the session by explaining provisions of the Information Technology Act. The Critical Information Infrastructure where computer resources whose destruction can debilitate national security, economy, public administration or order as well as health and safety of people was discussed. These are notified by Gazette Notification as protected system. Explaining the difference between access and secure access, the speaker said that the access is punishable but secure access might not be punishable upto certain extent. Section 43A deals with entities which handles sensitive personal data information and ensure reasonable security practice and procedure to protect the information was discussed. The speaker discussed various aspects of personal data such as password, medical information, financial information and bio-metric information. The speakers then focused on regulation of private companies for using private data of users and emphasized on having computer data protection legislation as the need of the hour. The speakers focused on intermediary liability according to Section 79 and explained the process of tracking accused by approaching to the network service provider and obtaining the IP Address. The judgment in *Shreya Singhal vs. Union of India* was also referred for explaining the liability of intermediary. The speaker discussed judgments of the Supreme Court on the admissibility of electronic record. The requirement of certificate under Section 65B for issues of admissibility of electronic record by way of secondary evidence was discussed by refereeing to the judgments of *Anwar vs Basheer*, *Sonu vs State of Haryana* and *Navjot Sandhu* case.

Session 9: Forensic Evidence in Civil and Criminal Trials

The speakers started the discussion by giving an overview of the topic. The speaker said that the forensic science is the use of science and technology to provide scientific evidences. The forensic evidences are mainly of two kinds i.e. physical and biological. The speakers discussed both the types of forensic evidences in detail. The process of forensic analysis of the documents in question was discussed which includes various fields such as handwriting analysis, signature and initial analysis, alteration, erasure, sequence of strokes of handwriting as well as printed matter. The speakers explained the principles of handwriting analysis which consist of identification of forgery in disputed handwriting and signature. The speaker discussed different types of forgeries which consist of freehand, simulated forgery and the cut copy paste signature. Various aspects of checking forgery including determination of authorship of forgery, comparison of handwriting, use of photocopies of signature, determination of whether a person is a left handed or right handed and also determination of age of ink and paper were highlighted. Relevant Judgements of the Supreme Court in this regard were referred and discussed. The speakers highlighted the importance of expert opinion in deciding issues of evidences. The speaker discussed evidentiary value of fingerprint and opined that it is a valuable mean of identification due to its uniqueness and that it never changes. According to the speakers judges in various cases have decided that the identification of thumb impression is almost perfect and the evidence of fingerprint expert can be relied upon. The speakers also discussed the concept of DNA and how DNA is helpful in crime investigation, identification of paternal and maternal genesis and the identification of sex of a person. The speakers focused on various protocols which investigating agencies should strictly follow during the collection and preservation of physical and biological evidences.

Session 10: Judging Skills: Framing of Charges

On the theme, the speakers highlighted the issues regarding framing of charge at the commencement of a trial. It was suggested that while framing charges a judge must be very careful, verify the charges levelled in the chargesheet and should not simply rely upon the prosecution or police chargesheet alone. The Kasab's case was referred during the discussion to elaborate upon how charges were framed in that case. It was pointed out that there are two types of cases - summons case where no formal charge is framed and warrant's case which involves formally framing of charge. The speaker also dealt with how to frame charge(s) in a particular case and stated that it must include ingredients of a particular offence and the manner of committing the offence. The technicalities relating to multiple charges, which charges can be joined together, separate and distinct charges, minor and major charges etc. was also covered during the course of discussion. The speaker also gave an overview of the provisions relating to theft, criminal conspiracy and cases involving constructive liability and vicarious liability under IPC and pointed the technicalities of framing charge(s) in such cases. Lastly the speaker mentioned that framing of charge is important for a fair trial and involves application of mind.

Session 11: Judging Skills: Art, Craft and Science of Drafting Judgement

The need to learn art of writing judgement was highlighted during the session. It was stated that judgement is a message of legal principle with reasoning leading to an outcome. The speakers pointed out essential ingredients to be included in a judgement. It was emphasized that a judgement

must be concise, precise and the decision must be based on reasoning, it must be in simple language, easily understandable by the litigants. It was deliberated that the two decisions are never similar even if the facts are same due to the variation in application of logic and interpretation of law by an individual judge. Difference between admissible and inadmissible evidence was also discussed at length. The participants were suggested to not read headnotes and editorial summation of a judgement as it does not have any authority and further in cases involving complex facts the judge must include elaborations if the judgement is lengthy. The speaker also recommended the participants not to overload the judgement with precedents as trial courts are court of facts. It was further highlighted that a judgement must be decisive, use of words like 'may' or 'might' must be ignored and there should be use of specific words with well-reasoned logic. Lastly it was stated that reasoning is the most important part of a judgment and it must be based upon quality of the evidence/ witness and not on the quantity.

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

The meaning of terms 'rationale' & 'discourse' was discussed in detail during the course of session. It was suggested that a judge must not be a silent spectator and must completely participate in the trial. It is the duty of a judge to promote rational discourse in his courtroom. The speakers stated that strength of a judge is knowledge, personality and conduct. A judge should resort to politeness and must react to each situation logically. It was highlighted that the discourse must be constructive in a courtroom then only it can be rationale. The speakers insisted the participant judicial officers to read law and have command over it, over the facts and then try to maintain the discourse and rationality in the court.

Session 13: Role of Magistrate at First Production of Arrested Person

During the session the speakers deliberated that arrest must only be made when there is an offence and it must be made only in accordance to the procedure established by law. It was stated that at the time of production of an accused the magistrate must verify the reasons for production, whether counter signed, memorandum signed by one witness and whether any 3rd degree measure resorted by police etc. In case of any 3rd degree measure resorted by police then magistrate has the power to produce the accused to the doctor. It was mentioned that depending on the severity of the crime a magistrate can grant police custody for not more than 14 days by giving reasons for such remand. Various landmark judgements on the subject were referred for discussion during the session such as *Nandini Satpathy vs Dani (P.L.) And Anr*, 1978 AIR 1025; *Sunil Batra vs Delhi Administration*, 1980 AIR 1579; and *Prem Shankar Shukla v. Delhi Administration*, AIR (1980) SC 1535. Article 20(2), Article 22, Article 21 of the constitution were also referred. The speakers emphasized that it is the duty and responsibly of a judge to uphold law and to uphold the rights of an accused as enshrined in the constitution. It was mentioned that the idea of law is that, if a person is deprived of his liberty then it must be under scrutiny. The concept of bailable and non-bailable offence was also discussed. Lastly it was highlighted that handcuffing is not permissible except in exceptional cases. The speakers suggested the judicial officers to decide by going into merit of the case even if they are acting as remand magistrate to avoid injustice.

Session 14: Fair Trial: Fair Processes

On the theme, the speakers highlighted that fair trial process is a check upon the abuse of power. Maintaining judicial calm, neutrality, impartiality is important for ensuring fair trial. The speakers stated that fair trial is a corner stone for just society. The speakers elaborated the concept of Fair Process which includes a fair prosecutor who is calm and have no vexatious and oppressive conduct. It was suggested that a judge should act as a neutral referee since there are chances that the witness and other protected person are vulnerable to biases. The session further included discussions on the rights under Article 20(1) and Article 20(3) of the Constitution. Cases of extra judicial killing and custodial violence were also discussed in detail. Giving a reference of Sohrabuddin's Case, the speaker stated that moral conviction is not enough unless there is evidence to link. It was also suggested that a judge must take the evidence into consideration for corroborating the witness, apply the law, precedent and then interpret. The other speaker highlighted that the first step in a trial process is framing of charge which must be specific and accused is entitled to know the charge against him to prepare his case. It was mentioned that speedy trial is an important aspect of fair trial and the concept of fair trial is embedded in Article 21 of the Constitution. Further, three principles of criminal jurisprudence were enlisted - presumption of innocence, impartial order and right to open trial.

Session 15: Role of Courts in Securing Gender Justice

The speakers started their deliberations with a generalized perspective of the topic. It was stated that creation of awareness and attitudinal change is the key to achieve gender justice. The principles of freedom, equality, dignity, equity and fairness must be ensured at all times. The speakers highlighted two tests to determine whether an issue is gender sensitive or not. The first test pertains to less number and great attention which can be at home or at courts. The second test pertains to three R's that is recognize, resist and report. Giving an example of POSCO Act, it was mentioned that there are cases where no reporting is done which is also a crime. A judge is required to be more sensitive towards all aspects and there needs to be an attitudinal change in the behaviour of a judge towards the issues of gender justice. The speaker pointed out that there can be a lot of impact of human rights abuse such as disturbing psychology, feeling of disgust, disbelief, suspicion, helplessness, frustration, anxiety and depression, loss of confidence, fear, loss of security, fear of guilt etc. There must be judicial sensitivity and empathy while dealing with cases involving rights of women and children. It was suggested that a judge must give priority to disposal so as to provide speedy justice and ensure that the victim support and representation is prioritized. A judge should work for making rich trends and progressive approach in every gender case.

Session 16: ADR and Plea Bargaining

In this session, the speakers explained the concept of mediation and discussed its essential aspects. The difference between mediation and arbitration was pointed to the participants. It was mentioned that in ADR there is Arbitration which is affordable by few, there is conciliation which is used in selected kinds of disputes and there is mediation which is by far the most preferred mode of ADR. There are Lok Adalats which are intermittent. Further, it was stated that in conciliation a conciliator knows the law who is either a judge or a lawyer. The speakers emphasized that in most of the civil suits mediation is possible which includes possession suits, commercial disputes, corporate

litigation, family matters, partnership disputes and injunction suits. It was suggested that a judge should try to bring consensus among parties towards use of ADR as an alternate means to decide a matter. Maintaining the confidentiality and complete hearing of both parties are two essential aspects of mediation. The speaker concluded by quoting that, “a journey of thousand miles begins with a single step as in the case of mediation”.

Session 17: Occupational Stress in Judges: Identification and Consequences of Stress

It was deliberated that stress has become an important facet of life since we all live in stress every moment. Management of stress is very important and it depends on one’s personality and behaviour inculcated from childhood. The speaker stated that the level of stress does not depend on the level of the court whether a judge of superior court or lower court, when a judge performs his duty he maintains stress at high levels. The other speaker highlighted that each judge has its unique way of processing stress. To know whether there is healthy or unhealthy stress one needs to know whether the response is based on a clearly perceived & real threat or is it based upon imaginative rather than real. The speakers elaborated upon the determinants of stress like nature of event, predictability, control, ambiguity and domain. A judge suffers from occupational stress that relates to stressful job factors, sedentary work environment, work overload etc. As a judicial officer one has to manage their emotion as well as the emotion of their case too, in his day to day life. The speaker pointed out that a judge becomes irrational due to anger and fear and therefore, insisted the participants to write down their thoughts and see what can be done. The speaker insisted the judicial officers to take good sleep and maintain healthy diet.

Session 18: Managing Judicial Stress: Institutional Strategies and Techniques

The speaker highlighted the problems faced by a judge by sharing his practical experiences. Certain reasons for stress pertaining to judiciary was pointed out such as stress relating to transfer, obeying circulars and orders, dealing with high profile cases, trial by media, troublesome advocates, promotion & its prospects, complicated cases, family matters and isolation. To overcome these causes of stress the other speaker suggested a few techniques which included practicing yoga daily, exercise and prayer, devote sufficient time to his family, plan for holiday etc. The speaker insisted the judges to not read law articles or case reports while on vacation rather devote time on their hobby, their family and other likings like sport, writing, cooking etc. Judge should be frank to discuss their legal problems with their seniors and colleagues and should be confident in his actions. The speakers concluded on the remark that it is a judge who has to keep the patience so as to keep the courtroom atmosphere better for all.

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