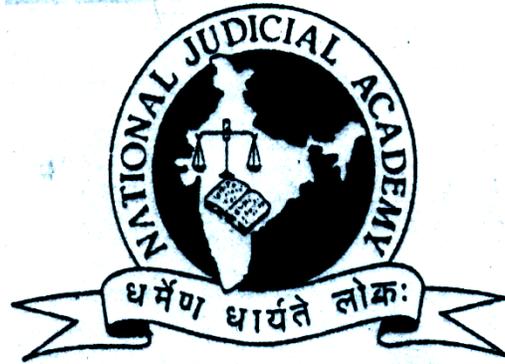


NATIONAL JUDICIAL ACADEMY



NATIONAL ORIENTATION PROGRAMME FOR NEWLY APPOINTED CIVIL JUDGES (JUNIOR DIVISION) P-890

JANUARY 16-22, 2015

PROGRAMME REPORT

By

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BACKGROUND

National Judicial Academy organized an orientation programme for Newly Appointed Civil Judges (Junior Division) from 16th to 22nd January 2015. 62 representatives across the country participated in the conference.

The resource persons for the conference were

- Prof. (Dr.) G. Mohan Gopal, former Director of National Judicial Academy
- Justice Sunita Gupta, Judge, Delhi High Court
- Justice A. K. Patnaik, Former Judge, Supreme Court of India
- Justice R. C. Chavan, Former Judge, Bombay High Court
- Justice Dharnidhar Jha, Judge, Patna High Court
- Justice Zaki Ullah Khan, Former Judge, Allahabad High Court
- Mr. B. A. Patil, Registrar High Court of Karnataka
- Mr. Sampath Iyengar, CEO, Blue Tiger
- Mr. R. S. Thakur, Dy. Director, Wildlife Crime Control Bureau
- Mr. S. V. Sheshadri, Assistant Director, Wildlife Crime Control Bureau
- Prof. (Dr.) S.L. Vaya, Director, Research & Development at Raksha Shakti University;
- Prof. (Dr.) Manju Mehta, Professor, Ph.D., DM&SP, & trained in Medical Education, AIIMS and
- Mr. Parag Gadhia, Coach, Speaker & Facilitator at Deep Ability Consulting

This programme aimed to contribute to the capacity-building of judicial officers at the lowest rung of judiciary i.e. Civil Judges (Junior Division). Catching them young, a programme for

junior division judges provides an opportunity to young judicial officers to share experiences and views with judges from across the country in the beginning of their careers. This programme aims to facilitate better appreciation of the role and responsibilities of judicial officers as members of independent judiciary in a constitutional democracy.

DAY I

Session 1

In Session 1, Prof (Dr.) Geeta Oberoi Director (I/C), NJA introduced the purpose and objectives of the programme to the participants and mapped out the various themes and issues that would be taken up in the course of the programme. Dr. Oberoi stressed on the role on the Justice Delivery system at grass root level and urged the participants to introspect and think over the responsibilities and the expectations of the people that have been cast upon them as judges. The participants then introduced themselves.

Session 2

Case Description by Participants that Challenged them

Panel – Dr. Geeta Oberoi, Professor, National Judicial Academy

In Session 2 the participants were involved in an open discussion on the cases that challenged them and the issues that pose difficulties to them as judicial officers. The judicial officers were divided into five groups. Each group was given a topic to discuss and deliberate.

The topic was given for discussion were –

1. Evidence Appreciation: Issues and Challenges.
2. Infrastructure Issues: What is the need?
3. Court Managers: What are the functions? What should be functions?
4. Time Management Issues in disposal of cases
5. Bench & Bar relationship.

After the discussions, each group presented the issues that were discussed and the opinions expressed. The following points were presented by the participants:

Group 1 -

Theme - Evidence Appreciation: Issues and Challenges

Points presented

- There is need for digitalization of evidence and summarization of records for saving time.
- The burden of proof in cases under the Protection of Children from Sexual Offences Act, 2012 and evidentiary requirements in child abuse cases is a major difficulty faced by the court.
- In order to facilitate the courts, there must be audio recording of the arguments made by the parties.
- The courts must be assisted by experts with regard to ballistics, medical evidence etc.

Group 2-

Theme – Infrastructure Issues: What is the need?

- There is need for adequate infrastructure for the judges. These include a chamber with a washroom and adequate space and furniture, requisite IT devices, internet access and a library.
- Infrastructure required in the courtroom includes Proper set-up of Bench and other furniture, Video-conferencing system in court room, adequate space and sitting facilities to accommodate litigants, advocates, child witnesses, etc., Providing sufficient monitors so that all stake holders can see and understand the court proceedings and installation of CCTVs in the courtrooms for further transparency in court proceedings.

- Court Premises should have drinking water for stake-holders, sitting facilities in waiting areas, cleanliness, provision for wash-rooms and their maintenance and parking facilities.
- Judges requires well equipped residential accommodation, sufficient storage facilities for files and court record, adequate working area for the staff, sufficient and well trained staff, proper security for judges.

Group 3-

Theme - Court Managers: What are the functions? What should be functions?

The function of Court Managers are -

- To assist the Judges.
- Maintain Official secrecy.
- Facilitate to establish the performance standards applicable to Court.
- Evaluation of the compliance of the Court Orders.
- Support the Judges to perform the administrative duties.

The suggestions as regarding the functions of Court Managers are -

- Accountability to respective all Courts.
- Acquainted with the legal procedural knowledge.
- Accountable for the e-committee requirements and statements.
- Identification of the staff that requires training.
- Identification of Court building repairs and infrastructures.

Group 4-

Theme – Time Management Issues in disposal of cases

- Since no precise time schedule is prescribed for proceedings in cases, and it varies with respective states and its practices, so a uniform approach in this regard, if possible, should be framed.
- Lengthy oral arguments should be curtailed and if possible written arguments be made a compulsion like in civil cases.
- Unnecessary Adjournments should be avoided.
- Cases like domestic violence cases, petty nature offences cases, complaint cases and matrimonial cases should be taken up on a daily basis.
- Court Commissioner should be appointed for taking evidences of witnesses which will save the time of the court.
- Public prosecutor must be made accountable with regard to the time spent in the cases.
- Time limit should be fixed for bringing orders from superior courts.
- Compromise should be encouraged by giving the judicial officer more points for settling the case.
- Proper and efficient staff should be provided in ample number and if possible necessary training should be given for minimum of time consumption on procedural aspects of the court.

Group 5-

Theme – Bar and Bench Relationship

Issue 1 - Trust Deficit

Solutions –

- More transparency such as sending of cause lists/orders/judgments online.
- Giving dasti orders/free copies more frequently. Computerization methodology should be adopted. SMS alerts for NDOH.
- Punctuality, Discipline and leading by example.
- Avoid legal-ease in judgments. Explain the order to the litigant and the lawyer – this would reduce the trust deficit. This would also reduce the corruption within the court.
- Patient Hearing to the lawyer.
- No adjournment at the drop of a hat, at the same time understanding and accommodating genuine constraints of lawyers as equal stakeholders.
- Listen courteously. Sensitivity and Politeness
- Diplomacy should be used. Use of euphemisms can be done.
- Self Help Brochures in the Court should be made available. Display Board for the court charges.

Issue 2 - Clash of Interests

- Economic Interests of the lawyer and judge's interest in disposal of the case or dispensation of justice.
- No common platform for reconciling their sometimes conflicting interests. The need or a synthesis.
- Dialogue/Seminars/Combined platforms/some amount of similar training.
- Lawyers don't like judges to be too participative. However we are not to be umpires but referees and have to be participative/pro-active judges. Striking the balance between being accused of being biased (if we are too participative) and uninterested or bored (if we don't participate) walking the tightrope !

Issue 3 - Behavioral Issues

- Aggressive behavior of the lawyers to the court or towards the court staff.
- Ego tussle because of difference in mastery over the subject, age difference; Lawyers v. Judges – confrontationist attitude.
- Solution – More diplomacy. J. Sabharwal – Use your sword i.e. pen – avoid verbal altercation. However if the line is crossed. Be firm – bounden duty to set it right.

Issue 4 – Boycotts and frequent strikes

Strikes are illegal and undemocratic – should be controlled by higher authorities by necessary disciplinary action by regulating authority.

DAY II

Session 3 & 4

Theme - The Concept of Justice & Social Context Judging

Speaker - Professor G. Mohan Gopal

The resource person commenced the discussions by sharing his experience at the academy. He then deliberated upon the concept of Justice in India and stated that Hon'ble Justice Kapadia established a three-tier committee dealing with the problems of the judiciary consisting of judges of High Courts and registrars, to represent the district judiciary. This committee, in consonance with the law ministry, helped in the improvement in judiciary. He further relied upon the significant role of the 13th and 14th finance commission as it has brought a lot of change since last 13 years. The resource person recommended that all participants Judges should keep the bail matters at the end so the lawyers stay till the end of day and present their matter before the court. He further deliberated that the National Judicial Academy is not a place for teaching, preaching or training but it is a place of conversation and discuss the role of judiciary in the nation building.

During the session, he proposed an interactive exercise where a few participants will share their most difficult and yet satisfying case they have come across in their career followed by the anonymous opinion of other Judges.

Volunteer 1

Case of theft

A thief committed theft in a closed house, stole gold ornaments. The owner came and opened the door and he found that ornaments were stolen. He filed FIR and Investigation started no clue till 5 years. In some other matter the police came to know that this is the same person who committed theft in the same house and the ornaments were recovered but were not identified. The accused made a confession that he sold the ornaments to a gold smith and the gold smith said that he bought the ornaments from the accused but then the ornaments are in a different form and not in the original state.

Everything was proved but the question of identification of ornaments was very complex as earlier they were ornaments now it was in a different form of jewellery. Also, the Confession made to police during investigation was only for the purpose of recovery. Informant, gold smith & investigation officer were the main witnesses.

Held: Acquittal

Participants' Vote: Convict: 26 (45%), Acquit: 32 (55%), Undecided: 1

Volunteer 2

Rent controllers, Eviction petition on the ground of non-payment

One Mr. X was a landlord and filed a petition for eviction against the tenant Y. The defense of Y was that she was not a tenant but had a live in relation with X. X was married with a women W. X claimed Y was a tenant, Y said she is not a tenant and she has a live in relationship and also had a child from the said wedlock. Before eviction he filed a suit for permanent injunction for not allowing her to sub-let the property and in that suit he was declared as a tenant. Y's child in his documents had X as his father and she said that X used to manipulate the records of rent

thinking that she might have to evict her at some point of time. She said X invited her as a live in and she never believed she was a tenant.

Evidences used were the testimony of the neighbors, school certificates, documents.

Question: Whether a judge can find a way to give a relief to the woman as it appears to us that she is in a live-in relationship with the Petitioner? It was complex as it had to deal between statutory Law and social position.

Held: Sue motto invoked domestic violence provision. In this case she is in live in relation. Eviction petition dismissed.

Participants' Vote: Eviction: 22 (37%), Dismissed: 37 (53%)

Volunteer 3:

A' son entered into agreement with a company and guarantor was A's father selling mobile phone vouchers (V). So the company gave V of 20 Lakhs. A failed to make payment, police complaint was made by the company. A gave cheque of 16 lacks. Cheque dishonored. Section 403, 406 & 138 were charged against A and his father who was government employee. Father says he has not misappropriated he has merely stood as a guarantor.

Held: Acquitted the father but convicted on Section 138 of Negotiable Instruments Act

Participants' Vote: Acquited: 43, Convicted 15 (25% , 75%)

Volunteer 4:

Anticipatory Bail Search and seizure issue

Whether to rely on official witnesses or not?

Held: Acquitted

Participants' Vote - Convict : 19(32 %) , Acquit : 38 (68%)

Volunteer 5

A case under S. 125CrPC against husband

Restitution of conjugal rights was filed by the husband but she did not join the husband. The question before the judge was to decide under either section 125 or the civil suit of conjugal rights? Also, the wife did not challenge the submission of husband.

Held: Partly allowed. Dismissed

Participants' Vote: Allowed: 30 (52%) Dismissed: 28 (48%)

After this exercise Prof. Mohan Gopal concluded the session by pointing out the diverse opinions of Judges on a single case and discussed the reasons for the same. However, decision is not a matter of Judge's discretion and there should be only one just decision. He highlighted as to why there is a conflict of opinions between the judicial officers. Prof. Mohan Gopal also stressed on the impact of varied judicial opinions on the people and on the judicial system.

After the Lunch break Prof. Mohan Gopal focused on the importance of Judiciary in nation building. He said that people should have faith in judiciary and then only a country will develop. In India police investigates the case independently unlike some European countries where police head is appointed by election. The judge has to set down the principle of law which has to be applied basis on which acquittal/conviction would be given. He suggested to the House that, in his opinion to strengthen the faith in judiciary we should re-enact the jury system. He further stated that a judge should deliver justice in real and a judge's subjectivity to justice is of immense importance.

Also, he stated that a judge should convince the people that a court will deliver justice.

Session 5

Theme - Role of Constitution in Trial Court Adjudication

Speaker - Professor G. Mohan Gopal

Prof. Mohan Gopal stressed on the Constitutional idea of justice as a goal for the Indian judiciary. He discussed the different variants of justice viz, Justice according to the constitution

and Justice according to personal opinion. Justice according to constitutional provision is Justice according to constitution, and justice by discretion is justice according to personal opinion which will differ from person to person. He urged the participants to follow the concept of justice according to the constitution. He further emphasized that Law is a set of hypothetical facts and if that fact pattern occurs then there must be a punishment and that is justice but if that fact pattern did not take place, then there should not be a punishment. According to him, a successful and unsuccessful murderer shall have a same punishment. We must understand that judge's concept of justice cannot be justice of their personal opinion. He relied upon Section 2 of IPC, which states that a person shall be liable to punishment under this code and not otherwise. A person can be punished for something contained in IPC but not otherwise.

Prof. Mohan Gopal discussed the concept of Truth and he stated that there are three concepts of truth:

- 1) **God's truth:** Gandhi said, only God knows the truth so only God can punish and no one else.
- 2) **Man's truth:** He look like a crook he must have done that. Different views on their different beliefs. Mostly it is wrong and by accident only it's right.
- 3) **Law's truth:** this comes from the Indian Evidence Act. You have to follow this and arrive at the truth by numerous calculations and processes. You have to figure out that whether a prohibited hypothetical fact situation has occurred or not.

He concluded the Session by explaining the meaning of word 'Justice'. Justice = Jus (Right norm) + Tice (stands still). A judgment which upholds the eternal values is just. In preamble you find the eternal values of constitution (equality, dignity, fraternity, freedom) and if these values are not compromised then only a decision can be 'just'. He concluded the session by stating that in a democracy, the judicial officers/ judges should try to protect people and not punish.

Session 6

Theme – Judicial Ethics

Speaker - Professor G. Mohan Gopal

This session mainly focused on the role of Judge. Prof. Mohan Gopal stated that a judge is a guardian of democracy. After 1980's people started respecting judiciary and believed that constitutional court is on the side of the people. Courts must become channels of resistance against abuse of power of government. Indian judiciary became a role model to the world. The power of judiciary comes from the trust and confidence of the common and poor people. The concept of justice means upholding constitutional values. It was also suggested the participants should watch a Documentary, 'Fudged Forensics & faulty witnesses'.

He then discussed the certain judgments to highlight the role and responsibilities of judges. In the case of State of Maharashtra Vs Wadekar, Prof. Mohan Gopal lauded the Additional District Judge for the role he has played in ensuring justice. He stressed that the judge was conscious of the social scenario and played his part in ensuring justice for the downtrodden people of the society. Prof. Mohan Gopal also discussed the judgment of Surinder Kohli's case and the lapses made in ensuring fair trial to the accused.

He concluded the second day of conference by discussing the methodology of deciding a case. He emphasized that the usual method is to see the facts and then issues, then see what law is applicable and then come to decision. He suggested an alternate Methodology which is calls as normative judging where the order would be:

- 1) Petition/police report.
- 2) Relief/action sought.
- 3) Which statute is to be applied?
- 4) Are any constitutional values involved (equality, dignity etc.)
- 5) Answer those issues.
- 6) Evidence relevant to those issues.

DAY III

Session 7 & 8

Theme – Stress Management & Relationship Management

Speaker – Mr. Sampath Iyengar

Panel – Justice R. C. Chavan and Mr. B. A. Patil

Dr. Amit Mehrotra stated that participants have to face a lot of pressure as judicial officers. They face many challenges like poor infrastructure, frivolous complaints, etc. Despite above difficulties they continue to work with full commitment. However, certain amount of stress is obvious in the profession. Thus, he emphasized that the sessions to be conducted today will focus on how the judges may cope up with excessive negative stress.

Justice Chavan carried forward the discussion by providing the introductory remarks to the participants. He introduced the co-resource persons. He stated that the judicial officers should reflect over themselves when they are on the bench. Thus he asked the judges not to let this stress enter when they are functioning in their official capacity. He emphasized that the judges should also know how to manage relationships. In today's time, where there is such a huge backlog of cases, it is must that judges should manage their time well.

Mr. Patil stated that he has not come here to teach but learn in the process of sharing. He said that judges should aim for judicial excellence. Mr. Iyengar took the discussion forward and asked the judges to be like kids for the day. He said that it is important that we should enjoy what we do. We have one short life, so it is essential that we live life else we shall have to leave life.

The resource person stated that we should always find the best person on the mirror. We should keep the remote of our mood with ourselves. He said it is essential that we understand that the life is a simple process and we should keep it in that way. He showed the video of the song, "Jeena issi ka naam hai."

He enumerated various stages of stress as relaxation, pressure, worry, stressed, depression and finally breakdown. He said that pressure is the most productive stage of all. He stressed that either we should learn on our own or life teaches us. Health is the biggest asset of all. Next he showed video of "give me some sunshine."

He enumerated following benefits of certain degree of stress as higher focus, better determination, superior performance, higher energy, sharp thinking, quicker reflection and above all success. He showed video of how a truck saved a plane. He said that problem of a common man is an opportunity of a businessman.

Mr.B.A. Patil quoted Napoleon Hale, “Every problem comes with equal and greater opportunity.”

Mr. Iyengar enumerated negative aspects of stress follows improper behavior, poor health, inappropriate attitude, sleeping disorder, irregular food habits, addiction to bad habits, loneliness, indecisiveness, procrastination, memory problems, possessiveness and finally unhappiness.

He specified that there are various reasons for stress like fear of failure; expect the unexpected, expectation of the worst, self destruction, lying, anger, high expectations, comparison, financial crises, resistance to change, illness, etc.

The resource person deliberated on the various methods to cope up with the stress which are as follows: Simply love it, outsource it, learn from best, accept and apologize and in the end life is simple keep it that way. He stressed that professional needs should also be catered in order to overcome stress.

Session 9

Theme – Time Management

Speaker – Mr. Sampath Iyengar

Panel – Justice R. C. Chavan and Mr. B. A. Patil

Mr Iyengar in this session discussed the time management and relationship management. He stated that everyone gets 24 hours in a day. He deliberated that time management brings about differences among individuals. He stressed that one should know at what point of a day he/she is

most energetic. Time is valuable. He told all judges to clap for a minute and made them realize the importance of a minute.

He advocated for the effective planning. He stressed that it is useful to have weekly and daily planners. We should avoid distractions. Mr. Iyenger stated the quote by Mr. Robin Sharma during the discourse that, “There is plenty of time to sleep when you are dead.”

Mr. Iyengar while taking up the topic of relationship management said that all that everyone has is one life and the easiest way to start a relationship is smile. Everyone should know his/her strengths and weaknesses and also likes and dislikes. In life one should love himself/herself. One should trust people and should respect every human being. He further stressed that one should live with values and should be humble.

He said that while communicating one should mind the language. One should be assertive and should have clarity in his/her mind. He deliberated that what we say is important; however, how we say is critical. One must have a positive body language. One must say no when it is necessary to say no. He further stated that asking something is not bad rather assuming things is awful.

It is important that we should have the three golden words on our fingers which are- sorry, please and thank you. He also said that it is essential that one should give time to our kids. One should believe that presence is present. He stressed that it is important to know that children do what parents do and not what parents say. One should give quality time to our children and ought to keep up our commitments. He emphasized that one should never utter I can't. Mr. Iyengar concluded the session by showing all the officers a video of a handicapped athlete to motivate judges.

Session 10

Theme – National Framework for Court Excellence

Panel – Justice R. C. Chavan and Mr. B. A. Patil

Justice R. C. Chavan began the session with a short introduction over the issue. He stated that it is important that the judiciary must deliver justice and wipe the tears of the poor. People in courts are agitated and the judiciary must ensure that the trust in the system does not vaporize.

Mr. B.A. Patil emphasized that judges should be judicious in preparation of cause lists. Prioritization of cases is important. Time management and proper planning should be reflected in the cause list. It was stressed that Judges must learn the concepts of case management and court management. These two issues are core issues in judiciary. Importance of the prioritization of witnesses was also discussed.

It was deliberated that Judges should apply mind while framing of issues. He stated that first judge should do what is necessary, then should focus on what is possible afterwards should think of the task which very difficult or impossible to perform. It was further deliberated that witness examination is also vital to judicial system. It was stressed that witness comes to court to help the court to discharge the justice. Thus they should be dealt with priority and it should be seen that they should be properly and with decency.

During the discourse it was emphasized that Judges are captains of their courts. It was stated that the difference between great judges and good judges is that a good judge decides case on merit whereas a great judge decides case with a vision of the constitutional values. It was delineated that Judges must have ability to communicate with councils, parties, etc. They should also be courteous and willing to listen. Listening is essential to judging. Judges should be compassionate and above all judges should have common sense. It was emphatically emphasized that winners do not do different things, rather they do things differently.

It was stated that the interpretation of the statues should be done very carefully by a judge while giving a decision. It was stated the judges speak through judgments. It was expressed that judgment should be clear and should not give rise to any further ambiguities. Judges should have skills to arrive at truth. Mr. B.A.Patil concluded the session by emphasizing on access to justice which is available to everyone as a right enshrined under the preamble of the Constitution of India and a judge has to ensure court excellence to achieve access to justice.

DAY IV

Session 11

Perspectives on Indian Social Scenario - Documentary Screening

In this session, a documentary screening was done on the theme of 'Dalit Rights'. The documentary showed how a person regained his confidence while shooting the film. He met the real life protagonist who made a social change in the village. It also depicted how sensitive a caste issue is and focused that a casual caste comment may hurt the sentiments of a person. Documentary sensitizes the judicial officer on how caste bias and prejudice still existed in our society. The movie gave a message that it is necessary that a person from dominated class should regain his/her confidence before opposing caste system.

Session 12

Theme - Section 125 Cr.P.C Reliefs and Interim Reliefs: Interlocutory Orders and Injunctions

Speaker-Justice Zaki Ullah Khan

Justice Zaki Ullah Khan emphasized on certain points. The object of Section 125 Cr.PC is to prevent vagrancy and destitution of women and the scope of Section 125 Cr.PC which is wide and covers not only wife but also parents and minor children including minor married daughter was discussed. It was delineated that both legitimate and illegitimate children are included within the Section. There is no ceiling on the maximum amount of maintenance to be awarded. The remedy provided by the Section is in addition and not in derogation of other laws in force. It was pointed out that Section 125 CrPC requires an application to be filed in a court and there is no need to file a formal complaint. Thus the procedure given to seek relief is simple. It was emphasized that Section 125 CrPC is in conformity to Articles 15(3) and 39 of the Constitution of India.

He further stated that as per Indian Evidence Act, there is a presumption of legitimacy of child. The onus is on the party who asserts to prove illegitimacy. Woman in the de facto relationship of marriage and the woman whose marriage is void on ground of existence of first marriage is also entitled to maintenance. The resource person stated that that there is multiplicity of statutes in

India to govern marital relationships. E.g. Anand Act for Sikhs, Special Marriage Act, Muslim Divorce Act etc. Following judgments were referred during the discourse:

- a. Mohammad Ahmed Khan v. Shah Bano Begum (1985 SCR (3) 844).
- b. Savitaben Somabhai Bhatiya v. State Of Gujarat
- c. Ramesh Chander Kaushal v. Veena Kaushal (1978 SCR (3) 782)

The resource person with regard to the Interim orders remarked that interim orders are made when:

- a. Balance of convenience is in favour of the party seeking interim order.
- b. Irreparable loss may be caused to a party to the suit.
- c. To prevent the suit from becoming infructuous.

It was deliberated that temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. Such injunctions may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908. It was further stressed that Order 39 CPC contains the rules regarding grant of temporary injunctions and interlocutory orders.

Cases in which temporary injunctions may be granted by the courts were also discussed during the session.

Session 13

Environment & Ecology - Documentary Screening

Name of Documentary – ‘Home’

In this session a documentary titled ‘Home’ was screened for the participants. This documentary stressed on the delicate balance in the environment and ecology and man’s role in disturbing this balance. The documentary stressed on the crisis that will occur if people continue to play and destroy the nature.

Session 14

Theme - Wildlife Protection Act and Wildlife Crime Scenario in India

Speakers- Mr. R.S. Thakur & Mr SV Sheshadri

Wildlife Protection Act is a special Act for maintaining ecological balance. The Act imposes a responsibility on the state governments for maintaining this balance. The need of this special Act which was emphasized in the case of Forest Range Officer v. Aboobacker (Kerala High Court 1990) was discussed.

It was deliberated that the Act gives wide power including the power of seizure. It was also asserted that officers have police powers and quasi judicial powers by which they can issue search warrants, record evidence, confessions etc.

It was stressed that the Act makes no distinction between attempt and actual hunt. Cognizance of the offence can be made only on complaint by specified officers. It was stated that possession of prohibited items is presumed to be illegal unless proved otherwise and wildlife has been widely defined under the Act to cover all land, water and air animals.

It was delineated that Hunting is prohibited under the Act. However, Schedule 1 animals can be killed with a permit. Also, it was said that animals can be killed in self defense. The resource person stated that no person is allowed to keep any wildlife without possession. A declaration has to be made in this regard and if not made, such possession is illegal. Dealing in trophy or animal article or their transport without license is punishable. Some of the offences under the Act are also compoundable.

Mr. R.S. Thakur also made reference to the cases during the discourse which includes Motilal v. CBI, Ayyub v. State of Rajasthan, EC Richard v. FRO, FRO v. Aboobacker, Matia Patel v. State of Orissa, State v. Sanchar Chand, Principle Chief Conservation of Forest v. JK Johnson, State of Bihar v. Murad Ali Khan AIR 1989 SC 1, Ashwini Kumar Bhardwaj v. State of Rajasthan.

Mr. S.V. Sheshadri delineated that India is one of the 12 mega biological diversity countries of the world and indiscriminate hunting of animals disturbs our food cycle. Thus it is important to preserve animals. The resource person stressed that the major reasons for killing animals are

huge profits, low risk, lesser penalty, no stigma attached to the offence, craze for ornaments made up of animal part, use of animals as medicines and treating ailments.

He stated that hunting of wildlife is an organized crime and it involves a nexus between poacher, middle man, trader, and manufacturer. Further, this network is organized within and outside the country. The poachers are mainly poor villagers and purchasers are big business empires.

It was emphasized that the smuggling in trophy and animal parts is very high in India especially of nails, skin, scales etc. The most targeted animals include elephant, rhino, tigers, jackals, mongoose, crocodiles, musk deer etc which are considered precious for their various parts. He finally emphasized upon the need of sustainable development wherein all naturally found things are to be utilized in a manner, so that they are also available to the next generations to come.

DAY V

Session 15

Theme - Criminal Psychology

Speaker- Prof. (Dr.) S. L. Vaya

Dr. Vaya began the discussion on criminal psychology. She discussed about cyber crimes and also described the neuro criminology model.

She explained the participants about the two mind theory and stressed that the mind has two points of diversion-experiential mind and rational mind. She stated that there are two types of thinkings involved. One of them is Automatic thinking and the other one is rational thinking.

Automatic thinking is spontaneous and less rational. Rational thinking is slower, more logical and develops after one and a half years of age. She said that behaviour of a perpetual chain snatcher or a repeated offender may be due to automatic thinking also. The resource person also discussed two systems of Lieberman. One of them was X system. The system is reflexive and is for automatic processes. The other system is C system. This system is reflective. It is for controlled processes. She stressed that an environment which is congenial to crime shall foster the reflexive behavior of a criminal. Such behavior leads to criminal behavior. She further

deliberated that the above theory is discarded in today's environment. There is nothing like criminal behaviour and it is an unacceptable behavior.

She explained how IT reformations mature children earlier than age. This brings aberrations in them. Thus this leads to an anti social behavior. She said that pro-social behavior should be imbibed in a person in his childhood.

She further stated that even the most organized crimes are rehearsed in the minds of the criminal. Thus it is important to deal with the mind. It is essential that we have to retrieve the stored crime story from the criminal. For this we need to pursue a scientific investigation.

Accessing mind is technology's need, polygraph tests, layered voice analyses, fully automated fixed system for mass screening, narco analysis, etc. was discussed during the discourse by the resource person. Thus the session was concluded with discussion on guidelines for forensic psychology.

Session 16

Theme - Criminal Psychology

Speaker - Prof. (Dr.) Manju Mehta

Dr. Mehta discussed about the psychological applications in forensic assessment. She discussed about the innovative methods of the interview. She asserted that the field requires study of human behavior in legal context. She said that legal application of psychology may be divided into three categories as understanding, predicting and influencing.

She asserted that role of psychology follows expert witness, assess competency to stand a trial, rule out mental illness, understand personality, provide lead to assist judicial enquiry and in law enforcement.

Role of psychological analysis was discussed with regard to recognition, assessment of future risk, evaluation of witness credibility, understanding limitations of the client and rehabilitation.

She deliberated that use of psychological assessment in forensic setting may be made in following cases which include civil, criminal, compensation, eyewitness, and assessment of credibility.

The resource person asserted that many aggressive or disturbed persons are not ready to settle disputes. In Juvenile Justice Boards also psychological assessments are done which helps in understanding the motivation of a crime. She expressed that psychological assessments are based on various methods and are reliable.

The resource person also discussed neuropsychological assessments which helps to study attention, concentration, psycho-motor-coordination, memory, visual-spatial disability, thought processing and executive functioning.

It was delineated that the sentence completion test helps us to reflect on the mental condition of a person. She explained the participants how children and adult assessments are different. Dr. Maju Mehta concluded the session on the note that if accused refuses to take any test nothing can be done. Informed consent is essential part of such assessment.

Session 17

Theme – Bail & Remand Matters and Sentencing

Speaker – Justice Sunita Gupta

Justice Sunita Gupta emphasized that in remand matters, Article 22 of the Constitution is to be read with Section 15, 16 and 57 of CrPC. The rule is that if investigation cannot be completed within 15 days, then the accused imprisoned has to be released by taking his personal bond. But if a judicial officer feels it necessary to have the accused in the custody, it is mandatory for him to give reasons for remanding the accused to police custody. Still this period of remand cannot exceed 90 days in any case.

Justice Sunita Gupta also made a reference to the cases to show that if charge-sheet is not filed on time, accused has right to be released on bail which include Hussainara Khatoon v. State of Bihar, Natwar v. State of Orissa, Sanjay Dutt v. State. The resource person stated that magistrate can issue a remand order of maximum 15 days. She also stated that the normal rule is bail and

not jail. But there are certain exceptions to this settled principle which include if the accused is likely to abscond, create nuisance or hinder delivery of justice.

It was delineated that when the person is presented before a magistrate, it is the duty of the magistrate to inform the accused of his right to get bail. In sentencing, she delineated that sentence is judgment on conviction and crime. A judge has wide discretionary powers on matters relating to sentencing. But there is also a duty on judges to hear the accused on the point of conviction. Justice Sunita Gupta also emphasized upon the need of releasing certain accused on probation under section 360 CrPC. For this, she referred to *Ambica Prasad v. Delhi Administration*.

Justice Sunita Gupta also referred to Victims Compensation Scheme given under Section 357A of CrPC. She stated that there is no upper limit of awarding compensation. However, an inquiry has to be made on the paying capacity of the accused. Justice Sunita Gupta said in certain offences like rape, acid attack etc a compensation of Rs. 2 lakh within a month of the offence is to be given to the victim. Justice Sunita Gupta concluded her discussion by pointing out the need for giving reasons while passing order as it helps the appellate courts in appreciating the facts and circumstances of the matter in appeal. Justice Sunita Gupta has also made reference to *Rudul Shah v. State of Bihar*, *Railway Board v. Chandrima Das*, *Bodhisatva Gautam v. Subhra Chakraborty* and *Kewal Patil v. State of UP* during the discussion.

Session 18

Documentary Screening

Name of Documentary – ‘All Rise in your Honour’

In this session the documentary “All rise in your Honour” was screened for all the participants. The documentary discussed the social impact of judicial delays, lack of proper implementation of the judicial decisions, judicial errors, frivolous suits, etc. It also discussed the issue of lack of public confidence in the judicial system. It also explained about certain malpractices prevalent among judges.

DAY VI

Session 19

Theme – Judicial Intervention for Legal Aid

Speakers – Justice AK Patnaik and Justice Dharnidhar Jha

Justice Dharnidhar Jha initiated the discussion while reflecting over the plight of the under trials. The resource person discussed the case of Hussainara Khatoon v. State of Bihar and explained that it is a practice that many prisoners in this case were under trials and were not presented before the magistrate for a long time. The reason was that the persons did not ask for legal aid. He emphasized that most Indians are uneducated, thus there is need for free and competent legal aid. He stressed that bail amount should be in accordance with the nature of offence

Khatri v. State of Bihar, 1981(1) SCC627 was discussed during the discourse and it was deliberated that Supreme Court in this case created a new jurisprudence after and compensation was given in violation of personal liberty of a person.

He emphasized the need for competent legal aid to the Indians. A few other cases of Sukdas v. Union Territory of Arunachal Pradesh; Sampurna Behura v. Union of India; Raju@Ramakant v. State and Bachpan Bachao Andolan v. Union of India; were discussed. It was emphasized that paralegals should be employed or deputed in police stations to assist in juvenile cases.

Why and how Legal Aid should be provided to the poor is been discussed by Justice A K Patnaik. During the discourse of discussion judicial officers expressed that general public is unaware of their rights and about Article 39A of the Constitution of India.

The resource person delineated that Article 32 guarantees Right to constitutional remedies. But this fundamental right is very expensive. He emphasized that the judges should be sensitized. The role of a judge is not to prosecute but to guard rights and liabilities of individuals. He discouraged judges to be influenced by the media.

He stated that judges should decide cases on the basis of record, evidences, facts, laws, etc. He stressed that people should get free and competent legal aid. The case of Sunil Batra v. Delhi

Administration and Shatrughan Chauhan v. Union of India was also discussed during the discourse.

Session 20

Theme – Judgment Writing

Speakers – Justice AK Patnaik and Justice Dharnidhar Jha

Justice Dharnidhar Jha stated that a judgment is a culmination or aimed product of all judicial proceedings. He said that first of a judge should write the facts of the case based on pleadings; then the admitted facts and then points of determination should be emphasized. This should be followed by decision and reasoning.

Various sections which include Section 2(9) of CPC, Order XX Rule 4, order XL rule 5, order 41 of CPC, etc. were mentioned and discussed during the discourse.

Justice Dharnidhar Jha further stated that in order to avoid doubt on the credibility of judicial officers, judgments should be delivered without any delay. He discussed the case of Mukhtiyar Singh v. State of Punjab 1995(1) SCC760 and stressed that brevity is important in writing reasons.

The four parts in judgment writing was discussed:

1. Facts-precise and concise from plaint and written statement
2. Evidences adduced by the party
3. Noting arguments of parties in light of evidences
4. Giving findings-ratio decidendi and reasoning

He then discussed the case of Dastane v. Dastane and deliberated that appreciation of evidences is important. No party can go beyond its pleadings. Judgments should be written in simple, lucid and instructive language.

Justice A.K. Patnaik stated that ultimately a judge is known by his orders and judgments. He emphasized that neither judges should have prejudice nor they should condemn any brother judge. He stated that judgments should not be written in flowery language to impress anyone. The session was concluded with a remark Judge should revise judgments before delivering them so as to rectify mistakes which a human being is bound to make.

Session 21

Theme – Reasoning

Speakers – Justice AK Patnaik and Justice Dharnidhar Jha

Justice Dharnidhar Jha discussed sec 2(9) of CPC, which defines judgment. He emphasized the grounds for writing a judgment and stressed that clarity in judgment is a result of proper research and reading. He expressed that reasoning should be comprehensive and said that if good reasons are written while imparting a judgment then it not only benefits the litigant but also the reasoned judgments get appreciated by the superior court.

Why reasons should be given is been discussed by Justice A K Patnaik. During the discourse of discussion judicial officers expressed that reasons explain the rationale behind any judgment. It was delineated by the resource person that the reasons are not supported by law is not acceptable and should not be given. It was also deliberated that reasons should be as per the principles and norms of the law.

Judges should follow procedure as per law and evidences should be produced and scrutinized as per the law. He advised that no one is above the law and judicial officers should not travel beyond law to do justice. Decision should be without any political or religious reasoning. No philosophy should be written in a judgment. He emphasized that citation of authority is necessary. He further stated that without authority there is no law and no law means no remedy. It was deliberated that reasoning when defeated becomes a caprice. Rationality is important. Reason should be given as per facts and laws at the point of determination.

It was delineated that judges have made a commitment towards the liberty of citizens. Nobody can force a judge to do anything as judge have a lot of power as a result of Independence of judiciary. The session was concluded with the talk about sensitivity and responsibility among judges.

DAY VII

Session 22 & 23

Theme - Enhancing the Memory Power

Speaker – Mr. Parag Gadhia

The resource person delineated that in increasing memory the foundation is 'I' and then comes 'VAII': Visualization, association, imagination, Interest. It was stressed that do not listen to negative and pessimistic ideas. Be positive. Human mind does not read letter but words as a whole. It was stated by the resource person that we take things from our sense organs. This information goes to sensory memory, and then to short term memory through attention and rehearsals goes to long term memory. It was deliberated that there is a high probability to remember what you learn first and last. We tend to forget what we learned in middle.

It was stated that we remember special days. This is called law of vividness. Concentration is the key to good memory and relaxation is important for memory. It was stressed that one can take deep breath, smile, yoga, meditation. Associating Facts to images enhances memory. Junk food leads to junk memory. Proper sleep enables good memory and Medicines like those of hypertension can cause loss of memory. Coffee and tea helps in short term memory but effects negatively in long term.

The resource person discussed following rule to stimulate memory:

1. Use memory to the utmost.
2. Challenge a novelty. Learn new skills.
3. If you work in an office, learn to dance.

4. If you are a dancer, learn to deal with a computer.
5. If you work in sales, learn to play chess.
6. Practice makes permanent.
7. Learn bit by bit every day. This brings strong foundation. Do not do it in one go as through this learning collapses.
8. Build strong neurons.

The conference concluded with the concluding remarks by Dr. Amit Mehrotra, Assistant Professor, National Judicial Academy, Bhopal who thanked all the participants and expressed his gratitude to all the resource persons for sharing their expertise and insights and making the programme useful, successful and meaningful.

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