

**NATIONAL ORIENTATION PROGRAMME FOR
NEWLY APPOINTED JUDGES CIVIL JUDGES
(JUNIOR DIVISION)**

P-913

13th -19th March, 2015

PROGRAMME REPORT
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NATIONAL JUDICIAL ACADEMY

Number And Name Of The Programme

The National orientation programme for newly appointed civil judges (junior division)– P 913 was organized by the National Judicial Academy during March 13 - 19, 2015.

Resource Persons And Number Of Participants

The conference was attended by 54 Junior Judges from district judiciary of the country. The discussions in the programme were guided by eminent judges, scholars, senior advocates and corporate professionals including Justice P.C. Pant, Supreme Court; Justice Sudhanshu Dhulia, High Court of Uttarakhand; Justice Manju Goel, Delhi High Court; Justice S.N. Dhingra, Delhi High Court; Prof.(Dr.) Mohan Gopal, former Director of the National Judicial Academy, Bhopal; Ms. N.S. Nappinai, Advocate, Bombay High Court; Mr. Subramaniam Vutha, Former Senior Vice President, Legal, of Tata Infotech Ltd. [earlier Tata Unisys Ltd.] and of Schoolnet India Limited; Mr. Yogendra Yadav, Manager at Lab Systems India; Mr. Avinash Kadam, Advisor, India Task Force of ISACA; Dr. Arun Mohan, Senior Advocate, Supreme Court; Mr. Shashi Kiran Shetty, Senior Advocate, High Court of Karnataka; Mrs. Manisha Karia, Advocate on Record, Supreme Court; Mr. Aditya Sondhi, Senior Advocate, High Court of Karnataka; Mr. Sampath Iyengar, CEO, BlueTiger and Parag Gadhia, Coach, Deep Ability Consulting.

Main Objective Of The Programme

The main objective of this programme was capacity building of judicial officers and equipping them with skills to meet the challenges involved in their day-to-day adjudication work.

SUMMARY OF THE DISCUSSION/PRESENTATIONS MADE BY RESOURCE PERSONS

DAY 1

SESSION 1 TO 4

The conference started with an introductory note from Mr. Sanmit Seth followed by introduction of the participants and the Panel Members for the day, Ms. N.S. Nappinai, Mr. Subramaniam Vutha, Mr. Yogendra Yadav, Mr. Avinash Kadam. The Session started on a lighter note with Mr. Subramaniam Vutha, Former Senior Vice President, Legal, of Tata Infotech Ltd. [earlier Tata Unisys Ltd.] and of Schoolnet India Limited, who introduced the basic concept of Internet- LAN, WAN and how work has moved to the Internet along with entertainment and social interaction. The fundamental reasons are Uniquity, Velocity, Volatility, Portability. He also explained that in virtual world every copy can be an original. The word 'Deletion' has a different meaning over Internet. He also discussed the challenges like Authenticity, Integrity and Non-Repudiation. He compared the Electronic Signature and Digital Signature with paper based signature in terms of value by putting the simple condition like uniqueness, detection of alteration, linked to paper and person. The biggest

challenge with paper is its obsolescence, handling risks, storage risks and electrical outage/fluctuation/moisture. The question which arises from these developments is that what will be the future of technology law with the technology of future. He also pointed out principles of electronic data – Access, Selection and Preservation. In the end, he explained types of computer crime – Computer as tool for crime, as source of evidence and as target of crime.

Next to address was Ms. N.S. Nappinai, Advocate, Bombay High Court, who began with her presentation about Criminal Justice System and its objectives which provide substantive and procedural mechanisms for prevention of crime – maintain law and order; retribution – punishment or sanction violation; deterrent against temptation of crime or its spoils; Protect rights of victims and ensure compensation to them. Thereafter, she proceeded with a new phase called cyber corridor, where there is invisible intruder and how we can equip ourselves with requisite tools. The main part of the session began with defining the Cyber Crime, which is not defined under the Indian Law. So, she discussed the Law in Australia which defines cyber crime as: “*any unauthorized activity, which involves or uses: computers, digital technology, the internet, communication systems; or networks*”

She elaborated what is a document, its definition under Section 29 of IPC and Section 3 of Indian Evidence Act. She dealt with the provisions of section 2(1) of the IT Act regarding data, electronic record, digital and electronic signatures. She also discussed as to who is an expert and in this context discussed the relevance of the opinion of the examiner of electronic evidence (as in Section 79A of the IT Act). She concluded that it was easier to comply with the provisions of Section 65 B (2) of Evidence Act as compared to those of Section 65 B (4).

She also discussed provisions of Section 69 of the Police and Criminal Evidence Act 1984 of UK, which states as follows:

- "(1) In any proceedings, a statement in a document produced by a computer shall not be admissible as evidence of any fact therein unless it is shown-
- (a) that there are no reasonable grounds for believing that the statement is inaccurate because of improper use of the computer and;
- (b) that at all material times the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents."

According to her, the above mentioned is simple yet powerful provision expressed in limited words and also making it easy to understand in respect of interpretation. Coming to Indian counterpart, she discussed various case law based on judgments during the last decade. She discussed the *Anvar PV vs. PK Basheer & Others*, which overruled the Navjot Sandhu Case by laying down that:

1. Compliance with the entire provision of Section 65 B including sub clause (4) mandatory;

2. Legislative intent clear and cannot be overlooked;
3. Necessity for certificate emphasized

She ended on a note that that technology is growing with a never ending pace and with the changes in law not keeping pace with it, proving beyond reasonable doubt has become difficult.

The third speaker for the day, Mr. Avinash Kadam, Advisor, India Task Force of ISACA spoke on the basics of encryption and introduced to the House about how the encryption is done, benefit of encryption, the way the complicated encryption is done by giving examples of a simple Wi Fi router password. He also introduced to the House various complicated mathematical calculations which are processed by the computer at the background while an encryption takes place.

The fourth speaker of the day, Mr. Yogendra Yadav, Manager, Lab Systems India explained basic concept involved in hacking, spamming and shoulder surfing. He also demonstrated to the House Software called “Encase”, which creates mirror image, wipe the HDD and also act as a Degausser. He also elaborated practical aspects of recovery and preservation of data collected from crime scene.

DAY 2

SESSION 5 TO 6

The first two Sessions were chaired by Hon’ble Justice P.C. Pant, Supreme Court of India along with Justice S. Talapatra, High Court of Tripura and Justice Sudhanshu Dhulia, High Court of Nantial. The session started with a welcome note from Dr. Geeta Oberoi, Professor, National Judicial Academy, Bhopal followed by Justice S. Talapatra, who started with some Preliminary remarks about changes in society and relation to morality, Bangalore Principles, Basic Principle of Law and his own experience in the judiciary. Some of the important points discussed during the session on Judicial Ethics which a judge should adhere to were: (1) Public Interest, (2) Constitutional Obligation, (3) Avoidance of Impropriety, (4) Judge should be broad minded, (5) Promptness, (6) Court Organisation, (7) Courtesy and Civility, (8) Kinship or Influence, (9) Independence, (10) Ex-parte Applications and Communication, (11) Judicial Opinions, (12) Influence of decision upon the development of the law, (13) Idiosyncrasies and inconsistencies, (14) Partisan Politics, (15) Self Interest and (16) Improper publicizing of court proceedings.

Justice Sudhanshu Dhulia took forward the discussion to the next level. He discussed the scenario in England and Ireland. He also pointed out shortcoming of Adversarial System and also talked about intellectual integrity at length taking the view of judges who had taken dissenting views. The questions raised during the course of session by one of the participating Judges relating to the fact whether the precedents are to be strictly followed while deciding the case when the precedent don’t seem to be correct to be followed due to the unique facts and circumstances of the case in hand, he

replied to them stating that the judge should apply the law as is in the case in hand rather than mere applying the principle laid down in the precedent. He was of the opinion that one should not completely ignore the precedent, it should be applied in a reasonable and correct manner so as to render justice. He also pointed out with some examples that at times the dissenting Judgments in the past were criticized for being against the popular opinion but holds good with changing space and time thereby emphasizing the role intellectual integrity of the judge deciding the case specifically pointing out to that fact that intellectual integrity of the adjudicating judge is of utmost importance. He later discussed at length Sir Mathew Hale's resolution, who was Chief Justice of King's Bench appreciating his foresight at that time which still holds good. These were the rules composed by him to guide his own conduct as a Judge. He read the key points of the resolution during the course of the session. In the end, he shared his experience at bar and Judiciary at length.

Justice P.C. Pant shared some of his experiences and concluded the pre –lunch session with a note that a judge should always have keenness to learn, hear with patience, behave with courtesy and answer wisely. Judge's conduct must be ethical in both their official as well as personal sphere because the society has greater expectations from judges in this regard as compared to other functionaries of the State. Judges must not accept any kind of favour from any litigating party of their court and they should be cautious towards such proposals in different forms.

The Post lunch session was on E-prison software and Case Information System (CIS). The session on E-prison Software was taken by Mr. Rajeev Prakash Saxena, DDG at National Informatics Centre (NIC), who briefed the House about integration of ICT tools with present working procedure in prisons for their efficient, reliable, simple, smooth and transparent functioning. The said software was designed to deploy at the State Data Centre and provide real time information access to Courts, Police and other Agencies. He also explained that the Software is capable of handling Information Management of Prisoner, Visitor, Hospital and Gate & Vehicle. This Session was designed to help the judges understand this latest technological step employed in the prisons of various states in India. He also mentioned about some of the major developments in the area of video conferencing from jail and cases in which it was used.

Last Session for the day was addressed by Mr. CM Joshi, ADJ, Mangaluru, Karnataka. He introduced the House with a new developed system deployed in various states of India for capturing of the data at various stages which information when put to use at various levels reduces the work load on the employees of the Court. The information so fed into the system will help the Court in arriving at statistical statement of the Court with few clicks. This new system will also make the information available to the Parties to the case in more real-time.

DAY 3
SESSION 9 TO 12

The third day began with the Introduction of Prof (Dr.) G. Mohan Gopal, Director, Rajiv Gandhi Institute for Contemporary Studies, Rajiv Gandhi Foundation, New Delhi and former Director of the National Judicial Academy, Bhopal. He asked the participant judges to introduce themselves with the area of posting. Thereafter, he shared his journey with the academy and also explained that NJA is not a place for teaching, preaching or training but it is a forum to discuss their role in nation building. He started with the Concept of Justice in India discussing Justice Kapadia's 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 put pressure on law ministry and helped in the improvement in judiciary. He also referred to the 117th Law Commission Report on Training of Judicial Officers.

After a brief overview of the Justice, he began with an exercise where one participant from each of the four regions i.e. North, South, East and West shared his experience of one case where he had felt it to be challenging yet interesting. Each Participant had to explain the details of the case and after all the clarifications, if required, the fellow participant judges had to give their decision on a piece of paper, which was tabulated later. The exercise was repeated for the other remaining regions. The session was concluded after the exercise and decisions given by the participant judges in four cases were tabulated. It was surprising to note that decisions of the participant judges differed according to regions. The question that arises is that even by referring to same law of land why different perception arises while deciding cases? He told that judges are holding an important position in the system and lot of discretion had been vested in their hands so the decision, which they deliver, must be Just decision and justified. He also enlightened that why there is conflict in judge's opinion. Further, he stated that a judge should convince the people that a court will deliver justice. He added that Judiciary is important to national building.

He further pointed out the difference in Indian adjudication and the jury system followed in the United States of America, wherein the sole perception of the judicial officer or the Judge does not influence the judgment. He further pointed out by referring to an Article "*Whose Eyes are You Going to Believe? Scott v. Harris and the Perils of Cognitive Illiberalism*" and a video clipping by which it was stated that the perception a person (while adjudicating a Judge) may hold an imprint of his background like age, or rural or urban background, or origin, etc. which would be the decisive factor as to how same situation is being perceived by different individuals.

He related two variants of justice namely, (1) Justice according to constitution, which is based on the constitutional provisions and (2) Justice according to personal opinion or discretion which would differ from person to person. He further emphasized that offence under 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 occur then there should be no punishment. According to him, a successful and unsuccessful

murderer should have the same punishment. We must understand that judge's concept of justice cannot be justice of their personal opinion. He relied upon Section 2 of the Indian Penal Code ('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. So, a person can be punished only under the law i.e, only if the law prescribes so and not by some individual person otherwise.

He discussed the concept of Truth and also the kinds of Truth:

- 1) *God's truth*: Only god knows the truth so only god can punish and no one else. So, god's truth is perfect.
- 2) *Human's truth*: It is imperfect and limited because cognitive faculty of man is limited since the capacity of human to understand and interpret is limited.
- 3) *Laws truth*: It is derived from Statute. Law's truth is required to fulfill the inefficiencies of human truth. Various steps have to be followed in arriving at the conclusion.

He further pointed out that while arriving at a Judgment, the Judges can follow the following method that firstly, they can consider the Prayer to understand what set of rights, duties or liabilities are sought to be established by delivery of the said Judgment; secondly, what is the law on the said point of facts and issues; thirdly, to consider the admitted facts; fourthly, to take evidence on the relevant facts; and after following the steps laid down, the Judge would be easily able to arrive at the Judgment.

He pointed out that the understanding of Justice can be categorised in relation to the three eras: Raja era, Raj era, and Swaraj era. Raja era had a sense of *dharma*. He further pointed out that we don't have a post era notion of Justice. He talked of the concept of freedom and equality as derived from the concept of Swaraj. He said that swaraj is subjected to four limitation of Swaraj : (1) Satya (truthfulness), (2) Ahimsa (non-violence), (3) Antyodaya (Equity) and (4) Sarvodaya (not for self but for the good of all). Here, Antyodaya and Sarvodaya relates to fraternity.

He concluded the Session by explaining the meaning of word 'Justice'. Justice = Jus (values or right norms) + Stice (means to stand). Therefore, justice means, eternal values i.e values that will always stand or in other words justice is the stand of the standard human conduct. Unjust refers to something which does not enhance our values. So, justice contains set of standard values which later leads to create the idea of law. Moving further, he stated that law is based on a set of hypothetical fact patterns which should or should not happen; while, value is the reason why something should happen or should not happen. So, essentially justice is the reason to have a law. Justice gives answer to why certain hypothetical facts have a set pattern upon which they could be later adjudicated upon in case of certain non-conformity.

A judgment is just only if it upholds the eternal values. So a decision can be just only if it does not compromise on the eternal values given in the preamble to the constitution namely, equality, dignity, equity and freedom. In a democracy the aim of justice is to protect people (and not to punish them) and to resolve differences by discussion. He also drew attention to the *Hohfeld's Jural correlatives* i.e., if a person has a right, then such a right has a corresponding duty bestowed on some other person; if a person has a privilege, then the existence of such a privilege lies against someone having no-right; if power exists in a person, then there exists a person who has a liability.; and if immunity is bestowed on a person, then existence of such an immunity lies against a disability bestowed on someone else. He further pointed out that claims and privileges together cover everything one can do.

DAY 4

SESSION 13 TO 16

The day started with introduction of Justice Manju Goel, Former Judge, Delhi High Court by Mr. Sanmit Seth. She examined judgments of the participant judges so as to point out the pattern, and brief them about the contents of a good judgment. She stated that what should be included as part of a good judgment. She during the course of session divided the participant judges into four groups and gave them a set of questions to ponder upon. Some of questions that were asked in all the group questionnaires were: (1) Appropriate length of the Judgment, (2) Contents, (3) features of good judgment, (4) reducing the length of judgment, (5) word and passages that can be quoted and (6) special care to be taken care when writing concluding part. She appropriately answered all the questions one by one in an interactive manner, where all the participant judges participated and she pointed out that judgment should not unnecessarily run into pages, it should cover all the relevant facts from the evidence, quotes should be used only when required and judges should avoid unnecessary use of *quotes* and *legal maxims*. She also pointed that judgment should not cover all the cases cited by the parties, the Judge should take into consideration the relevant portion of the judgment, if cited by the parties in the pleadings. She pointed out while answering the queries raised by the participants she mentioned that general grammar rules of the language like in case of English language must be adhered to.

The Second half the day was spent with Dr. Arun Mohan, Senior Advocate, Supreme Court. He started with a brief introduction about his background and his experience at the Bar. He emphasized on our efforts towards speedier justice and the larger goal being justice delivery. An analysis of the problems, as surveyed and researched, revealed that, as a primary area, sufficient attention is not paid to the distinction between fact, law and application of law. He further stated that judges need to be better equipped with understanding of certain fundamentals – the distinction between: (1) fact; (2) law; and (3) application of law. He further added that inculcating such fundamental will enhance grasp and fosters clarity, as also accuracy, in the decision, and generally, the speed and quality of working. The later part of the discussion was on how to make full use of Civil Procedure Code (CPC). He made his suggestion

from experience he had from practicing as an advocate at Bar. The day ended with queries from participant judges.

DAY 5
SESSION 17 TO 20

The whole day was chaired by Justice S.N. Dhingra, former Judge, Delhi High Court. He began with describing judicial system and explaining adversarial and inquisitorial systems. He explained in detail about Confession under section 164 of CrPC including Voluntariness and Retraction. He shared his experience at the judiciary on the criminal side and also the recording and admissibility of confession. He also discussed the Sanjay Dutta's retracted confession. This Session was followed by Mr. Shashi Kiran Shetty, Senior Advocate, Karnataka High Court, Bangalore. He focused his discussion on procedural infirmities in recording confessions making it not admissible. He also discussed case study on procedural infirmities in recording of confession.

Mrs. Manish Karia, Advocate on Record, Supreme Court took post-lunch session. She introduced herself and started with a practical exercise on Confession of Co-accused. The participant judges were expected to discuss the same and prepare their decision based on their experience and the discussion on the said exercise. She along with Justice S.N. Dhingra carried forward the session and also answered the queries relating to the said issue at length. Justice S.N. Dhingra at this juncture, shared his experience of Parliament Attack case with the House.

Last session of the day was focused on the circumstantial evidence, which was taken by Mr. Aditya Sondhi, Senior Advocate, Karnataka High Court, Bangalore. He discussed various recent judgments of Supreme Court and High Courts. He shared his views on circumstantial evidence and judgment in light of that.

In the end, all four of the resource persons answered queries of the participating judges on circumstantial evidence and difficulty in assessing the real sense of the same.

DAY 6
SESSION 21 TO 24

The Session 21 to 24 focused on Stress Management, Mr. Sanmit Seth introduced to the House, Mr. Sampath Iyengar, CEO of BlueTiger, a firm committed to help Individual & Organizations to achieve their highest potential. He began the session with a lighter note -laughter and simple physical exercises. He explained how the stress is affecting our efficiency of doing things and preventing us from performing, which is usually followed by sleeping disorder, addiction, loneliness, indecisiveness and memory problems. He demonstrated methods to cope up with stress-simply love it, outsource it, learn from best, accept and apologize and in the end - life is simple keep it that way.

In later part of his session, he discussed the importance of sleep and managing ones 24 hour to the fullest. He also elaborated that how one can be energetic throughout the day.

DAY 7

SESSION 25 TO 26

The last two sessions were chaired by delegates from Nepal including the Chief Justice, Director and Additional director of National Judicial Academy, Nepal. The chair was introduced by Dr. Geeta Oberoi, Professor, National Judicial Academy, Bhopal. Thereafter, Mr. Parag Gadhia, Coach, Speaker & Facilitator at Deep Ability Consulting, an Organisation engaged in providing memory enhancing techniques, introduced himself and began with the presentation on learning pyramid along with brain storming exercises to the participating judges. He involved all the participant judges in the course of various exercises for enhancing memory power. He also elaborated why we are not able to retain our memory power for a longer time. He explained techniques – Linking Method, Chunking Techniques and various other useful techniques to enhance memory power and retain the memory for much longer and accessible time. He also explained types of memory – Procedural, Semantic and Episodic.