

NATIONAL CONFERENCE OF JUDGES OF DISTRICT
JUDICIARY ON “CRIMINAL LAW AND HUMAN RIGHT
(DEVELOPMENT OF LAW)”

P-914

20TH - 22ND MARCH 2015

PROGRAMME REPORT

PREPARED BY:

RUCHI SINGH, LAW ASSOCIATE, NJA



NATIONAL JUDICIAL ACADEMY

1. Number And Name Of The Programme

National conference of judges of district judiciary on “criminal law and human right (development of law)” P-914 (20th - 22nd march 2015)

- 2. Resource Persons And Number Of Participants** There were thirteen resource persons and 29 participants.

List Of Resource Persons

1. Justice V.S Sirpurkar
2. Justice U.U Lalit
3. Justice A.K Patnaik
4. Justice V. Gopala Gowda
5. Justice G.M Akbar Ali
6. Justice Dharnidhar Jha
7. Geeta Ramsheshan
8. Dayan Krishnan
9. Dr. Anup Surendranath
10. Madhavi Diwan
11. Dr. Aparna Chandra
12. Dr. Mrinal satish
13. Anup Jairam Bhambhani

3. Main Objectives Of The Programme

It was a two and a half day deliberations for the District and Session Judges on the theme of Criminal Law and Human Rights. The main objective of the programme was to focus on subjects that are part of Criminal Procedure yet at the same time advance the cause of Human Rights so that the District and Session Judges will be encouraged to think around those trial related issues which either strengthen and correspond to the normative framework provided for the protection of Human Rights or which undermines or weaken the effort to protect and afford Constitutional guarantees. The purpose of the

programme was thus to focus on the key issues in criminal trial which affects fair and impartial justice delivery.

4. List Of Main Points Discussed

1. Presumption Of Innocence & Reverse Burden
2. Plea Bargaining-Issues & Concerns Under Human Right Framework
3. Undertrial Prisoners: Judicial & GOI Initiative To Advance Human Right
4. Victim Compensation Scheme: A Critical Analysis
5. Extradition, Deportation And Statelessness
6. Trial by Media v Right to Fair Trial
7. Witness Protection Norms: Issues And Concern
8. Objective Investigation And Prosecution: Role Of Judiciary
9. Right To Effective Representation And Legal Aid
10. Rights Against Self Incrimination Under Cr.PC: A Human Right Perspective

5. Summary Of The Discussion/Presentation Made By Resource Persons.

Day I

Session I: Presumption Of Innocence & Reverse Burden

The session started with the welcome speech by the director of NJA Dr. Geeta Oberoi. She also talked about how this conference will be useful for the judges of district judiciary. Justice G.M Akbar Ali and Geeta Ramsheshan were the speakers for this session. The Constitutional mandate under Articles 20 and 21 of the Constitution of India were discussed which provides a protective umbrella for the smooth administration of justice making adequate provisions to ensure a fair and efficacious trial so that the accused does not get prejudiced after the law has been put into motion to try him/her for the offence but at the same time also gives equal protection to victims and to the society at large to ensure that the guilty does not get away from the clutches of law.

For the empowerment of the courts to ensure that the criminal administration of justice works properly, the law was appropriately codified and modified by the legislature under the Cr.P.C. indicating as to how the courts should proceed in order to ultimately find out the truth so that an innocent does not get punished but at the same time, the guilty are brought to book under the law Provisions of Section 319 of Cr. P. C. was discussed with its objects and schemes of interpretation. It was also suggested that there had been plethora of judgments pronounced by both the Supreme Court as well as various High Courts having varied and sometimes even contradictory answers to the questions presented above coming out of the applicability of section 319 of Cr. P. C. So, few of the landmark judgments of the Supreme Court (few discussed briefly and the rest discussed ornately) on this issue were discussed by Geeta Ramsheshan.

Session II: Plea Bargaining-Issues & Concerns Under Human Right Framework

Justice G.M Akbar Ali in this session broadly discussed the Cr.P.C provisions related to Plea Bargaining. The session opened up with the question that can we bargain a conviction and negotiate some sentence without much trouble for the state? To this question Plea Bargaining was suggested as an answer. The provisions of charge bargaining and sentence bargaining were also discussed along with the broad theme of bargain in criminal cases. The research of the Law Commission and the Malimath Committee Report were highlighted upon.

It was discussed that the process of plea bargaining was brought in as a result of criminal law reforms introduced in 2005. Section 4 of the Amendment Act introduced Chapter XXIA to the Code having sections 265 A to 265 L. these provisions were discussed in details showing how these are not used adequately in different states in India. The last thread of discussion between the resource person and participating judges was the response of judiciary and how several times the constitutionality of provisions relating to plea bargaining has been an issue in many cases.

The questions raised by the participating judges were regarding the applicability of plea bargaining in appeal and revisional stages of trial, and what is the extent of victim participation in this scheme of plea bargaining. Also questions were raised on the point of use of plea bargaining for under trail prisoners.

Session III: Undertrial Prisoners: Judicial and GOI Initiative to Advance Human

Right

Dr. Anup Surendranath in this session discussed how Prisoners' rights have become an important item in the agenda for prison reforms and this is due essentially to the recognition of two important principles. Firstly, the prisoner "is no longer regarded as an object, a ward, or a 'slave of the state', who the law would leave at the prison entrance and who would be condemned to 'civil death'. It is increasingly been recognised that a citizen does not cease to be a citizen just because he has become a prisoner. The Supreme Court has made it very clear in many judgements that except for the fact that the compulsion to live in a prison entails by its own force the deprivation of certain rights, like the right to move freely or to practice a profession of ones choice, a prisoner is otherwise entitled to the basic freedoms guaranteed by the Constitution. Secondly, the convicted persons go to prisons as punishment and not for punishment. Prison sentence has to be carried out as per court's orders and no additional punishment can be inflicted by the prison authorities without sanction. Prison authorities have to be, therefore, accountable for the manner in which they exercise their custody over persons in their care, especially as regards their wide discretionary powers.

Different provisions of Cr.P.C relating to prisoners rights such as section along with the landmark judgements of Supreme Court were discussed. Hussainara Khatoon and Sunil Batra v Delhi Administration cases were also referred by the resource person from time to time while discussion.

Session IV: Victiom Compensation Scheme

Mr. Anup Jairam Bhambhani in this session focused on the analysis of Section 357 A of Cr.P.C. The discussion also focused on how the present criminal justice system is based on the assumption that the claims of a victim of crime are sufficiently satisfied by the conviction of the perpetrator and how this assumption needs to be changed. The Committee on Reforms of Criminal Justice System was alsom discussed which perceived that "justice to victims" is one of the fundamental imperatives of criminal law in India. It suggests a holistic justice system for the victims by allowing, among other things, participation in criminal proceedings as also compensation for any loss or injury.

The discussion also elaborately focused on the role of presiding officers of courts and Legal Service Authority was discussed. The issues related to quantum of compensation, rehabilitation, The statutory recognition of the right to interim relief, how the victim would recover from the aftermath of the case proceeding, and other urgent needs of the hour relating to victims were elaborated upon by the resource faculty.

Session V: extradition, Deportation and Statelessness

In this session there were four resource persons, Justice Justice U.U Lalit, Justice V. Gopala Gowda, Justice G.M Akbar Ali and Dayan Krishnan. Mr. Dayan Krishnan was the first speaker. He talked of various facets of extradition and deportation laws in India and how its relevant to judges of district judiciary. He embarked upon the points that there is not much awareness regarding such laws and explained the position in India. He also emphasized upon the point that extradition plays an important role in the international battle against crime, and between countries extradition is normally regulated by treaties.

Dayan Krishnan also discussed the situation that if there be no treaty between countries and a case comes up how it would be handled with the help of law and practice of states. The other three resource persons also contributed in the discussion by giving examples from their personal experiences as judges of Supreme Court and High Court. The cases of Sarbananda Sonowal v Union of India and Hasan Ali Raihany v Union of India and Ors on deportation were discussed by the resource persons in detail.

Session VI: Trial by media v Right to fair trial

Justice V.S Sirpurkar opened up the discussion in this session followed by Madhavi Goradia Divan. He started by the remark that duty of a judge is to completely insulate himself from any media reports. The case of K.M Nanavati v State of Maharashtra was cited as an example of media trial by Justice Sirpurkar. Nirbhaya case, Sahara case, BMW hit and run case, R.K Anand case, 2G scam case and the English case of Scott v Scott were among the cases discussed by Madhavi and Justice U.U Lalit with the participating judges.

Instances were drawn as to how “Mass Hysteria” is created by newspaper articles, because judges are also humans and they are definitely not from outer space. The public functions

of media, and the benefits of open justice system was also discussed in the session, highlighting upon the role of media as a trustee of people.

Session VII: Witness Protection Norms: Issues and Concerns

Justice A.K Patnaik and Justice U.U Lalit were the speakers for this session. Justice U.U Lalit started the discussion with the concept of fair trial. Justice A.K Patnaik emphasized on the role of judges in fair trial. He said that the role of judges is not of an umpire as it is in cricket match. The resource persons also took examples from the cases where they have seen witness turning hostile due to different reasons.

The discussion focused on most of the cases which involve rich influential persons or corrupt politicians and in such cases crucial witnesses turn hostile, making the rule of law a mockery. There is an urgent need to bring forth a bill of rights to preserve and protect victims' and witnesses' rights, and due process. This is necessary to ensure that such persons participate in the legal process without fear and apprehension, so that justice can be assured. It was suggested in the discussion that the role of a witness is very important in a trial because witness is an indispensable aid in the justice dispensation. The Best Bakery case and Jessica Lal case were cited as examples.

Session VIII: Objective Investigation And Prosecution: Role Of Judiciary

Justice U.U Lalit and Justice Dharnidhar Jha were the speakers for the session. In the session Justice U.U Lalit again focused on the role of judiciary and how it begins just as a report is filed under 173 Cr.P.C. He also talked of the role of Public Prosecutor in objective investigation and fair trial. The Case of Manu Sharma was discussed in great detail, highlighting upon the role of a presiding officer of the court and role of proactive court in the administration of criminal justice system.

Justice Dharnidhar Jha also added the importance of the provisions under Cr.P.C. relating to arrest and the mandates to be followed before and after arrest of an accused and the investigation thereof. The provisions relating to search and seizure were also discussed by him. Section 173, 193, 227, 228, 311 of Cr.P.C and section 165 of Evidence Act was discussed while discussing case laws relating to investigation and prosecution. The cases such as Dharampal v State of

haryana, Zahira Habibulla Sheikh case, K.M Nanavati case and Manu Sharma case were among the cases on which elaborate discussion went on between the resource faculties and participating judges.

Session IX: Right To Effective Representation And Legal Aid

Justice A.K Patnaik and Dr. Aparna Chandra were the speakers in this session. Dr. Aparna Chandra started the discussion with reference to the Constituent assembly debate. She also elaborated on the points such as: is there any minimum substantive context to the right of representation and legal aid, at what time in the proceeding does the right to counsel arise? What is the role of judges in ensuring effective representation was also the point of discussion.

The cases of Ajmal Kasab v State of Maharashtra, Nandani Satpathy case, directorate of Revenue Intelligence v Jugal Kisore Sharma, Kishore Chand v State of Himachal Pradesh, and Khatri v State of Bihar were among the few cases on which discussions went on between the resource faculty and participating judges.

Session X: Right Against Self Incrimination Under Cr.P.C: A Human Right Prospective

Justice A.K Patnaik and Dr. Mrinal Satish were the speakers for this session. The session started with the concept of right against self-incrimination as is inscribed in the Constitution of India. Clause (3) of Art. 20 of the Constitution of India which guarantees a fundamental right against self incrimination was discussed thereafter Dr. Mrinal went into the criminal law basis of this right. The discussion between the resource faculties and participating judges went around several protections against self incrimination as provided in The Criminal Procedure Code such as Sub sec. (2) of sec. 161 of the Code of Criminal Procedure, 1973 grants a right to silence during interrogation by police, Sub section (3) of sec. 313 again protects this right to silence at the trial, Sub section (1) of sec. 315 contains a proviso and clause (b) of the said proviso precludes any comment by any of the parties or the court in regard to the failure of the accused to give evidence. It was also discussed that how sec. 161, 313 and 315 raise a presumption against guilt and in favour of innocence, grant a right to silence both at the stage of investigation and at the trial and also preclude any party or the court from commenting upon the silence. The

discussion also raised questions as to how application of principles of natural justice are basic to a criminal trial, and how procedural lacunas may lead to gross miscarriage of justice.

6. Outcome of the Discussion

The program discussed the major aspects of criminal justice system as an instrument of social control and the issues and concerns of it which can be brought under human right framework. The participants became aware of issues which are of prime importance such as victim compensation scheme, rights of prisoners, protection of witness, trial by media etc, at the same time they became sensitive towards the role of courts towards seeking fair trial and impartial justice. The discussions of subjects such as extradition, deportation and statelessness made the participants aware of how district courts which have lead role to play even in cases concerning international importance. The conference would surely help the participating judges to enhance and strengthen upon their role as judges to check upon the proper administration of criminal justice system. Therefore we can say that in view of the importance of the subject matter, the conference proposed to explain in brief some of the important areas of the criminal justice system that have attracted the attention of the courts in recent years.