
CONFERENCE ON COURT GOVERNANCE



PROGRAMME REPORT – P 979

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INTRODUCTION

Court governance is an essential part of the justice delivery system. PDJs being head of district judiciary are alone empowered with vast powers for strategic planning, for streamlining court process, for designing and implementing long-term goals for to improve the state of affairs in their districts. This conference will assess how PDJs are governing their districts, what progress they have made to implement the vision document prepared to make their district a model district, which of the promises made in the vision statement are still to be realized and what are bottlenecks in implementing all promises made in the last year vision document.

Contents:

1. listing of cases
2. priority setting
3. allocation of cases
4. managing summon issues
5. relationship with bar, litigants, public prosecutors
6. networking for betterment of courts
7. infrastructure and budget issues

SESSION 1

Traffic control in courts: Controlling per day movement of Bar/Judges/Litigants/Ministerial Staff in Courts

Prof (Dr.) Geeta Oberoi, Director In charge of National Judicial Academy gave warm welcome and brief introduction on all the sessions and deliberated on the objective of the conference. She introduced the resource persons for the day and asked the participants for their introduction as well. The warm welcome to all the resource persons was given and they were requested to open first session of the conference.

Justice Dharnidhar Jha: He started with the introductory note stating that being the Principal District Judges or being associated with the judicial service for a longer period, the administrative capability of a district judge is what serves the nation the best. It is neither the High Court nor the Supreme Court but the PDJs who administer the judiciary in real terms. So PDJs are ultimately the depository of the respect and honor which the judiciary has earned or is likely to earn or it has earned in the past. Then he shared his experiences as a district judge of three courts before his elevation to higher judiciary that being slack or a bit tolerant on the administrative side of your institution creates problems for oneself so you have to identify the problems and take cognizance of it very sharply and react to the situation quickly. He further mentioned that every request of the district judge is to be routed through the High Court subordinate to the High Court.

He further shared his experience serving Bihar Judiciary with participants explaining the nuances of people working at the lower stanza of the judiciary. He briefly discussed the Telagi scam and what could be done to prevent such scam in the future.

He then asserted that it is a very big job giving an example of maintenance of vehicle in the court premises not only of the judges but also vehicle used for other purposes in the court premises which can be maintained and repaired by sending a report of the cost incurred for the same to the LR through your High Court. He further said that one should rely upon the registrar of their High Courts and if their integrity is doubtful then form a committee of 5 judges headed by senior most ADJ for the same purpose.

He further points out that being a judge of the High Court there is a need to: firstly see the subordinate officers with respect, secondly to protect them on account of the parental control. According to him, a district judge should not just smile and tolerate every wrong thing rather they have to be very forthright, act with a very heavy hand, if the occasion so requires, but at the same time, do not over indulge into issues.

He concluded the session by saying that the litigants are there and we exist only in their interest. It is neither our interest nor others interest. We never serve the Bar Association; we are not concerned about that. Bar is a necessary system of the judicial system, the justice system, but necessarily we exist for the litigants.

SESSION 2

Building upkeep and Cleaning Management in District Courts

Justice S. Vimla: She started this session emphasizing on learning by collaboration through discussion and interaction. She began with a small incident to elaborate the importance of cleanliness. Further, she indicated that cleanliness is equal to godliness. She shared her experiences as a PDJ on limited funds and cleaning of the court premises. She pointed out the measures that were taken by her for cleaning the premises of the court in limited funds available like approaching the NGOs, taking help of advocates, bar association and other international institutions. She further pointed out that now the High Court and Supreme Court on various occasions had stated that the State has no right or authority to say that they have no funds. Later she explained what is building management? A building management system (BMS) is a control system that can be used to monitor and manage the mechanical, electrical and electromechanical services in a facility. Such services can include power, heating, ventilation, air-conditioning, physical access control, pumping stations, elevators and lights. Thereafter she pointed out the benefits of building management:

1. Good control of internal comfort conditions
2. Possibility of individual room control
3. Increased staff productivity
4. Effective monitoring and targeting of energy consumption
5. Improved plant reliability and life
6. Effective response to Heating, ventilation and air-conditioning (HVAC)-related complaints
7. Save time and money during the maintenance

She further pointed out the Centrally Sponsored Scheme for Development of Infrastructure in Judiciary

There is a plan scheme of the Government – Centrally Sponsored Scheme for Development of Infrastructure in Judiciary, which includes construction of court buildings and residential accommodation for Judges/Judicial Officers, covering High Courts and subordinate Courts. The Central Government's share is restricted to the funds made available by the Planning Commission

and the expenditure under the Scheme is shared by the Central and State Governments on 50:50 basis. It is seen that sometimes State Governments do not release matching grant. Consequently, central grant is not released and either the Scheme lapses or it does not take off. State Governments should release the matching grant, so that Central Government share of the grant can also be utilized. She made a mention of factors which are responsible for poor maintenance of buildings:

1. Attitude of users and misuse of available facilities.
2. Insufficient funds for maintenance jobs.
3. Difficulty in procurement of spare parts due to unavailability for funds.
4. Inadequate training and development of maintenance personal.
5. Use of poor quality components and materials.
6. Persistent breakdown through indiscipline and ignorance.
7. Absence of planned maintenance programmes.
8. Lack of successful maintenance programmes by the maintenance department.
9. Lack of skilled personal in maintenance department.
10. Natural deterioration due to age and environment.
11. Non adoption of appropriate maintenance cycle for building maintenance.
12. No long term arrangements for the supply of required parts for replacement.
13. Complexity of designs and non involvement of maintenance experts during design stage.
14. Reluctance of maintenance staff about innovation support.
15. Frequent shortage of materials and spare parts due to absence of efficient inventory system etc.

She concluded the session by saying that to achieve best results, High Courts will have to put in place strict monitoring systems, if required, even setting up Infrastructure Bench. If independence of Judiciary has to be ensured, sufficient resources are required to be made available at its disposal for proper discharge of obligations. It is, therefore, necessary to phase out the old and out-dated court buildings, replace them by standardized modern court buildings coupled with addition of more court rooms to the existing buildings and more court complexes. In order to ensure that the new buildings meet all the requirements of the courts and their officers, it is desirable to prepare standard building plans and construct buildings accordingly.

SESSION 3

HR issues in district courts: Recruitment Systems in place for the Ministerial Staff

Justice U.C. Dhyani: He started the session with his own introduction and how he became judge and director of Uttarakhand Judicial Academy and what problems he had faced while serving as a director of a new institution like Judicial Academy. He also shared his experience both as a judge of lower judiciary and of the High Court. He advised the participants to be firm and calm during the recruitment process. He stated Human Resource management means to extract the maximum from the human beings from available resources. Sometimes, the staff is less, so until the staff is adequate, how to go about it is the proficiency of a district judge. He pointed out the guidelines of the Hon'ble Supreme Court in the matter of appointment of ministerial staff in *Ajay Hasia and Others vs. Khalid Mujib Sehravardi and Others* (1981 1 SCC 722):

1. ...allocation of more than 15% of the total marks for the oral interview would be arbitrary and unreasonable...
2. ...holding interview for only 2 or 3 minutes per candidate and asking irrelevant questions, held, would vitiate the selection...
3. ...Selection can be quashed even in the middle of an academic session if mala fides established...

He also mentioned about the *Renu and Others vs. District and Sessions Judge, Tis Hazari Court, Delhi and Anothers* (2014 14 SCC 50) in which following points were emphasized:

1. All High Courts are requested to re-examine the statutory rules dealing with the appointment of staff in the High Court as well as in the subordinate courts and in case any of the rule is not in conformity and consonance with the provisions of Articles 14 and 16 of the Constitution, the same may be modified.
2. To fill up any vacancy for any post either in the High Court or in courts subordinate to the High Court, in strict compliance of the statutory rules so made. In case any appointment is made in contravention of the statutory rules, the appointment would be void ab-initio irrespective of any class of the post or the person occupying it.

3. The post shall be filled up by issuing the advertisement in at least two newspapers and one of which must be in vernacular language having wide circulation in the respective State. In addition thereto, the names may be requisitioned from the local employment exchange and the vacancies may be advertised by other modes also e.g. Employment News, etc. Any vacancy filled up without advertising as prescribed hereinabove, shall be void ab- initio and would remain unenforceable and inexecutable except such appointments which are permissible to be filled up without advertisement, e.g., appointment on compassionate grounds as per the rules applicable. Before any appointment is made, the eligibility as well as suitability of all candidates should be screened/tested while adhering to the reservation policy adopted by the State, etc., if any.
4. Each High Court may examine and decide within six months from today as to whether it is desirable to have centralised selection of candidates for the courts subordinate to the respective High Court and if it finds it desirable, may formulate the rules to carry out that purpose either for the State or on Zonal or Divisional basis.
5. The High Court concerned or the subordinate court as the case may be, shall undertake the exercise of recruitment on a regular basis at least once a year for existing vacancies or vacancies that are likely to occur within the said period, so that the vacancies are filled up timely, and thereby avoiding any inconvenience or shortage of staff as it will also control the menace of ad-hocism.

He ended the session by taking questions from the participants and also shared his experiences in recruiting people at the High Court level.

SESSION 4

Procurement for District Courts: GFR 2005

Justice Ravi Tripathi: He advised that being the district judges, you all have to be very careful when it comes to finance. There are two set reasons for that: 1) for every single achievement of object, you will have to have finance; at the same time dealing with the finance is always very prone to invite allegations. One single mistake and you may find banks of allegations coming to you. So you have to be very careful. He also pointed out the importance of GFR Rules and advised to keep a copy of it on the office table. Every Officer should also ensure financial order and strict economy and see that all relevant financial rules and regulations are observed by his office and by subordinate disbursing officers. And you in your capacity as a district judge is the trustee of government money and the general principle is as a trustee, you have to be more careful about the trust money, then even your own money.

He discussed in length the provision and took question on those provisions to clear the air of doubts. He also advised the participants to be careful while applying the provisions of the GFR Rules and go through them twice.

SESSION 5

Case Information System (CIS)

Mr. C.M. Joshi: He started with the actual CIS and how it is managed and how best we can make use of it. He talked about the docket explosion, pendency and expansion of litigation fabric. He also emphasized on the increased number of special courts and the type of the case entering the courts had also gone through lot of changes in about last 10 years. He also mentioned about the mounting pressure on the judiciary. He talked about the exchange of information between court-litigants and court-lawyers and how the process can be improved upon by the coordination among the stakeholders. The third set of information which is required is for the establishment and the administrators like the presiding judges. Even the court establishments require information on number of particular types of cases which are there in a particular district etc. He also explained in detail the new structure of NJDG and how one can make best use of it. He also showcased the internal platform of the software which is being used by the judges at their respective courts and helped them to understand the underlying options to make their work more easy. He explained the importance of CIS and how the pendency of the court case can be seen on the system. He also talked about the state wise scenario and explained the means/process to get the information in the graphical representation. He explained the parameters which have to be ensured with utmost priority to set right the balance sheet.

The session ended with questions from the participants.

SESSION 6

Record Management

Justice S. Vimla: She stated that Records are fundamental for the efficient and effective operation of the legal system of a country and perhaps they are even more crucial to the administration of law than to any other function of the public sector. Not only the current records are in daily use for legal reasons, but records of previous actions are also routinely retrieved and used by a range of legal agencies. If court staff cannot locate the case papers related to a trial, an appeal against conviction may be delayed, even indefinitely, and justice may not be served to a citizen who was wrongly convicted. A 'record' can be defined as information generated in the course of an organisation's official transactions and which is documented to act as a source of reference and a tool by which an organisation is governed. Records arise from actual happenings; they are a 'snapshot' of an action or event. She also explained what is record management: Records management is "the field of management responsible for the systematic control of the creation, maintenance, use and disposition of records" and how it impacts day to day activity of the court. She also discussed the nuances of the Right to Information Act which are faced by the courts along with the administration of work which are assigned to the judicial officers apart from his/her daily court work. She shared her experiences with the participants as to what kind of problems are faced by the litigants if the files of litigant are untraceable and also how the bench clerk makes money in between manipulated files.

She stated the goals of record management program as follow:

1. to create only necessary records for efficient and successful operation of the office/institution.
2. produce the records when needed.
3. retain/preserve only records needed for continued operation of the office/ institution, and dispose what is not needed.

Later she explained the benefits of effective record management which are following

1. Facilitates effective performance of activities throughout an agency
2. Provides protection and support in litigation
3. Allows quicker retrieval of documents and information from files
4. Improves office efficiency and productivity
5. Supports and documents historical and other research

She also emphasized on ensuring appropriate preservation of and access to legal records along with the data management and docket management. She concluded her session by stating that simply computerizing or microfilming existing records without carrying out a records survey or developing retention schedules will only ensure that a lot of the existing unnecessary records will only be retained in an electronic format which will result in a lot of existing paper garbage being transformed into electronic garbage. As the process of microfilming or computerization is expensive it is very important to have a successful operating records management program in place before thinking about digitizing records. One must also consider the various alternatives available to store records along with carrying out a complete cost benefit analysis before embarking upon the process of digitalizing records.

SESSION 7

Budget Preparation for District Court

Justice Kalyan Jyoti Sengupta: The session was started with the introduction of the participants explaining their problems in budget preparation at their respective districts. Then he started with the historical perspective of the budget preparation and how it was done in pre-independence and post-independence era. He stated that except few states the common problem is even if the funds are allocated sufficiently, then because of the limit or cap put, judges cannot spend the money, so that's why money goes back.

Also supply of funds is not done according to the demands and requirements. Then another problem is common, nonpayment of the TA & DA to the witness in criminal justice delivery system. This is also common problem and as a result the criminal justice delivery system suffers. He further elaborated budget preparation through the provisions of Article 229 of the Constitution of India that all expenditure of the High Court including the salaries of the staff, pension and everything stand charged to the Consolidated Fund of the State Concerned. Similarly under Article 146 clause 3, Supreme Court expenditure, salaries everything stands charged to the consolidated fund but you will not find such mention in Article 233, 234, 234(A), which concerns with the district administration and even you'll find in Human Rights Commission, which also depends upon the budgetary allocation. Our district administration depends upon the budgetary allocation meaning that law department makes a demand with the approval of the Governor before the Assembly justifying this amount and how this is done. First they take all the estimated expenditure of the concerned district judges, all over the state and they work this out. This is their demand. So supposing if the District Judge is making a demand, the actual expenditure, then it will be wrong. You are to bargain. For example I tell you, when you are on account of salary for example in a district judge on account of salary one crore, right. On account of salary, salary will...it will not be refused...monthly salary will not be refused for the staff and it's invariably paid. Next he explained capital expenditure that Capital expenditure means, the construction of the building and infrastructure. According to him if a new court is sanctioned then a PDJ must give an estimate upto a certain level and when you give estimate, give it in higher figures because the tendency of the government is to reduce the expenditure.

He further instructs the registry to call all the district judges and their staff and to have a conference as to their requirement and give the estimate, and if the registry concerned sits with all the principle district judges before preparation of their individual budget, rough estimate, then here an equitable distribution could be made by the High Court if our High Court takes care of everything, naturally. If this system is not available then he advised all to suggest the High Court, and to make a request to High Court registry, please that we require that an annual conference of all the judges before preparation of the budget, that at least in the month of February, first week of February you make a request, then you put forward your demand justification. You must be justified for the putting forward any demand and once it is done, then High Court will be in a position to understand what the proportional requirement, for example, is as one of our learned District judge says that, he requires this fund for 10 lakhs and another district judge requires 2 lakhs, then distribution is made equally. Not according to the proportion of the requirement, that is why, if the pre-budget preparation of the pre-budget preparation, if a conference is invited among the district judges, and by the High Court registry, it will be an equitable appropriate distribution of the funds and how this fund could be whatever allocation is made, how this fund could be appropriated.

SESSION 8

Budget Utilization in District Courts

Justice Kalyan Jyoti Sengupta: He started by saying that he will take few minutes of time regarding the first topic preparation of budget. He said suppose you are a principle district judge for successive one two or three years. Now it may so happen there are revenue expenditure as salary and day to day expenses, these are the revenue expenses and this is to be met out of the so to say the non-planned expenditure. He mentioned about the complaints which the finance commission receives that, the judiciary was unable to utilize the grant made by 13th finance commission. He said that he had a discussion with the Director In-charge, NJA before the session and she was also told that fund is not being utilized properly. He explained the problem that normally central government is not responsible to release any fund for state judiciary, it is state concern, state expenditure.

He also advised all the participants to make a fervent prayer to the High Court and show that re-appropriation order is achieved, so that the entire money can be rested with the district judgeship itself. He read Article 235 and 227 and said that even financial aspect actually should not be looked into by the High Court. He recalled that in old days, any appointment of staff made by the District judge, the High Court would not have interfered in it because of Judicial order etc. This also gives good impact on one side but bad impact is that the district judge's discretion and power has been so to say minimized and as a result the District Judge has no discretion. Everything has to depend upon the High Court that is why there is a need to have balance in steps. So approach the High Court and also get in touch with the Judicial Secretary and Finance Secretary both to get your work done.

SESSION 9 AND 10

Bar- Judge Relationship in District Courts & Judge Litigant Relationship in District Court

Topic of discussion in this session was to understand Judge Relationship and Judge Litigants Relationship in District Court. Justice Dharnidhar Jha initiated the session with recalling and explaining the very basis, mandate and duty of the Judiciary and Judges enshrined in the preamble of the Constitution of India under Article 14 and 21. While citing various examples from his personal experience he explained the followings:

- The very solemn resolve of the Constitution through its preamble and Article 14 could have convinced us that we are here sitting anywhere, in any corner of this great democracy to discharge our solemn, to carry out the solemn promise of the framers of the constitution of providing Justice equally, without any discrimination and anything.
- A system is formed by ourselves, the judges and the assistance we derive from the counsel who appear who are engaged by the customers of Justice. They are the officers of the Court.
- While emphasizing on duty of an Advocate, Justice Dharnidhar said that the solemn duty of an advocate is to assist the cause of Justice by appearing in a court by producing evidence and assisting the court in other manner. There are certain traits which are expected from an advocate. While concluding on this point he said definitely and these are the traits which we also carry with the judges when we come to the other side of the Court room i.e. the bench.
- The next aspect of discussion was Advocates Act. He discussed the very philosophy and object behind Advocates Act and also he touched some aspects related to professional ethics. He put emphasis on role of Senior Counsel, his relation with the junior counsel, graduation in law, law as a career, lawyers as angle of social services etc.
- Discussing the contemporary development in Law, Justice Dharnidhar cited various examples and shared his personal experience as a judge. He said that now entire law profession has changed drastically, lawyers have their own ways of appearance in The courtroom, they have given guarantees to their clients in most of the cases that they should obtain this decree or that order or this judgement. The Old principles of advocacy that no one should hold out wrong promises to a litigant, no one should act on the instructions on the illegal unlawful instruction of his client are now over, those days are gone. Citing an

example he said the principal of advocacy recognized behavior rather was that if a client and a counsel was telling to indulge into some unlawful thing or to adopt an unlawful tact in court room you would simply say that no, is not possible, you engage another lawyer.

SESSION 11

Bar Litigant Relationship in District Courts

The session was in continuation to the earlier sessions and began with the discussion from those sessions along with the experiences shared by the participants and the resource persons.

Justice Dharnidhar Jha: He shared some instances where litigants had to face hardships because of the Bar. He also emphasized on imposition of cost on non-production of witnesses as he had on one occasion imposed cost upon the State and used to direct that the cost should be realized from the salary of the officer in-charge who was directed to produce the witness. He also emphasised that if there is no provision, how one can improve upon, because every situation can never have a particular provision either in the civil side or the criminal side, so this is the reason that courts have been pointing out that provisions, procedures are the handmade of justice, judges are required to develop their own procedures in certain cases in absence of any provision. It is not barred, you have to administer justice, the purpose has to be honest of administering justice. So, he requests the participants to be imaginative on the administrative and judicial side both.

He further adds that sometimes meeting the litigants is also necessary so that you get the feedback as to how you are performing, as to how your officers are performing, how the judgeship is running and then if you are required to take any corrective measures, and then you take them.

He concluded the session by saying that whole system of judiciary has been created for ensuring the one particular human right, availability of one human right, that is the right to justice and apart from the civil rights which you enjoy, the criminal laws take care of that particular human right which has not yet been recognized but ensured by the Constitution of India, a crime free society and while dealing with such matters regarding criminal or person who alleged to have indulged into any particular crime, if we come across certain irregularities on part of the judicial officers and we don't take steps for eradicating or correcting that behavior, then we are definitely encroaching upon the right of the victim or the informant to have justice.