

**West Zone Regional Conference for Enhancing the  
Excellence of Judicial Institutions: Challenges &  
Opportunities (P-1001)**

**19<sup>th</sup> & 20<sup>th</sup> November, 2016**

**In Association with High Court of Rajasthan and National  
Judicial Academy**

**Programme Report**

## **DAY 1**

**19 November, 2016**

The Conference was introduced by Justice G. Raghuram where he highlighted the need of training and education of judges due to increasing complexity in human society which give rise to complex issues in adjudication. Knowledge overtakes society every 5 years and therefore every day we are more ignorant than yesterday. Judging is a set of skills which must be acquired through learning and the National Judicial Academy is conceived with this idea. The NJA also provide platform for judges of SAARC countries. Justice G. Raghuram explained the objective of the Regional Conference and emphasised on increasing levels of communication between high court and district judiciary. There is need of interaction between High Courts and District Judiciary. The gap between the cabinet secretary and newly recruited officer is much less as compared to gap which is maintained between two immediate levels of judiciary. This constitute a huge disconnect which is not conducive to the healthy growth of the judicial family. There is no big or small way of judging and the jurisdiction of lower courts and high courts is identical. Justice G. Raghuram said that all institutions follow Weberian hierarchical system and communication levels should be more robust between different levels of judiciary.

### **SESSION 1**

#### **Importance of Ethics, Integrity and Discipline**

##### **Speakers**

**Justice A.K. Goel, Justice Navin Sinha**

##### **Following issues were raised and discussed in this session.**

1. As there is emergence of global world order therefore Austinian concept of sovereignty is dissolving. The notion that state has monopoly is a myth now. The vitality of judicial pronouncement comes from faith people have in judiciary. Courts restore equilibrium of conflict and tensions which brings development in human society.
2. There is lot of doubt about the impartiality of courts. When a judge give a judgment against the person of his/her own caste it is applauded by people. This shows amount of faith deficit people have in judiciary. The instance of recusal is increasing and accusation against judges are also increasing. This shows extant of lack of faith of people in judiciary.
3. The law schools should focus on value education. The issue of ethics is not a concern of law students. The legal education has become placement oriented and it does not focus on all round development of human personality. Even newly recruited judges does not give priority to the discussion of this issue. The main cause of arrear in litigation is lack of ethics among the stakeholders of justice system.
4. Judges who are disciplined being respected in court. People watch judge during trial and judge's conduct should be exemplary. The way a judge conduct his court is being

remembered by all stakeholders. The trial court is like Supreme Court for ordinary litigants as ordinary litigant hardly go to higher courts.

5. Integrity is not merely being honest but it also involves doing what is expected of a functionary. Incompetency of judges and ignorance of law are also violations of ethics. There are large number of under trial prisoners behind bars because of laxity in investigation and non-presence of witnesses. The liberty of under trial prisoners is taken away for arbitrary reasons. This problem arises because there is too much focus on procedural law and less focus on Constitutional values in adjudication. Speedy trial is a fundamental Constitutional right and court must enforce this right so that liberties of poor people can be protected. In such cases no adjournment should be given to any party.
6. Judges should have control on adjournments and they should regulate fixing of hearing dates. The fixing of dates should not be left to the discretion of court staff as it can give rise to corruption.
7. A judge remains a judge even when he/she is not in court. The judge must practice ethics everywhere and should have exemplary character. Judges must keep their eyes open and should ensure good public perception. Judges does not have opportunity to explain their defence against allegations. Judges must have the habit of reading and they must actively participate in training programs. The lack of education denotes lack of integrity.
8. We have good judges, we have exemplary judges but still we don't have ideal judges because the ideal judge is a curious mix of several distinct qualities. Once a person is a judges he is always a judge. Judges are under closest scrutiny. Deviancy is noticed more than the good judge. Skill enhancement is a necessity. If judges don't read and do not remain up to date the quality of work will going to suffer. Integrity is not only mean that judgment should be bona fide. It also means judges must be up-to-date on reading and remain aware of the latest laws. The public perception of judges is very important because he does not have the opportunity to explain himself.
9. New challenges in ensuring discipline in judiciary are emerging. Careless use of social media is one of them. Judges are following discipline but there is a miniscule portion where deviancy is taking place and deviancy is highlighted more.
10. The opportunity of reflexive judgements are few to judges because of limitation of time. If judges don't have the time to reflect then judgments are spasmodic reaction. This creates a problem and judges needs to be trained in contemporaneous values which are given through legislations.

**SESSION 2**  
**11:45 AM – 1:00 PM**

**Strengthening Internal Vigilance Mechanism as Response to Rising Judicial Indiscipline**

**Speakers**

**Justice A.K. Goel, Justice S. J. Mukhopadhaya, Justice Navin Sinha, Justice K. Kannan**

**Following issues were raised and discussed in this session.**

1. Subordinate judiciary is the face of judiciary and for an ordinary litigant the court of the magistrate is the Apex Court as very few people go to high courts and fewer goes to the Supreme Court. There is some problems in subordinate courts which are common to all states. There is some lack of discipline.
2. There is lack of instinct of encouragement. Most judges have been guided by seniors where they emphasise to go strictly by procedural laws. The Academy should give good lectures on the Constitution to subordinate court judges. They should decide cases by applying the concept of Article 14, concept of reasonableness and concept of arbitrariness. The innovative thoughts must be injected to them by encouraging them through judicial academies. The lower court judges must be equipped with concept of justice blended with the constitutional provisions. Such training should be extended to High Court judges as well. The training programs should enhance the values of consistency, uniformity and accountability among judges.
3. High Court judges are not to be trained because they are not subordinate even to the Supreme Court. One has to first feel that I am a High Court Judge and nobody is there to train me. You will have to train yourself. Subordinate courts are subordinate to High Court and they can be trained.
4. Aloofness is one important quality which a judge should maintain. The judge should not share his opinion with his family members and should not discuss judgments with them. The judge should have qualities including open mind and patience, hardworking, even handedness, high morale, judicial discipline and decorum, passion and compassion, justice with humanity, humbleness, not to allow counsel to waste time of the court, competence and diligence, independence and impartiality. Reputation goes first and a judge by face is known later on.
5. How judges play their role reflects their character, the role reflects the character of the person. If High Court judges write the character role of subordinate judges please see what is the role they are playing and this should reflect his character. There will be many judicial officers who will be ready to do anything for you but internal vigilance report when you write you have to see that you are aloof from all these things.

6. In implementing internal vigilance mechanism, first High Court judges should develop their own system. For writing the character role one has to be a judge. If a person is corrupt tell he is corrupt. Judgeship which we want to see from subordinate judiciary first should be reflected in your own life. These qualities cannot be developed in one day.
7. For ensuring discipline the quality of judgement should be checked. If you find it excellent note down the name of the officer. That officer should be rewarded in their character role. If the judgment is bad and reflects his corrupt nature then corrective measures are necessary.
8. Appearance of judge and how a judge appear in public is also a matter to be taken into consideration while deciding promotional aspects as appearance also reflects mind of the judge.
9. Beware of those judges who are trying to appease the High Court judges. Find out the district where corruption prevails. In district where the honest officers are posted then there are complaints and if dishonest officers are posted then there are no complaints. If there are similar complaint about one officer from different districts then the officer's integrity and behaviour, cleanliness and maintenance of files must be seen.
10. Judicial indiscipline is primarily seen as ignorance of law and improper application of legal principles. Failure to follow judgments of higher courts also constitutes indiscipline. The judges can ask the lawyers to summarise the position of law for clear application of legal principles.
11. If a dilemma arises before a judge in a situation where they could not agree with a higher court precedent then the judge can record his reasoning for such disagreement for any future reference. In situation where the two judgements of the Supreme Court appear contradictory, a judge may see how much of these two judgments reconcile and are cohesive.
12. When a complaint against a judge reaches to the High Court, the High Court judge must use his resources to find out the correct situation. Many times orders of judicial officer itself say in what manner the High Court must proceed. There can be no straight jacket formula for addressing the complaint. The vigilance setup in the high court must be used according to the nature of complaint. The complaints against judges should be scrutinized carefully and it should be seen whether there are proper reasons for complaints. Identifying and rewarding talent is also essential in the scheme of administration.
13. There should be monitoring of process of court which has potential for opportunity of corruption such as getting a certified copy of order, giving dates for hearing and getting the case listed for hearing. Measures must be taken to ensure prevention of corruption in such areas. Management system should be deployed for monitoring of such areas.
14. The judges should remain aware of data relating to institution and disposal in their courts and should ensure that disposal is more than institution. Every judge must know that how

many cases they can dispose in a day and on an average what is the trial time in a case. There should be a system in each court to analyse such data to avoid backlog of cases. The information technology system should be used for the collection and analysis of such data.

15. There is indiscipline on the part of lawyers which affect the administration of justice. Taking bribe on the name of judge and making unnecessary arguments for long time, strikes are some instances.

### **SESSION 3**

**02:00 PM – 3:00 PM**

#### **Impact of Media on Public Perception regarding Vitality of Justice Delivery**

##### **Speakers**

**Justice S. J. Mukhopadhaya, Justice Navin Sinha, Justice Ajay Rastogi, Mr. R. Venkataramani**

##### **Following issues were raised and discussed in this session.**

1. Institution of justice is a public space or public good and it should receive views from all sides subject to Constitutional limitations. Media has become a virtual all pervasive CCTV. Today technology control our thought process. The medium of communication are evolving rapidly and it is difficult to regulate speech and expression on such mediums.
2. The media, politicians, activist trying to malign judiciary because the trust of people is lost. Many time good information about judiciary is published in negative manner by media.
3. Litigant's perception of court is very important. The litigant observes the court process and form perception on court process. Judges should not bother that whether lawyers and public are giving them any credit or not.
4. Judges should not pay any regard to media's positive or negative publication about any party in a case before them. Judges should hear information from everywhere as they have to remain updated on current affairs but judges should decide the case according to laws and the Constitution.
5. Judge should not utter anything in the court which they cannot put in the order sheet. Judges should apply self-restraint and should not give opportunity to media to publish negative news about judiciary. Judges should not aspire to become a populist judge.

**SESSION 4**  
**3:30 PM – 4:30 PM**

**Relationship between High Court and District Judiciary**

**Speakers**

**Justice Navin Sinha, Justice Nirmaljit Kaur, Justice K. Kannan, Dr. Justice S.S. Phansalkar Joshi**

**Following issues were raised and discussed in this session.**

1. There is no hiatus between High Court and District Judiciary and the High Court is there to guide and help district judiciary. As long as judicial officer is acting bona fide and make any inadvertent mistake the High Court stands behind judicial officer. The judicial officer should always talk to the director of State Judicial Academy or guardian High Court judges if the face any problem. High Court always stand with honest officers. High Court should enhance trust in District Judiciary.
2. The relationship between High Court and District Judiciary is required to be enhanced. When an officer does something good, he/she should be openly appreciated. So far as punishment to a judicial officer is concerned High Court has very strong power and this power should be exercised in a responsible manner. Initiative to encourage lies with High Court. During inspection negative remarks should be avoided and judicial officers should be provided counselling for issues of competency and professionalism.
3. High Court has the power of superintendence, ACR writing, transfer and disciplinary action over subordinate judiciary. This power come with duty and responsibility toward the subordinate judiciary. Proper opportunity for hearing must be given to judicial officer before taking any adverse action against him/her.
4. Judicial officers which are transferred to less developed areas should be provided security and communication arrangements. The culture of welcoming High Court Judges by judicial officers at Stations should be discouraged.
5. There should be Grievance Cell in the High Court where the judicial officer can express their problem. The communication gap between lower judiciary and higher judiciary creates lot of problems. Sometimes officers from vigilance cell do arm-twisting and judicial officer cannot raise the issue because of lack of communication channel.
6. In Maharashtra there is a system of guardian judges and there are arrangement for proper access and communication between judicial officer and guardian judge. This terminology of guardian judge can be followed in other high court.
7. There should be relationship of trust between guardian/inspecting judges and judicial officer. There is need to get out of jagirdari mentality. The High Court should refrain from

making adverse remarks against judicial officers in judgments. Many times cases reach to Supreme Court for expunging of such remarks on judicial officers by High Court.

8. The High Court should enable conducive working conditions in district judiciary and must take greater interest in the proper functioning of the District Judiciary. In the matter of recruitment, promotion, selection, conferring of selection grade, super time scale, review, transfers, disciplinary proceedings, compulsory retirement etc., the High Court has to function in a most fair, transparent, objective and independent manner by following the principles of natural justice.
9. Taking the role of Guardian Judge with all the seriousness requires various actions including counselling of judicial officer before taking any action, to treat them with dignity, to spot bright talent, to encourage and motivate, to identify their specific areas of interest and expertise and give them scope accordingly, to weed out bad elements, to help them in evolving best and uniform practices for the governance of the Courts and effective administration of justice, to avoid calling upon judicial officers to give more disposal or to decide cases expeditiously or within a time bound manner without knowing their calendar or their file and to have discussions with Presidents of Bar Associations to resolve the critical issues.
10. In the matter of appointment of class IV employee favouritism should be avoided and appointment should be done according to the fair and transparent process.

## **DAY 2**

**20th November, 2016**

**SESSION 5**

**9:30 AM – 11:00 AM**

### **Social Context Judging (SCJ) as Principle for Exercise of Discretion and Application of SCJ in given Case Studies**

#### **Speakers**

**Justice K. Chandru, Dr. Mohan Gopal**

#### **Following issues were raised and discussed in this session**

1. Judges should be guided by Constitutional philosophy irrespective of any docket, any jurisdiction or any particular area of law. All judgments must be according to Constitutional principles.
2. Judges must apply due care in commenting on issues having social ramifications. In a particular case before a judge, the judge can expand the scope of social context interpretation. Through wider social context interpretation the judge can apply the principle



of social engineering. Social engineering involves considering law, context and Constitutional principles in adjudication.

3. Social context is a complex issue where the state is failing in most serious way. Big gap is developing between common people and state is using violence, police, security and army against our own people.
4. People's perception of courts is required to be changed and for this the relationship between court and poor must be changed. This can be achieved by changing the environment of court and by enhancing the access of poor to justice. Court must be a defender of the powerless against powerful. Court is an activity to protect rights of people according to the Constitution and laws.
5. There must be a small group of public defenders in every court complex on a regular salary. A group of 10-15 young lawyers can be trained and judges can take their help in cases involving poor people.
6. The liberal values in today's legal education system are decreasing. The legal education system has not been able to develop social conscience. The curriculum of law schools should include issues which enhances liberal values among students.
7. In adjudication of cases involving atrocity on scheduled caste/scheduled tribe people, the court must look into quality of investigation. The breach of mandatory conditions for application of Scheduled Caste and the Scheduled Tribe [Prevention of Atrocities] Act should not be relied by accused as defences. If investigation is not satisfactory, it cannot be the basis of any conclusion on conviction or acquittal. The court must order further investigation under CrPC.

## **SESSION 6**

**11:30 AM – 1:00 PM**

### **E- Justice: Re-engineering the Judicial Process through Effective use of ICT**

#### **Speakers**

**Justice S.G. Shah, Justice Sanjeev Sachdeva**

#### **Following issues were raised and discussed in this session.**

1. The registry should encourage the advocate to adopt e-file procedure for filing their cases in courts. All the pleadings should be scanned and should be saved in a folder in soft copy. This will reduce storage of document and will save lot of space in courts. The judges can access information from such soft copies in easy manner. The judges should be well versed with legal database for quick case research.

2. One of the major advantage of e-court system is saving of time of judges, lawyers and functionaries of courts. The documents can be searched instantly and nobody have to waste time in locating files and documents from records. It enable faster trials and speedier court proceedings.
3. Court has to utilize the audio video files with text document because in absence of rules court cannot work without exhibits on records. Electronic documents can be exhibited but it require electronic signature which are not widely used even today.
4. One of the major cause of delay is that few lawyers having lot of briefs and they are unable to reach to all courts for hearing. The e-court system can identify the advocates for hearing and advocate can file pleadings in prescribed format. The judge can access the relevant information immediately. Judges can search the relevant information in the document by search method and do not have to go through the entire document.
5. Courts should make use of data from National Judicial Data Grid for analysis about rate of institution and disposal. District judges can make use of such data for monitoring the performance of their courts.
6. The technology can be made useful for litigants and lawyers as well. Kiosks should be installed in all the courts. All the information related to a case should be made available on courts' websites through display board and customized cause list.
7. The automatic case allocation system enable automatic random allocation of cases among judges. This prevents bad practices such as forum shopping. The judicial officers information system can be used to assess the record of judicial officers.

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