

**EAST ZONE REGIONAL CONFERENCE ON ENHANCING THE EXCELLENCE OF
JUDICIAL INSTITUTIONS: CHALLENGES & OPPORTUNITIES
[P-1005]**



Organised by National Judicial Academy
In Association with High Court of Patna and Bihar State Judicial
Academy

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Programme Report

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INTRODUCTION

A one and a half day conference was organized on “*Enhancing the Excellence of Judicial Institutions: Challenges & Opportunities*” by National Judicial Academy from 17th & 18th December, 2016. The conference provided a platform to the judges and the officers of sub-ordinate judiciary from Bihar, Chhattisgarh and Jharkhand to discuss the Importance of Ethics, Integrity and Discipline, the Strengthening of Internal Vigilance Mechanism as Response to Rising Judicial Indiscipline, the Impact of Media on Public Perception regarding Vitality of Justice Delivery, the Relationship between High Court and District Judiciary, the Social Context Judging (SCJ) as Principle for Exercise of Discretion and Application of SCJ in given Case Studies and E- Justice: Re-engineering the Judicial Process through Effective use of ICT. The conference was graced with the presence of the learned Justices of Supreme Court as resource persons. The discussions on these topics covered not only the theoretical principles and philosophical interpretations but also the practical applications of the same. The discussion brought out the practical issues faced by the officers of sub-ordinate judiciary and the Hon’ble judges of the concerned High Court were directed to look into the matters. The whole conference was interactive as well as informative one. The conference was divided into 6 sessions spread over a period of one and a half days.

Hon’ble Justice Mr. Deepak Mishra, Supreme Court of India, Hon’ble Justice Mr. A.K. Goel, Supreme Court of India, Hon’ble Dr. Justice B.S. Chauhan, Chairman, Law Commission of India, Hon’ble Justice A.K. Ganguly, Supreme Court of India, Hon’ble Justice Shiva Kirti Singh, Supreme Court of India, Hon’ble Justice Navin Sinha, Chief Justice of Rajasthan High Court, Hon’ble Justice Sunil Ambwani, Chairman, E-committee, Supreme Court of India and Prof. (Dr.) A. Lakshminath, Vice-chancellor, Chankya National Law University, Patna participated as Resource persons in these various sessions and guided the participants.

Hon’ble Justice Mr. Deepak Mishra, Supreme Court of India chaired the sessions on the first day. Hon’ble Justice A.K. Ganguly, Supreme Court of India and Hon’ble Dr. Justice B.S. Chauhan, Chairman, Law Commission of India chaired the 5th & 6th session respectively on the second day.

PROGRAMME SCHEDULE

DAY I

- Session 1 - Importance of Ethics, Integrity and Discipline.
- Session 2 - Strengthening of Internal Vigilance Mechanism as Response to Rising Judicial Indiscipline.
- Session 3- Impact of Media on Public Perception regarding Vitality of Justice Delivery.
- Session 4- Relationship between High Court and District Judiciary.

DAY 2

- Session 5- Social Context Judging (SCJ) as Principle for Exercise of Discretion and Application of SCJ in given Case Studies.
- Session 6- E- Justice: Re-engineering the Judicial Process through Effective use of ICT.

Session 1

The **1st session** of the conference {“Enhancing the Excellence of Judicial Institution: Challenges and Opportunities”} dealt with the topic ‘*Importance of Ethics, Integrity and Discipline.*’ The speaker for the session was Hon’ble Dr. Justice B.S. Chauhan, Chairman Law Commission of India and it was chaired by Hon’ble Mr. Justice Deepak Mishra, Supreme Court of India

The session was commenced by Justice B.S. Chauhan. The speaker suggested the participants that, for enhancement we have to first find whether we have achieved excellence or not. If we have achieved excellence then only we can proceed further. Therefore, the first question that was discussed was whether we have achieved the excellence or not. He quoted *Madan Mohan's case*, (AIR 210 SC 2933). In this case there was a zamindar that had two wives. Later on, he died and their children were fighting for inheritance. The question arose whether marriage was contracted prior or subsequent to Hindu Marriage Act, 1956 and whether they were entitled to get inheritance or not. The matter came to Supreme Court. While going through all the certificates and documents related to that case recorded the finding that second wife was 6 years of age when she gave birth to her first child and was 3 years old when she gave birth to second child and third child was born before her own birth. He raised questions regarding the quality of our judgment and told that if such situations continue then time will come when our judicial system had to be abolished.

He criticised the lawyers because they talk in air and never bother to go through the facts of the case. Nobody wants to go through the facts of the cases. So, he asked the lawyers to achieve excellence first. Justice B.S. Chauhan pointed out that there are large number of cases where facts are not argued. He considered Supreme Court of India as the most powerful judicial institution. No court in any country has a provision analogous to article 142 of our Constitution which permits the court to pass any order in the hand of justice. But if comparison is done between Supreme Court and High Court then High Court is more powerful because Supreme Court has limited Jurisdiction as provided in the constitution and between High Court and Subordinate court, Subordinate courts are more powerful. It has all powers unless expressly taken away like Section 9 of Code of Civil Procedure. Therefore, judges of subordinate courts are most powerful judges in the judicial setup of the country.

Hence, it was pointed out that it is the duty of judges of subordinate judiciary to achieve excellence. Superior courts are only there to supervise.

It was also discussed that judges are always judged by public whenever they give judgment. The judicial officer or judges always remain in public scrutiny. Their conduct is being examined everyday not only in court but outside the court as well. Judges are considered as a judge 24 hours. It was highlighted during the discussions that a judge should live like a "widow" or a "hermit". Judges have to behave in such a manner that nobody should raise finger towards them. It was

suggested that judges should try to search for solutions in correct areas and frame issues only after knowing the facts of the cases.

Justice B.S. Chauhan during the session shared his experience as a lawyer that every lawyer starts from article 14 and ends at article 21 of the constitution. Nobody talks about CPC or Cr.PC. We have reduced the system to mockery. He further highlighted that it is the solemn duty of judges to do justice. Justice is an illusion, one cannot find the definition of justice in any book or statute and judges are dealing with a complex issue which is not capable of being defined. It was pointed out that Justice is a religion. It was stated that in normal course human beings are not capable of taking right decision and such a difficult task is assigned to a judge. Judges are performing that duty which is to be performed by god which is a divine duty. But, judges are also human beings, they are not inherited with decision making capability and they are taught the art of taking decision by their seniors, trainers in the institutes like this academy. The speaker gave a formula for taking decision i.e. marshalling of facts, framing of issues, admission of evidence. Judge have to apply provisions of natural justice, stating the first case which applied the principle i.e. *Dr. Bentley vs. University of Cambridge* (1923).

The quality of judicial education could be enhanced by aiding to judicial precedents. Further the two schools of thoughts Positive and Natural law school were discussed. Positive law school states that whatever is the law implement as it is while sometimes, cases are decided on the basis of morality without touching the law which is called natural school. He also highlighted *S. Khusboo's case*, in which a south actress told in the interview that pre-marital sex is not any offence under any legislation. But the proceedings against her were quashed on the ground of natural justice. It was suggested that judges should decide case strictly according to the law and should not be confused with morality. Judges should adopt morality within them and decide cases without any favouritism. Lastly, the discussions highlighted *Ram Prasad's case* whereby Supreme Court stated judges should not meet with people, they should not go to public debates because it affects their judicial rank. But there is a contradictions to this as well.

The session was concluded with question & answers and problems faced by the participants, which were as follows:

- Lack of assistance in backward areas of Patna like Banka

- Question: We earn points every month for disposal of cases like 3 points for contested disposals, 2 points for uncontested disposals and 3 points for disposals in Lok Adalats. We get easy points for disposal of those cases which does not requires application of mind. So, why should we give much time to those cases which requires application of mind?

Answer: Resource person pointed out that you should tell your High Courts that more points should be given for contested disposals. There should also be negative marking if the judgment is reversed. You have to assimilate digest and understand your facts. You have to apply the doctrine of precedent for which you have to understand the facts of the case.
- Question: Whenever we asks questions under section 165 of Indian Evidence Act,1872 the lawyers tell that they will cross examine and if such permission is not granted then judges cannot ask questions.

Answer: Under section 165, the presiding officer can give such permission to the counsel. You have to assure the counsel that only when you permit counsel can cross examine. Judges should be strong and don't feel scared of lawyers, if you are legally wrong you should be morally correct. High Court will always be there for help if you are morally correct.
- Question: How to deal with hostile witness?

Answer: While trying with a hostile witness you have to put many questions before them. You can put relevant and irrelevant questions under section 165 of Indian Evidence act, 1872 in order to find the truth. You should not attach your personal morality to the case. You should go by evidence on record.
- Questions: Senior lawyers always ask for unnecessary adjournment and if we reject their application they make allegation that the court is an interested party.

Answer: Under order 17 rule 1 d, health or illness of a lawyer is not a ground for adjournment. While giving adjournment you have to give some valid reasons that why adjournment is given.
- Question: Many a time senior lawyer contradict us. There was an instance where a senior lawyer was asking questions from the witness which is a misleading question but the lawyer was in contradiction with Judge and left the court and the junior counsel took on the further proceedings.

Answer: A judge is required to refrigerate his emotions. If you are hurt you are defeated.
Man can be dead but can't be defeated.

Session 2

The theme of the **2nd session** was *Strengthening of Internal Vigilance Mechanism as Response to Rising Judicial Indiscipline*. Speaker for the session was Hon'ble Dr. Justice B.S. Chauhan, Chairman Law Commission of India. It was chaired by Hon'ble Mr. Justice Deepak Mishra, Supreme Court of India

Hon'ble Justice Mr. Deepak Mishra threw some light upon the importance of vigilance mechanism in the courts.

Dr. Justice B.S. Chauhan stated that there are two sides of discussion on Vigilance Mechanism and judicial indiscipline. One side is, when a judicial officer is a disciplinary authority himself and the second side is when a judicial officer himself is undergoing disciplinary action. The speaker emphasised on controlling of the sub-ordinates, circumstances in which vigilance can proceed against them and the procedure to be followed while conducting an inquiry against one's sub-ordinates. It was pointed out that, it is necessary to know what the basic requirements are to hold an inquiry. Misconduct is something which is against the law or settled principle of rule.

It was pointed out that, anything should not be reflected on one's integrity or reputation suggesting some corrupt motive because once that is done it will be tough to be undone. Therefore, a judicial officer must consult before acting. A judge is not an ordinary government servant but he is performing a sovereign function. Article 235 of the Indian constitution was further deliberated upon through the case of *Sher Singh* whereby two judicial officers were kept in suspension and an inquiry was setup headed by an IPS officer of IG rank. Under this article the High Court cannot abdicate its power and responsibility and no person other than a judge can be asked to conduct a judicial inquiry so that, the officer does not feel any kind of humiliation before any officer of any department. It is the power and privilege given to the subordinate judiciary under article 235.

While conducting a judicial inquiry various points must be kept in mind as stated by the speaker. These points were elaborated upon through landmark cases which included *Vishakha's case*,

emphasised over the guidelines wherein the Supreme Court directed not to delegate responsibilities in order to protect the dignity of the judiciary. The judiciary itself is bound to conduct the inquiry.

To adopt the formula laid down in *Ashwini Kumar's case* for promotion of the staff. It was stated that those officers who work will have complaints against them which is obvious. Those who don't work will have no such complaints thus, no inquiry. Therefore, if judicial officers write any judgement and even if their 5 % of judgement gets reversed there is no issue because if there will not be judgement there will be no reversing of it. Only a working man faces problem and complaints. Hence, no one has the power to harm an officer if he is willing to work.

Justice B.S Chauhan quoted the line, - "Extra ordinary situation requires extraordinary remedy". Sometimes, it is required to devise new ways and principles to deal with difficult situations. When an officer becomes an inquiry officer, he should keep in mind the fair procedure in conducting the inquiry. It should be clear, reasonable and fair. He also quoted a line laid down by Supreme Court in *DTC case*, that for doing greater justice even if some rules are broken, it is permissible. In another case the High Court observed that the disciplinary authority who constituted the inquiry committee cannot be a witness before his subordinates. A judicial officer who himself is a disciplinary authority cannot be a witness at the same place. A minor injury requires a minor punishment.

Further the nuances of conducting a fair inquiry were discussed. It was pointed out that inquiry commences only if trial commences and issues should be framed on the basis of the charge sheet submitted without which inquiry could not proceed. The charge sheet should be short and clear, so that the delinquent can understand what charges have been levied upon him. After the inquiry has been done, a copy of the report has to be given to the delinquent for his information. No prejudiced person is allowed to conduct an inquiry. If it is proved that the inquiry was vitiated, the punishment by the committee will be set aside. It is necessary that before any disciplinary action show cause notice should be served. As per the principle of natural the person must be given a right to present himself. It was emphasized that a judicial officer should always take a reasoned decision. In disciplinary inquiries, the standard of proof is probability of preponderance and not beyond reasonable doubt. The other party should be informed about all the steps taken and should not be surprised. During the inquiry if the inquiry officer come across such facts which he doesn't approve to then he is very much independent to do so but he has to give a reason for the same.

Further the discussions pointed out that punishment in disciplinary proceedings should not be outside the rules. Other area of discussion included judicial review pointing out that it is available to see whether a fair procedure is observed or not, adequate and proportionate punishment had been given within prescribed limits or not. The punishment order cannot be passed by a subordinate authority to the appointing authority. The punishment can also not be given without conducting an inquiry, without giving opportunity to represent oneself and defend except in three cases:-

1. When the delinquent has been convicted in a criminal case
2. Conducting an inquiry is not possible.
3. Security of the state is involved.

Justice Deepak Mishra continuing the session emphasised that it might be possible that the judicial officers themselves be tried for disciplinary misconduct. Few examples of misconduct by the judges or judicial officers were cited which included not sitting on time is misconduct & granting unnecessary adjournments. Justice Deepak Misra encouraged the judicial officers to do their work without the fear of being punished, for being right they will not be punished.

It was further stated by the speaker that, “At court a judge is alone no relative – no mother no father. He said no one could harm and do injustice to someone until and unless he owns any of his responsibility. He also tried to make everyone aware about the concept of judicial indiscipline and in what circumstances the High Court can take steps by citing few examples.

The session concluded with questions asked by the participants which included:

- In un-compoundable cases, the lower court does not have inherent power under section 482 of CrPC to compromise by filing an application. Chhattisgarh is a tribal area and people are very poor, they cannot approach High Court. There are precedents that High Court has allowed compromise in un-compoundable cases. Can we also by citing that judgement allow compromise in un-compoundable cases?

Answer: The speaker answered the question in negative that since the inherent powers are not conferred upon the subordinate judiciary, they should go by the statutory provisions. Further

added that, inquiry could be initiated if found in particular cases that the punishment given is not in the ambit of the prescribed limit.

- In cases filed under Section 498 A of IPC & 354 of Dowry Prohibition Act (DPA), can the cases be compromised?

Answer: Section 320 CrPC. itself provides that it is un-compoundable; Please don't compound that because you don't have inherent power in that. The chair highlighted a judgement by the Patna High Court, where the trial magistrate imposed a sentence under Sec. 498 A read with 3 and 4 of DPA. In appeal before the session judge, the argument was to release him under Probation of Offenders' Act. Before High Court it was contended that section 4 of DPA contains minimum sentences. So, neither Probation of Offender Act nor Sec. 360 of CrPC is applicable. High court rejected and stated release under Probation of Offenders Act. Sec. 498 A does not provide for a minimum sentence. Hence, it comes under the sweep of sec 4 & 6 of Probation of Offenders' Act. Sec 4 of DPA provides that there is a minimum sentence but proviso says that it is upon the discretion of the magistrate that he can reduce the sentence. We referred to the appellate court because of the gravity of offence. If the husband and wife want to compromise we cannot quash it. You don't have power to quash. Read the judgement and understand the ratio".

- In the petition filed under section 317 of CrPC the lower court have the power to reject the petition and ask the accused to appear before the court?
- In disposal of civil cases, we are facing problems. From 10 years, the problem is continuously prevailing. Neither documents are available nor is the pleader's commissioner providing the report.

Session 3

The theme of the **3rd session** was *Impact of Media on Public Perception regarding Vitality of Justice Delivery*. The speakers of the session was Hon'ble Justice B.S. Chauhan, Hon'ble Justice Shiva Kirti Singh and Hon'ble Justice G. Raghuram. The session was chaired by Hon'ble Justice Dipak Misra.

Justice Dipak Misra started the session with the meaning of the topic - "Impact of Media on Public Perception Regarding Vitality of Justice Delivery". Discussions were focussed on the importance

of public perception in delivery of justice which is guided by media and balancing these two to avoid the conflict.

It was pointed out that justice delivery is a vital asset of judiciary and country is governed by the constitution and it is supreme.

Following questions were also raised to the participants:-

1. Whether our judicial officers are controlled by the perception created in public by the media?
2. Whether there is a media trial prior to the court trial in criminal cases?
3. Does the concept of referendum majority control adjudication process?

It was highlighted that 2300 years back, a question was asked to a philosopher that what was his greatest strength and the answer given by him was the reason. The reasoning nuance of judges should not be affected by any kind of virus that flows or floats into his/her veins and arteries by any kind of perception gathered in public. Judges should reason out on the basis of material brought on the record.

Justice Shiva Kirti Singh focussed on the impact of media on public perception regarding vitality of justice delivery, stating that, judiciary must be ready for critical examination by all stake holders in the society. The media represents the right of speech of the common people and hence its perception cannot be ignored. Judiciary cannot expect everybody to be silent if it is not performing its job fearlessly and independently and so the fearlessness and independence of judiciary is very valuable.

Discussions involved both the positive and negative aspects public perception, vital role of media in moulding the opinion of the society and it's capability to change the viewpoint of public on various events. It was suggested that media can be commended for starting a trend where the media plays an active role in bringing the accused to hook. Further, it was stated that though media acts as a watchdog and a platform to put forth people's voice nowadays media has become highly commercialised. There are reporters who show only the news for which they have been paid by political parties. Therefore it was deliberated that the media has a more negative influence rather than a positive effect.

The need to properly regulate the media by the courts was highlighted further during the session. It was pointed out that media cannot be granted a free hand in the court proceedings as they are not some sporting event. The most suitable way to regulate the media will be to exercise the contempt jurisdiction of the court to punish those who violate the basic code of conduct. The use of contempt powers against the media channels and newspapers by courts have been approved by the Supreme Court in number of cases was pointed out by the speakers. The media cannot be allowed freedom of speech and expression to an extent as to prejudice the trial itself. Media sensationalize the case for few days and leave it as they find other “masala” news irrespective of how much importance earlier news was.” There were discussions on how trial is effected by media sensation, how judges tend to start considering Media criticism while deciding. In most high profile cases verdict passed by media becomes the final verdict in trial courts.

It was suggested that judges should not feel they are absolutely unaccountable as they are still accountable to the society at large by their functionalism, endeavour, effort, integrity, behaviour etc. and sometimes they are projected as a member of the system. Media influence cannot be ignored but at the same time impression should not be created based on media. Judges must be ready with all the critical examination and perform their function fearlessly and independently. It was further added by that the decision making process should not be affected with the perception created by the media. Judges should deliver justice in accordance with the established law.

During the session the purpose of including such topic by the Academy was highlighted i.e. to educate the judicial officers and the high court judges. Justice Shiv Kirti Singh also mentioned about speech delivered by Dr. Rajendra Prasad in a convocation ceremony of a university. Dr. Rajendra Prasad said, ‘the first and foremost purpose of education is to develop the capacity given already by the god to the human beings which is the power of reasoning. Education refines that power of reasoning.’ The National Judicial Academy through such topics tries to update the judicial officers in the field of education. The purpose of education given by Dr. Rajendra Prasad in that speech was-

1. To develop power of reasoning.
2. To acquire some skill in order to earn our livelihood and maintain ourselves.
3. To learn how to live with others and how to have a good societal existence.

Lastly it was suggested that the judicial officers must be aware about the media impact on justice delivery or else, it will be difficult for them to perform their judicial duty in a correct manner. Hence, updating oneself in the field of education is very important for the judges in order to perform their judicial duty in a correct manner.

Session 4

The theme of the **4th session** was *Relationship between High Court and District Judiciary*. Hon'ble Justice B.S. Chauhan, Chairman, Law commission of India, Hon'ble Justice Shiv Kirti Singh, Judge of the Supreme Court were the resource person for the session. The session was chaired by Hon'ble Justice Deepak Mishra, Judge of the Supreme Court.

Justice B. S. Chauhan emphasised the importance of Article 235 and Article 239 of the constitution of India which speaks about the supervisory power to the High Courts in order to have a control over subordinate courts.

Justice B. S. Chauhan deliberated that article 14 provides for equal protection of law and equality before the law and article 16 provides equality in public employment and guarantee of no discrimination in public appointments.

It was stated that no court is above the constitution of India and one should follow the rule of law. It was expressed that 1215, Magna Carta was the first document where the law was codified and Article 39 and 40 of the Magna Carta deals with judicial system which speaks that no person shall be arrested without the order of the court and no person shall be denied justice nor it should be delayed.

The reference of Justice Edward was given. It was delineated that in 1610, Justice Edward put a view before the world that law should be supreme and even the king should be under the law.

It was stated that article 13, 14, 15, 19 and 21 the core values of the constitution of India and comes under the basic feature of Indian constitution which cannot be amended. It was expressed that the high court should strictly abide by the law prescribed as far as appointment of judges of lower courts are concerned.

Talking about the administrative power of the high court, Justice suggested that it is the responsibility of the High Court to administer justice strictly according to the law. High courts should exercise all administrative powers in good faith.

The reference of some departments were inviting names from the employment exchange and making the appointments. It was said by Supreme Court that it violates article 14 and 16 of the constitution. The harm is caused to those who do not know about the vacancies existing in the department.

It was also suggested that one cannot restrict the appointment by calling the names directly from employment exchange as it violates article 14 and 16 of the constitution. The departments are bound to advertise and give wide publication of such opportunities. All applicants should be

considered and merit cannot be ignored. It was further stressed that the employment should be made in accordance with the statutory provisions.

Justice gave the reference where government advocates in Uttar Pradesh were removed by the new government. Aggrieved by the order of new government, advocates went to the Supreme Court. The Supreme Court observed that the appointment of the government advocates was not according to the statutory rules. The Supreme Court held that such advocates cannot be heard and cannot be given protection because one who comes from the backdoor must leave from the backdoor. It was emphasized that wrong practice of appointments should be avoided.

Another case was highlighted where 10 vacancies were advertised in a district court and 72 persons were selected. Ten persons were given appointment and the remaining 62 were put in the waiting list. Explaining the concept of waiting list it was stated that waiting list is prepared for a particular contingency. If a person who has been offered appointment but has not joined then the person in the waiting list is given chance according to the merit. Waiting list itself does not become a source of employment. In this case, 10 persons were appointed and were transferred to other districts. Then 10 more vacancies were created. It was filled from that waiting list and the selected people were again transferred to the other districts. It was stated that a *Suo Moto* cognizance was taken in this regard and it was decided by the High Court that all appointments made after first 10 were void.

It was delineated that the ratio of law is that one does not have the power to appoint a person over and above the number of vacancies advertised and filling of future vacancies violate article 14 and 16 of the constitution of India.

It was emphasised that High Court cannot make any law which contravenes any right guaranteed under part III of the constitution and fair procedure should be adopted by the High courts while making appointments under article 229 and 235 of the constitution of India.

Justice Shiv Kirti stated that High Court has a unique status in the judicial hierarchy have explicit powers. It was stated that on the advice of the high court only, the governor appoints district and additional District Judges. The rules for recruitment in the judicial services are framed in consultation with High Court and the service commission. High court has exclusive control over the subordinate judiciary. It was emphasized that all their service conditions, postings, transfers,

conformations and leave are entertained by the High Court. Justice emphasized that this exclusive jurisdiction is because the judicial officers will lose their independence if there is any kind of control by the executive. Therefore, to get rid of the control of executive over judiciary, the power is vested with the high court. It was stated that judicial officers have to be isolated from all influences when performing judicial duty.

It was highlighted that relationship between High court and the subordinate judiciary is very delicate. Justice Shiv Kirti Singh emphasised that cordial relationship between the high court and the district judiciary is very important for the smooth functioning of the justice delivery system. The role of High Court is Loco-Parentis.

It was stated that there must not be any maladministration by the High Court and High court is there to maintain the judicial discipline.

Session 5

The theme of the **5th Session** was *Social Context Judging (SCJ) as Principle for Exercise of Discretion and Application of SCJ in given Case Studies*. The speakers for the session was Hon'ble Justice A.K. Goel, Judge, Supreme Court of India; Prof. Dr. A. Lakshminath, V.C., CNLU. The session was chaired by Hon'ble Justice A.K. Ganguly, Former Judge, Supreme Court of India. It was remarked

that India is not a new country; it is a civilization and is assimilated and articulated with the finest values of Indian civilization. It was remarked that India is the first written constitution of the oldest democracy in the world. People of India are its centre stage and it is for the first time the national charter starts with we the people. Indian constitution is one of the finest constitution and one has to understand its constitutional values and principles. It was further emphasised that the preamble is the essence of the constitution. It was stated that judges have to abide and uphold the constitution.

The word Justice was explained. It was stated that Justice is not a vague word. If a judge want to give justice then he must know what it means. It was further deliberated that and social and economic justice are to be interlinked. It was stated that there is a need to bridge the disparity between the social and economic context. The importance of political justice was also emphasized during the deliberation.

It was deliberated that the powers of executive and legislature are limited and executive cannot act above the law. Executive has to exercise its power under the law. According to rule of law, whenever an executive act it has to act under the authority of law.

It was stated that apart from fundamental rights the Supreme Court acknowledged the directive principles of state policy as justifiable as it is the obligation of the state to follow those directives in order to achieve the fundamental rights. It was delineated that the legislature cannot make law inconsistent with the rights contained in part III of the constitution.

It was expressed that under constitution there is inbuilt provision for judicial review and Judiciary has the power to decide whether law transgresses the constitution. It was stressed that Justice is not a purchasable commodity.

Justice A.K Goel stated that judicial institution is most trusted institution. Judicial service is a mission for upholding the constitution or constitutional value. It is the mission for achieving the constitutional goals.

Justice stated that Indian constitution has articulated the philosophy given by Chanakya in Kautilya's Arthshatra of social justice philosophy. It was stated with a concern that 260 million people live below poverty line, unemployment and large number of people are extremely poor.

It was further deliberated that it is very important for judges to know the history of our nation and how our Indian constitution evolves. The case of *A.K. Gopalan vs The State of Madras. 1950 SCR 88*, *Bandhua Mukti Morcha vs Union of India & Others 1984 AIR 802*, *Maneka Gandhi vs Union of India 1978 AIR 597* was discussed during the discourse.

Prof. Dr. A. Lakshminath stated the principle of *ubi jus ibi remedium* and stressed that law is not mathematics. He emphasised that Judging should not be arbitrary and should be accordance to the rule of law. It was remarked that strict adherence to adversarial decision may sometimes aid to injustice and suggested that judges have to be proactive to advance justice. A Proactive approach by the judge means that judge knows what the law and where justice lies. It was delineated that Judge is not merely an empire but an active participant in the social transformation. He must have a vision of entire society.

Session 6

The theme of the session 6 was “*E- Justice: Re-engineering the Judicial Process through Effective use of ICT*” The Speakers of the sessions was Hon’ble Justice Sunil Ambwani and Hon’ble Justice Navin Sinha. The session was chaired by Hon’ble Justice B.S. Chauhan.

Hon’ble Justice Sunil Ambwani stated in the beginning, there was no any such concept like E-court and it all began with in 1989, with the advent of Computer. It was emphasised that today,

Computer is the key for Government Department for enhancing the transparency, authenticity and removing corruption.

It was delineated that very 1st phase started in a District Court of Allahabad. In 2005, policy was laid down under National Plan for ICT. The concept of e- court was enunciated. It as delineated that the e-Courts Project was conceptualised on the basis of the ‘National Policy and Action Plan for implementation of Information and Communication Technology (ICT) in the Indian Judiciary – 2005’ submitted by e-Committee, Supreme Court of India with a vision to transform the Indian Judiciary with ICT enablement Courts.

It was stated that E-committee is a body constituted by the Government of India in pursuance of a proposal received from the Hon’ble the Chief Justice of India to constitute an e-Committee in order to assist and advice in formulating a National Policy on computerization of Indian Judiciary. The e-Courts Mission Project monitored and funded by Department of Justice, Ministry of law and Justice, Government of India for the district Courts across the country.

It was highlighted that in order to bring the concept into reality, the Phase 1 was launched. Phase 1 of the e-Courts was approved in February 2007 and revised in September 2010 with revised time lines of 31st March 2014. 1st Phase of e-Court was started with an aim to make the staffs well acquainted with system so that it will be easy to bring them under one umbrella. In Phase -1 of the E-courts project a large number of Court Complexes, Computer Server Rooms and Judicial Service Centres were readied for computerization of the District Courts. The District Court Complexes and the Taluka Court Complexes covered in Phase -1 were computerized. Hardware, LAN and Case Information Software (CIS) were installed to provide basic case related services to the litigants and the lawyers. A large number of District Courts launched their websites for the convenience of the different stakeholders.

The Change Management exercise was undertaken to train the Judicial Officers and Court Staff to get equip with the computer and Case Information System (CIS). The Judicial officers were trained and are designated as Master Trainers/Training of trainers. The CIS Master trainers trained District System Administrators (DSAs). The DSAs trained all the court Staff to get equip with CIS. The process Re-engineering exercise was initiated to have a fresh look on the process, procedures, systems and Court Rules in force in the different District Courts under High Courts.

Justice delineated that all the software prepared for the e-Court's Project are based on Free and Open Source Solutions (FOSS) which do not need to obtain any license or to pay subscription charges. An operating system based on Ubuntu (Debian based LINUX) was customised at the office of the e-Committee. The e-Committee is regularly updating the Ubuntu (Linux). At present Ubuntu 16.0 (Linux) version is under customization. It was deliberated that Common Case Information software is to be presented for entire district Judiciary with core and Periphery Models. The Core being unified for 'national' use, while the Periphery as per the local requirements of each high Court.

It was highlighted that the Process Re-engineering exercise was initiated for standardizing the rules and for its ICT enablement. The reports were submitted by most of the High Courts. Justice Naveen Sinha deliberated that 'The Policy and Action Plan Document Phase-II of the e-Court's Project, received approval of Hon'ble the Chief justice Of India on 8th January 2014. The Government of India sanctioned the project on 4th August 2015.

It was stated that High Courts empowered as implementing agency, of the project under its jurisdiction. The Infrastructure Model provides for adapting Cloud Computing Architecture which is efficient and cost effective, while retaining the present Server Rooms as Network Rooms and Judicial Service Centres as Centralized Filing Centres. It was emphasized that in Phase-II, Court Complexes are provisioned to be connected with Jails and Desktop based Video Conferencing. It was also stressed that Phase-II provides for Judicial Knowledge Management System including Integrated Library Management System and use of Digital Libraries.

It was stated that the Phase-II of the Project lays great emphasis on service delivery to the litigants, lawyers and other stakeholders. It was delineated that certified copies of documents will be given online and e-Payment Gateways will be provided for making deposits, payment of court fees, fines etc. The National Judicial Data Grid (NJDG) will be further improvised to facilitate more qualitative information.

It was highlighted that the e-Committee is involved in policy planning and providing strategic direction and guidance for the effective implementation of the project. It was stated that the High Courts have the assistance of the High Court Computer Committee, Central Committee, Central Project Coordinator, District Court Computer Committees and a Nodal officer for each district.

National Judicial Data Grid was discussed in detail during the discourse. The public access portal of National Judicial Data Grid was inaugurated on 19.09.2015 by Hon'ble Mr. Justice Madan B. Lokur, then Judge in-charge of e-Committee. The public can access the portal using the web link http://njdg.e-Courts.gov.in/njdg_public/ The NJDG will be useful for policy planners and policymakers bring in effective case management systems. It was further stressed that the data available in NJDG can also be used for Data Mining, Online Analytical Processing (OLAP), Business intelligence (B.I) Tools, Integration with Interoperable Criminal Justice System (ICJS). It was stated that CIS is a Common Software for all the District Courts. It is based on Free and Open Source Solutions (FOSS).

It was emphasised that new target cannot be completed by its own and for this very purpose new initiatives has to be taken. Improving the system of serving notices and summons through hand-held authentication devices for process servers, Information kiosks at each court complexes ,solar energy for power backup of court complexes, central filling centres, e-filing, integrated library management System, online certified copies, implementation of cloud computing with disaster recovery and back up facility, unification and standardization of all data including meta data, were some of the new initiatives discussed during the discourse.

It was delineated that on 7th August, Hon'ble the Chief Justice of India launched e-Courts national portal (e-Courts.gov.in.). It was stated that with dynamic real time data generated and uploaded continuously, the NJDG is serving as a source of information of judicial delivery system for all the stakeholders. It is regularly analysed for meaningful assistance in policy formation and decision making. It was stressed that the NJDG is working as National data warehouses for case data including the orders/judgements for courts across the country with full coverage of District Courts.