

NATIONAL JUDICIAL ACADEMY



PROGRAMME REPORT

for

NORTH ZONE REGIONAL CONFERENCE ON ENHANCING THE EXCELLENCE OF JUDICIAL INSTITUTIONS: CHALLENGES & OPPORTUNITIES (P-1006)

January 7th & 8th, 2017

In Collaboration with

PUNJAB & HARYANA HIGH COURT

And

CHANDIGARH JUDICIAL ACADEMY

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A two day regional conference on the theme 'Enhancing the Excellence of Judicial Institutions: Challenges & Opportunities' was organized at Chandigarh on 7th & 8th January, 2017 by the National Judicial Academy, Bhopal in collaboration with Punjab and Haryana High Court and Chandigarh Judicial Academy. The participants were 20 High Court Justices and 67 Judicial Officers from six states. The objective of the Conference was to provide a common platform to facilitate exchange of experience and sharing of knowledge on various issues ranging from ethics, integrity, vigilance, social context judging & use of technology, to consequences of corruption on the institution and public perception. The Conference provided an opportunity to discuss several crucial issues relevant to the particular region. The Conference was inaugurated with a welcome address from Prof. (Dr.) Balram Gupta, Director (Academics), Chandigarh Judicial Academy followed by an introduction to the central theme of the Conference by Hon'ble Justice Raghuram, Director, National Judicial Academy.

DAY I

Session 1

Theme: Importance of Ethics, Integrity and Discipline

Speakers: Justice G.S. Singhvi and Justice R.K. Agarwal

The foremost session of the Conference focused on one of the most important concern relating to ethics, integrity and discipline in the justice delivery system. It was initially taken up by Justice Singhvi wherein he laid the foundation of the discussion by making reference to some of the basic ideals of our Constitution such as Justice- social, economic and political, equality of opportunity and status and the dignity of individuals. These ideals of our Constitution are valuable and needs to be preserved and protected while dispensing justice. He was of the opinion that Part IV of our Constitution is much more important than Part III of the Constitution. That is to say, it is not just the fundamental rights guaranteed by the constitution which needs to be protected but it becomes even more important to adhere to and conform to the directives issued by the Constitution wherein there is command for the judiciary as well. Therefore, while delivering justice it is essential that it is in consonance with Part IV read along with the Preamble to our Constitution. Justice R.K. Agarwal made his contribution to the session by throwing light upon the ethical and moral values that must be adhered to by the judicial system. He also enriched the theme of the session by drawing instances from his own experience as a Supreme Court judge. Further delving into the subject, Justice Sighvi gave significant insights on the issue of justice for the poor. He was of the view that more time is consumed in assisting the haves of the society rather than the have nots. For this reason, it is necessary that judges become lawyers as well as adjudicators for the poor. Even under normal circumstances, a judge must always give a patient hearing to the advocate arguing the case before him for the reason that the advocate is not there representing his own case but that of someone else who is aggrieved.

Session 2

Theme: Strengthening Internal Vigilance Mechanism as response to rising Judicial Indiscipline

Speakers: G.S. Singhvi and Justice R.K. Agarwal

The session was taken up by Justice Singhvi wherein he opined that self-introspection is the best mechanism, that is to say one should conduct oneself in such a manner that there would not arise any need of internal vigilance mechanism. On this particular aspect of vigilance, he shared various instances of his surprise visits to the city civil courts and district courts while he was the Chief Justice of Andhra Pradesh High Court. He also stressed on the need to develop a mechanism to inform the public about matters and facts which give a wrong image of the integrity of the judiciary when it actually comes due to the negligence of the executive. He shared an instance in this regard when due to late filing of the charge sheet by the police the accused charged with a heinous crime was released on bail. He also suggested the participant judges that they should not hear an advocate dispassionately and objectively and must always try to make room even for arguments not acceptable to a judge. This reference was particularly with respect to the issue of internal complaints raised by various participating judicial officers. They were of the view that often frivolous complaints are filed against them by the parties against whom the order is passed. To this concern, Justice Singhvi remarked that it should always be taken care of that complaints must not be a rule by a failing litigant or lawyers of litigants. Such kind of internal complaints should only be proceeded with if after making an internal inquiry some material or substance is found in the complaint. On the same issue, Justice Sachdeva of Delhi High Court who was also a participant judge had some interesting insights. He advised the judicial officers that they must always pass orders as per their wisdom but at the same time hear the counsels and the litigants patiently. This is important because most of the time the altercation is not of being aggrieved by the order but not of being heard properly.

Another issue which was deliberated upon in this session was as to whether judicial indiscipline will decrease if we have audio visual recordings in the court. Justice Raghuram was of the opinion that it would not be conducive for free and profound decision making. Justice Singhvi was of similar view and he also gave the example of the manner in which the parliamentary proceedings are conducted in our country despite being recorded. There was another significant issue raised by Justice Raghuram as to how can we spread best practices regarding co-ordination between High Court and District Court judges. One response to it was to provide training to the district level judges which would be sort of an in-house training where the district judge could be placed as an observer in the High Court. Justice Sachdeva gave the instance of Delhi High Court where they follow the practice of placing a newly appointed judge with a senior judge on division bench. However, the problem in such a case is that there is a possibility that the junior judge develops the habits and traits of the senior judge with whom he is associated.

Session 3

Theme: Impact of Media on Public Perception regarding vitality of Justice Delivery

Speakers: Justice A.K. Goel, Justice S. Ravindra Bhat, Justice S. Nagamuthu & Mr. C. Aryama Sundaram

The session was initially taken up by Justice Goel and he opined that media's role is merely to provide facts or briefs. However, they often they go beyond that and become judgmental over certain issues which is very dangerous as it not only creates a public perception but there is every chance that the subconscious mind of the judges be influence by media reports. In this context he made reference to the famous Sahara case where media reports created a public perception against one party even before the case commenced in court. However, he at the same time was also of the view that apart from all the negative influence that the media trials have, the administration of justice delivery system gets strengthened at times because of the involvement of the media. Justice Nagamuthu discussed and expressed his concerns with respect to issues of contempt cases arising out of media reporting. He also raised questions as to why the police officer should go to give interview to the media and why media should be allowed to have access to all the matters. Mr. Aryama Sundaram however, focused mainly on the brighter side or the positive influence which media brings about in the society and how it is an essential element for any democracy to function. He pointed out that a stool of three legs is not as strong as that which stands on four legs. It is the media which acts as the fourth leg for our democracy. He interestingly remarked that media has a vested interest in democracy, economical or commercial. Thus, if there is anyone who really wants the establishment of democracy it is the media, the reason being that media could only function effectively when there is democracy in place. He further stated that a common man understands a particular matter when media explains it in simple terms. Therefore, we can always use the media to tell the people that judiciary is there to address the issues faced by them. Public confidence is most critical to the administration of justice. There is marriage between media and judiciary. Judiciary thinks of media as more efficient than other pillars of democracy. The same is true vice-versa. These are the two pillars that the people of our country trust the most. Justice Bhatt however had contrary opinions in this regard. According to them, that because of the excessive influence of media, the integrity of the trial process is under siege. However, he was also of the view that although media often has a negative influence, sometimes it has also had a positive impact in bringing some buried cases alive. He was also of the view that in order to combat the issue of incorrect reporting of the court's orders or procedures, every High Court should have a spokesman for the court who can correct things which have not been reported correctly. Justice Bhatt was also concerned about the impact of media upon the judges and he suggested that judges must refrain from giving judgments with the view to increase the TRPs or to grab the attention of the media.

Session 4

Theme: Relationship between High Court and District Judiciary

Speakers: Justice G.S. Singhvi, Justice M.B. Lokur, Justice P.C. Pant, Justice S. Ravindra Bhat & Justice S. Nagamuthu

The session was enriched by the contributions of its speakers on the issue of relationship between High Court and District Judiciary. Justice P.C. Pant pointed out significant constitutional as well as statutory provisions in this regard wherein the essence of such a relationship can be drawn upon. Some of these were Articles 227, 233, 234, 235 and 236 of the constitution, in addition to Section 122 of C.P.C. and section 11 and 12 of Cr.P.C. He also made reference to certain significant judgments in this regard such as State of Kerala v. Laxmi Kutir and the Chandra Mohan's case. It was also explained by him as to how various circulars issued by the parent High Court acts as guiding force to the judicial officers. Justice Bhatt's remarks in this regard with reference to the doctrine of precedents applied in common law was quite significant in the context of the discussion. He also pointed out the difference between Articles 226 and 227 of the Constitution stating that the higher courts should only in rare cases keep the subordinate courts within the boundaries of their authority. He further made reference to the significance of Article 50 of the Constitution and how we still have been unable to achieve this reality in certain parts of North-East. The relationship between the district judiciary and the higher judiciary was also discussed with respect to the power of contempt since such a power can be exercised by the lower judiciary only upon a successful reference to the High Court. Further, Justice Lokur made significant remarks as to the lack of communication that exists between the district judiciary and the higher judiciary. The core issue here, he pointed out is how to bridge this gap. In this regard he stated that the role of district courts is vital. They have the responsibility in bringing the issues and concerns faced by the courts under them to light. He asserted that ideally the relationship between the higher and district judiciary should be that of a parent and child. But does such a relationship exists in reality was the core issue. One of the major concern raised by the participants from the district judiciary was with respect to the lack of infrastructure that exists at that level. Justice Singhvi suggested a system of collection of statistics relating to the infrastructure of the district judiciary in various states so that the problem can be effectively addressed to. At last, Justice Nagamuthu had some interesting insights on improving the relationship between the higher judiciary and the district judiciary and bridging the trust deficit between them. He suggested giving options to a judge before he is transferred. He also pointed out that for years the promotions are not made to the senior division level for the reason that there are not enough recruits to serve the junior division level. This issue needs urgent attention. He was also of the view that freedom should be given to the lower judiciary to speak to the high court judges any time on any legal matter. In conclusion, it was agreed that the kind of relationship that currently exists between the lower judiciary and the higher judiciary is not what is ideally expected to be. It is important to achieve a state where this relationship improves as it can lead to much enhancement of the excellence of judicial institutions.

DAY II

Session 5

Theme: Social Context Judging (SCJ) as principle for exercise of Discretion and application of SCJ in given case studies

Speakers: Justice M.B. Lokur & Justice C.K. Thakker

This particular session was initiated by Justice Lokur wherein he stated that while judging a case, the social context or the trends of the society cannot be altogether ignored. The reason being that society is changing so law cannot remain static. In this regard he gave certain examples such as role of women in society and changing educational and employment patterns. He stressed on gender justice as one of the major component of social justice by making reference to the developments made in respect of endowing right to property on women, increasing presence of women in the employment sector etc. However, there is also another side of the aspect when we consider the social context and that is the kind of stereotypical attitude towards the dress, male friends, drinking and smoking habits of women which are often given much more significance than the real issue at hand. As for instance Justice Lokur expressed concern with respect to judgments where the sentence of a rape accused gets reduced on the ground that the victim woman was dressed in a particular way or was out late at night. Further, reference was made to the rights of the unemployed as against those who are in employment. There was also discussion with respect to violence against women, rights of construction workers, right to free legal aid, violence against people from North-East, hate speech etc. as vital aspects of social context judging. Justice Lokur was of the view that such changes in society need to be recognized and catered to by the judges and that the social context in which the case is presented must always be analysed before a judgment is made. Apart from social justice, the aspect of political justice was also discussed in the sense that the coming up of transparency and accountability features in the political sphere can be seen as having made a notable impact upon the societal context as well. The issue at hand could not be concluded without deliberating upon another significant aspect of economic justice in the social context. In this respect, the Minimum Wages Act was discussed as to whether it is actually been implemented in a proper manner as well the issue of contractual wagers in the light of the fact that half the money shown on paper goes to the contractor instead of to the worker. The learned judge also pointed out that sometimes it is very difficult to ascertain economic justice between the stakeholders involved such as in case of construction of a dam when people of that area are displaced there is uncertainty as to whether we are looking at economic justice from the point of view of such people or that of development of the state. The issues of medical care and environmental concerns were also referred to in this context. Justice Lokur concluded by saying that almost everything today has to be looked at from the context of the society. The reason being that we are not only looking into the needs of the present generation but for the future generations as well.

The other learned speaker for the session Justice C.K. Thakker took forward the discussion by stressing on the fact the ground realities prevailing in the society must never be ignored by the judicial community whether at the grass root or the higher level. He interestingly pointed out that sometimes in spite of a written constitution we are unable to read it in its true spirit. In such times, there comes need for interpreting the law with the changing needs of the society. For instance, earlier we did not had much for the victim in our system. Much of the protection was accorded to the benefit of the accused. But with the change in societal structure there came demands which led to the evolution of another branch called 'victimology'. For instance, it is a well-known fact that penal statutes have to be interpreted strictly and if there is room for two opinions benefit must be given to the accused. The reason behind this is that no innocent person should suffer. Justice Thakker asserted that drawing from the same logic what should be done is that if in a particular case there is a party belonging to the weaker strata of the society discretion should be exercised in their favour.

The discussions went further in this session with quite a lot of interventions made, issues raised and suggestions put forward by the participants. The session threw light upon certain other areas which developed because of significant change in the structure of the society itself. One of the participant interestingly made reference to the setting up of water ATMs in Shimla (having immense tourist inflow) in view of every person's right to safe drinking water. Another interesting incident discussed was that of a bus accident in Shimla in which tourists from various parts of India were injured. The difficulty arose as to the filing of case for compensation because the people were not from Shimla so it would have been difficult for them to pursue the case if it is filed in Shimla. The answer came in the form of mediation as otherwise it would not have been feasible from compensation point of view. As a result, out of 195 cases 144 were settled in the first instance. This can adequately be pointed out as 'Equal Justice'. The session concluded with the remarks by Justice Thakker wherein he made reference to the provisions giving special powers to the Supreme Court and the High Courts within which they can adequately exercise their discretion and further the goal of social justice.

Session 6

Theme: E-Justice: Re-engineering the Judicial Process through effective use of ICT

Speakers: Justice M.B. Lokur, Justice C.K. Thakker & Justice Rajesh Bindal

The session was initially taken up by Justice Rajesh Bindal and he made a power-point presentation while deliberating on the technological advancement made in the functioning of the Punjab and Haryana High Court through effective use of ICT. He pointed out various positive changes that have been brought about by the introduction of technology in the day to day functioning of the court system, some of which are the use of dragon speech software, introduction of e-court fee, medico legal reports, personal information system, online leave application and approval system, online publication of notices, according digital signature to the

judicial officers and court staff and an attempt towards full digitalization of subordinate courts (through which about 3.52 lac sq. ft. of land would be reclaimed from record rooms), etc. Thereafter, Justice Sanjeev Sachdeva enlightened the participants on the use of ICT with regard to the advancements made in this respect in the Delhi High Court. He too pointed out the ease and efficacy which has been brought about by holding hands with technology, such as the entire record of decided cases upto the year 2012 have been digitalized, 40,000 sq. ft. land has been vacated due to digitalization, certified copies of digital records with digital signature is available within 15-20 minutes of the order, installation of kiosks for information, and introduction of the system of e-court fee, digital display boards in and outside the courtrooms, e-cause list etc. Lastly, Justice Lokur also deliberated on the subject and he made reference to the website www.ecourts.gov.in wherein all the database information with respect to every court in India is available.

The programme concluded with the vote of thanks addressed by Hon'ble Justice Raghuram, Director, National Judicial Academy and Dr. Balram Gupta, Director (Academics), Chandigarh Judicial Academy.
