

# NATIONAL JUDICIAL ACADEMY



**Regional Conference on Enhancing the Excellence of Judicial  
Institutions: Challenges & Opportunities (East Zone-2)**

**[P-1018]**

**01<sup>st</sup> & 2<sup>nd</sup> April, 2017**

**In association with the High Court of Sikkim and the Sikkim  
Judicial Academy**

## **PROGRAMME REPORT**

### **Programme Coordinators**

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## **Day - 1**

### **Inaugural Session**

The National Judicial Academy organized a two day regional conference on the theme 'Enhancing the Excellence of Judicial Institutions: Challenges & Opportunities', held at Gangtok on 1<sup>st</sup> & 2<sup>nd</sup> April, 2017 in association with the High Court of Sikkim and the Sikkim Judicial Academy. The conference was attended by High Court Justices and Judicial Officers from the High Courts of Calcutta, Gauhati, Sikkim, Manipur, Meghalaya and Tripura.

The conference commenced with a welcome speech by Justice Meenakshi Madan Rai, Judge High Court of Sikkim. This was followed by a brief introduction of the conference by Hon'ble Justice G. Raghuram, Director, National Judicial Academy.

### **Introductory Remarks**

Justice Raghuram stressed that judiciary in a democracy plays two vital roles. One, it is the monitor of power and two, it is a mentor of transmitting and making possible the internalization in the society of those eternal values which permeates in the constitutional text. In the realization of these two goals judiciary plays a very vital role. To achieve these two goals judges require qualities which often eludes the human spirit and it is towards fertilizing those values which transforms the average citizen into a personality capable of adjudicating and mitigating conflicts in society. Judicial training aids this transformation. The NJA with the patronage of the National Judicial Academic Council, with the support of Hon'ble judges of the Supreme Court and other dignitaries thought it appropriate to have regional conferences commencing from the current academic year. All the six sessions of all the regional conferences are common. The purpose of having these regional conferences is to enable more robust participation of judges from the high courts and judges from the junior division. So as to energize the communication between the hierarchies within the judiciary i.e., between the High Courts and the subordinate courts. It was perceived that the only communication that takes place between the high courts and the subordinate courts is disciplinary communication that is conceived to be not the robust way of going about because to accentuate democracy a continuous course of communication between the hierarchies is required which also contributes to increase the efficiency of the deliverables. This is the reason why a session on the relationship between the high court and the district judiciary is included in the conference.

Impact of media on the public perception regarding the vitality of justice delivery is also considered to be a very important topic. Bashing of public institutions especially the judiciary is the favorite pass time of the media. This in turn creates fear psychosis which majorly impacts the way the judges deliver their responsibilities and obligations. To what extent media has got its own pathologies is also quite well-known among the cognoscenti. But then there is another matter i.e., how to deal with the media which is almost on the verge of rampage is a challenge faced by all democratic institutions, judiciary being no exception.

Importance of ethics, integrity and discipline is significant since judges are designed to point fingers to the rest of the society. It is time that judges have a more robust ethical personality which not just gives them a temporal authority but also gives judges moral authority to manage. What nuances of ethics, integrity and discipline that must form a judicial persona is the topic of session one.

The session on ‘Strengthening Internal Vigilance Mechanism as Response to Rising Judicial Indiscipline’ is not just about the indiscipline that everyone knows about but also the discipline, norms etc. which judges have to follow, how do judges who are in the hierarchies in the high court and the subordinate court deals with the plethora of conflicting case law is to be reflected upon.

Session five deals with social context judging. It is well recognized that if laws were self- executive phenomenon in the society then the formal and informal institutions and individuals in the society were to govern themselves in accordance with the agreed norms of the society, then we don’t need the state. But, that is not how the society operates. How the norms verbalized the legislative text have to be interpreted. Judge interpret it in the recognition that words are the symbols of the parent text. The session also emphasis that there is a constitutional coolarge in principle to social context in judging and interpretation of a large number of legislative text should be in healthy recognition of law that the rules that the society has formulated intends to execute certain principles as varied theories on social behavior.

Session six, ‘E- Justice: Re-engineering the Judicial Process through Effective use of ICT’ emphasis on the use of information communication technology where the judges deals with the technological support that is made available to the judicial institutions for expedite and more standardized justice delivery. Judges need to know about this new phenomena upon them that is accelerating the pace of change in the modern society.

## **Session 1**

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

***Speakers- Hon'ble Mr. Justice A. K. Sikri & Hon'ble Mrs. Justice Ruma Pal***

The introductory remarks were made by Justice Ruma Pal. She said that the conference should be more interactive and the participants should also contribute in the discourse. According to her all judges should have the constitutional vision of justice and how do the judges implement the constitutional vision of justice is also very important. The value component that goes into the decision making process is very significant. Then she asked the participants from where does one gets those values? The speaker then stressed that humans by nature are selfish. The distance that a human being covers from selfish gene to divine spark is a crucial. The steps involved to cover the distance are- self-discipline, objectivity, integrity etc. The more these elements the more the human reaches towards the divine spark. Whereas selfish genes brings in more animal like behavior. With this note the session one commenced.

The session was then taken over by Justice A.K.Sikri who asked a few questions- one, what are the essentials of a good judge and two, what should be the behavior of a judge not just in the court but outside the court and what is expected of a judge when he deals with the case, witnesses, lawyers etc. He opined that these days judiciary is in the glare of the media therefore behavior of a judge affects public perception of the judiciary. He further stated that the qualities of a judge includes- character, integrity, honesty, due diligence, fair play, flexibility of mind, knowledge of law, willingness to listen, patience in the court, courtesy in the court, empathy and intelligence. Judges have a lot of power and while exercising this power they should keep in mind the above mentioned qualities. To regulate these qualities we have the code of ethics i.e., the “Bangalore Principles”.

Adding to what Justice Sikri said, Justice Ruma Pal was of the view that a judge outside the court should behave as a normal human being without having any kind of a fuss around. In fact public appreciates judges who are simple in their conduct while they are outside the court. She also stressed that judges should know how to handle dilemmas. For instance, a judge should always guard his integrity and should never take any kind of gifts from people who may gain out from the judge himself. For being impartial it is equally important for the judge to see that he handles and decides the case on merits without any preconceptions. The speaker further, opined that a judge should always keep this in mind that he should not do certain things just because other judges are also doing rather, a good judge should know the difference between right and wrong and then act accordingly. One’s a judge has a good image then robust acceptance from the society is there. Since judges are not a known commodity therefore, they are always under test.

Justice Pal said that to be a master of one’s own courtroom a judge should never enter into a conversation with the counsels, counsels should be told to speak one at a time and there should not be any whispering in the court room.

## **Session -2**

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

***Speakers- Hon'ble Mrs. Justice Ruma Pal & Hon'ble Mrs. Justice Prabha Sridevan***

***Chair- Hon'ble Mr. Justice A. K. Sikri***

Justice Prabha Sridevan started the discourse by deliberating on the two aspects of internal vigilance. Firstly, the mentoring role of the court and secondly, to see that no aberrations are there in the system. Then, she raised the question as to why it is necessary to have internal vigilance mechanism? According to her internal vigilance mechanism is not just to ensure that all the officers who take part in the justice delivery system are working according the ethics as mentioned earlier. Rather, internal vigilance mechanism exists to ensure that the faith of the public in the justice delivery system does not collapse. Nowadays public seems to believe that judges are vulnerable not only financially but there exists regional, caste, religion vulnerability. It is a general perception that judges are vulnerable unless they prove otherwise. Therefore, the importance of internal

vigilance mechanism becomes higher. Public confidence has to be taken into account when we talk about internal vigilance which has to be swift and certain. People should know that action has been taken against an errant judge. Only then the perception that judges are vulnerable will go for the reason that errant judges will be removed immediately.

Justice Ruma Pal opined that for internal vigilance it is important for a judge himself to understand what a good judge is? Punctuality is very important for being a good judge. She further said that judges are very critical about themselves. In fact there has been a recent study on the efficiency of the legal system and delay. It was a two years study of the Delhi High Court. During the study some researcher sat in every court. The study found that on a percentage basis 80% of the delay was caused by lawyers by way of adjournments, strikes etc. whereas 20% delay was caused by the judges which is usually when the judges are absent. Judges work so hard but the media do not talk about that rather they say judges take holidays, leaves etc. no media concentrate on that 80% that causes delay. But the question is, are judges totally ignorant of this 80%? To some extent the judges are responsible because it is they who allow adjournments, if the judges do not allow adjournments then the lawyers would be forced to appear in the case. The judge should be explicit that he will not allow adjournments. It was also suggested that a judge should not list too many matters in a day rather he should list only that number of matter which he will be able to take up. At the same time a judge should also ensure that he will not grant adjournments in those matters which are listed. In this way the lawyers will know that if their case is listed on a particular date then it will be heard. Another way to cut down on delay aspect is to fix the time for lawyers so that the next lawyer knows that his case will be coming up. The lawyers may also be asked to give notes so that if a judge misses out an argument he can refer the notes. Such practice will aid the judge to control his court.

It was also suggested that the conduct of the judge towards the litigants is very important. The Supreme Court and the High Court judges do not get the opportunities to interact with the litigants but the judges of the subordinate courts do. Therefore, the conduct of the subordinate court judges towards the litigants should be such which shows that it is equality justice. For litigants the conduct of the judges matters the most.

Another facet of vigilance is discipline among the judges. District judges can keep discipline and practice due diligence in the court by keeping a track of the officers who comes late. The district judge may call the officers who comes late for giving explanation for being late, in some cases oral or written explanations can be called or can even issue memo for being late. Such techniques will surely bring change.

Internal vigilance is the work of the High Court but it is also important to know how the subordinate court judges perceive “internal vigilance” in the sense like, sometimes what happens is that a complaint is filed against a judge because of his bad behaviors etc. it is possible that such complaint has been made by a lawyer who is unnecessarily aggrieved by the said judge although the judge might be performing his duties diligently. This judge is then called by the seniors for explanation, how will a judge in such circumstances will feel? Here comes the role of the higher

judiciary, who should be strict against such bar and at the same time must be cautious in enforcing the internal vigilance mechanism.

Justice G.Raghuram opined that it is very important to understand that an honest judge will always be admired there is no doubt about it. There is a need to have a PAN India system where the integrity of the mentor should also be enhanced. India has an egalitarian constitution in feudal set-up therefore, the constitution is inconsistent with our society which should not be so.

The godfather syndrome should be done away with. There are instances where through internal vigilance mechanism a particular judicial officer is found guilty but because of his godfather in the high judiciary he gets elevated even after having enquires against him which have found him to be at fault. Such examples give a very wrong message in the judiciary. Even in matters of postings such syndrome exists. Such practices are causing burning issues among many judicial officers. This is a matter of self-introspection and it needs to be addressed both at the judicial and administrative side. There is a need for cultural transformation.

### **Session 3**

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

*Speaker- Hon'ble Mr. Justice K Chandru*

*Chair- Hon'ble Mr. Justice A. K. Sikri*

Justice K. Chandru initiated the discourse by stressing that whenever there are deviant behaviors of the judges, media is the one who reports such instances. Therefore, it is for the judges to keep in mind that the media is to be kept aside. We are living in an age where information, communication and technology are most important. He further opined that our constitution does not talk about press freedom, it speaks about freedom of expression. What is available to the ordinary citizen is the only thing available to the newspaper. The Supreme Court has been saying in a series of cases that we have not borrowed the American constitution to create a special press freedom. Court is just an arbiter to see whether the restriction imposed is reasonable or not. Therefore, the judiciary assumes a greater role in arbitrating the dispute between the citizens, newspapers and the kind of reasonable restrictions the state can impose on the newspaper itself. Judiciary is the deciding authority and therefore it is always under the glare of media.

He further added that when we talk about media influence does it mean that the judiciary put a wall around? By giving an example he said that there was a time in the high courts when the orders were dictated and there was hardly any newspaper present in the court. But nowadays there is a press rooms which gives minute by minute report and usually have dissent on every order. In their shows the media discusses orders with public, lawyers academicians etc. and every time when a judge go to the court they usually think what will be tomorrow's headline? Whether my judgment would be debated by the media or not is something which passes through the mind of a judge. In

fact, some judges also issue statements to the press while some judges get carried away by publications. Today we have such media which reports even the cough, sneezing etc. of a judge.

According to the speaker the larger question is why should we talk about media impact? How relevant is media impact? And why should we heed more on this issue? To these questions the speaker opined that the job of a judge is to render justice and they should not get influenced from whatever is being said by the media. Justice should be based on record and reasons. Media is considered as the fourth chamber of democracy. What role has the newspaper been playing in the last several years is also to be looked into. For instance, there had been many matters which have come before the Supreme Court because of the being reported in the newspapers. This is the positive role of the newspapers i.e., they bring before the court certain issues like, mismanagement, gross injustice to the under privileged people etc.

The speaker thereafter stressed that media can never impact the judiciary unless and until the judges are strong in law, on questions of integrity and on questions of understanding of the situation. Nowadays through social media anybody can write anything against the judiciary and a judge should not get carried away by all these things because nothing can create an impact on judiciary so long as the judges are very clear in what they are doing.

Justice Raghuram opined that judiciary is bound to be criticized when it performs extra-judicial functions and that is one part of a democratic setup. The criticism goes over board because the media is also criticizing. When media writes about the judiciary it is as if they are sapient and judiciary is not. Perhaps, this is the insolvable tussle between judiciary's claim for sovereignty on the text and doctrine and the press's claim on the sovereignty of text and doctrine. This is the tussle between third and fourth chamber of democracy and not on the majoritarian institution but counter-majoritarian institution which have a certain legitimacy in the constitution.

#### **Session-4**

#### **Relationship between High Court and District Judiciary**

#### ***Speakers- Justice Ruma Pal and Justice Prabha Sridevan***

In her prefatory remarks Justice Ruma Pal observed that— we all correspond to a view that there must be improvements in the relations between subordinate judiciary and High Court. As there is hierarchy there is need for supervision and control. Constitution of India rightly provides for it, but how to harness the power of control and individual dignity of a subordinate court judge is the question. Justice Prabha Sridevan commenting on the question raised, remarked that as there are powers with High Court judge subordinate judiciary tend to interact with a reasonable degree of genuflection. Unfortunately, submissive attitudes taken granted by some High Court Judges. Senior judiciary often insist malleable behavior as matter of right, for example— protocol duties of District Judge when High Court Justices go out. She said such expectations and avers undermine individual dignity of District and Lower Court Judges. Justice Sridevan perceived that High Court Judges need to be large hearted. Hierarchical arrangement and power of supervision must not

prevent downright communications which are must for effective administration. Justice Ruma Pal intervene to add that the same (open communication) must be true in case of District Judge and a Magistrate. Justice Pal appealed for clear channel of communication top to bottom.

In the second segment of the session Justice Ruma Pal opened the floor for suggestions from the participants. One of the High Court Judge suggested that,-

- (i) Administrative actions of High Court like transfer of a Magistrate from one district to another must be communicated to concerned District Judge.
- (ii) A pan India reflection on ACR is necessary
- (iii) Regular and surprise inspection shall be conducted annually
- (iv) Infrastructure issues of lower courts must be taken seriously
- (v) Effective supervision and assessment requires the High Court Judges to personally know the officers working under them
- (vi) Another High Court judge suggested that use of intemperate language (in the judgments) against the lower court judges must be avoided and for excellent work of judicial officers appreciation may be recorded in the order itself.

After hearing the High Court Justices, Justice Ruma Pal requests representative of district and subordinate judiciary for suggestion. Thereafter a recent research which shows Counsel-side inefficiencies and Court-side inefficiency in the ratio of 80:20 respectively as reason for the delay was discussed.

## Day -2

### Session-5

#### Social Context Judging (SCJ) as Principle for Exercise of Discretion and Application of SCJ

*Speakers- Justice A. K. Sikri, Justice Prabha Sridevan and Justice K Chandru*

Justice Sikri remarked that this is one of the most interesting and important sessions. He opened the session with a question— what is Social Context Judging? We as judges, as rule of law demands, decide cases as per law and we cannot go contrary to it. But many times cases may not be that simple, we often encounter cases which are hard, where both sides comes with logical arguments and substance, like- Euthanasia, LGBT rights, Triple Talak etc. In such cases judges have to exercise discretion in the light of social context.

Justice Prabha Sridevan explained why social context judging is important. She observed that we have an adversarial system where lawyers represent parties. Litigants who are economically and socially better gets better counsel, so litigation begin unequally. Here comes the role of judge who has to mediate this gap. Justice Sridevan gave example of a mother who killed her children and failed in attempt to kill herself was treated by High Court considering social context in which she committed the offence. She concluded that justice, mercy and compassion are essential component of a court.



Justice Chandru opined that social context judging often unveil a paradox as to the role of a judge, a dominant view is— judges only do conflict resolution, but some like Justice Krishna Iyer consider judging as social engineering. We have to find out a via media between the two, he said. Justice Chandru aptly remarked that principle of *stare decisis* (Article 141) and directions under Article 142 are to be followed by the subordinate courts. He highlight the tendency of lower court judges who follow precedents without perusing facts and circumstances of the case cited. Talking social context judging in the constitutional law context, Justice Chandru remarked that courts have tremendous contribution in the growth of law otherwise laws would have been static and outdated. He gave example of election commission which for a long time treated as another department of the government but courts rightly interpreted ‘superintendent’ and ‘conduct’ election widely to make election commission an independent body. Reforms did not stop at that, in *PUCL Case* disclosure of antecedents, assets declaration, education qualification etc. were made mandatory. Justice Chandru also observed that in spite of all these judicial activism, very often people of India vote for person accused, this shows, he said ‘larger reforms are yet to come from elsewhere, we (judges) can do only first aid not real surgery’.

Justice Sikri, putting in perspective the views of Justice Prabha Sridevan and Justice Chandru shared his experiences to underpin the significance of social context judging even at trial courts level. An epilogue to a very effective session was articulated by Justice Raghuram Goda. He observed that ‘Judges at all levels are under constitutional obligation to equal opportunities and effective access to justice to all’. Judge is not deciding who has better lawyer but who has better law, we (judges) need to set equilibrium wherever justice imply, said Justice Goda.

## **Session-6**

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

#### ***Speaker-Justice M. B. Lokur***

Justice M. B. Lokur addressed the participants on use of ICT. He elaborately presented phase-wise progress of E-Court project. He said that First Phase of the project was focused on District Courts, the implementation of which is almost complete. In the first phase four important groundworks have been accomplished, (i) supply of hardware, (ii) installation of software, (iii) training of core IT staff and judicial officers and (iv) supply of video conferencing units to every district courts.

Justice Lokur highlighting the utility of videoconferencing explained the various usages of video conferencing infrastructure. He said videoconferencing is being used for the purposes of- (i) effective administration of courts, (ii) interacting with jails/prisoners, (iii) examination of experts witnesses like doctors, and (iv) interacting with legal aid authorities, etc. He suggested that northeastern and western states like Sikkim, Arunachal Pradesh and J&K etc. can effectively utilize videoconferencing as a medium of communication and beat the barriers of road and other connectivity.

Justice Lokur observed that in Phase-II it was felt that providing a computer to every Judicial Officers is not adequate. To facilitate judicial officer’s work both at office and residence laptops

were distributed through High Courts. He requested High Court Justices present to expedite distribution of laptops through public procurement. He also made it clear that under E-Courts project High Courts will be funded for procuring KISOKs for public use. Justice Lokur also talked about National Judicial Data Grid and how it is benefiting the citizens by disseminating information relating to the cases pending. In the end he invited questions from the participants. Responding to a question on connectivity issue in one of the courts of Arunachal Pradesh, Justice Lokur said that in remote areas it is one of the problems but recently Special Package for northeast states including Arunachal Pradesh is formed hopefully the issues raised will be addressed at the earliest.

Justice G. Raghuram Goda in his concluding remarks expressed appreciation for active participation and harked on frame of references of topics chosen for Regional Conference. In particular, he laid emphasis on role of media in the administration of justice and judicial reactions to it. He remarked that with the advent of audio-visual media intensity of impact on all decision making agencies has been very vital. In the end he sought feedback from the participant judicial officers and justices to improve content, methodology and outreach of the Regional Conferences to come.