



NATIONAL JUDICIAL ACADEMY

Programme Report

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**REGIONAL CONFERENCE (SOUTH ZONE-I) ON
'ENHANCING EXCELLENCE OF THE JUDICIAL
INSTITUTIONS: CHALLENGES & OPPORTUNITIES**

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The Academy, in collaboration with the High Court of Karnataka and Karnataka Judicial Academy organized the South Zone-I Regional Conference on Enhancing Excellence of the Judicial Institutions: Challenges and Opportunities on 29th and 30th September 2017 at Bengaluru, Karnataka.

Efficient functioning of courts is a non-derogable *necessitas* for proper and quality administration of justice. Continual dialogue, communication and exchange of evolving horizons of knowledge and best practices, between judicial hierarchies—the Higher courts and Subordinate Courts—conduces and nurtures quality justice delivery. Therefore, the Regional Conference was designed to provide a forum for exchange of experiences, communication of knowledge and dissemination of best practices from across clusters of High Court jurisdictions in regions of our country and amongst hierarchies; to accentuate the experience of familial community between the High Court and Subordinate Courts judicial officers; besides revisiting established and imperative norms of a constitutional vision of justice and appellate review as well as other specified topics.

Justice Kurian Joseph, Justice U.U. Lalit, Justice Mohan M. Shantanagoudar, Justice R. V. Raveendran, Justice Thottathil B. Radhakrishnan, Justice Dinesh Maheshwari, Justice Dr. S. Muralidhar, Justice Raghvendra S. Chauhan, Justice P.S. Dinesh Kumar, Justice H.B. Prabhakara Sastry, Justice G. Narendar, Justice Devan Ramachandran, and Justice B.A. Patil guided the discussion.

Session 1: Constitutional Vision of Justice

Resource Persons: *Justice U.U. Lalit, Justice R. V. Raveendran, Justice Raghvendra S. Chauhan*

The theme for Session One was *Constitutional Vision of Justice*. The concept of justice as fairness, expressed in terms of 'liberty' and 'equality of opportunity' was discussed. It was emphasized that as per Amartya Sen, 'Justice' is absence of injustice. The constitutional provisions dealing with the concept of justice, the challenges in implementation and possible solutions to overcome these challenges were discussed in detail. It was stated that justice is prominently placed in the Preamble to the Constitution. It was deliberated that access to justice is pivotal to the constitutional scheme of justice. For, without access to the courts, justice is illusory.

In order to facilitate easy access to justice, an elaborate web of courts from the Supreme Court to the Gram Nyayalaya is woven. It was stated that jurisprudentially, the concept of *locus standi* is diluted by creating Public Interest Litigation, Alternative Dispute Resolution mechanism has been invented in order to supplement the traditional judicial structure.

It was highlighted that the plethora of litigation is a clear indication of people's zeal to access justice and their faith in the judiciary. However, it was stated that the ultimate consequence of the failure of the judiciary in securing justice for the people is the popular perception that the State machinery has failed to protect the common man and for the very political leaders, who are supposed to uphold the law usually more often end up violating it.

It was stated that the District Judiciary plays a pivotal role in implementing the constitutional vision of justice since most of the cases civil, criminal, or commercial are embedded in the constitutional fabric. It was highlighted that in this rather grim scenario, it is the District Judiciary which plays a vital role. It is, indeed, a misnomer that since the District Judiciary does not have writ jurisdiction, it has a minor role in implementing the constitutional vision of justice.

Sec. 91 of Civil Procedure Code, 1908 (CPC) was discussed and District Judiciary was reminded that it has the power to issue a declaration and injunction in cases of public nuisance or other wrongful acts affecting the public. Similarly, under Sec. 92 of CPC, the District Judiciary is the guardian of all public trusts. It was also stated that under Sec. 133 Criminal Procedure Code, 1973 (Cr.P.C.), it can deal with public nuisance as well.

It was observed that matrimonial suits, domestic violence cases, from injunction suit to declaratory suits which may involve women and minority rights raise issues of social justice. On the other hand, labour disputes, partition suits, specific performance suits, Debt Recovery Tribunal cases, cases before Commercial Courts, raise questions of economic justice to the parties.

Lastly, the fresh crop of defamation suits, prohibitory injunctions against the writers, the artists and film makers raise constitutional issues of freedom of speech and expression. Considering the pivotal role played by the District Judiciary, the Apex Court has repeatedly emphasised that the Presiding Officers need to play a dynamic and pro-active role during the trial. They cannot sit like mute witnesses at a boxing match. Besides doing the judicial work in the Court, the Judicial Officers also play a crucial role in the Lok Adalats. It was suggested that at every step, it is for the judicial officers to ensure that the Constitutional philosophy is implemented, the faith of the people is secured, and the rule of law is strengthened. It was delineated that delivering justice is not only confined to the court premises, but also extends to our daily activities. Rationality, impartiality, objectivity, fairness are not just the hallmark of a Judicial Officer, it is more so the benchmark for being a good human being. It was stated that the constitutional vision of Justice is not something to be preached in our judgments, but to be practiced in our daily lives. The session was concluded with a remark that it is the duty of every Judicial Officer to implement the constitutional vision of justice not only through his judicial work, but also through his personal conduct and behaviour.

Session 2: High Court and District Judiciary: Building Synergies

Resource Persons: *Justice Kurian Joseph, Justice U.U. Lalit, Justice Mohan M. Shantanagoudar, Justice R. V. Raveendran, Justice Thottathil B. Radhakrishnan, Justice H.B. Prabhakara Sastry*

The theme for second session was *High Court and District Judiciary: Building Synergies*. It was deliberated that constitutional objective of justice for all has its true meaning in District Judiciary being qualitative and effective. Fine tuning of the District Judiciary in that regard is in the hands of the High Court. At the same time, effective discharge of its constitutional obligation by the High Court is also equally contributory for a healthier society. To achieve this goal, a constant improvement in building synergy between the High Court and District judiciary, should be a continuous process.

Articles 214 and 216 of the Constitution of India which deals with the establishment of High Court, Article 233 which speaks about appointment of district judges, Article 234 that talks about the recruitment of persons other than district judges to the judicial service by the Governor of the State, Article 227 of the Constitution of India that enumerate the power of superintendence over all Courts by the High Court and Article 235 of the Constitution of India which explain the control over subordinate Court by the High Court were discussed during the session. It was stated that superintendence power of High Court is both administrative and judicial. But such power is to be exercised sparingly. Powers of superintendence cannot be exercised to influence the subordinate judiciary to pass any order/judgment in a particular manner. It

was emphasized that the control, vested in the High Court under Article 235 of the Constitution of India is to ensure independence of the subordinate judiciary. It is exclusive in nature, comprehensive in extent and effective in operation and it is to sub-serve the basic feature of the Constitution of India i.e. independence of judiciary.

It was highlighted that the Constitutional framework ensures the High Court and District Judiciary to work together with mutual compatibility and co-operation. The District Judiciary decides the matter based on the facts before it, guided by the judicial precedents laid down by the superior courts. The High Court being one of those superior courts helps the District Judiciary by laying down the correct preposition of law in the form of judicial precedents. It was observed that the High Court is the supreme judicial institution of the state judiciary in the state. It was stated that for the District Judiciary, High Court holds the position of not only an elder brother but that of a guardian. The subordinate judiciary is a most significant limb of the justice delivery system as it is the judiciary at the grass-root level. The principles laid down by the High Courts in its orders and judgments would be a guiding factors for the District Judiciary. Passing of a 'reasoned order' by the District Judiciary/Subordinate Courts is a primary duty of co-operation what it can extend to the High Court. Building synergy in the administration work between High Court and District Judiciary was also discussed during the conference.

Furthermore the cases *T.G.N. Kumar v. State of Kerala* [2011(2) SCC 772], *Rajendra Singh Verma v. Lt. Governor of NCT of Delhi* [2011(10) SCC 1], *K' a Judicial Officer* [Re 2001(3) SCC 54], *Guwahati High Court and Another v. Kuladhar Phukam and Another* [2002 (4) SCC 524], *High Court of Judicature for Rajasthan v. P.P. Singh and Another* [2003 (4) SCC 239], *Samsher Singh v. State of Punjab and Another* [AIR 1974 SC 2192], *Registrar General of High Court of Patna v. Pandey Gajendra Prasad and Others* [(2012) 5 SCC 357], *Amar Pal Singh v. State of Uttar Pradesh and Another* [(2012) 6 SCC 491], *Awani Kumar Upadhyay v. High Court of Judicature of Allahabad and Others* [(2013) 12 SCC 392] were discussed during the discourse.

Session 3: Revisiting Norms for Appellate Review: Consequence of Frequent and Excessive Appellate Interference.

Resource Persons: *Justice Kurian Joseph, Justice U.U. Lalit, Justice Mohan M. Shantanagoudar, Justice R. V. Raveendran, Justice Dinesh Maheshwari, Justice P.S. Dinesh Kumar*

The third session was on *Revisiting Norms for Appellate Review: Consequence of Frequent and Excessive Appellate Interference*. It was stated that the word appeal is not defined. A right of appeal is said to be the hallmark of any civilized system and a universal requirement of life and liberty. It was emphasized that absence of a right of appeal is a glaring lacuna in a system governed by Rule of Law. The concept of appeal in the light of *Nagendra Nath Dey's* case (AIR 1932 PC 165) was discussed during the discourse. It was deliberated that the Law Commission of India had repeatedly emphasized the futility of multiplicity of appeals as an assurance for justice. It was stated that an appellate court does not interfere if the judgment under appeal is shown to be incorrect but, only if it is shown to be wrong. Subjective and objective distinction between the ideas of 'correctness' and 'wrongness' was discussed. It was suggested that multiplicity of appeals and frequent interference is not an ideal solution.

It was stated that nearly every judge has a higher court looking over his or her shoulder, so a reversal should be expected from time to time. Occasional disagreement is simply the nature of a tiered system of legal decision making. Indeed, if appellate court never reversed lower court records perhaps, something would be amiss. It was stated that judge should not ignore adverse authority. If the authority is not distinguishable and is otherwise binding one should follow it. It was suggested that the judge should be very cautious while copying and pasting prior decisions and make sure to update the research to reflect the new developments.

Decision should be logical. It was stated that if sentences and paragraphs are inserted where they interrupt a line of thought, or where they have no connection to what proceeds or follows, coherence is lost. It was recommended to use heading and sub headings to identify where treatment of one subject ends and another begins. It was stated that a judge in his judgment should use long sentences and paragraphs sparingly, as too much information may bog readers down and make it harder for them to follow the analysis. Lastly, it was suggested that judge should never take anything personally if his/her judgments get reversed, modified or remanded.

Session 4: Access to Justice: Information and Communication Technology in Courts.

Resource Persons: *Justice Dr. S. Muralidhar, Justice G. Narendar, Justice Devan Ramachandran*

The topic for the fourth session was *Access to Justice: Information and Communication Technology in Courts*. The speaker initiated the session by elaborating upon the concept of “Access to Justice”. He discussed various facets of the term and referred to the definitions of the term provided in various international legal conventions. Thereafter, various factors which impede access of justice i.e. inordinate delay, exorbitant legal costs, weak enforcement of laws, non-availability of adequate legal aid etc. was discussed. The speaker stated that technology is a necessary tool for expediting delivery of justice. The history of infusion of technology in the Indian judiciary starting from the efforts of Justice G.C. Bharukha in Patna High Court. The speaker also elaborated upon the two phases of the E- Courts Projects in India and discussed the benefits in detail. The last speaker discussed the status of implementation of ICT in Delhi High Court and the district court. The distinction between the concept of online filing and e-filing was drawn and it was stated that the High Court has introduced e-filing which has streamlined the process of filing a case. The National Judicial Data Grid (NJDG) and the functioning of paperless courts under Delhi High Court was discussed. The speaker cautioned against compulsory imposition of technology and stated that paperless courts should be introduced in a phased manner since the lawyers and the judges would require time to become accustomed to the system.

Session 5: Access to Justice: Court and Case Management

Resource Persons: *Justice Thottathil B. Radhakrishnan, Justice Dr. S. Muralidhar, Justice Devan Ramachandran, Justice B.A. Patil*

The last session was on the theme of *Access to Justice: Court and Case Management*. It was discussed that the judicial officer should maintain a persona in the courtroom which should convey an impression of a leader to the court staff and the litigants. Thereafter, the speaker discussed various conditions which affect the productivity of a judge in the court i.e. infrastructure, quality of assistance from the bar, trained court staff etc. It was also discussed that judicial officer should frame a specific protocol or yardstick for dealing with a particular type of case and should follow it for quick disposal. The speaker also delineated various methods for better court management and the behavior which the judicial officer should maintain with the

court staff. It was also discussed that the judicial officer should maintain the decorum of the court and should not be very expressive. Furthermore, it was discussed that judicial officers should control their temper inside the courtroom and should not get incensed easily. The speaker also emphasized on confidentiality and stated that the judge should strive to keep their judgments confidential before delivery. Lastly, it was discussed that the time period between the dictation, release and delivery of the judgment should be kept minimum in the interests of justice to prevail.
