NATIONAL JUDICIAL ACADEMY

[P-1338]

West Zone-II Regional Conference on Contemporary Judicial Developments and Strengthening Justice through Law & Technology
25th & 26th March, 2023

PROGRAMME COORDINATORS
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National Judicial Academy (NJA) in collaboration with the Gujarat High Court and Gujarat State Judicial Academy organized a West Zone-II Regional Conference on the above subject at **Ahmedabad (Gujarat)** on **25th & 26th March, 2023.**

The conference aimed to provide a forum for exchange of knowledge, experiences and dissemination of best practices among participant justices and judicial officers. The conference is designed to promote a dialogue between participant judges amongst judicial hierarchies on themes including Contemporary trends in Constitutional Law; Precedential value of judgments by the High Court; and Developments in Criminal Law: Issues and Challenges. The conference focused on effective judicial governance through contemporary technological advancements including artificial intelligence, blockchain as well as information and communication technology in courts vis-à-vis e-courts project.

Session – 1
Contemporary Trends in Constitutional Law: **Recent Judicial Developments**
Speakers - Justice S.G. Gokani & Mr. N. Venkataraman
Chair
Justice C.K. Thakker

The discussion commenced with the basic structures of Government - Federalism and Unitary Government. Speaking of judicial review, the speaker emphasized the importance to uphold the constitutionality of the law. Where necessary, words could be added to a provision, or, to read down a provision of law, so as to uphold the constitutionality of a provision. As an instance of reading down a provision, *Olga Tellis & Ors vs Bombay Municipal Corporation 1986 AIR SC 180, S.P. Sampath Kumar Etc. Vs. Union Of India & Ors. 1987 AIR SC 386* and *L. Chandra Kumar vs. Union of India and Others -1995 AIR SC 1151* were refereed**.** Further it was emphasized that under the constitutional scheme of things, power is tilted in favour of the Central Government. It is the President (Executive) at the Center and Governor (Executive) at the state level. That the power of declaring an emergency etc. is with the Center and the exercise for the same is on subjective satisfaction of the factual scenario, as against objective satisfaction for the same. And only where such exercise of power, is totally irrational/arbitrary, even Presidential notifications, may be held to be ultra vires. It also referred to Article 141 of the Constitution of India - wherein the power to do complete justice between the parties has been bestowed on the Supreme Court. It was stated that occasions may arise where after declaring a particular provision as ultra vires, the need for spelling out consequential relief may arise. And it

is under Article 141 that the Supreme Court would do complete justice. It was stressed that the judicial interpretation of the Constitution is evolving, it being responsive to the growing requirements of rights and liberties of the individuals and the holistic well-being of citizenry, and thus it is a contribution to the Nation's development. It was pointed out that if we were to stick to originalism *(i.e., attributing to the text the original public meaning that it had had at the time of its enactment)* rather than treating the Constitution as evolving, we may end with "*inconsolable disappointment*". The two USA Supreme Court overruling two decisions, *Roe v. Wade 410 U.S. 113 (1973),* & *v the Planned Parenthood of Southeastern Pennsylvania. Casey 505 U.S. 833. 1991*, were cited as examples of such a debacle leading to a stand that for any right to be protected, the same essentially ought to be deeply rooted in nation's history.

Further Article 21 of the Constitution was discussed in the light of various judgments demonstrate the Supreme Court's commitment to interpreting the Constitution in line with evolving societal needs, *X. v. Principal Secretary, Health and Family Welfare, Government of NCT (Delhi), AIR 2022 SC 4917, K.S. Puttaswamy v. Union of India AIR 2015 SC 3081, The State of Jharkhand vs. Shailendra Kumar 2022 SCC OnLine SC 1494, Buddhadev Karmaskar vs. State of West Bengal MANU / SCOR / 54631 / 2021*. It was stated that the press, often referred to as the fourth estate, plays a crucial role in democracy. It influences public opinion and holds the other three pillars of democracy accountable. The press is protected under the freedom of speech and expression, and its role is vital in ensuring transparency, accountability, and safeguarding democracy.

It was asserted that Cooperative Federalism, a nuance development in the Indian Constitution, recognizes that the Constitution is neither solely centered around the federal government (Centre-centric), nor, solely centered around the states (State-centric). It is Centre-centric in certain portions and it is State-centric in certain other portions. The constitution emphasizes cooperation between the federal government and the states. He stated that the idea of Cooperative Federalism was evolved, after about 25 years of "experimentation", with the focus on the subject of trade, commerce, and business. This was so as the said subject was of common interest of both the states and the federal (central) government, and the said subject could ensure economic growth and revenue generation. The aim was to find a way to unify and share the powers to tax in this domain. The concept of the Goods and Services Tax (GST) was introduced. The GST involves the simultaneous taxation of goods and services by both the federal government and the states. The powers to tax were not surrendered by either the federal

government or the states but were instead pooled together in a separate constitutional body called the GST Council. The right to get intoxicated could be considered as a fundamental right was pondered upon. It was stressed that it's important to approach this topic from a neutral standpoint and not take a position or argue without considering the ideology and social patterns involved. Judges, although expected to look at the law objectively, often find it challenging to separate their personal views from their judgments. Whether the right to intoxicate oneself becomes a fundamental right under Article 21 where a state allows liquor trade, is yet to be conclusively determined. The issue of how democratic governance and the rule of law can coexist with a nation's values, traditions, culture, and ethos is an ongoing area of exploration for judges. The evolving nature of these issues presents challenges for judges in striking a balance between the rule of law and a nation's unique characteristics and values.

Session – 2
Precedential Value of High Court Judgments
Speakers - Justice C. K Thakker & Mr. Shekhar Naphade

The second session began by stating that every judgement is based on the facts and its own peculiar circumstances, points of law, points of fact, mixed questions of law and fact, so on and so forth. Besides all of the above, the judgement would also contain certain principle(s). And it is the principle(s), as per the law on precedent, which is / are to be followed in subsequent decisions. Referring to the Roman Law, it was stated that strictly speaking, theory of precedent was never accepted under the Roman Law. If Roman Laws were to be applied, it would be open even to a Civil Judge, Junior Division, to ignore the decision of the final forum, the highest court of the country. But under the Common Law System, in no case can it happen that the final court‟s decision is being ignored by a judge from District Judiciary. Uniformity, certainty, consistency, absence of chaos or confusion, no ambiguity, predictability, in context of the law of precedent were discussed. Judicial decorum / judicial propriety was also formed part of the discussion. It was stated that as an academician, one may criticize a judgement, as not abiding is a settled principle of law. But when it comes to a judge, a judge is bound to follow the judgement pronounced by Supreme Court. The discussion went to the roots of precedent and its consequent development, stated the doctrine originated in England. There, Roman law was applied and where there were vacuum, the English devised principles to decide cases. Such principles had to remain uniform and thus, gradually, they began gaining a binding force, leading to the doctrine of precedents. It was mentioned that even in absence of the doctrine of precedents, the legal systems in France etc. have functioned well, and on the other hand, in the

recent years, the doctrine of precedent has raised certain concerns. And in this background, it needs to be checked that such causing of concern is indicative of absence of judicial discipline. Dealing with the distinction between the obiter and ratio, it was highlighted that the ratio is the principle that the court applies to finally decide a case; an obiter is an observation of the court on an issue that arises but is not necessary to decide the case. It was opined that an obiter should not be mistaken for a casual observation. In India, even an obiter of the Supreme Court is binding on the High Courts and lower courts if it relates to an issue considered by the court, even if it was not necessary to decide the case. However, a casual observation, which is not part of the ratio or obiter, is not binding. Further, the doctrine of precedent has both advantages as well as disadvantages. It helps ensure equality in the administration of justice, brings certainty to the law, and allows people to adjust their affairs based on established principles. But then, with the presence of qualified law in almost every aspect of human life today, the doctrine of precedent is also losing its relevance. Moreover, the trend of referring matters to larger benches is also impacting the doctrine, causing delays and uncertainty.

Session – 3
Developments in Criminal Law: Issues and Challenges
Speakers - Justice Manoj Misra & Justice Joymalya Bagchi

It was elaborated that the discretion for adjudication of bail applications, one has to be aware of the growing need of times and various laws, particularly those, which restrict liberty, or, curtail the discretion of the Court, including decisions rendered from time to time. It was underscored that appeals are not being heard for 20, (sometimes, 30 to 40) years, prisons are overcrowded. Other large social and related issues, not only concerning the accused or the victim, but under larger prospective of the families of the accused and the victim. So this bail jurisprudence has taken many dimensions. The session outlined four types of bail applications for adjudication: pre-arrest bail, bail pending investigation, bail after the completion of investigation and submission of charge sheet, and bail during the trial. It was emphasized that pre-arrest bail follows the conditions for granting bail in non-bailable offenses. The only caveat being that where custodial interrogation is required, as an essential requirement for fair investigation, the pre arrest bail (anticipatory bail) ought to be curtailed. Granting bail, merely for the reason that custodial interrogation is not warranted, does not auger well with the Supreme Court. Of course, where Regular bail during the investigation stage is granted if no prima facie case is established against the accused, but other factors are considered if a case is made out. Bail during investigation is also contingent upon whether it would hinder the investigation or otherwise.

Once charge sheet is submitted and the sentence may be hardly of seven years maximum and in such circumstance keeping a person beyond a certain period would not be justified. It was stressed that new types of white-collar crimes, such as money laundering, need to be adjudicated after examining the connection between the scheduled offence, the accused, and the wealth generated from the offence. It was pointed out that there was an incessant flow of bail applications before the Indian Courts. It was expanded that there are sizable under trials in the jails of India at about 77%, whereas in the other parts of the world, say the US,it is mere 25% and if 1/3rd of them are ultimately acquitted, as is the current conviction to acquittal ratio, their liberty is curtailed as against the constitutional cannons. There is a huge extent of arbitrary arrests despite repeated pronouncements, including those of *Joginder Kumar vs. State of U.P. and Ors, AIR 1994 SC 1349* and *D.K Basu vs. State of West Bengal AIR 1997 SC 610.* The Supreme Court has been burdened with numerous special leave petitions against the grant or denial of bail. Still, the number of under trials persist. What is the remedy then? Is it a change of mindset or is it a change of law? Do we need a standalone law for bails? Is chapter 33 of the Code of Criminal Procedure inadequate? These are questions for judges to ponder. The Supreme Court proposes a separate and specific bail law. The reference, obviously was made to *Satender Kumar Antil vs. Central Bureau of Investigation and Ors (2021) 10 SCC 773*.

Talking of electronic evidence, it was stressed that admissibility and reliability of electronic evidence should be considered separately. It was urged that prima facie view has to be taken and thus, reliability of such electronic evidence be assessed during trial rather than at the bail stage. In short, prima facie satisfaction of the electronic evidence be considered for the purpose of adjudicating the bail application. The plethora of cases were discussed to make particpants understand about the present scenario of electronic evidence, *Anvar P.V. vs. P.K. Basheer (AIR 2015 SC 180,* the same entails a certificate under section 65B of the Evidence Act, and not by oral evidence. This proposition was doubted in *Shafhi Mohammad vs. The State of Himachal Pradesh AIR 2018 SC 714* and *Tomaso Bruno vs. State of U.P. (2015) 7 SCC 178 . Shafhi Mohammed* (supra), raised an issue as the consequence of the certificate being in the hands of an adverse party and thus the party relying it is not being able to produce it. Thus, it held that 65-B is not mandatory and it can be substituted through oral evidence. This, however, was overruled in *Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and Ors. AIR 2020 SC 4908*, which reiterates *Anwar*(supra) proposition, making certain exceptions. One exception being that the evidence is primary evidence. Second exception is where the evidence is with the other party, including the accused. Then, in such case, the court will call upon the accused to produce it and if the accused does not, then secondary evidence is admissible.

During the question answer session, a question was raised as to how to balance conflicting propositions, say, bar on grant of bail (in NDPS Case) and inordinate delay in conclusion of trial. The answer was provided that in such cases, in case of inordinate delay, bail can be granted even in face of legal embargo. The judgement, cited in support was of Supreme Court *Legal Aid Committee Judgment – 1995 (Supreme Court Legal Aid Committee vs. Union of India (UOI) and Ors. MANU/SC/0877/1994.*

Session – 4
Overview of E-courts Project
Speakers - Justice A. Muhamed Mustaque & Justice R.C. Chavan

It was expounded that eCourt Project - Phase 3 is to begin soon. The performance of Phase 2 of the e Court Project was far from spectacular, as desired goals could not be achieved. It was indicated that the aggregate budget was Rs.2500 Crores and that Rs.1600 was disbursed, out of which in 2020, about 300 Crores were unutilized. And that as on date, about 150 crores were unutilized. It was opined that the centralized planning is not going to work , the needs of the civil judge / district judiciary ought to be understood before planning and thereafter, monies need to be spent wisely. Talking about the pendency, it was indicated that there are 5 Crore Cases in India and about 25 Thousand Judges. Thus, every judge has 2000 cases. Pendency, according was owing to mismanagement of cases. It was lamented that lack of vision whilst constructing Court, for sufficient provisions for decent internet connectivity appears to have not been made. It was requested that the District Judiciary Judges to brief their respective High Courts as to the needs of their Courts. Even bottlenecks could be brought forth to the notice of High Court. That there was no dearth of funds, was clearly indicated.

Further, it was indicated that the government is willing to spend Rs.7000 crore for one year in budget plan and that it needs some thought as to how to spend this amount. It is a policy matter and need introspection in certain services which require deliberation in the system.
It was stressed that there are three aspects, - value, vision and vibrations. No Institution can transform without value in it and that value can be taken from Constitution .For vision, it was mentioned, that a role of a judge is considered as a transformer of judiciary at state level. It was indicated that they have interlinked the courts, with the kind of environment in each places in Kerala. That, it was e-filing at district judiciary, giving them a clear message that this is the reality of future. That the approach ought to be collaborative with every stake holder in the

process. Regarding the aspect of vibrancy was concerned, it was demonstrated through desktop on which, all the details for his office communications, judgments, details regarding disposal, orders pending and assessment, library etc. were easily accessible. In short, it was stressed that the end user be integrated with the system. It was expounded that the rating for performance of the Judicial Officers, like good, average, poor, outstanding, is entered as a result of which, the system itself will address the performance of the Judicial Officer. Today, world is focusing on different dimension. For Judicial Officer only interpretation skill is required and other things will be taken care of by the system.

Session – 5
Emerging and Future Technology for Effective Judicial Governance
Speakers - Justice A. Muhamed Mustaque & Justice Suraj Govindaraj

The speaker urged to embrace technology. Judges are the constituents of judicial system and are unable to figure out the problems, as they do not have a third party perspective. So, experts of other domain ought to be invited for pointing out the problems in the system. It was also impressed that advocate should participate for the adoption of digital systems and automation in court processes. This would include implementing e-filing and digitizing legacy records to improve efficiency and reduce paperwork. It was further requested to utilize blockchain technology, where each unit, the litigant, the Court and the lawyer would be a block. Explore the use of blockchain to interlink all courts, creating a trusted network where information cannot be tampered with. This could eliminate the need for certified copies and the transfer of physical records between courts, streamlining the judicial process.

Talking about AI system and its utility, AI Tools helps to enhance decision-making and improve productivity. AI can assist in analyzing case data, assessing officer performance, and standardizing certain legal processes such as motor accident claims. Especially in subjects like Motor Accident Claims, it was urged to explore the use of smart contracts, i.e., enable automated settlements without the need for third-party intervention, potentially resolving the matters outside the court system. The session rolled over to another angle where the District Judiciary is looking at Civil Judges, who are looking at the District Judge, District Judges are looking at the High Court and the High Court is looking at the E-Committee - thinking that some solution will come about. But unfortunately, each one has a different thought. The view was that the e-committee believes that the High Court, being an independent entity, should devise its own scheme based on the prevailing circumstances in each court. However, there is a

lack of communication and collaboration between the senior judges and the younger generation who may have innovative ideas but lack experience in the judicial system. It was emphasized that the need for both the experienced judges, who have witnessed the system's evolution, and the younger generation, who have fresh perspectives, to work together. There is resistance to adopting technology, but it was explained that technology should be seen as a tool to enhance efficiency and improve processes rather than a burden. It was urged that judges embrace technology and be active participants in driving the change rather than being passive recipients of technology-driven decisions imposed upon them.

It was suggested that smart executory functions be built in various aspects of the judicial process. For instance, when filing a case, a smart contract can automatically generate the necessary documents and initiate the process, including sending summons electronically through the e-post office or Nstep model. The Nstep software allows bailiffs to electronically serve documents and collect necessary information through geotagging, photographs, and digital signatures, eliminating the need for manual paperwork. This real-time data can be seamlessly integrated into the court's system, reducing delays and improving efficiency. It was proposed that the implementation of a wallet system, similar to services like Ola and Uber, where lawyers can deposit funds for various legal processes, such as process fees, copying applications, and court fees. This system would enable seamless and automated deductions, potentially even integrating and streamlining financial transactions within the legal system. Transformation involves generating innovative ideas and embracing technology to bring about substantial changes and improvements. Stakeholders, including experienced judges and younger generations, are encouraged to contribute their ideas and suggestions for enhancing the judicial system through technology. By harnessing the power of technology and applying innovative ideas, stakeholders can shape the future of the judicial system and create a more efficient and user-friendly environment.