



**NATIONAL JUDICIAL ACADEMY in COLLABORATION with the HIGH COURT OF
JUDICATURE AT MADRAS & TAMIL NADU STATE JUDICIAL ACADEMY**

**SOUTH ZONE-II REGIONAL CONFERENCE ON CONTEMPORARY JUDICIAL DEVELOPMENTS AND
STRENGTHENING JUSTICE THROUGH LAW & TECHNOLOGY**

25th & 26th February, 2023

PROGRAMME REPORT



OVERVIEW

The National Judicial Academy along with the Tamil Nadu State Judicial Academy and the Hon'ble High Court of Madras conducted the *South Zone-II Regional Conference on Contemporary Judicial Developments and Strengthening Justice through Law & Technology*. The two-day conference received delegates from the states of Andhra Pradesh, Karnataka, Kerala, Tamil Nadu and Telangana. The conference was spread across five technical sessions and witnessed extensive deliberations on various topics of contemporary relevance, including federalism, right to freedom of speech and expression, precedential value of judgments, criminal jurisprudence, electronic evidence, the e-courts project and emerging technology for judicial governance.

INAUGURAL SESSION

INAUGURATION

The Conference commenced with the Invocation song "தமிழ்த்தாய் வாழ்த்து" (Tamil Thai Vazhthu), the state anthem.

Hon'ble Mr. Justice Abhay Shreeniwas Oka, Judge, Supreme Court of India, inaugurated the



conference by lighting the lamp (Traditional Kuthuvilaku), along with Hon'ble Mr. Justice Amreshwar Pratap Sahi, Director, National Judicial Academy, Hon'ble Mr. Justice T. Raja, Acting Chief Justice, High Court of Madras/Patron-in-Chief, Tamil Nadu State Judicial Academy, and Hon'ble Mr. Justice R. Mahadevan, Judge, High

Court of Madras/President, Board of Governors, Tamil Nadu State Judicial Academy.

INTRODUCTORY ADDRESS

Hon'ble Mr. Justice AMRESHWAR PRATAP SAHI, Director, National Judicial Academy delivered the introductory address at the conference. Justice Sahi emphasized that the objective of the conference was to strengthen the delivery of justice with law and technology. It was reminded that the judiciary plays a vital role to uphold its position by pronouncing landmark Judgments. Judiciary is one of that integral components engrained in the constitution to uphold the rule of law. Justice Sahi further noted that India is becoming a centre of judicial education and training among the developed countries.



WELCOME ADDRESS

Hon'ble Mr. Justice T. RAJA, Acting Chief Justice, High Court of Madras/Patron-in-Chief, Tamil Nadu State Judicial Academy delivered the welcome address. Justice Raja emphasized



how integrating judiciary with law and technology has helped the judiciary to yield more proactive and realistic results. Justice Raja pointed out that the conference is a great opportunity for the delegates to listen to learned scholars from different parts of the country. He also thanked Justice Sahi wholeheartedly for providing the opportunity of hosting the conference at Tamil Nadu State

Judicial Academy. Justice Raja further appreciated the efforts taken by his brother and sister judges in making this conference a reality.

INAUGURAL ADDRESS

Hon'ble Mr. Justice ABHAY SHREENIWAS OKA, Judge, Supreme Court of India, delivered the inaugural address. Justice Oka emphasized the importance of imparting education and continuous judicial training for judges. Justice Oka gave personal anecdotes how role of judicial training cannot be minimized as a mere formality. Justice Oka also reverberated that the role played by a resource person has a scintillating impact over the judicial education and training imparted at a State Judicial Academy. This quality defines the march of a State Judicial Academy to greater heights. Justice Oka thanked Justice Sahi, Justice Raja, and Justice Mahadevan for the opportunity and appealed for interacting with every delegate during the technical sessions.



VOTE OF THANKS

Hon'ble Mr. Justice R. MAHADEVAN, Judge, High Court of Madras/ President, Board of Governors, Tamil Nadu State Judicial Academy proposed the vote of thanks. Justice Mahadevan with gratitude and optimism extended heartfelt thanks to everyone who contributed to making the South Zone-II Regional Conference a grand success. Justice Mahadevan expressed the delight to work with such a talented and dedicated team in organizing the conference.



The inaugural session concluded with the national anthem and group photograph.

TECHNICAL SESSIONS - DAY 1

Justice Sahi opened the technical sessions by remarking that thought process about the constitution is necessary, keeping in mind the progress India is making globally. India's progress has a significant impact on system of judicial governance as well. We have strengthened our constitution and judicial governance in the past 75 years. Our constitution cannot be so easily transcended but can be viewed from different paradigms and perspectives. Understanding the trends in constitutional interpretations is important for getting the essence of this conference correctly.

SESSION 1 - CONTEMPORARY TRENDS IN CONSTITUTIONAL LAW : RECENT JUDICIAL DEVELOPMENTS

Justice A.S. Oka opened the first session on contemporary trends in constitutional law by affirming that the Constitution as a living document is necessary for the changing society. The Constitution possesses the resilience necessary to ensure its continued relevance. Constitutional courts are vested with the duty to ensure transformation of the Constitution and keeping in mind the changes in the society. Transformative constitutionalism implies that Constitution is dynamic. It was explained that keeping the basic structure of the constitution intact, the Constitution through the interpretation of the Supreme Court is continuously transforming.



Touching upon federalism, Justice Oka emphasized that a lot of debate is required on the topic cooperative and competitive federalism in the Indian context. It was also noted that, perhaps the Constitution of India gives us a unique model of a federal state, which has lot of scope for both collaboration and competition between the Centre and the States.

Justice Oka highlighted that constitutionality of a law is tested on the touch stone of the Constitution in light of transformative constitutionalism. Justice Oka explained that the validity of laws concerning prohibition has to be tested on the question whether the law infringes right to privacy and that constitutional morality/societal morality cannot be a ground. While examining

Article 21 *vis-à-vis* Prohibition laws it is important for the constitutional courts to define the extent to which privacy is protected under Article 21.

On criticism and contempt, Justice Oka opined that although criticism gives us an opportunity to introspect, administration of justice should not be allowed to be ridicule through criticism. Justice Oka quoted Lord Atkin's exposition of law, "*Justice is not a cloistered virtue. She must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men.*", and remarked that we should ignore criticism with all the contempt it deserves and not initiate contempt action. Ultimately, our reputation depends upon the work, which we do in discharging our judicial function. On freedom of speech and expression, Justice Oka delineated the distinction between hate speech and sedition.

Following Justice Oka, Mr. Shyam Divan, Senior Advocate, Supreme Court of India, spoke about judicial limits on competitive and co-operative federalism. He pointed that the notion of co-operative federalism was first analysed in Indira Nehru Gandhi (Smt.) Vs. Raj Narain & Anr. [(1975) Supp SCC 1], which questioned integral aspects of Constitution such as its basic structure, jurisdiction of courts and separation of three organs of the state. More recently, in Union of India Vs. Mohit Minerals (P) Ltd. [(2022) 10 SCC 700], it was stated that federal and regional governments to legislate in the same sphere. He further explained the notion of competitive federalism in which states compete with each other to project themselves toward attainment of trillion-dollar economy. He reflected that, the concept of Judicial limits was discussed in case Centre for Environmental Law Vs. Union of India [(2013) 8 SCC 234], sets out



that cooperation exists between states and the central Government. Mr. Divan quoting different issues like equitable distribution of water between the states iterated that in order to preserve the federal structure, co-operative federalism is crucial. Mr. Divan concluded that, so long as Constitution remains a guiding light, the spirit of co-operative federalism would continue to strengthen the federation and enable to progress for democratic evolution.

SESSION 2 - PRECEDENTIAL VALUE OF HIGH COURT JUDGMENTS

Hon'ble Mr. Justice G. Raghuram, Former Director, National Judicial Academy, emphasized that, a complex system like society requires three criteria i.e., of centralization, standardization



and stabilization. Centralization implies that a central authority should have doctrinal coherence and jurisprudential non-ambiguity. Judiciary being such a central authority, should have a level of standardization, which is difficult to achieve. Justice Raghuram emphasized that adherence to precedents and fidelity to the doctrine of

precedents is an aspect that ensures judicial integrity. Indiscipline should not find place in doctrinal coherence.

Justice Raghuram highlighted some concerns for the doctrine of precedents. They are as follows:

- i. Doctrine of precedents can end up ensconcing not just wise decisions but wrong ones too.
- ii. Overruling of precedents generally takes time and is a gradual process.
- iii. Fidelity to the doctrine to precedent may regress to comfort. It was explained that judges should be make independent assessment of law first and then resort to precedents.



Continuing the session, Mr. N. Venkatraman, Additional Solicitor General of India, deliberated on co-operative federalism. It was explained that prior to 2017, the Constitution was considered to be State-centric (*vide S.R. Bommai Vs. Union of India [AIR 1994 SC 1918]*), or Centre-centric (*vide Jindal Stainless Ltd. v. State of Haryana [(2017) 12 SCC 1]*), and certain chapters are State-centric and some are Centre-centric. It was opined that in 2017 the concept of co-operative

federalism achieved great heights through the introduction of Goods and Services Tax (GST). This was possible through 'pooling of sovereignty' which was the first experiment in the Constitution in this regard. It means that both the federal partners (centre and states) are committed that they will not increase or diminish their plenary power. In GST Council both the federal partners 'pool' their sovereignty. Prior to GST, in relation to indirect tax in the case of sales Tax, VAT was with Union and the rest was with States. So, Union and States had mutually agreed to swap and share power of taxation, i.e., Union and States agreed to interchange sales and service within to use one taxable event as the basis to collect money equally. Thus, GST law, replicating income tax, is a uniform indirect taxation regime throughout the country. This 'pooling of sovereignty' takes place in the GST Council (Article 279A) which is a constitutional body. It was further stated cooperative federalism should be encouraged, and that such an experiment could be nuanced in other areas, particularly the judiciary.

Mr. Venkatraman referred to the economic principle of 'force of attraction' to highlight the economic gains of cooperative federalism. It was further highlighted that pooling of sovereignty does not mean surrender of sovereignty. Every GST statute whether Central or State, is structured accordingly, and will have to yield to GST council. Mr. Venkatraman also referred to the Apex Court's judgment in Union of India Vs. Mohit Minerals (P) Ltd. [(2022) 10 SCC 700].

Mr. Venkatraman referred to Article 261 of Constitution, which incorporated the term faith, and highlighted that constitutional trust is the guiding principle for disagreeing with a judgment. It was further explained that the principle of domestic comity varies according to region and size. On cross border comity, it was explained that every judicial interpretation involves judicial diplomacy. The ground rule of judicial diplomacy is that a nation should secure its own interest first and then to consider the welfare of another nation. It was highlighted that in the years to come courts will be occupied with two main subjects i.e., [i.] personal rights and liberties of citizens, and [ii.] business related and commercial disputes, as India is one of the fastest growing economies. Therefore, judicial institutions have a pivotal role to play in this regard by incorporating judicial diplomacy.

Thereafter, questions were invited from the participants. A pertinent question posed was whether the legislature, when it brings an amendment to override a judicial decision, acts as an interpreter of judicial decisions. Mr. Venkataraman answered that, when a court declares a law to be *ultra vires* and if the legislature wishes to takeover, it can be done only through the process of validation. Validation has two parts [i.] the defects pointed out has to go over through a legislative process and [ii.] the law may be applied either prospectively or retrospectively. Justice Raghuram pointed that theoretically, judicial power dominates but *defacto* legislative power will always dominate. Justice Raja also underlined that, whenever a legislation or amendment is going beyond the Constitution the court is entitled to interfere.



SESSION 3 - DEVELOPMENTS IN CRIMINAL LAW: ISSUES AND CHALLENGES

Mr. Sidharth Luthra, Senior Advocate, Supreme Court of India dealt with Prevention of Money Laundering Act, 2002 [PMLA] with specific reference to electronic evidence. It was mentioned that there was a linkage between narcotics, organised crimes and money laundering, and that the purpose of PMLA was to counter the threat to global economy. The case of Nikesh Tarachand Shah Vs. Union of India, (2018) 11 SCC 1, which had struck down the dual conditions of grant of bail, and the subsequent amendment to Section 45, PMLA, to revive the twin conditions was discussed. It was pointed that several High Courts had not accepted the resuscitation of the twin conditions, since the basis had already gone.

Mr. Luthra discussed the case of Vijay Madan Lal Choudhary Vs. Union of India [2022 SCC Online SC 929] in detail, wherein the Supreme Court acknowledged the unfettered powers of the Enforcement Directorate (ED), with respect to search, seizure, investigation, attachments of assets etc., and opined that this is in disregard to fundamental rights under Part III of the Constitution.



Thereafter, it was asserted that if there is a discharge, quashment or acquittal, in their predicate offence, one cannot be prosecuted for money laundering. It was also mentioned that of late even when there is a discharge, the ED challenges the discharge by the agencies investigating the predicate offence. Mr. Luthra then briefly discussed about attachment, adjudication and confiscation. It was also stated that, Vijay Madan Lal (supra) does not impose absolute restraint on grant of bail. It was also stated that, the supply of Enforcement Case Information Report (ECIR) in every case to person concerned is not mandatory.

Subsequently, Mr. Luthra spoke about the principle of reverse burden of proof and it was opined that burden does not shift but the onus changes. It was also said that when the foundation is not laid by the prosecution, reverse burden cannot be attracted. Further, it was stated that there is a greater burden on the trial judge and the judges of the High Court to see if there are reasons to believe before passing orders. It was also mentioned that Section 45A of Indian Evidence Act read with Section 79A of Information Technology Act, 2000 is not absolute. With reference to

Section 65B, Indian Evidence Act, and the decision in Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal [(2020) 7 SCC 1], it was opined that a piece of evidence produced before the court would have to meet the threshold test under Section 65A or Section 65B of Indian Evidence Act.

Mr. Luthra further referred to Section 5 of the Civil Evidence Act, 1968 of UK and Section 59B of the Australian Evidence Act, 1929, and appealed that the legislature ought to look at these provisions and improve upon Section 65B of the Indian Evidence Act, 1872.

Hon'ble Mr. Justice S. Nagamuthu, Former Judge, High Court of Madras began the session by elucidating about the Prevention of Money Laundering Act. The case of Directorate of Enforcement v. Padmanabhan Kishore, 2022 SCC OnLine SC 1490 was discussed in detail. The case of Tofan Singh v. State of T.N., (2021) 4 SCC 1 was discussed where officer appointed under Section 53 of the NDPS Act must be deemed to be a police officer under Section 25 of the Indian Evidence Act.



Justice Nagamuthu briefly explained the differences between PMLA and NDPS Act, on the aspect of presumption. The speaker also discussed Section 65A and Section 65B of Indian Evidence Act. The case of Woolmington v. DPP (1935) UK HL 1 was referred and it was stated that every offence shall be proved beyond all reasonable doubts by the prosecution.

However, when it comes to reverse burden of proof, the accused is required to prove his innocence. Then, Section 24 of PMLA has two limbs, the first limb being that the court 'shall presume' that such person was involved in money laundering until the contrary is proved; the second limb is that the authorities 'may presume'.

It was stated that the principles of Noor Aga v. State of Punjab, (2008) 16 SCC 417 was simply followed in the case of Vijay Madan Lal Choudhary v. Union of India 2022 SCC Online SC 929. Presumption cannot be considered bluntly but, the foundational facts must be first proved.

On reverse burden of proof, Justice Nagamuthu illustratively discussed the terms, 'may presume', 'shall presume' and 'conclusive proof'. Justice Nagamuthu reflected on the recent

Supreme Court decision in Aparna Ajinkya Firodia Vs. Ajinkya Arun Firodia [SLP (C) No.9855/2022, dated 20th February 2023], wherein it was held that refusal of a mother to conduct DNA test on her baby cannot justify drawing an adverse inference that she was adulterous. It was stressed that, any enactment that gives the court a liberty to presume, the courts before exercising their liberty to presume should verify whether all the foundational necessary for raising such a presumption is fully and completely met. It was pointed that reverse burden will only come when there is a presumption lawfully invoked by the judge. When a judge presumes something lawfully, the accused may rebut such a presumption. It was emphasized that, on standards of rebuttal the Supreme Court's decision in State of Madras Vs. A. Vaidyanatha Iyer, [1958 SCR 580] still upholds as the law of the land. Justice Nagamuthu concluded that, reverse burden is the rebuttal of a presumption. Presumption is made on proof of

South Zone-II Regional Conference on Contemporary Judicial Developments and Strengthening Justice through Law & Technology
25th and 26th February, 2023 at TNSJA Headquarters, Chennai
Organised by High Court of Madras and Tamil Nadu State Judicial Academy in association with National Judicial Academy



South Zone-II Regional Conference on Contemporary Judicial Developments and Strengthening Justice through Law & Technology
25th and 26th February, 2023 at TNSJA Headquarters, Chennai
Organised by High Court of Madras and Tamil Nadu State Judicial Academy in association with National Judicial Academy



foundational facts. In 'may presume' cases, rebuttal can be established by a mere explanation and in 'shall presume' cases, explanation has to be supported with evidence.

TECHNICAL SESSION – DAY 2

SESSION 4 – OVERVIEW OF E-COURTS PROJECT

In the penultimate session of the conference, Hon'ble Mr. Justice Suraj Govindaraj, Judge, High Court of Karnataka, stating that, technology is a mental block that judges need to overcome. It was iterated that in the near future, stenographers will be replaced by transcription tools, which will make things simpler and avoid human errors. It was also explained that one must get used to the video conferencing technology which can be used in one's own court tomorrow. It was also stated that, technology now may be expensive but will not be so in the near future.

Justice Govindaraj discussed the three phases of technological advancements in judiciary, first being the computerization, where computers were provided to all Judicial officers and all Courts, the second phase focused on softwares, Case Information System [CIS], National Judicial Data Grid [NJDG]. These two phases were at a lower end and only basics were met. Phase III aims at upgrading every court by establishing *e-seva kendras*, which will help a lawyer to file a case in taluka and appear before the High Court. The proposed scope of technological advancements in Phase III includes paperless courts, digitalization of records, live streaming, artificial Intelligence, blockchain technology, and cloud storages.



Justice Govindaraj further explained the use of NSTEP mechanism, where the bailiff will have to go in person to serve summons and also geo-tag the location. It was explained that like NSTEP, the Inter-operable Criminal Justice System [ICJS] can be used for service of warrants, either bailable or non bailable which will reach the person immediately. Lastly, it was highlighted that these measures have reflected in the improving rates of disposal of cases, which is just as significant as the pendency rates.



The session was continued by Hon'ble Mr. Justice Sanjeev Sachdeva, Judge, High Court of Delhi. He explained the need for technology in enhancing efficiency in judicial system. Justice Sachdeva emphasized that *"we should not change our way of doing things for technology, technology should adapt itself to ease our work in the way we do things."*

Technology has the potential to create basic systems like online filing, e-summoning, case-tracking system for clients, data repositories, seamless network of information flows from courts to courts and from relevant governmental bodies to courts, and advanced algorithms (Artificial Intelligence and Blockchain) for retrieving relevant precedential data for both lawyers and Judges.

Justice Sachdeva traced the progress of judiciary in using advanced technology from the beginning until today, and highlighted the transformation of the courts from manual record keeping to digital record keeping. It was explained that digitization can give three positive results to a judge, reduction of time, expedite storage of files, reduce storage of files and improve access to justice availability through efficient administration of justice. It was further illustrated how photocopying of records has been replaced by scanning of digital records.

Justice Sachdeva explained the NSTEP mechanism which is a service tracking application for issuance of summons comprising of both web and mobile application. It provides real time status update of service of summons besides tracking geographical location of server at the time of serving. E-inspection application which will enable advocates and litigants to inspect their case files, was explained. The use of Justis mobile app empowering Judicial officers of the District and Taluk level courts for efficient Court management and Meta Data which encapsulates history, origin, version and other information about a data in a structured field, was discussed.

SESSION 5 – EMERGING AND FUTURE TECHNOLOGY FOR EFFECTIVE JUDICIAL GOVERNANCE

The session commenced with Hon'ble Mr. Justice Sanjeev Sachdeva, Judge, High Court of Delhi, explaining that artificial intelligence [AI] refers to computer systems performing tasks which normally require human intelligence. The usage of AI in the legal profession, particularly by lawyers and judges, was discussed in detail. The utility of AI with specific reference to harm assessment tool was discussed using the example of courts in foreign jurisdictions. The risks, particularly ethical and legal challenges associated with using AI was also explained. One of the major challenges is that the results can be biased depending on the data that is fed to it. Moreover, since AI follows historical patterns, there would little scope for innovation or diverse thoughts and opinions.

Continuing the session, Dr. Harold D'Costa, CEO, Intelligence Quotient Security Systems, discussed the application of AI in the legal system. The benefits of AI include improving administrative efficiency, case management, reducing pendency and strengthening the judicial decision-making process. AI can be utilised in judgement prediction, similar case matching, as well as in analysing audio and video files. One of the major issues with AI is that since it is made on open-source platforms, its actual viability has not yet been tested. The use of the AI text generator i.e., ChatGPT in judicial decision making, and its limitations was also explained. It was also emphasised that human intervention needs to be combined with technology to give the right output.



Dr. D'Costa further discussed about blockchain technology and explained that, once data is entered into the blockchain, it cannot be manipulated, changed or forged. This is because every document entered generates a unique hash value, and if any change is made to the document, the hash value also changes. Every transaction is entered as a block, and once it is approved by the network it becomes part of the blockchain. Blockchain technology is used in financial services, healthcare sector, human resources, and in the legal system as well. Furthermore, blockchain technology can be used to execute smart contracts, ensure authenticity

of chain of custody, and ensures that electronic evidence extracted and stored in the cloud can be accessed only by the concerned person and not by anybody else. This provides greater data security at reduced cost.

The use of digital rights management software in maintaining confidentiality of records was also discussed. With regard to cloud computing, it was explained that the judicial system should have its own independent cloud computing software, as even if the local systems are attacked, the data stored in the cloud will not be affected. Using cloud computing, organisations can securely collect, manage and share encrypted video evidence and other relevant case information with the click of a button.

Dr. D'Costa then discussed the utility of edge computing systems and disaster recovery mechanisms. The zero-trust security model, which functions on zero human intervention and ensures data encryption, was also discussed. Through a demonstration the necessity to encrypt the source code of the e-courts database was also stressed. Lastly, it was suggested that courts while dealing with electronic evidence, need to verify if the device in question is rooted or not, and when it was rooted or unrooted in order to ensure the authenticity of its contents.

CONCLUDING REMARKS & VALEDICTORY SESSION

Justice Sahi and Justice Raja concluded the conference. Justice Sahi, on an optimistic note pointed that though the work of judiciary is tiring, yet it is endeavoring a long way in securing the foundations of the Constitution. It was stated that the conference covered both criminal and civil laws to its extreme extents and not only the length but also the depth of it. Justice Sahi thanked the Acting Chief Justice of Madras High Court, the Hon'ble Judges of the Madras High Court, Hon'ble Judges of all the High Courts, the Director of Tamil Nadu State Judicial Academy and the participating judicial officers for making this conference a success.

Justice Raja, stated that Artificial Intelligence has made life easier and comfortable. Justice Raja concluded stating that the ocean of knowledge and wisdom gained is the outcome of this conference.

The South Zone-II Regional Conference on Contemporary Judicial Developments and Strengthening Justice through Law & Technology concluded with the National Anthem.

