

**Regional Judicial Conference (South Zone)**  
**Strengthening Justice Delivery System: Tools & Techniques**  
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Organized by Hon'ble High Court of Karnataka, Karnataka Judicial Academy and National Judicial  
Academy

27<sup>th</sup> February, 2015 to 1<sup>st</sup> March, 2015

**Programme Coordinator: Mr. Rajesh Suman**

**Programme Report**

The National Judicial Academy organized the Regional Judicial Conference (South Zone)-Strengthening Justice Delivery System: Tools & Techniques during 27<sup>th</sup> February, 2015 to 1<sup>st</sup> March, 2015 with the coordination of High Court of Karnataka and Karnataka Judicial Academy. The Conference was attended by Prof. (Dr.) N.R. Madhava Menon, Justice R.V.Raveendran, Justice V.Gopalagowda, Justice Kurian Joseph, Justice J. Chelameswar, Justice A.K. Sikri, Justice P.N. Prakash, Justice R. Subhash Reddy and Justice B. Kemal Pasha as the resource persons.

**Following are the main issues discussed in the programme**

**Session 1**

**Justice Delivery System in India: An Overview**

Prof. (Dr.) N.R. Madhava Menon stated that courts are primarily used by middle class and upper class groups and poor people rarely come to court except as defendants in criminal case. Poor people therefore resort to arbitrary forums like khap panchayats. He discussed the recommendations of the 14<sup>th</sup> Report of the Law Commission and stated that there is a necessity for prevention of frivolous cases coming to court. The use of ADR mechanism should be enhanced and only complex litigation should go for trial. There should be structural reforms in civil and criminal procedures. The judicial selections and appointments should be streamlined considering the poor level of knowledge among district judiciary. There is need of professionalization of the Bar and reforming of legal education. Merely increasing number of judges will not going to reduce arrears. There is need of implementation of abovementioned measures and judges needs to take more control of their courts. The judicial control should start at the beginning of the first hearing itself and need to implement pre trial hearing system to reduce the complexity of cases. There should be incentives for litigants to use ADR system and judges should monitor this

process. This will help in reduction of cases going for trial. The quota system for disposal of cases should be eliminated and judges should take proactive role in using ADR mechanism and disposal of cases. The quota system should be supported by data which shows the standard time required for the disposal of various categories of cases. The judicial skills should be enhanced through rigorous judicial education as it is ultimately the quality of judge that will give timely and fair justice.

The High Courts are not able to utilize the 13<sup>th</sup> Finance commission fund. For instance only 3 High Courts have responded for the proposal to form courts for which Rs. 250 crores was allocated. After some effort by National Mission members 4 more High Courts responded. There should be model court for criminal justice system where court, police, prosecution and prison can be there in single building. It will expedite the adjudication of cases. Similarly family court should be established in women college campus so that women can have all the requisite facilities. In Special court, the special judges lack expertise to adjudicate the special category of cases and most of the times, the District Judges are appointed as special judges over and above their existing court work.

## **Session 2**

### **Transforming our Justice Delivery System : From Legalistic to Justice Oriented**

Justice R.V. Raveendran stated that the quota system of disposal of cases should be reformed. In fulfilling the quota system the judge is forced to select cases where the witness becomes hostile and ask the prosecutor which cases can be disposed of early. It prompts judges to adopt practices when they would not have resorted to if there would have been no quota system. Instead of quota system there should be supervision of judges.

The role of judges in organizing the legal aid awareness camps should be reviewed. For organizing the awareness camps and bringing people judges have to request police and bar association so that high court judge remains satisfied. However it resulted in adverse effect on the independence of judges as the bar association start making request to judges.

Implementation of existing procedures is very necessary of speedy disposal of cases. Legislators should decriminalize some of dispute which are civil in nature as the criminalization of such dispute has led to immense burden on courts. The judges too should enhance their judicial and administrative skills and should adopt modern technology such as accessing websites for legal material. Judges must promote constitutional values and maintain ethical standards. Judges must encourage ADR process to reduce arrears. It will help in disposing of cases not meant for trial. For this mediation centers would be established in all the districts. Proper training to judges and staff should be provided training so that they can work in efficient manner.

Judges are afraid to give bail in deserving cases because of complaints by lawyers to the high court. The high court should adopt some caution and restraint in entertaining such complaints. There should be regulation and streamlining of reporting of judgments. Now there are many judgments on some legal issues and creates confusion and led to diverse kind of decisions. Only those judgments covering new areas of law should be published.

Judges should not be deputed for non judicial work, for instance as registrar, administration etc. Now there are 10 district judges as registrar who otherwise could have disposed many cases in their courts. For non judicial work, other personnel should be appointed such as court managers etc. Judges should not be concerned with budget and finance. Judges should not involve in financial transactions. High court should only ask for services and should not take money. Taking money from government affects the independence of judges. Law is different from morality and judges should give justice in accordance to law. Judges however should not be super technical. Judges should focus on justice first and human elements should be kept in mind.

### **Session 3**

#### **Strengthening Justice Delivery System : Initiatives by Government of India**

Prof. (Dr.) N.R. Madhava Menon discussed various aspects of the National Mission for Justice Delivery and Legal Reforms. The national missions emerged out of the Conesus between executive and judiciary and it was resolved that judiciary should receive proper support of the state government and planning commission. Judiciary required greater financial support. Thirteenth Finance Commission made many recommendations and central government required to finance it. E-court and National Judicial Data Grid are some of major initiatives. National Mission is a five year project. Twin goal increasing access to justice and reducing delay and arrears. The other goal is bringing structural changes and setting performance standards and making it a criterion of selection and promotion. The policy and legislative changes including Arbitration Act revision, Motor Vehicle Act revision and litigation policy for states which will define the cases which should be taken to court and appealed. The establishment of commercial court for expeditious disposal of commercial court was another aspect of the mission. Digitalization of court has also been given priority. Changing the mindset of judges, lawyers and staff is a major challenge in ensuring proper computerization. This will change the whole culture of court. All India Judicial Services from district judges and upward is also under consideration.

The reengineering of process and popularization of ADR mechanism are other aspect of this mission. Every court will have a mediation centre. It also a Human Resource Development component and now many judicial academies with excellent infrastructure and technological tools are there. The Chief Justice of high court should address the subordinate judiciary once in every week through video conferencing. The video conferencing should be used in judicial education. National Court Management System has

been set up which will consider the court reforms through process reengineering. Facilities for judges including good accommodation are part of mission. Because of court reforms, the disposal of cases is near or equal to filing of cases during 2011 and 2012. The mission has helped in clearing cases pending in courts for more than 5 years. Gram nyayalayas is another part of national mission. More effort is required in strengthening gram nyayalayas.

**Session 4:**

**Break Out Group Discussion and Presentation**

In this session the participants were divided into five groups and discussed topics including Evidence Appreciation: Issues and Challenges, Fair Trial Rights: Issues and Challenges, Court Managers: What are functions? What should be functions, Time Management Issues in disposal of cases and Bench & Bar relationship: Issues and Challenges were discussed and presented.

## **Session 5**

### **Criminal Justice System in India: Constitutional Perspective**

Justice V.Gopalagowda stated that courts must provide speedy justice with fairness. There are mostly poor persons in prisons who are not able to get bail. Proper legal representation should be provided to them and speedy justice must be provided to them. The Supreme Court has provided Constitutional guarantees to accused persons and expanded them in its various judgments. In Aksharmdham case, the accused persons were falsely implicated and their constitutional rights were not respected during the trial. The confession was not according to the constitutional principles.

Justice Kurian Joseph stated that Article 14, Article 19 and Article 21 of the Constitution are interrelated. He emphasized that dignity of victim and witnesses should be protected by the court. Today victim and witnesses don't want to come to court. Judges has taken responsibility for administering justice. The purpose of the legal system is to promote justice. Victim and witnesses should have impression that their dignity will be protected by the court and then only they can cooperate with court. All judges must answer the question whether they are disposing of cases or whether they are providing justice and in how many cases they have actually imparted justice. The electronic evidence should be admitted according to statutory requirement.

Justice B. Kemal Pasha discussed the right against self incrimination and doctrine of presumption of innocence and said that with the system of plea bargaining and adverse inference against accused in certain situation, our system is moving towards inquisitorial system. The Malimath Committee recommendations regarding accused statements should be implemented. Most of the criminal cases are resulting in acquittal. Unnecessary contradictions are brought by accused for instance regarding statements u/s 161 CrPC. The judges must fulfill the expectation of common men by being proactive in criminal trial.

Justice P.N. Prakash discussed the separation of power between executive and judiciary as introduced by the Constituion of India. In the old criminal code, the commissioner of police had the power to grant bail. But the reformed criminal code has separated executive from functions judicial in nature and judges have been given all powers to decide a case. Judges must review the executive action properly. For instance during investigation, the magistrate must see the report memo and supervision notes and should clarify any issues which indicate an unfair investigation. This will ensure fair and proper investigation by the investigation officer. Public prosecutor should first interview witnesses and then only

witness should be called in witness box. This will give some confidence to witness and they will cooperate with justice delivery.

### **Session 6**

#### **Reducing the Life Span of Civil Litigation: Management Tools**

Justice J. Chelameswar stated that civil litigation takes lot of time in disposal due to many reasons and even after decree is obtained, its enforcement is very difficult. Because of filing of many unnecessary interlocutory applications, the delay happens in civil litigation. More input is required in the judicial system to address this problem of delay. Each judge in the country on average has 3000-4000 cases on his docket which will take 10-11 years for disposal. Supporting staff is also required for judges and government must fund judiciary according to its needs. But government does not want to allot more funds to judiciary. But appointment of judges is not very easy because of scarcity of good candidates. The number of appeals and revision should be reduced to reduce the time of civil litigation. Similarly more efficient judges, lawyers and staff are required. In many cases, the appeals and revision come because of callousness of bar and bench. Judges must analyze the objections filed by lawyers properly as many times unreasonable objections are argued for many days. Active participation of judges in civil litigation is required. Many cases on S. 138 and bail matters are unnecessarily coming to the Supreme Court and more skills is required among trial court judges to deal with such matters in effective manner.

Justice V. Gopalagowda said that judge-population is very poor in India and despite that Indian trial court are disposing of cases which are among the highest disposal in the world. The necessary appointments and infrastructure is required for strong judiciary. There are large numbers of cases on list. This give rise to many adjournments request by lawyer but court should not grant adjournments in an casual manner. Judges must also control cross-examination to prevent delay. Judges must be not a silent spectator and should diligently interact with the lawyers. The non-issues should not become issues in the proceedings. Judges should know how to take work from staff. The cases must be categorized subject wise. Cases of senior citizens, suit for maintenance, cases for shelter, tenancy should be given priority.

### **Session 7**

#### **Reducing the Life Span of Civil Litigation: Use of ICT Tools**

Justice A.K. Sikri stated that the national plan for enhancing ICT use in courts is an important step towards computerization of courts. The electronic recording of FIR and evidence is part of the ICT plan. Despite the process of e-filing in place, advocates are still coming to court with files. The use of summary of complaints and arguments must be encouraged and laptops should be used to record summary of evidence and argument at all levels. The laptops should also be used for legal research including finding out latest cases and articles.

## **Session 8**

### **Judicial Initiatives for Litigant Friendly Environment in the Courts**

(Open Session)

Justice A.K. Sikri discussed the importance of creating level playing field between parties during adjudication. There should be kids crèche, ambulance and medical aid in every family court. The communication with litigant should not be harsh and aggressive and court staff should be trained in this regard. There should be toilet and water facilities for women in every court. In family court restroom for women should be there. Many times the litigants are unable to locate court. So there should be signboard for court at suitable place in a district. There should also be a manual for giving information about court. Some funds should be provided for cleaning toilet in every court. There should be lift in every court. In sexual harassment cases, a judge must have the confidence of the victim that justice will be done to her.

## **Session 9**

### **ADR Mechanism and Role of Judges**

Justice R. Subhash Reddy stated that adversarial litigation causes lot of delay and expensive and creates differences between the parties. In US in 1970s the ADR system was introduced has resulted in reduction of delay and arrears. The ADR system has root in panchayat system, we are revitalizing the system by introducing with scientific system. In Industrial Dispute Act, Hindu Marriage Act, Family Courts Act the provision for settling the disputes was there before introduction of section 89 in civil code. There should be effort to find out cases where there is possibility of settlement of cases. For proper implementation of section 89, nobody thought of requirement of infrastructure such as mediation centers and tools to enhance the awareness. Serious thinking on ADR is required.

Justice Kurien Joseph discussed the importance of expeditious disposal of criminal cases. In district court, trained mediators do not show any interest. There should be guidelines for selection of lawyers for mediation training. Judges must interact with trained mediators for proper implementation. Judges should focus on disposal of old cases. Absence of parties affects the process of mediation because of lack of interest of advocates. Judges should call parties by sending notice for their appearance. The parties then also approach advocates who in court say that parties are not interested in mediation. In order to tackle such situation there should be judge involved mediation. ADR is getting statistics oriented and in some cases justice may not done to a party. Such cases where ADR can result in injustice, the normal process of trial should be resorted to. In rural areas, awareness of mediation is not there. Legal services authority must raise awareness in this regard.

## **Session 10**

### **Public Law Lecture**

Justice V. Gopalagowda stated that judiciary has a predominant role in upholding constitutional values and it do it through the power of judicial review. The judges have a paramount duty to protect Constitutional rights of parties. There should not be arbitrary deprivation of liberty and should be according to the laws. Delay in disposal of cases leads to unreasonable detention of accused persons. We must strive to find a way out ways and means to dispose cases expeditiously. More than 60 percent of litigation is by state and central government. This should be checked. The concept of compensation differs from judge to judge. This is an instance where cases get delayed. The efficiency level of judges should be enhanced. Lack of awareness of legal rights among people is a barrier in accessing justice. The language of law also required to be simplified. In Akshardham case, the translation of Gujarati documents of prosecution and defence was different. In some states witness speak in some language which is not known by the judges. Translators are not appointed by courts. Such cause delay in the disposal of cases.

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