

NJA REGIONAL JUDICIAL CONFERENCE (WEST ZONE)
STRENGTHENING JUSTICE DELIVERY SYSTEM: TOOLS &
TECHNIQUE

P-917

15TH – 17TH MAY 2015



PROGRAMME REPORT

PREPARED BY:

RUCHI SINGH, PRASIDHA RAJ SINGH (LAW ASSOCIATES), NJA

NATIONAL JUDICIAL ACADEMY

1. NUMBER AND NAME OF THE PROGRAMME

NJA Regional Judicial Conference (West Zone) on “Strengthening Justice Delivery System: Tools & Technique”, P-917 (15th- 17th May 2015)

2. RESOURCE PERSONS AND NUMBER OF PARTICIPANTS:

There were thirteen resource persons and 110 participants.

3. LIST OF RESOURCE PERSONS

1. *Justice GyanSudhaMisra*
2. *Justice B.S. Chauhan*
3. *Justice RanjanGogoi*
4. *Justice Madan B. Lokur*
5. *Justice Arun Mishra*
6. *Justice Sunil Ambwani*
7. *Justice Ravi Tripathi*
8. *Justice ShaliniPhansalkar Joshi*
9. *Justice M.R. Shah*
10. *Justice K.S. Ahluwalia*
11. *Justice Sujoy Paul*
12. *Mr. ArunShouri*

4. LIST OF MAIN POINTS DISCUSSED

1. Transforming our Justice Delivery System: From Legalistic to Justice Orientation
2. State of Justice Delivery System in India: Reflection by Judges (Breakout Group Discussions)

3. State of Justice Delivery System in India : Reflection by Judges (Breakout Group Presentations)
4. Judicial Initiatives for Litigant Friendly Environment in the Courts
5. Management Tools to Reduce Life Span of Civil Litigation
6. *Criminal Justice System in India: Constitutional Perspective*
7. The Use of ICT Tools
8. ADR Mechanism and Role of Judges
9. Public Law Lecture

5. OBJECTIVE OF THE CONFERENCE

It was a two and a half day deliberations on justice delivery system: tools and techniques. The main aim of the conference was to deliberate upon and evolve such tools and techniques to enhance the capabilities of judicial officers to reduce the pendency of cases. The thematic framework of the conference also aimed to develop common understanding between judicial officers on a range of issues common to a particular region. It provides platform to exchange ideas on challenges faced at the regional level and acquaints the higher judiciary & academia about practical difficulties faced by judicial officers in a particular region in implementing directives provided for doing the complete justice.

Session I: Inaugural Session

Welcome address by Justice Govind Mathur:

Justice Govind Mathur on behalf of Rajasthan state academy assured everyone a comfortable stay and said that the response to this workshop is overwhelming. He also introduced Justice B. S. Chauhan and Justice Gyan Sudha Mishra. He said that people of India have great faith in the judicial system and that judges are the custodian of the rule of law.

Thereafter Dr. Geeta Oberio Director (in-charge) NJA briefly introduced the concept of regional conference and said that there have been 63 regional conferences between 2006 to 2015 which has trained 9450 judicial officers approximately. She also added that the regional conference has been stayed as per the proposal forwarded in the calendar meeting held at

Supreme Court on 9 may 2015 and the Chief Justice of India has asked for a feedback regarding regional conferences.

Thereafter Justice B.S. Chauhan addressed the session. Justice B. S. Chauhan talked of his guru mantra. He said that knowledge is power and judicial service is different from other services. Every judicial officer deals in two things law and justice. He also added that if a judge has a right to decide the case he also has a right to decide it wrongly, but delay and arrear can never be an excuse. He also added that justice is not defined anywhere because justice is an illusion. He briefly talked of provision of Cr.P.C, such as section 161 and its correct use. He also praised NJA as an institution, which can initiate changes in the judicial system.

Thereafter Justice Sunil Ambani the Chief Justice of Rajasthan High Court welcomed everyone to the Sun City and started his discussion on the note of multiple task of the judge. Talking of the subordinate judiciary he said that the district judges CJMs and other subordinate judges are now required to manage their courts more efficiently. They also have to manage lawyers, court staff etc. and have to hold periodical meeting with police, public prosecutor etc. He added that judges need more managerial skill and in future they would need even more therefore self management is an important thing for judges. It includes good habits self-discipline etc. in his discussion he also talked of the independence of judiciary and how it is at stake presently due to media's intervention as a watchdog. He therefore said that entire judiciary should stand together as an institution or as a fraternity. He ended his note on John Marshall's statement "Power of Judiciary lies in trust faith and confidence of the common man".

Session II: Transforming our Justice Delivery System: From Legalistic to Justice Orientation

Speakers: Justice GyanSudha Mishra & Justice B. S. Chauhan

Justice GyanSudha Mishra started her address with the concept of the innate wisdom of justice, which is presented to us by legislature in form of an act. The letter of law therefore can always be supported with the sense of justice. Addressing the judges present in the conference she said "your inherent jurisdiction lies in your mind and if you know what is just you don't have to fear, you should be bold enough to give the just judgement". She then talked of judgement

writing and said that judgement writing must not be like essay writing but more like précis writing. A judgement should be brief, crest and precise. It has to be conducive with the law but at the same time the creativity, the innovation and the urge to do justice must be reflected in it, because ultimately the order passed by a judge reflects in itself the fact that it will do justice.

She added that it is the duty of a judge to administer justice in a fearless way. If a judge imparts justice with a clear consciousness then he has nothing to fear. A judgement must contain sound reasoning and must be according to law. It should give an idea of the entire case and every argument must be examined very carefully and it should be conducive to the judgement also. For a judge self-reading is essential. It helps us to know if our judgement is correct or not. She said that whatever she is sharing on what should be the duty of the judge is out of her experience as a judge. She said that she personally feels it is the judge who can fill in the gap between computer justice and human justice. This gap is where judges have to instil their innovation and creativity. She ended her discussion on an open note asking the participating judges to share their predicament.

Justice B.S. Chauhan took on the diasthereafter he opened up the discussion on the question: “judges face the lawyer and who are these lawyers”? By this he meant the wide disparity between the lawyers appointed by the government and lawyers practicing privately in term of their fees. For example a rich party can hire lawyers like Ram Jethmalani on the other side an indigent party can't afford such high profile lawyers. He also added that a half-baked lawyer without any sense of legal knowledge just appears and defames the state and the judicial system. A lawyer will do anything just to win his case, because he has taken no oath to dispense justice. He then pointed out to the participating judges and said “it's we the judges who have taken oath to dispense justice” in furtherance of this conversation he emphasized on the delays and arrears in the judicial system referring to an urdushayari “ *saja de sela de bana de mita de bahut der hogaie e-paikere-insafabfaisalsuna de*” he also referred to CR.P.C 1991 amendments and section 112 of evidence act which deals with paternity of a child and said that these laws have become obsolete due to the introduction of the concept of DNA test.

He also added that parliament does not make law at the need of the hour and legislature is not taking much initiative to amend the laws with the requirement of time. In between a participating Mr.RameshwayVyas from Chittorgarh added this theme of the session is very

important for trial court judges. He shared his experience and said “In my thirty years of career I have found that there is no direct interaction between the judge and the accused or even with the parties but when we as judges involve with the parties we feel that the file says something else and something very different from what the case actually. Therefore we as judges must do our homework properly. NJA has a good infrastructure unlike state judicial academy and therefore I would request NJA to send us their research on questions of conflicts between different High Courts and also as to the recent status of legal questions.

Thereafter Justice B.S. Chauhan added that judges must make good use of the provision of CPC. He gave example of order 10 rule 2, order 8 rule 9, order 17 rule 1 and other similar provision emphasizing on the fact that judges are not making good use of such provisions for example examination of parties at preliminary stage and so on.

Another participating Judge Mr. M.P. Singh posted in Ujjain, M.P, added that in speedy justice the role of lawyer is also very important, but in practicality these lawyer are not trained and their role is very conflicting. Justice B.S. Chauhan answered this proposition but forward by Mr. Singh and said “you have to face the half-baked lawyers because it is the privilege of the parties to choose his lawyer and not the judge’s privilege. Mr. Singh also added on by highlighting other problem in his state such as lack of infrastructure and staff members “if the steno is on leave then there is no other staff to type the judgement” to these issues justice B.S. Chauhan replied that “history answer such questions and said that a Judgement can be hand written, short and precise in answering all the issues. Again Mr. Singh added on by suggesting the solutions that 25% of extra staffs should be created for emergency cases. He further pointed to the Sethi Commission Report and said that the report has increase the working hours of judges, but what can judges possibly do if lawyer do not turn up before 12 P.M or afterwards. How can the trial be speedy under such circumstances?

Justice Mishra suggested a remedy to such problems and said that here the role of inspecting judge comes into picture because he acts as a buffer between the chief justice of the High Court and the District Judges and subordinate judges. Other participating judges who raised issues such as judges have to work for six days and they do not get sufficient time to study. As per them there are no staffs in their courts “less than fifty percent staffs are there from the from the actual number of staffs required”

Justice B.S Chauhan in his answer to the issues raised by participating judges referred to CJCM conference and said that resolutions have been passed in this regard and sent to central government for the implementation of same.

Mr. Tirupati Gupta participant judge from Rajasthan shared his experience regarding section 156 (3), section 366 and section 376 of Cr.P.C and referred to a judgment by Deepak Mishra in the case of Mrs. Priyanka Shrivastava and Another V. State of U.P. he also added that sometime justice by a judge leads to his unpopularity to which Justice Chauhan answered that a very good judge has to be the most unpopular one. Because judges are not there to contest election.

Mr. Balkrishna participating judge added that we don't say that law is wrong 60% of the cases of the magistrate courts are of that sort where trial goes on for years and then we have to leave the accused on probation. Because there is no development of process serving in criminal justice system.

Mr. S.K Sharma took on the discussion to a positive note saying that, "if you want to work no one can stop you and if you don't want to work no one can make you work. All you need is positive attitude and willpower.

Another participating lady judge added that:

- There are time bound cases, which judges have to decide but these cases are time bound for the judges and not for the advocates. So this makes the disposal difficult.
- In many courts there are fifty to sixty percentage of cases are handled by one or two lawyers so in such cases how can we as judges make the trial speedy.

Justice B.S. Chauhan in his answer to this problem referred to order 17 rule 1 and said that a judge has the power to refuse adjournments. He also referred to Rameshwar Aggarwal case and suggested the participants to read the case. Several other issues and concern raised by the participating judges on the theme of transforming justice Delivery System were addressed in this session.

Session III: State of Justice Delivery System in India: Reflection by Judges (Breakout Group Discussions)

The third session was a group discussion by the participating judges on the topic of state of justice delivery system in India: Reflection by judges. The participating judges were divided into five groups randomly each consisting of 22 judges to discuss on the five sub themes and issues relating to the sub themes in their courts and their respective state.

The sub-themes are:

- (1) Infrastructure Issues: What is need?***
- (2) Court Managers: What are functions? What should be functions?***
- (3) Bench & Bar relationship: Issues and Challenges.***
- (4) Performance Assessments Unit System.***
- (5) Low Civil Filings – causes and what does it indicates?***

(For group one to five respectively)

This session was coordinated by student from a local law college arranged by state judicial academy. One hour was give to each group to discuss and sum-up their problems and suggestions. One group leader was mutually appointed by each group who was supposed to make presentation on their respective themes in the next session.

Session IV: State of Justice Delivery System in India: Reflection by Judges (Breakout Group Presentations)

Group one: Infrastructure Issues: What is need?

Team leader for group one divided his whole presentation into three parts that is man, machine and money. The judiciary and the government should be committed to provide the best infrastructural facilities for justice delivery system. The lack of such facilities leads to a delay in rendering justice.

- He added that there are insufficient number of computers in the court. Even if there are computer they are not updated.
- Problems related to light, inverter, generators (In Gujarat all the courts have sufficient electricity)
- No Wi-Fi facility (only courts in Gujarat have)
- Libraries are not updated (No books No Bare Acts)
- No facility of E-library
- Shortage of staff quarter/ Residential quarters
- Proper Budgeting is require to resolve infrastructure related issues
- No funds no grants and no power even to purchase small things. (There should be financial autonomy given to the judiciary)
- Laptops are not provided
- Lack of court buildings
- No separate plan for different courts
- For staff quarter there is no provision for central funding

Justice Mehta Judge Rajasthan High Court Suggested that researcher available at NJA and SJA should research the new development of law and emerging case laws and circulated this update research to all the judicial officer and also to High Court judges every month.

A participating judge from Maharashtra added that the Maharashtra judicial academy uploads all its workshop details and also e-mails all the new cases decided to all its judicial officer.

Group two Presentation: Court Managers: What are functions? What should be functions?

The group leader presented the discussion by his group into parts:

- 1. What are the functions of court manager***
- 2. What should be the functions of court manager***

He pointed to the existing functions of the court manager as follows:

- Based on applicable directives of superior courts, establish the performance standards applicable to the court (including on timeliness; efficiency; quality of court performance; infrastructure; and human resources, access to justice; as well as for systems for court management and case management).
- Carry out an evaluation of the compliance of the court with such standards; identify deficiencies and deviations; identify steps required to achieve compliance; maintain such an evaluation on a current basis through annual updates.
- In consultation with the stakeholders of a court (including the Bar, staff, Executive Agencies supporting judicial functions such as prosecutors/police/process service serving agencies and court users), prepare and update annually a 5- year court-wise Court Development Plan(CDP).
- Monitor the implementation of the CDP and report to superior authorities on progress.
- Ensure that statistics on all aspects of the functioning of the Court are compiled and reported accurately and promptly in accordance with systems established by the High Court.
- Ensure that reports on statistics are duly completed and provided as required;
- Ensure that the processes and procedures of the court (including for filing, scheduling, conduct of adjudication, access to information and documents and grievance redressal) are fully compliant with the policies and standards established by the High Court for court management and that they safeguard quality, ensure efficiency and timeliness, and minimize costs to litigants and to the State; and enhance access to justice. (Note: standards systems for court management should be developed at the High Court level).
- Ensure that case management systems are fully compliant with the policies and standards established by the High Court for case management and that they address the legitimate needs of each individual litigant in terms of quality, efficiency and timeliness, costs to litigants and to the State (Note: standard systems for case management should be developed at the High Court level).
- Ensure that the court meets standards established by the High Court on access to justice, legal aid and user friendliness.
- Ensure that the court meets quality of adjudication standards established by the High Court.

- Ensure that Human Resource Management of ministerial staff in the court comply with the Human Resource Management standards established by the High Court.
- Ensure that the core systems of the court are established and function effectively (documentation management; utilities management; infrastructure and facilities management; financial systems management (audits, accounts, and payments).
- Ensure that the IT systems of the Court comply with standards established by the High Court and are fully functional.
- Feed the proposed National Arrears Grid to be set up to monitor the disposal of cases in all the courts, as and when it is set up.

The group leader also added that there is the post of court manager in all the district of Rajasthan. In Maharashtra these post are only created in some district. He said that his group is of the opinion that

- There should be one court manager for each court
- Ministerial staff of court can be appointed as manager to supervise the staffs and the procedure
- Court manger should be under the control of principle district judge
- A court manager should both be an MBA and a law Graduate
- His functional area should be court development and E-Governance
- Duties and function of court manager should be fixed.
- Also facility should be provided to court manager such as office, staffs, laptops etc.
- The function of court manager should be decided as per the requirement of concern districts and state.
- Court manager can be a bridge between litigants and courts.
- They should also monitor case disposal
- Interns from reputed colleges should be allowed to assist the court manager
- Ensure report on statics
- To ensure that the courts meets the quality of adjudication standards

The team leader also pointed out the problems as put forth by the group members.

- No proper coordination between judicial officer and court manager
- Their accountability and responsibility must be fixed
- Services should be extended to Taluka courts also
- Court manager are appointed at district headquarters only outline courts are far from getting advantage of services of court manager
- Court manager have no manpower for working
- Clerks and puns should be under subordination of court manager
- Court manager should also be provided with vehicle
- Hurdles in the functioning of court manager in Rajasthan and Maharashtra should be removed.

Group three: Bench & Bar relationship: Issues and Challenges.

Justice Sujoy Paul initiated the discussion on bar and bench relation issues and challenges and referred to justice Ravindran statement “Bar and Bench is like husband and wife who cannot be divorced” he also added that bar and bench both are there for one purpose that is to achieve justice. In his discussion he said that most of the judges are from bar. He referred to the phrase by Kabir that “Premgaliatisankarijamey do nasamai” and said that bar and bench is not two different things. He referred o Justice H.R. Khanna Statement “Bar and Bench both are part and partial of the justice delivery system.

Thereafter group leader for group three presented on the theme of Bar and Bench relationship Saying that relationship means Sambandh which means similar agreement. Where you follow the procedure people will have no problem. If you show more sensitivity towards one case people might feel why you are feeling so close to that particular case when there are number of other case pending. Therefore he suggested that the only remedy that judges have in situation of complexity is to deal tactfully. He further added that ten percentages of the people are disturbing the working of ninety percentage people. There should be something to curb them. With judicial officer there must be the training of advocates.

Justice Mehta stated that judge should be firm courtesy and respectful. If you respect others you will in turn be respected.

The presentation for group four was made by Shivani Singh participating judge from Jodhpur, on the theme of Performance Assessments Unit System.

- She stated that performance assessment must be based on quantitative and qualitative outputs and there must be equilibrium and harmonization between both at the time of annual assessment.
- In credit system credit must be given to each kind of disposal in civil or criminal proceeding. This will help us to justify our work. For example in M.P we have no credit for civil disposal.
- There must be uniformity in allocation of units or credit points for disposal. For example there is no unit in M.P for examination of witness.
- There must be some point as we get for work disposal or may be relaxation in the working days
- Disposal in LokAdalat should be appreciated in credit.
- Annual assessment must not only be done on the disposal of our work.
- There should be equal distribution of work.
- Credit must be given for administrative work also.
- For interim injunction, revision and appeal credit should be increased.
- Performance units should be given up instead priority should be give to disposal of old cases. Unit system has become the tool for harassing judicial officers.
- Individual performance should be analyzed.
- Uniform unit system should be adopted.
- Looking at several factors such as number of cases in a court, type of cases ,bar etc.
- High work pressure in judges is the root cause of problems. Therefore number of judges should be increase.
- Government pleader should be a government employee, like APP (presently they are appointed by the court on temporary basis, so they are not loyal to the courts) instead of helping the court they are causing hindrances in the smooth working of the court.
- Each magistrate court should have a steno and ADJ court should have two steno. Presently there is a post of process writer in the court whose work is only one hour in a

day. So criteria for the selection of process writer should be same as steno. It will double the efficiency of the court.

Recommendations by Justice Mehta

- NJA should develop a uniform assessment system. So that all officer are treated equally
- Independent body for appraisal for judicial officer judgments should be created. A body of retires district judges and high court judges can be created
- Assessment must be on quality of judgment and not quantity

Low Civil Filings – causes and what does it indicates?

The group leader started his presentation on the note that there are positive as well as negative aspects of this subject.

Positive aspects: The alternative dispute resolutions like Arbitration, Mediation and Conciliation as well as LokAdalats are the positive aspect and causes of low civil filing. He further added that money dispute etc. is settled in LokAdalats by way of pre litigation applications. Therefore these causes much be welcomed.

Negative Aspect and causes:

- Delay is the most important and major cause of low civil filing of civil cases. Civil litigations finally ends after at least 20 to 25 years. Litigants want speedy remedy. Hence they are now diverted towards filing criminal litigation like cases under section 138 of Negotiable Instrument Act. A procedural delay also defeats the result. Litigants unwillingly go to the unwanted compromise. The decree is confirmed up to the apex court there are delays in execution like under rule 97 to 101 of order XXI which is a second round of litigation since inspection.
- Decree holder cannot enjoy the fruits of the decree passed within time. Effective execution is not possible because of many delays. There are no deterrent measures for effective execution in criminal cases. Infrastructures like civil prisons are not available. Decree holder is required to pay subsistence allowance for civil imprisonment of J.D etc.

- Numbers of judges are not proportionate to the litigation. Some judges working in civil and criminal courts at the same time. Rationalizations of norms of disposal are required to reconsider.
- Various tribunals are formed. New enactment bars the jurisdiction of civil courts.
- Court fee are not rational
- Bulky evidence and technical procedures in leading evidence.

Indications:

- People are losing faith in civil litigation
- Litigant diverting themselves to the criminal litigations and other alternatives

Remedies:

- Separate civil execution courts are required norms of (executions should be increased)
- Litigants friendly atmosphere
- Improvement of working conditions of judge.

Introspection:

- Lack of interest to deal with civil cases.
- No effective decree are passed
- Non implementation of civil procedure code
- Courts are slow in passing interim orders

Session V: Judicial Initiatives for Litigant Friendly Environment in the Courts

*Speakers: Justice GyanSudha Mishra, Justice Ravi Tripathi, Justice ShaliniPhansalkar Joshi,
and Justice M.R. Shaw*

The session started with the address of Justice Ravi Tripathi (Judge Gujarat High Court). He focused his discussion on three keywords: wisdom, vision and compassion. He said that no one comes to the court by his own choice, when people are in problem they seek the help of courts to resolve it, therefore judges should make the courts user friendly, and for this they must have compassion. He also added that compassion only comes when we take humanitarian approach.

He then talked of the shift from Raj to Baburaj and posed a question to the judges attending the conference as to who is a Babu? He clarified that Babus are the bureaucrats who look down upon the people at large as uneducated and unmannered. They feel in themselves that they are a class apart from all commoners. So the influence of Baburaj must not be on judges.

By the term user friendliness he said that he means just few simple acts such as:

1. Giving the litigant a glass of water to drink if he seems tired and has traveled from far off place.
2. Giving a stool to sit if the litigant is an old person.

He also added that judges are themselves the master of their courts, and subordinate judges are the main face of the judiciary because they actually reflect the judicial system. For saying this he had a reason, he cleared that ninety percent of cases, which come to subordinate courts, are not appealed. It's only in ten percent cases that an appeal is filed in the High Court and out of those ten percent appealed cases five percent are high profile corporate cases. Therefore he said that ninety percent of people take the impression of what a court is from the subordinate judiciary. Therefore he suggested that lower court judges must act to make the court litigant friendly and should be more compassionate towards people at large.

Thereafter the discussion on user friendliness was carried on by Justice Shalini P. Joshi (Judge, Bombay High Court) who thanked NJA for giving her an opportunity to address the session and then opened her discussion on the note that it is for the litigant that the entire system

exists, so the question is whether he finds it to be so? She then moved on to the tools for increasing user friendliness.

Infrastructure –

- Clean, Functional.
- To be made specious by proper arrangement.
- Provision for drinking water.
- Sufficient space for waiting.
- Furniture in good condition.
- Surprise visit by Principal Judge.
- Use of Court Manager's skills

She also focused on speedy and swift justice and how to achieve it. For that she explained a few points, which are basic requirement to achieve the same:

- Court Management
- Board Management
- Case Management
- ADR Mechanism
- Litigants do not have to wait in the Court for longer time than necessary
- Witnesses should not be called repeatedly

Further Justice Joshi added that as a Judge it is our responsibility to make the system accessible and acceptable. She explains few points, which should be taken into consideration.

- Simplify the court language.
- Simplify the court procedure.

- Train staff to be courteous, sensitive and gender sensitive.

Justice Joshi also talked about the court conduct and business to make it more litigant friendly. She added that atmosphere of the court is very important and as a judge it is our responsibility to make it comfortable and peaceful for the litigants.

Atmosphere in the Court -

- To make it less formal.
- To make it less alien.
- To make it confidence inspiring
- To protect and uphold dignity, privacy and confidentiality of litigants in all stages.
- To take care of facial expressions.
- To avoid harsh tone, slide remarks, insinuations, smile of disbelief.

She further added that it is necessary that witnesses are able to depose in a free atmosphere, without any embarrassment. To effectively control recording of evidence.

- Judge to play more active role.
- To take sufficient interest.
- Avoid being mute and passive spectator.
- Avoid casual approach.
- To remain alive to its responsibility and sensitivity.
- Not only to remain fair but also appear to be fair to both the parties.

She took the reference of very landmark case called *ZahiraHabibullah Sheikh V. State of Gujarat*. The Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant

materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves.

- To simplify questions.
- Avoid double meaning / double negatives.
- Complex questions.
- Not to permit aggressive questioning on character assassination

To make witness feel comfortable by -

- Giving chair, if infirm and old.
- Providing water, if required.
- Giving breaks, if necessary.
- If adjourned, giving date and time suitable to witness and litigant as far as possible.
- Thanking the witness at the end

She also mentioned the guidelines for Recording Evidence of Child Victims of Sexual Abuse in *Sakshi Vs. Union of India* [AIR 2004 SC 3566]

- A screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;
- The questions put in cross-examination on behalf of the accused, in so far as they relate directly to the incident, should be given in writing to the Presiding Officer of the Court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;
- The victim of child abuse or rape, while giving testimony in Court, should be allowed sufficient breaks as and when required

Further she also took the reference of Protection of Children from Sexual Offences Act, 2012

- To allow Support Person to be seated.

- Take assistance of an Interpreter.
- Child not exposed to in any way.
- Identity of child or family members not to be disclosed.
- Child victim can be examined at any other place [Section 37(2)].

Justice Joshi mentioned that it will be very helpful if all the judges record evidence of child victims in chamber and not only in camera. She added that Handmaiden of Justice is meant to advance and not to obstruct the cause of justice. She asked to expand and enlarge the meanings of procedural provisions to elicit the truth and to do justice with the parties. Justice Joshi added that a Sensitive Judge could make a lot of difference. His innovations, genuineness and initiatives can make system more litigant friendly than the Rules or the Procedures.

The next speaker for this session was Justice M.R Shah, (Judge, Gujarat High Court) who started his discussion on the note that often judicial officers complain that if we start having friendly relationship with litigants then people may talk, he added that having friendly relationship might be a subject of controversy but having friendly atmosphere in the court is in the hands of judges and they must act to have such an atmosphere in their courts. He said that there is a difference between the two terms and it should not be misunderstood with each other.

He also said that it is for the judges to remember that the authority of the judiciary lies with the people. We neither have the purse nor the sword, because the purse lies with the government and the sword lies with the police or the army. So we owe allegiance towards the people at large.

He also raised the point as to how friendly atmosphere can be created. He said that when litigants believe that timely justice will be given to them, when they start trusting the judicial system, when they enter the court premises without fear then we can think that user friendliness has been achieved. Trust of the litigant is the achievement of the Judges.

After his discussion Justice GyanSudha Mishra recommended that:

1. NJA must highlight upon issues such as when a problem comes how should the litigant go about it. How to track his case, what to do, where to go and how to deal about it etc, must be researched upon by the judicial academies.

2. She also recommended that there must e a helpdesk in the courts. She that every where we have this system of having a helpdesk so why not in courts? Even at airports and railway stations we have helpdesks. This helpdesk would be a great help for the litigants to know basic things about a court without approaching a lawyer. She said that NJA should put this proposal before the appropriate forum or to the Chief Justice Of India.

Session VI: Management Tools to Reduce Life Span of Civil Litigation

Speaker: Justice Ravi Tripathi

Justice Ravi Tripathi was the main speaker in this session. He started his discussion by wishing good afternoon to all the participating judges and then posed a question as to what do they understand by the term Management tools? He asked the participating judges to suggest answers to his question.

One of the participating judges from Rajasthan cited an example of manufacturing process of a car, in car factory. He suggested that at every stage there is the manufacture of the tool and finally all these tools are assimilated and is turned into complete car without any delay. Similarly in a court proceeding if things are managed properly at every stage of trial with due diligence then there would be no delay or arrear.

Another participating Judge raised a problem as to how in a court proceeding one party wants speedy disposal and the other party wants to delay the trial, so in such situation how would a judge mange it. He said that this is where management tools come into picture. Like for example if the judge will not give adjournment then the will spam of the litigation would be reduced.

Another participating judge suggested clubbing of matters with similar issues as a management tool. He cited the example of land acquisition matters.

Another participating judge said that civil procedure must not be abused. He added that it's the duty of the judge to see that there is no abuse of procedure. A judge better knows if can give the relief claimed or adjourned the matter as pleaded by the advocates. Judges are well aware of the type of lawyers in their court. There are speciallawyers who are engaged by litigant only to delay execution. Judges must see that such frivolous application must not be entertain.

He also added that if judges have a justice-oriented approach no one can create problem for them. He also cited few example from CPC such as order 41 rule 11 which are often overlooked.

He shared that he personally feels that it's not the lawyers who want adjournment,it's the judge who wants it the most. He said under order 17 there is mandatory cause of adjournment and judges must make use of such provisions.

Another participating judge from Rajasthan gave example of rent control act and how the provisions in it can be used a management tools. He also added that if a civil litigation presumed to be an express train then it will always have certain fixed stations and there will be no delay. But often-civil litigation are treated as passenger train and stopped at every possible station.

Another participating judge from Maharashtra added that "we should sit at the dias at 11 am in the morning even if the advocates turn late we should not be late" our self discipline should be maintained it also act as a managements tools. He also said that judges do not do their homework properly.

Another participating judge said that "service of summons" and "frivolous applications"are often used as speed breakers by the advocates. He cited an example from his personal experience under order 7 rule 14 saying that applications come and advocates wants us to dismiss them. And then they want to file an appeal or go for revision. These are tactics adopted by the advocates to delay trials and at such point a judge should act as a manager.

Justice Ravi Tripathi summed up the discussion saying that people in power will have to be bitter. Fragrance travels in the direction of the wind, but the reputation of a person travels all around.

Session VII: Criminal Justice System in India: Constitutional Perspective

Speakers: Justice Ahluwalia, Justice Arun Mishra

Justice Ahluwalia opened up the discussion in this session themed on criminal justice system in India: Constitutional perspective. He said that article 50 of the constitution separates judiciary from other wings of the government. After 1973 magistracy of this county has been very powerful. He said that in a pre trial stage magistrates are the most powerful officers. All of us know that civil court cases have decreased and criminal court cases have increased. Here magistrates' delicate functions come into picture. He then asked the participating judges to share about the magistracy in their respective states.

A participating Judge from Gujarat said that leaving aside the district of Ahmadabad, Rajkot Barodra and Surat for the other district things are very good. There is not much infrastructure problems not even shortage of staff. He said that Gujarat judicial academy is also a very good and performing its functions very well.

Another Judge from Maharashtra added that in Maharashtra magistracy is very powerful, even infrastructure is very good. But the norms of disposal are very problematic. Only half of the day is left for regular work because the other half is spent in remand work.

Another participating judge said that the basic problem is that the witnesses are not brought timely to the court. To this Justice Ahluwalia answered that under section 311 of CrPC judges can call any witness during court time, also judges have the power to pose any type of question to the witnesses. He then briefly discussed the provision of article 20 (1) and (2) of the constitution of India. He also took the reference of article 22 and 39A of the constitution. He further elaborated on amendments under Cr.P.C in 2009 and 2010 and discussed briefly section 41, 41A and section 44 to 47 of Cr.P.C. He also talked of few landmark cases such as:

- ***Joginder Kumar v. State of U.P.***
- ***D.K. Basu v. Union of India***
- ***Husnai Ara Khatun Case***
- ***Adesh Kumar Case***
- ***Marind Case USA***

He then said that bail is a rule and Jail is an exception and judges do not adequately use the provisions under section 41 and 41A of Cr.P.C. He also added that in case of offenses for which punishment is more than seven years the ground reality of bail is very different.

- Remands are being granted Casually
- Police fails to understand the essence of section 41 and 41A
- These provisions are understood in letters but not in spirit.
- Therefore it is often misused by police

He also took the reference of NAAZ foundation Case along with Jon StrautMill's HARM principles.

A Participating judge added that if article 21,22 and 20 and other provision of Cr.P.C are used by the magistrates adequately then police can't misuse his power. He gave an example from section 332,352 IPC out of his personal experience and said that it is the judges'duty to see that nobody tries to destroy evidence prima facie.

Justice Ahluwalia furthered the discussion saying that there is a provision of imprisonment or jail in our country for every small thing and therefore the fear in criminal justice system has failed. To elaborate upon he referred to the judgments given InKasab's case and NandaniSatpati'scase and Shahbano's case. He also referred to article 17 and 23 of The Constitution of India.

Justice Ahluwalia also referred to section 304B of IPC and Provisions of NDPS Act to highlights upon how granting of bail has become difficult and often the accused has to discharge the presumption that he is innocent.

Justice Arun Mishra(Judge, Supreme Court of India) also addressed the participating judges on the theme of Criminal Justice System in India. He started the discussion on the point of 'delay' giving example of how his flight got delayed. He said that delay is the basic problem faced by the Indian Judiciary and it must be tackled by us.

He then moved on to the relationship between the fundamental rights and directive principles of state policy, and said that it can also be used in criminal law. He referred to article 17 and 23 of the Constitution of India and said that these provisions are constitutional

safeguards. He also highlighted upon article 20 and 23 of the Constitution. He talked of the brain mapping test which has been held to be self- incriminatory while he was discussing the provisions under article 20(1,2,3) of the Constitution, he added that such tests can only be used for the furtherance of investigation and nothing else. These tests cannot be used as evidence.

He also referred to the concept of procedure established by law and due process of law. In this regard he cited the cases of:

1. Maneka Gandhi v U.O.I
2. Francis Coralie Case.

He added that these cases played the most significant role towards the transformation of the judicial view on Article 21 of the Constitution of India so as to imply many more fundamental rights from article 21. He also said that article 21 and 22 must be read together. The amendments made in Cr.P.C in section 41 are only to intune criminal law with constitutional law.

He also talked of the role of bar in criminal justice system and said that it is also the duty of the advocate to protect the judicial system. Every person has a right to be defended by an advocate and no one should be punished without observing the procedure established by law. If a false statement is lodged against a person he should be compensated.

He then took on the discussion towards victim compensation schemes and also talked of the concept of interim compensation. He also talked of the abuse of power by state and the concept of speedy trial, and that if a procedure is not providing for speedy trial then it should be void. He highlighted upon few cases in this regard. They were:

1. Bodhisatvagautam v SubhraChakrovarty
2. Lakshmi Case(acid attack case)
3. Rudal shah case
4. Bhim Singh v State of jammu& Kashmir
5. D.K Base case
6. HussanairaKhatoon Case
7. Sher Singh v State of Punjab

He also referred to the provision of section 468 Cr.P.C which says “bar to taking cognizance after lapse of the period of limitation”. Such provisions and the amendments in such provisions is giving shape to speedy trial and equal justice to all.

With reference to article 21 he also discussed the cases of:

1. Charles Sobhraj case
2. Sunil Batra Case
3. Prem Shankar Shukla case

He added that Economic and social Council of U.N in its resolution has said that death sentence should be abolished. In countries, which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with extremely grave consequences. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby. He also added that fairness, justness and reasonableness is required.

He said that the power to pardon is not a procedural but a substantive right. He took the references of Machhi Singh and Kehar Singh cases. On the point of public hanging he said that there can be no public hanging. He referred to the case of Attorney general v Lakshmi Devi. Also he discussed the case of Dharamveer v State. He said that the accused should be allowed to be interviewed by family members, friends and relatives, but it should be subject to article 21. He added that even reasonable restrictions against a fundamental right are subject to judicial review.

He then took his discussion on by pointing out that how influential people are tried in slow motion. He said influence and biasness are things, which should never come in a judge’s way. Judges have to be creative and innovative and must always avoid inordinate delays. He also raised discussion on the right to privacy of an accused and the rights of prostitutes.

Justice Ahluwalia closed up the discussion in this session by talking of Mill’s harm principle and the guidelines given in Vishaka case.

Session VIII: The Use of ICT Tools

Justice Madan B. Lokur, Mr. C.M. Joshi

Justice Madan B. Lokur and Mr. C.M Joshi were the speakers in this session. Mr. C.M Joshi started the session on the note that knowledge is the mother of all virtues, and vice proceeds from ignorance. He then moved on to the participating judges and asked how many of them have android phones, have ATM cards, and have accessed atleast one website? He said that android phones are but linux which we have in our laptops, but we don't know its right use. He added that off late we are giving the case status to litigants online, but lower judiciary is not doing it. We are using information technology services but, all of us use ATM cards, android phones and websites but we as judges are not making good use of it to strengthen our judicial system.

For enhancing responsiveness, timeliness these tools can be used, but to what extent they are actually being used is still a question. He gave a practical example as to how we curse the bank when one transaction goes wrong while we use ATM cards, so similarly the litigants would feel for the judicial system if we do not give them proper information.

He also talked of the personal benefits that we avail from ICT. He pointed them as:

1. For judges the basic help is of research i.e. online sources of research
2. Communication through sms, emails and whatsapp etc.
3. Document storage (i.e judgments that judges type)
4. Editing that is being done using word processor.
5. Calculations and other facilities such as photographs *etc.*

On the uses of ICT he talked of how ICT techniques can be useful in the working of judiciary at different levels and different stages of trial. He raised points as to:

1. Management can be done with the help of ICT techniques
2. Human Resources, which also means sharing of resources in that court also. This involves a little innovation.
3. File management (a file which is being listed is not put before the court)

4. ICT techniques can also be useful for performance appraisal. Setting performance appraisal would be useful to the management.
5. Summons can be served using these techniques, because this will be time saving.
6. Need assessment can also be done with the help of it.
7. Future training can also be made easy.
8. Parties can search their cases with the help of these tools.
9. Also information can be provided to government agencies using such tools.
10. Judgments can be uploaded online.
11. Payments can be done online.

Justice Lokur furthered the discussion on the use of ICT tools and said that the litigants have the right to know what is happening in their case. It is in interest of the litigant. If we share information with them then the system will become more transparent and friendly. We inform them the case status in some cases but in others we do not. These practices differ from state to state. We have the tools but we are not using it. He also added that there are two lakh people wanting information from the judiciary everyday, but we are not answering them.

Justice Lokur showed to the participating judges a website (etaal.gov.in) which is a web portal for dissemination of e-Transactions statistics of National and State level e-Governance Projects including Mission Mode Projects. It receives transaction statistics from web based applications periodically on near real time basis. He asked the participating judges to refer to this website.

He also showed a website (ecourts.gov.in) and added that the e-Courts project was conceptualized on the basis of the “National Policy and Action Plan for Implementation of information and communication technology (ICT) in the Indian Judiciary – 2005” submitted by e-Committee (Supreme Court of India), with a vision to transform the Indian Judiciary by ICT enablement of Courts. On this website he showed how it can be used to get information regarding causelists, case status, orders / judgements and other informations related to district courts. He demonstrated for the use of the website by clicking at the particular state and then to the particular district in that state and then to give the case number and the year and retrieve current information regarding that case.

He demonstrated by showing cases from Jodhpur district in Rajasthan, and also for the states of Maharashtra and Madhya Pradesh. He also pointed out the problems as to how this website is not updated by the district courts, particularly in the state of Rajasthan. For Maharashtra he said the control on the website on the point of updating information is better. He also asked all the participating judges to ensure that these duties of updating the website is carried on with due diligence.

He also added that:

1. Mobile Technology is only efficiently in the states of Punjab & Haryana, Maharashtra, and Karnataka etc. For the other states he asked the participating judges to see that these technologies are used.
2. Video Conferencing is being used extensively in the states of Chhattisgarh and Jharkhand. For other states also it should be used. He also gave examples of how video conferencing can be of great use to dispose of cases which are pending for reasons that parties are at different places, or for any other reasons. He asked all the participating judges to use such technologies are in practice used by them, and added that if they will not use the technologies then training them or developing techniques to increase efficiency will be of no use.

Session IX: ADR Mechanism and Role of Judges

Speakers: Justice RajanGogoi, Justice Madan B. Lokur, and Justice Sunil Ambani

This session started with the welcome speech of Justice NirmaljeetKaur (Judge Rajasthan High Court). She also pointed out the importance of ADR mechanism and introduced Justice RanjanGogoi and Justice Lokur as the speakers for the session. Thereafter Justice Gogoi took on the dias.

Justice Gogoi started the discussion on the note that ADR is not a current method of resolving dispute. He explained the historical background of ADR and said that centuries before when the britishers arrived in India they developed a system of resolving disputes between the villagers. He also added that the method of mediation was very popular among the businessman (mahajans) of Gujarat, but there was no legal recognition of these methods.

He also said that ADR methods are bypasses created to handle the cases may be because of the inability of our judicial system. He added that the enactment of Arbitration Act also there were provisions of ADR, for example C.P.C 1809 contained mediation provisions without intervention of the court, and C.P.C 1908 also has provisions for ADR. After the enactment of the Arbitration & Conciliation Act 1996, provisions under C.P.C had been amended to bring the two acts in conformity with each other. He also added that the modes of ADR had been identified when there was no need to create bypasses. He also provided statistics of pendency of cases for few of the states and said that:

1. Rajasthan High Court has 3 lakhs cases pending.
2. Maharashtra High Court has 3.5 lakhs cases pending.
3. Madhya Pradesh High Court has 2.5 lakhs cases pending.
4. Gujarat High Court is at a better position as it has less than a lakh cases pending.

He also gave statistics for the pendency of cases in trial courts of these states, he said in Maharashtra there are 29 lakhs cases pending in trial court, where as for Gujarat and Madhya Pradesh there are 22 and 11 lakh pendency of cases. He said this is a huge number and this situation must be tackled by using ADR methods. He also said that for these reasons ADR mechanism has become not only convenient but necessary.

He also talked of the modes of ADR and the role of judges. He added that arbitration is an adjudicatory process and the arbitrator is the master of the law and the procedure both. He pointed that the only difference between mediation and conciliation is that in mediation the mediator plays a proactive role whereas the conciliator has no such proactive role. He also talked of LokAdalats which have a limited role and can deal with specific cases only such as traffic challan cases or other petty cases. He highlighted few provisions of the C.P.C as well as Legal Service Authority Act with regard to ADR mechanism.

He made reference to the Civil Dispute Resolution Act 2011 of Australia and said that it has worked wonders. There are provisions in that act which are actually genuine steps and inspiration can be drawn from it. He said that these steps are:

1. Notifying to other persons what the issues are.
2. Responding appropriately to any such information.

3. Considering whether a dispute could be resolved by ADR method.
4. Attempts to negotiate the matter.

He also added that in India we do not have ADR mechanism in this form. Therefore we need proactive judges in this regard. He also said that ADR methods have their own limitations.

Justice Sunil Ambani (Chief Justice, Rajasthan High Court) also contributed to this session saying that what parties can do by sitting together, a judge can never do. Judges decide the matter and parties have to accept the decision, but using ADR mechanism parties can negotiate with each other and reach at concurrence, therefore ADR is that method by which number of cases can be settled.

He also added that mediation is not successful in Rajasthan; the rate of success is only 18.68 %. 13th finance commission has given us crores of money to utilize for ADR mechanism, its one crore for each district, but judges are of the opinion that if we can decide it why should we send it for mediation. Even litigants have similar notions. The problem in Rajasthan is of “reference”, though mediation training has been given to all the judges. He said that ADR is a chance given to the parties to rectify their problems, but the problem with judicial officers is that they just want to earn their points. He also referred to few cases on ADR mechanism such as K. SrinivasRao v D.A. Deepawhich is a case on matrimonial dispute. He also cited the case of B.S Joshi where the hon’ble Supreme Court held that even 489a cases can be settled through mediation, but the major concern of the judges is how they can send such cases for mediation.

On the point of judicial settlement as a method of ADR he said that this mode of ADR is the most unchartered one, because the pitfall in this method is if you do not achieve the desired result then the judge is disqualified to hear the case and the matter is referred to some other judge.

He also added that plea bargaining is not successful in our country because the conviction rate in India is only 6-8%, so no one prefers taking a stigma on him, they feel they have chance to come out pure after the trial, without getting convicted. Also he added that the government has not instructed the judges anything regarding this.

He also added that it's the duty of the judge to instruct the parties to adopt ADR methods because a lawyer will never advice so, as no lawyer would want to loose a case from which he can make money.

Thereafter Justice Lokur took on the dias and initiated a discussion upon ADR mechanism and the role of judges. He discussed mainly the advantages and disadvantages of ADR methods. He said that there are several advantages of mediation. Namely:

1. When the parties have settled the dispute the parties go back home satisfied.
2. The speed at which the disputes are resolved is yet another point at which ADR methods can be praised.
3. If the parties are satisfied then there is a win-win situation.
4. In commercial disputes this method is the most adoptive because when the case comes to the court there one party wins and the other looses so this affects the business relationship between the parties. With ADR this problem is not faced by large and the commercial relationship between the parties remains intact.

On the point of disadvantage he said that in his opinion there are no such disadvantages of adopting ADR methods. He said that even if it's a bypass method there is no harm in using it, if by using it disputes can be resolved. He said that even doctors do a bypass surgery t save his patient. He also added that not even the lawyer is at harm if ADR methods are being used, he looses nothing because there are numerous cases in courts and every lawyer has cases. He also added that by far he had never heard any lawyer complaining that because of ADR methods they are not getting cases.

He also pointed out at the procedure of mediation and said that it basically has four stages. A joint session between the parties then a private session with the mediator and then again a joint session followed by the settlement or no settlement. He added that the mediator is but a moderator who helps the parties to go along.

On the point of how is mediation different from LokAdalat he said that in LokAdalat there are certain number of cases filed for hearing on a certain date and all these cases are disposed off at the end of the day, but for mediation slightly complicated cases come, there is difference in quality.

He also added that all the judges of the subordinate courts and also the High Court Judges should be sensitized regarding use of ADR mechanism. In Supreme Court if in a matter there is a possibility that it can be settled through mediation then it is sent for mediation. He also added that NALSA has offered to fund the State Legal Services to facilitate mediation. For strengthening the justice delivery system in future he recommended that units must be awarded to a judicial officer to send matters for mediation. Regional Programmes must be held to encourage mediation. He also said that pilot projects have been organized for one or two states at a time, in Kerala, Jharkhand, Maharashtra and Punjab & Haryana these projects were successful but in Rajasthan (in the districts of Udaipur and Jodhpur) they were not successful. He asked the participants to raise their points and issues of concern.

A participating judge from Maharashtra said that ADR method can be resorted mainly in commercial matters, or sometime in family disputes or in few other types of cases but these methods are not applicable to all types of cases. He also added that in his state LokAdalats are functioning very well, and every month there is sitting of LokAdalat. He said that the problem is that many litigants have this notion that if they go for mediation they will have to pay money for it.

Justice Lokur cleared the doubt regarding this and explained that for mediation the parties don't have to pay. It's free of cost. He also referred to section 16 of the Court Fee Act which entitles a refund of court fee if the dispute is settled through mediation. He asked the judges to make the litigants aware of such provisions.

Another participating judge from Surat, Gujarat added that in his state LokAdalat is the most effective among all other modes of ADR, because its recognized all over the district. He also added that in his state arbitration is also very effectively used mode because Gujarat is a commercial state. The only point of concern he said in his state is that conciliation by judicial officers is not taking place, and judges must act in this area.

A participating judge from Ujjain, M.P. said that mediation is not successful in his state because except for few districts like Bhopal, Jabalpur, Gwalior etc there is not much pendency in other districts. Also people want to settle their matter in courts; they feel that in mediation time is

wasted. He also raised a concern as to the fact that judicial officers have no extra judicial hours for mediation from Monday to Friday. He said on holidays they should be allotted such works.

Another participating judge from Rajasthan said that mediation work must be given to retired or working judicial officers because mediators do not have much experience. And this work should be allotted in non working days.

Session X: Public Law Lecture

Speaker: Mr. ArunShourie

Justice GovindMathur introduced Mr. ArunShourie as the chief speaker for this session. His words of introduction were:

“Good morning ladies and gentlemen. This one is our concluding session and today we are having a prestigious guest with us Mr. ArunShourie who remained with World Bank around 13 years. ArunShourie sahib basically an economist who remain with world bank for more than a decade who was adviser to Indian Planning Commission of India and in very young age of 32 and 33 year and an author a noted journalist having Ramon Magsaysay award in his account. A know politician who remain cabinet minister and first NDA government that completed five years. His impact as a cabinet minister is known. The dis-investment of aliening property and industries an initiative was taken by Shourie at that time. Friends, he is here with us to deliver a lecture on public law. In my young age, I had a obvious reason to restrain myself from whatever you was writing because you was coming from world bank and I was acting in left oriented student. So whenever a person coming from World Bank I was under this impression and that you must be supporting the idea of impearlist families. But today, I confess that now I quote your phases on several occasions. I remember in 1999 or 2000, I read an article that was in regard the approach and attitude some activist with Narmada BachaoAndolan. I, while reading that article found that giving the reference of famous English author and you mentioned that it is the principles would take over.

It's fortunate enough to have you on the issue of public law today. What public law very broadly we understand that it is law related to individual with society or to say it is a law of governance. Administrative law all other law, which are governing the society our system that is

the public law and the fundament requirement of public law. It is public law lecture series Mr. Arun is here what I understand that the basic requirement in a public law is justice. If a society I having faith that yes from the governance we will get justice. After World War II Prime Minister Churchill somebody told him this English empire is going to collapse then he just ask a question our courts not working the person concern our courts are working, but our economy is in bad shape. Here he found that all right if the people are having hope for justice nobody is going to damage our system. Now I will hand over to Mr. Shourie.

(The lecture given by Mr. Shourie is being reproduced verbatim here)

“Our supreme court protected us for the past sixty years against the executive and political power. I know that at one stage uncovering things before Rajiv Gandhi government and that Rajiv Gandhi put over around 326 cases against us.

Recently there was contempt case file against me by Chief Justice Mukherjee and Mr. Subramanyam Swami that case was decided in my favour after 24 years, but it has been decided in favour of free speech recognizing the new changes in the society. But it is with that confidence that we have always written freely because of Indian Judiciary. There is no other source of accountability apart from press and judiciary in our country.

Salutary step have been place for the last few years is only because of judiciary. Especially the recent judgments passed by Supreme Court over turning the section 8 (b) of peoples representative act. So, that the members who are convicted cannot be continue as a member of legislature. It is something people like me writing about 20 years. So finally the court had intervene and bring a wonderful change in this regard. The judicial universe in India consist of much fewer person. Person who are better educated, who are more aware, who go by reading and writing, and therefore it is easier to affect change through the smaller group then it is like say bureaucracy or through the political class. Therefore I speak as one what the citizen feels, the importance of our independence judiciary. But I also speak as a one who is much concern and apprehensive about many thing that we hear about the judiciary. There are but I don't have any proof of allegation or the presumption that's comes in society is itself corrosive. People believe I am corrupt, I may be honest, but if they believe I am corrupt then that itself will rob my word of all effectiveness and that is coming about, because probably a very few judges, a very few

judicial officer but as we say one drop of poison is poisonous for the whole bucket. Secondly I feel that as a other institution they fall in the standards I quoted one person with whom I had a very great regard and I asked who all are judges now a days whom judgments we should read these days and he didn't give me any name. It's very surprising to me. But when I look at the case like Jaylalita I just lose hope, that this great singular opportunity we should have not be allow slipping away.

In freedom of speech also the executive in India is so often come down with the heavy hand on the press, but whenever it has done to do so the hand had got burn or withdraw because of judiciary. You find that when the assault come people don't rise up (but I still remember the Bihar incident that is on JaganathMishradefamation case , Rajiv Gandhi bring the defamation bill to keep the Indian express quite) but ultimately because of reversion the government had to withdraw the same bill.

At each time Rajiv Gandhi try to shut down our office. But then our circulation will go up. At one stage I put on the front page a very big cartoon our broken down desk of the Indian express and behind that there is a banner in that Rajiv Gandhi was sitting and it was written that he is the circulation manager.

The whole purpose of National Judicial Commission is nothing, but efforts to bring the judiciary under the executive under the political executive. But I fear that if the judiciary does not have the grid esteem then the response of the people to gather around the judiciary is decline. Now looking up our judiciary i will make few comments.

First I will deal with the judges then come towards judgments:

You should always remember the Profumo incident on june 5, 1963, British secretary of war john profumo resigns his post following revelations that he had lied to the house of commons about his sexual affair with Christine keeler, an alleged prostitute. Our senior judges will remember lord denning did not hold any public hearing; he never met the witness, including Christine keeler or any other person present. He never took any notes but what he said, nobody disbelieved. The country does not run, the state does not run on a danda but rather it run on iqbal.

The government is the biggest litigator and they try to get the advantage of the judiciary. Therefore I think three things are necessary for our judiciary to always remember.

- Each of us must be absolutely straight
- Never but never we should accept the extra privilege from the executive. He added that we must have no price.
- We must swiftly take action whenever the slightest allegation was made to our colleague and brother judges. We should never stand by for our brother judges because he is bringing the institution down as a whole.

I give you an instance at Bhopal in Indian Express a story was published about income tax tribunal. The judgment, which was not even published or delivered, the entire text of that particular judgment, was found in office of chartered accountant Kolkata.

Now the follow up was done by Indian express by three times, but there is no movement on that particular case. The Judgment was written in chartered accountant office and delivered by the office of Income Tax Tribunal.

If we compelled to dilute the standards because of over burden of the case or because of lack of staff or due to the non availability of proper tools, then we must speak out, we must take stand or we should urge the retire judges to speak out. Rather to dilute the standards of the judiciary.

Translate your compassion with regard to judicial system. I feel that in India mediocrity has become the norm. An intimidation has become the argument and assault has become proof. Therefore it is necessary for us to reverse this and have a situation in which it is so easy to get by doing very little. This is the case in journalism and this is the case in civil service or even academics.

Every single case that comes before you is utmost important. But particularly the case regarding politician, public servant or police or judges should be given extra care and protection. Because they have much bigger multiplier effects on the society.

Therefore in these particular cases not only he gets away, if he crook, but the reputation of judiciary will suffer. Because people know that he is a criminal and ultimately people will

start blaming the court and judiciary. They think that criminal get away from the court and it must be some collateral purpose. Because of this the state of India was delegitimized.

Don't allow any adjournment. I cannot imagine the Sukhram case where at his residence police caught 4 crore cash below his bed. And after 25 year he is still roaming free and deliver lecture on Mahatma Gandhi. His case was still pending and yet not decided because of adjournment.

Judiciary should become active with regard to adjournment, if the legislature is not doing anything as the case of section 8(b) of Peoples Representative Act. The judiciary should give utmost importance. We should give harsh punishment to the criminals. We should disbarment of public life forever. This is the stage three of cancer and we will not be able to survive.

Now I talk about Judgment writing:

- Firstly In higher court many of the cases are so long. TMA Pai Foundation case consist 92,000 words and Ashok Kumar Thakur approximately one lakh twenty six thousand. I found that random thought are coming in between passing the judgment and judges forgotten the main part of the judgment. The judgments are not clear. The decision is not clear. This happened with many case with regard to minority decision.
- Second the break down of discipline with regard to judgment. Three-judge bench disregarded the judgment passed by five-judge bench. Similarly two-judge bench routinely disregard what three judges said.
- Thirdly I think our courts are too affected by the intellectual fashion.
- Fourthly we must see as we go higher and higher we should be more aware of the Meta consequences of the judgments that we are pronouncing. But that is not the individual case it will set the precedent for many other things.

With this note I am ending my session on Public Law”.

Valedictory Session

Speaker: Justice RanjanGogoi

The valedictory session was taken by Justice RanjanGogoi, and his message to the participating judges were in these words:

“A very good morning to all the Learned Judges, Madam GeetaOberio Director NJA and Ladies and gentlemen. Let me begin on a personal note, I have to attend this programme organized by NJA, after five yearsthe last time I was present in the year 2009. Lets not go into the reason why I discontinued. It’s the persuasion of present director that she has brought me here and I am glad I came here. Look at the theme Strengthening Justice Delivery System: Tolls and Techniques. I hope that you all had a open hearted discussion at last you all heard Mr. ArunShourie on Public Perception on the law.

I wish Mr. ArunShourie had been present here unfortunately he had to leave for some urgent work. Where do we stand in public estimation, its no satisfaction to say that we are better than executive and legislature? Let not make relative judgment. Let us judge ourselves where do we stand.

Three crore cases ever day that is thrown upon our faces. The judiciary I would not even say misunderstood. I am saying it was not understood. Yesterday a very senior officer asked me a question. Sir you are a Supreme Court judge? I said yes, then he ask where do you work, where is your office? I said my office is in Delhi. He again asked how many offices or branches does the Supreme Court of India have? I said one; we don’t have any other office. This is what a senior central government officer knows about the judiciary or the Supreme Court. How would he know the internal working of the judiciary? I always felt that Indian judiciary needs a spoke person somebody must speak up for the judiciary. Somebody must tell the country that we have only eleven judges for one million populations and what the law commission recommended is to have fifty judges in the year 1992.

Are we able to fill up even these eleven? How big our judiciary, how big our judiciary family only 18,000 judges. 31 from Supreme Court, 900 from High Court and rest are from

lower judiciary. Suppose an executive puts us a question you are not able to fill up the existing post, then why do you want extra or additional post for judges.

What answer we should give and why we are unable to fill up this is where I want Mr. ArunShourie

1. A Judge Must be a man of Exceptional merit
2. He must be a man of ability and utmost integrity

Tell me where do I get this commodity. A country with population of hundred and thirty crore I can't get this commodity anywhere. Am I believe it no I will not believe it. It is available find it they are hiding take them out, give them incentive. Keeping a percentage 25% on seniority and 75% on merit basis.

Give judges Independence to decide case and by judicial independence I did not mean independence of Supreme Court, but the independence of each Judges to decide the case independently.

In the year 2040 we need 75,000 judges and I am sure we can get it. What the judiciary need today is leadership. Every single judge has to a leader.”

Justice RajanGogoi focused on four points:

1. We need to change our pattern of working
2. I look at precedent to guide me not to break the judiciary discipline (but my own ideas are different from the precedent)
3. Internal functions of the judiciary has to change and for that we require total commitment
4. Commitment is required in judiciary and it should be treated differently.

He then ended the session by saying “I acknowledge the great pain suffer by Rajasthan High Court, NJA and State Judicial Academy for organizing this conference. This too much of efforts, but it all for good reason ladies and gentleman thank you so much.”