

National Judicial Academy



PROGRAM REPORT

**P-1260: National Workshop for High Court Justices
25 & 26 September, 2021**

Prepared by

Mr. Yogesh Pratap Singh & Ms. Nitika Jain
Program coordinator & Faculty
National Judicial Academy, Bhopal

National Workshop for High Court Justices [P-1260]

25th & 26th September, 2021

Coordinators: Mr. Yogesh Pratap Singh, Research Fellow and Ms. Nitika Jain, Law Associate

The National Judicial Academy (NJA) organized a two-day *online* National Workshop for High Court Justices on 25th & 26th September, 2021 at the NJA.

The objective of the workshop was to provide a platform for justices to share experiences, insight and suggestions with a panel of distinguished resource persons from the judiciary, academia and an eminent medical expert from clinical psychology. The online workshop sought to sensitize High Court Justices on contemporary themes including *Judiciary & Media: Need for Balance* and *Role of High Courts in Reforms in Legal Education*. The workshop also aimed to initiate discussions on *Introduction of Artificial Intelligence (AI) in Judicial System* and contemplated the prospective intricacies and nuances of AI in judiciary. A dedicated session on clinical discourse over *Inner Re-engineering for Attitudinal Changes & Bias* formed the last part of the deliberations in the workshop. About 35 Justices of different High Courts participated in the workshop. A brief snapshot of the scheme of the workshop spread over the duration of 2 days was:

Session-wise Programme Schedule

Day-1

Session 1 - Judiciary and Media: Need for Balance

Session 2 - Introduction of Artificial Intelligence in Judicial System

Day-2

Session 3 - Role of High Courts in Reforms in Legal Education

Session 4 - Inner Re-engineering for Attitudinal Changes & Bias

Session-1

Judiciary and Media: Need for Balance

Speakers: Justice G. Raghuram & Justice Gita Mittal

The session commenced with discussion on primary functions of media as forth pillar of democracy and its impact on judicial adjudication. A question whether media influence judicial outcome was floated for discussion. Disinclination of the media to have any sort of regulation as impeding to the freedom of press under constitution scheme was highlighted. The core process of the judicial branch - the making and writing of judgments, was described as both - a public act and an act of communication. In the context of communicative facet of the judicial process, the Judiciary and its engagement with the media was described. It was stressed that orders and judgments; and even ex-tempore observations of the judge in the course of proceedings are closely monitored and reported, particularly in sensitive or sensational cases. Contemporary anatomy of the media with respect to profession of journalism was discussed. The core principles and essential role of journalism as examined & developed by the Harvard Faculty Club (HFC) such as obligation to the truth, loyalty to citizens, discipline of verification etc. were highlighted to ponder upon. It was stressed that these core elements are being undermined today and the new danger is in independent journalism being consumed in the solvent of commercial, partisan, political or sectarian interests' leveraged communication and synergistic self-promotion; in slanted news fertilised by sensationalism, half-truths, misinformation, and often in marketing of illusions. It was pointed out that Interaction, interdependence and on occasion tensions amongst the four *estates* are natural phenomena; the judiciary could perhaps make a beginning by admitting, on occasion, our own failures and limitations and openly. This could start an internal discourse and eventually usher in better relationship with media; a more collegial and peaceful atmosphere could then emerge, over time.

Broad overview of judicial control of Media reportage of Judicial proceedings was highlighted. It was pointed out that ‘open justice’ is one of the fundamental principles of the Indian judicial system and the principle of open justice involves two aspects: one, the public having access to courtrooms and two, the media being able to communicate what goes on in the courtroom. The media acts as a channel to ensure open justice and guarantees that justice is not only done but also seen to be done. However, it was stressed that this powerful role is concomitant with commensurate responsibility. It was emphasized that exercise of the right to free press sometimes interferes with the right to fair trial and may potentially erode the innate majesty of the judicial system. The legal framework regulating the media along with landmark judgements by the higher courts were also presented during the session. International conventions on Freedom of Media; Madrid Principles on the relationship between Media and Judicial Independence (1994) and the report of the 200th Law Commission were also presented and formed part of the discussion during the session.

Session-2

Introduction of Artificial Intelligence in Judicial System

Speakers: Justice Suraj Govindaraj & Prof. P. Chakrabarti

Chair: Justice Nitin M. Jamdar

The session rolled out with a brief overview of Artificial Intelligence (AI) and its extant application especially with reference to Indian judiciary. The functional use of AI by the Supreme Court of India in SUPACE (*Supreme Court Portal for Assistance in Court Efficiency*); and SUVAS (*Supreme Court Vidhik Anuvaad Software*) was delineated. The impact of AI on judging and the judicial system was discussed. It was lamented that the AI enabling tools are likely to have detrimental impact on the human resource employment, especially on the unskilled, and semi-skilled segments, owing to its potential magnitude of dispensable capability on counts *viz.* efficiency, accuracy and speed of delivery of the mundane and automated data-oriented access and analytics, therefore, advance planning for effective utilization of such work force for alternative work was stressed upon.

Detailed description of current usages of AI by lawyers, law firms and corporates into justice system in India were explained under following heads;

- Conducting due diligence using AI tools including contract review, legal research and electronic discovery.
- Prediction technology using AI software to forecast litigation outcome.
- Legal analytics wherein case laws data can be used to generate trends and patterns.
- Document automation to generate documents.
- Analysis of large Intellectual Property (IP) portfolio.
- Divorce proceeding automation using AI; and
- Chatbots/Lawyer bots plate form to provide services.

Possible usages of AI in Courts at different level were highlighted and deliberated upon during the session. Some of these usages as discussed in the session were;

- 360degree search of connected matters and or litigation between same parties by analysing case data.
- Bail verification using AI tools.
- Drafting and filing of mundane applications using AI.
- Auto dating and listing of matters.
- Memo of posting –Judge to give dates on the basis of court calendar
- Framing of charges and framing of issues by District Judiciary using AI software.
- Motor Vehicle Compensation using AI to determine compensation.
- Analysis of affidavits re maintenance and cross verification.
- Creation of Synopsis of dates and events.
- Disposal of Traffic offences using AI.
- Transfer pricing Analysis.

Some of Infrastructural and other requirements for AI such as upgradation of IT infrastructure, digitisation, enabling e-filing & paperless courts, training, hiring domain experts and developing apps & software were also highlighted during the session.

To determine the extent of use of AI in judicial system, what AI is and how it works was pondered upon and discussed. Three aspects of AI i.e., Automation, Augmentation and Autonomy were explained. While deliberating upon structure & model of AI, it was stressed that real world has undecidable, intractable, multi-objective, multi-dimensional, multi-party problems with partially available information and in order to address this, AI has three paradigms i.e. symbolic, statistical and neuromorphic, enabling a combination of crisp and probably approximately correct methods based on data analysis. Deliberating on power of logic in AI, it was pointed out that there is a potential to start encoding and logically converting many of the straightforward cases thereby reducing the time of its disposal. While addressing

on Adversarial aspect of AI, it was pointed out that the machine learning which is available today is prone to adversarial attacks, therefore it was stressed that AI which is likely to introduce in judicial system will require deep explanation as to why did AI come up with a particular outcome.

Session-3

Role of High Courts in Reforms in Legal Education

Speaker: Prof. N.L. Mitra

Chair: Justice G. Raghuram

The session commenced with a brief introduction of the topic whereby the role of High Court judges, their contribution and the future of legal education in the country was discussed at length. The speakers threw light upon the entire system that comprises three stages: First, the legal education; Second, the legal system and; Third, legal governance. It was highlighted that these three stages can be achieved only if the foundation is strong. It was pointed out that the National Law School Bangalore was the first initiative at the national level to impart quality legal education. Some examples were highlighted whereby judges are associated with the law schools including traditional and national universities. It was emphasized that many National Law Schools having all India recognition and international recognition are continuing today on brand lineage than the current reality.

Broad structural composition of three streams of legal education existing in the country was explained i.e.:

1. Traditional Law Colleges - university attached run under the supervision and substantial measure of control by the State
- 2 National Law schools – almost all of them mentored by High Courts, having High Court judges or in some cases judges of Supreme Court as there Chancellor or Vice Chancellors
3. Private Law Schools – recent streams like Bennett, Jindal etc.

The benefits of the private law school were highlighted in terms of the huge amount of fiscal support available both on account of substantial funding by industrialists, business houses and the higher fees charged.

It was narrated that in case of NLIUs in which High Courts have substantial measure of say in their administrative if not academic affairs, should look into that there is not enough critique of judgements academically in the law schools. In this regard it was emphasized that there is a need to critically look at judgements using parliamentary language with cutting edge and critical study of law. A reference was made to the judgement of *Keshavananda Bharti case* wherein critical assessment to what it does to the concept of separation of powers must be studied.

The difference between legal education and judicial education was another area of discussion and it was mentioned that the dichotomy is not complete as one leads to another. Following key points were highlighted:

- Legal Education must contribute to quality corporate transactional, or litigation expertise. But, substantially they should also contribute themselves into adjudication.
- Vast areas of social disequilibria, empowerment issues, women & children, social asymmetries, states overweening effect to various sections of the society.
- There are various issues both intra-national and transnational which affect the wellbeing and equilibrium of society and the law schools do not train students substantially to contribute to the national efforts. Students are not tuned to the current needs of the society.
- Students are trained in theoretical law and therefore, they find it difficult to adjust in a feudal atmosphere where the litigant is a supplicant before the judge, and not a supplicant before the law.

It was suggested that in High Courts distribution of judges to various committees and association to law schools must be equitable and not hierarchical whereby the selection of judges who are to be associated with law schools must perhaps be those who are interested in academics, and having interest in wider reading between the law, who are better suited to be associated with law schools otherwise the contribution will be mechanical.

Some light was drawn upon common law as prevailing in England. It was pointed out that Common Law is based upon customary practices and on judicial interpretation of given circumstances. Common Law has given 3 words: public order, public interest, and public morality. Some flaws in the system were underlined such as weak legislative process wherein even without discussion and application of mind a law is passed. The participants were suggested to read the book “The Life Divine” by Sri Aurobindo about stages of Mind for inner-reengineering which talk about learned mind, wise mind, conscious mind and illuminated mind.

It was emphasized that if anything is becoming a system it has an epistemological process and likewise if law is a system then there has to be an epistemology process. Dialectic process of learning is in the court, every court has a dialectic process of learning. It was highlighted that in India, legal education has not been considered as part of the education system or an integral part of the legal system.

It was asserted that the role of High Court Judges in reforming legal education is an indirect responsibility. It was pointed out that there are a large number of cases in courts against the Bar Council which sets up a tone for legal education. Following cases were referred to *Kunal Kaushal v. The State of Bihar*, Civil Writ Jurisdiction Case No.3636 of 2019; *P. Ramu v. The Secretary*, W.P. (MD) No. 3731 OF 2011; *Muthuvijayan vs The Bar Council of India*, W.P. (MD).No.12506 of 2018; *Smt. Manjula B.R. And Ors. v. Karnataka State Bar Council*, ILR 2002 KAR 1544; and Bar Council of India Rules, 2019. It was emphasized that through judgements the courts take up the role in reforming legal education.

Some issues with regard to reforming legal education were pointed out as: that the government expenditure for legal education is the least out of the total budgetary allotment, no financial support by the central government for national law colleges, and least financial support from the UGC. It was further highlighted that judges must know exactly who is needing justice and

who is diluting the legal system; till then reforms may not be possible. It was suggested that when matters pertaining to legal education come before a court, a judge must look into the root of the matter. It is the lack of financial support by the government and the UGC which leads to a lack in uplifting the standards of legal education in the country. The participant justices were suggested to understand what law is and then reach to what law ought to be while deciding such matters relating to legal education.

The concept of clinical legal education was also discussed during the course of discussion. In every district court or every court there must be a clinic whereby students learn through practical approach. A comparison was drawn with the English & American courts where the 5th year students undergo clinical legal education and appear for a client. Various provisions including Sec. 7, Sec. 24 and Sec. 49 of the Advocates Act, 1961 were discussed. The disproportion in the number of students as to that of the number of teachers was pointed out during the course of discussion. It was further highlighted that the recent Draft Bar Council Rules of 2020 are still not brought in.

The language barrier in the judicial system was pointed out whereby there are a number of dialects and a judge transferred from different jurisdiction will face challenges since evidence is collected in local language. It was suggested that as High Court judge one must know the system, if a judge does not know and understands what law is then, there will be miscarriage of justice. In this regard it was highlighted that if a judge is not aware that university means affiliated colleges as well and gives a decision that bar council team cannot go to affiliated schools they can only go to universities then it will be a wrong judgement.

With regard to one year LLM course, a comparison was drawn with the United States where legal education is not an undergraduate programme and with the United Kingdom where the LLB, LLM, LLD degrees exist but does not entitle for practice unlike India and therefore it was mentioned that one year LLM course in India is not adequate. The discussion also

underlined that High Court judges must also give emphasis on continuing education. Two continuing legal education programmes which the Bar Council of India have started were pointed out: 1. ABCI – Associate of the Bar Council of India - 3 Year Continuing Education Programme, and; 2. FBCI - Fellow of Bar Council of India.

It was mentioned that Legal Education is a subject matter of Entry 26 in the concurrent list, and therefore States can make a law so far as legal education is concerned. Sec 7 (1)(h)&(i), Sec 24(1)(c)(iii) & (iiia), Sec 49(1) (af) (ag) & (d) of the Advocates Act, 1961 read with part 4 of the Bar Council of India Rules are important provisions for judges while deciding such matters.

Participants gave various suggestions with regard to the judge's role in legal education including: to devise a mechanism to check inspection of the law colleges & universities a committee in each High Court must be set up including a retired judge, 2 members of bar council and members of Academia. It was highlighted that it is the job of the Bar council of the state to have an Academy to train the teachers and lawyers which requires a proactive role. Further, it was suggested that every law school must have a judge retired/sitting as a teacher faculty associated with teaching at law schools to know which provisions of law are more litigated in courts. Courtrooms must be structured in the classroom itself to understand what examination in chief, cross examination etc. is. A dialogue between the students and the teachers, the real on-field experience must be increased in a way of cooperative teaching. Lastly, it was suggested that legal education must be incorporated in school curriculum. Two judgements were highlighted by a participant justice with regard to common law system in India – *In Superintendent & Legal Rememberancer etc. v. Corporation of Calcutta*, AIR 1967 SC997 and *Subramaniam Swamy v. Union of India*, (2016) 7 SCC 221.

Session-4

Inner Re-engineering for Attitudinal Changes & Bias

Speaker: Dr. Harish Shetty.

Chair: Justice Ram Mohan Reddy

In the session on *Inner Re-engineering for Attitudinal Changes & Bias*, three simulated situational problems were placed before the participating justices to brain storm and share opinions and solutions to navigate through the issues involving human emotions while being at the bench deciding a case in hand. The various *etiology* of “stress” and the anatomical and physiological response(s) to the “emotional stressors” were discussed during the session. A few related queries *viz.* What are the commonly identified stress triggers to judges? What is work-life balance? How can it be achieved? etc. were posed. While discussing various ways to reduce or control stress, it was suggested that slowing down one’s autonomic nervous system is a cardinal way to reduce stress. It was suggested that one needs to consciously adopt practices to reduce stress. A few ways to do the same include, sleeping; meditation; activities elevating mindfulness; spending time with those we love; abdominal breathing; regular exercise; reframing negative experiences into a more positive approach; expressing oneself in a personal journal; laughing; doing activities that we enjoy; and being in the present etc. It was also emphasized that other daily tools to help negotiate stress included: micro *pranayama*; micro distractions; black humor; silence & solitude; greeting staff members; self-talk; strolling within the chamber. It was prescribed that while indifference leads to dehumanization, awareness magnetizes equanimity. Various traits of optimal judicial temperament such as independence, courtesy, patience & to uphold the dignity of the court, open mind, impartiality, compassion, public trust and decisiveness were discussed and emphasized that each judge should have. Various biases such as implicit, explicit, structural and socio-economic were also elaborated and discussed.