

National Judicial Academy, Bhopal



REPORT

National Workshop for High Court Justices

[P-1290]

02nd & 03rd April, 2022

Sumit Bhattacharya & Shashwat Gupta

Program coordinators
National Judicial Academy, Bhopal

National Workshop for High Court Justices

[P-1290]

2nd & 3rd April, 2022

PROGRAMME REPORT

Programme Coordinators –Sumit Bhattacharya, Research Fellow, & Shashwat Gupta, Law Associate, National Judicial Academy, Bhopal

A two day “National Workshop for High Court Justices” was organised at the Academy on virtual platform. The online course sought to sensitize the participating justices from pan India on the key aspects and contours of role of judiciary in dealing with the “Protection of Environment and Wildlife”; “Social Context Judging and Public Interest Litigation”; “Litigation during Covid-19 Pandemic”; and “e-Judiciary: Challenges & Opportunities”. The essence of the workshop was schematically subsumed in the aforementioned four sessions accreting to a deeper understanding of the underlying policy framework through the pragmatic and operational challenges faced in adjudication therein. The pedagogy and the discourse stimulated intense discussions on the contours of the public interest litigation, and especially the nuances and innovations of litigation during pandemic. A designated session dealing with the implications of e-court projects as it has been and is being rolled out in Phased manner, on the sudden advent of the pandemic situation formed part of the course.

The discourse was kindly guided and navigated by Hon’ble Justice Justice A.K. Goel (Chairperson, National Green Tribunal, former judge Supreme Court of India); Mr. Shyam Divan (Senior Advocate); Prof. M.K.Ramesh (Professor of Law NLSUI, Bangalore); Justice G. Raghuram (former judge Andhra Pradesh High Court, former Chairperson CESTAT, & former Director NJA); Mr. M.V. Durga Prasad (advocate); Justice A. Muhamed Mustaque (judge Kerala High Court); Justice Atul Sreedharan (judge High Court of Madhya Pradesh); Justice Sunil Ambwani (former Chief Justice Rajasthan High Court); & Justice R.C Chavan (Vice Chairperson e-committee Supreme Court of India, former judge Bombay High Court).

Session-wise Programme Schedule

Day-1

Session 1 - Role of Judiciary in Protection of Environment and Wildlife.

Session 2 - Social Context Judging and Public Interest Litigation.

Day-2

Session 3 - Litigation during Covid-19 Pandemic.

Session 4 - e-Judiciary: Challenges & Opportunities.

Session 1

Theme: Role of Judiciary in Protection of Environment and Wildlife

Speakers: Justice A.K. Goel, Mr. Shyam Divan, Prof. M.K.Ramesh

It was emphasized that the judiciary has a very integral role in protection of the environment and that it is important that the courts maintain balance between environment protection and development. It was stated that industrial effluents, flow of untreated sewage into water bodies, coastal pollution, rampant sand mining etc. are adversely affecting the environment. Thereafter, the concept of public trust was discussed and it was stated that under this doctrine the natural resources vest in the government only as a trustee. The concept of sustainable development as propounded in the Stockholm Conference was also highlighted and the concept of precautionary principle was focused upon. It was stated that major environment protection initiatives were undertaken through directives in Public Interest Litigations by application of various environmental law principles. The emerging environmental issues were also pondered upon during the session which included urban town planning; protection and recognition of ecosystem services; conferment of personhood on wildlife and environment; displacement due to climate change, scarcity of water etc. It was opined that it is important that an institute is created for responding to current and emerging challenges and it was opined that ad-hoc judicial interventions would not solve the problems. It was stated that it is important that occasional performance audit is

undertaken of the judiciary. Thereafter, the various bottlenecks under the current pollution control regime present in India was also focused upon. The malady of frequent amendments of the environment protection rules and regulations was highlighted along with the recent Environmental Impact Assessment (EIA) amendment. It was stated that court interventions due to abdication of duties by government has also been subject to critique that judiciary has tried to act as a super administrator and is rendering other institutions reductant . It was stated that it is important that the courts set themselves a jurisdiction limit and exercise restraint while adjudicating upon policy matters. Furthermore, it was emphasized that the high court should perform a balancing act between the various legislations.

Session 2

Theme: Social Context Judging and Public Interest Litigation

Speakers: Justice G. Raghuram, Mr. M.V. Durga Prasad

It was stated that the orbit of Public Interest Ligation has expanded multifold from its origins as a device for providing justice and protection to socially and economically disadvantaged and underprivileged sections of the society. It was further stated that tripartite division of power is central to democratic societies to contain untrammled power but with advent of P.I.L. the judiciary intruded into governance issues and started addressing a plethora of policy issues. It was opined that it is important for the judges to navigate within the parameters of law and they should not consider textual law as an impediment to justice. Two types of interpretation were focused upon during the course of the session which included textual or literal interpretation and purposive interpretation. It was also opined that public interest litigation could become an unruly horse if it is not circumscribed by judicial restraint. It was further stressed that the judiciary should not encroach within the domain of the executive. It was highlighted that P.I.L. have encompassed almost area and there is now enhanced public expectation for judicial interference in almost every domain. It was opined that it is important that the judges should undertake balancing act between competing value choices. It was stressed that it is important that appropriate scrutiny is undertaken so that judicial time and resources are not wasted. Another important area of concern which was highlighted was that it is important that a method should be devised to determine which applications should be entertained by the courts.

Session 3

Theme: Litigation during Covid-19 Pandemic

Speakers: Justice A. Muhamed Mustaque, Justice Atul Sreedharan

The session dealt with the aspects, nature and impact of litigation during the global emergency posed by the pandemic situation. It was iterated that the learnings from the pandemic surpasses the situational specifics, and depicts the core distilled potion, as a prototype to deal with any such forthcoming national or global challenge. The shift in paradigm owing to emergence, promotion and adoption of virtual mode enabling ease of access to justice, convenience in procedural *lis* and faster and relatively faster delivery (as against a grinding halt of the judicial machinery owing to exigent and compelling crisis situation), had laid down new twilight procedural lucidity. The session had been designed to filter out the best practices as a model to be augmented and roped-in into the regular court procedures and practices to enable and accentuate effective justice delivery both qualitatively and quantitatively. One of the learnings to be considered as a failure mode during the pandemic situation which had to certain extent led to operational and execution retardation (or paralysis on occasions) was pointed out to be the underutilization of funds by the judicial system. It was pointed out that the sub-utilization of funds had a direct and adverse impact on the deliverables. Although Indian judiciary could quickly and promptly break the inertia of halt to resume motion, the end result would have been much better (both qualitatively and quantitatively) had the system adopted the e-committees' agenda consistently and progressively all through its almost one & a half decade old journey. A much better show could have been projected during such unprecedented pandemic like situation had the infrastructure (both soft & hardware) been put in place and rolling. It was candidly analyzed that funds were not an issue *vis-à-vis* its effective and timely utilization. The stakeholders and the system of e-filing would have been put to test for its potency had the 15+ years blue-prints been timely executed by the judiciary. However, the pandemic situation pushed the system to an emergent SOS adoption of the e-judicial auxiliaries, only to demonstrate and exhibit a taste of its tremendous prospects. The various tools used by the High Courts in India to enable litigation during the pandemic was discussed with the bottlenecks faced. Tools such as "V Consol" platform, integrated e-project of Case Management System (CMS) by the Kerala High Court wherein an e-filing was integrated and made accessible to stakeholders *viz.* e-post, prisons, State Govt Offices, Central Govt. Offices, Subordinate Courts,

Standing Counsel, State police Dept., Treasury, AG/CGC etc. were discussed. Mobile “e-seva kendras” with mobile video conferencing facilities were demonstrated. It was boldly contemplated that the transition through the thick and the thin of pandemic, and with the misses and lessons learnt, whether digitized services might qualify to be raised to the level of fundamental right in years to come?

Session 4

Theme: e-Judiciary: Challenges and Opportunities

Speakers: Justice Sunil Ambwani, Justice R.C. Chavan

The brief trajectory of the scheduled unfolding of the three versions of the Case Information System (CIS) was traced. The impact assessment of various versions of the CIS, as it was slowly adopted and systemically assimilated was discussed. The major bottlenecks faced were discerned, which could be classified under myriad overtures including those which are internal to the judicial system (*viz.* slow and improper execution of CIS, lack of continuous domain knowledge and training, inability to maintain system up-time, lack of IT infrastructure including internet access, internet speed, bandwidth, customization and aligning of the digitization suitable to comply and serve the unique State Rules, etc.) and those impacting from outside the system (*viz.* budgetary issues, not having IT professionals to deal with IT specific issues etc.). A major issue surmounting the implementation of the e-court project was developing a “national standardized” program with auxiliary flexibility to accommodate State level procedural variations, mandated through the mosaic of different Rules. So the process re-engineering and training were underscored as two most important perpetual tool to navigate a flawless execution of various Phases of the CIS. It was briefly explained that the 1st Phase was in fact a priming phase where anchoring and basic foundations were fixed. In this Phase the basic infrastructure *viz.* hardware and basic software installations to prepare for the launch and take-off was planned. The 2nd Phase was a dynamic and more kinetic Phase. It saw large-scale digitization, enabling video conferencing (VC), capacity building and transparency boost through integration of pan Indian Courts with National Judicial Data Grid (NJDG the biggest repository of the case law status), etc. The ambitious 3rd Phase is now set to roll. Wherein, better monitoring, deep and pervasive access to justice, integration of AI to enable the justice delivery system, Voice over Internet Protocol (VoIP) augmentation, and the like, await the ambitious implementation and execution plans, to raise the mammoth Indian judicial

system to the next level. The judicial system was put to the litmus test during the unprecedented scenario of pandemic looming large, only to withstand the situation and not crumble to a fragile destitute state. It also has thrown SOS to the systemic fractures and lesions calling to mend and develop a more sustainable mega machine. The dichotomy of ease of access to judicial system using digital platforms (especially during the pandemic) to the oft (mis)quoted raise in pendency was attempted to be dissected. It was aired that it might not be accurate to presume that ease of e-enablement increased pendency indicating a systemic malfunction. In the paradoxical view it might as well be an indicator of rise in litigation volume owing to increase in awareness, rise in transparency, and ease of filing. The extending of the virtual mode post-pandemic to encourage a hybrid mode of judicial system was mooted. The session winded up with the sharing of the viewpoints of certain innovations and scuttles experienced by the High Courts during the unprecedented pandemic times.