

NATIONAL JUDICIAL ACADEMY



P-1308

**NORTH ZONE- I REGIONAL CONFERENCE ON “CONTEMPORARY
JUDICIAL DEVELOPMENTS AND STRENGTHENING JUSTICE
THROUGH LAW & TECHNOLOGY**

25th & 26th SEPTEMBER, 2022

Programme Report

PROGRAMME CO-ORDINATORS

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The National Judicial Academy (NJA) in collaboration with the High Court of Jammu & Kashmir and Ladakh and the Jammu & Kashmir Judicial Academy is organizing the North Zone – I Regional Conference which was attended by High Court Justices, Judicial Officers, High Court Computer Committee Chairperson and High Court Computer Committee Members at District Level from the High Courts of Delhi, Himachal Pradesh, Jammu & Kashmir and Ladakh, Punjab & Haryana, Uttar Pradesh and Uttarakhand. The conference provided a forum for exchange of knowledge, experiences and dissemination of best practices among participant justices and judicial officers under the respective High Court's Jurisdiction. The conference promoted dialogue between participant judges amongst judicial hierarchies on themes including Contemporary trends in Constitutional Law; Precedential value of judgments by the High Court; and Developments in Criminal Law: Issues and Challenges. The conference focused on effective judicial governance through contemporary technological advancements including artificial intelligence, blockchain as well as information and communication technology in courts vis-à-vis e-courts project.

Inaugural Session- Justice A. S. Oka

It was opined that the media has the right to criticize the judiciary but it should be constructive criticism and not motivated comments against the judge due to disagreement with the judgment rendered by the judge. There should be critiques of the judgments rather than casual remarks. It was highlighted that in the visual media and social media analysis of judgments are mostly undertaken without reading or understanding the entire judgment. Further, it was stated that judges should not be oversensitive to comments. It was opined that sometimes self-restraint of judges is misused and certain actions are undertaken which are clear attempt to scandalize the judiciary. It was advised that the judges should exercise restraint while making oral remarks. The issue of live streaming was also discussed and it was stated that open courts through live streaming would allow the common man to view the difficult process of decision making. Further, the issues regarding privacy in live – streaming was also focused upon. It was stated that members of the judiciary are answerable to the common man and that they should function in a transparent manner.

Session 1

Contemporary Trends in Constitutional Law: Recent Judicial Developments

Speakers- Mr. N. Venkataraman & Mr. S. Shekhar Naphade

It was opined that although judging is considered a divine function but judges should not consider themselves divine since divine is not accountable but the judges are actually accountable to the constitution. The judgments of *S.R. Bommai v Union of India* (1994) 3 SCC 1, and *Jindal Stainless Ltd. v. State of Haryana*, (2017) 12 SCC 1 were referred to highlight different facet of federalism in India. It was stated that apart from cooperative and collaborative federalism a new type of federalism has developed i.e. contestation federalism. The 101st constitutional amendment was highlighted and it was stated that new concept of pooled sovereignty was incorporated into the constitution through the inclusion of Article 279A. It was stated that the GST council created by the provision has met with tremendous success and almost 95% of the resolutions have been passed unanimously. Article 279A (6) has been introduced which states that the GST council is guided by the need for a harmonized market. The division of voting power between the states and the center in the GST council was also delineated .It was further stated that in GST Council the disagreements are resolve by the procedure set under Article 279A (11). It was emphasized that the concept of pooled sovereignty does not envisage surrendering of sovereignty.

In respect of prohibition, it was stated that in the legislations banning alcohol has been challenged in court and the judgment in *State of Bombay v .F.N. Balsara* AIR 1951 SC 318, and *Kerala Bar Hotels Association & Ors v. State of Kerala & Ors.* (2015) 16 SCC 421 were discussed. It was opined such legislations involve reconciliation and balancing between Article 47, 21 and 19 (1) (g) of the Constitution. It was also stated that there is friction between Part III and IV of the Constitution and it was opined that constitution does not work only on rights in absence of duties. Thereafter, the concept of *rex extra commercium* was also the subject of discussion during the session.

It was stated that in initial years of the Supreme Court the judges exercised judicial restraint and had a conservative approach but in the eighties the court undertook a more purposive interpretation and towards judicial activism . Subsequently, the session also included discussions on issue and instances of judicial overreach, judicial under reach and judicial abdication. The concept of

constitutional morality was elaborated upon and it was opined that constitutional morality is superior to social morality.

Session 2 Precedential Value of High Court Judgments

Speakers- Mr. N. Venkataraman & Prof. V. K. Dixit

The recent judgement of *M/s Trimurthi Fragrances (P.) Ltd. v. Government of N.C.T of Delhi* 2022 SCC Online SC 1247 was discussed in detail and it was stated that the decision of bench of larger strength will prevail over judgment of smaller strength irrespective of number of judges in the majority in the bench of lesser strength. It was stated that precedents are required for consistency, stability and efficiency in the hierarchy of courts. The process of extracting the ratio of a judgment was discussed along with application of precedent through generalization of facts. Thereafter, the origins of the principles of natural justice was elaborated upon along with the process through which it was developed. Further, the method of distinguishing a judgment and the concept of *sub silentio* and *per incuriam* were also focused upon during the session.

Session 3 Developments in Criminal Law: Issues and Challenges

Speakers- Justice P. N. Prakash & Justice R. Basant

It was opined that applications of bail, anticipatory bail and cancellation of bail is of vital importance since it concerns the liberty of an individual. The recent judgment of *Satender Kumar Antil v. CBI*, 2022 SCC Online SC 825 was discussed and it was stressed that liberty of an individual is sacrosanct and the judges should be guided by the principle that bail is the rule and jail is the exception. Further, it was highlighted that pretrial detention is not punitive and it was stated that presumption of innocence is an integral aspect of the criminal jurisprudence in the country. The tripod test for grant of bail was discussed which incorporates the following parameters i.e. gravity of offence, flight risk and interference with justice. It was stressed that the conditions imposed for grant of bail should have a nexus with the purpose or should have been contemplated under the statute. It was opined that detailed examination is not required in a bail

order. It was also opined that the judge should not worry about social media and should decide the matters without fear or favor.

On the theme of reverse burden, it was stated that under the Anglo Saxon jurisprudence the burden is on the prosecution. It was highlighted that reverse burden of proof which have been introduced in various legislations in India is not anathema to law. Further, the admissibility of statements to police officers was discussed along with admissibility of statements to other agencies under special legislations. The scope of term “proceeds of crime” in Section 3 of PMLA, 2002 as elaborated by the apex court in *Vijay Madanlal Choudhary v. Union of India* [2022 SCC OnLine SC 929] was also discussed during the session. Further , the twin bail conditions under section 45 of the PMLA, 2002 and the exposition of the Supreme Court in *Nikesh Tarachand Shah vs. Union of India* (2018) 11 SCC 1, which struck down the two pre-conditions for bail, for violating Article 14 and 21 of the Constitution was highlighted. Following this decision, Section 45(1) was amended in 2018. The 2018 Amendment substituted “*punishable for a term of imprisonment of more than three years under Part A of the Schedule*” with “*under this Act*”. The objective of this amendment was to modify the provisions in the light of *Nikesh Tarachand Shah* by making the bail pre-conditions under Section 45(1) applicable to all offences under the PMLA, and not solely to “*scheduled offences*”.

Session – 4 Overview of E-courts Project [e-Committee, SCI theme]

Speakers- Justice Sanjeev Sachdeva & Justice R. C. Chavan

The session on the *Overview of E-courts Project*, commenced by highlighting the transformational journey of E-courts project and how it has led towards efficient services and transparency. The year wise and phase-wise indicators as discussed and elaborated upon are as follows:

- ✓ Afore 1997- The National Informatics Centre (NIC) implemented the List of Business Information (LOBIS) in all High Courts and the Supreme Court.
- ✓ From 1997-2003 computerization of District Courts was started.
- ✓ The phase between 2003-2010 saw various initiatives taken by several High Courts like-
 - Customizable application software
 - Computerization of subordinate courts by developing browser bases
 - Case Information System (CIS) on open source etc.

- ✓ During 2006-2009 the first phase of the eCourts project started-
 - The e-Committee was formed which ultimately led to the National Policy and Action Plan
 - eCourts project.
- ✓ In the course of 2010-2014:
 - Various contemporary projects developed in Karnataka, Andhra Pradesh and Maharashtra
 - The Maharashtra model was selected to be deployed across the country
 - CIS was implemented; Online citizen-centric services and National Judicial Data Grid (NJDG) were also introduced
- ✓ The segment between 2015-2018 was the second phase of the eCourts project that focused on transparency and litigant centric services that included-
 - CIS 2.0, CIS 1.0 for High Courts
 - Services to stakeholders through various service delivery channels and digital payments of fines, court fees, penalty etc.
- ✓ The phase between 2019-2020 was towards digital courts which led to-
 - Virtual courts
 - e-Filing
 - Integrated CIS with Inter-operable Criminal Justice System (ICJS), Land Records, Treasury Portals, eChallan and
 - Open Application Programming Interfaces (APIs) was published

While discussing various facilities for judicial officers under eCourts the *JustIS Mobile App* and *SMS Alerts* were emphasised upon. The *JustIS Mobile App*, aids judicial officers to monitor pendency and disposal at finger tips; several reports are accessible in graphical and grid form; facility to label significant cases and mark short note for such case is available and; a judge can classify cases of significant nature on the cause list. Subsequently, the new portal for searching high court judgments called the *judgment search portal* was highlighted. This portal provides facility to search judgments on various parameters like- Case Type, Act, judge, decision date etc. including combination of five free text search criteria. The system is integrated with high court NJDG and can leverage all the benefits of NJDG.

***Session- 5 Emerging and Future Technology for Effective Judicial Governance [e-Committee,
SCI theme]***

Speakers- Justice Rajiv Shakhder & Justice Raja Vijayaraghavan V.

The session initiated by highlighting that Artificial Intelligence (AI) is a product of human intelligence which is designed by human beings to function as an enabler and touches upon various facets of human life i.e. Law, Policing, Medicine, Science, Defence, Education, Manufacturing process, Logistics and Politics. As discussed numerous ways in which technology enhances administration of justice are substantial reduction in processing time; speedy additional court processes; once filing information is in the court database, it can link the legal process to other platforms with nominal efforts; records can automatically move anywhere essential within the court's system; lesser possibility of human error in completing databases and; reduction in the amount of on-site document storage required by a court. Additionally, it was emphasised that technology is reforming the justice delivery system by assisting in notifying, supporting and advising stakeholders of the justice system, replacing tasks and activities that were hitherto carried out by humans and most significantly, a disruptive technology can change the way judges work and provide for an unlike forms of justice predominantly where processes change significantly. While discussing the emerging futuristic models in judicial governance it was stressed that technology can improve procedural efficiency, aid in decision-making processes, and even predict outcomes consistent with past precedent; enables parties to obtain information and court services using their smartphones; simplifying service of process; enables automated court messaging to parties and online dispute resolution etc.

It was accentuated that the future technology of AI in courts can be of immense help in organising information, improving procedural efficiency, advising potential litigants to arrive at a predictable solution, aiding decision making process, reducing arbitrariness in human decision making and predictive justice by analysis of large amount of data. It was stressed that correct and controlled use of AI has the potential to transform justice systems worldwide. It has to be borne in mind that AI cannot replace judgments written by humans nonetheless, it can be used as a support system and an augmentation tool. While discussing the global perspective on the use of AI in judicial governance the European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems

was highlighted. The said charter discoursed five principles namely- respect for fundamental rights; non-discrimination; quality and security; transparency, impartiality and fairness and lastly, “under user control”.

The session further discussed various safeguards while using technology in court and justice administration. It was suggested that human oversight, and discretion is needed to complement the efficiency of intelligent decision, it is to be ensured that AI tools do not become prescriptive by overshadowing case specific reasoning; judges ought to be vigil in using AI based supporting systems; judges should have meaningful autonomy so as to be able to deviate from the outcome of algorithm and the use of AI should be consistent with the constitutional values.

While discussing the contemporary technology of Blockchain it was emphasised that blockchain can be imagined as a decentralized database in which entries are unchangeably grouped in chronologically sorted, linked blocks. Various features of blockchain that includes Consensus, Provenance, Immutability and Finality were also elaborated upon. Thereafter, the E-Governance Model that has been conceptualised, created and implemented in the High Court of Kerala was briefly discussed. The session concluded by emphasising that by leveraging technology tools, courts can optimize their internal process and improve services to citizens through more efficient use of resources, increased reach and accessibility of justice, and improved transparency and accountability of court activities. However, while judicial transformation must be driven by court system professionals and users, policymakers must create the correct framework and an enabling environment.