

**Seminar on Judicial Reasoning: Knowledge, Skills & Perspective Development [P- 1310]
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The National Judicial Academy (NJA) organized a two-day seminar on the theme ‘Judicial Reasoning: Knowledge, Skills & Perspective Development’ for judges from the District Judiciary with the objective of enhancing the knowledge and skills of judges on the core aspects of the judicial role, and to develop a perspective on judicial reasoning. The discussions in the seminar focused on the core principles of judicial ethics including qualities, attitude and skills for effective judging; the use of logic in judicial reasoning; the art of judgment writing; and theories of judicial decision-making *vis-à-vis* how judges decide with the application of logic and reasoning. The sessions also included discussions on the engagement of non-legal factors which contribute to judicial reasoning such as constitutional morality, economics, politics and social issues. Emphasis was placed on subjectivity, objectivity, and rationality in the decision-making process. The important factors in judicial decision making including judicial precedents, relevant analogies, and public policy concerns were discussed and emphasis was laid on ensuring neutrality, legality and objectivity in decision making by judges.

The first session on *Qualities, Attitude and Skills for Effective Judging* commenced with the introductory remarks of the Director, NJA who impressed upon the participants that while judging is a divine function, it does not make the judge divine. Judges are accountable under the Constitution of India. Therefore, it is crucial to inculcate the essential judicial qualities to ensure appropriate judicial conduct. The speaker also emphasized on judging as a divine function, but pointed out that judges essentially provide a public facing service which entails that the judge is subject to scrutiny. Therefore, it is imperative that judges effectively perform their role. The tools necessary for effectively performing this public facing service of judging are competence and compassion. The qualities of a good judge as stated by Socrates – ‘*To hear courteously; to answer wisely; to consider soberly; and to decide impartially*’ were quoted to emphasize on the appropriate judicial attitude. In the discussions, the following essential qualities of a good judge were highlighted *viz.* judicial temperament, intelligence, knowledge, communication skills, ethics, courage, integrity, character, and awareness of socio-economic realities. Judicial temperament was stated to encompass the manner in which the judge conducts the court, the manner in which the judge hears the case and how he/she ensures litigant participant in the case. It also includes the ability to apply the rule of law to the facts in the case. The essential judicial virtues of independence, impartiality, patience, courtesy, punctuality and humility were also emphasized upon. Participants were also advised to build their competence by striving to increase their knowledge through regular reading and research. Courage and integrity were emphasized as a necessary judicial quality as judges must be able to decide impartially despite media and social media coverage and criticism. Clarity of objectives and firmness of conviction were also underscored as important traits of a good judge. It was stated that a judge must not only possess these qualities, but must also demonstrate these qualities while performing the judicial role.

It was stated that the judge's duty is to render justice which encompasses a speedy, effective and competent adjudication of disputes in accordance with law after due hearing. Such adjudication should be in a fair and impartial manner, which is tempered by equity, equality and compassion. The participants were cautioned against adopting the role of a social reformer, and were advised to decide according to the law. It was underscored that the conduct of a judge, the fairness of hearing given and the just and equitable decisions delivered by the judge earn him the trust and respect of the Bar and the public. The following judicial skills were elaborated upon in the course of the discussion - thorough knowledge of procedures; broad acquaintance with substantive law; art of giving proper hearing; marshalling facts and writing good judgments; handling interim prayers and requests for adjournments; and ability to ensure timely justice and to eliminate delay

The five ethical principles to be cultivated and maintained to be a good judge were stated to be honesty and integrity; judicial aloofness and detachment; judicial independence; judicial temperament and humility; and impartiality. The requisite administrative skills for a judge – time management, board management, registry management, Bar management, and self-management were discussed. Ethical conundrums in the judicial role such as public scrutiny of the personal life of a judge, impact of social media on judges and judicial outcomes, subconscious bias in judging were deliberated upon. The judgments in *SBI v Ajay Kumar Sood* [2022 SCC OnLine SC 1067], *Muzzafar Husain v State of UP* [2022 SCC Online 567] and *T. Arivandandam v. T.V. Satyapal*, [(1977) 4 SCC 467] were referred to in the course of the discussion.

The second session on ***Subjectivity, Objectivity, Rationality in Decision-Making Process*** commenced citing Thomas Fuller – “*When a judge puts on his robes, he puts off his relation to any; and becomes without pedigree.*” Neutrality in judging was stated to be the ability to decide without fear or favour. The types of bias listed in the book “How Judges Decide” by Andrew Goodman were alluded to. It was stated that judges think they are doing justice but in reality judges decide cases as per the law; what is justice in such decisions is perceived by the public. The Restatement of Values of Judicial Life was referred to in the discussion and the opening line of the same i.e. “*Justice must not merely be done but it must also be seen to be done.*” was quoted.

The judgment in *Dimes v Grand Junction Canal Proprietors* (1852) 3 HL Cas 759 was cited to emphasize that judges should not appear to be biased. Further, the judgment in *R v Sussex Justices, ex p McCarthy* [1924] 1 KB 256 on the impartiality and recusal of judges was highlighted to emphasize on the principle that the mere appearance of bias is sufficient to overturn a judicial decision. The judgment in *R. v. Rand* (1866) L.R. 1 Q.B. 230 was cited to emphasise that “*any direct pecuniary interest, however small, in the subject of inquiry, does disqualify a person from acting as a judge in the matter*”

The external biases that impact a judge in the decision-making process were briefly touched upon. Further, emphasis was placed on implicit biases as the invisible influences on the judge. The concept of bias was explained and it was stated that the decision-making process is subject to intrinsic errors. The major forms of bias were elucidated viz. confirmation bias, hindsight

bias, availability heuristic, extremeness aversion, and affiliation bias. Reflexive and Reflective decision making were explained. Behavioral economics principles were highlighted in the discussion to understand why people deviate from rational action in decision-making; and the impact of influences like biases, faulty heuristics, loss aversion, perceived social norms, heightened emotions, mental fatigue, choice overload, and situational framing on decision making were discussed. The examples of bias in behavioral economics such as Knee jerk bias, Occam's razor bias, Silo effect confirmation bias, Inertia bias, and Myopia bias were discussed. The various factors which cause bias in decision making were listed out –

- Affinity i.e. tendency to associate with similar persons
- Confirmation i.e. peer pressure
- Attribution i.e. personal impressions
- Conformity i.e. following personal values
- Halo Effect i.e. revering certain persons
- Gender
- Ageism
- Religion
- Anchor Bias i.e. basing the decision on a value, belief or any reference point
- Authority i.e. deference to persons in authority
- Overconfidence

It was emphasized that in judging, the judge is not tasked to judge people, rather they judge their actions. The influence of bias and prejudice impinge in this role as we can judge such actions based on our own perception. Judges are human but are expected to judge impartially like a computer. However, it must be kept in mind that every litigation is a human interface problem. All judges at all levels of the judicial hierarchy grapple with this issue of bias and objectivity. The participants were advised to judge the matter according to the facts rather than on the basis of the person in the case. This is a tool to eliminate bias. The participants were also advised to ground their decisions on the Constitution of India. The values enshrined in the Constitution and the conscience of the Constitution were emphasized as important considerations in decision making. It was cautioned that the conscience of the individual should not prevail over the constitutional conscience. The role of the District Judiciary under the Constitution was elaborated upon. The participants were advised to eliminate their ego while judging and to inculcate humility. It was underscored that the judge's value system should not influence the decision. The individual conscience can only come into play when it adheres to the constitutional conscience. Reference was made to the Harvard self-assessment questionnaire on bias and the participants were advised to regularly self-assess and self-evaluate; and to be their own critic. It was also discussed regarding the potential bias in cases where a judge has a bank account in the bank which is before the court as a litigant. In this regard, the participants were advised to refer to the Bangalore Principles of Judicial Conduct and to assess if they are likely to be affected by the fact of having a bank account in the said bank. If they feel they will be affected and likely to be bias they should recuse. It was opined that in cases where the outcome of the case will impact the value of the interest held in the bank or company, then the judge should recuse from hearing the case. In all cases, the judge should disclose any potential conflict of interest.

It was stated that the main challenges in effective judgment writing are lack of clarity of thought and ineffective language skills. The judges were advised to have thorough knowledge of the law, and be conversant with the facts of the case and the submissions of the parties. Reasons were stated to be a crucial part of a good judgment. Further, it was stated that the reasons must bridge between the facts in issue and the decision/outcome of the case. It must lucidly explain the rationale linking the law to the facts and should justify the decision of the court. The participants were advised to cite only relevant and/or unique precedent. Multiple precedents need not be cited where the law is settled. Further, the participants were advised against verbatim quoting of the pleadings and the submissions of the parties. It was stated that judges should write lucid judgments which are comprehensible and precise. Judgments should not be used as a tool for legacy building, rather it should be written with the reader in mind to ensure that the parties in the case and the appellate court are able to understand the decision and the reasons for the same.

In the third session on *Interference of Personality in Judicial Reasoning*, Benjamin Cardozo and Oliver Wendell Holmes were cited as legendary judicial persons as role models to emulate. The ideal role to be adopted by the judge was elaborated upon, and it was stated that in reality each person is a mix of tendencies which impact the actions and decisions of the person. It was stated that the court is an institution but it comprises of individuals possessing varied ideologies, varied character traits and personalities which impact the course of law. A judge is not an impersonal deciding machine. A judge is expected to decide cases objectively. It was stated that to ensure objectivity, judges need to subordinate their personal views and convictions to the rule of law.

Personality was stated to be an implicit bias which is based on several factors including one's age, gender, personal experiences and personal trigger points. It was cautioned that arguments before the court may not necessarily represent the whole truth, and may be embellished. It is therefore necessary for the judge to apply his mind to the facts to unearth the truth. Further, the participants were advised to be conversant with the social milieu and social realities which vary from one region to the other. This will assist them in delivering socially relevant decisions. The types of personalities – thinker, persister, harmonizer, imaginer, rebel, and promoter – were dwelt upon. Personality was emphasized as a sum of character traits of each individual.

The first crucial step to address the impact of personality in judicial reasoning is that the judge must recognize that he can be influenced. Thereafter, the judge must make efforts to reduce or minimize the influence of these factors on the decision making process. Appropriate judicial conduct, both on and off the Bench, was advised. Practices of sycophancy and genuflection and condescension were decried. Judicial independence both from external and internal influences was emphasized upon.

Judicial aloofness was dwelt upon, and it was stated that judicial aloofness does not mean that a judge has to isolate himself in an ivory tower. The impact of external influences on judicial decision making was analyzed. It was stated that family, social circle and personal experiences of the judge impinge on decision making by the judge. The need for balance was underscored

and it was stated that judges should ensure that their personal ideology or philosophy should not become the thumb rule for deciding all cases.

Emphasis was placed on courtesy as a means to foster harmonious relations with the Bar. Harmonious and cooperative functioning was stated to be the means to ensure effective Bar and Bench relations. On recusal from cases listed before the court, it was advised that the judge must give reasons for such recusal. It was stated there is no quick and easy fix to achieve harmonious Bar and Bench relations. It was opined that a competent, honest and hardworking judge gains the respect and cooperation of the Bar.

Pressures imposed by the Bar, strikes by the Bar, and judicial hierarchy were identified as constraints on the court. It was debated whether law operates as an external constraint. Emphasizing on the operation of precedents as an external constraint, Benjamin Cardozo was quoted “The judge is not the knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness.” It was also debated whether technological advancements operates as an external constraint on the judge. Internal constraints including the judge’s ability and skill, pendency, judicial targets, and time were also dwelt upon. The judgment in *Goolrokh M. Gupta v. Burjor Pardiwala* MANU/GJ/1005/2012 was referred to in the discussion. The judges were advised to inculcate compassion and empathy in judging.

The fourth session on ***Constitutional Morality in Judicial Reasoning*** commenced by highlighting that District judges must always strive to secure rights of the people and to do so every step of the process is of coercive nature, however, legitimacy to do so comes from morals. It was underscored that judgments should be true to the constitutional values and ethos. The history pertaining to framing and adoption of the Indian Constitution including the Constitutional Assembly debates were deliberated upon. Judges were suggested to read the book by Granville Austin, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION*. A pertinent question was posed during the discussion as whether the law reform the society or does society reform the law. Various landmark judgments of recent on Constitutional Morality were discussed at length including *Indian Young Lawyers Association & Ors v. The State of Kerala & Ors.*, (2019) 11 SCC 1 [Sabrimala Temple case]; *K. S. Puttaswamy (Aadhaar) v. Union of India*, (2019) 1 SCC 1 [Right to Privacy]; *Aishat Shifa versus State of Karnataka*, SLP(c) 5236/2022 (Hijab Case); *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321 [Decriminalization of Sec. 377 to the extent of homosexuality]; *Joseph Shine v. Union of India*, 2018 SC 1676 [decriminalized adultery, striking down Section 497]; and *Shreya Singhal v. Union of India*, (2013) 12 SCC 73 [on Sec. 66A of IT Act]. The session also included reference to judgments on live-in relationships and interplay between POCSO and Marital rape cases. It was emphasized that the judicial system is very important since they are endowed with the duty to protect the rights of citizens. It was stated that judgments must be backed by law. It was debated that can morality intervene law highlighting instances of marital rape cases wherein there are divided thoughts.

It was suggested that judges must draw strength from the preamble to the Constitution. The term constitutional morality was defined as something not explicit but implicit in the text of the Constitution. It was opined that, it is possible to pervert the Constitution without changing

its form and that constitutional morality is not a natural sentiment, it has to be cultivated. Further, it was stated that self-discipline and self-restraint are a sense of constitutional morality. Distinction between social morality, responsibility and constitutional morality were highlighted. Some jurisprudential aspects on the subject were mentioned including Bentham's theory of legislation and morality from natural law. It was opined that evolution of constitutional morality started from positioning of our preamble. The judgment in *Kesavananda Bharati v. State of Kerala* [(1973) 4 SCC 225] was cited to emphasize that Preamble is no more a key to the Constitution but very much a part of the Constitution. How the right to life has evolved and expanded through judgments was also discussed. It was stated that Preamble is the fountainhead and the vehicle through which the court projects constitutional morality in its judgments.

A few examples of constitutional morality were cited viz. doctrine of reasonable classification wherein justification for discrimination of a certain class of people may be considered as constitutional morality, colored interpretation of Part III of the Constitution, right to property read under Article 21, right to faith *versus* right to equality, morality under Art. 19(1)(4) & Art 25, constitutional morality through judicial review, invoking Art. 142 on complete justice during pandemic to meet the situation of congestion in jails, etc.

Following suggestions were made during the course of discussion that district judges must have knowledge of developments in Constitution law and how law develops, that they must own and possess the Constitution and allow the Constitution to possess in them which will help to enhance a sense of responsibility while delivering judgments, respect for rule of law and aim to promote justice, equity & good conscious. The recent judgment in *Dobbs v. Jackson Women's Health Org.* 597 U.S. (2022) was referred which overruled the judgment in *Roe v. Wade*, 410 U.S. 113 (1973). Basic Structure and its linkage with constitutional morality was also deliberated upon.

The session concluded with the following remarks that constitutional morality is unruly horse and it will grow like the basic structure, that personal morality should never be applied in the judgment, and lastly, judges were suggested that they may bend the law, expand the law and test the law to do justice but never break the law, and to interpret law in a way that it improves the law and the society for better. A reference was made to the book *COURTS ON TRIAL* by Jerome Frank.

The last session was on the theme ***Logic in Judicial Reasoning***, which was commenced by a word of caution that no injustice must be done to a litigant. It was highlighted that logic is that which establishes a relationship between inference and the information available with judges. It was stated that logic helps to draw conclusion and judges were suggested to observe facts in entirety like a doctor and then think of which law to apply and the remedy thereby. The discussion focused on how decisions are made and aspects related to decision making process. It was emphasized that judges have a duty towards the litigant to justify with reasoning their decision in a judgment. With regard to logic it was also mentioned that logic is drawing inference at one level and then articulating inference for the general public. Deriving everything stage by stage to satisfy the litigant and convince them that no injustice is caused to his part of the view is an important aspect while making decision by judges. Judges were

suggested to filter out facts which need not be proved, relevant & irrelevant evidences before them, and to be focused on principle of burden of proof while drawing inference.

On logical fallacies it was accentuated that personal presumptions and personal experiences of judges may lead to negative interference with logic. However, it was opined that if judges embrace Constitutional values and Constitutional morality then they will not faultier. It was stated that facts and issues which are proved straight away is easy but facts and issues not proved easily are instances where judges have to apply their sense of justice. It was stressed that writing judgment is not an easy task and that judges must give bare minimum time required for writing judgement. Further, it was cautioned that framing charges and framing of issues are very important and should not be left upon court officers.

Further, the session dwelt upon the importance of articulation while decision making emphasizing that judges must articulate with calm mind, collect their ideas and pen down on a paper what they want to project. Reasoning is the basic structure of a judgment and that reasoning must be given in a language which is comprehensible. The judgment in the case *SBI & Another v. Ajay Kumar Sood*, (2022) SCC OnLine 1067 was referred wherein the Apex Court held that reasoning in the judgment should be intelligible and logical, clarity and precision should be the goal...writing judgments is an art, though it involves skillful application of law and logic. Following other judgments cited during the course of discussion included *A.K. Kraipak v. UoI*, AIR 1970 SC 150 and *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 to emphasize on applying principles of natural justice and procedure established by law which is reasonable. It was elaborated that reasoning given is logical if it serves the purpose of the context.

The session also involved discussion on flexibility of the principles of natural justice and interpretation of the Constitution. A reference was made to the judgment in *Devdutt v. Union of India*, 2008 (8) SCC 725 relating to Annual Confidential Report. It was explained that there must be application of judicial mind so that authorities do not act in arbitrary manner.

Lastly, following key points were delineated on the subject viz. reasoning on rights between parties and reasoning of law, that judgments have captive readership which is read by lawyers, litigants, judges and therefore judgments should be like a story, precise and clear. It should include background, facts, application of law and then arrive at a conclusion. Reasoning is the soul of a judgment and it was suggested that every conclusion be backed by logical and sound reasoning.