

**West Zone-I Regional Conference on “Contemporary Judicial Developments and
Strengthening Justice through Law & Technology”
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The National Judicial Academy (NJA) in collaboration with the Rajasthan High Court and the Rajasthan State Judicial Academy organized the West Zone-I Regional Conference at **Jodhpur (Rajasthan)** on **29th & 30th October, 2022**. The conference aimed to provide a forum for exchange of knowledge, experiences and dissemination of best practices among participant justices and judicial officers under the respective High Courts’ jurisdiction. The conference was designed to promote a 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 also focussed 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. The sessions were conducted through andragogic practices including interactive and participative sessions.

Inaugural Session

The conference was commenced with the inaugural address by Hon'ble Mr. Justice A.P. Sahi, Director, National Judicial Academy. The objective behind the Regional Conference was explained and it was emphasized that the Conference provides the opportunity to address regional problems in judicial system and to promote discussions between the stakeholders of the Judiciary. Then Hon'ble Mr. Justice Pankaj Mithal, Chief Justice of Rajasthan High Court expressed thanks to dignitaries for participating in the Conference and expressed the utility of the Regional Conference. It was emphasized that it is necessary to sensitize judicial officers and they must be equipped with the latest tools and technology to strengthen judicial administration. The relationship between law and technology was elaborated. Justice B.S. Chauhan then expressed his views on the Regional Conference. The efforts of the district judiciary were appreciated and concern was expressed on false complaints against judges. It was emphasized that credibility of each institution is being degraded under a misconception of freedom of speech and expression. Shri Kalraj Mishra, Hon'ble Governor, Rajasthan stated that it is said that democracy develops when the Judicial system is strengthened. Judiciary is very important for any state and society. Our country is the biggest democratic country, so everyone has hopes from the Judiciary. In order to strengthen the judicial system efforts must be made at all stages. It was highlighted that in ancient times the principles of morality and the rights of people were provided through Smritis. In Manusmiriti we find different courts for civil and criminal matters and provision for appeal. In Vedic times law was regarded as Dharma and the Indian society was based on the rule of law. The efforts of judiciary in ensuring rule of law were appreciated. Then the vote of thanks was expressed by Hon'ble Mr. Justice Sandeep Mehta, (Administrative Judge, Rajasthan High Court & Chairman, Rajasthan State Judicial Academy)

Session 1: Contemporary Trends in Constitutional Law: Recent Judicial Developments

Speakers: Hon'ble Mr. Justice B.S Chauhan & Mr. Shekhar Naphade

The session was commenced by Hon'ble Mr. Justice A.P. Sahi, Director, National Judicial Academy and it was opined that regarding federalism it can be said that there is a separation of power but there is no separation of purpose. Judiciary, executive and legislature, all work for people. The issues regarding Centre-State relations and the relationship between departments were elaborated. Then the speakers explained various essential features of the Indian federalism. It was opined that our Constitution has been substantially adopted from the Government of India Act 1935 and as per the Indian requirements necessary changes were made. The provision for federalism was also taken from the said Act. Article 355 and Article 356 were referred in this regard. It was opined that our Constitution leans towards Unitary Constitution but for convenience of working it has a federal structure. Then the focus was given to the right of freedom of speech and expression and it was emphasized that restrictions under this right elaborates situations on what one is not permitted to say.

The Declaration of the Rights of Man of 1789 of France was referred and it was opined that it provided for the free communication of ideas and opinions. The idea from Rigveda i.e. let noble thoughts come to us from every side was referred. It was emphasized that the freedom of speech and expression is the first human right to make life meaningful and it is a basic right acquired by birth. Reasonable restrictions on this freedom are imposed when it undermines the security of the state. In this regard judgments *Romesh Thappar vs The State Of Madras* 1950 AIR SC 124, *Brij Bhushan* (1950 AIR 129) and *Ram Singh* (1951 AIR SC 270), *Shreya Singhal v. Union of India* (AIR 2015 SC 1523) and *S. Khushboo vs Kanniammal* (2010) 5 SCC 600 were referred. It was opined that morality and criminality are not co-extensive and it is for the parliament to define what an offence is and what reasonable restrictions are.

The speakers then referred to Dr. B. R. Ambedkar and said that good implementation of the Constitution depends on good persons. Speaking on federalism it was opined that executive power at the centre is exercised in the name of the president with aid and advice of ministers. The power of the President and Governor was compared. Various Articles of the Constitution were referred to discuss federalism in the Indian Constitution. It was opined that certain provisions clearly shows that the Constitution in practice tends towards unitary system. The use of Article 356 was discussed and speaker said that over the years the use of Article 356 shows that this power is being exercised for collateral purposes and the bonafide exercise of this power is rare and it strikes at the root of federalism. The concern was expressed on delay in the disposal of such cases. The judgments *S. R. Bommai v. Union of India* (1994) 3 SCC1) and *State of Rajasthan & Ors. vs. Union Of India* (1977) 3 SCC 592 were referred in this regard.

The speaker then expressed views on the prohibition policy and stated that from the standpoint of constitutional law the prohibition has no basis at all. The meaning of *res extra commercium* was explained to participants. The issues surrounding social morality and constitutional morality were discussed. The concern was expressed on trial by media and the case related to the auction of 2G spectrum was referred. It was opined that media sometime tend to influence decision making which is not a good trend. Media seems to cross the line and there is no legislation to control it.

Session 2: Precedential Value of High Court Judgments

Speakers: Hon'ble Mr. Justice B.S Chauhan & Mr. Shekhar Naphade

The session was commenced by Hon'ble Mr. Justice A.P. Sahi, Director, National Judicial Academy by emphasizing certainty in the decision making process with the proper use of precedents. It was opined that innovations in law should be in the larger interest of the society. It was emphasized that deviation from precedents requires caution when one is being tempted to give new shade to law. It was suggested that one should not follow overruled decisions or wrong decisions and the job of the judiciary is to streamline justice and to interpret the law.

The speakers then differentiated between Ratio Decidendi, Obiter Dicta and casual observation. The judgment of the Bombay High Court AIR 1955 BOM 113 by Justice Chagla was referred in this regard. It was opined that the ratio of the case is that part of the finding in a judgment which is necessary for the court to decide the case and the case cannot be decided without deciding that point. Rest is either obiter or casual observation. Further distinguishing Obiter and Ratio it was stated that an obiter is a Court's view on an issue which arises before the court but it is not necessary to decide that issue while casual observation is the observation that the court makes while passing the judgment.

While discussing the concept of ratio decidendi it was opined that in every case there is a connection between factual matter and proposition of law and a slight change in the factual matrix will bring a different result. Therefore judges required to be careful in finding that whether the factual matrix is same or not. It was further added that obiter is not binding on the same bench of the Supreme Court but it is binding on all High Courts. Casual observation by High Court is not binding on Subordinate Courts. The judgment Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala & Anr. (1973) 4 SCC 225 was referred. The issue whether the judgments of Privy Council are binding on Indian courts was discussed and Article 372 of the Constitution was referred. The interpretation of Central laws was discussed and it was opined that it is interpreted differently in different parts of the country. Section 24 of the Hindu Succession Act 1956 was interpreted by different courts differently but finally settled by the Supreme Court. It was further added that such a situation makes number of cases pending in Apex Courts for several years and the same law being operated differently in different parts of the country. The speakers suggested that there should be some kind of self imposed restriction to not to differ without proper reasons. The speaker said that lawyers tend to hide relevant precedents which do not support their case and it was suggested that judges should do their independent research to address this problem. The judgment M.V. Elisabeth and Ors vs. Harwan Investment AIR 1993 SC 1014 was referred with regard to the interpretation of laws. The concern was expressed on the unnecessary length of the judgment and different High Courts having different views on the same laws. It was suggested that the court should not differ unless required by the situation.

On the issue of binding force of the judgment of High it was opined that High Court is the court of record and by virtue of Article 227 of the Constitution it is implied that all courts in the jurisdiction are bound by decisions of the High Court. It was opined that ensuring discipline in application of precedents ensures uniformity, predictability and consistency in the system and it prevent bias, prejudice, arbitrariness, divergent views and ambiguity in law.

The speakers then referred to judgment Shanti Fragrances vs Union of India (2018) 11 SCC 305 to discuss the situation of reference to a larger bench and the issues related to binding force of the judgment. It was opined that the controversy is resolved in Trimurthi Fragrances

(P) Ltd., through its Director Shri Pradeep Kumar Agrawal v. Government of N.C.T. of Delhi, through its Principal Secretary (Finance) and Others 2022 SCC OnLine SC 1247 and now the position is that the majority decision of a bench of larger strength would prevail over the decision of a Bench of lesser strength, irrespective of the number of judges constituting the majority.

The judgments Distributors (Baroda) Pvt. Ltd vs. Union of India AIR 1985 SC 1585 and Hotel Balaji v. State of Andhra Pradesh AIR 1993 SC 1048 were referred and it was opined that perpetuating an error is no heroism and rectification is the compulsion of judicial conscience. It was further added that it is not only proper but obligatory to rectify the error. Errors should not be perpetuated and reasons should be given as to why they were wrong.

The judgment Rupa Ashok Hurra vs Ashok Hurra (2002) 4 SCC 388 was referred and the issue of curative jurisdiction was discussed. It was opined that the Supreme Court can depart from its previous decisions when it is convinced of error and when its effect is not in favour of public interest. The issues related to per incuriam judgments where judgments are passed in ignorance of law were discussed. The rule of sub-silentio when the particular point of law involved in the decision is not perceived by the court was discussed. It was opined that the court is not bound by an earlier decision if it was rendered without argument, reference or citation of authority.

Session 3: Developments in Criminal Law: Issues and Challenges

Speakers: Hon'ble Mr. Justice Atul Sreedharan & Hon'ble Mr. Justice G. R. Swaminathan

The session was commenced by Hon'ble Mr. Justice A.P. Sahi, Director, National Judicial Academy by highlighting the history of the law of bail since last 150 years and it was emphasized that it encompasses within itself the constitutional value of liberty which we preserve under Article 21. The complexity of bail matters in financial frauds and economic offences was discussed and the judgment of the Supreme Court in Vijay Madan Lal Choudhary vs. Union of India 2022 SCC Online SC 929 was referred.

The speakers emphasized that curtailment of liberty is a very serious matter and Article 21 provide a broad scope for the protection of liberty. The issues that when police take action in curtailing freedom in the course of an investigation then what procedure should be followed by police was discussed. The speakers said that the Supreme Court and High Courts held in various judgments that generally the law is in favour of bail and not jail but it remained in judgments and rarely given effect till Armesh Kumar v. State of Bihar (2014) 8 SCC 273. This judgment laid down that the power of arrest should be cautiously exercised for the offences having punishment up to seven years and arrest must be done in exceptional circumstances. The police should have strong reasons when the freedom of the person is required to be curtailed. The judges must ensure that guidelines laid down in the judgment have been followed by the police.

It was emphasized that court must ensure that all reports and documents are submitted along with the charge sheet if they are necessary to decide the bail applications. Various suggestions were provided to decide the bail applications in an expeditious manner. The ICJS system enables interlinking of police, revenue authority, FSL and courts and courts can get relevant documents through this system. Then the speakers focused on handling media pressure. It was

emphasized that court should never succumb to media pressure and should strictly decide according to the law.

The speakers then referred to the jurisprudence of the Supreme Court on electronic evidence and judgments *State (NCT Delhi) vs. Navjot Sandhu* (2005) 11 SCC 600, *Bruno vs. State of Uttar Pradesh*, (2015) 7 SCC 178, *Shafi Mohammad vs. State of H.P.*, (2018) 2 SCC 801 and *Anwar P.V vs. P.K. Basheer & Ors.*, (2014) 10 SCC 473 were referred. The speakers opined that the Section 65B has created more confusion than clarity and there has to be a second look at this.

The speakers then opined that the principle of bail emanated from the first principle of innocence and it was emphasized that one should have a checklist of how to grant bail and not a checklist of how to refuse bail. It was further suggested that there should be balance between liberty of the individual and societal interest and the judicial discretion should be applied in accordance to the law and not in spite of the law.

The speakers then focused on the principle of reverse burden of proof and it was opined that burden does not shift but the onus keeps changing back and forth. The judgments related to the Prevention of Money Laundering Act, 2002 and Section 24 of the Act were referred. Regarding the validity of reverse burden it was opined that India is obliged under international law to take strong measures against the menace of money laundering and the PMLA Act is a step towards fulfilling this obligation. The reverse burden is not introduced for the first time and many statutes have this principle. The judgments of the Supreme Court were referred in this regard. The judgment *Woolmington vs. DPP* (1935) UK HL 1 was referred. The reasons for sustaining reverse burden in certain offences were highlighted and the judgment of the Bombay High Court i.e. *Shaikh Zahid Mukhtar vs State of Maharashtra Writ Petition No. 5713/2015* was referred in this regard. It was emphasized that the reverse burden does not detracts court from the standard of fairness or reasonableness during the trial. The judgments *Noor Aga vs. State of Punjab and Anr.* [(2008) 16 SCC 417], *Sher Singh vs. State of Haryana*, 2015 3 SCC 724, *V.K Mishra vs. State of Uttrakhand* (2015) 9 SCC 588 and *P.N. Krishnalal vs. Government of Kerala* (1995) Suppl 2 SCC 187 were discussed.

Session 4: Overview of E-courts Project

Speakers: Hon'ble Mr. Justice R.C. Chavan & Hon'ble Mr. Justice A. Muhamed Mustaque

The speaker underlined the need to develop an in-house system for procuring the "Data" and the e-Committee is committed to that work because the same cannot be given to an open source keeping in mind the importance of 'Data' in our judicial system. It was highlighted that the NIC would help in providing sufficient technical support in our judicial system for reducing the number of hearings of the cases and also reducing the length of litigation. While discussing the Phase-III, it was said that the length of litigation would be minimum, at least one year and if the case goes to the High Court, the length would be two years. Furthermore, the e-Committee with the Department of Justice developed a program and the Project was financed by the Government of India for the time being. The role of State Governments in such projects would be ensured and for the running of such projects, the PPP Model was suggested. It was mentioned that the Memorandum of Understanding had been signed with CSE Limited. The facility of Petition Writers would be provided by the Company. If the Advocates register themselves with the Company, all the facilities would be provided to them upon payment of fees. Appearance through video conferencing was also discussed. The structural aspect of the Court Buildings and the need for new buildings for the running of the

Courts would be met in the next five years. To achieve the goal of paperless working, digitalization of the record was discussed. Sending the notices and their service through digital mode was also emphasized. The need to develop a system was also discussed which will be helpful in the early disposal of the cases. Emphasis was given that the Judicial Officers in the Country will work 24x7. They need not come to the Courts/Offices, just work from home or their residential offices. The aspect of live streaming of the Court proceedings was also discussed. It was said that live streaming of the Court proceedings has to be done to build confidence in the judicial system. It was also discussed that Annual Confidential Reports should be filled-in to correct the Judicial Officers by judging their performance and to upgrade the knowledge/skills of the Judicial Officers, role of Judicial Academies would be highest.

The aspect of liberalization and transparency for the betterment of the judicial system was also discussed. It was said that the system would be developed for the citizens of the Country for access to justice. Services would be provided from home and everyone has to reach for justice from their homes. A system needs to be devised whereby just clicking the button, thousands of credentials will be opened and one can see/search the status of the case by allowing the live streaming of the court proceedings, one can see what is going on in his case. The need for digitalization of the documents, filing of the documents or cases through e-filing, and then, filling all the required 'Data', on the Dash-Board was highlighted. While speaking about JUSTICE APP, it was said that it is a smart tool for self-appraisal of the judicial officers and a performance analysis tool at the High Court level. It enhances the judicial performance of the officers by giving accurate 'Data' regarding the Court manned by the judicial officers. It was further said that in the High Court, the Portfolio Judge/Guardian Judge of a particular district would monitor the functioning of the Courts in the District. The session stressed the need for paperless Courts in the District. During the course of the session, a video was shown live from the Court in which, it was seen that a witness was standing in the witness box and the court proceedings were going on smoothly. The challenges to be faced in making the Courts paperless and Challenges in the service of process/notices digitally were discussed. The High Court of Kerala is the first paperless Court and the facility of e-filing in all segments is provided in the High Court, therefore, there is no need for any physical office, a lawyer can send his document/case papers by clicking on a button on Dash-Board. One can simply operate from his laptop. A suggestion was given by the participant that Forensic Science Laboratory University should be opened in all the States so that the judicial officers would be trained which would be helpful in the trial of the criminal case. Lastly, it was mentioned that a judge is required to do justice, not just to decide the case.

Session 5: Emerging and Future Technology for Effective Judicial Governance

Speakers: Hon'ble Mr. Justice Suraj Govindraj & Hon'ble Mr. Justice Raja Vijayaraghavan V.

The session began with an explanation of how technology enhances the administration of justice. Throughout the justice delivery system, technology can be used to inform, support, and advise people. In addition to replacing functions and activities, it can also change how judges work. Emerging futuristic models in judicial governance like enabling automated court messaging to parties, enabling online dispute resolution, use of technology to simplify the service of process, etc. were highlighted. Information about e-Sewa Kendras and Dash-Board was discussed. It was further stated that the Kerala High court has its own IT Personnel/Experts and the system is automatic. The speaker emphasized the collection of and security of data by filing cases through e-filing in phase – III. The use of Artificial Intelligence was discussed during the discourse. The benefits of Machine Learning tool like

assisting in the intelligent scheduling of cases and the creation of cause list was emphasized. Smart e-filing, intelligent filtering, tracking of cases, use of speech recognition techniques, translation, etc. were highlighted. The session covered the systems/software called SUVAS and SUPACE in our judicial system. The software of CASEMINE (for searching a judgment for the purpose of reference), QUILLBOT (for reducing the words, meaning thereby picking out the keywords from the judgment and giving a summary of the judgment), MANUPATRA, BLOCKCHAIN and SMART CONTACTS. Benefits and potential uses of AI were discussed at length like streamlining administration, automation, transparency, predictive Justice, etc. The fundamentals of Machine Learning and Deep Learning like how they gather information, analyze and understand the information, and also make decisions based on the understanding were underscored. To draw the analogy between the different jurisdictions, the example of the US Justice System was given by saying that in the US, they used COMPAS & PSA system in their judicial system. Similarly, the European Courts of Human Rights (ECHR) used a system called AVATAR and the Brazilian Supreme Court used a system called AI VICTOR.

The importance of data was highlighted. To recognize a CAT through AI, thousands of 'Data' were required, like, type of face, height, length, weight, type of eyes and so many other things in order to declare that the animal is a Domestic Cat. A comparison was drawn between the judicial system in India and China. It was mentioned that China is 100% digitalized, but India is not. The Courts in China are running with the help of Artificial Intelligence (AI) and, therefore, the role of a Judge becomes rendered redundant but this position will not be in India because the Indian Courts are still manned by Judicial Officers/Judges. Furthermore, the session included discussions on NJDG, Nstep, E-challan and E service App. The session ended with Q & A.

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