NATIONAL JUDICIAL ACADEMY

East Zone- I

Regional Conference on Contemporary Judicial Developments and Strengthening Justice through Law & Technology

(P-1318)

26th & 27th NOVEMBER, 2022

PROGRAMME REPORT

Academic Coordinators:

Dr. Amit Mehrotra, Assistant Professor and Ms. Shruti Jane Eusebius, Research Fellow

Inaugural Session

Welcome Address

Justice Shree Chandrashekhar, Judge, High Court of Jharkhand cum Judge-Incharge, Judicial Academy, Jharkhand delivered the welcome Address at the conference. In his address, he stated that the justice delivery system in India largely owed its success to the undying allegiance of every Judge to the rule of law and their untiring efforts to impart justice. The objective of this conference was to strengthen the delivery of justice through the use of law and technology. The conference was divided into five technical sessions broadly covering topics like the right to freedom of speech and expression, the precedential value of judgments, the comity of courts, bail jurisprudence, and the E-courts project.

Commenting on Precedents, he quoted Lord Gardiner, who said in 1966 "…too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law…" According to Lord Gardiner, the final decision of the House should normally be treated as binding, however, departures should be allowed when it is right to do so. But the debate continues.

Justice Chandrashekhar then discussed the principle of the Comity of Courts. As per Lord Mansfield, the application of comity was the discretion of the Courts. Where the foreign laws were manifestly in conflict with the principles of natural justice and public policy, then the Court has the discretion to not apply it, like in the case of *Somerset v. Stewart (King's Bench, 1772)* where the question of property rights of an American slave was involved.

There have been many developments in criminal law in the recent past, particularly in the area of bail. He emphasized that the guidelines regarding bail as laid down in *Satender Kumar Antil v. CBI* AIR 2022SC 3386, should be followed. Our criminal justice system is largely accused-centric, there is a need to strike a balance between the individual's rights, societal interest, and the voice of the victim.

On the use of technology, Justice Chandrashekhar reiterated the words of Justice D.Y. Chandrachud that technology must be seen as the facilitator of change. AI technology is already being used in the United States, the United Kingdom, and Brazil and we will have to see to what extent we can use it in our country.

Keynote Address

Justice Indira Banerjee greeted the august gathering. She started with a comment on the significance of 26th November. On this day, our Constitution was adopted. Justice Banerjee

stated that it was wonderful to hold a conference on 'strengthening justice' on this day. In contrast to the earlier conferences, this conference was not only for High Court judges or District judges, etc. but judges from across the board and hierarchy. Irrespective of the hierarchy and jurisdiction, all judges have the duty to do justice. But what is justice? In Plato's Republic, Socrates and Glaucon who are in search of justice realise that the quarry is just underneath their feet. Socrates then tells Glaucon;

"*We are like people searching for something they have in their hands all the time; we're looking away into the distance (e) instead of at the thing we want, which is probably why we haven't found it*."

The principles outlined in the Preamble, the fundamental rights and the Directive Principles of State Policy in the Constitution, all constitute justice. 'We the people' have given ourselves this Constitution. Justice Banerjee stated that most of us were not there when the Constitution was adopted but we have been included in 'We the people' by the process of judicial interpretation. This has been very lucidly described by an American politician, documented in '*In Our Own Words: Extraordinary Speeches of the American Century'* compiled by Robert Torricelli and Andrew Carroll**.**

It falls upon the courts to interpret the Constitution. The interpretation has to be purposive in accordance with the aims and objectives of the Constitution so that justice is done. The aims and objectives of the Constitution form the basic features of the Constitution. The Preamble was held to be a part of the Basic Structure of the Constitution in Kesavananda Bharti v. State of Kerala, *AIR 1973 SC 1461*. The basic structure of the Constitution was something which was perhaps unknown before Kesavananda Bharti Case. It was developed in the Indira Gandhi v. Raj Narain *AIR 1975 SC 1950*, Minerva Mills Ltd. and Ors. v. Union of India and Ors. *AIR 1986 SC 2030* and Waman Rao and Ors. v. Union of India and Ors., *(1981) 2 SCC 362*. Even today, the basic features of the Constitution have not been enumerated and there are many provisions that could be part of it. It was emphasized that a progressive approach needs to be adopted. It was stated that the court by way of progressive interpretation has greatly expanded the scope of Article 21. However, much still needs to be done. It was opined that many directive principles of state policy have not yet been achieved. If we are talking of strengthening justice even today, then that means those responsible for giving effect to the Constitution lack the necessary willpower. There is a wide gap between those who administer justice and those who need it. In the words of Benjamin Franklin, "*Justice will not be served until those who are unaffected are as outraged as those who are*."

It was iterated that Justice needs to be inexpensive. The COVID pandemic led to the rapid adoption of technology, and virtual hearing was introduced in nearly all the courts. Virtual hearings have proved to be a boon for the ordinary litigant who otherwise has to pay for transport and accommodation expenses of lawyers going to different places to litigate.

Justice also includes social justice. Social justice implies gender equality. It is noteworthy that from 1950 to 2018, only 8 women judges were appointed to Supreme Court. There has to be equality, and equality can be achieved by progressive interpretations of the Constitution.

Technical Sessions

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

The chair, Hon'ble Mrs. Justice Indira Banerjee commenced the session with discussion on the Indian polity. Indian Polity as per Article 1 of the Constitution is federal in nature and not unitary. But, unlike the Federal Constitutions of the USA and Australia, the Indian Constitution is better defined as quasi-federal due to the existence of emergency provisions, amongst other things.

The speaker then discussed the scope of Prohibition in the Constitution. The constitutionality of prohibition has been challenged time and again in courts but such challenges have never been sustained, though many judges opine that prohibition is an infringement of fundamental rights.

The speaker then discussed the role of the judiciary viz a viz media trial. Media plays a pivotal role in a democracy by disseminating information. Judiciary also communicates by way of judgments which are public documents. Freedom of speech and expression includes the freedom of the press as well, but it is not absolute. Reporting by media should be fair, accurate, responsible, and unbiased. The 26/11 attack was cited as an example when due to irresponsible media coverage, the terrorists were able to monitor every move of the people at the target location. Further, the media in order to increase its viewership has a tendency to sensationalize an issue thereby creating public opinion regarding it even before the matter reaches the court. The speaker gave the example of the *O.J. Simpson Case* of the United States, famous for the intensive media trial which is said to have ultimately influenced the jury's verdict. The courts should keep themselves immune from such media trials but ultimately the judges are also humans.

Further, speaking upon criticism of the judiciary by the media the speaker said, the media and judiciary should adopt a balanced approach. Fair criticism of judgments is welcome but the attempt should not be to scandalize the courts and obstruct the cause of justice, which would amount to contempt. The judiciary should also be less sensitive and exercise the power of contempt sparingly.

In the second part of the session, the speaker, Advocate Sujit Ghosh, discussed in length Freedom of Speech and Expression jurisprudence and the concept of Hate Speech. He drew a comprehensive outline of laws and judgments of India and eight other jurisdictions to demarcate the difference between the two. He started with the Charlie Hebdo incident; a cartoonist massacred by Islamic extremists over an objectionable cartoon about Islam. Five years later, Samuel Paty, a school teacher was also murdered by the same set of people for showing the same cartoon. He was called the 'Silent Hero' by the French President. The real challenge is to determine the extent of Freedom of Speech and Expression. There is the famous saying, 'my freedom ends where your nose begins'. Freedom of speech and expression is a cherished right, however, the legislature was cautious that any absolute right could be abused and therefore, Article 19(2) provides for reasonable restrictions upon the exercise of this right. There are five parameters for determining when free speech becomes hate speech. These are; reasonableness, context, the performance of duty, and proportionality. The time, the context as well as who is the speaker are important. In the US, freedom of speech is a protected right by the first amendment to the Constitution. Its interpretation has however gone through a change over the years. The US Courts have adopted the Bad Tendency Test, Social Contract Theory, Utilitarian Philosophy, and the idea of Autonomy to determine whether a speech is hate speech. In Canada, any speech that infringes the dignity of another person is hate speech liable to be punished. Some of the important judgments of the Canadian Supreme Court on this aspect are; the *James Keegstra Case* (1993 SCR 697) wherein wilful promotion of hatred amongst any religious or language group etc. was punished; *Taylor vs. Canadian Human Rights Commission* (1993 SCR 892) wherein it was emphasized that the non-target groups should not be indifferent, they should also be sensitized about the issue; and the *Saskatchewan judgment* 2013 1 SER 467, in which the test of reasonable person un-oriented to speaker or target was applied. Another important judgment is of *R v. Zundle*. In Australia and South Africa, also, human dignity has been given paramount importance. In Germany as well, the dignity of an individual overrides the truth or opinion of any person. However, in France, freedom of speech and expression has been given a very liberal interpretation because of the adoption of the *Doctrine*

of Laicite which makes a clear distinction between private and public life. Thus, people there are free to criticize even if it may be offensive to some.

Andrew F. Sellers in his book has the seven-point test to ascertain whether a speech amounts to hate speech. A speech will be counted as hate speech if; it targets a group or a set of people, it has content of hatred, it was delivered with the intent to create hatred (either explicit or disguised), or it causes harm (silent, actual, or structural). Further, the context and occasion of the speech, the person who gives the speech, and whether the speaker has any redeeming features are the other parameters.

It was highlighted that in India, there are several judgments where the extent of freedom of speech and expression has been discussed, like; *Ramji Lal Modi v. The State of U.P* AIR 1957 SC 620, *Kedar Nath Singh v. State of Bihar* AIR 1962 SC 955, *Shreya Singhal v. Union of India* AIR 2015 SC 1523, *Ram Manohar Lohia v. State of Bihar and Ors*. AIR 1966 SC 740 and *Anuraddha Bhasin and Ors. v. Union of India* AIR 2020 SC 1308.

In conclusion, a speech should never be seen in isolation. The intent and the context behind the speech should be examined. It should also be examined whether the speech had any redeeming feature and whether it infringed upon the dignity of another as after the *Justice K.S. Puttaswamy Case* AIR 2017 SC 4161, the dignity of an individual is paramount.

Session 2: Precedential Value of High Court Judgements and Language used in Court

The speaker commenced the session with a discussion on the precedential value of judgments. With regard to citing precedents, the Supreme Court had famously observed in a judgment; "*citing more than one decision, on the principle of law as a matter of precedent, is misconduct*." Once, Mr. Venugopal, the former Attorney General of India was asked why he could not match the brilliance of his father. He replied that "*when his father argued, there was no precedent, but by the time he had begun practicing, it was only precedent*." Precedents are of English origin. The English never had written statutes, they had precedents that applied commonly to all. Thus, the name, common law. India being a common law country also has precedents. It was iterated that Article 141 of the Constitution provides that laws declared by the Supreme Court will be binding on everyone in the territory of India. In India, judges sit in benches which leads to conflicting judgments from co-equal benches. Resultantly, it was highlighted that there are two types of precedents- horizontal precedent and vertical precedent. Horizontal precedent is when the judgment of a single-judge bench is cited before another Single Judge bench.

Vertical precedents on the other hand follow single judge bench versus Division Bench or Full Bench when it comes to High Courts and so on.

Indian criminal law system is adversarial in nature. In the adversarial process, we all end up thinking binary that either a thing could be right or wrong. But a judgment need not be right or wrong, it is in the end, an opinion. Some scholars have argued that it is not the ratio decidendi but the holding of the case that is binding. Holding of a case is the law combined with the facts of the particular case. So, what may be binding for one case, may not be for another as the fact(s) in the issue could be different. Judgments are sometimes delivered taking into account the entire facts of the case or some facts of the case or a broad array of facts representing a batch of cases or to lay down the general principle of law like in the *Vishaka Case*. Courts may lay down a narrow or broad principle, making it difficult to determine its applicability. In *Barwick v. English Joint Stock Bank*, it was held that if there is a master-agent relationship then the agent's act must have been for the master's benefit, however, later in *Lloyd vs. Grace Smith and Company*, Barwick's ruling was held to be too narrow, but in *Barwick*, the court had interpreted the phrase 'master's benefit' only with respect to the particular facts of the case.

Further, what is to be considered binding when there are judgments of co-equal benches of the Supreme Court, the previous one or the later one? As per the *Sandeep Bafna case*, it is the former that shall prevail. But, then, society changes with time and so should there be a change in interpretation. Precedents are there to maintain consistency, it is no sin to distinguish from previous judgment and proceed further while maintaining judicial discipline.

The speaker then ventured into the topic of language used in court. He said, '*legal writing does not have to be lethal writing, it can be pleasurable as well*'. The MACJ (Madman, Architect, Carpenter, and Judge) model developed by Prof. Betty Sues Flowers suggests that the judge should dictate initially like a madman without worrying about art or grammar. He can take care of such concerns while re-drafting as there is no good writing but only good re-writing. Emphasis was placed on refining the judgment through review.

A few points can be kept in mind while writing; sentences should not exceed two lines, each sentence should convey one idea, the use of verbs should be preferred over nouns and use of the passive form of speech.

Issues in a judgment should be framed in interrogative form. The approach suggested by Bryan A. Garner was suggested to state the facts briefly in the issue and then put a question mark in the end. As much as possible, simple short sentences should be used.

A judgment is like a signature, unique to every judge but at the same time, it has to be legible. The first part of every judgment should state its scope and instead of citing entire paragraphs,

the law can be stated summarily. Globally, the length of judgment has increased by over 30% due to the practice of copying, made easy by the internet. Further, it was advised that the paragraphs should be kept short and each page should have at least 2- 3 paragraphs.

Some of the books on legal writing are, *Point Taken* by Ross Guberman, *Elements of Style* by William Strunk, and Benchmark *for the Bench* written by a Kenyan advocate. Then, the articulate writing styles of Justice Elena Kagan, Justice Neil Gorsuch, and Justice Brett Kavanaugh, and Justice Lady Hale were pointed out.

The Chair, Justice Banerjee then concluded the first and second sessions. In her concluding remarks, she said, the media plays a very pivotal role in democracy but they should be circumspect about their actions. They should not conduct media trials. Fair criticism of judgments is welcome but there should not be an attempt to scandalize the courts and obstruct the cause of justice. The judiciary should also not be very sensitive and the power to condemn by way of contempt should be exercised sparingly.

Speaking about the language used in courts, she said that the language of judgments should be simple so that even the common man is able to understand the same. Further, judges should be politically correct in their judgments and avoid the use of language that would suggest bias.

Session 3: Developments in Criminal Law: Issues and Challenges

The speaker, Justice Joymalaya Bagchi started the session by enumerating the global figures for the prison population. India is the second most populous country with about 40 prisoners per 1000 individuals. This is not high when compared to U.S. and U.K. Then why is there such a hue and cry over the volume of prisoners in the country? This is because of the unhealthy nature of incarceration. As per the NCRB Report of 2021, nearly, 3 out of 4 prisoners are those who have not been pronounced guilty by any court in India *i.e.* under trials constitute almost 77% of the prison population. At present, the conviction rate is at 57%, which means out of these only about half of the undertrials will end up with a conviction. Therefore, there is a need to re-look at the bail jurisprudence of India.

It was stated that bail jurisprudence invariably revolves around the question of the grant of bail. Justice Iyer has mentioned three aspects that should be borne in mind while considering bail applications, these are;

1. The presumption of innocence and the right to liberty
2. The power of the state to use punitive processes to maintain public safety
3. The burden on the public exchequer to maintain a prisoner

These aspects can be better understood by going through the latest guidelines of the Supreme Court in *Satender Kumar Antil v. CBI and Ors.,* AIR 2022 SC 3386.

Anticipatory bail requires stricter scrutiny than regular bail. In *Gurubaksh Singh and Others v. State of Punjab,* AIR 1980 SC 1632, the Supreme Court drew a balance between falsity of allegation and the chance of absconding. Just because there is no chance of absconding or the investigation is complete, it does not always become a ground to grant anticipatory bail. The same was reiterated in *Sushila Agarwal v. State of NCT of Delhi,* AIR 2020 SC 831.

By the 2005 and 2009 Amendments, the victims of gender-specific crimes and vulnerable victims from marginalized sections like Scheduled Caste and Scheduled Tribe have the right to notice and hear the question of grant of bail to the accused. Taking note of these legislative changes, the Supreme Court in *Jagjeet Singh and Others v. Ashish Mishra and Others, AIR* 2022 SC 1918, observed that the victims in general do not have the right to notice on hearing of bail but they would be entitled to a hearing if they intervene and want to participate.

The requirement for the grant of bail in case of special laws like NDPS and UAPA is stricter than general laws. In fact, Section 45 of the Prevention of Money Laundering Act, 2002 (PMLA) was set aside as being unconstitutional in *Nikesh Tarachand Shah vs. Union of India (UOI) and Ors.,* AIR 2017 SC 5500. The twin conditions for grant of bail under the section held no nexus with the bail application which concerned itself with the offense of money laundering instead the court had to apply its mind to whether such a person is guilty of scheduled or predicate offense. Thus, there was an unreasonable classification between those accused of a scheduled offence and those who were not. Section 45 of the Act has since been amended and the amended provision was upheld as holding reasonable nexus with the Act in *Vijay Madanlal Choudhary v. Union of India and Ors.,* 2022 SCC OnLine SC 929. In *Kartar Singh v. State of Punjab* (1994) 3 SCC 569, the Supreme Court while dealing with the provision of bail under TADA had held that it is the wisdom of the legislature to see which offenses require restrictions on bail and punishment with regard to the offense is not the only parameter.

Then the speaker discussed the admissibility of electronic evidence. Electronic evidence is intangible, mutable, fragile, and therefore unique. In order to rely upon electronic evidence; effective and proper acquisition, identification, preservation, evaluation, and admission need to be done. *Sanjay Kumar Singh v. CBI,* 2019 SCC OnLine Del 8247 enumerates two factors to determine source and authenticity. Identification of the source can be done by Section 65B. The interpretation of this Section has seen many changes ever since it was enacted. In *Anvar P.V. v. P.K. Basheer,* AIR 2015 SC 180, Section 65B was held to be a complete code in itself and therefore the requirement of the certificate was mandatory. *Tomaso Bruno v. State of U.P.*

(2015) 7 SCC 178, a 2 Judge Bench, took a contrary view from *Anvar P.V.* and held the requirement of a certificate to not be mandatory.

Shafhi Mohd. And Ors. v. State of H.P.(2018) 2 SCC 801, again, a 2 Judge Bench tried to resolve this conflict by differentiating between computer output taken from an electronic device in possession and that which is not in possession. In the case of former, certificate would be required while in latter, it will not. The judgment in *Shafhi Mohd* was held to be wrong and Tomaso Bruno per incurriam in *Arjun Panditrao Khotkar v. Kailash Kushaurao Gorantyal and Ors,* AIR 2020 SC 4908. The Court held that the requirement of the certificate under Section 65B was mandatory.

It was stated that Section 65B was borrowed from the UK. However, English law has changed as the requirement of the certificate was found to be impractical. American law is even broader in this regard. Federal rules of evidence guided the admissibility of electronic evidence till 2017. Even after amendments to the law in 2017, the court in *Lorraine v. Markle* held that electronic evidence could be proved by the general rules even if proof of authentication is not there.

A certificate is not proof of the authenticity of the contents of electronic evidence. The source and authenticity have to be independently proved in order to rely on any piece of evidence.

The discussion was undertaken on *Reverse Burden Clauses* and the reservations against them. Tom Bingham, the author of, "*The Business of Judging: A collection of essays and speech*", was quoted we all have the responsibility to ensure that there is no miscarriage of justice while applying reverse burden clauses. It was stated that the reverse burden clause is not a new innovation. The presumption of innocence is only a human right, not a fundamental right. Moreover, before the reverse burden clause is applied, the prosecution must establish, basic or foundational facts. Unless that is done, the question of the onus shifting to the accused does not arise at all. There is a difference between legal or persuasive burden and evidential burden. The former is something that can never shift. But the latter is just raising some evidence to raise an issue and then it is for the other side to respond. Where the accused has to discharge the burden of proof based on the preponderance of probability, then that is a legal or persuasive burden.

In dowry death cases, it is actually a presumption of guilt rather than that innocence. The accused has to prove beyond reasonable doubt that he is not guilty, once the prosecution is able to satisfy the four conditions laid down under Section 304B of the Indian Penal Code, 1860 (IPC).

Reverse Burden Clause in PMLA, Section 138 of the Negotiable Instruments Act, 1991, Prevention of Corruption Act, 2002, and challenges raised regarding their constitutional validity were discussed. And almost all of them have been upheld. *Vijay Madanlal Choudhary v. Union of India and Ors.*, 2022 SCC OnLine SC 929 was discussed in this context. The Supreme Court has read down the rigor of the clauses by requiring that the accused need only cross the minimal threshold. It is not beyond reasonable doubt standard.

Session 4: Overview of E- Courts project

The chair, Justice A.P. Sahi (Retd.) highlighted the significance of using technology in the judicial system. India is one of the best democracies in the world with a sound judicial system, however, it is overburdened with cases and technological interventions have helped in reducing this burden. Indian Judiciary needs to adapt to technological advancements swiftly. Digitization will also enable the courts is rendering speedy justice. The guidelines of the E-Committee of the Supreme Court should be followed in this regard.

Further, technology can be used for the translation of documents, judgments, etc. to the local language, enabling even an ordinary litigant to understand the judicial process. A bilingual approach in courts also helps in a better appreciation of evidence.

The speaker, Dr. Debasis Nayak listed the achievements of the E-Courts Project. Under the project, 3,477 court complexes have been enabled to carry out hearing through virtual conferencing facilities. Unique Case number Records (CNR), Quick Response Codes (QR Code), and Judicial Codes (JIO Code) have also been developed so that every judge has a unique ID, case statistics of judicial officers can be tracked and capacity-building can be done by way of judicial assessment. Standardized national codes for case types and legislations across all districts, digitization of old case records, setting up of virtual court services for lawyers and litigants via e-seva kendras in High Courts, enabling e- filing, Mobile Apps for judges, training relevant personnel on the use of systems has been done under the two phases of the E- courts Project and much more is proposed is to be done under the third phase of the Project. The core values of a digital court should be; trust, empathy, sustainability (paperless courts), and transparency.

Several initiatives have been taken up by the E-Committee of the Supreme Court, which is as follows;

- Inter- Operable Criminal Justice (ICJS): It enables the seamless transfer of data and information among different pillars of the criminal justice system, like courts, police, jails, and forensic science laboratories, from one platform.
- NStep: It is a centralized process service tracking application comprising of a web application and a complementary mobile app designed to streamline the process.
- JustIS: It is a Mobile App developed for the Judges of District & Subordinate Courts in the country. The App is username/password protected. The App is a digital repository that provides all details about his/her court at the handset 24×7.
- Judgment & Order Search portal: The new portal for judgments search is set to provide a repository for Judgments and Final Orders of the High Courts.
- SUPACE: AI tool that collects relevant facts and laws to aid a judge in decision-making.
- SUVAS: Machine-assisted AI translation tool,

In the US, an AI tool called COMPAS (Correctional Offender Management Profiling for Alternative Sanctions) is used to assess the risk of recidivism of an offender. In the case of *State v. Loomis* 137 S. Ct. 2290 (2017), the State of Wisconsin's use of closed-source risk assessment software in sentencing Eric Loomis to six years in prison was challenged as being violative of due process. Eric Loomis was categorized as a high-risk offender even though he had pleaded guilty. However, the court held it to be a proprietary algorithm that could not be made public. This example was cited to emphasize that the principles of natural justice, transparency, impartiality, and fairness.

The next speaker, Dr. Harold D' Costa pointed out the loopholes in the technology being used by the judiciary. It was emphasized that there is a need for greater cyber security awareness in order to prevent the judicial process from being hampered by cyber threats. A live Cyber threat map identifies the servers which are vulnerable to such threats. E-courts system should be equipped with proper software that can act as a check against SQL injections and other viruses. Emphasizing the need for proper cyber-security for the e-courts system, he showed an example of how e-court data can easily be manipulated at present. The e-court system is exposed to many other vulnerabilities; video captures of court proceedings can be morphed, e- documents can tamper with, E- court website can be compromised if not secured, Digital evidence can tamper with if not hashed, and getting a certified copy of documents is a tedious and time-consuming process. Some countermeasures that can be implemented - all documents should be hashed before sending it to anyone; sensitive PDFs should be locked and digitally signed; the

e- Courts website should be checked once in a month for vulnerabilities; and proper malware protection standards should be implemented.

Session 5: Emerging and Future Technology for Effective Governance

The speaker, Dr. Debasis Nayak started the session by highlighting Section 3(2) of the IT Act, 2000 which specifies the process of authentication of electronic records. The section revolves around the words, *asymmetric cryptosystem*, and *hash function*. An asymmetric cryptosystem involves the use of private and public keys. A hash function is used in conjunction with a private and public key pair to create a digital signature. Different inputs have different hash functions and even small differences will create different hash results. So, when a document is digitally signed, it cannot afterward be altered, as the sign becomes the property of the document and changes with every change, producing a different hash result. Any person verifying the document with the help of a public key will be able to tell whether the document has been altered.

The IT Act, of 2000 legally recognizes a digital signature. A document is digitally signed by using a private key and hash function. A blockchain is a combination of these. It is like a distributed ledger. It keeps an account of all transactions happening in a system. Every transaction is simultaneously duplicated across all the nodes (Computers) in the system working on the same blockchain software. It is immutable.

Originally, blockchain was introduced only to facilitate the transfer of currency which is information. This information can be in the shape of a currency or it can also be in the shape of a document. This is where the application of blockchain comes in. A digitally signed document can also be uploaded as a piece of information on the blockchain software. Every piece of information that is generated in the form of a transaction on the software is a block of information that is linked to the next block (subsequent transaction) and so on and so forth creating a continuous blockchain. Every transaction has its own hash function and every block contains the hash of all the previous transactions. Anybody who verifies the signature will come to know who uploaded it and nobody can change it because of the hash result. Further, he will have to make changes in all the nodes across the system which is nearly impossible. This technology can be used by the judiciary for processes such as calling lower court records by the appellate court. It will save time and also ensure that the documents have not been tampered with and are authentic.

Cryptocurrency is also based on blockchain. It is like a piece of information transferred across a block chain system. There is no third party involved. If someone wants to convert cryptocurrency to fiat currency, he can do so via crypto exchanges. These crypto exchanges have to maintain KYC as per government regulations. They will provide information when asked. But, crypto exchanges only exist at present because cryptocurrencies have not gained universal acceptability. The moment they are accepted universally, it will be impossible to monitor the transactions because of their inherent anonymity. That will be a very dangerous situation.

In the second part of the session, the speaker, Dr. Harold D'Costa, emphasized data protection and suggested that instead of waiting for data to destroy remedial measures to protect data should be undertaken.

Firstly, the SQL injection method can be adopted as a test to determine what computer program can compromise the data stored in the database or cloud. Second, the firewall can be implemented in the system, which is a filtering process through which data from various sources such as organizations, individuals, etc. which are coming into the network gets filtered i.e infected data is separated from the authentic one. Thirdly, Big Data can be secured by way of intrusion detection systems, honey pots, honeynets, threat monitoring, demilitarized zones, anti-virus, and proxy server.

Artificial Intelligence (AI) system can be applied in the judicial system to improve administrative efficiency, case management, improved decision-making process, and lower Pendency. AI system includes deep learning, predictive analytics, translation, Image recognition, machine vision, etc. based on some decision support systems. With the help of AI, the pendency of cases can be reduced greatly. It can be used to collect, standardize and sanitize data, mitigating chances of bias. It can be used for scheduling and courtroom management. Further, AI can also help in risk assessment and judgment assessment.

The use of AI in other jurisdictions was highlighted. In Estonia, the adjudication of small claims is done by a robot judge. Austria has built a sophisticated case management system using AI. United States has primarily employed the use of AI for Risk Assessment. Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) assesses the risk of recidivism of a convict, enabling the court to make informed decisions regarding parole and sentencing. United Kingdom uses Harm Assessment Risk Tool (HART) to predict the likelihood of re-offending of an offender. In Brazil, an AI tool called VICTOR is used to conduct preliminary case analysis, reducing the burden on courts.

It was stated that AI and ML (Machine Learning) can assist in decision-making. However, they should not replace human decision-making. AI-powered tools can assist in easy access to materials but they should remain non-intrusive when it comes to decision-making. More work remains to be done in making India's legal data amenable to ML formats. As AI technology grows, concerns about data protection, privacy, human rights, and ethics will pose fresh challenges and will require great self-regulation by developers of these technologies.

Blockchain is another technology that can be used in the judicial system. It can be employed to replace manual processes and spreadsheets with consolidated and fully digitized tracking of legal actions and outstanding judicial guarantees. It can aid in the speedy recovery of judicial deposits once suits are resolved. It can increase the efficiency of the system by automating many tasks involved in requesting bonds or securing deposits. Further, the tamper-free nature of blockchain will keep the data secure and ensure transparency of the process. The use of this technology can be scaled up to include hundreds of legal actions and supply chain participants, including law firms, banks, and insurance companies.

Valedictory Session

Justice A.P. Sahi, Director, National Judicial Academy, Bhopal, concluded the conference with the valedictory address. He thanked the Judicial Academy, Jharkhand for their cooperation and congratulated them for their seamless organization of the conference.

He then talked about the concept of comparative and competitive federalism in India which could be best explained by the statement made by Former Chief Justice of India, Justice S.A. Bobde made during a conference for training of judges from Bangladesh, "*We might follow the principle of separation of powers in governance but we do not have separation of purpose. All the organs of government should work towards the welfare of people*."

Talking about freedom of speech and expression, he said that it is constitutional supremacy that governs us not judicial or parliamentary supremacy. What we have is '*swatantrata*' not '*swachchandata*'. Freedom of speech and expression cannot translate into anarchy. Whether it is an individual or media, all have to be guided by the Constitution.

While speaking about precedents, he cited the case of *East India Co. Ltd. v. Collector of Customs* AIR 1962 SC 1893 in which it was held that the High Court has control over all the courts and tribunals within its jurisdiction. Judgments of the other High Courts are only persuasive in nature. While, Justice William Douglas, had said that the court should not shy away from innovating, however, judicial discipline has to be maintained and the subordinate

courts are all bound by the judgment of the High Court which has jurisdiction over that state or union territory. In case of any ambiguity, the subordinate courts can refer to the matter. Similarly, the High Courts cannot declare a Supreme Court judgment to be wrong in law, however, they can distinguish it.

When speaking about the bail jurisprudence in India, Justice Sahi remarked that we are running on an intermediate system without any finalities. When allowing bail, reasons should be given but not decisions. The lower courts should refer to the judgment in *Satendra Kumar Antil v. CBI and Ors*, AIR 2022 SC 3386 for guidance in matters of granting bail. District judiciary should stop refusing bail. The High Courts are overburdened already. Though the judgment of *Vijay Madanlal Choudhary v. Union of India and Ors.*, 2022 SCC OnLine SC 929 has caused some confusion, discussions are being held at the national level and changes are in the offing.

**********x**********x**********