

NATIONAL JUDICIAL ACADEMY



**North Zone-I Regional Conference on “Contemporary Judicial Developments
and Strengthening Justice through Law & Technology”**

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Programme Report

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The National Judicial Academy (NJA) in collaboration with the High Court of Uttarakhand and the Uttarakhand Judicial & Legal Academy organized the North Zone-I Regional Conference at Nainital (Uttarakhand) on 30th September & 1st October, 2023. A total of 156 judges/ judicial officers participated in the conference. The North Zone-I Regional Conference involved the participation of High Courts of the North Zone viz., High Courts of Delhi; Himachal Pradesh; Jammu & Kashmir and Ladakh; Punjab & Haryana; Uttar Pradesh; and Uttarakhand.

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 Court's jurisdiction. The conference was designed to promote a dialogue between participant judges amongst judicial hierarchies on themes including Constitutional Morality and Contemporary Constitutional Trends; Elements of Judicial Behaviour; and Judgment Writing Tools. The conference intended to focus on effective judicial governance through contemporary technological advancements including artificial intelligence as well as information and communication technology in courts vis-à-vis E-Courts project.

The programme was commenced with the inaugural session which was presided by His Excellency Hon'ble the Governor of Uttarakhand and Supreme Court Justices including Hon'ble Justice Sanjeev Khanna, Hon'ble Justice Surya Kant, Hon'ble Justice Ravindra Bhatt, Hon'ble Justice Sudhanshu Dhulia, Hon'ble Justice Sanjay Karol and Hon'ble Justice Manoj Mishra. Hon'ble Justice Vipin Sanghi, Chief Justice, Uttarakhand High Court, Hon'ble Justice Koteswar Singh, Chief Justice of Jammu and Kashmir & Ladakh High Court, Hon'ble Justice Sharad Sharma, Judge in charge, Uttarakhand Judicial Academy, Mr. R Venkataramani, Attorney General, Mr. N. Venkataraman, Additional Solicitor General and Hon'ble Justice Sujoy Paul, Director, NJA were present in the inaugural session.

Session-1: Constitutional Morality and Contemporary Constitution Trends

Speakers: Justice Sudhanshu Dhulia, Justice Vipin Sanghi, Mr. R. Venkataramani & Mr. N. Venkataraman

The session commenced with discussion on federal structure of taxation in India and the historical background of the Goods and Services Tax Act was explained. The conflict between parliamentary legislation and state legislations was highlighted. It was opined that the Constitution is a normative framework for governance and contains principles rooted in values of struggle for freedom. The concept of cooperative federalism and the doctrine of pooled sovereignty was discussed and the difference between sovereignty and pooled sovereignty was explained. It was opined that neither the Union can do anything in isolation from States nor States can do anything in isolation from the Union. The functioning of GST Council was discussed and achievements of the GST taxation regime were highlighted. The beneficial effects of the GST regime in the expansion of the Indian Economy were described and it was opined that due to the GST regime there is uniform economic development across all States in India. The concept of sovereignty was explained in the context of international law.

The discussion then focused on the constitutional morality and the difference between constitutional morality and social morality was explained. The use of terms constitutional morality, constitutional trust, and constitutional silence in the judgments of the Supreme Court

was discussed. The enunciation of the doctrine of limitation on legislative power was explained and the impact of constitutional trust on the use of this doctrine was highlighted. The importance of Preamble and the principles of Justice, Equality, Liberty and Fraternity were discussed and the evolution of constitutional morality from these principles was highlighted. The issues related to restrictions on legislative and executive power and judicial intervention on the basis of constitutional morality was discussed. The issues related to the impact of subjectivity of judges on the interpretation of constitutional morality were discussed and it was opined that constitutional morality is actually constitutional maturity. It was opined that Dr. Ambedkar had said that in India democracy is a top dressing on a soil which is fundamentally undemocratic and constitutional morality is not a natural instinct. It has to be inculcated and as long as the sentiment of constitutional morality is not diffused to the entire citizens of this country, the judiciary has to play a role in its dissemination. Referring to Professor Arohan Barack, former Chief Justice of Israel, it was opined that it is childish to say judges do not make law. Judges make law daily and that doesn't mean overreach. It was stated that court sometime make law to fill the gap in law which was not addressed by the legislature. It was opined that whether constitutional morality is citizen centric or authority centric is going to be a major issue for future. It was stated that there are certain eternal constitutional values which form part of our morality and truth always stands. Litigants' interest and welfare of the people is supreme.

It was opined that the basic structure is a core value and the court should not remain silent on its interpretation and should not leave it to the next generation for interpretation. The scope of judicial review in England and India was compared and the expanded scope of judicial review in India was highlighted. It was opined that judiciary has expanded the scope of judicial review through creative interpretation of the right to life and other fundamental rights. The discussion then focused on the importance of objectivity and neutrality and decision making in constitutional matters. The doctrine of separation of power was discussed and it was opined that each organ of the government should function within the limits set by the Indian Constitution.

Session 2: Elements of Judicial Behaviour

Speakers: Hon'ble Mr. Justice Sanjiv Khanna, Hon'ble Mr. Justice S. Ravindra Bhat & Hon'ble Mr. Justice Sanjay Karol

The session was commenced with issues related to constitutional duty and obligation of judges. It was opined that every judge decides the matter before her in accordance with her fair assessment of facts and proper understanding of law without influences, inducements and pressures from any quarter. It is the edifice of impartiality and public trust that gives legitimacy and credibility to the institution. The lack of any of these principles or any basic gap between actual performance and what is mandatory by law has its impact which is felt not only by the judge concerned, but by everyone in the institution.

The elements of judicial behaviour consists chiefly of two aspects. One is the personal element which imposes certain ethical standards and another relates to judicial independence and objectivity in decision making. The values of honesty and integrity are the hallmarks of the judicial probity. It was opined that a judge must decide the case on the basis of records and applicable laws. If the judge decides a case for other reasons then he is not performing his duty.

It was stated that integrity is not merely monetary greed but it includes various facets of our life. The conduct of the judge should be seen as a whole. His every action and behaviour in and out of the court becomes a matter of scrutiny and public concern. It was opined that a judge is appointed to do the assigned work in an efficient and competent manner.

It was emphasised that judges have to be honourable persons and being honourable means judges are basically service providers and they are providing services to people. Doing duty with commitment and hardwork is the hallmark of integrity of judges and they should perform their duty without fear or favour. It was opined that judges should not resort to recusals unless the case necessitates it and that judges have to be very clear about the principles when they want to recuse from a case. Judges should not recuse from cases merely they are tough or have been adjourned time and again or where the record is very bulky.

It was opined that a judge is a human being who is a bundle of passions and prejudices, likes and dislikes, affection and ill will, hatred and contempt and fear and recklessness. In order to be successful these elements should be kept under restraint. This is possible only by education, training and continued practice and cultivation of his sense of humility. Judicial humility means having a mind that respects law and that can change its thinking. It accepts that another view is possible and can be persuaded by reason. It is detached and aloof and puts passion behind its judgement and not in front of it. It was emphasised that judicial humility is the quality which makes a judge realise that he is neither infallible nor omnipotent. Without humility a judge becomes arrogant and pompous tyrant. Judge should be concerned with rendering justice rather than trying to exhibit his eruditions, intelligence or power, which inevitably results in injustice.

Judges have to be sensitive and they must possess keen appreciation of the importance of individuals and group interest. Judges must be in touch with the society in which they work, understanding its values and its tension. The session was concluded with discussion on the objectivity in decision making process. The emphasis was paid on expeditious disposal of matters involving infrastructure projects and careful use of social media.

Session 3: Judgment Writing Tools

Speakers: Hon'ble Mr. Justice Surya Kant & Hon'ble Mr. Justice Manoj Mishra

The session commenced with discussion on issues which a judge must bear in mind when he writes a judgment. Essential features of a judgment were discussed and it was opined that a judgment is an analysis of facts and law. It was opined that use of idioms, phrases and rhetoric should be used carefully in the judgement. The judgment should analyse the facts with open mind and only relevant and precise precedents should be cited. The situations where the reference to precedents may not be required in judgment were elaborated. The facts disclosure has to be there and it has to be clear. Then it was opined that the important thing is that in which jurisdiction a judge is writing a judgment. The narration of facts in writ jurisdiction matters and in revisional jurisdiction matters was discussed and it was suggested that a brief reference to facts is sufficient in such matters.

The discussion then focused on the fundamental principles of writing a judgment. The judgments of the Supreme Court *CIT v. Saheli Leasing & Industries Ltd.*, (2010) 6 SCC 384, *Board of Trustees of Martyrs Memorial Trust v. Union of India*, (2012) 10 SCC 734, *Union of*

India v. Jai Prakash Singh, (2007) 10 SCC 712 were discussed in this regard. The speakers then elaborated the structure of legal analysis in a judgment. It was suggested that the structure of a judgment should include overview of relevant facts, succinct statement of issues, position of parties on each issue and a composite fact narrative which is directly relevant for taking the final view. The speaker also discussed FIRAC method which emphasise on the structure of a judgment including facts, issue, rule, analysis, and conclusion. It was suggested that language of the judgment should be as simple as possible and plain English should be used to write a judgment. Various inputs were given by the speaker for the use of language in a judgment.

Examples of lucid language in judgments were discussed by referring to various judgments including *Hinz v. Berry (1970) 2 QB 40* and *State of W.B. v. Anwar Ali Sarkar, (1952) 1 SCC 1*. The speaker paid emphasis on the importance of brevity in writing a judgment and the judgment *Freeman & Lockyer (A Firm) v. Buckhurst Park Properties (Mangal) Ltd, (1964) 2 QB 460* was discussed. Various suggestions were made in this regard. The speaker then highlighted the importance of sensitivity and fairness in writing a judgment. The session was concluded with discussion on the importance of objectivity in judgment.

Session 4 - Overview of E-courts Project

The discussion commenced by elucidating on the three phases of the E-Courts Project. It was iterated that the first phase focused on computerization of courts. The second phase focused on softwares and the e-Committee of the Supreme Court in Phase II suggested adoption of Free Open Source Software for computerization of courts. The software system was established in two compartments i.e. core and periphery. The core was not amenable to change by High Courts but the periphery software could be changed and modified according to the needs of High Courts. The issue of use of different nomenclature for different category of cases across different high courts was discussed. While discussing about the periphery software system it was emphasised that all High Courts should exchange information regarding the developments made in their respective periphery software systems. It was suggested that the successful model can be adopted by other High Courts as well. This will prevent duplication of efforts and bring uniformity in processes of different High Courts. The Phase III of the e-Courts Project aims at upgrading every court by establishing e-Seva Kendras, which will help a lawyer to file a case in remote places and appear before the High Court. Also, through e-Seva Kendras the litigants can collect all the relevant information about their cases. The proposed scope of technological advancements in Phase III includes paperless courts, digitalization of records, live streaming, Artificial Intelligence (AI), blockchain technology, and cloud storages. The recent grant of funds to the e-Committee for Phase III was mentioned and it was stated that the funds should not be viewed as an endowment, rather it is an investment in the infrastructure of the judiciary. The discussion then centered upon the National Judicial Data Grid [NJDG]. The NJDG provides entire range of information regarding the performance of courts in the country. Thereafter, the system of National Service and Tracking of Electronic Processes [NSTEP] was expounded. Thereafter, the features of the JUSTIS app were explained and the use of the app in analyzing the performance of judicial officers, assessing the judicial officer's involvement in the ADR processes and analysis of judicial data to provide a predictive mechanism were pointed out.

The participants were suggested to undertake initiatives to use technology to help litigants and to improve the administration of justice. While discussing the use of technology in Courts it was suggested that aversion to technology is a mental block that judges need to overcome. The participant judges

agreed that one must attempt the use of technology first before coming to conclusion as regards its utility. The significance of judicial leadership in inspiring, driving and steering the process of change was emphasised. It was suggested that communication between various stakeholders should be held regularly.

Frequent changes in leadership due to frequent changes on the composition of committees, registries and also due to the frequent change in Chief Justices of the High Courts; thereby leaving was stated as one of the major issues in the effective implementation of the e-Courts Project. It was suggested that judges with the requisite expertise must be included in the committees to utilise their expertise. Lastly, the need of optimum use of technical staff and periodical review of their work was underscored.

Session 5 - Emerging and Future Technology for Effective Judicial Governance

The session sought to equip the participant judges to effectively utilise the e-Courts services and also to familiarise them with the latest developments in Information Technology (IT) and computer technology. The adaptation of the judicial system in the Covid-19 pandemic to meet the needs of the time with the use of technological tools was highlighted as a significant achievement. However, some High Courts disbanding the technological setup for virtual hearings was flagged as a serious concern. Subsequently, emphasis was placed on the need for deliberations on the extent to which Artificial Intelligence (AI) can be integrated in the judicial system. The utility of AI in automation of court processes and analysis of data for generation of suggestions and improvements was highlighted. It was opined that AI can be used in analyzing judicial data – to assess disposal rates, judge performance, docket, pendency, and the effectiveness of measures used to address the challenges faced by the judiciary. Further, it was pointed that the rate of institution of cases is higher than the rate of disposal of cases resulting in backlog. It was stated that AI can assist the judiciary in predictive analysis. AI can also assist the court in drafting of issues and charges, summarizing legal precedents, research and information search, and in organizing and collating case related information. AI can assist in the evaluation of judicial data, including individual perceptions, biases, etc. Such evaluation will enable judges to reflect on their decisions, ensure informed decisions, and establish institutional norms. Deliberating on the risks associated with the use of AI data bias was considered to be a challenge. Data Bias occurs when an information fed is inaccurate and fails to represent the entire population. It is a significant concern as it can lead to biased responses and skewed outcomes resulting in inequality.

Thereafter, a demonstration of the features of the software developed by the High Court of Kerala was conducted, and the functionalities and utility of the same were explained. The utility of such a system in the analysis of roster; ensuring accessibility of orders, relevant case documents, annotations and personal research; enabling voice to text function; and enabling remote location functioning was highlighted. The features of the telegram channel customized by the High Court of Karnataka for judges were demonstrated and its utility in organisation of docket and caseload was emphasised. The functionalities and benefits of the Supreme Court Vidhik Anuvaad Software (SUVAS) was emphasized. The need to develop an institutional database of judgments for judiciary in order to limit the dependence on other databases, and the utility of AI in creating such database was stressed. Discussions were also undertaken on the potential benefits of the use of AI in the adjudication of summary offences, MACT cases, and traffic offences. Thereafter, it was stated that the people are not aware of how the judicial system operates and the role and responsibilities of the registry. In order to build the trust and confidence of the people in the judicial system, it is necessary to address this opacity in judicial functioning. The measures introduced by Kerala High Court for bringing about transparency in allocation of work to staff, scrutiny of files and performance analysis of employees were highlighted. Inclusion of all

stakeholders and allied private institutions under one canopy, and interlinking of courts were stated to be effective measures to ensure transparency.

Lastly, it was stated that change is inevitable. The courts of the future will be paperless and the system would transition from hybrid systems to completely virtual system, with physical hearings being a rarity. Furthermore, it was emphasised that if the judicial system and the stakeholders do not adapt to the change in the times, they would become a part of the problem rather than the solution. It was emphasized that the integration of AI in the court process will have a far reaching impact.