



Judicial Education

NJA

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From the Desk of the Director, NJA

Dear Patrons,

This newsletter covers activities of your Academy during April and May, 2018, the last two months of the previous academic calendar.

In April we organized a National Orientation Program for Junior Division Judges; the West Zone Regional Conference at Mumbai, in collaboration with the High Court, Bombay and the Maharashtra Judicial Academy; an annual calendar meeting between Justices-in-charge and Directors of State Judicial Academies and the NJA; the National Conference for High Court Justices; a workshop for Members of the Railway Claims Tribunal; a refresher course for judges dealing with disputes arising under the SC/ST (POA) Act; and a National Judicial Conference for High Court Judges on the Regime of the Goods and Services Tax.

Three programs were organized during May, 2018. A National Judicial Conference for High Court Justices during the 4th to 6th; a workshop for Additional District Judges during the same period, as a parallel program; and the East Zone - II Regional Conference organized at Guwahati, in collaboration with the High Court of Assam and the State Judicial Academy.

I am pleased to report that during the just concluded academic year, the Academy witnessed a substantial increase in the number of academic programs. We were able to conduct 87 programs in all during the period August 2017 to May 2018. 15 programs for Justices of High Courts; 8 Regional Conferences; 5 workshops for Principal District Judges; for Presiding Officers of Special Courts - 9 workshops; 8 conferences for Additional District Judges; 3 programs for Judicial Magistrate level Officers; 4 programs for Civil Judges Junior Division; 2 programs for Registrars and Registrars General of High Courts; 2 Court Excellence Enhancement Programs (in clusters of 10 each); and 12 Special Events - for Presiding Officers of All India Tribunals, Senior Law Officers of the SBI; Judicial Officers from overseas and an annual Calendar meeting. In all the previous calendar facilitated interactions, judicial education and training for 2572 participants.

The faith and enthusiasm of participant judicial officers, court personnel, overseas judges and other duty holders in the justice delivery system spurs your Academy to continue the commitment and quality, in facilitating judicial training and education, with gracious cooperation of our patrons, Supreme Court and High Court Justices - serving and retired, experts from several fields and other resource persons, who kindly accept the invitation and generously contributed valuable time, to guide our programs.

We are dedicated to carry our charter forward this academic year as well, with the same fervor, intensity and dedication.

Justice Raghuram Goda (Retd.)

Director

NATIONAL ORIENTATION PROGRAMME FOR JUNIOR DIVISION JUDGES

April 6-12, 2018

Shruti Jane Eusebius & Nitika Jain, Law Associates



The National Judicial Academy Bhopal, organized a 7 day orientation programme for Junior Division judges from 6th – 12th April, 2018. The orientation programme initiated discussion on various themes pertaining to the judicial function with the objective of encouraging the participants to introspect on the significance of their role in upholding the constitutional vision of justice and the rule of law. The orientation programme was attended by 36 judges from across the country. The programme was conceived as capacity building of judicial officers at the primary tier, viz. Civil judges (Junior Division). The sessions were designed to provide a forum for the participant judges to share experiences and views with counterparts from other states and to facilitate better appreciation of the judicial role.

The first session on the theme *Role of Courts in a Constitutional Democracy*, involved discussions pertaining to the role of judges in upholding constitutional democracy. It was emphasized that each case decided by the junior division judges strengthens the democracy. The speakers threw light on the inadequacy of laws made by political parties and stated that it is the role of a judge to protect

the rights of minorities. A brief historical overview of the evolution of constitutional democracy in India was undertaken with specific analysis of the *Kesavananda Bharti*, *SR Bommai* and *Golaknath* cases. The principle of sanctity of Basic Structure and balancing factor between constitutional democracy, majoritarian parliament and regional political situation were discussed. Various articles of the Constitution were also deliberated upon in detail with a view to appreciate the role of the judiciary in upholding the constitutional ethos.

On the theme *Managing the Docket: Court and Case Management*, the speakers stressed upon the requirement of coordination and management for efficient functioning of courts. It was pointed out that for case management quality, responsiveness and time must be considered. The framework of National Court Management Scheme was discussed with regard to management of courts. The problems in the prevalent Court Management systems identified in the course of the discussions include-

- (a) Infrastructural challenges such as inadequate size of courts, misuse of office space, lack of separate arrangements for special courts.

- (b) Organisational issues including inadequate staff strength, user-friendliness of the courts, inadequate management of resources.
- (c) Inadequate budgetary allocation to the courts.
- (d) Court Managers are not being used effectively by the courts.
- (e) Management of caseload by judges is a challenge as judges have to prioritize various classes of cases.

It was stressed that judges should not use shortcuts to expedite cases and do away with necessary process. The quality, responsiveness and timeliness of justice are essential traits of an effective judicial system.

On the theme *Courtroom Technology : Use of ICT in Courts*, the phases of e-court project was discussed in detail. It was pointed out that computerization in judiciary started in 1992 and ICT enablement led to creating capacity and infrastructure. The speakers suggested that entry level judges must use and modify it as per requirements. The speakers stated that lack of enthusiasm in using ICT and the misuse of computers and laptops are a problem in the effective use of ICT in courts. Enabling digital signature for judicial officers is a challenge as the digital signature requires yearly renewal. The speakers also emphasized on the benefits of cloud computing for storing judicial data.

On the theme *Constitutional Vision of Justice*, the speakers threw light on the preamble which is the heart and soul of the constitution followed by Articles 38 and 39A that lay down the constitution's vision of justice. It was stated that constitutional vision of justice not only includes creation of law but also creation and enforcement of rights and duties. It was highlighted that mind should be attuned to the object of social justice behind the social legislation. It was stated that primary judiciary is the face of judiciary in the country as very few cases reach the Supreme Court. It was further, opined that justice is an idea which is abstract in terms and could include liberty of thought, belief, faith, worship and upholding the rule of law.

The session on *Law of Precedents, Identification and Application of Ratio Decidendi*, included deliberations upon the various principles applied by the judiciary relating to precedents. It was mentioned that judges need to be fact oriented and precedent is what exemplifies the doctrine of *stare decisis*. The doctrine of *Ratio Decidendi* and *Obiter Dicta* were discussed in detail. It was suggested by the speakers that when judges try a case and determine the *ratio*, they must have clarity in their mind. It was further stated that when judgment is quoted, judge must read the case carefully and only quote the relevant portions of the judgment. The speakers requested the participants not to quote the headnotes. Justice R.V. Raveendran gave fundamental rules to be followed in precedents.



On the theme *Adherence to Core Judicial Values*, Bangalore Principles were discussed at length. It was pointed out that competence and diligence must be shown through the judgments. The speaker highlighted that what is expected out of a judge is, how he conducts himself inside and outside a court. It was mentioned that the ethical values for judges are most stringent as compared to other professions. The core ethical standards pointed out were, integrity & honesty, judicial aloofness, independence of institution as judiciary and as judge individual, humility and impartiality. Each of these standards were discussed in detail stating that independence is the greatest asset a judge has, but this independence comes with responsibility.

In the discussions on *Judging Skills, Framing of Charges* the speakers discussed the steps involved in a case up to the framing of charges. Three types of cases i.e. cases exclusively triable by court of sessions, cases not to be tried by court of sessions and committing the case to court of sessions were highlighted. The essentials required while framing of charges and what constitute charges were explained by the speakers. Various hypothetical cases were discussed and the participants were asked to frame charges in each case followed by discussion based on the charges framed.

In the session on *Judging Skills : Art, Craft and Science of Drafting Judgment*, the resource persons discussed the various styles of judgment writing viz. the pure and impure styles of judgment writing. The pure style of judgment writing requires a sequential structure to the judgment, beginning with the facts of the case, stating the arguments and issues and culminating the analysis and the conclusion arrived at by the court. The impure style is an unstructured form of judgment wherein the whole story in the case is stated in the first paragraph and the judgment mainly deals with the questions for consideration and the analysis of the court. The resource persons also discussed the anatomy of a judgment and stressed that the judgment must include –

- (a) Table of contents
- (b) Issues for discussion
- (c) Facts and procedural history
- (d) Analysis and discussion
- (e) Conclusion and disposition

The resource persons stressed that the judgment is primarily for the litigants and must be crafted accordingly. The language must be simple and coherent. The litigants should be able to easily understand the outcome of the case and the reasons for the outcome. The reasoning is the soul of the judgment. The approach to judgment writing must be consistent and precise. The judgment delivers the message of the law and the language is the medium. The medium is like a gift wrapper and is important to the judgment as it attracts attention.

All judges irrespective of the level of the judicial hierarchy discharge the same functions, with only minor difference in degree and name. The judge is like an artist and his/her outlook matters in discharge of his judicial function especially in the art of writing judgments. Judges must approach judgment writing as art and must take the liberty to write freely and to develop his/her own style of writing. A judge's judgment is as distinct his/her personality and signature and a judge must develop his/her own distinct style of judgment writing.

The resource persons stressed that-

- (a) Judgment should first state the law, then state the facts and thereafter state the question for consideration.
- (b) Statement of the Issue in the case should not exceed 75 words.
- (c) Judges should avoid using 'whether' in the judgment while stating the Issue.
- (d) Sentences in the judgment should not be longer than 2 printed lines.
- (e) Judges should avoid copying and using large quotes from precedents. Judges should rather state the ratio of the precedent.

The speakers gave key points which should be followed by the judges for better judgments which included, to write precisely and not lengthy judgments, to fully hear the arguments of the lawyers, to quote only relevant part of judgment and not to quote head notes, avoid abbreviations, reference must be made to binding precedents, and the language of the judgment must be sober and easy to understand. It was suggested that judges know

what to write but they must learn how to write as a judgment is a judge's signature and it reflects the personality of a judge. Lastly, it was pointed out that every judgment must include content table, issues, introduction, facts, analysis, conclusion and disposition.

On the theme *Electronic Evidence : Collection, Preservation and Appreciation*, the speaker pointed out that the session is intended to address the fear of dealing with electronic evidence. It was stated that it is not the machine but the software which makes a difference. Every device collects data and there is no such thing as erasing data completely as everything could be retrieved.

On the theme *Information Technology and Cybercrimes*, the speaker threw light on working of crypto currency & Bitcoin and discussed at length various forms of cybercrimes like hacking, identity theft, child abuse, unauthorized use of trademarks, online piracy, cyber defamation and cyber bullying. It was pointed out that virus is a code which is intended to cause harm and as a user we must be very careful. The also discussed the process of hacking, cheating by personation in online domain and the jurisdictional issues with regard to such offences.

In the discussions on *Forensic Evidence in Civil and Criminal Trials*, the resource person dwelt on the relevance and the increasing role of forensics and the increasing involvement of forensic evidence in cases in recent times. The scope of science of forensics has gone beyond the mere sampling and analysis of evidence and now encompasses the study of criminality as a science. The speaker discussed the concept of neuro-criminality and emphasized on criminality as a learned behaviour as the brain has learnt to do certain acts. The speaker discussed the concept of Automatic mind (ie irrational thought and acts) and rational mind (ie rational in thought and action). In the development of habit patterns, the behaviour has become automatic and there is no diversion in the neural pathway and hence the brain commits certain acts as automatic or irrational behaviour. The speaker discussed the various methods of collecting forensic evidence and recent developments in science with regard to forensic evidence. The speaker discussed the science of brain mapping and the recent method of layered voice analysis.

In *Break-out Group Discussion*, the participants were engaged in discussion on the art of writing judgments and the importance of reasoning in judgments. The discussions were based on a simulation exercise and it was emphasized that the judgment should reflect the facts, issue, conclusion arrived at by the court and the reasoning of the court for such conclusion. The relevance of reasoning in judgment writing was empahsised and it was stressed that judgment should state the law and the precedents relevant to the case to bolster the conclusion arrived at by the court. The speaker stressed that judgments should be precise, coherent, well structured and sequential and should conclusively deal with the facts. Most importantly, the judgment should be able to communicate the opinion of the court to the person reading the judgment so that the person is left in no doubt as to the conclusion and the reasons for such conclusion.

On the theme *Role of Courts in Securing Gender Justice*, the resource persons dwelt on the concerns of gender bias and gender inequality that is prevalent in Indian society. The speaker discussed the issue of sexual violence with the aid of simulation exercises. The speaker highlighted the prevalent myths and stereotypes regarding sexual violence, including perceptions of chastity, consent, absence of injury as an indication of consent, promiscuity and previous sexual history. The speaker discussed the concept of bodily integrity as a right and discussed the cases of *Justice KS Puttaswamy v. Union of India* and *Independent Thought v. Union of India* in this regard. The speaker also discussed the concept of consent and its constitutional dimensions, and stressed that constitutionally a female has equal rights as a male and no statute should be interpreted or understood to derogate from this position. If there is some theory that propounds such an unconstitutional myth, then that theory deserves to be completely demolished. The speaker discussed the judgment in *Anuj Garg v. Hotel Association of India* where employment of "any man under the age of 25 years" or "any woman" in any part of such premises in which liquor or an intoxicating drug is consumed by the public was held to be unconstitutional and it was held that no law in its ultimate effect should end up perpetuating the oppression of women. Personal freedom is a fundamental tenet which cannot be compromised in the name of expediency until and unless there is a compelling State purpose. The speaker also dwelt

on marital rape as a violation of a woman's right to bodily integrity. The speaker also discussed the need to ensure victim centered justice especially in sexual violence cases.

On the theme *ADR and Plea Bargaining*, the resource persons highlighted the challenges before the judiciary viz. litigation explosion, inadequacy of judicial resources, backlog of cases, increasing cost of litigation as reasons for the increasing use of ADR methods for settlement of cases. The speakers also highlighted the negative consequences of the failure of the judicial system in providing speedy justice viz. use of extra-legal methods of settlement, cynicism in the people with regard to the judicial system, delay and negative public perception of the judiciary. The speakers highlighted the benefits of ADR to the judicial system and to the litigants. The speaker discussed the statutory provisions enabled dispute resolution through ADR and the models of ADR that can be employed to settle disputes. The speakers stressed that ADR is a democratic settlement of disputes and involves direct communication, acceptance of each other's views, accommodation and mutual agreement between the parties. The mediator plays the role of a facilitator. The speaker conducted a mock mediation to enable the participants to understand the modalities of conducting mediation and to reinforce the benefits of settlement of disputes through ADR.



In discussions on *Occupational Stress in Judges: Identification and Consequences of Stress*, the speaker dwelt on the concept of emotional wealth and its significance in positivity and mental harmony. Happiness, positive energy, respect and inner peace are necessary for emotional wellbeing. The speaker stressed that one must be aware of ones' thoughts and emotions. The speaker suggested self-affirmation as a tool for positivity. Good sleep hygiene including less use of gadgets at bedtime is necessary for mental wellbeing.

With regard to Managing Staff Behaviour, the speaker stated that one must understand that the staff as human beings are imperfect. One must try to understand the court staff and the advocates and to understand their neuro-linguistic programming. The suggested measures/tools to build cordial relations with the court staff are –

- (a) Organise monthly get-together with the staff
- (b) Build personal emotional bridges with the staff
- (c) Cultivate better relations with the staff
- (d) Small gestures towards the staff will go a long way to foster harmony.

With regard to handling advocates in the court room the speaker stressed that the judge must prepare his mind before entering the courtroom so as to avoid getting provoked. Managing advocates is an art and skill that is acquired with experience. Politeness is a tool that works with adversarial advocates.

The speaker suggested that one must break the wall between home and officer. One must take 10 minutes timeout before going home to destress and recharge brain before going home. The speaker also stressed that one must keep abreast of the law as academic deficit also leads to stress. Stress also results the belief that we are dealing with objective reality. We are dealing with shared myths of the day. Don't have moral canonization and demonization of the litigants. One must build and create one's own remedies

In discussions on the theme *Managing Judicial Stress : Institutional Strategies and Techniques*, the speaker dwelt on the concept of occupational stress and

individual reaction to stress. Stress can be caused by environmental factors, personal/individual factors, occupational factors, psychological factors and health factors. The speaker discussed the coping strategies which are adopted by individuals to deal with stress. The speaker made the following suggestions to cope with stress –

- (a) Avoid Stressors- one must take control of one's environment and learn to avoid the situations, issues and persons who cause stress. One must distinguish between the "shoulds" and the "musts" and learn to say no.
- (b) Behavioral Management – One must learn to manage stress by methods of relaxation, distraction and time management
- (c) Problem Solving – One must find and define the problem, generate and evaluate alternative solutions, select and implement the solution and evaluate the result.
- (d) Adapt to the Stressor – Adaptation can be done through thought management. One must use measures of self-reinforcement, self-instruction and reframing one's thoughts
- (e) Anger management
- (f) Managing relations
- (g) Lifestyle management

Suggestions:

- Judicial officers must be true to the oath to protect constitutional democracy.
- Judicial officers must realize their strength by seeking the worst and conquering them as opportunities.
- A committee of senior judges must be constituted to consider judgments those are required to be reviewed and to review them.
- A pool of staff available to the courts should be created so that effective and optimal use of all staff can be ensured and staff assigned to judicial officers who are on leave can be utilized in other courts.
- On judgment writing it was suggested that a judge must not get swayed by what other write but have their own distinctive identity and writing style.
- Judges must keep abreast of the law as academic deficit also leads to stress.
- Judiciary must undertake measures to ensure victim centered justice especially in sexual violence cases.
- Judges must endeavor to shrug off their personal biases when dealing with cases.



WEST ZONE REGIONAL CONFERENCE ON ENHANCING EXCELLENCE OF THE JUDICIAL INSTITUTIONS: CHALLENGES & OPPORTUNITIES

April 7-8, 2018

Yogesh Pratap Singh, Research Fellow & Krishna Sisodia, Law Associate



The National Judicial Academy organized a two-day West Zone Regional Conference on the theme 'Enhancing Excellence of Judicial Institutions: Challenges & Opportunities', in collaboration with the High Court of Bombay and Maharashtra Judicial Academy and Indian Mediation Centre and Training Institute, Uttan (Thane). The conference was attended by High Court Justices and Judicial Officers from the High Courts of Bombay, Gujarat, Rajasthan and Madhya Pradesh.

The Regional Conference was designed to provide a forum for exchange of experiences, communication of knowledge and dissemination of best practices from across clusters of High Court jurisdictions in the West zone. Its aim was to accentuate the experiences of the High Courts and Subordinate Courts, besides revisiting established and imperative norms of a constitutional vision of justice, elements of judicial behaviour, social context judging, significance of ICT and other specified topics.

The first session was on the theme "*Constitutional Vision of Justice*". It was stressed that although we

have tremendously failed in achieving social and economic justice in the country still the people of India have faith in the judiciary. Therefore, it is important for the judicial officers to understand the constitutional philosophy and in its Preamble lies the heart and soul of the Constitution. Various aspects associated to justice were discussed like- the significance of certainty of law, issues related to cases involving public interest and individuals, competent legal aid and social consciousness etc. It was suggested that magistrates should focus on access to justice rather than chasing principles. The constitutional vision of justice is not only important for higher judiciary but also for the subordinate judiciary. It was highlighted that although members of the subordinate judiciary are not invested with powers to declare the laws unconstitutional, but they are the ones who are handling constitutionally important cases. *Ratlam Municipality* case was cited as the best example of the kind.

The second session was on the theme "*High Court and District Judiciary : Building Synergies*". It was perceived that predominantly the only

communication that takes place between the high courts and the subordinate courts is disciplinary communication which is far from the ideal. To accentuate harmony, a continuous course of communication between the hierarchies is required to inevitably increase the efficiency of the deliverables. It was suggested that to build synergies between the high court and the district judiciary it is important that – the district judges should prudently handle the appeals of junior judicial officers and subsequently guide them. It was opined that synergies cannot be built if there is no mutual respect for each other. It was also pointed out that the judges should be open to accepting dissent from the judicial officers. It was highlighted that the amount of disempowerment is too much among the district judiciary and this, in turn, affects the justice administration system. The session concluded by stating that continual dialogue, communication and exchange of evolving horizons of knowledge and best practices, between judicial hierarchies – the Higher and Subordinate Courts, conduces and nurtures quality justice delivery.

The third session was on the theme “*Elements of Judicial Behaviour: Ethics, Neutrality, and Professionalism*”. It highlighted that judicial conduct plays an integral role in upholding public trust and confidence in the justice system, hence, the demeanor of a judge must embrace ethics, neutrality, and professionalism. It was emphasized that ethics are the basic principles of the right actions of a judge that may be in relation to moral action, conduct, motive or character of judges. It was agreed that impartiality, integrity and independence of a judge is the most important value and judge’s duty is to decide the case and to see that justice is rendered.

The fourth session was on the theme “*Social Context Judging as a Controlling Element in Statutory Interpretation and Exercise of discretion*”. It was conceived that while judging a case, the social context or the developments of the society cannot be completely ignored as society and law both are dynamic i.e., they evolve with time. Our Constitution, being a socio-political manifesto of the people and courts being the guardians of the Constitution, are expected that social context forms an indispensable tool of judging not only in constitutional courts but also in trial courts where far greater number of people seek justice. Further, the role of a judge is to act as a conduit between the needs of society and

the law without allowing the legal system to decline or collapse into anarchy. The session was concluded by stating that judging is not just deciding, it is strengthening the social cohesion and maintaining the rule of law.

The fifth session was on the theme “*Access to Justice: Information and Communication Technology in Courts*”. The speaker initiated the session with the history of computerization of courts which began way back in 1990s when the first computerized Cause List was prepared in the Patna High Court. A reference was made to the Delhi High Court by emphasizing that the entire record of decided cases upto the year 2012 have been digitalized, 40,000 sq. ft. land has been vacated due to digitalization, certified copies of digital records with digital signature is available within 15-20 minutes of the order, installation of kiosks for information, and introduction of the system of e-court fee, digital display boards in and outside the courtrooms, e-cause list, e-summons etc. It was suggested that the judiciary as a whole stands far behind in the application of technology for swifter justice administration, therefore, litigant oriented use of technology should be adopted by the judiciary to improve the efficiency of courts.

The sixth session was on the theme “*Access to Justice: Court and Case Management*”. The session was made as an interactive session in order to allow participant judges/justices to place before the house the limitations they face with respect to the management of their courts as well as to share their experiences and assimilate best practices. It was widely agreed that the effective administration of justice depends critically upon a successful partnership between the judiciary and the stakeholders. By reducing the time required for resolving disputes, the appropriate use of case management may also help build public confidence in the effectiveness of the courts and the accountability of judges. It must be ensured that laws, regulations, and court policies are followed, that the needs of court employees are properly addressed, and that administrative tasks are carried out. The judge presiding over a court must monitor unnecessary delays and ensure that there are no uncalled for adjournments. It was suggested that the success of the court depends upon the quality, responsiveness and timeliness of justice and hence the management of court is an integral aspect of the justice administration system.

MEETING OF HON'BLE JUDGES IN-CHARGE OF JUDICIAL EDUCATION AND DIRECTORS OF SJA'S**April 14-15, 2018**

The Director NJA spelt out the purpose of this meeting i.e. to formulate draft calendars for the National Judicial Academy and various State Judicial Academies, for preparing final draft calendars for consideration by the National Judicial Academic Council (NJAC). The Director, NJA circulated the draft NJA Annual Calendar – 2018-2019, prepared by the Academy, for inviting suggestions, additions, and modifications by the participants. Hon'ble judges representing the participating SJA's were then invited to make presentation regarding their respective calendars and the training modules/protocols/schedules followed in the respective SJA's.

Justice Dilip Gupta of Allahabad High Court, highlighted the need to train judicial officers on appreciation and application of evidence. He also stated that there are two master trainers attached to the SJA w exclusively for training judicial officers in the area of ICT and movement towards computerization of courts.

Justice Aniruddha Bose representing Calcutta High Court/W.B SJA informed that the WB SJA would submit its calendar later. He stated that they are also training non-judges. Justice Bose wondered whether

a common structural model for SJA's could be developed across jurisdictions, by consultations and consensus amongst High Courts, so as to achieve uniformity and operational efficacy.

The Director, NJA observed that the law operating in the field of adjudication is a sort of battle-field surgery, different from that operating in the septic environment of an operation theatre in a hospital. Law and procedures need to be constantly tuned to the dynamic needs of society and in real time conditions of infrastructure/manpower asymmetries/deficits, in conditions where judicial officers are often assisted by an inadequately trained/informed bar and similar sub-optimal operative environments.

To a query whether there are any State Governments run/administered training institutions recruiting judicial officers for training of executive/police officers, the representative of AP SJA stated that the National Police Academy, Hyderabad seeks assistance, on a regular basis, of judicial officers for their training programs. Other States also furnished instances of deputing judicial officers for training of government officers.

Some of the Hon'ble Judges in-charge of SJAs conceded that best among judicial officers are not spared for faculty positions in the Academies; hence regular judicial functions would suffer. Other judges also mentioned pressures for accommodating officers in SJAs, for reasons of healthcare, need for a capital city posting and like reasons. Insufficiency of adequate number of senior judges with academic/teaching interests/aptitudes is another reason of shortage of faculty in State Academies. Some judges suggested that faculty positions should be incentivized by a higher pay package, special grades, fast-track promotional opportunities or some such incentives to make these positions attractive.

Justice Talapatra representing Tripura High Court stated that when a State agency requests for deputing a judicial officer to deliver a lecture, we depute officers, without disturbing judicial work, during weekends/vacation periods.

The Director intervened to observe that the need of any officer for headquarter posting should never be a criterion for posting an officer to the SJA, rather his training skills, academic profundity and aptitude for teaching should be the only relevant factors for posting to faculty positions.

Hon'ble judge representing Chattisgarh judge made a presentation of the activities of his SJA; and stated that the High Court/SJA, when requested by a State agency, spares judicial officers for executive training programs, but not as a part of the training calendar.

Justice Sanjiv Khanna, representing the Delhi SJA stated that academician's involvement in judicial training is also critical; the nature of litigation is constantly evolving; we are moving forward from mere family and inheritance matters to regulatory aspects, Bankruptcy and Insolvency, Cyber laws, Financial transactions, Cross-border Corporate litigations, Benami properties laws and their implications etc. He also mentioned structural issues whether SJAs be set up as an independent society or should continue to be a part of the High Court; and these require to be considered as well. Should SJA take up research and audit of judicial performance or leave this area to private players like Vidhi and Daksh. Justice Khanna also opined that training in Human Resource management should also form

part of the SJA curriculum; Courts could perhaps recruit HR professionals particularly since India is an exporter of HR skilled professionals. The calendar of the Delhi Judicial Academy, for the current year has proposed 66 courses. A bulk of the programs relate to adjudication of disputes pertaining to vulnerable sections of the society, an area where the State Academy lays emphasis and has made good progress. Sanjiv Khanna, J also pointed out that faculty/officers exchange programs across SJAs would be a good area for vitalizing quality in judicial output.

The Hon'ble judge representing Gauhati HC clarified that he was deputed to the meeting as an observer, he was not the judge in-charge of the SJA. He furnished the calendar.

Justice Nagarjuna Reddy, representing the Hyderabad High Court and the SJA felt concurred with several observations of Sanjiv Khanna, J and stressed on importance of commercial litigation and the need for training judicial officers in this field; training in attitudinal change is assuming significance for newly elevated judicial officers. He narrated two recent examples. 85 adjournments were given in a case pending since 2002 to 2017 and advocates of the parties were still seeking adjournments; he could succeed in passing a compromise decree between the parties after 32 years of litigation. In another case, he found 800 illegal encroachers and how complying with all substantive and procedural provisions he could yet get these illegal evictions removed, in a writ petition with more than 100 adjournments on record. According to Reddy, J High Court judges too need sensitization to effective court and case management skills. We do faculty assessment of faculty members. District level workshops are also held under the supervision of administrative judges. These are supplementary to what is done by the State SJA.

Justice Choudhary representing the Himachal Pradesh High Court stated that in his State the nature of litigation is substantially different. There is not much of commercial, business or industry related litigation and even the rate of serious crime is low. In the previous academic year the SJA conducted a total of 72 courses for both judicial officers and non-judicial officers. According to him, problems other than judicial, faced by judicial officers must

also be discussed at SJAs and problems need not be sidelined or ignored; a feedback mechanism must also be evolved. He suggested that the NJA consider imparting training to the legal professionals since there is a serious deficit in the legal education imparted in several law schools and also regarding professional standards of ethics, behavior in courts and decorum.

It was informed that Rajasthan has advocate training academy.

The Hon'ble judge representing J&K High Court and the SJA suggested to design more courses to train judges in mediation and in ICT. He informed about a question bank protocol developed by the SJA and its contribution in reducing egregious judicial errors. He also informed that the State does not have a Bar Council and therefore the SJA administers oath to advocates as well as trains advocates on conduct and ethics. He showed slides about SJA activities.

The Hon'ble judge representing Jharkhand HC/ SJA referred to his SJA calendar circulated to all participants and stated that there is an urgent need for designing courses on substantive and procedural laws governing Commercial courts. As to feedback sessions he stated about a blog on their website where officers are allowed to ask /post any question and it is the responsibility of the Director to answer those questions. He requested the NJA to develop a central pool of resource persons, for sharing with SJAs. Both NJA and SJAs must develop training modules to help judges migrate towards paperless courts in the near future, he added. He also mentioned the difficulty experienced with respect to preparing/maintaining a question bank for the recruitment process. The existing question bank is posing problems and there are complaints on the rise. The NJA must develop centralized question bank for recruitment of judicial officers at all levels, he opined.

Justice B.S. Patil representing Karnataka High Court/ SJA stated that judicial academies have twin tasks: firstly to impart legal education to recruited officers because of their poor legal education background and the secondly, to provide judicial education to prepare them for the functions they are to discharge. To make interactive session productive, they have devised a strategy of asking resource persons to

share their session content – in presentation or Q/A format two days earlier with trainees so that trainees would go through the same and could get ready to seek clarification. He suggested skill development programs for enhancing abilities for listening; whereas memorizing and learning should also be an aspect of focus during training sessions. He informed about regional workshops organized for different districts providing an opportunity to the SJA to interact with a larger number of Officers. Justice Patil stated that the SJA has been providing additional training in English classes. 5 days mediation training should be mandatory for every newly recruited judicial officer, he added.

Kerala SJA Director Justice K.T. Sankaran explained the structure of his Academy. In Kerala the disposal is higher than the filing. This is an achievement of judicial training at the SJA. They have proposed 82 courses in 110 days. In the 2015 Conference of Chief Justices, a decision was taken to provide comprehensive training to all the stakeholders. The SJA recognised that every stakeholder should be trained rather than confining training to only one actor in the system, the judicial officer. They have opened their doors for all persons who are in any way connected with the justice system. Therefore whether trainee or trainer, they do not discriminate according to office or occupation. He stated that the Question Bank strategy, earlier adopted had failed due to manipulation by judicial officers. Justice Sankaran also pointed out that the Kerala judiciary is perhaps unique in the sense that it is free from audit objections. He added that the SJA also imparts training to young lawyers at district courts level so that they understand issues about law and poverty and behavior in Courts; and this has proved hugely beneficial.

The Hon'ble judge representing M.P stated that in some parts of the State there is a festival called Bhagoria, where teenagers run away and have sexual relations, when they come back to their home either they get married or if things do not work out then FIR's are filed under section 366, 376 IPC. Therefore subjects like sociology have also to be taught to judges by the SJA so that judges understand how different local cultures impact the statistics of crimes being reported.

The Hon'ble judge representing the Tamil Nadu SJA stated they do not have aversion to academicians as guest faculty and they invite them from several disciplines and from almost every prestigious institution in the country. He requested NJA to design a calendar in such a way that it complies with all the directives of committees set up by the Supreme Court, like Juvenile Justice Committee, E-Committee etc. NJA can think of involving stakeholders also in training programs.

Justice Kotiswar Singh representing the Manipur High Court cited two fundamental changes that have occurred. He said that introduction of LSAA exposed judicial officers to the public and introduction of E-courts has brought about considerable procedural changes in the courts' functioning. We cannot just confine ourselves to training of judges alone. We have to train our lawyers. Unless their quality improves, there will not be much achieved by training judges alone in the system. Three institutions – SLISA, SJA and the High Court have to come together to train all stakeholders involved in the administration of justice. Subordinate judicial officers must be taught Constitution as they have become prisoners of their habit of ignoring the Constitution totally from their judicial work. Even regular interaction with members of the media is needed for improving perception about courts. He said that the SJA must take advantage of legal literacy clubs / programs under SLISA schemes to create awareness about the whole system. NJA may develop some model format/questions Bank for recruitment of judicial officers. Most of the judges do not know how budgets are to be prepared. Therefore both NJA and SJA must train judges in this area also so that delays in financial allocations is avoided.

Justice Ravi Ranjan represented the Patna High Court. He shared his experience of hearing criminal appeals. In more than 90% appeals, decisions were set aside. This is because of faulty investigation and judicial errors as well. He asked SJAs to consider imparting training to FSL persons also as we are now training probation officers. Training must be given to judicial officers so that CIS-1 and CIS2 are kept updated and NJDG has current and accurate data fed real-time.

Rajasthan High Court/SJA was represented by Justice

G. K. Vyas. Officers should be trained to understand the nature of work and functions of officers appointed in Panchayat Raj institutions also he suggested. He added that SJAs must have a say in performance appraisal of probationer judicial officers. Only on SJA giving positive feedback, should a probationer be confirmed, or the probation should be extended.

The Hon'ble judge representing the Sikkim High Court stated that smaller States like his state have their own set of problems. In his High Court there are only 3 judges. The over all pendency is also very low compared to the rest of India. The total number of judicial officers in the State is 28. There are several limitations, distance, logistics and the like which impede securing services of resource persons to guide training sessions. A central pool of resource person would go a long way in meeting this problem he suggested.

Justice Talapatra of Tripura High Court resonated the views of Sikkim and stated that they are facing similar problems, in securing faculty for judicial education and training. Tripura judicial officers are often sent for training at Delhi and Chandigarh SJAs. But currently there are financial constraints and presently there are no funds allocated for such travel. He also suggested that separate/specialized training should be imparted to officers in the area of land survey rules and principles at SJAs. According to him judicial officers should not be involved in updating E-court system/NJDG. The Systems administrator should be solely in-charge of uploading data, for security reasons. He added that a new protocol for performance evaluation was developed during the period of the Chief Justice U.L. Bhatt, whereby 10 judgments over a period of 3 months were to be assessed by the inspecting/administrative/portfolio judge. This system worked well he added.

Justice Dilip Gupta of Allahabad High Court did not agree with Justice Talapatra, regarding the Systems Administrator updating data to the NJDG. He was of the view that the judicial officer has to be trusted with this work and this work has to be done by judicial officers and not the systems administrator.

Gujarat SJA Director, Mr. Patel informed the participants about courses conducted at his Academy during the previous academic year. He mentioned

about the courses introduced for the academic year 2018-19; and stated that a registration software was developed by the Gujarat SJA and this software generates automatic reports about the training courses, judges who attended these courses and other relevant data/information.

The representative of Meghalaya informed that the SJA was established only in 2016. Government allocated 22 acres of land. Funds are allocated by the Government.

On behalf of Orissa SJA the faculty member who attended the meeting informed that the High Court Judge in charge and Director could not come due to other pressing work. He explained the structure of the SJA and the current annual calendar for 2017-18.

The representative of the P & H/Chandigarh SJA stated that the SJA is under a Society and the CJ is the Patron-in-chief of the SJA. He suggested for training at the SJA on Sec 340 Cr.P.C, trial of persons of unsound mind, etc. The Director of Jharkhand SJA informed that every 3 months SJA conducts online examinations for judicial officers on topics drawn from journals that are supplied to them. Only 4 question are put on these journals. The representative of Kerala SJA said they will replicate this model. The representative of Delhi SJA asked what would be impact of these examinations, what if a judicial officer fails; and what would be the impact on the public perception of judicial institutions if lawyers come to know that officers failing in such exams continue to discharge judicial functions? The representative of Uttarakhand SJA opposed the tests model of assessment. The Director of Jharkhand SJA and added that officers are appreciating this effort. Justice Talapatra of Tripura High Court said that tests can be developed which enhance analytical abilities in judges.

The Director of Chandigarh SJA informed that judges are copying complaints and therefore abilities to write in own language are not being developed.

Justice Reddy of Hyderabad High Court said he will send to the NJA and the SJAs CDs of recorded versions of mock trials conducted by them for training officers. Jharkhand SJA informed that it is already doing this. Delhi SJA informed that prosecutors and police officers are also being involved in mock trials

so as to replicate as realistic a situation as possible. Jharkhand SJA apparently sends trainee judges to courts to observe the process and write mock orders for real trials. Justice Sankaran of Kerala SJA informed that trainee judges are sent to observe real trials during the foundation course. Justice Talapatra of Tripura High Court observed that mock trial would amount to theoretical training and not field training. Justice Kotiswar Singh of Manipur High Court remarked that each High Court/SJA should devise their own methodology for conducting mock trials for induction courses.

Justice Talapatra of Tripura High Court observed that there should be video conference of deliberations and shared with every SJA and that judges as resource persons come with their prepared content and this content is becoming repetitive.

Justice Sankaran of Kerala SJA observed that the NJA should consider organizing regional conferences on emerging areas of law like Cyber-law, Money laundering, IPR etc.

The representative of Karnataka SJA observed that its Mediation Centre does not train judges, it only trains lawyers for taking up mediation work. The Director of Tamil Nadu SJA informed that the Mediation Centre of TN has so far trained 300 judicial officers in mediation. This is a 40 hours training module.

The meeting concluded with a vote of thanks proposed by the Director of the NJA.



NATIONAL JUDICIAL CONFERENCE FOR HIGH COURT JUSTICES**APRIL 20– 22, 2018***Shashwat Gupta, Law Associate*

The National Judicial Academy organized a National Judicial Conference for High Court Justices from the 20th to the 22nd April, 2018. Eighteen High Court justices from 12 different High Courts participated in the conference. The objective of the conference was to provide a platform for the participants to share experiences and to facilitate discussions on various facets of judicial review, separation of powers and interpretation of the constitution

Session 1- High Courts: Guardian of District Judiciary

The speaker initiated the session by stressing upon the need of mentoring by the high court judges. He emphasized that the dialogue between the subordinate judiciary and high court should not be restricted only to disciplinary action and that hierarchies in the system were the main impediment in conversation between the higher and subordinate judiciary. Thereafter he briefly discussed Article 235 of the Constitution dealing with control of high courts over subordinate courts. The session also focused upon various duties of high court

judges under power of superintendence including setting of disposal targets, writing objective Annual Confidential Reports (A.C.R) and appointment of clerical staff. The speaker suggested that disposal targets of the subordinate judges should be set according to pendency of cases in the particular district. Subsequently, he discussed a method of writing objective and unbiased A.C.R. involving a 360 degree feedback which would incorporate feedback from colleagues of the judicial officer, lawyers, court officers and litigants.

Session 2- Free and Fair Elections – Vitalizing Democratic Fabric: The Way Forward

The speaker initiated the session by discussing the purpose of creation of a “State”. He proceeded to discuss various domains which should be the priority of the government. The major areas which were delineated included maintenance of law and order, sustainable development of natural resources, education, healthcare and infrastructure. The session delved on the role of judges to also mentor the

society apart from delivering justice. It was discussed that the culture of self-enrichment at public expense is eroding faith of the common man in the system. It was further discussed that there should an overall transformation of government institutions since fair elections alone is not sufficient for revitalizing the present democratic system in the country.

Session 3- Free and Fair Elections – Vitalizing our Democratic Fabric: The Way Forward

The speaker commenced the session by reflecting upon various pathologies affecting the political sphere which has resulted in democracy becoming dysfunctional in the country. The factors which were highlighted by the speaker included asymmetry of power, lack of understanding by citizens of their role in a democracy and over centralization of power. It was further discussed that political parties should only be allowed to make promises related to their constitutional role and distribution of freebies should be discouraged. The speaker also focused upon the elements critical for better functioning of a democratic state like state capacity to deliver public services, rule of law and accountability and stated that a fine balance between these elements is imperative .It was further discussed that rule of law is important for enforcing accountability and for preventing abuse of authority. Lastly, several reforms

were suggested by the speaker which included legislative reforms, increased empowerment of local governments and development of measures for enhanced accountability.

Session 4-Contemporary Challenges for Judicial Review, Policing Governance within Separation of Powers Framework

The speaker commenced the session by highlighting the duties of judiciary and stated that it is the responsibility of the judiciary to check that all the three organs work within the ambit of powers assigned to them. It is the duty of the court to uphold constitutional values and to enforce constitutional limitations. The speaker delved upon the concept of judicial review and stressed that it is at the core of constitutional democracy and is exercised to test the legality of any State action. The speaker also delineated various challenges faced by the judiciary which included undermining of the authority of judiciary, balancing development with environment protection and difficulty in access to justice by the downtrodden and marginalized communities. It was opined that the old concept of separation of powers should be replaced with the concept of cooperation of power since all the three organs are not warring entities and should work in tandem to protect and promote constitutional values.



Session 5- Construing the Sounds of Constitution's Speech: Meanings beyond Text

The session was initiated with discussion that the interpretation of the constitution should not be static and it should develop and evolve in consonance with time. It was discussed that the scope of Article 21 of the Constitution has been expanded by the court through interpretation to meet the exigencies of time and needs of the society. It was also discussed that the judges usually restricted themselves to the text of the Constitution in the initial years after India became a republic. However, with the passage of time the judges started interpreting the Constitution according to the needs of the society and expanded the scope of various fundamental rights. The speaker cautioned the participant judges against ignoring the text while interpreting the silence of the Constitution and also stated that pre-existing conventions should not be discarded while interpreting silences of the Constitution since it would result in unnecessary problems.

Session 6- Superior Courts: Managing Judicial Review within Democratic Framework

The session was initiated by the speaker by stating that judicial review should be done according to the demands of the situation. It was discussed that the judiciary should balance the demands and counter demands of the society. It was opined that the High Court and the Supreme Court are considered as superior court because a superior duty has been cast upon them to interpret the Constitution. It was discussed that the court should realize the limits, recognize the limitation and understand the scope of judicial review. The speaker also discussed that judicial review can only exist in a democratic state and is important for proper functioning of the constitutional framework. The participants discussed the concept of judicial activism and it was opined that the judiciary should refrain itself from encroaching upon the domain of the executive.

Session 7- Corporate Fraud and Manipulation: Repercussions, Deterrent Mechanisms and Judicial Approach

The speaker discussed the major scams which have taken place in India including the Harshad Mehta scam, Ketan Parekh scam and the Nirav Modi bank fraud. He also explained the modus operandi of the fraudsters and the method employed by them to commit the fraud. He opined that there should be greater vigilance on part of the regulators to prevent frauds and the judiciary should also change their approach towards such frauds. The speaker stated that the investigative agencies are not able to properly trace the money trail which adversely affects the prosecution. It was also discussed that there should be overhaul of the present legislative framework and the judges should be given more power to control the investigation in such frauds.

Session 8- Money Laundering: Prevention of Money Laundering Act, 2002: Origins and Evolution

The speaker initiated the session by elaborating upon the concept of money laundering and the major steps involved in it i.e. placement, layering and integration. Subsequently, he traced the history of the Prevention of Money Laundering Act, 2002 and focused upon attachment of property. He discussed the judicial remedies available against attachment including the appeals to various authorities and the scheme of attachment and confirmation. Lastly, he focused upon the various amendments made to the Act and discussed the judgement of the Supreme Court in *Nikesh Tarachand Shah v. Union of India* (AIR 2017 SC 5500).



SEMINAR FOR MEMBERS OF THE RAILWAY CLAIMS TRIBUNAL

April 21-22, 2018

Sumit Bhattacharya, Research Fellow



The National Judicial Academy organized a two-day National Seminar for the Members of the Railway Claims Tribunal (hereinafter RCT) on the 21st and the 22nd April, 2018. The seminar was attended by the Judicial and Technical Members of the RCT. The seminar served as a common platform for the members to air their views and concerns about their day-to-day working and its explore appropriate strategies for expeditious resolution of claims in RCT. The thematic areas covered in the seminar included issues like- jurisdictional Charter of RCT, statutory interpretation of some of the key concepts such as untoward incident, self-inflicted injury and criminal act etc., overview of railway accidents and claims, norms of strict liability, components of decision making. The seminar also discussed the need for adopting a non-litigative approach under the superintendence of RCT, methodologies for securing investigatorial support for ascertaining genuineness of claims and approaches to identify appropriate strategies for expeditious disposals in RCT.

The first session emphasized upon the fact that in a tribunal approaches and procedural modus are

different as in the civil courts. Till 1989, all claims against the railways (be it for damages towards personal injury, death or loss of goods) had to be taken before a civil court. In civil courts things are supposed to be done in a certain prescribed and established procedures. There is a predetermined and predictable manner of approaching a case. Therefore, there is certainty about how things are to be done. On the other hand, tribunal adopts simpler procedure. Tribunals are expected to attempt or endeavor to evolve things within a larger framework of rules of natural justice. The fundamental laws of natural justice ensures opportunity to a person to engage and to give his viewpoint. Tribunal decides essentially after adequately hearing a person. It was also stressed that “claims” can be or should be made by the passengers, railway staff or any other person who has the reason to use the railway premises. Discussing about untoward incidents it was suggested that if a railway facility is not properly supervised and if there is a death due to untoward incident, then railway administration has to take the responsibility to ascertain justice. Various challenges and issues faced by the RCTs were discussed. It

was emphasized that, there is a serious mismatch between the decisions arrived at by the RCTs and the various High Courts – incidental to the fact that around 90% of the RCT decisions are being reversed on appeal by the respective High Courts. It appeared that there are fundamental misunderstandings of interpretation of the law prevalent on the part of the members of RCTs. It was underscored further that several cases take up 7 to 8 years to be disposed of – mainly because of limitless adjournments and poor access to evidence. The maximum compensation that can be awarded for a victim in case of death is 4 lakhs which was thought to be grossly inadequate.

The session also discussed interpretation of key statutory concepts under the Railways Act, 1989 (hereinafter the Act) vis-à-vis the principle of strict liability. It was stressed that Section 124A is a radical departure from majority of principles of tort law based only on proof of negligence. The Act is a welfare legislation. Therefore, it was considered necessary to think about the issue from the perspective of passenger. The aforementioned principles, must be kept in mind when interpreting the provisions of the Act. Negligence of the victim is nowhere in the consideration of Sec 124A of the Act. On the other hand while discussing the evolution of the principle of strict liability, it was endorsed in referring to the common law practices evolved by the English Courts that if a person undertook a hazardous activity, and if that activity causes any loss or injury, the person was called upon to compensate for that injury. In the United States, however there has been a movement from a fault liability standard to a no-fault liability standard. It was further underscored, that in railway claim cases, the situational reality needs to be considered for the simple reason that an aggrieved passenger is not expected to be travelling with a camera or a recorder to capture evidences presuming an accident or an untoward accident.

It was expressed boldly that the problem of procuring and producing evidence is an insurmountable one in India. The most important consideration for a judge while hearing a case is (a) the genuineness of the person seeking the claim, and (b) genuineness of the claim(s) made. It was also emphasized that negligence of the victim is nowhere in the consideration of Sec 124A of the Act. The critical aspect is that in most cases, a person who stands casually at the door of a

railway coach, or who tries to board a slow-moving train does not have the intention to kill or seriously injure himself. At best, he can be reasonably expected to know that there is a possibility of his falling, which may result in injuries or death. But he certainly does not have the intention to kill himself. Further, it was observed that even in a criminally negligent act on the part of the victim, the railways generally cannot escape liability.

In the course of discussion, it was suggested that the rationale (legislative intent) behind the statute is moving away from negligence based principles to strict no fault liability principles, which needs to be kept in mind while interpreting the provisions. The proviso should receive a very narrow and restricted meaning relevant only to the object with which it has been enacted and attached. It was stressed that the acceleration of disposal of claims be a priority for RCT as an aspect of national importance.

The second session was primarily dedicated to “*Components of Decision Making (viz. Fair Hearing; Reasoning; Objectivity; Rationality; Critical Analyses etc.*” Moreover, subject matters such as “Bench Etiquette” and “Handling difference of opinion in the Bench” were also discussed at length. A few intriguing questions which were posed and discussed include ‘if there be a situation wherein, there is no pleading made by the victim, but evidences showcase the suffering e.g. a mass stampede; under such a situation can compensation be given? There seemed to be a clear divide between the positions taken by the “member technical” and the “member judicial”. Wherein the first group worried more about the misuse and abuse under the RCT Act regarding compensation, the second group focused more on the liberal approach that needs to be adopted while administering the welfare legislation. How to deliver a sufficiently reasoned judgment was discussed. It was asserted that, the proper way to deliver a judgment is to first come to a reasoned conclusion and then consult or research for supporting precedents rather than doing it the other way round. It was explained that a reasoned decision is one in which the reason leads to the conclusion. Objectivity was explained as the ability which insulates from influences which affect a decision making. It was narrated that a judge must consider all the possible alternatives and then apply or choose the best suited one applying ‘critical

analysis' to ensure justice. The difference between 'self inflicted' and 'self invited' injury was debated. In case of having two conflicting views, it was suggested to consider the view which favours the victim. It was also clarified that difference in opinion in a bench can only be in interpretation of law and not while appreciation of facts.

The third, sixth and seventh sessions were dedicated for presentations made by the various State RCTs. It was in the form of a reporting through presentation wherein, the local and the national performances, issues, and best practices were shared and discussed. Suggestions to specific inquiries were provided. Case studies were also presented.

The fourth session was on the theme "*How to identify operative ratio of a precedent?*" It was deliberated that the 'doctrine of precedents', is to be understood in the light of the fact that what it proposes has survived the test of time and has become socially acceptable. The strict construct of the doctrine of precedent, evolved over centuries has its roots in ecclesiastical law. It was clarified as to "what is binding in a case? What constitutes a precedent?" It was explained that it is the principle upon which a particular case had been decided, and is binding and not the case itself. It was also explored that a judgement consists of three basic aspects- findings on material facts – direct or inferential, statement as to principles of laws applicable to legal issues disclosed by the facts and conclusion and judgement based on the combined effect of the above two. It was also proposed that no judge should ever consciously harm or hurt anyone in the exercise of duties. The elaborate process of reasoning would subsume all prejudices the judge may have.

Moreover, in an attempt to emanate a homogeneous approach to passing of orders and disposal of cases with respect to RCT, discussions on a couple of High Court judgements which attempted to lay down a uniform procedure for awarding compensation and settlement of claims were held. It was suggested that while dealing in RCT claims, the members should be liberal in general while interpreting the provisions of the Act. It was emphasized that for the dispensation of justice both the litigants must be equally placed.

The fifth session dealt with appropriate strategies for expeditious disposal at RCTs. It was suggested that a shift towards non-litigative approaches & settlement under superintendence of RCT may be aggressively considered as a tool to deliver expeditious justice. Such an approach might prove to be more acceptable owing to its participative nature. The meaning and scope of 'Enquiry' as distinguished to 'Trial' was discussed. It was suggested that the Railways may like to consider 'annuity certificate schemes' for award of compensation process. The same might reduce the mammoth amount doled out by the railways towards fake claims. Yet another suggestion made was that the detailed guidelines and Forms under the RCT Act must be prepared and printed in vernacular languages. Moreover, the Form II under the RCT Act may be amended to include mandatory fields such as mobile number; Adhar number etc. These will prove helpful to weed out false claims. It will facilitate GPS location(s) of the victim, identification of genuine victims (filtering out touts and repeat false claimants etc.). Form II must contain (a) a pointwise detailed guidance note, and (b) check list for documentation to be attached with the claim.



REFRESHER COURSE FOR SC/ST [PoA] COURTS**April 27-29, 2018***Prasidh Raj Singh, Law Associate*

The National Judicial Academy, Bhopal organized a three-day Refresher Course for SC/ST [PoA] Courts on 27-29 April 2018. The programme initiated discussions on various topics like-the SC/ST (POA) Act: An Instrument for Social Reform; Ensuring Human Dignity: Eradicating Untouchability and Prevention of Atrocities; Role of Affirmative action in ensuring Dignity and Equality; Role of Special Court in effective implementation of the SC/ST (PoA) Act, Trial Process under the Act, Tackling Marginalization: Caste and Gender based Atrocities, Sexual Violence against SC/ST Women in India and Award and Standardization of Victim Compensation. The programme was attended by judges presiding over the SC/ST [PoA] courts under different High courts.

The Course intended to explore the evolution and contours of the SC/ST (PoA) Act as an instrument for social reform in India and effective implementation of the legislation. The deliberations included issues faced by judges under the SC/ST (PoA) Act, 1989 ["1989 Act"] and gender based atrocities against Schedule Castes and Schedule Tribes

During the course of discussion, it was stated that Article 17, which envisages the abolition of untouchability in all forms, is a key to understand the Act. The important point to look at is that, the Constitution do not list out the 'forms' in which the untouchability has to be abolished.

The resource person stated that if we review the 1989 Act after almost 20 years, then we can see that challenges that were prevalent during that time are present even today. It means that the Act is not properly implemented. Even after the recent amendment in the year 2015, the gaps are still existing in the Act because of the following reasons:

1. New forms of atrocities have emerged;
2. Intention/ willful negligence is difficult to prove;
3. The Act lacks in providing protection to victims. Perpetrators force and intimidate victims to withdraw case; and
4. Delay in filling of charge sheet



Further, various articles under the Constitution of India were discussed to envisage the affirmative actions for advancing the socio-economic development of SCs and STs: such as Art. 16(4) - Reservation in government services, civil service, public companies, statutory bodies, Art. 15(4) - Special provision for the educational advancement of SCs and STs, Art. 330, 332 and 334 - Seats in the Central legislature and State legislatures, 73rd and 74th Amendments - Reservation in Panchayats and Municipalities.

Further, it was discussed that the Act provides protection from various activities affecting social disabilities such as:

- Malicious persecution of property, political rights and economic exploitation;
- Establishment of exclusive special courts, exclusive special public prosecutors to ensure speedy trial;
- Cancellation of arms licenses of potential accused and grant of arms license as a means of self-defense;
- Enhanced punishment for some offences;
- Neglect of duties by a public Servant - liable for punishment;
- Compensation and TA/DA for victims or their legal heirs; and,
- District / Sub Divisional and State Monitoring Mechanisms.

The speaker further discussed the importance of Sec 15A of the SC/ST [PoA]. It was deliberated that rights given under Sec 15A is of paramount importance to ensure the safety of victims and witnesses. It was emphasized that a victim shall be treated with fairness, respect, dignity and with due regard to any special need that arises because of the victim's age, gender, educational disadvantage or poverty. It shall be the duty and responsibility of the State to make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation, coercion, inducement, violence or threats of violence.

Further, reasonable, accurate, and timely notice of court proceeding should be intimated through SPP or State Government to the victim at the earliest without any delay. The speaker further added that name & address of victim may be avoided in orders, judgments or records for maintaining the secrecy which further protect the victims and witnesses from any threat.

The refresher course further deliberated upon the recent amendments under the SC/ST [PoA] Act. It is important to note that the protection against coercion, intimidation, inducement or violence shall also be granted to dependents [defined under Sec. 2(1)(bb)] of victims in addition to victims and witnesses. Further, Sec 4 of the Act is substituted with new section providing for punishment of public servant who willfully neglects his duties required to be performed under the Act.

A reference was also made to the judgment of *Dr. Subhash Kashinath Mahajan v. The State of Maharashtra*, where the apex court directed that:

- there is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no *prima facie* case is made out or where on judicial scrutiny the complaint is found to be *prima facie* mala fide;
- in view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the SSP in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention; and,
- to avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated

The programme further deliberated upon the importance of Central Victim Compensation Scheme to reduce the disparity in deciding quantum of compensation amount prevalent in different states. The speaker stated that the Central Government on October 14, 2015 notified the

Central Victim Compensation Scheme. The scheme also aimed to support and supplement the existing Victim Compensation Scheme [“VCS”] and also to encourage various states to effectively implement the scheme under Sec. 357A of the CrPC.

Further, it was discussed that the notification also directed every state/UT to speed up the process of implementation of VCS in their respective state. The notification also issued the Central Victim Compensation Fund guidelines which came into force from 21 August 2015. The said guidelines provide for monitoring of the fund utilized by the State/UT.

Suggestions:

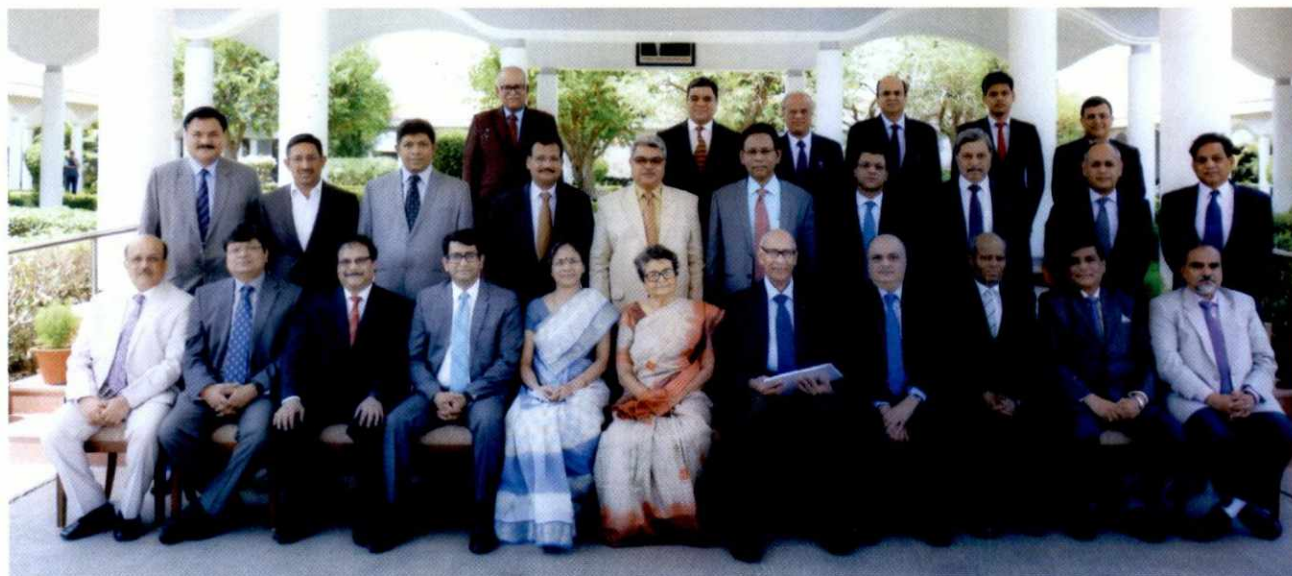
- Effective implementation is necessary to achieve the objective of SC/ST [POA] Act, 1989.
- Cases of land alienation; bonded labour; indebtedness; non-payment of minimum wages; caste prejudice and practice of untouchability should be dealt on priority basis.
- Safety of victims and witnesses must be taken care by the state governments
- FIR should not be amended or altered after the complaint is filed by victim.



NATIONAL JUDICIAL CONFERENCE OF HIGH COURT JUSTICES ON THE REGIME OF GOODS AND SERVICES TAX

April 27-29, 2018

Dr. Amit Mehrotra, Assistant Professor



The National Judicial Academy, Bhopal organized a 3 day national judicial conference for the High Court justices on Goods and Services Tax from April 27 to 29, 2018.

The Conference aimed to provide insight to the Goods and Services Act. The conference explored the prospective challenges and GST litigations that may arise in future. The object of the Conference was to highlight the issues pertaining to substantial question of law in matters of appellate jurisdiction of High Court and other jurisdictional issues and also to give an overview of the constitutional amendments incorporating GST regime by inserting various articles in the Constitution. Thus, the overall objective of the conference was to provide a forum to the justices, to discuss and debate the advantages of single tax regime and its future implications.

The theme of the Session One was *Indirect Taxes – Historical Perspective*. The speakers were Mr. D.P. Nagendra Kumar, Mr. N. Venkataraman and Mr.

Ajay Jain. The session was chaired by Hon'ble Mrs. Justice Ruma Pal.

The session commenced with the welcome address by the Director, NJA. Emphasis was laid on the background and the historic perspective of indirect taxes, structure of the GST and the amendments thereto in the Constitution of India. Background of GST from administration point of view was discussed. The concept of Central State Service and Value Added Tax was also discussed.

The need for GST and its evolution since 2006 was deliberated upon by the resource persons. Important developments in this regard were chronologically discussed as under:

2006- Announcement of GST.

2008- Empowered Committee was asked to prepare first Discussion Paper.

2009- First Discussion Paper released by the Empowered Committee.

2011- Constitution (115th Amendment) Bill was introduced.

2013- Parliament standing authorities gave the papers.

2014- Constitution (Amendment) Bill lapsed

2015- due to the Lok Sabha Elections, Constitution (122nd Amendment) Bill was introduced.

August, 2016 the Constitution (101st Amendment) Act was enacted.

December, 2016 the Rajya Sabha passed the bill and

Following objectives of indirect tax reform in India were highlighted:

- widening the tax base;
- rationalizing the rate structure – few rates, low rates;
- enhancing equity of the tax system;
- enhancing international competitiveness of Indian goods and services;
- strengthening the fiscal autonomy of the States; and
- simplifying the tax laws and processes to optimize tax collections and reduce compliance cost.

What constitutes interstate supply and intrastate supply was discussed during the discourse. It was asserted that uniformity and harmony of state legislation is achieved by the constitutional provision

under Art. 279A which provides for the constitution and composition of GST Council. The GST Council settles disputes between the Centre and the State.

It was stated that clause 12A in Art. 366 in the definition provision defines “goods and services tax” as ‘any tax on supply of goods or services or both except taxes on the supply of the alcoholic liquor for human consumption’. However, the term supply is nowhere defined in the constitution. It was remarked that Art. 286 of the Constitution provides for restrictions as to imposition of tax on the sale or purchase of goods. It was opined that GST is indeed a historical achievement and it is moment to celebrate for all. The GST Act resulted in amendments to Art. 246A, Art. 269A and Art. 279A of the constitution.

It was further stated that in 1956 the Central Tax Act was passed that gave power to the Union Government. Thereafter from 1956 to 1995, second major interstate development transpired wherein there were multiple taxes and every State wanted investment for their states. The term globalization in India was discussed during the discourse.

The book by Fali S Nariman on “The Silences in Our Constitutional Law and *Bengal Immunity Co. Ltd. vs. the State of Bihar Case*” were referred during the discourse.

The theme for the Session two was divided into two parts. The theme for the first part was GST: Constitutional Perspective. Mr. V. Sridharan was the speaker and the session was chaired by Hon’ble Justice Ruma Pal.



Significance of constitutional provisions in GST was discussed. The position of taxation system pre-1950 was explained by the resource person.

It was observed that prior to 1950:

- Entry 48 of List II of Seventh Schedule of the Government of India Act, 1935 dealt taxes on the sale of goods and on advertisements.
- Sales tax was a state subject.
- No entry in the List I for tax on sale of goods.
- No restriction on state's power to levy tax on sale of goods.
- Each state sales tax law had its own definition of sale within the state.
- A transaction of sale having some nexus with the state was defined as sale within the state.

The cases which includes *The King v. Dominion Engineering Co. Ltd.* (AIR 1947 PC 94) as to the position of taxation prior to 1950 and *State of Bombay v. United Motors (India) Ltd.* (1953) 4 S.T.C. 133 (S.C) were referred during the discourse.

It was stated that Art. 269(3) gives power to the Parliament to define interstate trade or commerce and it doesn't give power to levy tax.

It was pointed out that Sec. 6 of the Central Sales Tax, 1956 is a charging section and states about the liability to tax on inter-state sales. Sec. 9 provides for levy and collection of tax and penalties. It was further delineated that the place of supply need to be considered for export.

Part II of the Session two was on the overview and features of GST. The speakers for the session were Mr. D.P. Nagendra Kumar, Mr. Sujit Ghosh, Mr. N. Venkataraman and Mr. Ajay Jain. The features and Provisions of GST Act were highlighted as under:

- Concurrent Dual GST, CGST and SGST on intra-State supply of goods or services or both;
- IGST on inter-State supply of goods and services including imports;
- Shift from origin to destination-based taxation;

- A single tax to replace multiple taxes, applicable on supply of both goods and services;
- Uniform legislation, rules and procedures;
- Uniform threshold, rates and common exemptions both at the State and Central level;
- Taxable event – supply defined to cover all transactions other than transfer of title in land and immovable property;
- GST apply to all goods other than alcoholic liquor for human consumption and five specified petroleum products;
- GST apply to all services barring a few such as health, education and services provided by local self-governments;
- Composition scheme for small tax payers;
- Maximum rate prescribed in the Act;
- ITC - Cross credit utilization in respect of inter-State supplies;
- Electronic matching of input tax credit;
- Key business processes – registration, return, payment, refunds through common portal – GSTN;
- State-wise single registration for CGST/SGST/IGST;
- Provisions to tax e-commerce transactions;
- Self-assessment by tax payers – departmental officers may undertake scrutiny / audit of declarations made in the tax returns;
- Cross empowerment of tax officers for single interface;
- Elaborate provisions on place of supply under IGST Act;
- Inter-governmental fund settlement;
- Transitional provisions;
- Advance Rulings, Appeals and Revisions; and,
- Anti-profiteering

It was stated that the two basic pillars of taxation are taxable event and subject of taxation. It was stated that the term GST was defined for the first time in

the Constitution under Clause (12A) of Art. 366. It was also emphasized that Sec. 2(52) of the CGST Act, 2017 defines goods whereas Sec. 2(102) of the CGST Act, 2017 defines services. It was opined that GST is nothing but Tax on sale of goods.

The purpose of Credit System is that the business must not pay taxes, but consumers must pay. It was stated that the services are defined for the first time under Art. 366(26A) means anything other than goods. It was further stressed that gambling, betting and lottery, lottery cannot be claimed as service. The session was concluded with a suggestion that there is need to organize a conference on the Regime of GST on economic structure.

The theme for Session Three was *Concept of Supply*. The speakers for the session was Mr. Sujit Ghosh and Mr. N. Venkataraman. The session was chaired by Hon'ble Justice Ruma Pal.

It was stated that the concept of supply is exhaustive. Some fundamental questions under GST on taxability were highlighted, which are as follows:

- Is there a 'supply' as defined under the CGST Act?
- Is the said 'supply' a 'supply of goods' or 'supply of services'?
- What is the 'place of supply' for such supply? Whether this 'supply' will attract CGST and SGST of a particular State or will attract IGST (being inter-State in nature)?
- What is the value of such 'supply' on which GST will need to be paid?
- What is the rate at which GST will need to be paid?
- What is the point of time at which the above GST liability accrues -what is the point of taxation (or in GST phraseology -what is the 'time of supply')?

It was emphasized that Sec. 7(1)(a) of the CGST Act, 2017 states that supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business; and Sec.

7(1)(b) of the CGST Act, 2017 states supply includes import of services for a consideration whether or not in the course or furtherance of business. It was opined that there is a significant departure between Sec. 7(1) (a) and Sec. 7(1) (b) of the CGST Act, 2017. The cases *HornsbyShire Council v. Commissioner of Taxation* [2008] AATA 1060, *Jurgen Mohr's case* C-215/94, *Balfour v. Balfour* [1919] 2 KB 571, *Tolsma's case* C-16/93, *Landboden-Agrardienste v. Finanzamt Calau* [Case C-384/95] were referred and discussed. Sec. 5 of the IGST which provides for levy and collection of tax were also discussed. It was stressed that in case of a dispute between the national interest and state interest, national interest should always prevail. The constitutional provisions of GST which includes Art. 262, Art. 279A (6), Art. 279A (11) and Art. 246A were also discussed by the resource person and by the participant justices.

The Theme for Session Four was on *Classification: Mixed/ Composite Supply*. The speaker for the session were Mr. V. Sridharan and Mr. Sujit Ghosh. The session was chaired by Hon'ble Mrs. Justice Ruma Pal. Interstate supply of goods under Sec. 7(1) and Interstate supply of services under Sec. 7(3) were discussed. With regard to Sec. 7(5) (c) it was interpreted that the word 'in' is different from 'into', 'at', 'within' the territory in the aforementioned section.

It was stated that government doesn't want to collect tax at a last stage and want it in first stage itself. Special economic unit was discussed and Sec. 7 (5) (c) was stated as a residuary provisions. The taxing policy of Japan was discussed during the discourse. It was delineated that taxable territory and supply of interstate territory is not defined under the IGST Act.

While dealing with Sec. 9 of the Act it was stated that territorial water is not for any part of the state, it is for every territory of state. Sec. 9 deals nothing about interstate supply. It only applies to territorial water and not for exclusive economic zone. It was stressed that State like Bihar are the biggest beneficiaries relating to consumptions. The difference between the custom duty and GST was explained and discussed.

The theme for Session Five was *Valuation: Time & Place of Supply*. The speakers for the session was Mr. V. Sridharan and Mr. Sujit Ghosh. The session

was chaired by Hon'ble Justice Ruma Pal. Valuation of time and place of supply was explained with the help of various hypothetical situation. *Nokia's Case* was discussed where the main issue was whether the box of mobile and charger are taxable to which the Supreme Court held both are taxable.

It was stated that in value to be the 'Transaction value' where supplier and recipient are not related parties and price is the sole consideration. Value of supply shall include incidental expenses charged by supplier to recipient, interest, late fee or penalty for delayed payment and subsidies directly linked to prices except when provided by the Government.

It was further stated that where supply is between related persons or price is not the sole consideration, value is to be determined on basis of open market value, value of like kind and quality of goods or services, cost plus method and residual method. Provided where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods and services.

It was stated that pre-sale discount and post-sale discount are to be excluded from value of supply. Through examples, the resource person explained Sec. 8 of the CGST Act, 2017 which states about the manner in which the tax liability on a composite or a mixed supply shall be determined. The concept of



mixed supply [Sec. 2(74) of the CGST Act, 2017], composite supply [Sec. 2(30) of CGST Act], works contracts [Sec. 2(119) of CGST Act, 2017], Item 6 (b) Schedule II of the CGST Act, 2017 were discussed. Case study relating to setting-up of a 'Solar Power Generating System' was referred during the discourse.

The resource person discussed that place of supply is different for the goods and services. It was emphasized that the things which are important for interstate supply are location and place of supply. It was further deliberated that there is no definition of location of supply, though Sec. 2(70) and Sec. 2(70) of the CGST Act, 2017 defines the "location of the recipient of services" and "location of the supplier of services respectively. The concept of interstate supply was discussed with the help of various examples. Sec. 7 and Sec. 10 of the CGST Act, 2017 was referred during the discourse.

The theme for Session Six was **Input Tax Credit**. The speaker for the session were Mr. V. Sridharan and Mr. Sujit Ghosh. The session was chaired by Hon'ble Mrs. Justice Ruma Pal.

It was stated that there are three pillars of GST: firstly, the place of supply; secondly, Input Tax Credit and thirdly, value or consideration. Sec. 16 of the CGST which deals with eligibility and conditions for taking input tax credit was explained with the help of a case study.

It was stated that the credit of CGST paid in a State can be utilized against the payment of CGST levied by another State and the credit of SGST of one State can be utilized against the payment of SGST of another State as per Sec. 49(5) (b) and Sec. 49(5) (c) respectively.

Following conditions were explained for eligibility of Input Tax Credit:

- Possession of Tax Invoice/ Bill of entry;
- Receipt of Goods/ Services;
- Payment of Tax by Supplier;
- Furnishing of Return; and,
- Payment to be made for Value and Tax within 180 days

According to Sec. 16 (1) of the CGST Act every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in Sec. 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

It was asserted that IGST taxes are applicable to all and act as a universal donor and universal acceptor. It was also opined that Sec. 17(5) which deals with apportionment of credit and blocked credits is a negative covenant.

Rule 36 of the CGST Act, 2017 was discussed which states about the documentary requirements and conditions for claiming input tax credit which supports invoice based system.

The resource person interpreted Sec. 2(19) of the CGST Act, 2017 which defines capital goods as goods, the value of which is capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business.

The Theme for Session Seven was Advance Ruling and Anti-profiteering. The speaker for the session were Justice Mr. Sanjiv Khanna, Mr. Sujit Ghosh and Mr. S. Ganesh.

Three C's of the GST: clarity, consistency and certainty were pointed out. It was stated that there should be clarity as to legislations of the enacted Act, consistency as to matter of policy, changes and experiment and certainty as to role of adjudicators and interpreters.

It was stated that Sec. 171 provides for anti-profiteering measure. These measures were explained in three parts: *firstly*, as to the purpose, *secondly*, as to the mechanism and *thirdly*, as to the legislation. It was asserted that the purpose of anti-profiteering is to provide economic justice. He also added that no one should make profit under this new Act. The resource person distinguished profit from anti-profiteering and highlighted the term profiteering as per the Black's Law Dictionary which states profiteering

as it is "taking advantage of unusual or exceptional circumstances to make excessive profits..." It was deliberated that neither the CGST Act nor the CGST Rules provide the guidelines for determining the methodology and procedure for ascertaining the fact of profiteering by the supplier and the same has been left to the discretion of the authority.



Following issues of anti-profiteering under GST were discussed:

- The anti-profiteering provisions have created a lot of confusion amongst the industries
- Acceptance of liability
- Computational Mechanism
- Breach of Confidentiality

The resource person mentioned strict consequences of Sec. 171 which includes cancellation of registration and imposition of penalty. The situations when Sec. 171 could come into play were explained. Legal issues and the need for anti-profiteering were discussed. It was stressed that anti-profiteering measure had been envisaged under Sec. 171 but the word 'profiteering' finds no place in the text of Sec. 171. Indian anti-profiteering provisions were compared with that of

Malaysia and Australia. It was asserted that Sec. 171(1) as a positive provision, must be read with Sec. 171(3).

The theme for Session Eight was *Demand/ Refunds, Normal/Extended period of Limitation, Unjust Enrichment and Zero Rated Exports- Mechanisms.*

The speakers for the session were Justice Sanjiv Khanna and Mr. S. Ganesh. The concept of demand and refunds were explained. Sec. 73 of the CGST Act, 2017 was highlighted which deals with the determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of facts. The impact of a person accepting the liability and to pay tax/ penalty was discussed. Sec. 74, which deals with determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts was also discussed during the discourse. Sec. 75 of the Act deals with the general provisions relating to determination of tax. Sec. 76 of the Act that deals with tax collected but not paid to the government were also referred and deliberated. Sec. 80 was discussed. The resource person asserted that the provision of Sec. 80 of the GST Act is a salutary provision and not contained in any other Act.

The resource person emphasized Sec. 126 of the CGST Act, 2017 that deals with general disciplines

related to penalty and explained sub-section (1) that states no officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence. He termed that these are strict liability of offences and for technical breaches. It was asserted that the word exemption is a bad word under GST and opined that nobody export taxes but export goods. The Speaker then explained the concept of zero ruling. It was stated that Sec. 16 of the CGST Act, 2017 deals with the eligibility and conditions for taking input tax credit. Sec. 54 of the CGST ACT, 2017 which deals with refund of tax and Rule 91 and Rule 92 which state about the grant of provisional refunds of the Central Goods and Services Tax Rules, 2017 was highlighted. The speaker explicated the provisions of the Goods and Services Tax (Compensation to States) Act, 2017, and stated that it applies to only the state of commodities listed. *P. Jayappan v. S.K. Perumal* case and *Shiv Morey Corporation* case was referred during the discourse.

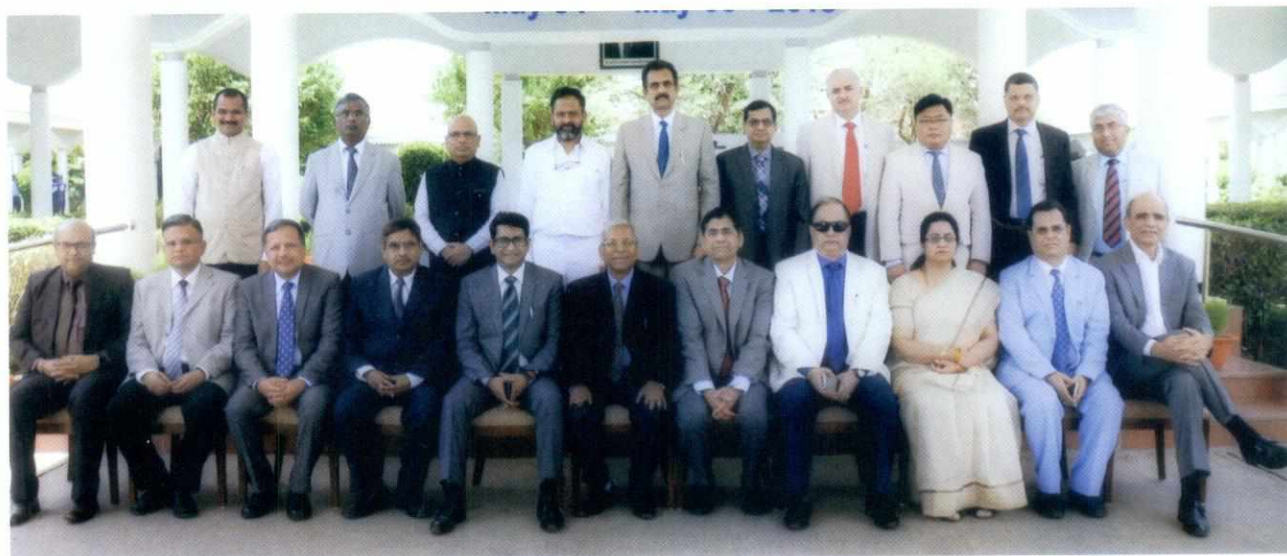
The National Conference on the Regime of GST was concluded on the note that GST aims at One Nation One Tax. Justice G. Raghuram, Director, National Judicial Academy concluded the Conference by conveying the vote of thanks to all the resource persons and participant justices.



NATIONAL JUDICIAL CONFERENCE FOR HIGH COURT JUSTICES

May 4-6, 2018

Shivaraj S. Huchhanavar, Research Fellow



The National Judicial Academy organized a 3-day National Judicial Conference for High Court Justices at Bhopal on the 4th to the 6th May 2018. The Conference was conceived with a view to provide a platform, for justices to share experiences, insights and suggestions with a panel of distinguished resource persons from the judicial branch and other relevant domain experts. The Conference was designed to facilitate discussions on developments in constitutional law, economic crimes, free and fair elections, supervisory powers of High Courts over Subordinate Courts, contemporary challenges for judicial review and policy governance, issues relating to constitutional interpretations and contribution of the Supreme Court and High Courts to development of laws. Identifying challenges and evolving optimal solutions/strategies to effectuate qualitative justice delivery was on the agenda during the Conference.

The Conference was inaugurated by an intensive discussion on the *supervisory and controlling powers of High Courts under the Constitution* and their effective use to promote integrity, excellence and responsiveness of the judicial institutions. The resource person emphasized that the ostensible

rationale for conferring administrative powers in High Courts is to safeguard judicial independence across the hierarchies. However, these powers are coupled with a duty to ensure that the impartiality and integrity, individual and institutional, are safeguarded through adequate accountability measures, and at the same time, the judicial officers are protected from unwarranted intrusions, both external and internal. It was opined that judicial administration is justified through a discursive process. Therefore, persuasiveness and democratic decision making would lead to broad acceptance and it enhances institutional stability and efficacy. It was observed that administrative decision making at the High Court level should not be arbitrary, capricious, vindictive or unduly aloof. Significance and need for improvements in the areas of judicial performance evaluation, promotion, retention, transfer etc., of judicial officers were also stressed.

Free and fair elections—vitalizing our democratic fabric: the way forward was the theme for the Second Session of the Conference. It was foregrounded that huge population above the age of 18, large constituencies and contra-democratic election

ethos make elections colossally expensive. It was highlighted that often the process of getting into the voters' list is complicated and tedious that a large number of eligible adults are not found in the list or wrongly treated as disqualified. The utility and efficacy of the first past the post, proportional representation, multiparty system, public funding of elections, the use of EVMs, NOTA, independent candidates, restrictions on government sponsored advertisements, compulsory voting, opinion polls, cabinet system, etc., were discussed at length. The role of the Election Commission, judiciary, civil society, media and other regulatory bodies in the success of Indian democracy was also critically evaluated. The cases relating to disqualification, election fraud, misconduct and the role of adjudicatory machinery was also deliberated. It was concluded that the subject of electoral reform is profound and basic to our democracy and constitutional governance, therefore, a regular interaction of various stakeholders is indispensable.

The Insolvency and Bankruptcy Code 2016, which covers both corporate and individual insolvency and bankruptcy issues was discussed in detail in Session-Three. The resource person set the context of the discussion by explaining the bankruptcy and insolvency laws in the post-independence period. Evolution of the Insolvency and Bankruptcy Code, significant changes that are introduced by the Code and regulatory framework that seeks to enforce this legislation were explained. It was observed that the Code consolidates pre-existing provisions of bankruptcy and insolvency; it designates exclusive jurisdiction for insolvency and bankruptcy cases in the National Company Law Tribunals and Debt Recovery Tribunals. The Code presents various institutional innovations like the Insolvency and Bankruptcy Board, Occupational Information Utilities, and Insolvency Professionals. The Code seeks to reduce the burden on regular courts and also to speed up the allocation of losses of commercial ventures. How information utilities will help predict the insolvency situations effectively was also explained to the participant justices. The Code also makes provision for Insolvency Fund for the purposes of insolvency resolution, liquidation and bankruptcy of persons under the code. During the latter half of the discussion, issues and challenges that regulatory mechanisms, created by the Code, are

facing and how to resolve those concerns effectively were discussed in detail.

Contemporary challenges for judicial review, policing governance within the separation of powers framework was the topic for Session Four. Heightened judicial assertiveness in the matters of governance was viewed from the separation of powers perspectives. The role of constitutional courts in a diverse country like India and need for restrained judicial activism was emphasized. How personal values of judges—political, professional and intellectual—if left unchecked, transcend the boundaries of separation of powers were described with specific case-illustrations. The issues, namely, judicial legislation, unbridled discretion, review and activism and overreach through interpretation, etc., were discussed at length with special references to cases decided by the apex court. It was asserted that the basic constitutional framework of separation of powers must be respected and adhered. The courts cannot be expected to have the expertise to take on policy matters and the appointment of expert committees to decide matters of policy would result in a parallel government.

The theme for Session Five was *Construing the Sounds of Constitution's Speech: Meanings Beyond Text*. Three main theoretical approaches namely, historical that relies heavily upon what a particular constitutional provision would have meant to its framers; textual, that focuses on the specific words used (and words not used) in a constitutional provision but requires interpreters to consider the 'present sense' of the text rather than the meaning of the said text at the time it was enacted; structural/purposive, which focuses more on inference rather than close reading of the text. It was also submitted that the interpretative approaches in India can be typically classified into three phases. Phase I –where textualism was the dominant interpretative approach. Phase II –Structural/purposive was the dominant interpretative approach. Phase III –result-oriented decision making using both the above approaches is dominant. Each interpretative phase was explained with examples.

In Session Six, *superior courts: managing judicial review within the democratic framework* was discussed. In this session, it was concluded that the

judicial review must be the democracy-promoting. It was opined that social context is not the reason for judges to drive beyond the bounds accepted by law.

Session Seven of the programme was on *Corporate Fraud and Manipulation: Repercussions, Deterrent Mechanisms and Judicial Approach*. The need for effective corporate governance and its relevance to a developing country like India, in light of series of corporate frauds the country has witnessed recently, was emphasized. It was asserted that though there are various regulatory authorities responsible to deal with and prevent corporate frauds, because of the inherent weaknesses like lack of coordination, resources, effective reporting, lapses in investigation machinery, the absence of due diligence and professionalism, the corporate regulation has been ineffective. The resource persons explained various types of corporate frauds and their propensities. It was suggested that effective regulation needs three major components to be addressed effectively— (i) Opportunities to commit crimes or frauds, (ii) Motivation to commit the crime and go unpunished, and (iii) opportunities to cover-up the fraud by disassociating with it citing lack of personal

knowledge or involvement. Therefore, all three aspects—detection, prevention and abatement—are to be addressed through a holistic approach and inter-departmental coordination.

The last Session was on *Money Laundering: Prevention of Money Laundering Act, 2002: Origins and Evolution*. The resource person explained different layers of money laundering i.e. placement, layering, integration and investment. Various types of money laundering, namely, domestic, returning, inbound, outbound and flow-through were discussed in detail. Adverse impact and spill-over effects of money laundering on the economy and elsewhere were also highlighted. Global perspectives on anti-money laundering architecture and international efforts, the financial action task force (FATF), the United Nation General Assembly resolutions, the role of Financial Intelligence Units etc., were deliberated. The discussion also stressed on each of the authorities created under the Act, specifically, Financial Intelligence Unit, Directorate of Enforcement, Adjudicating Authority, Appellate Tribunal and Special Courts. Finally, the modus operandi of money laundering cases was discussed, stage-wise.



WORKSHOP FOR ADDITIONAL DISTRICT JUDGES

May 4-6, 2018

Nitika Jain, Law Associate



A three day Workshop for Additional District Judges was organized by the National Judicial Academy Bhopal, on May 4 – 6, 2018. The Workshop was attended by 33 nominated judges from various High Courts, providing them a common platform to share experiences and assimilate best practices. The objective of the workshop was to explore challenges in implementation of ADR system; to study sentencing practices and advantages of integrating court and case management systems in Subordinate Courts. The workshop covered various contemporary themes such as - issues and practices pertaining to collection, preservation and appreciation of electronic evidence; advances and inadequacies in laws regulating cybercrimes. During the sessions, the participants discussed, evaluated and shared best practices on exercise of appellate and revision jurisdiction of District Judges in criminal and civil domains.

The First Session on the theme *Challenges in implementation of the ADR System in Subordinate Courts*, involved discussions pertaining the alternative yet effective forms of approaching to a problem or a situation as against conventional ways

to attain more productive results. The emergence of ADR mechanism over past sixteen years was discussed at length by the speaker. Pointing out the benefit of ADR it was stated that in present time litigation is lost in the process, the biggest complaint of citizen with respect to judiciary is 'Delay' and 'Cost'. The purpose of ADR was relieving the litigants from all the procedure and giving them an opportunity to resolve matters. The case of *Afcons Infrastructures Ltd.* was highlighted to facilitate better understanding of the theme. The speaker gave a list of cases which are suited and not suited for ADR mechanism. Further, the speaker deliberated on the emerging forms of alternate dispute resolution such as arbitration, mediation, conciliation and judicial settlement in detail.

In the Session on *Court and Case Management: Role of Judges*, it was pointed out that management is a science of judicious use of means to accomplish an end, and defined it as activities of setting the strategy of an organization and coordinating the efforts to accomplish an objective through the available financial, natural, technological and human resources. The scheme of National Court

Management Systems (NCMS) approved in 2012 was highlighted. The speaker dealt with the steps of Case Management and discussed the problems of administration and financial funds. The importance and role of court managers was explained and it was stated that their duties must include monitoring and supervising ICT enablement and requirements. With regard to Court Management, efficient use of available infrastructure was also discussed. It was pointed that categorization and grouping of cases is an important step of case management.

The Session on *Fair Sessions: Best Practices* involved video illustrations of the various aspects of fair sessions trial. Justice K.C. Bhanu gave a brief historical background of fair session's trial stating that the concept of fair sessions trial is embedded in Art. 21 of the Constitution. It was stated that the concept of fair sessions' trial can be traced in history, when no law was there. The provisions for fair trial in international law were pointed out referring to Art. 10 of the UDHR, 1948 and Art. 14 of the ICCPR, 1996. A group exercise was conducted during the session which consisted of cases with different facts related to fair sessions trial for interpretation and discussion on the theme.

On the theme *Laws Relating to Cybercrimes: Advances and Bottlenecks*, the facts and figures relating to the internet and its usage were deliberated upon. Various forms of cybercrimes such as identity theft, child abuse, unauthorized use of trademarks, online piracy, hacking, cyber defamation and cyber

bullying were discussed in detail. It was pointed out by the speaker that absence of uniform rules in international law is one of the major issue while dealing with cases of such nature. The speaker highlighted the common forms of contract in the internet world such as click wrap, browse wrap and shrink wrap. The statistics of users of social networking was projected to the participants which indicated that 91% of adults and 84% of children have 'Facebook' (FB) accounts and are keen users to these online sites. Moreover, 5-6 % of these accounts are fake. One-third of the child accounts are under 13 years. The speaker further elucidated landmark judgements in *Banyan Tree Corporation and Ultra Home construction (Pvt.) Ltd.* for explaining the jurisdictional issues arising out in cybercrimes.

On the theme *Electronic Evidence: Collection Preservation and Appreciation*, the admissibility of electronic evidence, digital forensics, how to use digital evidence were discussed. The speaker mentioned that digital evidence could be classified in two parts, volatile and non-volatile and stated that before digital signature the factors which were used to be considered were relevancy, veracity and authenticity. It was opined that Digital evidence is very difficult to destroy and not easy to modify. The concept of metadata was explained. The metadata of a picture helps in identification of device, date and location of the captured image and could be used in deciding cases. A concern over lack of cyber forensic labs was pointed out during the course of discussion. The speakers referred to the cases of *Anwar P.V v.*



P.K. Basheer, Sonu @ *Amar v. State of Haryana* and *Afzal Guru's* to explain the subject better.

The Session on *Sentencing: Issues and Challenges*, was divided into two parts, the first part of the session had a case study exercise for the participants followed by a discussion upon the subject in detail. The case study highlighted the diverse opinions of the judges with regard to sentencing the accused for a said offence. The session involved discussions relating to death penalty followed by an analysis of *Bacchan Singh's* case in this regard. During the course of discussion the speaker highlighted non-uniformity in giving punishments and sentencing due to absence of uniform policy which is a serious matter and must be addressed at the earliest. A brief historical background of sentencing in India was given out by stating the concept of criminology and the errors in judgments. The speaker suggested the participants to apply judicial conscience and if there is no evidence, then acquit or convict the accused accordingly.

The next Session was on *Criminal Justice Administration : Appellate and Revision Jurisdiction of District Judges*, which dealt with the intricacies of an appeal and compared the situation of 2008 and 2010 as to the state of Indian Judiciary. It was opined that the Indian Judiciary lacks adequate measures and many a times lot of judging depends upon personal causes other than principle basis. The speaker explained the difference between appeal and revision and stated appeal is where there are some possibilities of finality and revision is to correction of an outcome. The speaker stated that the word

complaint and appeal are correspondingly used and that the cardinal principles of criminal trial are presumption of innocence, prosecution must prove its case beyond reasonable doubt, and burden is always on the prosecution.

Last Session on *Civil Justice Administration : Appellate and Revision Jurisdiction of District Judges*, involved discussion on various judgements such as *Morgan Stanley*, *Shiv Ku. Chadda* and *Radhe Shyam*. It was pointed out that while disposing appeal judges must mention the points of determination. Further, it was mentioned that in civil appeals, the right to file an appeal by the litigant are conferred by the Code of Civil Procedure and the defendant also has a right to appeal against findings regarding issue framed by the trial court.

Suggestions:

- Judges are required to be pro-active for effective implementation of ADR mechanism.
- Training of lawyers is essential in the area of alternative dispute resolution.
- For court and case management system, grouping and categorization of cases is an important step which must be done efficiently.
- Life of someone else is in the hands of a judge and they have the power to convict, they must not be lethargic and always try to find out the truth.



EAST ZONE-II REGIONAL CONFERENCE ON ENHANCING EXCELLENCE OF THE JUDICIAL INSTITUTIONS: CHALLENGES & OPPORTUNITIES

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The National Judicial Academy organized the “East Zone-II Regional Conference on Enhancing Excellence of the Judicial Institutions: Challenges & Opportunities” during the 12th & 13th May, 2018 at Guwahati. The Conference was designed to provide a forum for exchange of experiences, knowledge and dissemination of best practices from across the cluster of High Court Jurisdictions of the eastern region; and amongst the hierarchy; to accentuate the experience of familial community between High Court and Subordinate Court judicial officers; revisiting established and imperative norms of the constitutional vision of justice; elements of judicial behavior; social context judging and other specified topic. The conference also provided an opportunity to discuss several crucial issues relevant in the East Zone-II. Judges from six High Courts of East Zone-II viz, High Court of Calcutta, High Court of Sikkim, High Court of Manipur, High Court of Meghalaya, High Court of Tripura and High Court of Gauhati participated in the Conference.

Session 1 : Constitutional Vision of Justice

The speakers raised issues regarding the topic including the nature of vision of justice judges need

and whether there are infinite notions of justice? The vision of justice is required to guide judges in myriad situations. Despite the length of the Constitution of India, there are silences and gaps in the Constitution which create a need for guidance to judges. The speakers quizzed the participants regarding their individual notions of vision of justice. The speakers emphasized that Constitution is a charter for governance, and lays down structural and functional division between its organs. It elaborate functions from panchayat to president. Various features of the preamble such as social justice, economic justice and political justice were discussed. The basic features of the Constitution i.e. demarcation of powers between various organs of the government, independence of the judiciary and rule of law were highlighted and debated. The speakers emphasized the implementation of Part IV of the Constitution which provide a road map for governance. Like fundamental rights, the directive principles of state policy are also fundamental. It was asserted that one of the main reason that directives are non-justifiable is that their implementation is dependent on the financial capability of state. The speakers discussed doctrine of basic structure through judgments including *Shankarai Prasad Deo*, *Sajjan Singh* and

Keshavananda Bharati. The speakers posed questions about relevancy of the Constitution to participants and referred to situations where trial court judges have to refer matters involving validity of a statute to the High Court. The speakers emphasized on the preparations required for forwarding such matters to the High Court.

Session 2 : High Court and District Judiciary: Building Synergies

The session commenced with the role of judges in securing justice. The speakers discussed the meaning of “synergy”. The word synergy implies working as a whole. Working together with shared vision results into more qualitative output, as compared to working in isolation. It was further suggested that for administrative purposes, the expression ‘guardian judge’ should be preferred over terms such as ‘zonal judge’, ‘administrative judge’, ‘inspecting judge’, ‘instructing judge’ and ‘portfolio judge’. The speakers emphasized that guardian judges can only inspect courts and not judges. The next issue discussed was on how judges deal with contempt power and reference to high court. The judge must conduct preliminary inquiry and thereafter forward his/her observations to the high court through the concerned district judge.

It was highlighted that the administrative function of the high court over district judiciary should not be confined to exclusively dealing with negative aspects. There should be regular encouragement to younger judges by high court. The encouragement part at present is lacking in the administrative function. The high court should focus on communicating on quality work to district judiciary. The discussion on Annual Confidential Report [ACR] highlighted that meticulousness in preparation of ACRs is lacking. Many times the appraisal written by guardian judge is changed by the office of the chief justice without consulting the concerned high court judge. The speakers emphasized that communication between judges of the district judiciary and high court should be enhanced. It was suggested that high court judges should keep their ears to the ground to remain aware of the environment in district court. The process of mentoring by high courts should be based on dialogue and consent. The discussion involved the issue of budget and infrastructure problems in the district judiciary. It was suggested that high court should assess the situation in the trial court before giving direction to dispose cases within a stipulated time. The issue of transfer was discussed and the need for making transfer process transparent and participative was emphasized. It was suggested that for transfer the judicial officer can be provided with option of choosing one place from three places.



Session 3 : Elements of Judicial Behaviour: Ethics, Neutrality and Professionalism

The speakers commenced the session by discussing integrity in the context of judging. The features of Bangalore Principles of Judicial Conduct were discussed. It was emphasized that these principles contain universal values, which all judges should follow. Judges have to keep in mind the expectation of people from them. There are certain expectations of people about the ideal image of a judge. Judges should make efforts to meet such expectations. This will go a long way in enhancing public trust and confidence in judiciary. Judges should follow a very high standard of accountability for oneself and should never get swayed by the power of the post. Double standard in judicial life should be avoided as it leads to dilution of ethics and neutrality. The belief in service to people should be followed by judges. Judges should live like an ascetic. The elements of ethical behavior and competence were debated extensively. The judges should remain above the biases emerging out of caste, region, religion, hierarchy and power structure. Neutrality is the greatest virtue of being a judge and it should be maintained by judges. Judicial reasoning is a strong check against common prejudices. There are six core areas which should guide judicial behavior. These include independence, impartiality, integrity, propriety, competence and due diligence. Punctuality is another major elements of judicial ethics and judges should ensure punctuality in courts and while giving judgements. Judges should not show undue seriousness to a matter and neither should take any matter unnecessarily casually. The judicial focus should be balanced and rational. The session was concluded by emphasizing the need of inclusiveness. It was underscored that due to cost of litigation the judicial system often tends to exclude people who cannot afford it. Judges must strive for making system inclusive and accessible to poor people.

Session 4 : Social Context Judging as a Controlling Element in Statutory Interpretation and Exercise of Discretion

The speakers commenced the session with the issue related to use of judicial discretion in adjudication; and how it can fill the void in situation involving conflicting interpretation of statutes. There are areas

in each legislation where use of discretion is required, wherein judges should consider the social context of legislation while interpreting the provisions of statute. The text of the law should be analyzed according to its context and the application of law on people should be according to their social and economic context. The judicial interpretation should be informed by values of equality and diversity. There should be an awareness of widespread inequality as well as diversity in society and how to address it through adjudication. The impact of being at disadvantaged position should be evaluated. The social, cultural and linguistic factors shaping the litigant coming before court should be considered. It should be seen that whether the poor social background can be a mitigating factor for the litigant. The procedures should not hinder substantial justice. The speaker emphasized that social context judging should be essentially done within the constitutional framework. Judge should avoid applying their personal values in adjudication. The adjudication process must be objective and should be informed by the laws and the Constitution. The session was concluded by referring to case laws involving social context adjudication.

Session 5 : Access to Justice: Information and Communication Technology in Courts

The speaker initiated the session by emphasizing the value of access to justice. They said that access to justice is an 'objective' while information technology is the 'means' to achieve the 'objective'. The speakers discussed the use of electronic data and evidence in courts. Information technology facilitates the various facets of access to justice. Further speaking on the National Policy and Action Plan for Implementation of Information and Communication Technology in Indian Judiciary, the speakers asserted that it was the earliest step taken to harness information technology to enhance justice delivery by increasing accessibility, transparency, simplicity and user-friendliness of the judicial system. This further led to the Mission Mode Project and creation of National Judicial Data Grid and the e-court project. CIS 3.0 which has been developed by the E-Committee of the Supreme Court of India and National Informatics Centre is a paradigm shift in the process of revamping the judicial process. It goes beyond mere uploading of data; and would now ensure that litigants don't necessarily need to come to the court. The session

focused on challenges in the successful application of information technology in Courts which included the issues that only 40% of the funds allocated for the purposes of implementation of IT in courts has been utilised by the High Courts, several courts especially in the North-Eastern States face connectivity issues which hamper the effective use of information technology and different High Courts are using various software and there is a need to have a single system and software across the country. It was resolved that judges must take responsibility for the data that is uploaded on National Judicial Data Grid and not leave it for the IT officer. The other issues included alternatives for preservation of digital files, data and digital evidence such as cloud servers, regulation of technology, collecting data and privacy of litigants and citizens.

Session 6 : Access to Justice: Court and Case Management

The speakers emphasised that civil and criminal cases are essentially different in nature and hence require different approaches in management. The case management systems for civil and criminal cases should be devised accordingly. Case Management for a judge essentially is the skill of managing one's board and understanding priorities. It also aids the court in becoming litigant friendly. Case management requires the judge to understand his/her own strengths and capacity and enables him/her to manage one's docket according to one's abilities. Some suggestions made for effective case

management were as follows:

- Judges must sort through their docket and separate the ready and not-ready cases.
- Judges must fix a time in the day (preferably after lunch) to tackle routine work such as completion of service.
- Judges must ensure that the evidence of a witness is recorded on the day the witness has come before the court, so as to ensure that the witness is not unduly inconvenienced.
- Judges must have a predictable system with regard to final hearings. Final hearings should not be done suddenly at the end of the month to dispose the case just to clear one's board. This would not be justice in its true sense.
- Bench books should be developed by the State Judicial Academies to assist judicial officers to deal with cases.
- Judges should ensure that the orders are released at the earliest following the pronouncement of judgment. Delay in providing a copy of the order to the litigants creates doubt.

The speakers emphasised regular use of CIS 2.0 and the National Judicial Data Grid to analyse the pendency and the nature of cases on board. The benefits of digitisation in courts were discussed in the session.



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Governing Bodies of the NJA

The Governing Council

1. Chairperson of the NJA the Chief Justice of India
 - Hon'ble Mr. Justice Dipak Misra
2. Two Judges of the Supreme Court of India
 - Hon'ble Mr. Justice Jasti Chelameswar (till 22.06.2018)
 - Hon'ble Mr. Justice Ranjan Gogoi
 - Hon'ble Mr. Justice Madan B. Lokur (from 23.06.2018)
3. Secretary, Department of Justice, Ministry of Law & Justice, GOI
4. Secretary, Department of Expenditure, Ministry of Finance, GOI
5. Secretary, Department of Legal Affairs, Ministry of Law & Justice, GOI
6. Secretary General, Supreme Court of India
7. Director, NJA Bhopal

The General Body

1. Chairperson of the NJA the Chief Justice of India
 - Hon'ble Mr. Justice Dipak Misra
2. Two puisne Judges of the Supreme Court of India
 - Hon'ble Mr. Justice Jasti Chelameswar (till 22.06.2018)
 - Hon'ble Mr. Justice Ranjan Gogoi
 - Hon'ble Mr. Justice Madan B. Lokur (from 23.06.2018)
3. Chief Justice of a High Court
 - Hon'ble Mr. Justice R.S. Reddy, Chief Justice, High Court of Gujarat
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5. Ex- officio members:
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 - ii) Chairperson Bar Council of India
6. Secretary, Department of Justice, Ministry of Law & Justice, GOI
7. Secretary, Department of Expenditure, Ministry of Finance, GOI
8. Secretary Department of Legal Affairs, Ministry of Law & Justice, GOI
9. Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension, GOI
10. Two Law Academics
 - Dean, Faculty of Law, Delhi University
 - Director, NLIU, Bhopal
11. Secretary General, Supreme Court of India
12. Director, NJA Bhopal

National Judicial Academy

Conceived in early 1990s by the Supreme Court of India, the NJA had to wait nearly a decade to get its infrastructure in place. On September 5, 2002 the then President of India, Dr. A.P.J. Abdul Kalam, formally dedicated to the Nation, the beautiful sprawling complex of the NJA, spread over 62 acre campus overlooking the Upper Lake at Bhopal. The President on the occasion released a Second Vision for the Republic in which a new and dynamic role for the judiciary was envisaged with a view to make India a developed country by 2020. "The Academy", he said, "may aim at developing attitudinal changes to improve judicial integrity and efficiencies". The NJA is now ready to commence that rather challenging journey towards achieving higher standards of excellence in delivery of justice through human resource development and techno-managerial upgradation.

Registered as a Society in 1993 under the Societies Registration Act (1860), the NJA is managed by Governing Council chaired by the Chief Justice of India. The Governing Council consists of two senior most Judges of the Supreme Court of India and three Secretaries to the Government of India from the Departments of Law and Justice, Finance and Legal Affairs. The mandate of the Academy under the Memorandum of the Society include following objectives:

- (i) to establish a center of excellence in the study, research and training of court management and administration of justice and to suggest improvements to the judicial system;
- (ii) to provide training and continuing legal education to judicial officers and ministerial officers of the courts; and
- (iii) to disseminate information relating to judicial administration, publish research papers, books, monographs, journals etc. and collaborate with other institutions both within the country and abroad.

With the support and guidance of the justices of the Hon'ble Supreme Court of India, the NJA has launched an ambitious plan of research, education and training activities to give the judiciary - the required intellectual inputs to assist the judicial system in dispensation of quality and responsive justice.



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