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NEWSLETTER

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From the Director's Desk

It is customary for any institution like the NJA to have an in-house publication to keep the fraternity it serves, informed of the developments and activities that take place in and around it. This helps the institution a lot in having timely interaction with its patrons paving way for vitalizing its academic regimen.

The NJA is in the process of reviewing and revitalizing and expanding its activities to new areas of relevance and importance for the judiciary. It is also redefining its role in new areas of research and learning that may go hand in hand with its regular programmes.

In fact the NJA has been straining its every nerve to situate the judicial officers in such a position that they could dispassionately perceive the factors that contribute to decision making. Their position under the constitutional scheme and their role in achieving the constitutional vision of justice for the teeming millions of India are tried to be made clear in every programme designed by the NJA. This assumes importance in a vast country like India with varied customs, mores and practices. Judicial Officers from different parts of the country with disparate backgrounds but driven by the common aim of achieving justice envisaged by the constitution make every programme of the NJA wonderful, meaningful and fruitful. The camaraderie developed by the participants from different parts makes every event unique. The best practices developed and implemented by some judicial officers are examined thoroughly and at times adopted successfully by others from other parts of India.

The position of NJA in this scenario is unique. It nurtures the virtue of healthy criticism. It stands for the independence of the judiciary. It encourages learning through debate and discussion true to the nature of the Law, a heuristic discipline.

To suit these requirements we have different items in the Newsletter. The section on points to ponder is to encourage criticism, analysis and creative thinking. The other items are meant for dissemination of information and knowledge.

We invite our patrons to share the joy of reading about our activities during the last quarter.

Prof. (Dr.) KN Chandrasekharan Pillai

NJA : The Catalyst of Change

The National Judicial Academy has been rendering yeoman service to the community of judges during the last decade. It is consistently engaged in experimenting with new pedagogical techniques in order to ensure that judicial education can become an effective tool for strengthening the Indian judicial system. The Academy has been straining its every nerve to discharge the duty by making the judges identify and appreciate the constitutional vision of justice writ large in the preamble and various provisions of the Indian Constitution.

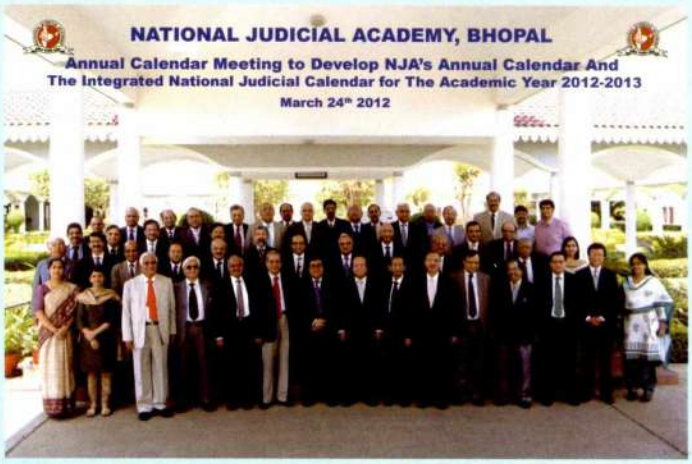
The activities at NJA and its programmes for judges are designed in such a manner that the judges become aware and conscious of the challenges faced by the nation. This helps them to interpret the law in tune with the constitutional vision and thus, become partners in nation building, sustaining democracy and the rule of law by way of building up public confidence and trust in the judicial system.

The Academy by way of its innovative programmes has been able to establish its identity as an institution of relevance to the Indian judiciary. Besides sensitization of the officers, it is strongly felt that it situates itself as a wonderful platform for the judicial officers from far and near to establish camaraderie and exchange experiences, views, best practices and generate knowledge and judicial skills for the betterment of the system. The resource persons drawn from varied disciplines and sectors help the Academy to fulfill its mission of realising constitutional vision in a heuristic mode. NJA has also been able to work in close cooperation with state judicial academies to develop a national framework for judicial education, which can be used by the judicial academies to design their programmes.

Evolving the NJA Academic Calendar

The calendar of NJA is prepared through an extensive consultation process with all the High courts and the state judicial academies. NJA convenes an annual calendar meeting as a part of this consultation process. This meeting receives participation from judges in charge of judicial education or their representatives from all the High Courts and the directors of state judicial academies and is chaired by Supreme Court judges. NJA circulates a draft calendar to all the high courts well in advance.

The calendar meeting gives an opportunity to collect and incorporate views and opinions of all the high courts. The meeting also provides an opportunity to take stock of the state of judicial education in the country and the measures needed to strengthen it. It is also an avenue for the State Judicial Academies to exchange their calendars mutually to develop an integrated national judicial education calendar.



The draft calendar, after incorporating suggestions received in calendar meeting is circulated amongst all the members of NJA's academic council and governing council for suggestions and approval.

A final draft is then submitted to the Chief Justice of India, the chairman of NJA for final approval.

Academic Calendar 2012-13: An Overview

Aiming to touch the Indian judicial system in its length and breadth, NJA calendar for the year 2012-2013 aims to realize the following seven goals:

- Strengthening institutional framework of the judicial system
- Enhancing the quality of the key function of the judicial system - adjudication
- Enhancing individual capacity of judges
- Enhancing the social impact of the judicial system
- Enhancing the over-all performance of courts
- Strengthening Judicial Education
- Furthering Research and Continuing Education Initiatives to Provide Feedback to the Judicial System

In pursuance to the above mentioned goals, in the year 2012-13 the NJA will be organizing 171 programmes. These programmes will allow the opportunity of participation to 2640 judges from all over the country across all tiers of the judiciary.

In order to ensure that programmes can be useful for judges from all tiers of judicial hierarchy, NJA organizes different types of programmes under each of the above-mentioned goals. For example, three types of programmes having judges of district judiciary as its target group conceived in pursuance of goal A-strengthening institutional framework of the judicial system are: National conferences of principal district judges on court administration and court management, a special series of programmes for presiding officers of special courts, and regional judicial conferences on the topic, "Administration of Criminal Justice: Issues and Challenges". A series of conferences which are to be organized in pursuance of goal B with the aim of addressing the issues relating to adjudication are titled as National judicial conferences of judges of district judiciary on key litigation areas. Under Goal C, wherein the focus is capacity building of individual judges who man the judicial system, NJA will be organizing two kinds of orientation programmes, a series of eleven days long programme for the civil judges (junior division) and another series of three days long programme for additional district judges. A total of six conferences to be organized under goal D, which aim to focus on the social impact of judicial system are titled National conferences of judges of the district judiciary on law and society interface.

In addition to the above, NJA will also organize eight conferences for the high court judges with the aim of achieving the four different goals viz. strengthening institutional framework of judicial system, enhancing the quality of the key function of the judicial system, enhancing individual capacity of judges and enhancing social impact of judicial system.

Programmes at NJA from August to December 2012

National Conference of Judges of the District Judiciary on Criminal Justice Administration, August 10-12, 2012 (P 568)

This three day National conference for the judges of District Judiciary on Criminal Justice Administration was first programme of this academic year and also first in the series of programmes conceived in pursuance of goal- enhancing social impact of the judicial system. Twenty-eight judges from eighteen High Courts participated in the programme. Two eminent judges from the High Court- Justice VVS Rao and Justice R Basant chaired the sessions. The discussions were centered around various aspects such as social responsibility of the criminal courts, role of witnesses in criminal justice system, increasing recognition of the role of victim and sentencing practices. Aiming to highlight the interface between law and society Prof BT Kaul and Prof KNC Pillai discussed with the judges topics like theories of crime and causes of crime. Mr. VV

Lakshminarayana, a senior police officer interacted with participants on various issues involved in investigation of cases. One of the highlights of this conference was the intensive discussion on the role of witnesses in criminal justice system and the difficulty faced by them in attending the courts.

National Conference on Commercial and Economic Disputes including Cases under Negotiable Instruments Act, August 17-19, 2012 (P 570)

The first conference in the series of programmes of specific areas of litigation was focused on the litigation relating to commercial and economic disputes. One of the main aims of this conference was to draw attention of the judges towards the changing nature of economic and commercial litigation in India in the wake of liberalization and the recent technological developments. It also aimed to emphasize the importance of speedy disposal of Commercial and Economic cases for economic growth and prosperity of the nation.

Twenty six judges nominated by eighteen High Courts participated in this conference. The three day conference was planned to include sub themes on suits relating to Contracts and specific relief, use of ADR, decision making in economic offences, Negotiable Instruments and Issues in IPR. The conference was chaired by Justice K. Kannan of P & H High Court and Justice DA Mehta, retired judge of Gujarat High Court. Resource persons included senior advocates from the Supreme Court and the Gujarat High Court who deal with commercial and economic cases and a professor from Delhi University for academic insights into the subject.

National Conference of the Presiding Officers of Special Courts established under SC/ST (POA) Act, 1989, August 17-19, 2012 (P 571)

The first programme in this series was dedicated to the courts established under SC/ST (POA) Act. It provided a forum to the presiding officers of these courts to appreciate and analyse the challenges faced by the courts in effective implementation of the above Act. 23 judges from across the country participated in this programme. One of the main aims of the programme was to sensitize the judges towards discrimination faced by historically marginalized groups in our society. Sessions were chaired by Justice V. Gopala Gowda, Dr. Justice S. Muralidhar. Other resource persons were Mr. Bojja Tharakam, an advocate with vast experience of dealing with cases relating to SC/STs. Mr. Anvesh Mangalam, IG police from Madhya Pradesh also addressed the participants about issues relating to investigation and prosecution of offences under this Act.

National Orientation Programmes for Additional District Judges, September 7-9, and November 2-4, 2012 (P 583 & P 606)

NJA has been organizing orientation programme for newly appointed Additional District Judges (ADJs) for the last many years. The orientation programme for ADJs provides an opportunity to district judiciary judges to share experiences, discuss problems, introspect, and above all develop solidarity with judicial officers across the nation. This programme aims to orient and motivate district judiciary judges to play an important role at ensuring the independence of the judiciary at all tiers.

In furtherance of its goal, NJA proposes to organize four orientation programmes for newly appointed Additional District Judges (ADJs) in the current academic calendar. The first two programmes were organized in the month of September (P- 583) and November (P- 606) respectively. A total sixty seven district judiciary judges from eighteen High Courts participated in both the programmes. The technical sessions focused on issues relating to civil and criminal justice administration. Specific sessions were also conducted on themes like 'Building Public Trust and Confidence in Courts', 'Impact of Media on Judicial Decision Making' and 'Judicial Ethics and Accountability'. Mr. Vakul Sharma, Advocate made a presentation on collection and appreciation of electronic evidence. The sessions were chaired by various sitting and retired Chief Justices and Judges of different High Court.

National Orientation Programme for Newly Appointed Civil Judges (Junior Division), September 7-17 and November 30-December 10 (P 584 & P 619)

Between August to December 2012, NJA organized two orientation programmes for Civil Judges (Junior Division) on the above-mentioned dates. More than hundred judges from across the country got an opportunity through these two programmes to visit NJA and also to meet their counterparts from different High Courts. With the objective of strengthening Indian judiciary from the grass root level, this eleven days programme draws attention of the junior division judges towards the role they are expected to play in upholding the cause of justice in the Indian legal system. Maintaining continuity with the stream of orientation programmes at NJA these programmes too served the purpose of addressing important myths about the role of junior division judges: that the task of lower courts, particularly at the level of junior division, is merely to resolve disputes; and that the role of junior division judges is limited only to (mechanical) application of law as laid down by the higher judiciary leaving junior division judges with little or no freedom to interpret law. Various sessions in the programme were designed to emphasize a major shift in the role of district

judiciary in independent India, from being an arm of the law enforcement machinery of the state or the executive branch of the government to being an institution for protection of constitutional rights of people.

While devoting adequate attention to areas like criminal and civil justice administration, gender justice, juvenile justice these programmes also introduced the civil judges to some new areas like, intellectual property laws, laws relating to disability. Resource persons in the programme include sitting and retired High Court judges, academicians and activists as well as lawyers having experience of trial courts.

National Conference of Judges of the District Judiciary on Human Rights and Civil Liberties, September 14-16, 2012 (P 585)

Aiming to reorient district judiciary judges towards their role as protectors of human rights, a three day conference was organized on the subject of human rights and civil liberties. One of the important aims underlying this conference was to emphasise and to demonstrate how a judge from district judiciary can also play an activist role in protecting human rights, in enforcing rule of law and in holding the state accountable to realize constitutional principles. Twenty

eight judges nominated from different High courts participated in the conference. The conference was chaired by Justice Dr. Y. Bhaskar Rao (Former Chief Justice, Karnataka High Court), Justice G. Raghuram (Judge, Andhra Pradesh High Court) and Justice S. Nagamuthu (Judge, Madras High Court). Prof. M. Gandhi, Professor, Jindal Global Law School offered a theoretical framework and drew attention towards international obligations of the country in this area. Smt. Anuradha Shankar, a senior Police Officer from M.P. shared her experiences on the role of police as protector of human right and civil liberties. Mr. Ravi Nair, a lawyer and a human rights activist discussed the challenges faced by the uniformed forces in maintaining peace and upholding national security while ensuring protection of human rights. Some other issues which could be discussed were, role of judges during investigation, constitutional principles which govern issues relating to bail and remand, avenues of human rights violation during trial and mechanisms envisaged under criminal procedure code to address such violations.

National Conference of Judges of the District Judiciary on Violence against Children and Women, September 21-23, 2012 (P587)

Considering violence against women as a special area of litigation which may require approaches different from those adopted in other areas of litigation, a national conference was organized on the above-mentioned subject. The programme sought to identify the peculiar challenges faced by the judiciary in dealing with cases relating to violence against women and children. One of the important aims of this programme was to make judges appreciate the root causes of violence against women and children and also to draw their attention towards the sensitive attitude that needs to be adopted by trial judges in dealing with victims of such crimes. The participants with the able guidance of the resource persons deliberated on the sentencing practices in cases of crimes against women and children. Various sessions in the programme were chaired by Justice R. Basant and Justice K. Hema from the Kerala High Court and Justice Anjana Prakash from the Patna High Court.

National Conference of Presiding Officers of Family Courts, September 21-23, 2012 (P588)

Second in the newly introduced series of programmes meant for special courts in the current academic calendar at NJA was National Conference for the Presiding Officers of the Family Courts organized at NJA in the month of September. The programme was chaired by two High Court judges, Justice R. Basant from Kerala and Justice K. Kannan from Punjab and Haryana. It was an opportunity for the presiding officers of family courts to share views and experiences concerning functioning of the family courts with their counterparts. In this programme, which received 22 presiding officers of the family courts from different parts of the country, some of the major issues that could be taken up for discussion were: To what extent family courts have been able to achieve the objectives with which they were brought into existence? Has it become possible to mitigate harshness of adversarial process in resolving family disputes? What are main challenges and constraints faced by the family courts in realizing the objectives of speedy and effective remedies to women in dealing with family matters? How to make effective use of ADR mechanisms in resolution of family disputes. This programme could also be used as a forum for

sensitizing the presiding officers of the family so that they can play an important role in protecting rights of women and children while resolving family disputes. Resource persons in the programme were Ms. Susheela Sarathi, an advocate and trained mediator and counselor associated with Bangalore Mediation Center and also an academician Prof. Lakshmi Jhambolkar.

National Conference of State Judicial Academies on Key Issues and Challenges in Judicial Education, October 12-14, 2012 (P 600)

The National Conference of State Judicial Academies on Key Issues and Challenges in Judicial Education was the first in the series of three programmes formulated for the SJAs. The objective of this programme which was held on October 12-14, 2012, was to take stock of the state of judicial education in our country. Apart from critically examining the activities conducted at SJAs in the previous calendar year and analyzing the implementation of the national framework for judicial education curricula, the programme also looked for ways and means to be adopted in the direction of further strengthening judicial education in the country. This programme worked towards developing a framework for the Court Excellence Enhancement Programme (CEEP), which is proposed to be initiated at the SJAs from the next academic year. Besides discussing the functioning of Court Managers, the programme also stressed on the importance of carrying out research activities at SJAs. The 19 participants from the various SJAs were ably guided by Justice VS Sirpukar, Justice Ravi R. Tripathi, Justice S. Ravindra Bhat and Prof (Dr) MP Singh.

National Conference of Principal District Judges on Court Administration and Management, October 13-14, 2012 (P 601)

In the current academic year NJA has proposed to conduct two conferences of Principal District Judges. One of the objectives of these Conferences is to provide a forum for the PDJs from across different High Courts to share their experiences relating to the management techniques adopted by them for effective administration of courts in their respective districts. The first of these two conferences was organized on 13 and 14 October, 2012. In this two days programme 35 Judges nominated by the High Courts participated. On day one, the main themes were "Leadership Role of Principal District Judge" and "Court Administration: Problems and Prospective". The main themes on day two were "Court Management", "Case Load and Case Management" "Role of Court Managers in the Judicial System" and "Building Public Confidence in Courts". Justice Ravi R. Tripathi, Justice R.C. Chavan and Justice Chandresh Bhushan chaired the sessions and guided

the discussions. An important aim of the programme was to reinforce the importance of good management techniques for effective functioning of justice delivery system.

National Conference of the Presiding Officers of CBI Courts, October 19-21, 2012 (P 602)

In recognition of the need of a platform for the Presiding officers of the CBI Courts to deliberate on wide range of complex legal issues that arise before them everyday, two conferences have been scheduled for them in the current academic calendar. First of these two conferences was organized from 19th to 21st October, 2012. Justice PP Naolekar, former Judge, Supreme Court

and Justice Anjana Prakash, Judge High Court of Patna chaired the sessions. Resource persons included a senior police officer from CBI, a retired public prosecutor from CBI, a senior advocate dealing with cases relating to Prevention of Corruption Act, a bank officer to describe various bank frauds and a senior police officer who had extensive experience in dealing with cyber crimes. Twenty-four Judges nominated by seventeen High Courts participated in this programme. Participant judges actively discussed various provisions of the Prevention of Corruption Act and Criminal Law Amendment Act.

National Conference of Judges of the District Judiciary on Issues Relating to Weaker Sections and Marginalized Groups (Transgenders, Mentally Challenged, Differently-abled and Senior Citizens) November 2-4, 2012 (P604)

A National Conference on issues relating to weaker sections and marginalized groups was organized to achieve the following objectives: (i) to enhance the awareness and to sensitize the participating judges about the issues and challenges faced by the marginalized sections in the Indian society, (ii) to discuss and deliberate on the legal framework available in our country to deal with the issues and challenges faced by the marginalized groups. While discussing about marginalized and weaker sections, the programme maintained special focus on transgenders, mentally challenged, differently-abled and senior citizens. The conference dealt with a wide range of issues rotating around the central theme including the sociological, medical and legal aspects. Sitting and retired High Court judges chaired the sessions and guided the discussions. Other resources persons included experts from different fields such as academicians Prof. Ranbir Singh, Prof. Preeti Saxena and Dr. Raka Arya, a clinical psychologist Dr. Sumit Ray, an advocate Mr. Barowalia and also a representative from a transgender group.

National Conference of Presiding Officers of NDPS Courts, November 2-4, 2012 (P 605)

This conference provided an opportunity to presiding officers of the NDPS courts to come together on a common platform to discuss important issues relating to functioning of this special category of courts. The participants could discuss the problems in the disposal of contraband, rehabilitation of drug addicts, difficulties because of disparate methods adopted by different investigating agencies authorized to detect and investigate the offences and prosecute the offenders.

Justice Vikramaditya Prasad, retired judge from Jharkhand High Court, Justice PK Mishra, former Chief Justice of Patna High Court, Justice Joymala Bagchi and Justice KS Ahluwalia, judges from Calcutta High Court and Mr. Barowalia, advocate and an expert in matters relating to NDPS from Himachal Pradesh were the resource persons. A total number of twenty four judges nominated from seventeen high courts participated in the programme.

National Conference of Judges of the District Judiciary on IT Act and Cyber Laws, Nov 30-Dec 2, 2012 (P 618)

In order to keep judges abreast with technological developments and their impact on society as well as on the judicial system this conference was organized at NJA. In this three day programme 26 Judges nominated by 18 High Courts participated.

On day one the main theme was "Tracing the Development of IT Laws" where Mrs. Karnika Seth, advocate, Supreme Court discussed the history of Information Technology Act and the important provisions of IT Act, 2000 including the amendment Act 2008. She also discussed important provisions of other Acts relating to IT Act like, IPC, Cr. P C, Evidence Act and other related Acts. On day two, the main themes were "Types of Cyber Crime", "Investigation & Collection of Evidence" and "Preservation and Appreciation of Digital/Electronic Evidence". Dr. Rajendra Mishra (Adviser Planning Commission, M.P. & former IGP Cyber Cell, M.P.) & Mr. Deepak Thakur (Dy. SP Cyber Cell, M.P.) gave presentations and lead the discussions. Dr. Justice S. Muralidhar, Judge, Delhi High Court chaired and guided the discussions.

Regional Judicial Conferences on Administration of Criminal Justice : Issues and Challenges

The National Judicial Academy has been organizing Regional Conferences since 2007 on various themes including key challenges facing the judicial system in enhancing timely justice. The main goal of these Regional Conferences is to facilitate sharing of knowledge, views and experience amongst judges from neighboring States on selected challenges. Such exchanges provide judges an opportunity to learn from each others' experience. In this manner, Regional Conferences provide inputs for the consideration of judges which may be used by them in improving the performance of their courts and thus, facilitate enhancement of the excellence of the judicial system. This year the theme of the Regional Conferences is "Administration of Criminal Justice: Issues and Challenges".

The Regional Conference on the proposed theme is being organised by the NJA with an aim of sharing knowledge and experience among judges across states in relation to various issues arising in the administration of Criminal Justice in India. The Supreme Court has said in various decisions that the system of criminal justice administration in India is in serious need of reform. In such circumstances, the NJA has taken up the issue of Criminal Justice Administration as an annual theme for its flagship programme of Regional Conferences.

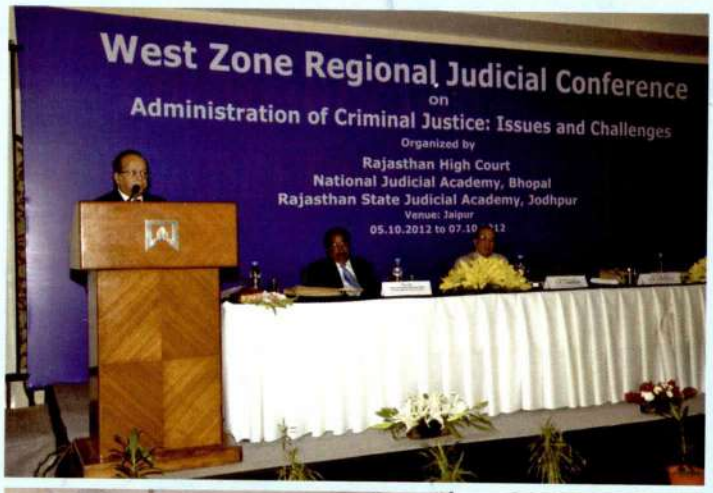
The focus of the Regional Conference this time will be to explore the Constitutional underpinnings of the Criminal Justice Administration. Sessions during the conference will also provide perspective on various rights available to the stakeholders such as the accused, victim, prisoners etc under the criminal justice system. NJA aims to deliver the main thrust of the program through analytical and empirical research outputs, simulation exercises, discussion sessions and lectures on specific topics.

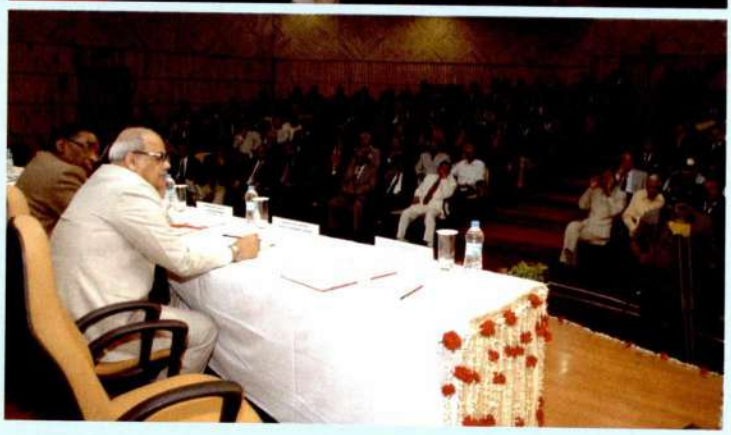
East Zone Regional Judicial Conference on Administration of Criminal Justice: Issues and Challenges, August 24-26, 2012 (P 572)

NJA commenced its series of regional conferences for this academic year from East Zone by organizing a conference in Ranchi (Jharkhand). The conference was organized in association with Jharkhand High Court and Jharkhand State Judicial Academy. More than 100 judicial officers from the High Courts of Calcutta, Chhattisgarh, Gauhati, Patna, Orissa, Sikkim and Jharkhand participated in the conference. Justice Altamas Kabir, judge, Supreme Court of India, Justice AK Ganguly, Justice SB Sinha, former judges, Supreme Court of India chaired the sessions.

West Zone Regional Judicial Conference on Administration of Criminal Justice: Issues and Challenges, October 5-7, 2012 (P 589)

The West Zone "Regional Judicial Conference on Administration of Criminal Justice: Issues and Challenges" was organized at Jaipur in coordination with the High Court of Rajasthan and the Rajasthan State Judicial Academy. Eighty participants from the west zone High Courts i.e. Bombay, Rajasthan, Gujarat and Madhya Pradesh participated in the Conference. The inaugural session was chaired by Justice Arun Mishra, Chief Justice, Rajasthan High Court and the valedictory session was chaired by Justice Gyan Sudha Misra, Judge, Supreme Court of India. Former Judges of the Supreme Court including Justice CK Thakker and Justice AK Ganguly chaired the sessions on the first day of the Conference.





North Zone Regional Judicial Conference on Administration of Criminal Justice: Issues and Challenges, November 23-25, 2012 (P 617)

The North Zone Regional Judicial Conference on Administration of Criminal Justice: Issues and Challenges was organized by the National Judicial Academy in coordination with the High Court of Punjab and Haryana and the Chandigarh State Judicial Academy. Eighty three participants from the north zone High Courts i.e. Delhi, Punjab & Haryana, Allahabad, Uttarakhand, Himachal Pradesh and Jammu & Kashmir participated in the Conference. The inaugural session was chaired by Justice AK Sikri Chief Justice, High Court of Punjab and Haryana. The sessions in the Conference was chaired by the Judges of the Supreme Court including Justice BS Chauhan, Justice Dipak Misra and Justice Ranjan Gogoi. Former Judge of the Supreme Court Justice SB Sinha chaired sessions on the second day of the Conference.

South Zone Regional Judicial Conference on Administration of Criminal Justice: Issues and Challenges, December 14-16, 2012 (P 621)

The South Zone regional conference of NJA was held at MCR, HRC Institute, Hyderabad. Around ninety judges from the states of Andhra Pradesh, Karnataka, Kerala, and Tamil Nadu participated in the conference. Three Supreme Court judges, Justice Anil R. Dave, Justice J. Chelameswar and Justice Madan B. Lokur chaired the sessions and guided the discussions. There were discussions on relevance of constitution in administration of criminal justice, role of judges in investigation of cases by the police, fair trial rights and proper sentencing of the guilty.

National Conferences of High Court Judges

National Conference of High Court Justices on Administration of Criminal Justice, August 11-12, 2012 (P 569)

A National Conference for High Court Judges was held at the National Judicial Academy on August 11-12, 2012. The national conference discussed the theme of "Administration of Criminal Justice: Key Issues and Challenges" over two days. Almost all the high courts were represented in the conference with around 19 high court judges attending the proceedings. Justice BS Chauhan and Justice Madan B. Lokur, Judges, Supreme Court, chaired the proceedings on both the days. Mr. PP Rao, senior advocate, Supreme Court guided the discussions.

The conference generated discussions on the major crises facing the criminal justice administration. Issues such as arrears and pendency on the criminal side, unfilled vacancies, poor bar, other managerial challenges and lack of theoretical coherence in the decisions of the Supreme Court drew active reflection and discussion at the conference.

National Conference of High Court Judges on Human Rights and Civil Liberties, September, 15th -16th, 2012 (P 586)

National Conference of High Court Judges on Human Rights and Civil Liberties was the second conference for the High Court judges organized in this academic year. A total number of 22 judges from different High Courts participated in the conference. Justice Madan B. Lokur, Justice SJ Mukhopadhaya, Judges, Supreme Court chaired the sessions. Justice Bhaskara Rao retired Chief Justice of Karnataka High Court, Prof. BT Kaul from Delhi University, Dr. Gandhi from Jindal Law School , Dr. RK Murali from Banaras Hindu University and Senior Advocate Mr. Ravi Nair were the resource persons for this conference.

The Director, NJA delivered the introductory address. In his address he spoke about the origins of international fora after World Wars I & II and pointed out the influence of Universal Declaration of Human Rights on the framers of the Constitution of India. He also high lighted how the right to fair trial, right to fair investigation etc gained status of constitutional rights in due course of time. Prof. BT Kaul dealt with the impact of globalization and development of labour law. Justice Bhaskara Rao spoke about the human rights violations by the police and other Public Authorities. Speaking on Terrorism and Human Rights, Mr. Ravi Nair spoke about the subversion of laws by the executive in the guise of protection of society from terrorism. Justice Mukhopadhaya highlighted the provisions of the Indian Constitution and a golden triangle of Fundamental Rights- Articles 14, 19 and 21. "Forced disappearances" was the other important aspect that was addressed by Justice Lokur. He also mentioned about the plight of Internally Displaced Persons (IDPs) and refugees from Bangladesh. Prof. Murali addressed the participants on provisions relating to victims.

National Conference of High Court Judges on Public Law, December 8-9, 2012 (P 620)

The National Conference of High Court Judges on Public Law was organized on December 8-9, 2012 with the

resource persons - Justice Manmohan Sarin, Lokayukta, Delhi, senior advocates of the Supreme Court including Mr. PP Rao and Mr. KK Venugopal and Dr. BT Kaul from Delhi University. The Conference was attended by 18 judges from various High Courts of the country.

One of the major concerns of the participants was blurring line between public and private function due to increasing privatization of hitherto known public services. Such privatization of essential public services such as telecommunication, banking and electricity etc. is reducing the scope of writ jurisdiction of High Courts across the country. During the discussion on corruption cases, concerns were raised on the low conviction rate in such cases especially in complex cases involving huge amount such as financial scams and money laundering etc. The issue of delay in the disposal of corruption cases was also raised and suggestion was made for efficient case management of such cases particularly focusing on management of evidences and witnesses. Another important issue taken up in discussion was labour law. Concerns were raised on the issue of the judiciary

etc. The issue of delay in the disposal of corruption cases was also raised and suggestion was made for efficient case management of such cases particularly focusing on management of evidences and witnesses. Another important issue taken up in discussion was labour law. Concerns were raised on the issue of the judiciary delivering pro-employer verdicts in labour law litigations after globalization, and emphasis was placed on the balancing of interests of the employer as well as the employee.

Court Excellence Enhancement Programme

Being a judicial academy most of the activities at NJA are judge-centric. Understanding the importance of other stakeholders i.e. lawyer, ministerial staff, police officer, prosecutor, and litigants, in the justice delivery system, NJA in the last academic year initiated a series of research programmes entitled, 'Court Excellence Enhancement Programmes'. One of the main aims of this project is to involve all the stakeholders in a court (i) to understand and analyse performance of selected courts from different states and (ii) to work towards enhancing excellence of trial courts in delivering justice to litigants. In phase one of this project in the academic year 2011-12, NJA conducted 100 conferences which offered a common platform to the stakeholders of the justice system to understand and find solutions for the challenges faced by their respective courts. These conferences also provided an opportunity to the stakeholders from each court to meet and exchange views with stakeholders from different courts. Through these conferences NJA also facilitated development of

an action plan by the stakeholders for their own court to improve its functioning.

Taking forward the above research project in phase two in the current academic year, NJA is conducting review meetings with the stakeholders of the same courts which participated in CEEP I. One of the main aims of these review meetings is to take stock of the implementation of the action plan which was developed at NJA in the previous academic year. From August to December 2012 NJA conducted CEEP review meetings for the stakeholders from 30 courts.

Points to Ponder

Spirit of *Nandini Satpathy*

Right to counsel and legal aid during investigation into crimes have of late assumed much importance in India. Right to counsel was recognized by the Supreme Court in *Nandini Satpathy* [(1978) 2 SCC 424] as early as in 1978. It had the backing of the American Supreme Court's decision in Miranda v. Arizona, [384 **US**. 436 (1966)]. This decision came to be dissented from by our Supreme Court in *Poolpandi and Another v. Superintendent, Central Excise,* [(1992) 3 SCC 259]. Lately in *Intelligence Officer v. Jugal Kishore Samra* [(2011) 12 SCC 362] it has received a thorough examination. The court found it running counter to constitution bench decisions. [*Mohd. Illias v. Collector of Customs Madras, AIR 1970 SC 1065; Romesh Chandra Mehta v. State of W.B., AIR 1970 SC 940; Poolpandi and Another v. Superintendent, Central Excise, (1992) 3 SCC 259*] The efforts made by the counsel to distinguish the constitution bench decisions on the ground that they dealt with cases under economic legislation like Customs Act were not appreciated by the Supreme Court.

In this context it may be appropriate if the court has a look into the decisions rendered under Art. 20 (2) of the Constitution wherein the cases under Customs Act came to be held not applicable to Art. 20 (2) as the customs officers albeit having police powers are not police officers and as such there would be no prosecution or punishment for the purpose of Art. 20 (2) of the constitution (see *Maqbool Hussain v. State of Bombay*, AIR 1953 SC 3257)

It is pertinent to note that the Supreme Court despite its rejection of right to counsel in *Jugal Kishore* chose to draw strength from *D.K. Basu* (1997) 1 SCC 416, to grant this right, in a limited way. *D.K. Basu* envisaged right to counsel to arrestees by police officers. *Jugal Kishore* was situated before a customs officer – like Intelligence Officer and he was on anticipatory bail. In other words, there was no precedent bound compulsion for the court to command *D.K. Basu* to its aid. Its commitment to human rights seems to have prompted it to do so. Recently, in *Kasab's* case [(2012) 9 SCC 1] the Supreme Court ruled that it is obligatory for the magistrate to convey to the accused his right to counsel and legal aid. Failure may entail disciplinary proceedings against the magistrate though it might not vitiate the trial it was restricted.

It is interesting to see another development in this context. In *Rajoo v. State of M.P.* [(2012) 8 SCC 553], the Supreme Court after a review of its decisions ruled that the right to counsel and legal aid in India is to be given not on the asking of the accused as in some foreign countries like New Zealand. The tenor of the judgment shows its recognition as an independent right not subject to any restriction. The discussion and ruling in *Mohd. Hussain @ Julfiquar Ali v. NCT of Delhi* [2012 (8) SCALE 308] has crowned this right as a human right - universally applicable even to a foreign national.

In these circumstances one may Ponder on this: though *Nandini Satpathy* is discarded its spirit will pervade the criminal jurisprudence in India seeking to be recognized, respected and rejuvenated or resurrected.

Prof (Dr.) KN Chandrasekharan Pillai

Judicial Understanding of Victim's Right to Appeal

The legislature *vide* s. 29 of the Criminal Procedure (Amendment) Act, 2008 has introduced a new substantive right of appeal in favour of the victim by the insertion of the proviso to s. 372 of the Code. The proviso carves out an exception to the general rule embodied in the first part of s. 372, which states that no appeal shall be filed except as laid down in the Code, and specifies the following three situations in which a victim can file an appeal: (i) against acquittal of the accused or (ii) conviction of the accused for a lesser offence or (iii) for inadequate compensation.

Since s. 378 of the Code was not amended with the insertion of proviso to s. 372, the doubt remains as to whether leave of the High Court would be required in case of appeal against acquittal by the victim. This amendment has also given rise to the following issues which need interpretation by courts: (i) there is no period of limitation in the proviso, (ii) even if the High Court entertains such appeal filed by the victim, there is no corresponding provision similar to s. 390, which is available for appeals filed under s. 378, (iii) it is unclear whether the victim has an absolute right or it would be available only in the case where the State has not preferred the appeal, (iv) whether a victim can prefer an appeal in cases where leave to appeal by the State is already rejected by the High Court?

With respect to the issue of leave of High Court, some High Courts are of the view that victim's right to appeal is governed by the requirement of leave under s. 378 of the Code. Conversely, there are several cases reflecting the contrary view.

In *Guru Prasad Yadav* v. *State of Bihar [Criminal Appeal (DB) No.582 of 2011]* the Division Bench of Patna High Court held that the procedure for filing an appeal by the victim has to be the same as provided under s. 378 of the Code. Punjab and Haryana High Court took similar view in *Smt. Ram Kaur @ Jaswinder Kaur* v. *Jagbir Singh alias Jabi[2010 (3) RCR (Cri.) 391.*

These high courts have looked into the matter from statutory point of view and, therefore, they reached a common opinion that the procedure to exercise such a right is the same as applicable for the other two streams of appeal (by the State and the complainant) *i. e.* only with the leave of the High Court.

In contrast, some high courts which appear to have focused more on the object and philosophy behind the proviso, have treated this proviso as an independent statutory right of the victim. Bombay High Court in *Balasaheb Rangnath Khade* v. *State of Maharashtra [MANU/MH/ 0551/2012]* declared the victim's right of appeal as part of his human rights which are absolute and unfettered in nature. The court cautioned that to grant the Court the right to give leave would be to denude victim of the only right granted to him or her in Indian criminal jurisprudence."

Delhi High Court in *Jagmohan Bhola* v. *Dilbagh Rai Bhola[2011 (2) JCC 777]* expressed its disagreement with the views of the Punjab and Haryana High Court in *Smt. Ram Kaur* and the Gujarat High Court in *Bhikhabhai* case [2010 Cri.L.J. 3325]. In Smt. *L. Premlata Sharma* v. *State of Tripura [MANU/GH/0152/2012]* the Gauhati High Court also disagreed with the P&H High Court.

A Full Bench of the Gujarat High Court in the case of *Bhavuben Dineshbhai Makwana* v. *State of Gujarat & Ors[(Criminal Appeal no. 238 of 2012]*, correcting the findings in *Bhikhabhai* case, opined that the right of a victim to prefer an appeal is a separate and independent statutory right and is neither dependent upon nor is subservient to the right of appeal of the State.

With respect to the issue of limitation the debate has arisen since there is no period of limitation prescribed under the proviso to s. 372. Whereas specific periods of limitation have been prescribed under Ss. 374, 377 and 378 of the Code, either in the Code itself or by virtue of the Limitation Act, 1963.

In *Kareemul Hajazi* v. *State of NCT of Delhi [MANU/DE/0017/2011]* the Court was of the view that in cases where no period of limitation is prescribed by the statue a reasonable period is required to be ascertained by the Court. Consequently, the Bench treated the victim on par to a complainant and stated that the period of limitation which would be appropriate in the case of appeals filed by the victim would be the same period which is prescribed for appeals by convicts against conviction or by complainant against acquittal *i. e.* 60 days.

However, the Bombay High Court in *Roma Sukhajitsingh Saini* v. *Nirmalsingh Habhansingh [Criminal Appeal of 2010 (Stamp No. 978 of 2010) together with The State of Maharashtra v. Nirmalsingh Harbhajansingh Saini (Criminal Appeal No 5485 of 2010)]* did not subscribe to view of the Delhi High Court. Considering that the Legislature has chosen not to impose any limitation on victim' s right of appeal, the Court did not find it permissible for the Court to impose any limitation when none exists.

The full Bench of the Gujarat High Court in *Bhavuben Dineshbhai Makwana* suggested for period of 90 days as the same is the longest period of limitation for filing an appeal against the order of acquittal in the Limitation Act.

Hence, it is worth pondering over the disparate responses of our High Courts on this new provision.

Neeraj Tiwari

Do the Courts Need to Evolve a Sentencing Policy?

Sentencing the guilty has been a matter of debate in all the legal systems of the world. Theories of retribution, deterrence, reformation and rehabilitation which have strong underpinnings in political and legal philosophies throw light on imposition of punishments on wrong doers and no developed legal system can ignore them. No theory of punishment is against the punishing the guilty but the theorists differ on the purpose of punishment. Influence of all the theories of punishment can be traced in the sentencing practices of our courts. Though long ago theoretically our legal system watered down the theory of retribution preferring reformation as purpose of punishment, sentences handed down by our courts often reflect retribution albeit under different names such as "just deserts" or "proportionate sentences". This may be one of the reasons for unacceptable disparity in sentences passed or upheld by our courts and this disparity is an acknowledged fact in our legal system. Our courts refer to sentencing policy and standardization of sentencing practices .Efforts of the Judges at apex court to formulate a sentencing policy have neither materialized nor have they been abandoned.

Recent judgment of the Supreme Court in *Sangeet and another v. State of Haryana* [2012(11)SCALE 140] is another attempt in the direction of formulation of sentencing policy and standardization of sentencing practices. It can be considered a fresh start of old feat. The judgment is an ice breaker to reopen a fresh debate on issues which were provisionally set at rest. Sitting in appeal against the judgement of a High Court confirming death sentence of a murder convict, the court made an attempt to trace the development of sentencing policy in India categorising such developments in to phases. The court expressed strong reservation against the balance sheet theory based on aggravating and mitigating circumstances which has been resorted to till now in deciding whether death punishment can be imposed in a given case. The court was also sceptical of the practice of sentencing the convicts to entire life terms or a fixed term without remission which was assented by the Supreme Court in *Swami Shraddanandha* [(2008) 13 SCC 767] as an alternative to death punishment in suitable cases.

Apex court has considered the possibility of evolving a sentencing policy on numerous occasions. It is also true that the same court repeated many times that there can not be any such policy as it "tends to sacrifice justice at the altar of blind uniformity." In *Bachan Singh* [(1980) 2 SCC 684] the Supreme Court reaffirmed the dictum in *Jagmohan* [(1973) 1 SCC 20] that standardization of punishments is well-nigh impossible and that formulation of sentencing policy is the function of the legislature which the court can not embark upon. Despite such observations the court in *Sangeeth* considered *Jagmohan* as Phase one of sentencing policy by the court and concluded that "*Bachan Singh* effectively opened up Phase two of a sentencing policy by shifting the focus from the crime to the crime and the criminal" presupposing existence of a sentencing policy. Does our legal system actually have any sentencing policy? Can certain random thoughts relating to death punishment without invoking theories of punishment be equated to expressions on 'sentencing policy'? In *Sangeet* the Court referring to paragraphs161 to 166 of *Bachan Singh* observed that Bachan Singh discarded the test of balancing the aggravating and mitigating circumstances and *Machchi Singh* [(1983) 3 SCC 470] revived it. What was stated in these paragraphs is that exhaustive enumeration of aggravating and mitigating circumstances is not possible and it appears that the court in fact approved this test and applied it in the same case as can be seen in paragraph198 of that judgment. Balance sheet theory propounded in *Jagmohan* was affirmed by the constitution Bench in *Bachan Singh* and *Machchi Singh* followed the track. *Sangeet* suggested discarding the balance sheet theory without indicating the course open to the courts to determine rarest of rarest cases. But the view expressed in *Sangeet* that "a balance sheet cannot be drawn up of two distinct and different constituents of an incident" merits greater debate. The observation in *Sangeet* on full life sentences and fixed term life sentences without remission also needs to be revisited in the wake of post Delhi gang rape debate on punishment for rapists.

Pattabhi Rama Rao K

Sentencing Practices vis-à-vis Section 376 of the Indian Penal Code, 1860

Section 376 of the Indian Penal Code, 1860, in recognition of the gravity of the offence of rape and in expression of society's abhorrence of such crimes, provides a punishment of a minimum of 7 years which may extend to life imprisonment or for a term which may extend to 10 years. The proviso to Section 376 states that "the court may, for adequate and special reasons to be mentioned in the judgments, impose a sentence of imprisonment for a term of less than seven years." Thus, the proviso casts a discretion on the judge whereby in view of the differing and unique circumstances in each case, a sentence lesser than the prescribed minimum can be awarded. The phrase 'special and adequate reasons' has not found definition in the Indian Penal Code and has been the subject of divergent judicial opinions.

In the 2012 case of *State of Rajasthan v. Vinod Kumar* (AIR 2012 SC 2301) the Supreme Court has held the age of the offender to be a relevant consideration in sentencing. Conversely, in *State of MP v. Bala @ Balaram* [(2005) 8 SCC 1] the Supreme Court had held that the young age of the offender would not be an adequate reason to reduce the sentence below the minimum prescribed in Section 376.

In some cases, the Supreme Court has held that passage of time since the occurrence of the crime would be a special and adequate reason to reduce the sentence under Section 376 [Baldev Singh v. State of Punjab, (AIR 2011 SC 1231), Raju v. State of Karnataka, (1994) 1 SCC 453]. However, in contrast, the Supreme Court in *State of MP v. Bala @ Balaram* has held that the long pendency of the trial will not justify the reduction of the sentence below the statutory minimum.

It is interesting to note that the Supreme Court on different occasions has held the following reasons to be 'special and adequate' to reduce the sentence below the minimum prescribed – (i) Compromise between parties (Baldev Singh v. State of Punjab), (ii) forgiveness granted by victim to accused and the fact that the accused is not a habitual offender (*Phul Singh v. State of Haryana* AIR 1980 SC 249), (iii) the accused lost control under the circumstances and has already suffered mental agony and disrepute (*Raju v. State of Karnataka*).

In contrast, in *State of Karnataka v. Krishnappa* [(2000) 4 SCC 75] the Supreme Court ruled that the fact that the accused is illiterate, had committed the crime under intoxication and has family who are dependant on him would not amount to special and adequate reasons under Section 376. Furthermore, the socio-economic status, race, religion, caste, creed etc. of the accused or the victim would not be relevant reasons to reduce the sentence below the minimum prescribed. In this case the Supreme Court also emphasized the need for uniformity in sentencing practices relating to rape. It held that reduction of sentence below the statutory minimum without cogent reasons for the same was a casual and inappropriate approach to such crimes and amounted to lack of sensitivity towards the victim and society. The mere existence of a discretion by itself does not justify its exercise. Such discretionary power must be used sparingly and only in cases where facts and circumstances justify a reduction.

It is relevant to note that in the 2012 decision in *Vinod Kumar* the Supreme Court has held that the proviso to Section 376 was an exception clause and was to be invoked only in exceptional circumstances where the conditions incorporated in the clause exist.

In *Pushpanjali Sahu v. State of Orissa* [2012 (9) SCC 705] the Supreme Court has expressed its concerns over the application of the proviso to Section 376. The Supreme Court has observed that undue sympathy to the accused in the imposition of inadequate sentence would do more harm to the justice system and would undermine the public confidence in the efficacy of law.

Undoubtedly no straight-jacket formula can be devised to determine what amounts to adequate and special reasons under Section 376. Yet, can it be possible to introduce a minimum degree of consistency in the sentencing practices relating to Section 376?

Shruti Jane Eusebius

Law of Arbitration in India- Are we heading towards Certainty?

One of the recent judgments of the Supreme Court that needs attention is: *Bharat Aluminium Company and Ors v. Kaiser Aluminium Technical Service, Inc. and Ors, (2012)9SCC552* in as much as its impact on business transactions is far reaching. This much awaited five-judge bench judgment has been received with a sigh of relief by the world of business and foreign investors. There is sigh of relief since the Apex Court has finally *restated* certain principles which can be seen to be forming foundation of Arbitration and Conciliation Act, 1996. This judgment serves the purpose of reiterating that re-modeling law of arbitration in India in 1996, *in accordance with* UNCITRAL Model Law, did mean adopting the most fundamental principle- the 'principle of territoriality'- underlying the latter. Curiously enough, it took ten years and efforts of five-judges' bench to restate the above and thereby address the mischief which was allowed to prevail by the smaller benches of the Apex Court, first, ten years ago in the case of *Bhatia International v. Bulk Trading, (2002)4SCC105* and secondly, some years later, in the case of *Venture Global Engg. v.Satyam Computer Services Ltd. (2008)4SCC190.* The above two judgments had become the cause of infusing elements of uncertainty, speculation in a legislation which sought to ensure certainty and rule of law with a view to making the legal system of the country cope with the era of liberalization and aspiring to be an important player in globalised world economy

Although it has taken sixteen long years since promulgation of the new law to get clarity about law of arbitration, particularly in relation to international commercial arbitrations, the judgment is nevertheless welcome, since the Apex Court has now laid down definitively that jurisdiction of Indian courts is limited in 'foreign seated arbitrations'. It has also cleared confusion surrounding the terms foreign awards and domestic awards by linking nature of award to the seat of arbitration. It has restricted the jurisdiction of Indian courts to set aside an award obtained in 'foreign seated arbitration' wherein substantive law governing the dispute was Indian law. The judgment declares that the term 'under law of which award was made' in section 48(1)(e) refers to procedural law of arbitration and not to substantive law governing the dispute. It has also introduced the concept of 'supervisory courts' in domestic arbitrations.

What is also appreciable in this case is the Apex Court's insistence on judicial restraint, its refusal to assume the mantle of legislature and to add words into the Act with respect to section 9 to grant interim relief in 'foreign seated arbitration', which actually was the root cause of whole turmoil starting from *Bhatia International.* The Court did acknowledge that restoring 'pre-Bhatia' position may have an unwarranted effect of denying the remedy of interim relief in foreign arbitrations even in situations where subject matter has strong connection with India. However, since the Apex Court did not find it possible to locate jurisdiction to grant interim relief either in section 94, Order 39 or even in section 151 of Civil Procedure Code, the ball is back in the court of legislature to make necessary amendments. And till the legislature decides to take cognizance of the situation, its various law commission reports and consultation papers which had suggested amendments to address the shortcoming in the Act which had resulted in *Bhatia International*, the remedy of interim relief even with respect to assets situated in India will not be available!

Moreover, the law laid down in this judgment has to have prospective effect. The judgments states, "in order to do complete justice, we hereby order, that the law now declared by this Court shall apply prospectively, to all the arbitration agreements executed hereafter." Thus, contrary to aspirations expressed in the consolidating Act of 1996, the area of arbitration in India, it seems, will be governed by three regimes- Arbitration Act, 1940 given the fact that the litigation under it is still pending in many courts, the Arbitration and Conciliation Act 1996 in post-Bhatia era and in post-Balco era for agreements executed after September 6, 2012. And on whom lies the responsibility for this conundrum? It is worth pondering over.

Nidhi Gupta

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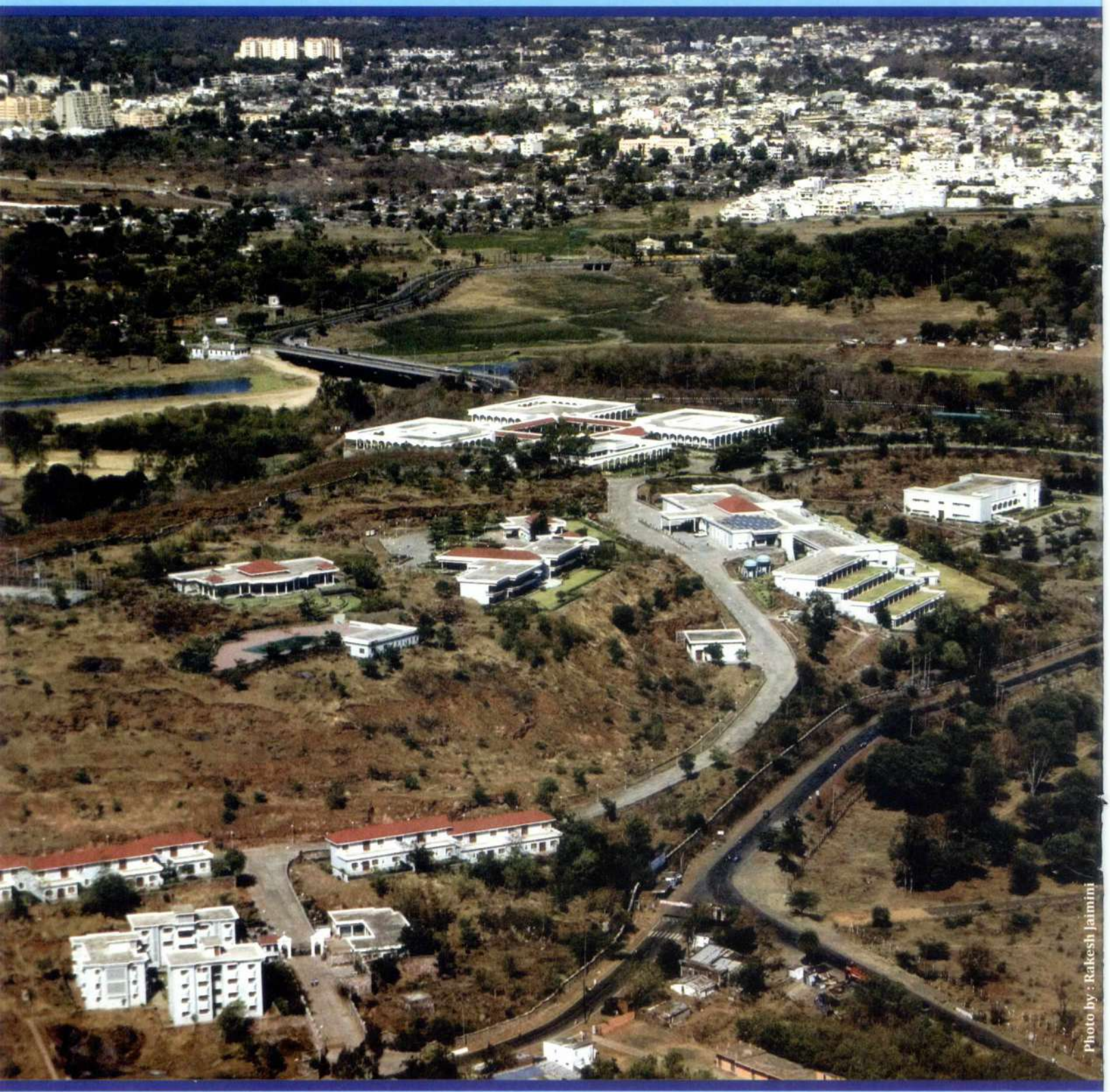

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