



Judicial Education

NJA

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FROM THE DESK OF THE DIRECTOR

This newsletter covers the academic activities of the Academy during April and May, 2017, the period marking conclusion of academic programmes for the calendar year 2016-2017. The National Judicial Academic Council, chaired by the Hon'ble Chief Justice of India approved the annual calendar for 2017-2018. The Academy has commenced judicial education and training programmes for the current year, since August, 2017. These would be covered during ensuing newsletters.

In April, 2017 we conducted 9 programmes, commencing from the Regional Conference for the cluster of East Zone II Courts, on the theme: *Enhancing the Excellence of Judicial Institutions: Challenges and Opportunities*, very graciously hosted by the High Court of Sikkim and the Sikkim Judicial Academy. This was followed by 8 other programmes during the month, including another Regional Conference on the same theme for the cluster of Courts of West Zone, hosted at Ahmadabad, by the High Court of Gujarat and the State Judicial Academy; two National Seminars, on Juvenile Justice Boards, and Functions of Registrars' of High Courts; an Orientation Programme for faculty of State Judicial Academies and other judges, on the theme of Adoptions under the J.J Act, 2015; an Annual Conference on *Stress Management* for Principal District Judges; a Colloquium of Guardian justices from several High Courts on *Developing Guidelines on Exercise of Supervisory Powers over Subordinate Courts*; a conference of Justices in-charge and Directors, of State Judicial Academies, for identifying areas for judicial education; and a conference for justices from Sri Lanka.

During May, 2017 a workshop for Commissioners and Chief Commissioners of Customs, Central Excise and Service Tax was organized; besides the North Zone Regional Conference organised at Srinagar, graciously hosted by the High Court of Jammu and Kashmir and the State Judicial Academy. An Annual Conference on Bench and Bar relationship for High Court Justices was also organized at the Academy campus during the month.

The 12 programmes organized during the period were well attended, and from the feedback received from participant judges/officers, was widely appreciated. The sessions at the various conferences/workshops were enriched by robust participation by attending judicial and administrative officers, and in particular, valuable contributions and interventions by eminent resource persons drawn from the judiciary, the legal profession and other specialized domains.

The Academy eagerly looks forward to the ensuing calendared events during 2017-2018, as we assiduously prepare to replicate and enhance the quality and content of programmes, while extending our services to several other sectors, at home and overseas, which are engaged in justice delivery within a liberal, constitutional and democratic framework.

Justice (retd) G. Raghuram

Director

National Judicial Academy

P-1018: REGIONAL CONFERENCE ON ENHANCING THE EXCELLENCE OF JUDICIAL INSTITUTIONS: CHALLENGES & OPPORTUNITIES (EAST ZONE-2): APRIL 01 & 02, 2017

Ms. Paiker Nasir & Mr. Shivraj S. Huchhanavar, Research Fellow



The National Judicial Academy organized a two-day regional conference on the theme 'Enhancing the Excellence of Judicial Institutions: Challenges & Opportunities', at Gangtok in association with the High Court of Sikkim and the Sikkim Judicial Academy. The conference was attended by High Court Justices and Judicial Officers from the High Courts of Calcutta, Gauhati, Sikkim, Manipur, Meghalaya and Tripura.

Judiciary in a democracy plays two vital roles. Firstly, it is the monitor of power and secondly, it is a mentor of transmitting and making possible the internalization in the society of those eternal values which permeates in the constitutional text. In these two goals judiciary plays a very vital role. To achieve these two goals, judges require qualities which often elude the human spirit and the fertilizing of those values transforms the average citizen into a personality capable of adjudicating and mitigating conflicts in society.

The purpose of having regional conferences is to enable robust participation of the High Courts justices and the Civil Judges (Junior Division) so as to energize the communication between the hierarchies within the judiciary i.e., between the High Courts and the Subordinate Courts. It was perceived that the only communication that takes place between the high courts and the subordinate courts is disciplinary communication that is conceived to be not the robust way of going about because, to accentuate democracy, a continuous course of communication between the hierarchies is required which also contributes in increasing the efficiency of the deliverables. The deliberations that followed accentuated on the following points:-

- Importance of ethics, integrity and discipline is significant since judges are designed to point fingers to the rest of the society. It is time that judges have a more robust ethical personality which not just gives them a temporal authority but also gives judges moral authority to manage. What nuances of ethics, integrity and discipline is that which must form a judicial persona.
- The qualities of a judge includes character, integrity, honesty, due diligence, fair play, flexibility of mind, knowledge of law, willingness to listen, patience in the court, courtesy in the court, empathy and intelligence. Judges have a lot of power and while exercising this power they should keep in

mind the abovementioned qualities. To regulate these qualities we have the code of ethics i.e. the “Bangalore Principles”.

- To be impartial, it is equally important for a judge to see that he handles and decides the case on merits without any preconceptions. A judge should always keep this in mind that he should not do certain things just because other judges are also doing rather, a good judge should know the difference between right and wrong and then act accordingly.
- Internal vigilance mechanism is not just to ensure that all the officers who take part in the justice delivery system are working ethically. Rather, internal vigilance mechanism exists to ensure that the faith of the public in the justice delivery system does not collapse. Nowadays the public seems to believe that judges are vulnerable not only financially but there exists regional, caste, religious vulnerability. It is a general perception that judges are vulnerable unless they prove otherwise. Therefore, the importance of internal vigilance mechanism becomes higher. Public confidence has to be taken into account when we talk about internal vigilance which has to be precipitous and firm. The people should know that action has been taken against an errant judge. Only then the perception that judges are vulnerable will go because errant judges will be removed immediately.
- The conduct of the judge towards the litigants is very important. The Supreme Court and the High Court judges do not get opportunities to interact with the litigants but the judges of the Subordinate Courts do. Therefore, the conduct of the Subordinate Court judges towards the litigants should be such which shows that it is equality justice. For litigants the conduct of the judges matters the most.
- Internal vigilance is the work of the High Court but it is also important to know how the subordinate court judges perceive “internal vigilance” in the sense that sometimes a complaint is filed against a judge because of his bad behaviour etc. it is possible that such complaint has been made by a lawyer who is gratuitously aggrieved by the said judge although the judge might be performing his duties diligently. This judge is then called by the seniors for explanation, how will a judge feel in such circumstances ? Here the role of the higher judiciary is crucial, which should be strict against such bar and at the same time must be cautious in enforcing internal vigilance mechanism.
- The godfather syndrome should be done away with. There are occasions where through internal vigilance mechanism a particular judicial officer is found guilty but because of his godfather in the high judiciary he gets elevated even after having enquired against him which have found him to be at fault. Such instances give a very wrong message in the judiciary. Even in matters of postings such syndrome exists. Such practices are causing issues among many judicial officers. This is a matter of self-introspection. This is a matter which needs to be addressed both at the judicial and administrative side. There is a need for cultural transformation.
- Impact of media on the public perception regarding the vitality of justice delivery is very important. Condemning of public institutions especially the judiciary is the favourite pass time of the media. This in turn creates fear psychosis which in turn majorly impacts the way the judges deliver their responsibilities and obligations. To what extent media has got its own pathologies is also quite well-known among the cognoscenti. But then there is another matter i.e. how to deal with the media which is almost on the verge of rampage is a challenge that is faced by all democratic institutions, judiciary being no exception.
- Media can never impact the judiciary unless and until the judges are strong in law, on questions of integrity and on questions of understanding of the situation. Nowadays through social media

anybody can write anything against the judiciary and a judge should not get carried away by all these things because nothing can create an impact on judiciary so long as the judges are very clear in what they are doing.

- When media writes about the judiciary it is as if they are sapient and judiciary is not. Perhaps, this is the insolvable tussle between judiciary's claim for sovereignty on the text and doctrine and the press's claim on the sovereignty of text and doctrine. This is the tussle between third and fourth chamber of democracy and not on the majoritarian institution but counter-majoritarian institution which have a certain legitimacy in the constitution.
- As there is hierarchy, there is a need for supervision and control. Constitution of India rightly provides for it, but how to harness the power of control and individual dignity of a subordinate court judge is the question. Hierarchical arrangement and power of supervision must not prevent downright communications which are must for effective administration.
- The judges, as rule of law demands, decide cases as per law and cannot go contrary to it. But many times cases may not be that simple, judges often encounter cases which are hard, where both sides comes with logical arguments and substance, like- Euthanasia, LGBT rights, Triple Talak etc. In such cases judges have to exercise discretion in the light of social context.
- In an adversarial system litigants who are economically and socially better gets better counsel, so litigation begin unequally. Here comes the role of judge who has to mediate this gap. Social context judging is highly relevant as justice, mercy and compassion are essential component of a judicial system.
- Social context judging often unveils a paradox as to the role of a judge, a dominant view is that judges only do conflict resolution, but some like Justice Krishna Iyer consider judging as social engineering. Judges have to find out a via media between the two.
- Judges at all levels are under constitutional obligation to ensure equal opportunities and effective access to justice for all'. Judge is not deciding who has better lawyer but who has better law, judges need to set equilibrium wherever justice imply.
- During the discussion on *E- Justice: Re-engineering the Judicial Process through Effective use of ICT* it was discussed that the Phase-I of E-court project was focused on District Courts, the implementation of which is almost complete. In the first phase four important groundworks have been accomplished, (i) supply of hardware, (ii) installation of software, (iii) training of core IT staff and judicial officers and (iv) supply of video conferencing units to every district court.
- Various usages of video conferencing infrastructure were brought to the knowledge of the participants, namely, - (i) effective administration of courts, (ii) interacting with jails/prisoners, (iii) examination of experts witnesses like doctors, and (iv) interacting with legal aid authorities, etc. It was suggested that northeastern and western states like Sikkim, Arunachal Pradesh and J&K etc. can effectively utilize videoconferencing as a medium of communication and beat the barriers of road and other connectivity.
- The seminar witnessed a discussion on National Judicial Data Grid and how it is benefiting the citizens by disseminating information relating to the cases pending.

P-1019: ANNUAL NATIONAL SEMINAR ON WORKING OF THE JUVENILE JUSTICE BOARDS IN INDIA : APRIL 1 & 2, 2017

Ms. Shruti Jane Eusebius, Law Associate



The National Judicial Academy organized the Annual National Seminar on Working of the Juvenile Justice Boards in India with the purpose of focusing on the functioning of the Juvenile Justice Boards in India. The objectives of the seminar were threefold-

- To discuss and analyse the recent jurisprudential development in the juvenile justice law with the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2015 ('JJ Act 2015') and the Juvenile Justice (Care and Protection of Children) Rules, 2016 ('Model Rules 2016') and its impact on the Juvenile Justice Boards ('JJBs') and their functioning.
- To examine and analyse the functioning of the Juvenile Justice Boards and the issues and challenges faced by JJBs in dealing with cases of juveniles.
- To provide an opportunity to discuss the problems and unique needs of JJBs in conducting proceedings and to understand and appreciate functioning of these courts. The programme also sought to provide a forum for the presiding officers to introspect, to share their experiences and also to express the major challenges and constraints faced by these courts.

The major issues discussed in the seminar are -

Jurisprudential Evolution of the Juvenile Justice Law in India - The selective transfer of juveniles in the age group of 16 to 18 years who have allegedly committed a heinous offence and the procedure to be followed by the juvenile justice boards in dealing with cases of juveniles in the age group of 16 to 18 years poses the following issues –

- It was opined that preliminary assessment of mental maturity will be a major challenge for the JJBs as there is no definite science to aid the JJBs in determining mental maturity. Further, most places have difficulty procuring the services of a psychologist as will be required to make the preliminary assessment.

- There is a difference between the ability to understand the consequences of one's act and the ability to understand the difference between right and wrong. It was opined that children do not have requisite understanding of right and wrong.
- In the categorization of offences prescribed under the JJ Act 2015, where would the offences which have no prescribed minimum punishment fall? It was opined that the judges need to strictly interpret the provisions of JJ Act 2015 and the offences which have no minimum prescribed punishment would not fall in the category of heinous offence. It was stressed that there is a need for cautious and conscious thought in categorization because if the offence is categorized as heinous, the criminal liability substantially increases in case of juveniles in the age category of 16-18 year old.
- In case the juvenile chooses to remain silent at the time of preliminary assessment, assistance can be taken of the parents of the juvenile and also of counsellors and psychologists to get an idea about the child.
- It was suggested that a Standard Operating Procedure is needed to be put in place for preliminary assessment to bring in uniformity and consistency as the statutory provision is silent on the procedure for Preliminary Assessment.

Fair and Speedy Inquiry under JJ Act - It was highlighted that the juvenile justice system is a non-adversarial system where emphasis is placed on restoration and rehabilitation rather than on punitive action. Further, the JJB conducts an inquiry rather than a trial and hence, the approach of the JJB to the inquiry should be informal and should be conducted with a view to understand the root cause of the problem and not merely to find the guilt and convict the juvenile. Though it is an inquiry rather than a trial and is an informal process, certain fair trial rights must not be lost sight of. These rights include constitutional rights as well as rights under the Convention on the Rights of the Child. Fair Trial Rights that are particularly important to a child which were discussed are –

- Presumption of Innocence
- Effective Participation of the juvenile in the process
- Right against Self-incrimination, including the right to remain silent
- Non-waiver of rights and the right to have the charges proved against him.
- Right to Privacy and confidentiality

Grant of Bail to Juveniles in Conflict with Law - It was stressed that the provisions relating to grant of bail to juveniles in conflict with law needs to be read in consonance with 3 principles mentioned in Section 3 of the JJ Act 2015 i.e. Principle of repatriation and restoration, fresh start and institutionalization as a measure of last resort. Bail should be granted to every juvenile as a matter of right and refusal should only be done as an exception in cases where the grounds for refusal of bail as mentioned in Section 12 of the JJ Act 2015 are fulfilled. The grounds for refusal of bail were discussed in detail and it was opined that bail should be denied only when the JJB has reasonable grounds to believe that the condition prescribed in Section 12 is fulfilled. The term 'reasonable grounds' would mean that there is sufficient evidence or material to believe that the particular ground is fulfilled. It should not be an apprehension without any basis. Further, denial of bail on the grounds that the juvenile will come into association of any known criminal was interpreted to mean that the criminal should be known to the juvenile and his family and that the link between the juvenile and the criminal should be established. Further, the ground that the release of

the juvenile will defeat the ends of justice was interpreted to mean that the juvenile should not be enlarged on bail when there is reason to believe that the juvenile will interfere with the investigation, inquiry or would pose a threat to the victim or witnesses. To further the interest of justice and the best interests of the child, conditions can be imposed with the bail such as supervision by probation officer, enrollment in school or vocational training etc.

Role of Courts in Adoption Matters- The role of the court in adoptions under the Hindu Adoption and Maintenance Act and the JJ Act 2015 was discussed and it was highlighted that the JJ Act 2015 provides for an adoption system and for the first time provides for adoption by all persons irrespective of religion. It is applicable to orphan, abandoned and surrendered children. The JJ Act 2015 also applies to intra-family adoptions. Adoption under the JJ Act is a judicial determination and the adoption is done through a defined process which is scrutinized by the Central Adoption Resource Authority and is done with an adoption order of the court. In the exercise of their function in adoption cases, judges must keep in mind certain fundamental principles viz. the right of a child to have a family, best interests of a child and the principle of privacy and confidentiality.

Age of Juvenility - The evolution of the age of juvenility through the various juvenile justice act i.e. the Juvenile Justice Act, 1986, JJ Act 2000 and the JJ Act 2015 was discussed. Under the JJ Act 2015 age determination is no longer termed as an inquiry but is a process. Secondly, age determination process is required to be done only in cases of doubt of age. In most cases firstly the age is to be determined on the basis of appearance. In the JJ Act 2015 the sequence of documents has been changed with two documents being mentioned in a single clause. In view of this, the problem that arises is that when both matriculation and high school certificate are available, which are listed in a single clause in Section 12, then which one to rely on in case both are proved. It was also opined that age determination by appearance would be a rather risky exercise as appearances can be deceptive.

Dispositional Orders under JJ Act - The concept of restorative justice was discussed and it was stated that even with the JJ Act 2015, restorative justice continues to be an objective of the juvenile justice system. The difference between criminal justice and restorative justice was highlighted. The speaker discussed the orders that can be passed by the JJBs under Section 18. There is no categorization of orders according to the nature of offence and hence the JJB must not limit itself to orders of institutionalization on the basis of the nature of offence. The approach to dispositional orders needs to be different from criminal justice. The JJB needs to look beyond the facts proving guilt of the juvenile and must take into consideration of circumstances of the juvenile that caused the offence and the factors that led the juvenile to commit the crime. The factors that need to be considered are the nature of the offence, the specific need for supervision or intervention, the circumstances of the juvenile as brought out in the social investigation report and the past conduct of the child. The principle of institutionalization as measure of last resort was stressed on. The speaker also discussed the additional orders that can be passed by the JJB with the dispositional order such as schooling/ vocational training, therapeutic aid, restraining orders – not to visit certain places, de-addiction programme etc.

P-1020: ANNUAL NATIONAL SEMINAR ON THE FUNCTIONS OF REGISTRAR (MISCELLANEOUS) IN DIFFERENT HIGH COURTS: APRIL 8 & 9, 2017

Ms. Nitika Jain, Law Associate



The National Judicial Academy organized a two day Annual National Seminar on functions of Registrars (Miscellaneous) of different High Courts from 8-9th April, 2017. The seminar was attended by the Registrars (Rules, Services, Computerization, Research, Recruitment, Legal and other activities) who are involved in various managerial and administrative work of the registry. As the subject was technical, based on the practices followed in different jurisdictions the programme schedule was structured to include themes relating to interdisciplinary subjects imparting soft skills to the participant Registrars. The aim was to impart various managerial practices which could be applied by them to improve court administration and management by increasing their efficiency and a changed outlook to their work. The seminar also provided a common forum to participants share their knowledge and experiences on good practices followed in their respective High Courts which could be implemented by other High Courts.

- On the theme *Court Administration and Resource Utilization, Planning and Controlling, Use of ICT for effective Court Administration*, the discussion on following points took place – registry is chosen by the Chief Justice of the High Court and the Chief Justice alone does not form the High Court it is the entire registry which is an essential component to form a High Court, the work of the registry and the importance of each court staff for smooth functioning of Court Administration. It was pointed out that rank has nothing to do with the efficiency of the work and there is a need for institutionalizing the good practices followed in each High Court. The discussions further focused on issues pertaining to listing of matter and it was stated that it could be improved through computerization. It was suggested that there is a need for practical solutions instead of policies and framework. Other areas discussed included preparation of inventory of resources with use of proper planning and allocation of resources, space management vis-à-vis lack of infrastructure in courts, challenges relating to recruitment and postings and the importance of using technology in matters relating to vacancy and recruitment.
- On *Human Resource Management*, the speaker broadly dealt about how managing of manpower could be done efficiently in an organization covering issues relating to management of Human

resource. The discussions were broadly based on the management perspective but the speaker gave out ways in which it could be implemented to improve court administration. Four stages of Human Resource management was highlighted which included acquiring manpower, training manpower, appraisal through compensation and man management. The discussions also included how relation with subordinates could be handled efficiently to increase work performance, the need for development of persons by understanding oneself, manpower planning through upward voice mechanism, integration of technology with human resource management and need for grooming of employees as per their nature of job. The 360 degree test was highlighted upon to assess the quality of the person in an organization and other tests discussed were psychometric test, thematic appreciation test (TAT), Word Association test and paper and pencil test.

- The session on *Analysis of Judicial Statistics* focused on two aspects i.e. big data analysis and predictive analysis. The idea behind the session was to make the participants aware on the use of unprecedented amount of information available to innovate and bring changes in the existing system. Deliberations were made on how trends of the past could be analyzed and used for future predictions. The need for data analysis in filing and disposal of cases, pendency and National Judicial Data Grid was highlighted. It was pointed out that the purpose is to analyze the available data and use it to find workable solutions. Three steps while handling data were stated as documentation, analyzation and classification. The participants reflected the need to formulate a uniform policy to analyze data as evaluation of data can serve a very broad set of governance and strategic functions and impart training to the court staff and judicial officer for data analysis.
- On *Capacity and Team Building*, Mr. Sampath Iyengar highlighted that the best way to understand team work is taking an example of human body where each part / organ works as a team. It was pointed out that the fundamental killer of team work is 'ego'. The speaker gave the meaning of the term 'team', as together everyone achieves more. A group activity was also taken up during the session which highlighted the following points:
 - ❖ That improvisation is the Key to Innovation
 - ❖ Always have a target in Mind – it should be “Difficulty but Doable”
 - ❖ Innovation need not be big always

It was emphasized that there are no limitations, the only limitations we have are the ones in our brain.

- On the theme *Conflict & Relationship Management*, the speaker put forth some questions to the participants such as, what comes in your mind when you face conflict, how do you feel about conflicts and what they expects from their opponents? Two models of conflict i.e. the American model which says that conflict is negative and contemporary model were also pointed out during the session. Other areas which were dealt upon included how Conflict could be beneficial? In conflict there is not always a winner or a loser there are compromise situations as well, reasons behind interpersonal conflict?, reasons for conflict such as individual interest and organizational interest and what can one do in conflict situations? It was suggested that the only way one can change the situation is by changing oneself and not expecting the other to change and one must try to adopt the responding method & not the Reactionary method to handle such conflict situations.

- On *Understanding the Causes and Consequences of Occupational Stress*, Dr. Aruna Broota highlighted the importance of sleep and pointed out the concept of 'nocturnal sleep' whereby a person should sleep by 12:00 am and not afterwards to get quality sleep. The speaker dealt with the following areas – meaning of stress i.e. any situation which threatens your wellbeing, types of stress namely physical and mental, sources of stress, expression of stress and consequences of stress. It was stated that Time management is an important technique to reduce stress. The speaker further advised the participants that if they do their work with pleasure thEn it is not stress, it becomes an attitude. The concept of 'body mind relationship' was also emphasized.
- The last session on the theme *Stress Management: Dealing with occupational stress – Intervention techniques*, was a continuation of the previous session whereby the speaker advised some lifestyle intervention techniques to manage and overcome stress. It was suggested that stress could be managed at different levels by adopting techniques such as managing diet, through Cognitive Therapy – Rational Emotive therapy (Nothing wrong in being emotional but be emotional for right reasons), work Output management, thought Management, yoga, relaxation and meditation.



SE-06: ORIENTATION-CUM-SENSITIZATION PROGRAMME ON ADOPTION UNDER THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 FOR FACULTY MEMBERS OF STATE JUDICIAL ACADEMIES AND OTHER JUDGES: 8 & 9 APRIL, 2017

**Mr. Rahul Ishwer Sonawane, Research Fellow & Mr. Krishna Sisodia, Law Associate
Prof. S. P. Srivastava, Professor – Mentor of the Programme**



Central Adoption Resource Authority (CARA) & Ministry of Women and Child Development, Government of India was very much concerned about pendency of adoption cases & hence wanted judges to be sensitized to dispose of adoption cases on priority. The melting ice theory i.e. 'you have to use the ice cube before it melts' is the theory applicable to adoption cases. One has to decide the adoption case before the child gets old enough to understand that he is orphan and not wanted by the rest of the world. At the same time, we thought that judges should also be sensitized to the darker side of adoption so in a haste of disposing cases, they should not forget that one wrong order on their part can destroy the life of innocent child. Target participants for this programme were Directors or Judges-in-charge of State Judicial Academies & some senior Judges who are handling adoption cases. These participant Judges are expected to impart further training in their respective State Judicial Academies for other judges who could not come here at NJA.

The programme commenced with the introductory address by Justice G. Raghuram, Director, National Judicial Academy, Bhopal. He explained the role played by NJA in judicial education and the vision and mission of the academy which is dedicated towards the enhancement of the justice delivery system. The Academy has been involved in the process of training judges from all the ranks of judiciary.

Session 1 - Fundamental Principles of Governing Adoptions & Various Legislations/Regulations for Adoptions – an overview

Speaker for this session Ms. Leena Nair discussed the fundamental principles governing adoption. She said that, adoption shall be resorted to right to family for the Orphaned, Abandoned and Surrendered (OAS) children. She pointed out that children are considered a bundle of joy and on whom the future of the country depends. She further discussed the relevant adoption laws including Juvenile Justice (Care and Protection of Children) Act, 2015. She further discussed some typical & cryptic orders passed by some judges in adoption order and requested the Chair & Participants to look into such orders.

Session 2 - Adoption Process in brief under JJ Act 2015 & Adoption Regulation 2017, Role of CWC in Adoption, Preparation & Importance of Home Study Report (HSR) in Adoption, & Post adoption follow up process.

Mr. Deepak Kumar discussed JJ Act, 2015, JJ Rules 2016 and CARA Adoption Regulations, 2017. Then he discussed the role of CWC in adoption process. It is entrusted with the job of declaring the child free for adoption. Then he discussed as to how the Home Study Report of Prospective Adoptive Parents is done & what it contains, why it is important etc.

Then he said that once the child is given in adoption either in inter-country adoption or in in-country adoption, his follow up is taken for the period of 2 years. The agency which facilitated adoption sends the progress report of adopted child after stipulated period. The details are as follows -

Inter-Country	In-Country
Total 6 reports, i.e. for first year each after quarter & for next year, each after 6 months	Total 4 reports each after 6 months.

He further stated that, the special adoption agencies provide post-adoption counselling services for adoptees and adoptive parents.

Session 3 – Inter-Country Adoptions: Laws and Regulations

Firstly, Arun Dohle started his session. To start with his session, he showed a video of "Dutch girl" who was given in adoption from India & was here in India in search of her roots i.e. mother & father. Then he started his presentation saying that “nobody wants to accept it but it is an open truth at international level that giving & taking the child in adoption is the money-making business. In India, less amount is to be spent for adoption & hence, foreigners opt India for adoption.”

The second speaker Mr. Anil Malhotra started his session & he discussed the provisions in CARA Adoption Regulations, 2017. He also discussed the formats of applications in CARA Regulations & concluded his session.

Third speaker Mr. Deepak Kumar discussed the UN Convention on Rights of Child & Hague Convention on Inter-Country Adoption with reference to Indian laws & regulations & conducted his sessions.

Session 4 - Court Procedure and Content of the Adoption Order (Inter-Country)

First speaker of this session Adv. Anil Malhotra elaborated the court procedures and application formats in the JJ Act, 2015 and CARA Adoption Regulations, 2017.

Second speaker for this session was Mr. Deepak Kumar. He discussed the procedure to be followed for inter-country adoption and also the format in which the application is to be made to the Court. He pointed out that, interest of child should be “first and foremost” during adoption. Whether it is in-country or inter-country adoption, the interest of the child should be supreme. There should be no compromise with it whatsoever. He also discussed as to what the court order should contain. In this session he tried to impress on the participants that once the application was filed before them, they should be assured that every care has been taken by CARA. He elaborated the process of adoption as follows -

- First Prospective Adoptive Parents (PAPs) will approach CARA affiliated SAA in their country and through it only, they will be registered on the portal CARINGS i.e. Child Adoption Resource Information and Guidance System.

- Then suitable child will be shown to them.
- On their acceptance of child, CARA will issue NOC to them.
- Then, petition will be filed by Specialised Adoption Agency (SAA) in which child is residing in the Court.
- After the Court passes order, PAPs will be entitled to take the child alongwith them abroad.

He further stated that Fees for such adoption to be taken from PAPs is \$ 6000/-. This fee is taken for preparing Home Study Report and for other legal charges i.e. applying to Court, getting certified copies of Court orders, lawyers fee etc.

Most of the Participant Judges expressed their views about this session and the entire Court Procedure, as terming them just a “Rubber Stamp” and nothing more. They were of the view that whatever is done by the CARA, SAA and CWC is not binding on them and they can independently assess the fitness of PAPs, their income, their compatibility, welfare of the child etc. They will be scrutinizing as to whether CWC has taken every care or not and then only they will be able to pass the order.

Session 5 - Relative Adoption & Adoption by Step Parent.

Speaker for this session Mr. Deepak Kumar said that, "There is no law in India which defines legal relationship between a step parent and a step child. A step child has no claim to the step parents' property. Nor is the child legally obliged to look after the step parent in his or her old age. Earlier, only an orphan or abandoned or surrendered child was allowed to be adopted under JJ Act. Now the government has expanded the definition of children eligible for adoption to include “a child of a relative and child or children of spouse from earlier marriage, surrendered by the biological parent(s) for adoption.” However, in case of "step-parent adoption", the couple including one of the biological parents will have to register with Child Adoption Resource Information and Guidance System. They also need to get consent of the other biological parent for adoption and file an application in a Court to obtain an adoption order. Similarly, for adoption by a relative, prospective adoptive parent/s will have to seek consent from biological parents if they are alive otherwise seek permission from a Child Welfare Committee. The Juvenile Justice Act 2015, from which the regulations are derived, defines the term relative as "a paternal uncle or aunt, or a maternal uncle or aunt, or paternal grandparent or maternal grandparent". To make adoption in these two categories simpler, the age criteria for prospective adoptive parents has also been waived off.

Session 6 - In-Country Adoptions Laws and Regulations.

In this session Mr. Deepak Kumar elaborated the laws & regulations applicable to in-country adoption. He said that all rules or procedure of inter-country adoption are applicable to in-country adoption also, except with certain modifications. He elaborated here as to how the online registration system called "CARINGS" works & concluded his session.

Second speaker Mr. Ram Kumar Mishra shared his experiences of adoption cases handled by him & concluded in favour of in-country adoption.

Session 7 - Court Procedure & Contents of the Adoption order (In-Country)

Firstly Adv. Ramkumar Mishra introduced the second session by explaining the relevance in inter-country adoptions. The role of Child Welfare Committee (CWC) in adoption. Later he moved on Assessing Eligibility of PAPs for Adoptions. Home Study Report (HSR) is prepared in the format given in Schedule VII of AR 2017 which has a validity of 3 years and it is the document used to judge the suitability of the

PAPs. PAPs are declared suitable based on the HSR and only then they are eligible for adopting a child depending upon the availability of a suitable child.

For this session Mr. Deepak Kumar was second speaker. He in short said that all court procedures applicable to inter-country adoption are also applicable to in country adoption. He further said that the contents of court order for in-country is almost identical to inter-country adoption discussed earlier, except that - direction to issue visa & passport of child will not be there in in-country adoption order.

He further stated that fees for such adoption to be taken from PAPs is Rs. 40,000/-. This fee is taken for preparing Home Study Report and for other legal charges i.e. applying to Court, getting certified copies of Court orders, lawyers fee etc.

Session 8 - Open House Discussion & Conclusions –

Hon'ble Justice Dr. (Mrs.) Shalini Phansalkar-Joshi commenced the session with brief introduction of Adoption. She said that “Adoption is a Beautiful Way to Build a Family”. Adoption is not about finding children for families; it's about finding families for children. Adoption is meant; to provide permanent, non-institutional care within the family to the children in need of care and protection, namely, Orphaned, Abandoned or Surrendered. She further said, “longer the child remains in Institution, the more negative the effects on cognitive, emotional, social and physical development of the child”. Developmental stages do have expiry dates. She cited *Lakshmi Kant Pandey Vs. Union of India*, [(1984) 2 SCC 244] “Every effort must be made first to see if the child can be rehabilitated by adoption within the country. And if it is not possible, then only adoption by foreign parents i.e. inter-country adoption should be acceptable. This principle stems from the fact that inter-country adoption may involve trans-racial, trans-cultural, trans-national aspects, which may create problems for assimilation of child, in the adoptive family.” She tried to impress upon the participants that adoption proceedings must be disposed of at the earliest and in any event, not later than 2 months from the date of application.

After the presentation of Justice Shalini Phansalkar-Joshi was concluded, NJA distributed a Simulation Exercise to the participants and Resource Persons for discussion thereon. The participants shared many suggestions like fixing a day in a week only to hear and decide adoption cases; extending the period of post adoption follow up from 2 years to 4 years in case of inter-country adoption and CARA to strictly monitor the functioning of the Child Welfare Committees, Specialized Adoption Agencies, Child Care Institutions and State Adoption Resource Agency.



P-1021: ANNUAL CONFERENCE ON STRESS MANAGEMENT: APRIL 15 & 16, 2017

Mr. Shivaraj S. Huchhanavar, Research Fellow



The National Judicial Academy organised a two-day Annual Conference on Stress Management on 15th and 16th April 2017. The conference was attended by nominated Principal District Judges from all over India.

The objectives of the programme were to-

- Help participants understand judicial stress and its impact on health and well-being of a judge.
- Sensitize cognitive, emotional, and behavioral symptoms of occupational stress on decision-making capacity of judges.
- Inform and enable participants manage occupational stress
- Appreciate systemic and individual barriers to operationalize institutional assistance to 'impaired or affected judges'.
- Identify preventive, curative and rehabilitative institutional measures to help to combat harmful effects of occupational stress on judges.

Subthemes of the conference were *Understanding 'Stress', Consequences of Occupational Stress, Personal and Professional Triggers for Stress in Judicial Officers, Stress Management: Relaxation Techniques, Stress Management through enhancing Emotional Intelligence, Managing Judicial Stress: Methods and Techniques, and Institutional Strategies to Prevent/Alleviate Occupational Stress.*

Prof. Pavan Kumar Singh was the resource person for sessions on *understanding stress and consequences of occupational stress*. Introducing the topic, he explained that stress is a “dynamic condition in which an individual is confronted with an opportunity, constraint or demand related to what he or she desires and for which the outcome is perceived to be both uncertain and important.” He elucidated environmental, organizational, and individual factors as the sources of occupational stress. Physiological, Psychosomatic and Psychosomatic symptoms of stress were explained to the participants. In the second part of his presentation Prof. Singh described psychological and behavioral symptoms of occupational stress, namely: trouble in remembering things, feeling easily annoyed, poor appetite, temper outbursts, feeling

blocked, unfriendly behavior, trouble in concentrating, feeling tensed, getting into avoidable arguments, severe anxiety, suicidal behavior, domestic violence, substance abuse, burnouts etc.

Third session was on *Personal and Professional Triggers for Stress in Judicial Officers*. Justice Dhyani observed that limited access to justice, backlog of cases, surge in new fillings and delay are the reasons that triggers stress in judges. He said—to effectively manage occupational stress judges must master the art of handling important stakeholders of justice administration viz. — (i) Court Staff, (ii) Witness, (iii) Advocates, (iv) High Court, (v) Litigant and (vi) State as the biggest litigator. Justice Chavan opined that job frustration as one of the reasons of judicial stress. He stated that judges deal with conflict and dispute and have to deal with litigants, criminals, advocates, etc. So, naturally they live in stress-filled environment. He advised participants not to, compare yourself to anyone and not to think too much about critiques. He stated that judges are not what others think of us. He advised the participants to be truthful to their oath and do job to the best of their ability, knowledge and judgment and not look for earning points at the cost of the interests of justice. Hon'ble Justice Kurian Joseph, chair of the sessions, added that clean mind and clear conscience are must for a stress free and peaceful life.

Shri Sampath Iyengar was the resource person for the session on *Stress Management: Relaxation Techniques*. He said fear of uncertainty of outcomes is one of the reasons for stress: personal or occupational. He cited ego as another reason. Shri Iyengar offered a number of solutions to deal with stress, viz. —

- Are you stressed? Love it!
- If the outcomes are out of one's control, don't worry, be happy
- Outsource Stress! (he meant don't take all the responsibilities on your head, delegate it to the competent)
- Accept and apologise your mistakes quickly
- Stretch body and mind
- Sleep right
- Get early in the morning
- Live with values
- Record and look back
- Count your blessings (think how lucky you are for whatever you are)
- Try and find how not be angry
- Make decisions quick
- You are average of five people around you- try to be in good company
- Forgive, forget and move on
- Have fun
- Seek advice
- At last, if nothing worked, surrender to the almighty!

Fifth session of the conference was on *Stress Management through enhancing Emotional Intelligence*. Prof. Radha Sharma was the resource person. Prof. Sharma observed that stress is *contagious*. Trauma of

others increases likelihood of experiencing a change in the psychological functioning of person witnessing it. She termed it as *vicarious trauma* i.e. secondary traumatic stress— internalizing the stress experiences of others. She also highlighted the importance of enhancing emotional intelligence in the employees and opined that understanding emotional levels and needs of persons working with you will facilitate deeper personal and professional bonding. Embarking on the term Emotional Intelligence (EI) she articulated EI is the capacity to empathize with others, have transparency, positive outlook and ability to inspire and develop others and be the harbinger of change. She also emphasized the importance of- Self-Awareness, Social-Awareness, Self-Management and Relationship Management in tackling stress.

Justice R. C. Chavan was the resource person for a session on *Managing Judicial Stress: Methods and Techniques*. Justice Chavan aptly remarked that common man forms an opinion about judiciary on the basis of lower courts' performance and not on what higher courts do. He requested participants not to plan to manage points instead plan a timeline for conducting cases and how to listen to various types of litigants. Talking about infrastructural constraints of the courts he said *be content with whatever you have*. Infrastructural difficulties are no defence for not doing your duties. Build an unquestionable reputation by means of your good conduct and hard work. Say blunt NO to whoever approach you for favour. He also said that family is the most important. A judge cannot neglect his family obligations because of his work pressures.

Last session of the conference was on *institutional strategies to prevent/alleviate occupational stress*. Prof. Radha Sharma was the resource person. She itemized stressors into different levels and subitized each type as given below.

Individual level

- Role overload
- Role Conflict
- Role ambiguity
- Responsibility for People

Group Level

- Managerial behaviour
- Lack of Cohesiveness
- Intragroup conflict
- Status incongruence

Organizational Level

- Climate
- Technology
- Management Styles
- Organizational Design

Extra organizational

- Family
- Economy

- Lack of mobility
- Quality of Life

In the end she offered organizational and personal strategies to manage stress.

Organizational Strategies

- Burnout audit at various levels
- Employee Assistance Programmes
- Rationalization of workload
- Professional support
- Filling up vacant posts
- HR Planning

Personal Strategies

- Yoga and Meditation
- Walking/Tread Mill
- Diet
- Time Management
- Music/reading
- Positive Thinking



P-1022: COLLOQUIUM TO DEVELOP GUIDELINES ON EXERCISE OF SUPERVISORY POWER OVER THE SUBORDINATE COURTS: APRIL 22 & 23, 2017

Ms. Paiker Nasir, Research Fellow



The NJA organized a two day “Colloquium to Develop Guidelines on Exercise of Supervisory Power over the Subordinate Courts” on 22 - 23 April, 2017. The colloquium was attended by Guardian Judges from various high courts(19 participants from the high courts of Allahabad, Bombay, Calcutta, Chhattisgarh, Guwahati, High Court of Judicature at Hyderabad, Jharkhand, Karnataka, Kerala, Madras, Meghalaya, Patna and Punjab & Haryana). The objective of the colloquium was to consider the prevalent best practices among each high court. There were deliberations on subject matters such as robust compliance of constitutional mandate, role of Guardian Judges in judicial performance assessment, protocols for effective inspection of courts and how to enhance objectivity and catalyze excellence in Annual Confidential Reports (ACRs). It was also discussed that the roles, errands and requirements from Guardian Judges needs to be clearly demarcated. Deliberations on the challenges faced by Guardian Judges in discharging their supervisory powers formed an integral part of the colloquium. The suggestions that accentuated during the discourse are :-

- The existing practices suggest that communication gap between Guardian Judges and District Judges is so wide that they hesitate to communicate with their mentors. Unless and until the communication gap between them is undone, supervisory jurisdiction will not be exercised in its true sense. The best mode for bridging communication gap between Guardian Judges and subordinate judiciary is by way of conducting video conferencing between them.
- Supervision by Guardian Judge should not only be administrative centric rather it should also focus on the kind of orders being passed by the subordinate judiciary. There should be a regular system for assessing judicial work as well. This will definitely enhance the quality of judicial work/pronouncements.
- The senior most judges of the high court should not be given the responsibility of being a Guardian Judge rather newly elevated/recruited high court judges should be made Guardian Judges.

- The performance of judicial officers should be scientifically assessed and personal prejudices be kept aside while assessing.
- The quality of judgments being sent for assessment is also in a crunch for the reason that many judicial officers take help of lawyers, academicians etc. in writing their judgments. Therefore, assessments should be on a regular basis so that the judicial officers do not indulge in such practices.
- There is a need for rationalisation of performance assessment and therefore, it is important for the high courts to develop systems of moderations. If required systems of moderations are not developed then it may cause injustice to good judicial officers.
- For effective inspection of courts, it is important to understand that inspection is not just to fulfil a formality but the idea is to catalyse and do value-added work from what had been done hitherto. It was also suggested that inspection must always be a “fact finding mechanism rather than a fault finding mechanism”.
- Through National Judicial Data Grid [NJDG] Guardian Judges can keep track of the daily work accomplished by the judicial officers.
- ACR writing is an art which is part of the duty of a judge and the key to writing ACRs objectively is timeliness. The more the delay the less would be the objectivity. The ACR should reflect some application of mind and must be written in a manner that shows objectivity.
- Guardian Judges should avoid making general statements that a particular judicial officer is corrupt etc. since such affirmations destroys the integrity of the institution as a whole, rather such officers should be communicated with in private.
- It was also suggested that while assessing judgments, the administrative wing must strike down the name of the officer from the judgment and then forward it to the judicial wing to make the evaluation fair and impartial.
- The length of the judgment should be taken into consideration. It should also be checked as to how far it has been written in one's own language by the judicial officer and how far it is plagiarised.
- Instead of asking for five judgments of the judicial officers, Guardian Judges should ask for the list of disposed cases and thereafter, may call for any judgment which they think fit for assessment.
- High court can identify on annual basis a model court be it civil or criminal court etc. based on its disposal rate, court administration, timeliness etc. This will be a way of appreciating a good judicial officer and will encourage other officers to perform better.

The best practices as identified during the sessions are:

- In some high courts, there are checklists and questionnaires for all the inspecting judges so that they can adhere to it during inspections.
- Many high courts have a regular practice of preparing pre-inspection reports which benefits in conducting accurate inspections.
- The tenure and transfer of judges with special reasons or couple judges is taken into consideration by many high courts.
- In some high courts, the districts are divided zone-wise. It makes it easier to comprehend as to which judicial officer has been placed to which type of a zone during his tenure.

- In many of the high courts, there are committees that look into the transfer of judicial officers in consultation with Guardian Judges in making transfers of judicial officers.
- The Guardian Judges should be strict in observing that the judicial officers are not called for protocol duties and in this regard, there are strict circulars by many high courts.
- In order to improve the overall functioning of the subordinate courts some of the Guardian Judges ensure that the administrative and ministerial staff of the subordinate courts are trained at the state judicial academies.
- In some high courts, two high court judges i.e. one senior judge and the other a newly elevated/appointed judge are made Guardian Judges of the same areas so that the newly elevated/appointed judge can understand how a Guardian Judge is supposed to function.
- In some high courts, secret note is prepared with respect to serious charges on the integrity of a judicial officer and sent to the vigilance department for further inquiry. On getting the report from the vigilance department, remarks are written in the ACR and necessary actions are taken up.
- In matters of complaints against judicial officers in some high courts, a letter is sent to the complainant asking for more information and evidences to support the complaint and if one does not reply then the complaint is closed. While some high courts have committees to handle such complaints.
- In most of the high courts, the burden on Guardian Judges has come down manyfold because of good infrastructure and re-engineering of the data available.



ACM-2017 : MINUTES OF THE MEETING OF HON'BLE JUDGES IN CHARGE OF JUDICIAL EDUCATION AND DIRECTORS OF STATE JUDICIAL ACADEMIES HELD ON 22 & 23 APRIL 2017 AT THE NATIONAL JUDICIAL ACADEMY.



A meeting of Hon'ble judges in charge of Judicial Education/State Judicial Academies and Directors of State Judicial Academies was held on 22nd and 23rd April 2017 at the National Judicial Academy. Eighteen Hon'ble Judges of High Courts in charge of Judicial Education/ State Judicial Academies or their representative and twenty three Directors/Additional Directors/Faculty of State Judicial Academies attended the meeting and made their presentations. They also submitted Calendars and syllabi of various training programmes conducted by them.

The main purpose of the meeting was to hold preliminary discussions on the proposed Annual Academic Calendar for 2017-18 to be finalized by the National Judicial Academic Council for the National Judicial Academy and the academic calendars of State Judicial Academies, particularly the induction and refresher training programmes for entry level junior division judges and district judges. Information was also sought from Directors of State Judicial Academies regarding the method of evaluation of performance of trainees during the course and whether the evaluation has any bearing on the seniority or career progression of Judicial Officers.

Hon'ble High Court Judges in charge of Judicial Education/ State Judicial Academies in their presentations gave details of various activities perused by their Academies during academic sessions. Academies follow the recommendations of Shetty Commission and directions given by the Supreme Court in All India Judges Association vs Union of India (1992 AIR SC 165). As regards foundation training for entry level junior division judges, Academies conduct training programme of one year duration, in phases, out of which about 50% time is spent in the academy and 50% on field training, during which period participants also go to courts and observe the actual working of the court. In some States they are allotted some judicial work to get an actual feel of judicial working. Trainee officers also go to Civil and Mental Hospitals, Forensic Science Laboratories, Police Stations, Prison, Tehsils, Observation Homes, Mediation Centers and various other offices to get acquainted with the actual working of these offices and places. The Delhi Judicial Academy send officers for 'village immersion programme' to get

firsthand experience with village life. As regards methodology, most of the academies are giving precedence to group discussions, self-study, practical exercises and moot courts over class room lectures.

During training periods at the State Judicial Academies, officers attend regular classes besides attending yoga classes, moot courts and seminars. Classes are held on various subjects such as Constitutional Law, Civil law, Criminal Law, Evidence Act etc. They also undergo practical training on framing of issues, framing of charges, judgment writing, writing of reasoned orders and adjudicating interlocutory applications. The thrust is on law and procedure as well as on skills, capacity building and personality development.

Foundation training of entry level District Judges directly recruited from Bar is generally of three to four months duration. These officers attend classes on various subjects and topics such as Constitutional Law, Civil law, Criminal Law, Motor Vehicle Act, Arbitration Act, ADR etc., and undergo field training in various offices and institutions. Emphasis is not on court training, since they possess sufficiently long court experience before joining service. Methodology of training is similar to that of junior division judges.

As regards refresher courses, State Judicial Academies do not follow a uniform pattern either in terms of content or duration of training. In some academies refresher courses are organized on specific topics in Civil or Criminal law, whereas in other academies refresher courses are organized covering many topics and issues of general importance relevant for the target group. Duration of such trainings ranges from three days to two weeks.

All State Judicial Academies evaluate performance during training in one way or the other, but seniority is not recalibrated on the basis of the performance during the training. In Assam, seniority is not given to selectees at the time of selection but is fixed on successful completion of the training. In some States trainees are required to clear an examination at the end of training. In most States, performance evaluation report is considered at the time of confirmation of the officer in service and in some cases also for grant of first increment. Hon'ble Judges and Directors of the State Judicial Academies expressed the view that trainees are granted leaves for short durations to which they are entitled only in emergent situations. Long leaves are not granted unless absolutely necessary or on medical grounds. However, they expressed that there are no rules regulating leave during training period. Some Justices-in-charge of academies suggested that seniority in service (i.e. ranking determined at selection), at least in the case of entry level recruitment, could be recalibrated/determined taking into account performance during training, a post-training examination and assessment after completion of at least an year's service after conclusion of training. Rules could be amended accordingly.



**SE-07: TRAINING PROGRAM FOR JUDICIAL OFFICERS FROM SRI LANKA:
APRIL 20 & 24, 2017**

Mr. Sumit Bhattacharya & Mr. Shivraj S. Huchhanavar, Research Fellow



A five day Training Program (hereinafter 'program') for the Judicial Officers from Sri Lanka was organized on April 20th to 24th, 2017. The program was attended by a total of 30 judicial officers representing various Courts of Sri Lanka and was led by a Justice from the Sri Lanka Court of Appeals. The program was organized by NJA, Bhopal on the request of Sri Lanka Judges' Institute (SLJI). Thematic framework for the conference was scheduled in collaboration with SLJI to expose the participating judges in the areas of law contemporary to their needs and to enrich the participating judges with the jurisprudential overview in the selected areas. The program provided a unique platform to share experiences and address the bottlenecks as learnings form the Indian perspectives on the subject-matters. The overarching objective of the training program was to expose the participating judges from Sri Lanka on the specific chosen areas of law, reflecting on the Indian and international best practices. The jurisprudential knowledge on subject matters had been intended to help sensitization of the participating judicial officers thereby strengthening the administration and delivery of justice in Sri Lanka.

The jurisprudence of 'Rights' as it evolved from the protection existing in tangible property from the Latin maxims of *res nullis* & *res communis*, corporeal to incorporeal nature of the property was discussed. It was argued that post scientism the creativity from human mind or human creations could be protected in the form of Intellectual Property (hereinafter IP). Not all human inventions can be considered for protection (e.g. fire - an invention by serendipity). The points further discussed included deliberation on the constituents of IP as creations either involving a) intellect (i.e. utility side) or b) Art (song, music, design). The subject matter of IP is always intangible vesting a 'negative right' to the holder, to exclude others to possess, use, alienate or dispose off. It was also dicussed that in dealing with IP rights there are two conflicting interests (i.e. interest of the right holder and the society). Moreover, is IP necessary for the creation of knowledge or are there other methods /reasons for creation of knowledge.

The uniqueness of Geographical Indication (in short GI) was explained in brief as the only IPR in the family which cannot be assigned. The difference between the subject matter of protection of Copyright and Design under the respective statute was touched.

It was discussed as a capsule that out of the existing seven (07) IP Laws five (05) provides for both civil wrongs and offences. Responding to the inquiry, if there exists any preventive action under IP law? it was explained by exemplifying the application and scope of “John Doe Order”.

Discussing *Contempt of Court: Law and Practice* a comparative study of the topic between three jurisdictions i.e. India, Sri Lanka and UK was done. The standards for comparison were:

- Legislations/Statute Law: wherein it was pointed out that Sri Lanka there is a Bill pending approval to be an ordinance.
Jurisdiction to punish: In Sri Lanka and UK every Court in the hierarchy has original jurisdiction to punish the cases of Contempt of Court with an escalated scheme degree of imprisonment with fine.
- Comparison using case law analysis: wherein various variables including behavioral aspects, legal disregards, misuses and abuses, falsifications, issues relating to compliance etc. were dealt with.

Justice Raghuram in his expert interjections pointed out that the UK and other developed common law and civil law countries are progressively drifting away from practicing the contempt jurisdiction unlike India and Sri Lanka. A judge in democracy is more seen to be associated with the public duty/responsibility bound and there actually is very little scope for him to exercise or exhibit power and brow beat.

The myth of *supplanting contempt jurisdiction v. enhancing the majesty of the Court* was clarified. The gravity of differences between punishing by the executive, legislature and judiciary was pointed out. Media assessing the performance of a judge (Delhi Wah India Case was cited). Courts not privy to the cases or issues went ahead to exercise contempt orders in the name of protecting the ethos of judiciary (e.g. Supreme Court in the Gujrat District Judge Case in the garb of inherent power). Justice Katju's case for his proactive opinions web-posting was referred. What amounts to “reasonable restriction” is debatable.

On the topic *Access to Justice and Legal Aid*, the contest between the rights of the accused to be represented by a lawyer and the refusal of the lawyers to appear for an accused in particular cases wherein, sentiments (national, public etc.) are attached was referred; e.g. *Raju Ramchandran Case*; *Azmal Kasab Case*. Differentiation of a *lawyer in his professional duty v. when he is a citizen* was discussed. On the question of “who manages the legal aid” a comparative of the status of management between India and UK was discussed. In UK the Bar council manages the legal aid whereas in India the legal aid is appropriated by the judiciary to itself. The services in the form of relief imparted by the Courts were classified as a) Conventional b) Un-Conventional. In case of conventional form to seek relief, a party in need of a lawyer (who is unable to hire or afford one) is supported by the State through legal aid and also through the concept of “*Lok Adalat*” which forms a part of the Alternate Dispute Resolution processes. The unconventional way is where relief is sought through the PIL or SAL. Deficiencies in the process of access to justice through Legal Aid were pointed out. The impediments faced in access to justice and the “forum of convenience” leading to legal paralysis for the victims or accused was discussed. The growth of the extra judicial methods as ramifications viz. use of the muscle power which is mushrooming under the name of recovery agencies especially in the private sectors was discussed.

Dealing with the topic *Separation of Powers: Boundaries of Judicial Review* the jurisprudential evolution from positivist to realistic to sociological philosophy was made the premises for further discussions. According to the speaker the encroachment of judiciary in the law making domain of legislature has diminished the value of judges. Example of the recent Supreme Court judgment *State of Tamil Nadu v. K.*

Balu (dated 15-12-2016) of banning liquor within the periphery of 500 mts of highways was argued as a bad example on the topic. Elaborating on the power of “judicial review” and “constitutionalism” it was deliberated that the judges must appreciate the limits and contours of the same and avoid inadvertent encroachment into domains of legislature and executive. Underscoring the importance of separation of power the 1st and the 3rd principles of the Beijing Principles was discussed in brief.

Discussing on the topic of *Judicial Independence and Accountability*, the balance between the limits of judicial review to judicial independence in the success of democracy was highlighted. It was emphasized that in order to hold the sanctity of judicial independence a judge must not compromise anyway on the justice delivery, no matter what be the consequence. It was further deliberated that in fact once a judge, (s)he must never be concerned over cause-effect assumptions over justice delivery. It was highlighted that it is the judge's conduct which secures their accountability and independence. Being the holder of a responsible public office every judge is keenly intrigued by the public and the politicians. Therefore, with great independence comes great accountability for the judicial role of a judge. It was discussed that there is a growing and glaring shift from accountability of the judiciary in India e.g. RTI issue where the asset declaration of the judges was turned down by the Court. Except for the publication of the reportable judgments all other aspects such as appointments, assets declaration, conduct of a judge etc. are opaque. The fact of the situation is that there is no independent audit of the judiciary. It was also advised that in order to be transparent and accountable a judge may use his personal knowledge and views to the extent that it does not militates against the facts of the case and in the interest of complete justice.

Dealing upon the subject matter *Impact of Media on Public Perception Regarding Vitality of Justice Delivery*, it was realized that media is an inevitable part of the society and must be considered as one of the important forces operating in a democratic system. It was succinctly expressed that judges must be careful to limit proximity while dealing with media in a democracy. They must try to completely divorce from media to keep the institution unblemished. Generally speaking it was highlighted that public perception is often anti-establishment and media today often is a market place for commercial benefits. A judge must be dispassionate of any impact while discharging his/her duties. Even if a criticism of a decided case is done at any public platform based upon founded logic, a judge should not be worried about the same and should exhibit dispassionate behavioural traits while delivering justice.

One important caution cited was that media should not be used as a tool to reach out and build public popularity or publicity which has been observable as a phenomenon in certain cases.

On *Mapping of success of ADR initiatives in India*, an informal interactive atmosphere discussing the merits of ADR revealed the various factors such as ADR is voluntary, less costly, less time taking, satisfies both the parties and harness cordial relationships. In later part of his presentation Justice Kannan, clarified the distinctions between Arbitration, Conciliation, *Lok Adalat*, Mediation and Adjudication. Justice Reddy explained with examples how the “procedural compliance” leads to delay. It was observed that simplest of issues remaining pending for years for technical grounds. Moreover, it was expressed that ADR allows the judges to adopt informal approach to understand the issues involved in a particular matter. The areas in which ADR is very successful in India i.e. Motor accidents claims, maintenance, negotiable instruments, and commercial matters were discussed.

Dealing on the topic of *Contours of Social Action Litigation*, in his prefatory remarks Justice Kannan observed that Public Action Litigation (PIL) in India emerged as a kind of an apology to subdued judicial reaction to the 1975 emergency. Prof. Kaul picked it from there and picturized that in the years that followed independence and adoption of the constitution, Indian judiciary was technocratic in its approach.

The transit of the rule of *locus standi* from rigidity to flexibility was discussed by citing *A. K. Gopalan case* and *Chiranjit Lal vs. Union of India* to the later years of judicial metamorphosis in *Fertilizer Corporation case*. While elucidating rule of *locus standi* Prof. Kaul quoted Justice Krishna Iyer for saying “[W]e have no doubt that in competition between Courts and streets as dispensers of justice, the rule of law must win the aggrieved person for the Law Court and wean him from the lawless street. In simple terms, *locus standi* must be liberalized to meet the challenges of the times.”

Reference was also made to very many environment protection related cases where judiciary was proactive and took *suo moto* actions, appointed commissions and imposed exemplary fine. Prof. Kaul explained the compensation jurisprudence evolved by Apex courts in India. In the last segment of his presentation Prof. Kaul tried to distinguish Social Action Litigation initiatives in India and USA. In US PIL is concerned with civic participation- consumer rights protection, collective decision making, Good Governance etc. Whereas in India primary focus is on State repression, lawlessness, administrative deviance, exploitation of disadvantaged groups, environment protection etc.

The meaning, scope, limitation and significance of *Judicial Discretion* was discussed at length. It was aptly remarked that 'discretion' in a broad sense is an absolute, unrestrained decision-making; however it actually means, decision-making restrained by the ability to choose a result within a fixed catalogue or menu; or in its most restrictive sense it could mean discretion to decide whether prescribed rules have been satisfied and to apply those rules. It was discussed that judicial discretion can be divided in to (i) Pure/absolute discretion and (ii) Guided discretion. It was elaborated that guided discretion is a discretion akin to a sentencing discretion in criminal law where maximum and minimum penalties are prescribed. In case of guided discretion there are a number of possible alternatives and the judge is left to decide upon the best alternative upon the facts. It is only when the judge's decision is manifestly wrong or outside the parameters of the acceptable alternatives that this type of decision should be overturned.

Moreover, deliberation on factual, procedural, equitable and rules based discretion followed by the various facets of judicial discretion was briefly discussed. Discretion of appellate court was discussed and observed that to succeed on appeal an appellant must show that in the exercise of that discretion a judge was plainly wrong. However, where two views are possible, the view taken by the subordinate court shall be upheld. On matters of appreciation of evidence of a witness and the reliability of the version of a witness, the trial court's appreciation which had the opportunity to see the demeanour of the witness must be preferred.

Discussions on the topic of *Paradigms of Economic Offences* observed that ramification of economic offences in globalized world are diverse and at times highly damaging. They can destroy the economy and destabilize security of the State. Economic crimes like smuggling, money laundering, tax evasion, drug trafficking, corruption and serious economic frauds are eating the vitals of the nation in a very big way. Explaining the law and practice in India on economic offences it was emphasized that many of the economic offences were covered generally by IPC in India, however, of-late, many special Acts were passed to deal with investigation, trial and abatement of economic crimes. In his closing remarks Justice Sharma opined that, there is a need for special courts to deal with economic crimes established under exhaustive code to deal with Economic Offences levying severe punishments to deal with such offences of involving and affecting huge magnitude of loss to person and property.

It was observed that with reference to economic offences we (India and Sri Lanka) are facing “a bundle of contradiction”. Criminalization of something is a rather easy social approach. Lack of resource hurts process of law enforcement on one hand and on the other hand the excessive bureaucratic interferences offers unusual impediments. Governments at times fail to understand the difference between control and

regulation. It was concluded that there must be fine balance between State's authority to regulate the market for national good and individual's freedom to do business.

Appreciation of Electronic Evidence and Cybercrimes and Law dealing with Cybercrimes were discussed in Session 11 and 12 respectively. Issues in identification of digital evidence owing to their volatility and ease of alterability especially when forged and stored in cloud or outside the jurisdiction of affected country was discussed. Thus the importance of seizure and preservation of electronic evidence, forensic examination process and presenting the evidence in court were explored. Indian Evidence Act, 1872 (hereinafter EA) (Section 2(r) and 2(t)) and The Electronic Transactions Act, 2006 (Sri Lanka, Section 26) were referred for interpretation of 'electronic evidence'. The most relevant features for the purposes of admissibility of electronic evidence were briefly discussed. In the context of *relevancy, admissibility, genuineness, veracity & reliability* of electronic evidence, case law jurisprudence in India was discussed as in *Kundan Singh vs. The State*, *Kishan Tripathi vs. The State* and *Mobarik Ali Ahmed vs. State of Bombay*.

The last session dealt with *cybercrimes and law dealing with cybercrimes*. Real examples of cybercrimes— e.g. Stuxnet and Ukraine's Powergrid hacking were discussed and explained for its serious international ramifications including endangering of national security and its potential to cause havoc even in public utility services. Constituents of cyber-attack, cybercrime, cyberespionage and cyberwarfare was dealt and reference to section 66 of IT Act was resorted to explain cyber terrorism. Other crimes enumerated in the IT Act, covering Sections 43 (a) to (j) in addition to Sections 66 C, D & E, 67 and 67B specifically were briefly discussed.

Moreover, the liability including the limitations and exceptions under statute for the Internet Service Provider (ISP) within the scope of the IT Act 2000 was briefly discussed.



P-1023: WEST ZONE REGIONAL CONFERENCE FOR ENHANCING THE EXCELLENCE OF JUDICIAL INSTITUTIONS: CHALLENGES & OPPORTUNITIES: APRIL 29 & 30, 2017

Mr. Rajesh Suman, Assistant Professor & Ms. Shruti Jane Eusebius, Law Associate



The National Judicial Academy organized the second West Zone Regional Conference on 29th & 30th April, 2017 involving the relevant High Courts of Rajasthan, Gujarat, Bombay and Madhya Pradesh. The Conference was organized in collaboration with the Hon'ble High Court of Gujarat and *Gujarat State Judicial Academy*. The theme of the conference was “Enhancing Excellence of the Judicial Institutions: Challenges & Opportunities”. The underlying aim of the conference was to provide a common platform to facilitate exchange of experience and sharing of knowledge on various issues ranging from ethics, integrity, vigilance, social context judging, use of technology and consequences of corruption on the institution and public perception. The conference also provided an opportunity to discuss several crucial issues relevant to courts of west zone region. Experts from related domains shared their experience with participants and solutions for challenges faced by participants on issues under consideration were deliberated through mutual discussion.

Major Highlights and Suggestions from the Conference

- Judges must not be afraid of anyone in writing judgment. They should be afraid only of their conscience and the almighty. If they are afraid of these two then ethics and integrity will follow automatically. Judges must follow their conscience then no problem will arise. The conscience must be bright and judges must practice what they want to preach. They must follow Saint Tukaram who first practiced the behaviour and then used to preach.
- If judges know and practice ethics and integrity then there is no need of internal vigilance mechanism. Mere competency is not enough and there should be integrity among judges. Person without integrity is of no use. If judge is honest then even if he makes mistake his reputation remains intact. There are very few judges who are indisciplined and judiciary must strengthen system to catch such black sheep. In some states police officers are engaged to check the integrity of judges. Judges should not be money minded.
- There is rising indiscipline among advocates and there is practice of managing cases which they charge from their clients. There is no direct judicial control on advocates. The report of the Law

Commission of India has highlighted the problem of indiscipline among advocates. Advocates think that they are above and beyond control. Judge can control the aspect of adjournment frequently asked by advocates by making them fix the date of hearing. The judges should not allow advocates in the chamber when they are alone.

- The complaint regarding integrity of judge should not entertained unless it is accompanied by verifiable material. Anonymous complaint should be discarded. The principles of natural justice should be followed in vigilance hearing including principle of audi alterem partem and rule against bias.
- Uncertainty in the application of legal principles is also indiscipline. Judges should update their knowledge of legal principles. When legal principles are certain then judgment should be certain. If trial court find any grey areas concerning any legal principles then court may state a case and refer the same for the opinion of the High Court under Section 113 of the Code of Civil Procedure.
- Judges should not be bothered about news on proceedings pending in their court. One should treat every challenge as an opportunity. The media publication of judicial proceedings has two aspects. One is right of freedom of speech and expression which is inbuilt in the Constitution. Supreme Court in many judgments refused to put restrictions on media publication and ruled that restriction has to be on the case to case basis. There are many cases which have been brought to court by the media. Another aspect is irresponsible media publication especially on social media. These are mostly anonymous publications and it is difficult to trace their authors. There is need of regulation of irresponsible media publication. The media should not be unnecessarily restricted for its publication and there should be free exchange of information between institutions and public. The regulation must be there in case witness and victim need adequate protection.
- In some instances the high court judges have not been fair to judges of subordinate court. For instance sometime some high court judges do not pay for expenses during their visits. The high court judge is a karta of the family and he should take care of the younger brothers in subordinate judiciary.
- There is need of some introspection on the part of high court judges regarding their behaviour towards the judges of subordinate judiciary. The judges of subordinate judiciary need support from high court. There is not enough reciprocation on the part of high court judges towards judges of subordinate judiciary. The effort must be made to eliminate the feeling of fear from the minds of subordinate judges. The trust and respect between judges of subordinate court and high court is required to be increased.
- The judges of subordinate judiciary should demand respect from their superiors. They must take stand for protecting their dignity. There should not be any desire for comfortable posting among the judges of subordinate judiciary. They should have courage to face consequences of their actions and should stand for their rights.
- There is a need of strengthening social justice to vulnerable sections. There must be equality in justice dispensation. The legal services authority has the mandate of providing legal assistance to people from vulnerable sections of society. The poor quality of advocates is one of the main challenges of legal services authority. The low fees of advocates is one of the reasons that advocates are not doing qualitative work in legal services.

- In many rape cases a confusing situation is emerging where the accused marry the victim and parties ask for withdrawal of the case. Judges must decide such cases according to law and punishment should be determined according to facts and circumstances of the case. Judges must have the capacity to recognize sensitive situation and must decide accordingly.
- In many criminal case due to poor investigation the real guilty person escapes and poor innocent person is made an accused. There is need of intensive training to investigation officers and prosecutors. There must be adequate investigating officers and one officer should not be given lot of cases as it decreases quality of investigation. The investigation process must be done with adequate infrastructure such as mobile forensic labs.
- The phase 2 of e-court project has been completed and more than 95% of the district courts have been computerized. The refresher training of trainers will be organized to take full advantage of the e-court project. Due to e-court project there has been lot of transparency and accountability in the functioning of courts.
- The high courts must make use of money released for e-court project. Lot of money is still lying unutilised with the high courts. The money can be used for appointing more technicians for improving the functioning of e-court project in the state. The money can be used for proper maintenance of computer system in courts. There is need of more interaction between district court and high court e-courts committee for proper implementation of e-court project.
- Each high court can develop its module which can be integrated with the periphery of software system of e-court. This is need based and must be according to the requirement of the system in each high court. For instance Bombay High Court has developed 44 modules in periphery whereas Sikkim High Court has developed 1 module and Meghalaya High Court has developed 2 modules.



SE-8: WORKSHOP FOR FEDERAL INDIRECT TAXES ADJUDICATORS (CHIEF COMMISSIONERS, COMMISSIONERS): MAY 01 to 03, 2017

**Mr. Rahul Sonawane, Research Fellow & Mr. Krishna Sisodia, Law Associate
Prof. S. P. Srivastava, Professor – Mentor of the Programme**



The National Judicial Academy organized a three day workshop for Federal Indirect Taxes Adjudicators from 1st to 3rd May, 2017 which was attended by 26 Tax Adjudicators (Chief Commissioners and Commissioners) from across the country. The object of the workshop was to sensitize the Departmental Adjudicators to follow the rule of law in adjudication proceedings. The discussions were guided by Hon'ble Mr. Justice A.K. Patnaik, Hon'ble Ms. Justice Ruma Pal, Hon'ble Mr. Justice Rajive Bhalla, Hon'ble Mr. Justice R.V Easwar, Mr. P.G. Chacko, Adv. Vikram Nankani and Adv. Vakul Sharma. In the course of discussions, the following views were expressed:

The theme of Session 1 was ***Authority to Tax and Basis of Taxation***. The speaker initiated the discussion by stating that the source of all tax collection in India is Article 265 of Constitution which reads - “No tax can be levied or collected except by the authority of law”. Therefore, there cannot be any taxation without legislation and if any tax is collected without the authority of law then there lies no difference between a tax collector and a burglar since both will be using unlawful coercion to extort money from an individual. The speaker also highlighted the fact that in taxation matters involving huge amount of money, tax adjudicators tend to bend towards the revenue side to be on a safe side which is both unethical and unlawful apart from being a blatant violation of Article 265 of the Constitution. Therefore, it was suggested to the participants that they should be fearless of their seniors and the department and decide the assessment proceedings impartially in accordance with law.

The theme of Session 2 was ***Core Principles of Interpretation of Taxing Statutes***. The speaker initiated the discussion by stating that as a general rule tax statutes should be read strictly and literally. Strict interpretation means going by the letter of law. The departure from strict interpretation is only permissible when it leads to any anomaly, absurdity etc. It was emphasized by the speaker that the following should not be considered during adjudication:

- The philosophy of taxation.

- The doctrine of substance.
- The moral perception of taxation.
- The hardship it can cause to the assessee.

The theme of Session 3 was ***Role of Adjudicators: Balancing the Interests of Citizens and Revenue***. The speaker commenced the session by stating that firstly, adjudication is a quasi-judicial function which means that the adjudicator is bound by the principles of natural justice and therefore he/she should proceed in an unbiased, impartial and fair manner. Secondly, the adjudicator should be governed by the rule of law as imbibed under Article 14 of the constitution. Thirdly, the adjudicator should follow binding judicial precedents. On the theme of the session two provisions were highlighted:

- Section 18(1) of Customs Act, 1962 which provides discretion to the authority to ask the assessee to furnish security as the "proper officer deems fit."
- Rule 7(2) of Central Excise Rules, 2002 which is also a Discretionary Provision.

It was suggested that where discretion is provided, it should be exercised in accordance with law and not in an arbitrary manner. Therefore, it is the duty of the adjudicator to balance the interest between citizens and revenue in accordance with law and principles of natural justice.

The theme of Session 4 was ***Judicial Ethics, Judging Skills & Objectivity in Decision Making***. The speaker initiated the session by stating that the term "Judicial Ethics" is not exclusive to Judges only and in its widest sense includes adjudicators also as they perform quasi-judicial function. The speaker further discussed the Bangalore Principles of Judicial Conduct which deals with the values of independence, impartiality, integrity, propriety, equality, competence and diligence. Thereafter, the qualities of judging propounded by Socrates was discussed viz. to hear courteously, to proceed wisely, to consider soberly and to decide impartially.

Subsequently, the speaker highlighted the five vices from "Shukraneeti" from which judges need to alienate themselves viz. -

- Raga - Bias
- Lobha - Greed
- Bhaya - Fear
- Dwesha – Prejudice
- Rahasyashruti – Not to hear one side secretly

The theme of Session 5 was ***Drafting of Reasoned Orders***. The speaker initiated the discussion by citing two celebrated judgments of the Supreme Court:

- *Agricultural Produce Market Committee v. Salamulla* in which the functions of reasoned judgment were outlined viz.
 - ❖ To inform the litigants the reason for the decision.
 - ❖ To demonstrate fairness and correctness of the decision.
 - ❖ To exclude arbitrariness & bias.
 - ❖ To enable the appellate court to pronounce upon the correctness of the decision.

- *Dharampal Satyapal Ltd. v. Dy. Comm. of Custom Excise* in which it was held that Ratio Decidendi/Speaking Order is the third principle added to the principles of natural justice.

The speaker discussed the stepwise procedure to draft a Reasoned Order:

- Give a brief business profile of the party.
- Briefly state the Revenue's Case as made out in the show cause notice.
- State the submissions of the party in response to the show cause notice.
- State the undisputed facts.
- Application of Judicial Precedents
- Recording of the reasons thereof.

The subject of Session 6 was ***Principles of Natural Justice and Application in Tax Assessment Proceedings***. The speaker initiated the discussion by discussing the historical background of the principles of natural justice. The speaker referred to *Ridge v. Baldwin* where it was held that a decision given without regard to principles of natural justice is void. Furthermore, a couple of other judicial precedents were discussed viz.

- *Uma Nath Pandey v. State of U.P.* – “Principles of natural justice is a flexible phenomenon, not rigid or absolute.”
- *CCE v. Sanawarlal Purohit* – “Applicable in all cases unless expressly barred by the statute.”

The speaker also reflected upon the three major components of Principles of Natural Justice-

- *Nemo Judex in Causa Sua.* - No man be a judge in his own cause
- *Audi Alterem Partem.* – No one shall be condemned unheard
- *Ratio Decidendi* – Reason for the decision

It was suggested that natural justice is nothing but the natural sense of what is right and wrong. Every Adjudicating Authority is bound by the Principles of Natural Justice, any derogation is permitted only when it is expressly barred in the statute.

Session 7 was on the theme of ***Appreciation of Evidence including Electronic Evidence***. Electronic Evidence means the evidence which exists in electronic form which can be produced in tangible form e.g. E-mails, ATM Transaction, Digital photographs, etc.

The relevant judicial precedents on the theme were discussed -

- *Md. Ajmal Kasab v. State of Maharashtra*- In this case the Supreme Court appreciated the electronic evidence of almost every form like CCTV footage, mobile devices, memory cards, data storage devices, etc.
- *Tukaram S. Dighole v. Manilerao Shivaji Kokate*- In this case the Supreme Court held that Standard of proof in the form of electronic evidence should be more accurate and stringent.
- *Sanjay Kumar Kedia v. Narcotics Control Bureau & Anr.* - In this case the accused was caught by tracing the IP Address of his computer.

A significant point of discussion in the session was Section 65B (4) which requires that a certificate be signed by a person occupying a responsible official position in relation to operation of the relevant device for the purpose of identifying the electronic record containing the statement and describing the manner in

which it was produced in order to become admissible in court. The question that arose before various courts was whether the certificate is mandatory to invoke the provision of Section 65B. The issue was ultimately settled in the case of *Anwar v. P.K. Basheer & Ors.* where it was held that certificate shall be produced for the admissibility of electronic evidence under Section 65B. It was suggested that in order to appreciate electronic evidence the source and the authenticity are the two things which should be kept in mind as electronic records can be very easily tampered with and ultimately the adjudicators need to be tech savvy in order to test the authenticity and source of electronic evidence.

Session 8 was on the theme of ***Endemic Pathologies in Tax Assessment Proceedings***. The speaker discussed the pathologies in tax assessment proceedings in the show cause notices. It was brought to attention of the participants that some of the show cause notices does not disclose the cause of action and in some show cause notices allegations are made stating that “X is conclusively found guilty of the allegations”, which is unlawful. Furthermore it was stated that almost 85% decisions of the departmental adjudicators and appellate commissioners are turned down or reversed either by the Tribunal (i.e. CESTAT etc.) or the High Courts and Supreme Court.

Subsequently the speaker discussed the correct approach in tax assessment proceedings which included the following -

- To issue show cause notice stating the allegations
- Consider the reply
- Frame points for determination
- Pass a reasoned order.

Justice G. Raghuram concluded the workshop by stating that both Tax Adjudicators and Judges are part of the same family and the appeal procedure prescribed by the legislature is the testimony to that belief. He also stated that all government officers are servants of the Republic of India and ultimately their work should be done keeping in mind the downtrodden and oppressed sections of the society.



P-1024: ANNUAL CONFERENCE ON BENCH AND BAR RELATIONSHIPS AT THE HIGH COURT LEVEL: MAY 6 & 7, 2017

Mr. Prasidh Raj Singh, Law Associate



The National Judicial Academy organized a two day conference on Bench and Bar Relationships at the High Court level from 6th-7th May, 2017. The conference expedited the discussion on various issues like- Bench and the Bar: operative norms for optimizing justice delivery, managing the complex web of precedent conflict: Distilling Rationes, Belligerence, Asymmetric or Sub-optimal assistance at the Bar: The Judicial Role, Emerging issues pertaining to personal and official relationship between Bar and Bench and lastly proposal to nurture Bench and Bar relationship. The conference was attended by 21 High Court judges from their respective jurisdiction.

During the course of discussion it was deliberated that judgment reflects the understanding of law, facts and issues and it is imperative that judges should behave in a manner that even the junior most lawyer from the bar is respected and treated equally by the bench. It was discussed that uniformity is of vital importance and unfair treatment often leads to distrust and loss of confidence.

It was deliberated that by virtue of Article 227, the High Courts have power of superintendence over all courts and tribunals in their respective jurisdiction. Thus, it is implied that all courts and tribunals will be bound by the decisions of the High Court and therefore the decision made by a higher court is binding and it should not overturn the precedent unless there is a strong reason to do so.

The doctrine of precedent was discussed at length to provide certainty, stability, predictability and uniformity. It was reflected that precedent increases the probability of judges arriving at correct decision based on the assumption that collective wisdom is always better than that of an individual and it also preserve the institutional legitimacy and “adjudicative integrity”. Further it was discussed that doctrine of precedent provides equality in treatment and thereby prevents bias, prejudice, arbitrariness and avoids inconsistent decisions. It further help to prevents uncertainty and ambiguity in law, but the disadvantage is to find out the *ratio decidendi*, if there are number of reasons. It was highlighted that the distinction can be made on facts to avoid inconvenient precedents.

The discussions in the conference focused on *ratio decidendi*, which consists the reasons formulated by the court for resolving an issue arising for determination and, not in what may logically appear to flow from observation on non-issues. It was pondered by the participants that a case is an authority, for what it decides and, not for what logically follows from it. The binding effect of decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which the argument was subsequently advanced was actually decided. The participants emphasized on the point that the Supreme Court has consistently stated that in case of conflicting judgments of co-equal benches, it is desirable to refer the matter to a larger Bench.

It was further deliberated that the court should not decide any issue which is not agitated by the party and such instance would violate the principles of natural justice. During the course of discussion Justice B. S. Chauhan referred the case *State of Orissa v. Nalini Kantha Muduli*, where the court held that the members of the Bar are officers of the court. They have a bounded duty to assist the court and not to mislead. Citing an overruled decision is a matter of serious concern and court expressed its anguish for the falling standard of professional conduct. It was also highlighted that a member of the bar undoubtedly owes a duty to his client and must place before the court all that can fairly and reasonably be submitted on behalf of his client. Further the bar must uphold the dignity and decorum of the court and should not indulge in activity which disrepute and degrade the court proceedings.

Some of the suggestions made by the resource persons during the course of discussions are as follows:

- Judges must observe ethics.
- Integrity is the hallmark of judicial discipline.
- A fair and human treatment should always be given to the Bar.
- A judge should not develop any favorites.
- Legal education should come within the preview of High Court.
- Pre enrollment exam should be conducted by the High Court instead of Bar Council of India
- Ex-parte communication should be prohibited that is a judge should not discuss any issue involved in a case with a lawyer in absence of the other party or its counsel.
- Close personal contact between the judge, the party and the lawyer may tantamount to bias and prejudice.



P-1025: NORTH ZONE REGIONAL CONFERENCE ON ENHANCING THE EXCELLENCE OF JUDICIAL INSTITUTIONS: CHALLENGES & OPPORTUNITIES: DATED: MAY 13 & 14, 2017

Dr. Amit Mehrotra, Assistant Professor and Ms. Nitika Jain, Law Associate



National Judicial Academy Organised a two day North Zone Regional Conference on Enhancing the Excellence of Judicial Institutions: Challenges & Opportunities on 13th and 14th May, 2017. Following were the broad highlights and discussion:

- Judging is not just a profession but a way of life. Judiciary is one of the most excessively branded part of democracy in India. Judge should observe principles of ethics which itself is a right conduct. Judicial officers by virtue of performing the sovereign judicial function itself form a separate and distinctive class. In present times credibility of the judiciary has become an eyesore because of its prolonged delay and lack of integrity.
- Justice being a product of decision-making, every human being is not capable of doing it. Judges are not mere government employees as they perform sacred functions. Justice is a mere delusion as it is not defined in any statute book. Justice should be as per law, so that parties shall not suffer.
- Bangalore Code of Judicial Conduct 2001 was referred which sets out core values that should guide the exercise of judicial office namely; Independence, impartiality, integrity, equality, propriety, competence and diligence.
- It was delineated that judges have been given important duties and thus they must be careful about the image of judicial institution. It was stated that district judiciary is the face of judiciary and powers of the trial court cannot be underestimated. It is the duty of the judicial officers to be the well-wishers of the ordinary people.
- It was stressed that judicial individualism is the basis of judicial independence. Integrity among the judicial fraternity is the hallmark of judicial discipline. It was emphasized that the judicial officers must follow such steps, have integrity and discipline that everyone respects them and their decisions. People must have faith in them.

- Section 165 of Indian Evidence Act, 1872 empowers a Judge to ask any question to the parties, be it relevant or irrelevant, to meet the ends of justice. Order 20 Rule 1 of Code of Civil Procedure was discussed which speaks that a judgment shall be given within 30 days after the case has been heard and if not given within 30 days reasons has to be recorded for such delay.
- It was also emphasized that the Judges must not be scared of Advocates. Advocates are there to win the case and not to serve justice. It was asserted that the first and foremost duty of a judicial officer is to know the law. Knowledge being a power should be acquired by him. If a judge has poor knowledge of law, absurd results may come which will not only lower the reputed image of judiciary but also distort the faith and trust of people in the sovereign judicial institution. There may be travesty of justice.
- Judicial officer shall imbibe constitutional values. It was stated that there is a need of impartial judges and not neutral judges. An impartial judge will go beyond what is presented to him and act fairly to meet the ends of justice while as a neutral judge relies only on the lawyers.
- Judicial officer should not get influenced by the media which virtually runs a parallel trial. A Judge must act independently and without any attachment, greed, fear or enmity. It was discussed that no one can deny the impact of media on the public perception and vitality of justice delivery. Media is an important wing and forms the fourth estate of democracy. However it is sad that media nowadays works for TRPs.
- It was highlighted that internal vigilance mechanism has emerged as a response to rising judicial indiscipline. The tendency that by virtue of holding office entitled to do anything even beyond judicial powers need to be curbed. It was stressed that strengthening internal vigilance mechanism would limit their powers and in turn will maintain judicial discipline among the judicial officers at large.
- It was stated that complaints are something which becomes part of the identity of the judicial officers. They shouldn't be afraid of it. Judicial complaint has to be supported by an affidavit and the address of complainant need to be verified, then only the affidavit submitted should be accepted.
- It was stated that while writing the orders, judge should give the complete picture of case and write all necessary particulars in the application, be it facts, presence or absence of parties, reply of lawyer or any related or unrelated conversation pertaining to the case. Further, it was enunciated that the Judges are masters of the case they are presiding over; they must exercise their power in pen and not in heat.
- While deciding a case one has to decide a case on merit. It was emphasized that judges must put more effort and extra labor for the 'needy and underprivileged people' but should never go against the very principles of law.
- It was emphasized that in present times it's not only the monetary corruption but caste corruption is also a challenge before the presiding judges. It was suggested that one need not to transfer the case only because litigant or advocate and presiding officers belong to same community.
- It was stressed that an independence of court and healthy relationship between the higher and lower judiciary is a prerequisite for justice delivery and onus to maintain a healthy relation lies on the High Court. It was stated that the channel of communication between the High Court and

subordinate judiciary must be opened and at the same time subordinate judiciary must have attitude to learn.

- Discipline is very important for a judicial officer. It was mentioned that the only thing that can't be tolerated is indiscipline. It was also highlighted that there is a system of hierarchy within the Judiciary. This system of hierarchy should not be violated. If hierarchy in the judiciary is broken down it will collapse the system. Although there is a system of hierarchy in the judiciary there is no personal subordination between the judges.
- In order to eliminate the gap between the senior and junior division judges, it was suggested that the funds must be utilized to hold weekend meetings and interactive sessions.
- It was pointed out that, currently media has become a source of victimization in relation to crime. Discussions focussed on pre-trial publicity by media and the extent to which it affects the decision of the court. It was termed as a dangerous thing and further stated that, "Media coverage enhances the development of bias in the judicial officers about the case". The judicial officers were asked not to get influenced which may cause them to deviate from the procedure.
- It was deliberated one dimension of Social Context Judging is Public Interest Litigation (PIL) which could be categorized into three different compartments related to the environment, issues of corruption and governance and issues directly affecting the society.
- Referring to the problems and degradation of environment it was stated that in India PIL truly has been carved out as a judicial tool of utmost importance. The participants were given a clear understanding of how PIL can be served as tool of SCJ.
- It was stated that a poor man may not be able to hire an expensive lawyer which may cost him the denial of any relief from the court. Thus, a presiding officer must be able to use his compassion which is the hallmark of a judge and shall differentiate between the parties to achieve the true equality. Quality of law and equality can be achieved only if it is applied unequally. Hence, judicial officers must think empathetically and must feel the 'pulse of the society' and 'problems of poor'.
- E-courts project and discourse on the emerging need of re-engineering in the judicial process was discussed. It was pointed out that there is a need and importance of adapting the technical tools by the judicial institutions. An embryonic need of conversion of the traditional courts into e-courts was stressed upon and in this regard a video presentation on the effective use of National Judicial Data Grid (NJDG) was shown the participants.

It was pointed out that NJDG gives information about the number of cases pending in a court, cases filed and disposed-off in preceding month and number of cases that are pending for more than 10 years. The portal also maintains a list of cases which are to be heard on daily basis. The figures on the portal can be sought in both ascending and descending order. History of cases can also be taken and so it can help a judicial officer to ascertain his progress. It was suggested that through its use a judicial officer can also devise a plan to dispose-off the cases on priority basis. The video illustrated a step by step process to access the website.



Visit of Mr. John R. Tunheim, Chief US District Judge & Mr. Stephen P. Goldrup, Counter-terrorism Coordinator for South Asia in connection with conference on Counter Terrorism (13th April 2017)



Visit of Ms. Sripriya Ranganathan, Joint Secretary (BM), Ministry of External Affairs, New Delhi in connection with the training of Bangladesh judges at NJA (09th June, 2017)

Governing Bodies of the NJA

as on June 30, 2017

A. The Governing Council

1. Chairperson of the NJA, the Chief Justice of India
 - Hon'ble Mr. Justice Jagdish Singh Khehar
2. Two Judges of the Supreme Court of India
 - Hon'ble Mr. Justice Dipak Misra
 - Hon'ble Mr. Justice Jasti Chelameswar
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

B. The General Body

1. Chairperson of the NJA, the Chief Justice of India
 - Hon'ble Mr. Justice Jagdish Singh Khehar
2. Two puisne Judges of the Supreme Court of India
 - Hon'ble Mr. Justice Dipak Misra
 - Hon'ble Mr. Justice Jasti Chelameswar
3. Chief Justice of a High Court
 - Hon'ble Mr. Justice R.S. Reddy, Chief Justice, High Court of Gujarat
4. Judge of High Court
 - Hon'ble Mr. Justice D.N. Patel, High Court of Jharkhand
5. Ex- officio members:
 - i) Minister, Ministry of Law & Justice, GOI
 - 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 commenced the rather challenging journey towards achieving higher standards of excellence in delivery of justice through human resource development and techno-managerial upgradation. Since 2003, NJA has successfully imparted training to more than 26,000 judicial officers of various levels.

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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