



Judicial Education

NJA

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JUDICIAL EDUCATION

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**NEWSLETTER OF THE
NATIONAL JUDICIAL ACADEMY**

Vol. 2 No. 1

March 2005

From the Director

It is over six months since the last issue of the NJA Newsletter was released. The interregnum was so full of activities in the Academy that there is so much to report to our readers on the developments in the judicial education front. This issue of the Newsletter carries notes on some significant events and developments in this regard.

Elsewhere in this issue, NJA is announcing the Training Calendar for the year 2005-06. Letters are being issued to the various High Courts seeking nominations for all the twenty-four Courses scheduled for the coming year beginning in July, 2005. With a view to maximize the benefits of the NJA programmes to its consumers, it is important to correspond with the trainee Judges well in advance of the training programme. Their needs have to be ascertained and the trainers and trainees have to be prepared to make the interactions productive and useful. Late nominations and changing the nominees at the last moment have resulted in lot of difficulties to the participating judges as well as to the Academy. It is hoped that the High Court administration will appreciate the difficulties and make nominations this time well before the commencement of the new series of programmes beginning from July, 2005.

A significant development which augurs well for judicial education in India is the emergence of a working relationship between the NJA and the State Judicial Academies on curriculum development, training the trainers, standardization of study materials, research collaboration, exchange of publications, periodic meetings of Directors of the SJAs for monitoring progress etc. An association of judicial educators of India is being formed. A Working Committee of representatives of State Judicial Academies is discussing new initiatives to give a fillip to judicial education in the Year of Excellence of the Judiciary. We are hopeful to report some significant achievements in this regard before the end of the year.

Hereafter, NJA Newsletter will appear regularly twice a year, in April and in October.

March, 2005

Prof. (Dr.) N.R. Madhava Menon

Science, Law and Ethics: The Dynamics of Social Progress*

Dr. A.P.J. Abdul Kalam
President of India

Dynamics of Society is the Function of Science, Law and Ethics

I am delighted to participate in the *Judicial Colloquium on Science, Law and Ethics* organized by the National Judicial Academy, Bhopal. I greet the Hon'ble Chief Justice of India, the Hon'ble Justices of the Supreme Court and the High Courts, distinguished legal personalities, the Director of the National Judicial Academy, scientists, technologists and other participants. During the last two hundred years, there has been considerable advancement in science and technology. Certain things which were considered possible in science have not happened. Whereas, certain other things not considered possible have become a reality. Considering the rapidity of these developments and their impact on mankind and society, there is an urgent need to have a re-look at the system in an integrated way on Science, Law and Ethics. As said by a legal luminary, it would be tragic if the laws and ethics are so petrified and are unable to respond to the unending challenge of evolutionary and revolutionary changes in our society. In that respect, this *Judicial Colloquium on Science, Law and Ethics* is a very important event which provides an opportunity for

scientists, technologists and legal experts to work together and draw a roadmap for the changes which are needed in our legal system in an integrated way taking into account technological progress and ethics to have a balanced social system.

Multi-dimensions of Technology

Technology has multiple dimensions. Geo-politics converts the technology to suit a particular nation's policy. The same policy will lead to economic prosperity and capability for national security. For example, the developments in chemical engineering brought fertilizers for higher yield of crops while the same science has led to chemical weapons. Likewise, rocket technology developed for atmospheric research helped in launching satellites for remote sensing and communication applications which are vital for the economic development. The same technology led to development of missiles with specific defence needs that provide security for the nation.

The aviation technology development has led to the fighter and bomber aircraft, and the same technology will lead to passenger jet and also help operations requiring quick reach of support to people affected by disasters. When nuclear science was born

in India in the 1950s, in two decades, India got nuclear medicine, nuclear irradiation for preservation and multiplication of improved varieties of agricultural products, nuclear power and much later weapons. Similarly, in the case of science of virology, the same science can be used for anti-virus vaccines and also some other nations may use the same science for generating virus for biological warfare. It is essential as in the case of Chemical Weapons Convention [CWC], a treaty has to be in place for the elimination of biological weapons. It is essential for our legal experts to work with the world body like the United Nations to bring into force a Biological Weapon Treaty in a time bound manner to prevent some of the irresponsible groups of nations deploying the virus for biological terrorism. We should note that the existence of biological weapons is always a danger to humanity.

Life Sciences and Laws

As you are aware, new technologies are arising due to nanotechnology, biotechnology and information technology. These technologies are also converging as a triad bio-nano-info leading to nano robots. Nano robots, when they are injected on a patient, my expert friends say, it will deliver the treatment exclusively in the diseased area

* Address delivered through video-conference at the *Judicial Colloquium on Science, Law and Ethics* for the Supreme Court & the High Court Judges at the National Judicial Academy on 19th February, 2005.

and then the nano robot gets digested as it is DNA based. Also, in the medical area, we are finding increasing application of stem-cells as a curative process. In this area, ethics are involved in the use of embryonic cells which have been found to be extremely efficient in curing certain diseases. This issue needs a careful study by legal, social organisations and medical community jointly for enacting an appropriate law based on our Indian ethos.

The human being of today is the result of millions of years of genetic engineering and evolution, particularly, of the human minds. Hence, I believe that human cloning should not be done. However, human cloning is being aggressively researched by many countries. When the cloned human beings increase in number in a few decades, then the relationship of families of cloned persons to the natural persons will need to be evolved reflecting a change in the legal way of doing things including human dynamics. A debate in this topic is essential amongst the scientific and the legal community.

However, cloning of human organs for repair of organs such as eye, liver, kidney and heart etc. is an important requirement and also stem cell research must be progressed. Recently, I came across an article in which the stem-cells recovered from the

umbilical cord of a recently delivered mother are found to be a rich source of stem cells. This area is a fertile research ground for stem cell research community and a number of umbilical cord stem cell banks which will emerge in the country. Legal and scientific community should be prepared for regulating this situation. Also, there is a need to have a re-look at the Indian Transplantation of Human Organs Act of 1994 to make it donor friendly and more importantly patient friendly to help those who are in dire need. In this connection, here, I would like to mention an experience of an Indian scientist who was waiting for a British liver in UK where as per law, the priority for transplantation has to be given to the native citizen first.

Human Genome Project – Ethical Issues

Human genome project has led to the mapping of gene sequence of the human population across the globe. This will be the starting point for many overlapping discoveries of bio-medical innovations for many decades to come. The function of each of the 40,000 genes indeed will lead to the understanding of every aspect of our life. Proteomic research in characterization of genes is taking shape. It may even lead to tailor-made medical treatment to suit the person's genetic make up diminishing the problem of unwanted drug side effects. In our

traditional holistic healing system, the same medicine is not given to two different individuals having same disease. Custom built medicine is required looking at the *Prakriti* of the individual. Further discovery, may even lead to fine tuning of human evolution. But one of the big concerns is the legal ownership of the human genome. The conflict has to be resolved nationally and internationally. The typical questions which come to our mind are the following: Who is the owner of the results of the human genome projects and the results of the proteomics research? Who should have access to personal genetic information, and how will it be used? Who owns and controls genetic information? How will genetic tests be evaluated and regulated for accuracy, reliability, and utility? Should parents have the right to have their minor children tested for adult-onset diseases? Are genetic tests reliable and interpretable by the medical community? How do we as a society balance current scientific limitations and social risk with long-term benefits? The U.S. Department of Energy [DOE] and the National Institutes of Health [NIH] are devoting three to five per cent of their annual Human Genome Project [HGP] budgets toward studying the ethical, legal, and social issues [ELSI] surrounding availability of genetic information. This represents the

world's largest bioethics program, which has become a model for ELSI programs around the world. A national programme on the proteomics of the Indian population should be initiated with the multi-institutional and multi-disciplinary participation as a consortium. This programme will lead to Pharma research and wealth generation. At the same time, bio-ethical, legal and social issues should be studied as a part of this programme. I would suggest this Colloquium to discuss these issues and make appropriate suggestions in this regard.

Space Law

As it is known, all the communication satellites whether it is civil or military have to be placed in the geo-synchronous orbit. International Telecommunication Union allots the slot in this orbit for all the users. In the geo-synchronous orbit, there are certain strategic slots from which you can radiate to most part of the planet all the time. That provides additional wealth generation capability to certain users. Most of these slots have been occupied by the developed world. Of course, India has got some slot for INSAT series. It is essential for the Indian legal community to study the laws and bye-laws of the existing laws and safeguard our interests.

Similarly, the remote sensing satellites are put for

reconnaissance as well as resource mapping in the Polar orbit. In addition, there are large numbers of small satellites in the near earth orbit. In another two decades huge solar powered satellites (few kms. in radius) will occupy the geo-synchronous orbit.

Particularly in times of conflict, blocs of countries waging war may create economic damage by switching off the transponders radiating to the enemy country. Their reconnaissance satellite could also be made ineffective electronically. An in-depth analysis is required to simulate and understand the probable situation and work out adequate legal safeguards to protect our national interest.

Cyber Law

We have cyber laws in place which has been approved by the Parliament. It is another area where many advances are continuously taking place at a fast pace. Hence cyber laws need constant updating. I would like to cite a few examples.

In this context, India's cyber laws need to look at the fact that now-a-days nations are electronically connected, with all its economic assets, defense and national security establishments will be the target for cyber attacks during a conflict. In such a situation, a country can be defeated even without a missile or aircraft attack just through

intelligent cyber war.

Hence, it is essential to generate a simulation model of the connected economic and defense security system as a cyber/electronic network. This will reveal the need for the evolution of a new policy with redundancy and restriction of external connectivity and external partnership of certain vital establishments.

Since our financial system is and will be connected to world economic institutions, we have to implement a robust encryption system for all our transactions through a national encryption policy. In addition, cyber laws have also to be devised based on the Information Security standards.

However, when a bloc of countries wages war against another bloc, relevance and validity of these standards has to be reviewed leading to the evolution of new standards. In the globalized economy, we have to strike a sound balance between protection of national interest and the economics of international partnerships.

Sea Law

India has a Sea Law. But the sea has now become multi-dimensional. India's marine wealth, transportation to and fro in the national and international waters and territorial regions need an integrated look.

Sea has a wealth of marine life and inert products. It is

necessary to protect deep sea oil, gas and mineral reserves apart from conserving sea bed resources. A legal and technical review is required to understand whether our national interests above the sea, on the sea and under the sea are fully protected.

Also, India is signatory to the United Nations Convention on the Law of the Sea [UNCLOS] which was enacted in 1994. This has resulted in the addition of two million square kilometers of sea area to our national jurisdiction in the form of exclusive economic zone with full rights for economic exploitation. There is a need to frame Rules for governance and regulation of the development activities in the deep sea and maritime zones of India.

Restrictive Laws by Developed Countries

Many developed countries have made laws to restrict or deny export of certain class of state-of-the-art goods and technologies, in selective manner, to developing countries even while making international laws which make it mandatory for the developing countries to open their markets to be accessed by foreign entities with very little restrictions. India has successfully faced such technology denial measures adopted by certain countries. When our laboratories needed certain type of alloy steel or super computers to develop indigenous systems, certain countries

imposed ban on export of such alloy steel or computers to India. As soon as we succeeded in the development of that particular alloy steel or high performance computers, the ban on export of that steel or supercomputers was lifted. But such an unbalanced world order is something on which our legal experts may have to think, while framing our commitments to international treaties.

The Missile Technology Control Regime [MTCR] and the Non-nuclear Proliferation Treaty [NNPT] - these are all national laws mostly driven by a few nations to avoid the proliferation of missiles and nuclear technology. But, in spite of these laws, the proliferation has taken place in different ways as most of you all know. Only in India, we have a clean record that both in missile area and nuclear technology there is no proliferation. It is very important to study and the legal experts should make a point while participating in international forums.

Legal community must also play the balancing role so that our technological growth can continue to be beneficial to our people and to the nation, free from undue interferences or unfair practices by any party with vested interests, domestic or foreign. Industrially developed countries are trying to make laws and

treaties to protect and promote their own national interests and priorities, instead of working for win-win partnerships. India should work for win-win situation even in business and trade with ethics.

Moon - Mars Exploration

As you all are aware, number of experiments are taking place in the Antarctica region. This region is rich in oil and minerals, but it cannot be allowed to be exploited by any nation for economic purposes. This has been realized by various countries and well formulated ground rules for operation in Antarctica has been formulated in the form of an Antarctica Treaty of which India is also a signatory.

With the depletion of resources in the planet Earth, there is an urge from different countries to go in for exploration on the Moon and in the Mars. There are possibilities for lunar mining including helium, lunar manufacturing and solar energy harvesting. Similar missions can also be planned in the Mars. While embarking on such missions, what should be the ground rule followed by different countries? Since these issues are staring at us, I thought of mentioning this to the scientific and the legal experts who are assembled here to debate on the topic - Science, Law and Ethics.

Conclusion

India was ruled by many Kings for thousands of years.

Every ruler has left a set of laws. Similarly, there were many religions practiced in India and these religions also had their own set of laws. While dealing with cases pertaining to people of certain religion, our judiciary had always accepted their religious laws while pronouncing judgments on personal matters. The latest ruler was the British who ruled us for over two hundred years and gave us the rule of law based on their political, religious and legal experiences. We have been following this for many decades now. Presently, India is going through a phenomenon of knowledge society influencing the information society, the industrial society and the agricultural society through innovation and value addition. Finally, by the year 2020, India will become an economically developed nation. Economically developed status alone has not brought happy societal life in the real sense in many countries. This means that India while working on mission mode for economic development should also build the values based on our civilizational heritage in the evolution of our society. I believe this *Judicial Colloquium on Science, Law and Ethics* is the right forum to discuss this great mission of evolving a legal system in the various phases of development of India leading to a happy, prosperous and safe India.

My best wishes to all of you

in your mission of integrated analysis of the three vital areas of Science, Law and Ethics.

May God Bless You.

Question and Answer Session

Q.1.a. How can we transfer the benefit of science and technology to the poor living in the villages and the remote areas?

b. What role the courts can play in this regard?

- Justice Sunil Ambwani,
Allahabad High Court

Ans : a. Firstly, the technological inputs for farming should reach the farmers. This can be done by educational institutions and industries. I have seen a model in Punjab, where the farmers of village *Navapind* have been given the technology and training in cotton cultivation leading to the per acre yield doubling in a year's time. Similarly, the technology inputs must go to craftsmen, artisans and weavers. This has happened in the case of *Kanchipuram* sarees and *Kohlapuri* chappals. Such examples are to be replicated in all parts of the country. Thirdly, a village knowledge centre should be created in each village, wherein information about monsoon, plantation timings, availability of quality seeds and fertilizers, financing methodology, contract farming outlets and marketing information must be made available, so that the farmer can

increase the productivity and get the right price for his product. Also the technology can be provided for generating solar energy, bio-mass energy, bio-fuel like *Jatropha* plantation, low cost LED lighting can be provided to the villagers for improving their living conditions. Tele-education and telemedicine system can provide quality education and health care to the villagers at their doorstep. This is especially necessary in remote areas like the North-East, Uttaranchal and Himachal Pradesh where physical connectivity is slightly more difficult. The computer technologists have to come up with language independent software so that the villagers can benefit from the ICT revolution.

b. The courts can have a database of all the villages in their jurisdiction. The courts can endeavor to reach quick and speedy justice to the villagers through mobile court system. Village information centres should also be able to provide information pertaining to the cases to the villagers thereby saving time and money and reduced loss of working precious hours by the villagers.

Q.2 Computers and information technology have an important role in reducing arrears in the courts as well as in helping in other areas. Broadly, two kinds of

software are used-Proprietary and Open Source. Which one is better?

- Justice Yatindra Singh,
Allahabad High Court

Ans : First of all, I would like to clarify that the choice of proprietary vs. open software is driven by the usage and requirements of the user at the operating system level. Since, proprietary software is predominantly used at the client level; many users are familiar and comfortable with this. However, at the server level, mature users choose the software as per their requirement. Open source

operating system enables the development of language independent software and also building one's own security algorithms to suit his requirement.

Indian IT industry is capable of providing a solution for the justice delivery system and its e-governance to the justice administration on top of any proprietary or open source systems. What is important here is justice delivery system should be inter-operable system built on top of open standards such as web services.

Q 3. As India is emerging as a technological giant in the world scene, what

would be your advice for humanizing science and technology so that they have a human face? How can we ensure that these technological developments contribute to a better quality life for the common man of our nation?

- Dr. Thomas Kalam, Director,
St. John's Medical College,
Bangalore

Ans: Science and technology alone cannot provide the human face. Science, technology, law and ethics in an integrated way have to humanize the system.

JUSTICE V.R. KRISHNA IYER, LEGALLY SPEAKING 172 (2003).

"Radical reform of the judicial process is the first national priority and justifies financial resources and other dimensions of judicial autonomy being given high consideration, so too research and development. Let us demystify the courts, tribunals and the judges and begin to 'tell the truth of their lies'. . . . This is the beginning of Project Processual Justice to the People. No society can survive without a fair justice system. The protagonist of the Court Process is the Judge on the Bench. So the central figure-the judge-must be the focus of forensic reform. First things first if human rights are high on the nation's agenda."

A Case Study – in Science, Ethics and Law

Fali S. Nariman

Senior Advocate, Supreme Court of India;
President, Bar Association of India.

I. Introduction

The necessity and importance of lawyers learning from other disciplines was emphasised many years ago. You will find in one of Sir Walter Scott's famous novels that on a visit to the house of Counsellor Pleydell, a Scottish lawyer, Guy Mannering is ushered into the lawyer's library, the walls of which are lined with the editions of the best authors and an admirable collection of classics.

"These," says Pleydell, "are the tools of my trade. A lawyer without history, science or literature is a mechanic, a mere working mason. If he possesses some knowledge of these he may venture to call himself an architect."

It is the duty of the lawyer to strive to be not a mere mason, but an "architect": a living example is Justice Michael Kirby of the High Court of Australia: when you listen to him and read his judgments you will know why.

To the Ninth LAWASIA Conference held in New Delhi way back in 1985, the then Secretary General of the Commonwealth Sir. Shridath S. Ramphal, Q.C. sent a message, most appropriate to lawyers in our region. In it he said:

"I am urging you to wander into pastures beyond a lawyer's domain. I ask in

return, by what superior law are its gates locked against you? And I remind you that we are all heirs to a noble tradition of intellectual inventiveness in our response to changing needs. ... Too often we dwell smugly in our legal cocoons, convinced to our supreme importance to societies which are in fact noticing us less and less. We need to escape that shell and remind ourselves of what others besides lawyers assuredly know: that there are more things 'twixt heaven and earth' than our legal world dreams of, realities that often bear upon an ultimate judgment of our legal order."

There are many things that the lawyer has to know, to be aware of, and keep himself abreast with, such as for instance, how other legal systems deal with new questions thrown up by modern scientific technology.

II. Science and Law, and Science and Ethics

Science has already outstripped the law and the law must evolve to keep pace with science. It was a non-lawyer that first called the shots – and in doing so, helped advance the law in matters of science. Ananda Chakrabarty, is now a household name in genetic research. He was

an Indian-born microbiologist who filed the first patent application (in the USA) relating to his own invention: a human-made genetically engineered bacteria capable of breaking down multiple components of crude oil, a capability possessed by no other naturally occurring bacteria.

A patent examiner rejected the microbiologist's patent-claim, ruling that bacteria, as living things, were not patentable subject matter; this was affirmed by the US Patent and Trademark Office Board of Appeals. The US Supreme Court¹ held (by a narrow majority 5:4) that a live, human-made micro-organism is patentable subject matter – such a micro-organism constituting a "manufacture" or "composition of matter" within the Patent statute. And Ananada Chakrabarty became famous.

All this is well known.

What is less well known is (and this concerns the "ethics" bit in "law and science") is that amongst those who took personal advantage of this new legal development were a group of doctors in the medical centre of the University of California, Los Angeles: – which gave rise to the not-so-well-known case decided by the highest State Court in California.

The case was of such significance both to the legal and

¹ *Sidney Diamond v. Ananada M. Chakrabarty*, 447 US 303 = 65 L Ed 2d 144.

scientific community that the entire Supreme Court of California, all seven Justices, sat to finally determine the important questions raised.²

The facts of the case are instructive: good lawyers and good scientists must always crave for new knowledge!

In 1976, one John Moore underwent treatment for "hairy cell Leukemia" at the Medical Center of the University of California. After hospitalising Moore and withdrawing extensive amounts of blood, bone marrow and other substances from his body, the leading physician Dr. Golde and his colleagues, who attended on Moore, confirmed the diagnosis of Leukemia, and recommended that his spleen should be removed, otherwise there was danger to his life. The removal (they said) would slow down the progress of the disease. Moore signed a written consent authorising the operation. But it appears that, before the operation, Golde and his colleagues had secretly made arrangements to obtain Moore's spleen following its removal, and take it to a separate research institution which had nothing to do with Moore's medical care, but had everything to do with forming a cell line, which if and when patented would be of great value!

After the operation, and

much research on Moore's extracted spleen, the Regents of the University of California applied in 1981 for a patent on the cell line listing Golde and another doctor as the inventor for using the cell line to produce "lymphokines."³ This was almost immediately after the decision of the U.S. Supreme Court in *Ananda Chakrabarty case*.

After the operation, the Regents, Golde and his colleagues entered into a series of commercial agreements for rights to the cell line and its products with Sandoz Pharmaceutical Corporation (Sandoz) and Genetics Institute Inc. (Genetic). By 1990, the market potential of the products from Moore's cell line was predicted to be approximately three billion dollars! Hundreds of thousands of dollars had already been paid under these agreements to the developers. Without informing the plaintiff, and in pursuit of their research efforts, Golde and the University of California continued to monitor Moore's body and take tissue samples from him for almost seven years following the removal of his spleen.

A couple of years on, Moore, who was already bitter about not having a spleen – and having spent seven years with doctors

tinkering with him – discovered to his amazement that so small a part of his body, after being subjected to intense scientific research, had a potential of generating three billions of dollars! He also thought it unfair that he should have no share in it. Moore then sued the doctors and the University for invading a legally protected interest of his own (his body) without his consent. He had two causes of action:

- (1) Breach of fiduciary relationship; and
- (2) Conversion.

Moore lost in the First Court, but won in the Court of Appeal. The University and Golde carried the case to the highest Court in the State. The Supreme Court of California ultimately held that no law prohibited a physician from conducting research in the same area in which he practiced – but medical-treatment-decisions were made on the basis of proportionality: weighing the benefits to the patient against the risks to him. A physician who added his own personal research interest to this balance could be tempted to order a scientifically useful procedure or test which offered marginal or no benefit to the patient. This was something a reasonable patient would want to know in deciding whether to consent to the proposed course of treatment.

² 793 P.2d 479 Cal. 1990.

³ Cells are "the basic structure and functional units of all living organisms" – and a cell – line is a culture capable of reproducing itself indefinitely.

Accordingly, the Court held that a physician who is seeking a patient's consent for a medical procedure must, in order to satisfy his fiduciary duty and to obtain the patient's informed consent, disclose all personal interest, unrelated to the patient's health, whether research or economic, that may affect his medical judgment.

Since Golde and his colleagues had concealed their economic interest in the post-operative procedure they (and their patent assignees the University) were liable in an action for breach of fiduciary duty and lack of informed consent.

Moore also had another more interesting cause of action – that of *conversion*. But the majority of the State's highest Court hesitated to uphold this plea. In no reported decision had any Court imposed conversion liability for use of human cells in medical research. Besides, the subject matter of the Regent's patent – the patented cell line and the products derived from it – could not be Moore's property; this was because the patented cell line was both factually and legally different from the cells taken from Moore's body; they represented the product of "human ingenuity" and that is why Federal law permitted patenting of such organisms.

One more reason was given for not upholding the alternative plea of conversion – it was this: that research on human cell plays

a critical role in medical research and researchers are increasingly able to isolate medically useful quantities through genetic engineering.

One of the Judges, Judge Mosk, in an impressive dissent expounded on the moral dimensions of the matter. Morality, he said, militates in favour of (and not against) recognition of the plaintiff's claim for conversion of his body tissue – essentially – because of the defendant's moral shortcomings in the instant case viz. the defendant's duplicity and greed. Let them be compelled – he said – to disgorge a portion of their ill-gotten gains to the uninformed individual whose body was invaded and exploited and without whom such profits would have not been simply possible! Justice Mosk's colleagues on the Bench said that, though they shared his "sense of outrage," they could not, "follow his path."

The question in the end was one of choices –

The bench mark of wisdom, for us as expositors of the law, (the majority said), "is the recognition that we cannot cure every ill, mediate every dispute, resolve every conundrum." As Justice Brandeis liked to say, "sometimes the most important thing we do, is not doing."

Where then should a complete resolution be found? The answer they thought was with the legislature: to create a licensing scheme which established a fix

rate of profit sharing between researcher and subject. So Moore's claim was upheld in part (on the plea of fiduciary duty) and rejected in part (on the more important cause of action for conversion of a part of his body).

The Judges if they had looked back could well have derived assistance from Roman Law. In Roman Law, recognition was given to a legal concept known as *specificatio*. When one person made a new product out of materials belonging to another, who should be the owner of the new product? In Roman times, this doctrine was confined largely to agricultural disputes, as for instance where one person made wine from grapes belonging to another.

Disagreement about the answer to the question as to who was the owner of the new product (the wine) led to celebrated disputes amongst the great Roman Jurists. There was something to be said for both sides: to support the claim of the maker alone would give undue recognition to his labour, to prefer the claim of the owner of the original materials (grapes) would place no value at all on the labour involved in transforming the material into wine!

The Regius Professor of Civil Law in Cambridge, Prof. David Johnston published an article in the Cambridge Law Journal (1997 CLJ 80). In it, he analysed the fundamental questions raised in

the California Court decision and said that they were not adequately answered. The Professor reasoned backwards: If the University owned the patented cell-line, it could have become owner in one of two ways –

(1) first, by transfer of title in the cells from Moore to the University: in which case we would have to assume that Moore acquired title to the cells at the latest when they were removed from him; in which event the basis of the transfer would be the Roman Law concept of *donatio* (or abandonment) of his title to the University. But this possibility would require further consideration of far-reaching ramifications and would give recognition to property interests in parts of the human body. The Professor then argued that there was another possibility;

(2) namely, that the University might have acquired a new original title in a thing which had not previously existed namely the cell line: the new patented cell was a thing which did not previously exist - a possibility that again was too dogmatic, and certainly not equitable.

Prof. Johnston discounted both arguments. He preferred the modernised version of the doctrine of *specificatio*. It was (he said) to be found in the German Civil Code. Under that Code, the maker of the new product becomes its owner when the value of the labour involved in creating it is "not significantly less" than the value

of the original material: the maker is under an obligation to compensate, based on the doctrine of "unjustified enrichment:" thus the maker of the cell line would have to account to the patient for some enrichment derived from the use of the patient's cells, but not necessarily the whole of the future profits to be made from the new thing.

The essential point made by the Cambridge Professor is that Roman Law supplies a structure and a solution to difficult modern problems which can be resolved with "old tools." The value of the Professor's analysis lies to a large extent not in the correctness of the results, but in its discipline and methodology.

Adapting legal history and its rules and principles to new contexts, there is much to be learned from the adventurous and creative spirit of other regimes – they help us reshape our legal rules, re-deploy them, and even, sometimes whilst misunderstanding, to meet new ends, and new challenges.

III. Conclusion

The lawyer of today has to meet and contend with challenges beyond the law: challenges also to his traditional role as an intermediary between his client and Courts of Justice. Many decades ago, when the then Chief Justice of Australia, Sir Owen Dixon was asked whether it was any part of the duty of a lawyer to contribute towards the progress of

society, he said that it was not – the duty of a lawyer (he said) was to keep a hand on and hold steady the framework and foundations of the Law. But that was long long ago. The quickening pace of technological advance and a new sense of service and duty to society has replaced the old model: making us harken to the message of the Secretary-General of the Commonwealth to the LAWASIA Conference in New Delhi (in 1985): who reminded lawyers that they were "heirs to a noble tradition of intellectual inventiveness:" a nice, well-rounded phrase of great use to the lawyer practising in the new millennium.

There is a Judge in England – Justice Sedley - the same Sedley whom Lord Hailsham as Lord Chancellor would not appoint as a High Court Judge because of his leftist leanings, but whom a successor, Lord Chancellor Lord Mackay appointed on assuming office. Sedley has performed admirably as a Judge and is now a Lord Justice of the Court of Appeal: being reckoned as one of England's brightest judicial minds. Sedley is listed in *Who's Who* as having as one of his hobbies, "Changing the World." For Judges, lawyers and law teachers of the twenty-first century there can be no better motto: "Changing the World:" the world of law needs changing.

Towards Excellence in Justice: New Initiatives while 'Doing More with Less' in 2005

Prof. (Dr). N.R. Madhava Menon

Director
National Judicial Academy

Neglect of Judiciary

For several years now, the judiciary has been seeking adequate Government Support in building infra-structure capacities for enabling it to clear the backlog of cases and for increasing the efficiency and productivity in administration of justice. While the Central Government took some initiatives, the State Governments under whom the Subordinate Judiciary functions did not extend the necessary support. Meanwhile, governments at Central and State levels loaded the Statute Book with too many laws generating a whole lot of new litigations adding to the pre-existing arrears of work in Courts.

There has been a five-fold increase in the lawyer population during the last thirty years. In a sense, this increase of litigating lawyers also contributed to the docket explosion and consequent delay in disposal of cases. Judiciary not only does not have the power of the purse but also is not in a position to communicate to the people who matter in a democracy, its own problems and legitimate demands. Of late, through a judicial order,¹ the Supreme Court of India had to direct the Government to implement the recommendations of the Government appointed First National Judicial Pay Commission and to increase the judge strength nearly five fold (50 per million) in the next five years.

While the first part of the judgement is being implemented in bits and pieces, the second part regarding increase in number of judges is not being given the attention it deserves either by the Central Government or by the State Governments.

Prime Minister's Ten Point Formula for Judicial Reform

In a conference of Chief Justices and Chief Ministers held at New Delhi in September, 2004, the Prime Minister lamented the increasing delay and cost of justice and called for reducing the backlog of cases and the cost of litigation. He added, "The problem of reducing backlog could be addressed in two ways. One is by reducing the load on courts and judges. The other is by improving the productivity and efficiency of our courts so that they can process more cases and in a faster manner. The two approaches, if combined could lead to dramatic improvement in the situation as it obtains at present."

In respect of the first approach (reducing load in Courts) the Prime Minister suggested the following measures:

1. Much of Government litigation in the form of appeals ultimately fails which shows that they should not have been appealed at all.
2. The Government will now implement the 1994 Law

Ministers' Conference decision that, "disputes between the government and PSUs and between one PSU and another ought not to go to Courts or Tribunals and should be settled by the parties amicably."

3. Lok Adalats, Family Courts, Fast Track Courts and Tribunals should be studied and their performance strengthened so that they can take some of the burden off the regular Courts.
 4. Potential of alternative dispute resolution mechanisms like conciliation, mediation and arbitration must be fully exploited so that the demand on adjudication will be decreased.
 5. A great deal of litigation is the product of inefficient and non-transparent laws as for example, tax laws. Government will make efforts to rationalize tax structure and establish National Tax Tribunals which hopefully will reduce tax-related litigation.
- In respect of the second approach, the Prime Minister conceded that there is a physical limitation to the quantum of cases any judge can handle and there is the need for more judges. At the same time, he argued:
- a) "There is scope for improving the productivity of existing resources . . . by

deploying modern technology as ably demonstrated by the Supreme Court itself . . . There is scope for improving Court management through the use of information technology and of improved case management methods."

Among other suggestions made in this regard are:

- b) Information technology has not as yet been used as an effective tool in administration of justice. The Supreme Court and the Union Ministry of Science and Technology may work together and suggest ways and means of using modern technologies to help the judicial system reform its processes. Such changes could be made in a Mission-oriented Mode.
- c) There is need to invest in the training and capacity building of all judicial officers so that they become more effective in case management and disposal. In addition, Courts could develop collective mechanisms of review and monitoring so that performance of individual judges is monitored and causes of delay are addressed. Further, mechanisms could be designed whereby best practices in one court or by any individual judge are

rapidly disseminated across the entire judicial system. These monitoring, review and co-learning mechanisms should also incorporate other stake holders in the judicial process as they also contribute to the efficiency of the system as a whole.

- d) It is important to have specialized judges. This is the age of specialization and judiciary must recognise this need, which has been accepted internationally.
- e) A simple way of improving the productivity of the judicial system is by increasing the number of working days and cutting down on vacations. This is equivalent to increasing the number of judges.

While promising additional resources for administration of justice, the Prime Minister emphasized an important fact often unnoticed. He said, "A judiciary manned by judges with vision, wisdom and compassion can do more for justice and the welfare of the under privileged, than all the laws and policies we can think of!"

2005: The Year of Excellence for Indian Judiciary

The Prime Minister's 10-point formula for judicial reform has received an instant response from the Chief Justice of India who, besides placing the problems and demands of the judiciary, declared

the year 2005 as the Year of Excellence in Indian judiciary, dedicated to reduction in arrears without sacrificing quality and rising to the highest standards of conduct and behaviour.

Soon after the momentous Declaration of the Chief Justice of India heralding 2005 as the Year of Judicial Excellence, the National Judicial Academy got into Mission Mode and mobilized Registrar Generals of various Courts along with Law Secretaries to formulate strategic action plans for each High Court/Supreme Court to make a difference in judicial administration during 2005. A Ten-Day Workshop (18th-28th December, 2004) was organized at the Academy with the participation of Registrar Generals/Registrars/ Law Secretaries of as many as Seventeen States/High Courts and of the Supreme Court of India. The High Courts/States which did not participate are Punjab and Haryana, Uttar Pradesh, Himachal Pradesh, Sikkim, Uttarakhand and Chattisgarh.

The Judicial Administration Workshop was about "Doing More with Less" or in other words, achieving greater productivity and efficiency in the judiciary by maximizing use of available resources, removing procedural bottlenecks, improving capacities of judges and court staff through organized training, and introduction of IT and computers in a

phased manner to provide better support services to judges to be able "to do more with less." The four major components of the Workshop were:

- (i) Judicial statistics and judicial planning for higher productivity;
- (ii) Case, Court and Docket Management through sustained training for reduction of delay and pendency;
- (iii) Technology applications in judicial administration to improve efficiency, transparency and supervision;
- (iv) Greater attention to access to justice problems of the poor and disadvantaged and invoking alternate methods of settlement in an organised, systematic manner.

In preparation for the Workshop, the Registrar Generals were asked in advance to collect judicial statistics and related data and prepare a detailed report on the Status of Administration of Justice in their respective High Courts/States. Besides basic information on the structure/distribution of Courts/Judges, judicial budget and expenditure, judge and staff strength including vacancies, average institutions and disposals at different levels, the status of recruitment and training, the extent of use of ADRs including Lok Adalats, the status of computerization in courts etc.,

the reports would contain the initiatives adopted for reducing pendency and delay in judicial proceedings. Several informative and instructive reports were received from High Courts well before the commencement of the Workshop which helped the interaction to be realistic and well-informed.

The Chief Justice of India Hon'ble Mr. Justice R. C. Lahoti himself addressed the Workshop laying out his agenda for action during the Year of Excellence. Among the Resource Persons who addressed the Workshop in its various sessions were Hon'ble Justice Mr. S.B. Sinha and Hon'ble Mr. Justice K.G. Balakrishnan from the Supreme Court, Hon'ble Mr. Justice R. V. Raveendran, Chief Justice of M.P. High Court, Former Chief Justice of India Mr. Justice A.M. Ahmadi, Hon'ble Justices Madan Lokur, S.R. Bannurmath, Kamal Mehta and Mohit Shah from Delhi, Karnataka and Gujarat High Courts respectively, retired Justices M/s. Rama Jois, N. Venkatachala (Supreme Court) and G. C. Bharuka, leading Advocates Fali S. Nariman and P.P. Rao and few academicians.

Strategic Plans for Action during 2005

An important outcome of the ten-day high level deliberations among the Court administrators and judges is the production (however imperfect) of detailed

Action Plans for improved Court Management and Judicial Administration for immediate implementation if the Chief Justices were to endorse them. Never before in recent judicial history was such a concerted effort at judicial reform by those in charge of court administration, and therefore of implementation, have been attempted. Hence, it is significant and pregnant with clear possibilities for change. It is indeed a challenge and an opportunity and let us hope the Year of Judicial Excellence will let it happen to the advantage of Justice-India!

In his Law Day Address, Chief Justice of India clarified what he meant by achieving excellence in judiciary. He said that he would expect excellence in judicial selection, excellence in judicial performance, excellence in Bar-Bench relations and excellence in relations between judiciary and other wings of government during 2005. Towards this end, he wanted every judge to excel in the five Is, namely, Initiative, Intelligence, Industry, Integrity and In-obtrusive Personality. Together with a well-thought-out strategic action plan, the judiciary is ready to embark upon a determined effort to redeem the confidence of the litigant public for fair, inexpensive and quick justice. The National Judicial Academy is happy to be instrumental in the development

of the Strategic Action Plans which are now put together for ready reference of all concerned.

Some Highlights of the Action Plans

1. Reducing delay in filling up vacancies and avoiding deputation of too many judges in non-judicial work

State after State reported large number of posts remaining unfilled at all levels of the judicial hierarchy for a variety of reasons. On an average 20 to 35 per cent of sanctioned posts of judges are vacant for varying periods disrupting judicial work and contributing to pendency. Further more, many judges are on deputation with the Government and other agencies and are unavailable for judicial work. When recruitment is made in bulk, the quality invariably suffers and training gets diluted. The Action Plan therefore proposed: (a) regular annual selection of judges; (b) advance identification of possible vacancies and early initiation of selection procedures; (c) recalling judges on deputation who are in non-judicial work and (d) allowing retention of retiring judges on contract till replacement become available.

2. Understanding arrears, classification of pending cases, prioritizing and bunching of cases, fixing targets and organizing disposal through Fast Track Courts, Lok Adalats,

Special/Vacation Courts and similar strategies

It is possible to reduce the arrears once we are clear of its nature, size and status. In other words, it is information we lack in an organized fashion for solving the problem. Information is the key for intelligent management. For example, in one state nearly a million cases pending relate to prohibition and excise matter whereas in another state over ten per cent of pendency are forest related issues. A large chunk of pending criminal litigation is petty offences where the parties are not available, processes could not be served or investigation remains incomplete for inordinately long periods. These are matters which could be compounded, dismissed or withdrawn with some effort from the Courts and the departments concerned.

Examples were cited from some States where by scientifically classifying cases and employing ADRs, lakhs of cases were disposed of reducing pendency substantially. During 2005, the Action Plans propose to repeat such exercises more often in all States plagued with large pendency.

3. Improved methods of performance evaluation, removal of persons who are inefficient and/or of doubtful integrity, better training on management and institution of Awards for outstanding

performance

Recognizing the importance of human material as the ultimate guarantee of productivity and quality, the Action Plan proposes multiple strategies to remove dead wood, encourage creativity and efficiency, and provide incentives for better performance and professionalism. Every effort should be made while writing ACRs and during inspection to identify deficiencies and give constructive, critical feedback to officers at all levels as that alone can help self-improvement. Judges are the only persons who are not subject to taking instructions from superiors in discharging their judicial functions. Therefore, self-correction is the course open to them for which they must get feed back on performance. Reputation in public and in Bar Associations is a good indicator of judicial performance but it cannot be measured or analyzed objectively as a learning tool.

Performance evaluation is a pro-active tool for judicial reform. For this, clear goals have to be set for judges to pursue. These goals are then translated into performance indicators. The conventional parameters are physical disposals based on minimum units or quota of work to be done every month. Qualitative parameters like quality of decisions, compliance with norms and ethics, knowledge of

court craft and law are seldom measured in performance assessment. There is need to link performance with policy outcomes in terms of constitutional goals and values. In 2005, efforts will be made to evolve such norms and procedures so that the undeserving will not get rewarded and the deserving will not be left out.

4. Management of litigation explosion and delay by modernizing court procedures and induction of computers and Information Technology

Management is the art and science of utilizing resources to achieve goals with minimum friction and waste. In the case of judiciary, it is avoidance of excessive delay and cost of litigation as well as retaining public confidence in the fairness of the system. Once the size and complexion of litigation is known and the inventory of resources made, management involves adoption of a set of strategies (like setting targets and priorities, classification and allotment of work based on expertise and infrastructure facilities, multiple tracks for processing cases based on needs, monitoring case flow and making corrections, delegating and manpower planning etc.) and mobilisation of the workforce to implement them with diligence and promptness. It breaks down to manpower (personnel) management,

resources (financial and material) management and accountability/performance management. Personnel management involves not only the subordinate judges and ministerial staff of courts but also the large number of litigants, victims and witnesses as well as the inevitable army of advocates, good, bad and indifferent.

Creating a work culture conducive to efficiency and an environment promotive of higher productivity is part of the management effort. In this regard, administration has to address delay inducing factors at the local level as part of the strategic plan. Giving a face-lift to Court premises and ensuring supply of minimum support services uninterruptedly are part of the Action Plan for 2005. Introduction of IT and networking through computers which are now underway throughout the country has to be speeded up during 2005 under the supervision of an empowered Committee which will arrange to prepare and execute a phased programme of efficient implementation. Training on the use of new technology for everyone involved in judicial administration is to be fully accomplished during 2005 under the programme. Cases will be organised in three tracks – Fast Track, Middle Track, and Slow Track. Through a computerized system, as cases get disposed in Fast Track, those from the other

two levels are moved up automatically for disposal.

The Registrar Generals took note of the computerized system now functioning in the Supreme Court, in Delhi, Karnataka and few other High Court jurisdictions and learnt lessons on how the transition could be managed more efficiently in their respective States. The Year of Excellence is expected to make a difference in this regard in all High Courts as the programme is now widely accepted and resources are now easily available.

5. Goal-oriented budget preparation and result-oriented financial management

Conventional style of budget preparation based on small additions to previous year's budget does not enable the Government to appreciate the minimum needs of the judiciary and the genuine efforts being made to give the best of services to the litigant public. Judiciary is now recognized as part of planned development though the allocation is still less than one per cent of plan expenditure. The Government is also not fully aware of the huge income to Government that administration of justice generates by way of court fees, unclaimed decree amounts, fines etc. The judicial budget should make explicit how much Governments are actually spending in real terms on administration of justice, the most

primary function of the State. If the budget can indicate how the enormous arrears of 2.5 crore cases can be reduced by a small increase in allocation, Government will hesitate refusing that as it results in direct benefit to the people generally and to the litigant public (of which governments are the major constituents) in particular. In other words, judicial budget should not just be confined to figures and numbers, but should identify problems in financial terms and offer solutions in terms of services to the public. Government and people should realize how little Judiciary is getting as compared to many other less important departments and agencies of government. We need an output-oriented budget for judiciary.

The Registrar Generals were apologetic of large sums of unspent money sanctioned in the budget but surrendered at the end of the year. This includes money sanctioned by way of development grants for special courts, buildings and equipments. This is indicative of poor financial management which will be avoided in the Year of Excellence.

Litigants' money with Court should also be kept in interest-earning deposits so that when it is finally returned they will get their legitimate dues with interest. In this regard, it was proposed that there can be a special head in the budget estimates titled "Arrears

Reduction Schemes" which may carry expenditure on expert committees, research studies engaging professionals, litigant amenities, rent of buildings and support services etc.

6. Process Service, Record Keeping, Certified Copy Supply Unit and Registry to be revamped to make them litigant-friendly and efficient

Registry can be vastly improved by computerization, development of networks and modified proforma for electronic data entry and automated scrutiny, numbering based on judicious classification and distribution through pre-determined norms. This is now happening in several places and it needs to be strengthened during 2005.

Service of processes including summons and notices is another point of delay, corruption and confusion. In some courts, it is now being done partly electronically and partly through private courier service. The provisions of the amended C.P.C. should be fully utilized to make the service processing unit efficient and litigant friendly.

Supply of certified copies and maintenance of records have to be similarly streamlined and organized with the help of technology on priority basis.

7. Legal Aid, Alternate Dispute Resolution Systems

and Court annexed Mediated Settlements

Though Lok Adalats have been a resounding success in most States, there have not been studies on improving and institutionalizing the technology involved. There are allegations that the decisions are imposed and the parties not given much of a choice with the result many settlements are re-opened. During 2005, panels of trained mediators will be developed in every city, pre-trial settlements will be encouraged and courts will be directed to devote half a day every week for settlement work. Government litigation will be settled by encouraging department heads to negotiate and settle.

All ten year old civil cases, five year old criminal cases and three year old writ petitions and writ appeals will be eliminated from court dockets through out the country during the year 2005 for which the system will be geared, targets fixed and resources distributed. Most of the resources of the Legal Services Authority will be devoted towards this goal.

8. Justice to Women, Children, Tribals, Dalits, Disabled and Elderly

During the Year of Excellence, every High Court will take steps to give priority attention to streamline and improve access to justice for disadvantaged sections of society for whom the

Constitution and the laws provide for affirmative action and protective discrimination policies. The High Courts will persuade the State Governments to set up more Juvenile Justice Boards and

Family Courts. Courts will take up litigations involving the disabled and the elderly on priority basis and provide the basic amenities for them in Court complexes. Judges will take a pro-active and

litigant friendly approach while dealing with women, children, the elderly and the disabled.

JUSTICE R.C. LAHOTI, PREAMBLE: THE SPIRIT AND BACKBONE OF THE CONSTITUTION OF INDIA 114 (2004).

"Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a judge must be a man of high integrity, honesty and is required to have moral vigor, ethical firmness and be impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process. . . . It is, therefore, a basic requirement that a judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than that expected of a layman and also higher than that expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the judge can ill-afford to seek shelter from the fallen standards in the society."

National Judicial Academy Training Calendar 2005-2006

Course No.	TITLE OF THE PROPOSED PROGRAMME	TENTATIVE DATES	PARTICIPATION
NJA - T017	Training the Trainers' Programme on Gender Justice Issues: "Social Context Judging" for Promoting Equality	15-17, July 2005	Director of State Judicial Academy and one member of the Faculty of the Academy, preferably a lady judicial officer
NJA - T018	Advanced Course on Criminal Justice Administration	24-30, July 2005	Two District & Session Judges from larger States and one from smaller States
NJA - T019	Workshop on Computerization and E -Governance in Judiciary	5-9, August 2005	From each High Court a Registrar (in-charge of computerization) and one District Judge involved in computerization of the Judiciary.
NJA - T020	Advanced Course on the Role of Subordinate Judiciary in Human Rights Protection of Weaker Sections of the Society	26-30, August 2005	Trial Court Judges on the Criminal side - one from each State
NJA - T021	Refresher Course on Family Courts & Settlement of Family Disputes	2-7, September 2005	Two Judges from each State Presiding over Family/Matrimonial Courts only
NJA - T022	Advanced Course on Environmental Law Adjudication	25-29, September 2005	Two Judicial Officers from each State
NJA - T023	Refresher Course on Forensic Sciences and Administration of Justice	6-10, October 2005	One District & Session Judge and one CJM from each High Court
NJA - T024	Refresher Course on Juvenile Justice & Child Care Services	14-17, October 2005	Presiding Officers of Juvenile Justice Boards
NJA - T025	Sensitization Course on Justice to the Disabled & Prevention of Atrocities against the Dalits	4-8, November 2005	Two CJMs from each State
NJA - T026	Refresher Course on Statutory Interpretation with Reference to Standards of Reasonableness, Public Order and Morality, Equality before Law etc.	11-15, November 2005	One Senior Judicial Officer from each State
NJA - T027	Refresher Course on Administrative Justice & Adjudication	1-5, December 2005	Senior District Judges eligible for promotion to High Court
NJA - T028	Symposium on Water and Energy Law: Issues in Management & Adjudication	8-12, December 2005	Two Judges from each High Court
NJA - T029	Refresher Course on Labour Law & Adjudication	27-31, December 2005	Labour Court Judges - two from each State

NJA - T030	Workshop on Cyber Laws and Cyber Forensics	6–10, January 2006	Two CJMs or Sessions Judges from each State
NJA - T031	Advanced Course on Civil Justice & Adjudication	27–31, January 2006	Two District Judges from each State
NJA - T032	Refresher Course on Intellectual Property Rights Adjudication and New Patent Regime	3 – 5, February 2006	Two Judges from each High Court
NJA - T033	Symposium on the Economic Analysis of Law	10–12, February 2006	Judges of the High Court
NJA - T034	Advanced Course on Court Management and Judicial Administration	24–28, February 2006	Registrars: Two from large High Courts and one each from smaller High Courts
NJA - T035	Refresher Course on Application of Strict, Absolute and Vicarious Liability in Administration of Justice	3–7, March 2006	Two Senior Judicial Officers from each State
NJA - T036	Workshop on Training the Trainers	15–20, March 2006	Two Faculty members of State Judicial Academies
NJA - T037	Orientation Course on Tribal Customs, Laws & Dispute Settlement Processes: Role of Formal Legal System	25–29, March 2006	Two Senior Judicial Officers from each State who have had some exposure to issues affecting the tribal population
NJA - T038	Workshop on Mediation, Conciliation, Arbitration and Negotiated Settlement of Disputes	7–12, April 2006	Two Senior Judicial Officers from each State
NJA - T039	Advanced Course on Economic Crimes	21- 23, April 2006	Presiding Judges of Courts meant for trial of Economic Offences
NJA - T040	Refresher Course on Court and Media Relations	4–7, May 2006	Registrars, District Judges, Protocol Officers of the Courts – one from each State

NOTE:

NJA may arrange more programmes outside this Calendar which will be independently notified. All nominations for Courses during the entire year are supposed to reach NJA from the High Courts on or before the commencement of the Calendar Year, i.e., 1st July 2005.

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Second International Conference on the Training of the Judiciary: A Report

Prof. (Dr.) N.R. Madhava Menon
Director, NJA

The Second International Conference of International Organization for Judicial Training [IOJT] held in Ottawa, Canada between 31st October and 5th November, 2004 was attended by nearly 300 representatives (mostly judges) from 88 countries associated with judicial training. It was sponsored jointly by the IOJT with headquarters in Jerusalem (a former Israeli Supreme Court Judge is the Chairman) and the National Judicial Institute of Canada. Besides, the Director of the National Judicial Academy, the following persons from India attended the Conference: (i) Hon'ble Ms. Justice Ruma Pal, Judge, Supreme Court of India (ii) Hon'ble Mr. Justice Samarash Bannerjea, Chairman, West Bengal Legal Services Authority; (iii) Ms. Anuradha Kapoor and Ms. Naina Kapoor representing "SWAYAM" and "SAKSHI", two NGOs working on gender justice issues.

Structure and Scope

The main Conference which was spread over four days (31st October - 3rd November) began with a "Knowledge Fair" where judicial training organizations from amongst many of the participating countries displayed and demonstrated their activities, publications and educational materials. The National Judicial Academy also had a corner at the Fair which enabled it to project its

training and research activities as well as its publications. From the enquiries received by the Director, it appears that many delegations were keen to know more about the NJA programmes for future collaboration. Among such countries are Uzbekistan, Ghana, Nepal, Sri Lanka and Pakistan.

Another activity simultaneously held on the first day of the Conference, to which the Director, NJA was invited, was a special group meeting of a dozen delegates from the Commonwealth countries discussing the development of a "Delay Reduction Project" sponsored by the Commonwealth Judicial Education Institute [CJEI] with headquarters in Halifax, Canada. Judge Sandra Oxner, Chairperson, CJEI, who has been a Consultant to the ADB Project in Delhi and one familiar with the problems of delay and arrears in Indian Courts, presided over this session.

CJEI is active in judicial training in several Commonwealth Countries and partnership with this Commonwealth-wide judicial training organization is an outcome of the Director's participation in the Ottawa Conference. This partnership can be strengthened and streamlined with the NJA all set to host the CJEI Biennial Meeting in March, 2005. The topic "delay reduction in courts" and the experience of Commonwealth countries in this

regard will be helpful in planning and policy development.

The Theme and Issues of the Ottawa Conference

"Judicial Education in a World of Challenge and Change," was the main theme of the Conference. This was broken up into about twenty sub-themes discussed in as many workshops and six plenary sessions. As many as seventy-six speakers made their presentations in these sessions. The Director, NJA was one of the three main speakers in the session devoted to discussion of issues on "Creating and Sustaining a Successful Training Centre with Limited Resources." The moderator of the session was Dr. Russel Wheeler, Director of the Federal Judicial Centre, Washington D.C.

A look at the range and variety of issues discussed in the twenty workshops spread over three days gives one an idea of the focus and intensity of judicial education issues addressed by the trainers from around the world. They are as follows:

1. Getting Started: Creating and Sustaining a Successful Training Centre with Limited Resources.
2. Assessing Educational Needs and Designing a Curriculum to deal with them.
3. Faculty Development and Training.
4. Evaluating Judicial Education: What can and

- should be measured?
5. Support to the Judicial Curriculum: Mentoring and Learning Plans.
 6. Ethical Issues in the Design and Delivery of Judicial Education.
 7. Education and the Judicial Career – Training of Newly Appointed Judges.
 8. The Potential and Limitations of Distance Education.
 9. Future of Technology in Judicial Education.
 10. Developing and Maintaining a Secure Judicial Network.
 11. The Craft of Judging: Identifying and Teaching Judicial Skills.
 12. Developing an Effective Skills-based Course.
 13. Judicial Dispute Resolution and Case Management.
 14. Receiving and Weighing Scientific Evidence.
 15. Teaching Diversity Issues.
 16. Teaching Judicial Ethics.
 17. Educating Court-related Justice System Professionals.
 18. Judicial Education as a Support to Independence and Reform.
 19. Judges as Unique Adult Learners: Applying the Principles of Adult Learning to the Training of Trainers.
 20. Course Design and Delivery using Technology for Instructor-led Programmes.
- On each of the above

topics, there were two to three presenters giving their experiences in judicial education and recommending steps to be evolved to improve the quality of instruction in training programmes. Over five hundred pages of reading materials were circulated on which power point presentations were made by the speakers. It was indeed an intellectual treat for everyone involved in judicial education. Issues were similar and challenges appeared to be many and complex. One thing became obvious that there is no perfect model available anywhere and every country is involved during the last fifteen to twenty years to develop suitable arrangements for judicial education at all levels. In this process, there is lot to be gained by looking at one another's experience particularly for those who are embarking on judicial education only in recent times.

In this regard, all the eighty-eight countries which were represented at the Conference can be grouped into three categories, namely (a) countries which already have established judicial education centres with varying types of programmes and different levels of accomplishments (about ten to fifteen per cent of countries present at the Conference were in this category); (b) countries which have started the Academies and are in the process of taking them to higher levels of

sophistication (another forty to fifty per cent of countries at the Conference including India belonged to this category); (c) the rest were countries which are wanting to establish judicial training centres and are seeking out plans, programmes and assistance from the first and second categories. The Conference in this regard has been a wonderful experience coming at an opportune moment for the last two categories. NJA is now fairly known in judicial circles abroad and after participation in this Conference; it will be relatively easy to establish academic and professional exchanges for mutual advantage with many judicial training institutions abroad.

One thing was quite revealing. Judiciary every where now acknowledge the need for education and training. They appreciate that it alone can help improve efficiency of the system and quality of the justice it dispenses. At the same time, it finds that the demands of judicial independence necessitate careful planning and control of the education delivery mechanisms. In other words, judicial education must remain with the judiciary while it brings in other experts to give inputs in the curriculum and training methodologies. There is no better way to achieve this goal excepting through partnerships and exchanges with other judicial training institutions even

if they belong to different traditions and systems of law. A certain percentage of the judicial budget has to be allocated to judicial education and the system should be closely monitored to bring in improvements on a continuing basis. In this process, technology generally and information technology in particular has an important role to play and no judicial system can afford to delay adoption of technological tools for judicial education and reform.

Membership of the International Organization for Judicial Training

The IOJT which organized the Conference invited the judicial training institutions present at the meeting to become members and continue to avail of its varied services for development of training capacities. There is no membership fee and the Statutes of IOJT have aims and activities similar to those of the NJA. Developing partnerships and academic collaboration with judicial training centers is part of the objective of NJA. Assuming that the Governing Council will approve the membership, the Director submitted the application for membership of IOJT which was not only accepted forthwith by the Executive Committee of IOJT but it also invited the Director to be a member of the Board of Governors of the organization representing the Asian region. It

is open to the Chairman, NJA to depute anyone of his choice to represent NJA in the Board of Governors of IOJT. This association with IOJT which is the only premier global body of judicial trainers will be professionally helpful to NJA in acquiring faculty assistance, library materials and course designs for its training programmes.

Symposium on Social Context Education for Judges

An additional attraction for judicial trainers attending the Ottawa Conference was a two-day symposium, on what is termed as "social context education for judges," held between 4th and 5th November, at the same venue. By "social context," the organizers meant to convey education related to equality, human rights and diversity (pluralism). It is a relatively new and bit controversial subject in the judicial education curriculum. It assumes that judicial decision making warrants social context (equality-equity) inputs and, as such, constitutes a legitimate part of the educational agenda. It summarises the experiences of a social context in judicial education project implemented by the National Judicial Institute of Canada in several countries and illustrates how engaging the judiciary with constitutional, legislative and international human rights law and best

practices on them secure true judicial independence and achieve reform towards equal justice delivery. It is essentially knowledge of social reality acquired through methods not ordinarily available in training curricula for judges.

The symposium consisted of a series of short presentations on concepts and designs followed by a number of workshops on several themes related to social context education for judges. The workshops focused on the following themes relevant to the judicial role and functions:

- (1) Judicial Education and Gender Equality: Women, Judges and Human Rights Law.
- (2) Judges as Problem Solvers: The Role of Inter-Disciplinary Learning and Multi-Disciplinary Court Processes.
- (3) Legal and Social Upheavals: Building Capacity to Respond to Major Social Crises.
- (4) Disability and Law: Rethinking Paradigms.
- (5) Crafting Judicial Education to Address Sexual Offences.
- (6) Social Context and Judicial Decision-Making Processes: Social Cognition Research, Diversity and Judicial Reasoning.
- (7) Indigenous People, Customary Law and Judicial Education.

(8) Enhancing Judicial Skills in Cases Involving Domestic Violence.

Based on empirical data of what is happening in courts involving people with disabilities or non-mainstream litigation issues, these workshops interrogated existing practices and provided possible options to judges to interpret and apply law creatively to advance equal justice or to respond to unusual situations involving multi-disciplinary processes. It is value addition to judges' knowledge and skills enhancing capacities to resolve problems in a human rights-friendly manner. In plural societies working with colonial legal systems and modern democratic constitutional value systems, Judges do face situations where precedents are either absent or dysfunctional of human rights guarantees. Social context education is intended to supply creative thoughts and effective instruments to discharge judicial functions in such

situations so that public confidence in rule of law and judicial independence are cherished while advancing the cause of justice and equality.

The idea indeed is noble and the strategy worthwhile adopting provided the job of training is done with care and caution by social scientists in association with experienced judges. It is not so much on the need where differences exist but the method and the persons by whom the instruction is to be imparted. Canadian judges, barring a few, seem to have endorsed the idea and made social context education part of judicial curriculum in Canada. They have trained the trainers accordingly and encouraged judges to adopt what they call "contextual judging."

While in some indirect ways social context instruction is part of judicial training already, it is desirable to have a fresh look at the need, identify the priority areas, develop appropriate designs, modules and

instructional methods to enrich the curriculum particularly of continuing education courses. While it may be avoided or introduced in smaller doses in induction training for newly recruited judges, social context education may be introduced for judges in service after experimenting and receiving feed back on its impact.

Concluding Observations

Personally speaking the deliberations at the six-day conference was quite revealing and rewarding in the art and science of judicial education and training. There are so many experiments under way in different countries and judicial budgets accommodate them. NJA has miles and miles to go for which a core team of educators have to be prepared soon.

Director, NJA would like to record his grateful thanks to the Governing Council which deputed him for this unique meeting of judges and judicial educators.

Tarak Singh v. Jyoti Basu, JT 2004 (10) SC 606, 614.

H.K. Sema, J. "It must be grasped that judicial discipline is self discipline. The responsibility is self responsibility. Judicial discipline is an inbuilt mechanism inherent in the system itself. Because of the position that we occupied and the enormous power we wield, no other authority can impose a discipline on us. All the more reason why Judges should exercise self discipline of high standards. The character of a Judge is being tested by the power he wields. Abraham Lincoln once said, "Nearly all men can stand adversity, but if you want to test a man's character give him power." Justice delivery system like any other system in every walk of life will fail and crumble down, in the absence of integrity."

Role of Judiciary in IPR Development and Adjudication*

Md. Arifuddin Ahmed
Research Fellow, NJA

The Academy with support from the Ministry of Human Resource Development, Government of India organized a Round Table of the Judges of the Superior Courts in the country to examine the role of the judicial system in adjudicating the rights and obligations of competing interest groups in an IPR regime.

FICCI's National Initiative against Piracy and Counterfeiting also provided inputs to the Round Table. The Academy prepared and circulated three volumes of background material for prior study which was sent to the participant judges. Thirty-four High Court Judges representing the twenty-one High Courts of India and two Judges each from Maldives and Nepal participated in the Round Table which was inaugurated by Hon'ble Mr. Justice R.C. Lahoti, Chief Justice of India. Hon'ble Mr. Justice N. Santosh Hegde, Judge, Supreme Court of India and as many as fourteen faculty members including one judge each from U.K. and Thailand, articulated their views on IPR issues.

Objectives

The Round table had the following as its goals:

1. To know the magnitude and consequences of piracy of knowledge products and the challenges which they pose to the legal and judicial

system

2. To understand the present status of IPR regime from a national and international perspective and to appreciate its strength and weaknesses
3. To learn strategies and techniques employed by different jurisdictions including Indian Courts to resolve IPR disputes, particularly in respect of copyright matters in relation to film, music and software industry
4. To interrogate current practices with a view to develop necessary attitudes and skills conducive to promotion of IPR development in the new Indian Economy.

Issues and Concerns:

IPR adjudication in India, particularly, in copyright matters exhibits a conflict between national interest and our international obligations. Resolving this incongruity is not merely within the province of law but it involves other disciplines like Economics and International Relations too. Better adjudication can be achieved only when these combinations are acknowledged and properly appreciated.

The exchange of ideas and knowledge and sharing of interests in many kinds has for long been

part of scholarship. New technology now enables this part of knowledge and ideas to be an "Industrial Property," as it supplies the need for informational, educational and entertainment material which is generated upon the expectation of market return. Therefore, IPR regime in general and copyright in particular is often violated causing incalculable damage to trade and industry.

In the last few decades, the entertainment and software industry has achieved a prominent position in the Indian economy. These two industries are direct sufferers of any violation or infringement of copyright laws and treaties. Strict adherence of these laws and treaties make them the immediate beneficiaries. Piracy and counterfeiting are two menaces which require urgent attention. Indian judiciary is the ultimate guarantor of these rights; hence, it has a special role to play in protection and enforcement of these rights.

Throughout the deliberations, the focus was on the following issues:

1. Are there any lacunae in the existing laws and any overlapping of rights of which pirates take undue advantage in IPR adjudication?
2. Whether globalization of IPR standards discriminates in favour of developed and rich

* Held at NJA from 1st-3rd July, 2004.

countries? Does the TRIPs agreement run counter to the interests of the developing world?

3. What are the issues in contemporary IPR debate regarding protection of copyright in – “online publications”; “formal hyper linking”; and “bio-piracy”?
4. What are the enforcement mechanisms available in the present legal framework? Are they adequate enough to curb piracy and infringement?
5. Is there any need to enhance penalties and is there any need for specialized courts for IPR adjudication?
6. How has technology brought about challenges to the IPR legal regime and how does it facilitate infringement? If so how to avoid the same?
7. Whether software should or should not be an item for patentability?
8. Is Copyright the right form of protection for computer software?
9. What are the advantages and disadvantages of using “open source access” and “proprietary source access”?
10. How piracy is affecting the film and music industries and how is it to be curbed?
11. What are the copyright issues in broadcasting and cable network?

Deliberations and Outcome

In analysing the above

identified issues, the experts focused not only on the legal issues, but the deliberations touched upon technical as well as areas like international relations.

One of the experts opined that the global IPR regime though not pro-developing country, one cannot wish away the TRIPS Agreement. Globalization of IPR standards discriminates against the interests of the developing countries; rich countries generate and poor countries consume. The major thrust for internationalizing IPR laws has been given by the MNCs, even though the IPRs are not natural rights but are statutory rights. “MNCs have naturalized this right and have used the WTO to protect what they have defined as their “rights” as “owners of intellectual property.” Since most innovations are not in public domain and for international trade, TRIPS seeks to enforce the rights of the MNCs to monopolize all products, distribution and profits at the cost of citizens and small producers’ world wide, especially in third world countries.”

Experts representing the film and music industry furnished data to establish that the music industry has been losing over Rs.300 crores over last eighteen months. This problem cannot be tackled unless legal loopholes are tightened and the administrative machinery is made more accountable. In addition to this, a pro-active judicial approach is the

need of the hour.

Piracy results in huge revenue losses to the software industry and therefore one of the experts identified three ways to curb it - “Technological sandwich”, WIPO technical tools and legal remedies, including civil and criminal. There is also a need for more stringent penalties on “commercial” infringement. A specialized court for efficient adjudication of the matter was also mooted and the Judge from Thailand demonstrated a model - “The Central IP & IT Court” - its constitution and functions.

The development of technology has revolutionized the existing IPR regime and has posed various challenges. One negative aspect is that it facilitates infringement. The major challenges which are thrown up are - Jurisdiction over internet, Domain name dispute, Civil Proceedings and Investigation hurdles. To mitigate these problems, reference was made to model foreign laws like the Digital Millennium Copyright Act, 1998 and the European Copy Right Directives, 2001. Fundamental questions being debated by the Joint Parliamentary Committee on IPR were also discussed in the Round Table.

In respect of IPR protection of software, a technical expert pointed out to the recommendations of the U.K. Commission on IPR which can be adopted to

the Indian context. However, this could lead to yet another debate on "open source access" and "proprietary source access".

Copyright issues of broadcasters and cable operators were specifically discussed because they violate through -

piracy of new films, remixes of old songs, telecast of pirated CDs and VCDs etc. The concerned expert was of the opinion that greater transparency and information sharing in negotiations between players in the broadcasting, cable, film and music industries can lead

to better discipline and reduction of violation. A shift towards compulsory licensing arrangements through judicial consensus could provide more effective and realistic regulatory environment which is likely to lead to better compliance and more certainty.

M. Krishna Swami v. Union of India, (1992) 4 SCC 605, 650.

J.S. Verma, J. "To keep the stream of justice clean and pure, the judge must be endowed with sterling character, impeccable integrity and upright behaviour. Erosion thereof would undermine the efficacy of the rule of law and the working of the Constitution itself. The Judges of higher echelons, therefore, should not be mere men of clay with all the frailties and foibles, human failings and weak character which may be found in those in other walks of life. The judges of higher judiciary should be men of fighting faith with tough fibre not susceptible to any pressure, economic, political or any sort. The actual as well as the apparent independence of judiciary would be transparent only when the office holders endow those qualities which would operate as impregnable fortress against surreptitious attempts to undermine the independence of the judiciary. In short the behaviour of the Judge is the bastion for the people to reap the fruits of the democracy, liberty and justice and the antithesis rocks the bottom of the rule of law"

Refresher Course on Matrimonial Litigation & Gender Justice: Role of Family Courts*

Lekshmi Vijayabalan
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In spite of the constitutional mandates and the statutory guarantees, women rarely get adequate protection in court rooms and are unduly discriminated against due to substantive and procedural infirmities in the law. In delivery of equality based justice, as the primary judiciary forms the crucial stage, the Academy chose to undertake this Refresher Programme to sensitize the Presiding Officers of various Family and Matrimonial Courts towards the cause of gender justice.

The Course had the following as its specific objects:

- To identify specific instances of gender bias while adjudicating family matters
- To understand and apply the constitutional promise in the light of the historical developments in the gender justice movement, International Covenants, enactment of laws, judicial interpretations, and executive implementation
- To enable the judges to appreciate the spirit of the Family Courts Act, 1984 [hereinafter FC Act, 1984] and to apply the same to ensure efficient dispensation of gender justice
- To identify and facilitate effective interventions to prevent discrimination

against women in family and matrimonial court proceedings

- To develop gender neutral attitudes and skills amongst the judicial officers to deal sensitively with critical issues concerning women

Constitution & Gender Justice Administration

To highlight the need and importance of social context judging, which necessarily implies adherence to constitutional values, a session was devoted exclusively to understand and appreciate the same in gender justice adjudication. What is equality under the Constitution? What should courts do to ensure equality between the sexes? What does dignity mean in the context of gender? These were some of the questions which emerged during the discussion which attempted at a reality check of the post-colonial constitutional developments vis-à-vis gender justice.

It was pointed out that while interpreting the constitutional document, judges are to travel beyond the written text and look into the social, political and economic realities, the underlying norms and values and more importantly, the human rights philosophy if gender equity is to become a reality.

The unanimous opinion which emerged while highlighting the conflict between the inherently

unequal personal laws and the Constitution was that if Constitutional Law failed to pierce into the realm of personal law, gender justice would be the casualty. Therefore, it was urged that the Uniform Civil Code be treated as a priority item for women's empowerment.

Analysing the approach adopted by the superior judiciary in effectuating the constitutional guarantees, reference was made to *Vishaka*. It was noted that the case revealed application of novel interpretative techniques whereby the slender thread of Article 19 (1) (g) was used effectively to hold that every incident of sexual harassment at the workplace results in violation of woman's rights. At the same time, *Nergesh Meerza*, *Mary Roy*, *Gita Hariharan*, *Rupan Bajaj* and *SAKSHI* where highlighted to illustrate that the march of the law was inconsistent. In *Danial Latifi*, the Muslim Women (Protection of Rights on Divorce) Act, 1986 was interpreted as satisfying the object of Section 125 Cr.P.C. However, this position was commented upon as being untenable and impractical and accordingly, it was agreed by all that this socialistic and summary remedy under the Cr.P.C. should continue in emergency situations as a simultaneous remedy.

The survey of the case laws illustrated that the feminist jurisprudence as evolved by the

* Held at NJA from 27th-31st August, 2004.

Courts have come a long way to recognise women from being mere sexual objects to active participants in the public life of the nation entitled to live and work with dignity. Even though the judicial process was characterised as being pragmatic and in the right direction, it was thought as lacking punch to break the current stereotype societal constructs which treat women as unequal and subservient. However, with the emergence of organised crimes like trafficking in women and children linked to commercial gain, critical jurisprudential issues are being posed; the same warranting more judicial dynamism to guarantee gender sensitivity and justice. Accordingly, the participants were called upon to juxtapose gender fairness as guaranteed by the Constitution on the seemingly innocuous statutory framework while adjudicating issues with a feminine tinge. Mention was made of the fact that a socially sensitive judge is far more efficient than any legal provision. However, as human beings, judges are subjective. In appreciating this element, the socio-cultural context, his values etc. assumes great importance. Justice delivery requires humanness or else computers could do the job. The onus on the judges to achieve egalitarianism is greater in an inherently unequal and deeply patriarchal society like ours. Therefore, judges while fulfilling constitutional mandates

would have to mould the framework in a manner which is sensitive and responsive to gender justice.

Women's Movement & Matrimonial Disputes

The close linkage between social movements and judicial action was also stressed upon. Successful legal and judicial changes can be brought forth by women's movements working in tandem with the judiciary and in this context, the *Mathura Rape case* was pointed out as a classical example wherein the women's movement, Parliament and the Court influenced each other rather strongly to effectuate far reaching changes in our anti-rape law. Women's organisations taking recourse to the liberalised locus standi rule have undertaken the campaign for law reform with respect to dowry prohibition, sati prevention, and shift of focus from violence in the public sphere to violence in the home, thereby vindicating women's rights. Dispensation of gender justice therefore requires a new species of judges appreciative of women's movements.

Role of International Instruments vis-à-vis Municipal Gender Jurisprudence

Several interesting issues surfaced regarding the enforceability of International Law to further gender justice in the municipal law context. Can International Human Rights instruments be enforced by filing

a writ? Is legislation necessary for applying CEDAW to Indian Law or does it have automatic application? In this regard, reference was made to the celebrated *Vishaka* wherein it was held that enforcement of such treaties depends upon the legislature and that the judiciary could intervene to enforce the instrument only when there was a legislative vacuum provided there is no conflict between the existing law and the Conventions.

Another major issue which was highlighted was the abandonment of wives by non-resident Indian husbands. By one estimate, in Rajasthan alone, there were about ten thousand girls abandoned in this manner, with or without a formal divorce. Such women are primarily denied access to justice due to economic reasons. The need for greater judicial activism in order to provide succour to such women was stressed upon.

Family Courts Act, 1984, Rules and their Performance

One of the primary points to emerge was that in a few States like Goa, Himachal Pradesh, Uttaranchal and Delhi, establishment of the Family Courts were yet to be notified and that in these States, it was mostly the District & Sessions Court Judges who sat to adjudicate upon disputes involving family matters. Critical issues relating to both substantive and procedural matters governing the FCs were

also elaborately discussed. Issues like injunction, maintenance, guardianship and custody as well as ADR application to FCs adjudication, support services in the FCs including counsellors received special attention.

Qualifications of a Family Court Judge

Should the Presiding Officer have expertise in conciliation? Is an unmarried person qualified to preside over a Family Court? Can Judges who abuse/exploit children or who are discourteous towards women be disqualified as Family Court Judges? Is there any rationale in setting the retirement age of the FC Judge to be 62 years? etc. were some of the issues which were raised. A section of the participants even mooted the initiation of a PIL to rectify some of these lacunae. The need for an All India Cadre of Family Court Judges was also stressed upon. A multidisciplinary approach to familial disputes by the FC judges was considered as essential to the success of the institution.

Powers of the FCs

FCs are generally not viewed with much respect as it has no power to adjudicate upon rape or other criminal issues relating to women. An interesting example from Tamil Nadu, was brought to notice wherein, in addition to the Family Courts, there are "Mahila Courts" which adjudicate upon criminal offences

against women. The group also admitted to the handicaps which it has had to face while enforcing its decrees and stressed upon the need for more powers for actively giving matrimonial remedies.

Conciliation

The picture which emerged with regard to the adoption of conciliation techniques in matrimonial proceedings was dismal. A major lacuna pointed out was that, the Act does not take stock of the many issues which come to play during conciliation. Accordingly, it was recommended that the assistance of different professionals be utilised by FCs.

Pendency

Pendency of litigation plaguing the justice delivery system in the FCs throughout the country is typified by the Allahabad Family Court experience where nearly 5,500 cases are pending with 150 cases being listed daily and thirty listed for evidence. Amongst the various factors arrayed, the first and foremost was that under the FC Act, 1984, FCs are to be set up only if the population of the area is greater than one million. This it was pointed out required change - Family Courts were to be notified for every district. Further, undue centralisation of judicial functions, absence of the jury system and lack of public participation has complicated matters. It was felt by most that it was high time to implement the concept of Gram

Nyayalaya as envisaged by the 142nd Law Commission Report. An interesting example from Gujarat was also highlighted wherein legal mobile vans, comprising of retired judges and retired practitioners doing pre-litigation programmes, have been pressed into service to combat pendency.

The workload of a Family Court Judge in a month is assessed on the basis of a "unit system." For a full judgement in a contested case, six units are given and for settlement cases, the units are two. This quantification poses practical problems for the courts dealing with matrimonial litigation. Therefore, a proposal emerged that the two units for settlement cases be raised to six. The participants were called upon to give their own proforma of FC judgment assessment laying down criteria for a different evaluation technique.

Infrastructure of a FC

For minimising lawyers' intervention, it was recommended that these courts were to be situated far away from civil courts, preferably near the State Women's Commission. All possible care was to be exercised with regard to its ambience for an informal look including an informal dress code for the Presiding Officers.

Procedure

A word of caution was added in that it would be self-destructive if FCs were to be equated with an

ordinary civil court. Family Court Judges were to be empowered to take recourse to innovative steps and risks to further gender justice. Regarding processual justice the following guidelines were advanced. The Judges were to exercise greater court management prudence. In respect of matrimonial proceedings and child custody disputes, it was suggested that the same should ideally be held in camera. In resolving disputes, the ideal method advocated was to convince the parties to resolve the same themselves. Whatever be the law, precedent and advocacy, it was agreed by all that judges had to exercise higher level of humanness in reconciliation proceedings and in child custody disputes.

Right to Legal Representation

It was urged that the lawyers should not to be allowed to interfere at the settlement stage. As an additional safeguard to prevent exploitation of the illiterate litigants, it was observed that the Legal Services Authorities were to identify a panel of socially committed lawyers whose charges are based on a reasonable fee structure. The need to impart special lawyering skills to the lawyers appearing before the FCs was also stressed upon. Interestingly, an opinion emerged that preference for women lawyers in the FCs should also be laid down in the statute.

Role of High Courts

It was also stressed that the High Courts were to exercise a certain amount of circumspection while staying interim awards since there was a strong possibility of affluent husbands abusing the process of the court by resorting to such measures frequently.

Speed and Cost in FCs

Delayed proceedings in FCs and its deleterious effect on children were highlighted. Therefore, the following suggestions for expediting familial justice were forwarded like: Service of summons to be decentralised; the new technology envisaged by the amendments to the CPC to be employed. An independent agency for serving summons and even the possibility of substituted services like publication in news papers were forwarded. Section 9 which speaks of the duty of the FC Judge to make efforts for settlements including the power to constitute *lok nyayalaya*'s or settlements through counsellors, the role of the Legal Services Authority to provide free legal aid for women etc. were also stressed upon.

Right to Matrimonial Home & Maintenance

In granting injunction preventing the wife from entering into the matrimonial home, the wife's interest had to be accorded paramount consideration. Regarding the right of women to maintenance, most felt that Section 125 Cr.P.C. should find uniform application.

Child Custody

In child custody disputes, the dilemmas encountered by the FC judges are manifold. It was observed that in guardianship disputes, no parent can claim an absolute right to the custody of the child. Access depends on the fitness of the parent based on the best interest standard of the child. It was noted that when neither parties are competent, the judge could even explore the possibility for third party adoptions. In this regard, Section 31 of the Juvenile Justice (Care and Protection) Act, 2000 as well as the best interests of the child powers could be relied upon as the deciding factors. It was further urged that execution proceedings in child custody and access could be made simpler by calling the child to the court and handing over its custody.

Evidence and Judgement

The undesirable trend of simultaneous recording of evidence by several persons including the clerks taking place in many Family Courts was deprecated. In spite of the benevolence inherent in Sections 14 and 17, the FC Judges have failed miserably in appreciating the same. All this points out to the need for a change in attitude amongst the Presiding Officers consistent with the provisions of the Family Courts Act.

Support Services in Family Courts

Amongst the States utilising support services, Maharashtra

was rated as having the most effective mechanism in place whereby every judge could utilise the service of full-time counsellors and panel of experts. For a proper appreciation of the role of conciliators, a role play was enacted by some of the participant judges to demonstrate the skills appropriate for the task. Summarising the required skills, it was concluded that the conciliator was to be an informer as well as a resource builder. Not only was he to be impassionate, he was also to be objective, committed, informal and cordial, active and patient listener, employing appropriate language and body gestures through out the process. Further, he was not to be judgemental and was not to suggest solutions. He should facilitate the parties to arrive at mutually acceptable solutions.

Even though it is not mandatory for the counsellor to have a legal background, robust societal consciousness, contextual application of common sense and personal involvement were rated as highly necessary. FCs were also to emphasise on post-adjudication counselling.

Training which was being imparted to the judicial officers with regard to the counselling methods was rated by the participants as being below standards. Therefore, the need to incorporate counselling skills as part of judicial training was stressed upon. The Legal Services

Authorities, National and State Women Commissions, could also offer counselling services. Services of counsellors attached to the Social Welfare Boards as well as psychologists attached to professional colleges could also be utilised. In order to have a highly professionalised programme in place, the participants stressed on the desirability of Rules to be framed for the purpose. A separate Ethics Code for the counsellors, conciliators and mediators was also suggested as the need of the hour.

Gender Justice outside Courts & its Relation to Family Courts

Family Courts have a major task cut ahead - it is to balance justice with welfare to women and promote family unity. To achieve these goals, it was realised that these courts were to encourage and aid litigants to take recourse to settlement mechanisms outside the formal court structure. It was also pointed out that there are a host of other institutions like Lok Adalats, Women's Commission, Social Welfare Boards, Human Rights Commissions, Central, State and Local Level Government Departments, Sexual Harassment Committees, Legislatures, Panchayats, Political Parties, Media, NGOs, Educational Institutions and Professional Bodies like Medical Council of India [MCI], Bar Council of India [BCI] which also

pursue the goal of delivering gender justice. The services afforded by these institutions are also to be tapped resourcefully.

Family Court as a mechanism to settle familial disputes stands midway between legal/formal system and the social/civil society. The philosophy of FCs Act is definitely pro-women. With this perspective, large discretion has been conferred upon the FCs by the legislature to be more flexible while providing wider opportunities for securing gender justice. However on analysis, it seems that the system has failed in achieving its avowed objectives. It was emphasised that instead of clamouring for the establishment of more courts, one has to look at improving the quality of the existing courts. Even though greater decentralisation as well as simplification of the Family Court Rules as applicable to ensure speedy justice can be treated as the desideratum, more importantly, being the kingpin in the justice delivery system, judges as the primary social engineers capable of converting societal will into legal logic have to adopt gender balance and sensitivity as a necessary agenda and initiate steps without waiting for other agencies to act. All tools in the judicial armoury would have to be fully tapped to bring about this societal change and any excess activism in this regard if bonafide is sure to condoned.

Refresher Course on Environmental Law and Adjudication*

Tony George Puthucherril
Research Fellow, NJA

Environmental disputes adjudication is not just an exercise to resolve conflicting claims between the contending parties; rather it is an effort to develop a legal order conducive to social justice, sound ecological management and promotion of sustainable development. This process necessarily involves the use of multiple knowledge and skills from a variety of sciences and traditional knowledge systems which ordinarily, the judges are not acquainted with. Nevertheless, the success of environmental adjudication process depends upon cultivating the right kind of values, attitudes and skills amongst the judicial personnel in respect of natural resources management and the use of preventive jurisprudence in environmental matters.

Under our legal system, environmental jurisprudence stands out as a prime model pointing out to the vitality of judicial process in justice dispensation. Pouring humanistic content into the Directive Principles and the Fundamental Rights, the writ courts have through a catena of cases fashioned out a Fundamental Right to clean and healthy environment. Protection against environmental degradation thus remains no more a mere statutory right. Any infraction thereof

affords a person the right to move the Supreme Court or the High Court to redress the injury. This development has enabled the superior judiciary to meticulously foster an extensive and innovative jurisprudence furthering environmental justice which probably very few judicial systems have adopted. It is in this context that the Academy thought of organising a Refresher Course on Environmental Law and Adjudication for nearly forty District Judges, two representing each state.

The Course had the following as its specific objectives

- Understand problems in ecological management and sustainable development in relation to law and the possible role which the judiciary can play in this effort.
- Analyse the Bhopal gas leak litigation and critically compare the roles played by the superior judiciary and the subordinate judiciary.
- Appreciate the scope of PIL and civil society interventions in matters of ecology and environment.
- Scrutinize the valuable tools evolved in recent years by the Constitutional Courts which have enabled efficient adjudication of environmental disputes, the approaches followed to balance the competing interests of development and ecology, the new liability principles in relation to 'Toxic Torts', applicability of writ remedies in relation to private entities, constitution of Green Benches etc.
- Examine the available civil and criminal remedies in furthering environmental justice.
- Explore the use of ADR in settlement of environmental disputes in natural resources management.

Administration of Environmental Justice

For long, Tort Law had been the primary tool employed to attain environmental justice. Many modern principles like the Polluter Pays, the Principle of Absolute Liability have had their origin in Tort Law. Even though Indian society could have had a reasonable sustainable development scheme by utilising the instrument of Tort Law, the fact remains that tort litigation in our country is relatively limited. Problems relating to evidence, long drawn out litigation and a host of other reasons have generally forced the people out of the lower courts. Matters have reached a situation wherein a sort of fatalistic attitude has crept into the societal psyche wherein many feel

* Held at NJA from 20th-25th September, 2004.

that it is better to put up with the inconvenience rather than being victimised by the system. It is this which has turned away many a victim from approaching the ordinary courts for environmental justice. Moreover, the lack of proper co-ordination between the Pollution Control Boards and the lower judiciary has worsened the situation. All this points out to the need for a total revamp of the judicial system at the subordinate level vis-à-vis administration of environmental justice. Greater public confidence in the existing remedies would have to be built up assiduously by the lower courts.

Bhopal Gas Leak Disaster

To have a proper appreciation of these themes, the discussion centred firstly on "Bhoposhima," often described as the worst industrial accident in history which left in its wake one of the biggest protracted litigations for justice. The disaster which took place on the midnight of 3rd December 1984, took a heavy toll on human life leaving nearly 3,828 dead instantaneously (the unofficial toll is feared to be much higher. By 2003, over 15,000 death claims have been processed). Over 30,000 have been injured on that fateful night, a figure which now stands at 5.5 lakhs. Nearly 2,544 animals were killed. The disaster thus resulted in deprivation of the right to life, the right to health, the

right to clean air and the right to clean water.

An important development in the quest for justice, relates way back to 1989 when the UCC finalised a 'Site Rehabilitation Project' for decontamination of the plant site. NEERI was called upon to undertake the task under the supervision of Arthur D. Little & Co. In its first report (1990) NEERI submitted that there was no contamination of the groundwater in and around the plant site. However, the UCC itself doubted NEERI's conclusions since their internal notes revealed that majority of liquid samples collected from the area contained chemicals in quantities far more than that permitted for inland disposal. NEERI submitted a second report again maintaining that there was no contamination of groundwater and soil around the plant site. In 1999, Greenpeace came out with an independent report on the test of soil and water samples collected in areas around the plant site which confirmed extensive contamination. This led to a fresh class action litigation being filed again in the court of the Southern District, New York by Sajida Bano, Haseena Bi and five other victims directly affected by the contamination and five Bhopal victims groups claiming damages under fifteen counts. Judge Keenan, the Presiding Judge, dismissed the class action claim on the ground that the 1989

settlement covered all future claims. In appeal, the Second Circuit Court of Appeals affirmed in part but remanded the claims on counts nine to fifteen to Judge Keenan. Judge Keenan again dismissed the class action suit on grounds of limitation. Even though the Court of Appeal affirmed in part, it asked Judge Keenan on remand to consider the claims arising out of damage to property and the issue of decontamination of the site by UCC, if the Union of India and the State of Madhya Pradesh had no objection. This led to a hunger strike by the victims which forced the Union of India to submit a memo before Judge Keenan stating that it has no objection to decontamination being undertaken by UCC at its own cost.

Thus, on an analysis of the events, the participants concluded that justice could not be afforded to the victims primarily due to the insensitivity of the system. The manner in which the settlement was thrust upon the victims and the way in which it was justified revealed an utter contempt for the life of an Indian citizen.

Lessons Learnt

- The tragedy exposed the inability of the judicial system to cope with claims arising from the victims of mass disasters.
- Many argued that the

Settlement was total eyewash. The initial compensation lawsuit was filed for US \$3 billion. However, the court imposed settlement stood at mere \$470 million which on an average works out to be Rs. 10,000 per victim, out of which Rs. one lakh was paid in only 80 cases; the remaining 93% were paid Rs. 25,000 and 7% an amount ranging between Rs. 35,000 - Rs. 60,000. The entire compensation was peanuts when one compares the \$5 billion which has been paid as punitive damage by the oil giant Exxon for the Exxon Valdez oil spill in Alaska in 1989. Exxon in fact paid \$940 for cleaning each oil contaminated sea otter and US\$ 40,000 for the rehabilitation of every sea otter. Each sea otter was given a ration of lobsters costing US\$ 500 per day. When calculated this works out to be the same amount paid as one time compensation i.e. Rs. 25,000 (US\$ 500) to 93% of the Bhopal victims. All this proves that life of an Indian citizen is much cheaper than that of a sea otter in America.

- The event highlighted the grave dangers which could ensue due to unregulated

attempts at economic development. The UCC was portrayed as 'a weapon of mass destruction.' Proper impact assessment studies are to be done and the standards scrupulously enforced before setting up of hazardous industries. In this, the lower judiciary which is familiar with the ground realities should keep an effective tab on these hazardous industries.

- A humane, result-oriented decision making process furthering the cause of social justice is expected from the courts in such mass torts. When the Supreme Court and the Union Government worked out an unsatisfactory settlement thereby closing the doors to the victims, the Second Circuit Court of Appeals directed Justice Keenan to look into the liability of the tortfeasor with regard to the cleaning up of the pollutants. All this points out to the need for innovative remedies.
- Appropriate emergency reliefs are also to be moulded in such situations.
- The stress should be more on precaution and prevention.
- Undue procedural formalities and technicalities are to be completely eliminated. Ordinary rules of procedure

cannot be applied in matters of high technology related industrial torts. Dilatory tactics need to be defeated at all costs.

- Institutional re-arrangements are highly necessary to prevent mass torts.
- Basically, as environmental adjudication in disasters involves protection to all life forms including human beings and to the succeeding generations which are yet to be born, imaginative reliefs and remedies are highly necessary. For instance, orders in the nature of continuing mandamus, appointment of amicus curiae, continuous monitoring, and verification of facts through Commissions etc. are to be utilised.
- The legal profession exhibited a total lack of sensitivity. No immediate legal aid was afforded to the victims. This calls for greater sensitisation of the Bar to the effects of such mass disasters. Legal Services Authority should also play an important role in mitigating the impact and in affording justice to the victims of mass disasters.
- Medical and scientific personnel need to be more vigilant to stem the impact of such disasters.

- Bhopal proved to be an eye opener. It was found that the existing remedies which were embodied in the Criminal Law and in the Tort Law could offer no succour. This led to a spurt in legislative activity. A series of enactments came forth from the legislature, the Environment (Protection) Act, 1986 being the most important amongst them.
- Even though Bhopal disaster remains a blot on Indian judicial system, the post-Bhopal Supreme Court has fostered an impressive and innovative jurisprudence on environmental rights, which probably no other jurisdiction could achieve.

Session Outcomes

- It was strongly felt by the participants that the need of the hour was to constitute environmental courts or in lieu of this the District Courts were to be conferred with a limited writ jurisdictional power as far as environmental matters are concerned.
- Development of environmental jurisprudence is not possible by relying on precedents alone. Innovative strategies and techniques have to be adopted.
- Stress was also laid on the need to fashion out time

bound interim reliefs.

Water Resources and Legal Controls

In spite of all the progress which man has achieved, one of the fundamental conditions for human development – universal access to basic water remains unmet. The World Water Development Report has ranked India as low as 13 among 180 countries in terms of water availability and 120 among 122 countries in terms of water quality. A primary reason for this dismal situation is the non-recognition of the importance of water law as an effective water management tool in our country. Accordingly, an entire session was devoted exclusively to acquaint the participants with the issues relating to water management in general and water pollution control in particular.

It was stressed that water management is not about pollution only. It involves deeper and more complex issues as to how one is to manage a scarce resource which is being polluted indiscriminately. Even though, accessibility to potable aqua is part of Article 21 it also involves questions relating to fair distribution of the resource under Article 14.

The current water rights regime formed the subject of a heated discussion. Since water is divided into surface and ground water, in relation to surface water,

the riparian principle has statutory recognition and in respect of ground water, the colonial *ad coleum* still controls the affairs. It was agreed by all that the *ad coleum* was anachronistic and not in tune with the constitutional mandates as it deprived millions access to water.

It is often said that the wars of the future will be fought to control water. In recent times, South India witnessed mini-wars when fracas broke out between Karnataka and Tamil Nadu over Cauvery water sharing. In fact, in our country not a day passes without witnessing some sort of squabble between close neighbourhoods over water sharing. It was in this background that the discussion proceeded to examine the Inter-state Water Disputes Act, 1956 and the recent crisis over the Ravi-Beas water sharing. Strong opinions were expressed as many felt that the only solution to inter-state river water disputes was to nationalise inter-state rivers. This led to a discussion regarding the correct interpretation which could be afforded to the relevant entries regarding water in the Constitution. It was finally realised that the Central Government even under the present power sharing arrangement under the Constitution, has enormous responsibilities which it has not discharged and that no purpose could be achieved by merely

transferring the entries to the Concurrent List.

Session Outcomes

- The techniques adopted in adjudication of conventional civil disputes are inadequate in so far as adjudication of water disputes are concerned as it requires a certain level of technical expertise. More importantly, the presiding officer has always to bear in mind that while adjudicating a water dispute, he is pandering with a basic human right without which life cannot exist on this planet.
- It was strongly felt by all that laws are to be enacted to make rain water harvesting compulsory. The lower judiciary being in constant touch with the common man, it could with the aid of the Legal Services Authorities, launch programmes to spread the message of rain water harvesting.
- Lack of political will was cited as the primary factor leading to frequent disputes between states over water sharing. Greater inter-state coordination was required in this regard and the need to revitalise the moribund River Boards Act, 1956 was also stressed upon.
- Strong Environmental Impact Assessment has to

be done before undertaking gargantuan projects like interlinking of rivers, and the reports of the same must be made public.

- Ground water management needs to be done effectively and as a pre-requisite the *ad coleum* principle is to be abrogated.

Biodiversity & Role of Courts

The primary assets which are to sustain a population of over one billion people and which are to propel the country into the status of a developed nation are natural and human resources. Non-utilization of these would mean that the country would not prosper. Accordingly, strategies aimed at biodiversity conservation and the role of courts in this regard were detailed.

India is a treasure trove of biodiversity. This is evident from the fact that nearly:

- 6% of the world species are found in India
- India is the tenth amongst the plant rich countries of the world &
- Eleventh in terms of endemic species of higher vertebrates
- Out of the twelve biodiversity hotspots, India has two – the North-Eastern regions and the Western Ghats

Unfortunately, due to the lack of a holistic approach to conserve and promote this

diversity, it is in danger of being lost for all times to come. Globally, the number of plant and animal varieties which are facing extinction is simply mind-boggling. Some amount of this destruction can be gauged from the fact that our forest cover which stood at 43% at the time of independence has dwindled to a mere 17%.

The absence of an appropriate legal regime or the inappropriate application of the existing legal regime, has led to the perpetuation of large scale biopiracy with impunity, whereby India stands to be exploited of its biodiversity. The weakness of the Indian patent regime to protect traditional knowledge has added to the existing woes by contributing in a big way to the rampant biopiracy. This is a very serious proposition to be noted by all concerned, particularly the judiciary.

During the discussion on Biotech benefits and IPR regimes, it was pointed out that if awarding patent rights to scientists and the trans-national corporations could be justified on the ground of R&D investment, then why cannot the same yardstick be applied to reward communities who have conserved the traditional knowledge for centuries. In this context, reference was made to the *Arogyapacha* benefit sharing mechanism which was pointed to be an ideal model for benefit sharing with the tribals.

Another interesting aspect discussed related to genetically modified organisms [GMOs]. The BT Cotton is genetically modified cotton which has the ability to produce an yield which is nearly ten times more than the ordinary levels of production. It is also found to be pest resistant. However, BT has its dark side which has led to a spate of suicides.

Session Outcomes

- Role of judiciary in biodiversity conservation is a grey area which necessarily involves discarding of antiquated notions and adopting innovative approaches.
- Determining a value to an object having immense biodiversity value was portrayed as a ticklish issue. For instance, the question of evaluating the value of a tree. If the Forest Department was asked to assess its value, the response would be pathetic since the calculation would only be in terms of its timber value. The value of services rendered by a tree of fifty tonnes during fifty years (in terms of oxygen production, air pollution control, soil erosion and fertility control, recycling water and humidity control, bird and animal shelter, protein conservation was estimated to be about Rs.52

lakhs at current value). All this points out that scientific resources and studies are to be employed in order to draw out a correct picture of the value of the biodiversity that we possess.

- More importantly, the discussion served to break a myth which was doing the rounds in judicial circles that judges in urban areas had no role in conserving biodiversity. It was agreed upon by all that judicial intervention to conserve biodiversity was absolutely essential, irrespective of the place of jurisdiction. Courts could play a pro-active role in eco-restoration and rebuilding even in urban areas.
- Yet another myth which the programme served to explode was that our current biodiversity conservation strategies were based on a wrong premise. The Biodiversity which we see today is the product of long standing human-nature interactions, both in the forests and in the farms. The unscientific and anti-people approaches in dealing with these issues have only compounded the crisis while the primary approach towards biodiversity conservation is to be based on rational, scientific management

principles wherein the stakeholders are also involved.

Forest Management Jurisprudence

Since time immemorial, forests have been an integral part of human life and flourishing. Treasure troves of biodiversity, forests play an important role in maintaining the eco-balance. However, the earth is fast losing its forest cover.

The traditional system for forest management in the country was centred on a religious basis wherein the forests and several kinds of wild animals were worshipped. Forests were classified into deer forest, game forest, productive forest, and elephant forest. With the advent of the British Rule, forest management in the country underwent a radical transformation.

The discussion centred on the two prime legislations which constitute the foundational basis of the forest laws in the country namely, the Indian Forest Act, 1927 and the Forest Conservation Act, 1980. The Indian Forest Act, 1927 confers jurisdiction on the state over both public and private forests. Establishing three classes of forests namely, reserve forests, protected forests and village forest, it was pointed out that the Act embodies elaborate procedures in Sections 3 to 26 for constituting these

forests with a detailed process of settlement of rights by the Forest Settlement Officer. Offences are categorised into two categories. Firstly, there are trivial offences which can be disposed off by compounding and secondly, there are offences which entail higher punishment. Startling statistics were brought to the notice of the participants. For instance, there were nearly 8,55,378 cases under the Indian Forest Act during the period from 1998-1999 and in 1999-2000 the number of cases under the Act was 7,71,260. Several States like Karnataka, Andhra Pradesh, Kerala, Assam etc. have their own forest Acts which embody the same principles as contained in the Indian Forest Act, 1927. The Forest Conservation Act, 1980 now affords the primary framework for forest conservation and management restricting de-reservation of reserve forests and regulating the diversion of forest land by way of lease to private industries and individuals. It also provides for the constitution of an Advisory Committee for grant of approval for any of these activities. However, statistics revealed that the law was observed more in breach than in implementation. More than 3,50,364.3 hectares of forest land were diverted for non-forest purposes during the period from 1981-1994.

In spite of the centralised

system, the forest cover in the country is dwindling at alarming rates forcing the Supreme Court to don the role of a super administrator in respect of forest management in *T.N. Godavarman Thirumulkpad v. Union of India*. The discussion also served to highlight the fundamental flaw in our approach to forest management which is based on the 'command and control' philosophy with little community participation. Joint forest management is increasingly being touted as a possible solution to this problem. Attention was also drawn to the Tree Courts which function in Bangalore and which have been set up under the Karnataka Tree Preservation Act, 1976. Interestingly under this system, those who wish to obtain permission for felling trees are required to plant at least two saplings per tree felled, deposit one thousand rupees for every felled tree and were to guarantee that the newly planted saplings would be taken care of. It was also pointed out that of late, the system was not functioning effectively due to the city's explosive growth in recent years.

Session Outcomes

- The term 'forest' has not been statutorily defined. Unless and until there is a proper and all inclusive definition of the term forest, the precise contours of what is meant by encroachment

cannot be understood. Nevertheless, the definition as enunciated in *Godavarman* case could be utilised.

- The traditional exploitative role of the forest department has only served to alienate the people. Rather than following a centralised model, a participatory decentralised model would be the ideal. In this, initiatives like joint forest management have to be promoted and legal backing should be afforded to these attempts. Primarily based on the 1990 Circular on Joint Forest Management issued by the Union Ministry of Environment and Forest, there is an urgent need to draw up a statutory framework for the same.
- Forest conservation and management is not punishing a few encroachers. The approach should be concerted and multi-dimensional. Widespread awareness has to be created amongst the people with regard to the need to protect and conserve the forests. The social and economic conditions of the people who live in and around the forest needs to be improved since protection of forests does not imply annihilation of

tribal rights.

- The need to set up Tree Courts with wider and more effective jurisdiction in almost all states was emphasised upon.
- High Courts are to issue written directions to the subordinate judiciary to organise tree planting campaigns, failure of which has to be treated as dereliction of duty.
- The focus should shift from regulation to conservation with emphasis on private involvement in forest management.

Coastal Zone Management & Judiciary

India has a long coastline of over 6,000 kms. The coastal areas represent a unique ecosystem which is highly fragile and sensitive. But due to the huge population pressure, unsuitable development policies, rampant pollution and dumping of all sorts of wastes - all this has had a tremendous impact on the coastal areas. This poses serious ecological threats particularly in the context of global warming.

The need to protect our long coastal line started in the early 1980s when the then Prime Minister sent letters to the Chief Ministers of all the coastal states directing them to ensure that the coastal zone up to 500m. from the High Tide Line be kept free from development activities of all

kinds. However, due to the pressure from the tourism industry, the Central Government in 1986 relaxed this ban. This proved disastrous in that not only was development permitted in area which was hitherto treated as sacrosanct but it also sent a signal that the government could be made to bend on matters involving ecological considerations. However in 1991, the Government came out with a notification under the Environment (Protection) Act, 1986 and the Rules framed there under to accord special protection to the coastal areas of the country known as the Coastal Zone Regulation Notification. Depending on the intensity of the protection needed, the Notification has classified the areas into zones namely, the CRZ-I which is generally treated as a no-development zone, the CRZ-II, the CRZ III and the CRZ IV which primarily covers the Andaman and Lakshadweep islands. The demarcation of areas into zones was to be carried out in accordance with the Coastal Zone Management Plan which was to be prepared by the concerned States.

International Environmental Law & Domestic Courts

The role played by International Environmental Law in shaping the contours of our domestic environmental law was also deliberated upon. The

Session enabled the participants to have a basic understanding of the nature and scope of some of the fundamental principles followed in environmental adjudication in our country, the roots of which can be traced to International Environmental Law, like the principles of- Sustainable Development, Polluter Pays, Precaution, Inter-generational Equity and Public Trust. Reference was made to leading decisions like the *Bichhri case*, the *Vellore Tanneries*, *Span Motels case* etc. The participants were also exposed to several other doctrines like common but different responsibilities, equitable utilisation etc.

The growth of international environmental law, right from the days of the Stockholm Conference to the Rio-Earth Summit and to the recent World Summit on Sustainable Development was also explained. In outlining the tools which could be relied upon in implementing the International Conventions, reference was made to Article 253 which empowers Parliament to make laws implementing our country's international obligations.

In order to examine whether the participants had benefited from the Course, the final day was devoted exclusively to problem solving which gave them an opportunity to apply the new skills which they had been imparted with during the Course to different

factual situations. The participants were divided into three groups with problems assigned to each on biodiversity/ traditional knowledge, trans-boundary waste disposal and on the public trust doctrine. Not bound by precedents, they were given the freedom to question national laws, the international legal framework and jurisprudential viewpoints.

Going by the feedback, the overwhelming majority of the participants felt that they had

immensely benefited from the Course and that the same served to explode a myth that environmental law adjudication was the exclusive domain of the judges of the superior courts. The judges of the subordinate judiciary could also play an effective role in this regard. However efficient adjudication in such circumstances imply that the judicial officer should have a fair understanding of the nature of the resource, the nature of the legal

framework involved, its lacunae and how best it could be avoided by recourse to a method of judicial interpretation which is imaginative. It was also pointed out that as the level of awareness regarding the importance and vitality of this subject was unsatisfactory amongst the members of the lower judiciary, intensive training programmes on environmental law adjudication are to be initiated by the State Judicial Academies on a continuing basis.

NATIONAL LEGAL LITERACY MISSION, 2005-2010

The National Legal Services Authority has announced a nation-wide legal literacy mission for the next five years towards empowering the poor and to enable them better access to justice. The Prime Minister and the Chief Justice of India jointly initiated the plan in Delhi on 6th March, 2005.

The main objects of the Mission are:

1. Legal Education of people's rights;
2. Educating the citizens on their fundamental duties and legal obligations;
3. Education and awareness on the process of delivery of legal aid to the disadvantaged;
4. Provision of Legal Aid;
5. Simplifying the language of the laws and judicial pronouncements to aid legal literacy; and
6. Empowerment of members of judiciary and legal community.

Refresher Course on Juvenile Justice and Child Care Services*

Geeta Oberoi

Research Fellow, NJA

Every State has to develop a good vulnerability management law relating to children as they constitute the weakest, most helpless, as well as the most precious segment of human society. Law relating to juvenile justice administration is one component of such a vulnerability management law. Juvenile justice in the Indian statutory framework can be traced to Articles 15 (3) and 39 (c) of the Constitution which are in tune with the reformatory strategy currently prevalent in civilized criminology, wherein the child offender is approached not as a target for harsh punishment but as one requiring human nourishment. The United Nations Minimum Rules for the Administration of Juvenile Justice [the *Beijing Rules*, 1985] and the Convention on the Rights of the Child, 1989 [hereinafter CRC] are the most significant international human right instruments on juvenile justice. The ratification of CRC by India in 1992, changing societal attitudes towards criminality by children and the need for a more child-friendly juvenile justice system led to the passing of the Juvenile Justice (Care and Protection of Children) Act, 2000 [hereinafter JJ Act, 2000].

Requirements of the Juvenile Justice Boards

The JJ Act, 2000 in providing for a new approach as far as

juvenile justice administration in the country is concerned seeks to constitute a separate authority designated as the Juvenile Justice Board [hereinafter JJB] which is a plural body consisting of a Principal Magistrate and two social workers. The Principal Magistrate of the JJB is to administer juvenile justice with the help of the support services offered by the Probation Officer and the social worker members. The JJB is required to take all duties and standards of care in dealing with the juvenile. It has to afford every juvenile before it four sets of basic rights - the right to survival, the right to protection, the right to development and the right to participation. The Board has to ascertain from the child as to whether he was subjected to ill-treatment while kept in police station/lock up and in case of deviation, pass appropriate instructions. More importantly, the Presiding Officer of the JJB must possess special knowledge or training in child psychology or child welfare and he must be suitably trained to deal with such cases as they require a different set of procedures and qualitatively a different kind of approach.

Contrary to these expectations, it has been found that juvenile justice administration in the country is plagued by many ills. Firstly, many states are yet to establish the JJBs - the

principal body entrusted with the task of dispensing juvenile justice. Secondly, Section 15 of the JJ Act, 2000 incorporates the principle of non-institutional treatment, but it has been found that present juvenile courts and JJBs, do not effectively utilise this provision. Moreover, most judicial officers of juvenile courts do not have training in child psychology due to which they fail to appreciate the attendant circumstances which are responsible for the deviant behaviour of the child.

Keeping in view these problems faced in juvenile justice administration, the Academy undertook this Refresher Course with the following objectives:

1. To develop a new mindset wherein child rights are given absolute primacy
2. To develop better policy choices and more compassionate legal framework for children
3. To highlight the best practices in juvenile justice administration prevailing in different parts of the world
4. To prepare a Plan of Action aimed at revamping the system for immediate implementation

The seven day Course was attended by forty participants, most of whom were Principal Magistrates of JJBs, two from each State.

* Held at NJA from 6th-10th October, 2004.

The discussion began with an exposition of the factual situation regarding the status of children in India, their rights under the CRC, the Beijing Rules, the JJ Act, 2000 and other relevant laws. It was pointed out that one-third of all babies born in India are low birth weight which affects their mental growth. Fifty-three per cent children below five years of age suffer from severe malnutrition. Fifteen to twenty million children are child labourers. A hundred million children do not go to school and lakhs of children die every year due to non-availability of clean water. Large number of street children are exploited and they eventually pick up diseases and die. Sexual abuse of children is rampant. Large numbers of children disappear every year - these untraced children are prone to delinquency. During the course of the discussion, the participants revealed that migration of children is a major cause for criminalization as there is none to take care of them. Orphaned children also comprise a major chunk of those who are trapped in the juvenile justice system.

Accordingly, it was agreed by all that recognition of children as a discrete group with identifiable rights needs to be accepted as a legal principle. Right to protection for such children must include freedom from all forms of exploitation, abuse, inhuman/degrading treatment and neglect.

A Session was devoted to analyze the JJ Act, 2000 in the light of the earlier enactment of 1986; to bring out the differences between the two. The role of the JJB and its responsibilities were also discussed. There was a heated debate between the participants as to whether or not the juvenile justice system is part of the criminal justice system. It was pointed out that the JJ Act, 2000 had nothing to do with the earlier enactment of 1986, Children's Act and the criminal justice system, etc. Major lacunae in the JJ Act, 2000 in that neither is there any mention of legal aid nor is there any provision laying down the minimum age of innocence were highlighted during the course of the discussion. Defects in the Rules enacted by the different states under the Act were also pointed out and it emerged that the U.P. Juvenile Justice (Care and Protection of Children) Rules, 2004 did not lay down the procedure to be followed while recording evidence.

The role of the Presiding Officer of JJB was discussed in detail and it was agreed that his responsibilities differs from that of an ordinary judge in that he may have to arrange for schooling and boarding of the juvenile and may even have to work together with the labour inspector, education department, voluntary organizations, social workers, probation officers and the police. It was agreed by all that the judge

administering juvenile justice was to be aware of child psychology. Many participants argued against the inclusion of two social worker members in the JJB and vesting them with the same powers as that enjoyed by the Principal Magistrate to give collective decision. However, this criticism was silenced when it was pointed out that even in the *Lok Adalats*, judicial officers have to preside with non-judicial members. The basic philosophy of the Act was also discussed. It was argued that the juvenile should not be termed or treated as an accused, since the purpose is to bring the child back from criminality and the Presiding Officer of JJB was to have faith in the theory of reformation. Effects of institutionalization were also discussed and it was generally agreed that in the *best interests of the child, institutionalization was to be discouraged because of:* overcrowding, abuse, corruption, less food, small space, long distance between these institutions and the JJB, less manpower to handle children etc. in the Observation Homes. In fact, many of the participants narrated their personal experiences as to how Observation Homes have become breeding grounds for producing, 'child in conflict with law.' *Accordingly, following alternatives to institutionalization were explored-*

- Utilising the help of para-legal services like law

students, social service organisations, etc.

- Juvenile Courts to be constructed within the premises of Observation Homes.

The participants disclosed that they were facing problems due to the non-availability of Probation Officers who were to make the social enquiry report before the final order could be passed. Besides these, the requirements of an ideal JJB were also discussed and it was pointed out that the environment in a JJB should not be like that of an ordinary court. The participants also brought out that they should be provided with at least one computer and a data entry operator.

Select issues concerning the child in court like age determination, child abuse, detention while pending inquiry, role of Child Welfare Committee [hereinafter CWC], bail, child witness, etc. were also discussed.

Keeping in mind, the practical difficulties with the ossification test used to determine age; it was impressed upon the participants that the benefit of doubt as to age of juvenility has to be in favour of the child. The role of the CWC, its functions and expectations from it were also analysed. It was noted that (i) more than knowledge of law, knowledge of human rights, child psychology is required and (ii) CWC is not merely

for resolving disputes but it is to go far beyond this approach/ mentality. They may have to innovate strategies to administer justice to the child in situations where parents have lost love for their children and human values are completely ignored.

Interestingly, a Session was set apart to analyze the approaches and attitudes of the participants, wherein they were individually asked as to the kind of order which they would have passed under Section 15 of the JJ Act, which affords wider scope for reformatory justice. It was also impressed upon them that (i) every endeavour must be made to release the juvenile on good conduct. Probation is also a method of disposition and (ii) victim justice in present times meant that the juvenile be told to do community service, which is a part of correction service. It was explained that the Board could not impose community service as a punishment.

In conclusion, the Director, NJA impressed upon the participants that:

(i) Supportive services like legal aid services, foster care institutions, social workers, probation officers and child psychologists even though a must for dispensation of justice by JJB and CWC, these services are not provided in most states. This hampers the implementation of the Act in the spirit in which it was enacted. In such a scenario, the

role played by the judicial officer assumes greater significance and he has to play an innovative role. He should seek help from various NGOs, religious institutions, social organizations like CRY, SOS villages, Rotary Clubs, etc. Also the services of Gram Panchayats could be tapped for providing rehabilitation and social integration of the child.

(ii) The concept of foster care under the JJ Act, 2000 – needs to be promoted. There is a need to look around and explore for people who can take care of the best interests of the child. For instance, the elderly who are well placed in life, alone and craving for love and affection. The resources of law schools, law students, etc. could also be tapped in giving voluntary help to discover fit persons and fit institutions for such children. Such experiments have been carried out by the National Law School of India University, Bangalore, wherein girls rescued from brothels were kept in the girl's hostel and later absorbed in to various jobs in the Law School. In many States, Rotary Clubs, Lions Clubs are functioning and are having enough money and resources, which could be used effectively for rehabilitation.

The last day was devoted exclusively to the preparation of a *Plan of Action* by the participants to improve the juvenile justice dispensation system in their respective States.

Workshop on Cyber Laws, Cyber Forensics and E-Governance in Judiciary*

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The participants of this Workshop were mainly Sessions Judges and Chief Judicial Magistrates. Each High Court nominated two judges from their respective Subordinate Judiciary and over all, forty-three Judges participated in the Workshop. An inter-disciplinary approach was adopted in choosing the faculty which consisted of jurists, technocrats and investigating officers. Three volumes of reading material were provided to the participants for prior study. In fact, the first volume was circulated three months in advance keeping in view the technicality of the subject.

Rapid developments in technology and the growing movement towards a knowledge based society can be highlighted as the principal reason amongst others as to why judges need to be acquainted with the developing field of laws relating to Information Technology.

Objectives

The key objectives which were sought to be achieved by this Workshop were as follows:

- (a) Awareness of the legal framework governing Information Technology i.e. The Information Technology Act, 2000.
- (b) Learn the impact of Information Technology in Commerce, Governance and Administration of

Justice.

- (c) Appreciate prospects of incorporating Information Technology practices in the realm of Judicial Administration.
- (d) Learn the use of computers and internet.

Deliberations and Outcome

The advantages associated with the adoption of Information Technology practices and understanding the legal issues arising out of the same were some of the major concerns which were sought to be addressed in the first session. After exposing the participants to the underlying theme of the Workshop, the objectives and the need to understand the basic principles of Information Technology Law and related legal issues, the participants were briefed about the Information Technology Act, 2000, which is the framework legislated by the Indian Parliament to provide legal sanctity to electronic transactions facilitating the growth of electronic commerce in India.

A session was devoted completely to demonstrate the use of computers. Participants were provided with a personal computer at the Computer Wing of the Academy with internet facilities whereby they could operate and understand the computer, the computer system and computer networking. All aspects were

demonstrated by computer professionals and the computer friendly atmosphere enabled better understanding of the same. Five sets of computer lab exercises prepared by the Center for Development and Advance Computing [CDAC] and the NJA were demonstrated to the participants who were asked to work out the exercises.

Referring to the rapid developments in Information Technology, the resource person focused on the structural changes in Trade and Commerce due to the I.T. revolution which brought into the fore, a new range of disputes with multidimensional legal issues. For instance, contracts for acquisition and use of computer hardware and software involve the Law of Contract and Intellectual Property Law. Fusion of these two laws creates more complex issues. Emphasis was also given to the problems related to e-commerce and the participants were also exposed to the cases which arose in various jurisdictions and as to how the Courts, elsewhere have handled the same.

Information technology impacts on criminal law in two ways. It facilitates the commission of existing crimes such as frauds and thefts but it has also given birth to a new range of criminal activities such as computer hacking and the

* Held at NJA from 17th-21st November, 2004.

development and distribution of computer viruses. Criminal law was perceived to be patchy in its application, both to existing and to the new forms of cyber crimes causing considerable concern to the computer industry and financial institutions. A session was also devoted to analyse the basic approaches in Cyber Crime incidences providing an opportunity to understand new developments in cyber crime investigation. Experts on cyber crime investigation also presented the ways and methods of how the computer could be abused towards commission of various offences.

Computer and Forensic Sciences, their relation and how they are useful in investigation and adjudication were also deliberated upon.

Cyber Space is a paper-less society wherein technology and law permits transactions in paper-less modes. In such an environment, the issues which arise are: What is the authenticity of an online document?; What is its integrity?; Issues relating to confidentiality etc.

The inbuilt technicalities in digital signature, its encryption

and decryption, how digital signatures are created and verified and how much of these signatures can be technically and legally authenticated - were some of the issues which were also deliberated upon.

Taking note of the question as to how computers aid e-governance in judiciary, the participants were provided with helpful models on e-governance and judicial administration. A model of e-governance from Karnataka was demonstrated to show how the use of technology is helpful to achieve the following objectives:

- I) Establishment of a meaningful record tracking system;
- II) Case law management system;
- III) Performance of a judge in reducing delay and arrears;
- IV) Maintaining discipline in administrative staff;
- V) Maintaining litigant friendly and transparent statistical report;
- VI) Information relating to case history.

Re-engineering governance in the judicial process would also imply the use of technology for minimizing human discretion at

the ministerial level and curb corruption.

On review of the Course in its entirety, it was revealed that the basic issues which can arise in the context of cyber law adjudication are:

- Jurisdiction in Cyber space;
- Data Protection & Privacy;
- Investigating Cyber Crimes;
- Legal recognition of Forensic Tools etc.

In conclusion, the workshop enabled the participants to understand more about the uneasy relationship between Law and Science. Science always overtakes the law and the contemporary scenario is that Science has thrown up many unanswered questions which challenge many conventional legal concepts like liability, burden of proof, ownership, property, personality, etc. As we leap into the digital age, the policy makers, judges and lawyers, law enforcement agencies are confronted with the pressing need to reorient their traditional thinking in the light of the challenges posed by the convergence of new communication technologies and computer networks and issues relating to cyber space.

The First Advanced Course on Court Management, Judicial Planning and Judicial Administration*

Anil Bangalore Suraj
Research Fellow, NJA

The concern of slow disposal of cases and the mounting arrears at every level of the Judicial System in India has brought the discipline of Court Management and Judicial Administration into prime focus. There could not have been a more appropriate time to pursue a greater understanding of the necessary and applicable techniques to increase the efficiency of the Judiciary. This Advanced Course involved interplay of concepts from different disciplines – Management and Administration, Technology and Computation, Economics and Budgeting, and Law and Practice. The subject was classified into broad themes according to the objectives identified, with each of them comprising of specific topics highlighting the concerns therein.

Pursuant to the objectives identified, the ten-day long Course was divided into the following four segments:

- **Diagnosis** – wherein the attempt was to identify and understand the ailments of the Judiciary. The prominent points discussed included – Structure and Status of Judiciary; Judicial Selections, Training and Appointment at Superior and Subordinate Court levels; Judicial Performance Assessment Methods; and Court and Case Manage-

ment vis-à-vis the problem of Delay and Pendency.

- **Formulate Reform Strategies** – following the diagnosis of the problems ailing the Judiciary, this segment was designed to generate desired reforms and the required strategies to respond meaningfully to the issues raised.
- **Measures to Revamp** – pursuant to the strategies, the adoption of overhauling measures were discussed in this segment. Extensive computerization and radical changes in the existing procedures were stated as being essential steps to revamp the structure of the Judiciary towards removing the ailments identified.
- **Status Report and Strategic Action Plan on Judicial Administration** – preparation and presentation of the jurisdiction specific Strategic Action Plan formed the concluding segment of the Course. The Document aims to uncover the ground realities and propose practical steps to be invoked in overcoming the barriers for an effective Access to Justice.

Judicial Administration

Describing the extent of the problem of arrears, the Judges and Court Administrators were

called upon to seriously consider the following points:

- Determination of the percentile of disputes that need to be litigated. Consign the remaining matters to the alternate forms of dispute resolution.
- Posting of more Judges to places where there is a higher case pendency rate.
- Evolving a systematic study of – the nature of the cases, the pendency, and a region-wise categorization of the subject matter of disputes.
- Lack of funds and infrastructure cannot be claimed as an excuse for delay in the matter of criminal justice administration, as Article 21 of the Constitution could be invoked in this regard.
- People being appointed to the Registry of the Courts must possess the required training and qualifications as they are crucial for effective court management.
- Problem of under-utilization of funds by the judiciary.

Regarding the problem of adjournments, reference was made to Section 35-A of the Code of Civil Procedure and the Judicial Officers were asked to impose Costs upon such litigants who may have instituted a frivolous litigation and wasted the time of the Court. The participants were

* Held at NJA from 18th-28th December, 2004.

further encouraged to apply the provisions of Or.6, Rr.16 & 60; Or.7, R.11; and Or.10, R.1 of the Code of Civil Procedure.

Judicial Appointments

Emphasizing upon the need to maintain the sanctity of the judicial bodies as being the "Temple of Justice", it was noted that the procedure followed in judicial appointments must be objective and transparent. It was stated that the selection of a Judicial Officer is a "unique" process and that the nature of the judicial activity requires fairness, impartiality, and integrity, which cannot be fathomed by usual procedures. Calling upon the participants to explore the possibilities of adopting more objective Psychometric and Psychological Testing procedures as employed in the selection of the Armed Forces to scientifically project the human personality, it was argued that the problem with appointments were not restricted only to the procedure but to also the promotion and eligibility system too. It has been advocated that even the process of promotions must be merit-based selections and that the procedures must be evolved accordingly.

Judicial Independence:

Observing that the respect for the Courts and Judicial Officers springs from judicial performance, it was emphasised that the Judiciary has to be more transparent in its functioning.

Lamenting that the scrutiny by the press and media is becoming selective, the participants were called upon to enhance their legal abilities and thereby increase the confidence of the public on the Judiciary. Referring to the concept of Separation of Powers and the Judicial Independence, it was stated that judgements of the Supreme Court in the matters involving Article 21 of the Constitution have come to characterize the true extent of Judicial Powers.

Judicial Performance Assessment

Stating that an effective form of performance assessment is a tool for judicial reform, it was observed that in a situation where the system is failing, the performance evaluation assumes even greater role. The following were identified as being the main reasons for the assessment of judicial performance:

- Performance assessment indicates priorities;
- Objective evaluation can accommodate merit-based incentives;
- Provides a fair basis for establishing accountability; and
- Provides legitimacy for the usage of public funds and undertaking a sovereign function.

Judicial performance was sought to be evaluated through certain other parameters that are

beyond the usual factors of measurement:

● **Outcomes and Impact –**

This approach is to discern the outcome and impact of the judicial functioning on the bases of safety and security and thereby evaluate the performance of the judiciary. This system of assessment was stated to be more critical of the Judicial System and of its failure to act promptly.

● **Internal Reforms –**

Another method of assessment could be to link judicial performance to the status of judicial reforms that have been undertaken internally. This could be an objective tool as it would not depend upon the popularity of the justice, but would instead hinge on the effectiveness of the mechanisms evolved within the judiciary. The commitment to the Constitutional goals and provision of access to justice to the weak and poor could be the bases for the internal reforms that ought to be undertaken.

Court and Case Management towards Arrears Control and Reduction

The average time period taken for the disposal of a case involving a particular kind of subject-matter was sought to be explained through the method of

Inventory Control Index. For instance, if we could determine that the disposal of a property dispute would take twenty months, then for such period of time the suit shall be termed as being a pending matter. It becomes a backlog only when it is not disposed even after the completion of twenty months since its institution.

Explaining the fact that the number of pending cases can never be zero, it was observed that the aim of a Judge should be to keep a positive *Clearance Ratio*, i.e., to ensure that the disposals are exceeding the institutions.

Regarding the term *Case Management*, it was stated to refer to such practices that are aimed towards the effective management and speedy disposal of a particular case. *Caseflow Management* was stated to denote all those functions that affect the movement of cases in Court proceedings. It refers to actions oriented towards essential management to achieve and continuous flow of cases. Explaining the term *Court Management*, it was mentioned that, in addition to Case and Caseflow Management, it involved effective management of the Court room and the time of the Court as well.

State-wise presentations on Arrears Control Measures

To gain an overview of the

status of arrears control measures as prevalent across the High Courts and the Supreme Court the participants were called upon to make presentations on their respective jurisdictions. Encapsulating the relevant points to be noted, it was observed that the following required deeper consideration:

- The complexity of the matter must determine the time to be taken for its disposal, thereby involving a system of different time tracks – Fast, Medium and Slow, with incremental progression from the slower to the faster track.
- Determination of the Pattern of Litigation and formulation of suitable strategies.
- Basic infrastructure, including computerization, is the minimal requisite for an effective arrear control mechanism to be in place.
- Exploration of the possibilities of having a Court Administrator (Non-Judge) at all levels of the Judiciary.
- Incorporation of the shift-based system of functioning in the judiciary, whereby the existing infrastructure would be utilized more optimally.
- Determination as to what part of Judicial Administration could be effectively outsourced.
- To impress upon the Government to evolve a

Litigation Policy, whereby the Government shall resolve not to litigate unless all options for an amicable settlement are exhausted.

- Judicial Impact of legislative measures needs to be determined and financial allocations must accordingly be granted to measure up to the tasks required.
- Centralized purchase and Standard listing of titles are needed for effective management of court Libraries. On-line database resources must also be used and this could be made possible through active linking up with other institutions equipped with better infrastructure.
- Determination of definite norms for writing of Annual Confidential Reports.
- Long periods of suspensions and enquiries need to be avoided.
- Judicial officers on deputation need to be recalled to serve the judiciary.
- All High Courts must publish a Yearbook on an annual basis starting in 2005. It shall have to contain a factual report on the initiatives, needs, performance and overview of the particular High Court and its subordinate judiciary.
- Video-conferencing must be

incorporated as a routine form of interaction between the High Court and its subordinate judiciary.

- Institution of a Year of Excellence Award to motivate the Judicial Officers.

Information Technology and Judicial Reforms

Referring to the problem of delays as being a chronic ailment of the Indian Judiciary it was stated that urgent steps need to be taken for introduction of Information Technology to overcome the backlog of cases. In the light of computerization of court processes in the High Court and Subordinate Courts of Karnataka, the following points were raised for consideration:

- **Quality of disposals** – Resolution of disputes becomes quick, accurate and cost-effective; Uniformity and Predictability is enhanced; Greater transparency in judicial transactions; and Accountability of Judicial functionaries is facilitated.
- **Various information and communication technology tools aiding Courts** – Word-Processor, Voice-recognition software, Digital signatures, Electronic mails, Video-conferencing, Imaging/Scanning, Fingerprint identification system, Document

management tools and Database management systems.

- **Support for judicial activities** – Assistance in timely case progression; issue-wise analysis of evidence; preparation of the judgement with all the components; online availability of laws and judgements; and aids in mathematical calculations.

- **Support for administrative tasks** – Assessment of work performance by Judges; ascertainment of litigation trends and need for additional infrastructure; and Centralized data warehousing and mining facilities through networking of Courts across the country is possible.

- **Structured databases** – Based on the seven basic parameters of – Cases, Courts, Judges, Court Staff, Litigant, Advocates and Location – the whole database management could be undertaken and also the effective automation of ministerial/registry level work from the stage of filing – to the process of judgement and decree – grant of certified copy – and the execution of the decree. Automated generation of registers, statements, summons, cause lists, and

reports would also be easily enabled by the capturing of data on the basis of the seven indicators.

- **User-friendly access and entry norms** – The technological tools are tailored to be accessed easily by anyone concerned and to also be user-friendly when it comes to entering the required data.

- **Reduces dependency** – The introduction of technology would make a Judge independent of the Registry and the Lawyers for availing the essential details regarding a matter and to also determine the caseload progression in the Court.

Personnel Management in the Judiciary

Stressing the importance of administrative skills for a Judicial Officer, the following were listed as the traditional administrative tasks of a Judge:

- Administering appointments, transfers and other service conditions;
- Financial Administration;
- Managing the Decree Department and provision of Certified Copies; and
- Maintenance of Court Records.

The participants were asked to keep the evaluation of "Integrity" independent of the efficiency markers and called upon them to even consider

negative marking if necessary. Regarding general perceptions leading to adverse remarks and low marking, the need for strict norms to be followed and for reasoned actions backed by substantive material was emphasised.

Financial Administration and Budgeting

Referring to the objectives of an effective form of budgeting, the following were highlighted:

- Auditing of past expenditure, for obtaining the estimates of current financial needs of the Judiciary and for preparing projections for forthcoming ventures;
- Reviewing and revising Heads of Expenses;
- Purposeful and planned translation of financial resources into delivering the determined goals of the judiciary.

Observing that the share of Judiciary in the Tenth Plan Outlay was only 0.078%, it was stated that the following features have to be noted for better financial administration:

- The biggest flaw in the administration of granted funds is the fact of non-utilization of the allocations made.
- The present system of budgeting is Line-Item based and is Input oriented. It was suggested that the judiciary must be given

enough flexibility and autonomy to deviate from the Line Item allocations and use the same for other heads within a year.

- Increase in the Plan Expenditure was to be encouraged. It was noted that activities like expansion of buildings, computerization, and Judicial Academies formed the core of Plan expenses in the recent past.
- Decrying the present practice of keeping the litigants' deposits in zero-interest accounts, it was suggested that there should be more meaningful ways of utilizing the huge amounts of money that the Courts have in deposits.
- The Judiciary must explain to the government about their actual grants and as to how it needs to be augmented proportional to the demands on the judiciary.

Legal Aid Administration and Access to Justice

Reiterating the merits of various forms of Alternate Dispute Resolution mechanisms, the following points were emphasized upon:

- Effective employment of Mediation as a technique to settle cases.
- The Supreme Court has given enough scope for

employing ADR tools for bulk disposal of cases, especially those pertaining to government departments or public-sector units.

- Laudable efforts made by the Parliament in enacting the Arbitration and Conciliation Act, 1996 and Section 89 of the Code of Civil Procedure.
- For knowing the extent of incorporation of ADR tools in the Indian legal system, references were made to – Industrial Disputes Act, 1947; The Notaries Act, 1952; Hindu Marriage Act, 1956; Income Tax Act, 1961; Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981; Family Courts Act, 1984; Legal Services Authorities Act, 1987; Arbitration and Conciliation Act, 1996; and Section 89 of the Code of Civil Procedure.
- There is a need for undertaking a study to find the success rate of the use of ADR mechanisms to settle cases.
- The emphasis should be on imparting the right kind of training to the Mediators so as to make the process as professional as possible.
- Follow-up measures must also be given adequate attention, preferably through law.

Control of Corruption and Improving Public Perception of the Courts

Stating that perception is not equal to reality, it was stated that the public tolerance level vis-à-vis the judiciary has been quite high. Reiterating the importance of maintaining the confidence of the public, the Judges were called upon to provide equitable remedies even at the subordinate level.

Stressing upon the need to introduce automation into all stages of the court processes, it was stated that replacement of human efforts by machines shall reduce corruption drastically and expedite the procedures too. Terming corruption in the Registry as being more dangerous and rampant, it was suggested that formulation of appropriate rules under Article 235 of the Constitution, whereby the High Court may be empowered to order search and seizure against a corrupt officer, could overcome the problem promptly.

For a more effective action

and for maintaining the high standards expected of the judiciary, it was suggested that a Judicial Officer should not be charged as being "corrupt" but instead be termed as "unfit for judicial duties" and proceeded against, thereby ruling out the elaborate procedure of conviction for corruption.

Bar-Bench Relations

Encapsulating the entire discussion on the sensitive aspect of the Bar-Bench relationship, the following were pointed out as being major indicators of the status across the country:

- Legal Education must involve the judiciary and include the problems faced by the judicial system.
- Accommodation of reasonable requests of the lawyers with respect to functioning of courts is required for better relations with the Bar.
- The judiciary must exhibit better management and

inter-personal skills, at the individual and at the organizational level, for more productive and symbiotic relationship with the Bar.

Judiciaries across the globe are faced with the challenge of having to remain committed to the goals of democratic functioning, while regulating the rapid growth in technology and free markets. Judicial reforms and their implementation depend heavily on the existing manpower and infrastructure. For such an edifice to be sustained, the study of Judicial Administration as a distinct discipline becomes an imperative need of the hour. Understanding the mechanisms that rule and identifying the people who work the system forms the foundation for a conceptual understanding of Court Management, Judicial Planning and Judicial Administration. The ten-day long deliberations presented the pertinent issues relating to the Judicial System in a meaningful manner.

News & Events

As the Judicial Year 2004-05 (a Judicial Year is based on the Supreme Court Calendar which begins from July 1st and closes on May 15th of the following year) comes to a close, going by the responses which we have received from the trainees (more than 700 Judicial Officers from all over the country have had the benefit of the residential training programmes offered by the Academy) one can rightly conclude that the Academy has lived up to the expectations of the Indian judicial fraternity in a short span of time.

In fact, NJA has become the lodestar in judicial education and training not only in India but all over the world. As we gear up to achieve the high professional standards in this Year of Judicial Excellence, we would like to present a brief summary of other events of special importance which took place at the Academy.

Workshop on Judgement Writing

Justice delivery system is often criticised due to judgments being sometimes muddled in legalese, lengthy, poorly organised and thereby incomprehensible both to the law man and to the layman. Dr. James Raymond, an international consultant on judgment writing skills, conducted a one-day Workshop on writing minimalist judgments on 22nd September, 2004 for the District

and Sessions Judges who were the participants for the *Refresher Course on Environmental Law and Adjudication*. Dr. Raymond pointed out to the participants to write less and get to the point and to keep in mind the people for whom they were writing for. As part of this exercise, a few judgments written by the participant judges were analysed thread bare to point out its semantic deficiencies. He vehemently argued that judgments should be promptly written bearing in mind brevity, clarity, perception and use of appropriate language and expressions.

The Visit of Lord Justice David Keene & the Workshop on Judicial Education & Training for Judicial Reforms

Lord Justice David Keene, Chairman of the Judicial Studies Board and a Lord Justice of Appeal in England and Wales on his visit to the Academy was the main speaker at the one-day *Workshop on Judicial Education & Training for Judicial Reforms* which was held on 12th October, 2004 wherein he enlightened the participants on the English experience in judicial training. Lord Keene explained that the emphasis in training in England was on 'judgecraft' and not on substantive law. He also explained the importance of Bench Book, training for in-service judges, training techniques which seek to

dispel sexuality based stereotyping to avoid prejudices, media-judiciary relationship etc.

Project Launch Workshop on Access to Justice for the Poor and Disadvantaged People

The Academy has proposed a research project intended to investigate the difficulties experienced by the poor and disadvantaged sections of people in accessing justice in the trial and appellate courts with a view to develop strategies for procedural reforms. To be able to determine the appropriate research strategies and methods and to develop consensus on the role and responsibilities of participating organizations, a three-day Workshop was hosted at the National Judicial Academy from 18th-20th November, 2004. The Consultation involved more than thirty persons of eminence, including, Judges, academicians, advocates, social activists, NGO representatives from India and abroad and government bureaucrats. The Consultation resulted in the formulation of recommendations and methodologies for the effective conduct of the proposed research project.

Two-Day National Consultation Meeting on Law Reform: Proposals for Gender Equality in Select Labour Laws

Women have emerged as a major section of the workforce

both in the organized and in the un-organized sectors. However, as most labour laws were enacted when the workforce consisted mostly of men and when human rights were not given the status which they assume today, the same now requires change to effectuate gender justice. It was in this background that the National Commission for Women approached the Academy seeking assistance in finalizing a set of recommendations for amendments to labour legislations for providing equal justice to women workers. Accordingly, a two-day national consultation meeting for reforming select labour laws (ten in number) was held at the NJA from the 4th- 5th December, 2004. Nearly thirty-five resource persons participated in this two-day Consultation Meeting. The suggestions which emerged have been forwarded to the National Commission for Women.

Madhya Pradesh Principal District and Sessions Judges' Conference

Under the leadership of Hon'ble Mr. Justice R.V. Raveendran, the Chief Justice of the Madhya Pradesh High Court, a two-day conference involving the heads of the District Judiciary, of the State of Madhya Pradesh was held at the Academy from 18th- 19th December, 2004. Hon'ble Mr. Justice R.C. Lahoti, the Chief Justice of India, inaugurated the conference and explained the key

objectives which are supposed to be achieved in the Year of Judicial Excellence, 2005. Different facets of court and case management, management of staff and other personnel etc. were some of the issues which were deliberated upon. All the participants presented a report of the state of the justice delivery system as existed in the District under their control. The underlying object of this exercise was to prepare the district judiciary for increased productive performance in the Year of Excellence.

IOJT Membership

The International Organization of Judicial Training [IOJT], the only premier global body of judicial trainers formed in 2002, aims at linking the judicial training organizations of the world, and individual judges with an interest in judicial training to strengthen judiciaries. Developing partnerships and academic collaboration with judicial training centers is part of the objective of NJA. Pursuant to the same, the Academy submitted an application for membership of IOJT which has been accepted forthwith by its Executive Committee on 20th December, 2004. The Director of the NJA represents the Asian Region in the Board of Governors of the Organization. This association with the IOJT will prove to be fruitful to the NJA in acquiring faculty assistance, library materials and

course designs for its training programmes.

New Initiatives towards Greater Co-ordination between the National and the State Judicial Academies

Ever since its inception, the National Judicial Academy has always strived to build up the capacities of the State Judicial Academies through mutual co-operation. One important step in this direction has been the establishment of an Association of Judicial Trainers with the Directors and Members of the National and State Judicial Academies. The Director, NJA is to be its Chairman and the office of the Association will be at the NJA. A Working Committee comprising of the Directors of the State Academies from North, South, East and West Zones of the country with the Director, NJA is to be constituted. It has been decided on 13th February, 2005 that the Working Committee members for 2005-06 will be Mr. U. Durga Prasad Rao from A.P. Judicial Academy (South), Mr. S.M. Deka of JOTI, Guwahati (East), Dr. Sudhir Kumar Jain of Delhi Judicial Academy (North) and Mr. Ved Prakash Sharma of JOTRI, Jabalpur (West/Central).

New Registrar takes Charge

Shri. Jagdish Baheti, a senior member of the Madhya Pradesh Higher Judicial Service has assumed office as the Registrar

of the National Judicial Academy on 17th February, 2005. Shri. Baheti has had an illustrious career as a judicial officer. He entered judicial service as a civil judge in the year 1983 and was later promoted as an Additional District and Sessions Judge in 1996. He joined the Lokayukta organisation as a Legal Advisor in 2004. The NJA family welcomes the new Registrar.

Inauguration of the Auditorium

The Academy is proud to announce the addition of a state-of-the art auditorium to the existing infrastructure. Hon'ble Mr. Justice R.C. Lahoti, the Chief Justice of India inaugurated the Hall on 18th February, 2005. It is equipped with the latest audio-visual technologies, including Documentary Projection and computerized Liquid Crystal Display options. Bearing the capacity to seat almost 300 persons, the auditorium facilitates hosting of international conventions, seminars and memorial lectures that require a large gathering.

Book Discussion

A book discussion on "Justice as Fairness: A

Restatement" by John Rawls was held on 24th February, 2005 at the Academy, jointly organized by the Department of Law, Barkatullah University, Bhopal and the American Information Resource Centre, Mumbai. The discussion was chaired by Hon'ble Mr. Justice Jayachandra Reddy (Retired Judge, Supreme Court of India) and was moderated by Prof. (Dr.) N.R. Madhava Menon, Director, NJA. Prof. M.K. Srivastava, Head & Dean, Faculty of Law, Barkatullah University welcomed the participants. The panelists included Hon'ble Mr. Justice Gulab Gupta (Retired Judge, High Court of Madhya Pradesh), Hon'ble Mr. Justice V.D. Gyani, Mr. Abhilash Khandekar and Mr. Lalit Shashi, both journalists, and Prof. V.K. Dixit, Senior Research Fellow, NJA. Rawls' philosophy, it was noted in the discussion, was highly relevant in the Indian context particularly since it tends to counter the disturbing trends in the society which side track the interests of the marginalized sections of the society. Professor Rawls in fact has the unique distinction of being the first philosopher to raise welfare to the status of political and legal rights.

Forthcoming Events

Third Biennial Conference of the Commonwealth Judicial Education Institute, 14th - 19th March, 2005

The Commonwealth Judicial Education Institute in association with the National Judicial Academy is hosting the Third Biennial Conference of the Commonwealth Judicial Education Institute at Delhi and Bhopal. Nearly forty superior court judges from all over the Commonwealth including seven Chief Justices are expected to participate in this Meeting devoted to the subject of, "*Delay Reduction: Strategies and Techniques*." After the inauguration on the 14th at New Delhi by Hon'ble Mr. Justice R.C. Lahoti, the Chief Justice of India, the participants proceed to the Academy in Bhopal on the 16th for several brainstorming sessions between 16th and 19th March, 2005 on different facets of delay and backlog reduction strategies. Alternative Dispute Resolution mechanisms will also receive special focus in the deliberations.

NJA Director is an Advisor to the Commonwealth Judicial

Education Institute [CJEI] based at Halifax, Canada.

National Seminar on Expediting Justice and Combating Corruption, 8th -10th April, 2005

The year 2005, has been declared to be the Year of Judicial Excellence by the Chief Justice of India and different initiatives are under way to speed up justice, reduce the arrears of cases and improve public confidence in the judiciary. The Academy in association with the Registrar Generals/Registrars of various High Courts got prepared Strategic Action Plans for gearing up the system at all levels for better delivery of justice. Many

refresher courses have been organized involving judges and court administrators in this regard.

It is now proposed to follow up the initiatives with a "National Seminar on Expediting Justice and Combating Corruption" which is to be held from 8th – 10th April, 2005 at the Academy.

The Seminar will aim at analyzing the causes of delay contributing to corruption and practical techniques including use of Information Technology to attack the problem with least resistance from vested interests. What are the delay reduction strategies which are practical given the constraints of resources? What lessons have we learnt from the experience of

Courts which have already accomplished some degree of computerization and modern methods of management? How best to organize ADRs for effective settlements without trial? How to get improved amenities for litigants and make court and related institutions people-friendly? What can be done to prevent or mitigate adverse media publicity of judicial institutions? What more can be done to curb corruption in judicial administration? These are some of the issues which the Seminar will address with a view to evolve a practical action plan to be implemented in the Year of Excellence.

CORRIGENDUM

The following corrections are made to matter published in the previous issue of Newsletter Vol:1 No:2 (September, 2004).

Page	Line	For	Read
4	2	depth with enormous with	depth with enormous tolerance," while dealing with
4	5	proceedings."	proceedings.
6	9 th last in 2 nd column	There are 24 (21+ 3) High Courts	There are 21 (18+3 in newly formed States) High Courts

NJA Occasional Paper Series

Publication of papers, monographs, journals and reports of research findings relevant to judicial administration and delivery of justice, is part of the mandate of the National Judicial Academy. In part fulfillment of this object, the Academy has initiated a series titled "Occasional Papers." The NJA Occasional Paper Series is in fact the medium through which the Academy brings into the personal library of judicial officers throughout the country, important articles, lectures and reports which have significant value in judicial education and training. As of now, Four Occasional Papers have been released. Three more are in different stages of production and are to be released in the coming months.

The series was initiated with a paper on 'Judicial Accountability and Independence' authored by Hon'ble Mr. Justice S. Rajendra Babu, Former Chief Justice of the Supreme Court of India. The paper is based on a lecture delivered by the learned Justice at the

Academy on 8th November, 2003 in the 'First Advanced Course on Criminal Justice Administration for District & Sessions Judges.' This was followed by Occasional Paper No.2, titled 'Contempt of Court' authored by Shri. Fali S. Nariman, Senior Advocate and President of Bar Association of India which is based on the address delivered by him at the Academy on 7th November, 2003 on the subject of 'Law & Practice of Contempt of Court.' Hon'ble Mr. Justice R.C. Lahoti, the Chief Justice of India, while inaugurating the National Consultation Meeting of State Judicial Academies and High Courts held at the NJA between 29th February and 1st March delivered a keynote address on 'Gender Justice and the Judiciary' which has been published as Occasional Paper No.3. Occasional Paper No.4 titled 'Risk Management in the Judicial Process' has been authored by an eminent lawyer from Chengelpet, Tamil Nadu, Shri. D.K. Sampath.

The Academy is pleased to announce that it intends to bring out Occasional Paper No. 5, which is based on the First M.C. Setalvad Memorial Lecture delivered by Hon'ble Mr. Justice R.C. Lahoti, the Chief Justice of India, on a theme which has assumed critical importance for judiciary at all levels – 'Canons of Judicial Conduct.' Occasional Papers Nos. 6 and 7 relate to 'Appreciation of Evidence in Criminal Cases' authored by Hon'ble Mr. Justice U.L. Bhat, Former Chief Justice, Gauhati High Court and High Court of Madhya Pradesh and 'Social Context Education for Judges' by Prof. (Dr.) N.R. Madhava Menon, Director, NJA.

In order to reach out to the entire judicial fraternity, the Occasional Papers have been priced very low. Those wanting to procure copies of the Occasional Papers as and when they are released may write to the Deputy Librarian for further information or visit our website <www.nja.nic.in>

Glimpses of Select Events at NJA



His Excellency, the President of India, Dr. A.P.J. Abdul Kalam, delivering the Keynote Address through a video-conference at the *Judicial Colloquium on Science, Law and Ethics* for High Court Judges on 19th February, 2005



Prof. (Dr.) N.R. Madhava Menon, Director NJA, welcoming the President, Dr. Kalam at the *Judicial Colloquium on Science, Law and Ethics* on 19th February, 2005



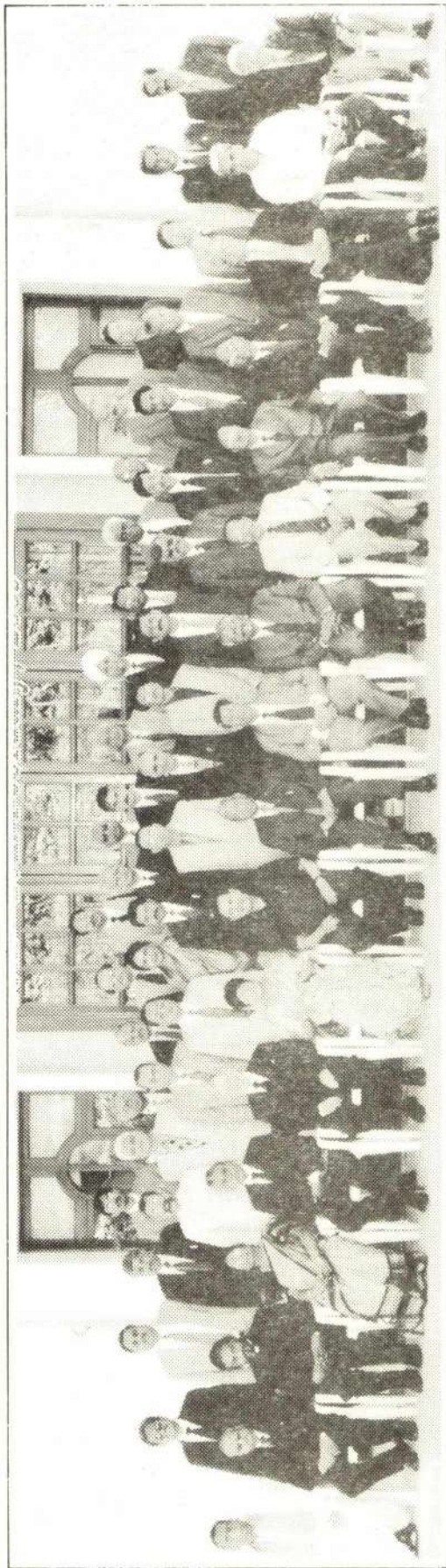
Hon'ble Judges of the Supreme Court at the *Judicial Colloquium on Science, Law and Ethics*



Hon'ble Mr. Justice R.C. Lahoti, Chief Justice of India, inaugurating the Auditorium on 18th February, 2005



The National Judicial Academy Auditorium



The participant High Court and Supreme Court Judges at the *Judicial Colloquium on Science, Law and Ethics*, 18th -20th February, 2005

Sitting

(Left to Right) Acharya Saumyendra Nath Brahmachary, Dr. P. Rama Rao, Dr. Thomas Kalam, Dr. Vasantha Muthuswamy, Mr. D.R. Kaarthikeyan, Hon'ble Mr. Justice Michael Kirby, Hon'ble Mrs. Justice Ruma Pal, Hon'ble Mr. Justice N. Santosh Hegde, Hon'ble Mr. Justice R.C. Lahoti (Chief Justice of India), Hon'ble Mr. Justice Y.K. Sabharwal, Hon'ble Mr. Justice R.V. Raveendran, Prof. (Dr.) N.R. Madhava Menon (Director, NJA), Mr. B.M. Gupta, Prof. V.S. Mar'i, Mr. Anand Grover, Dr. R. Gangakhedkar, Mr. N.B. Zaveri

Standing First Row

(Left to Right) Mr. Justice P.K. Ray, Mr. Justice K.S. Rathore, Mr. Justice B.S. Verma, Mr. Justice K. Joseph, Mr. Justice Anil Dave, Mr. Justice B.J. Shethna, Mr. Justice R. Gogoi, Mrs. Justice Gyan Sudha Misra, Mr. Justice N.N. Tiwari, Mr. Justice I.A. Ansari, Mr. Justice B. Nazki, Mr. Justice R.M. Lodha, Mr. Justice K. Sreedhar Rao, Mr. Justice S.R. Bannurmath, Mr. Justice B.P. Das, Mr. Justice L. Mohapatra, Mr. Justice P.R. Raman, Mr. Justice Dipak Misra, Mr. Justice S. Ashok Kumar, Mr. J. Baheti (Registrar, NJA)

Standing Second Row

(Left to Right) Mr. A.M. Saxena (Dy. Registrar, NJA), Mr. Justice S. Ambwani, Mr. Justice Yatindra Singh, Mr. Justice P.C. Ghose, Mr. Justice Ajit Singh, Mr. Justice Narayan Roy, Mr. Justice R.K. Merathia, Mr. Justice D.S.R. Varma, Mr. Justice N.K. Sud, Mr. Justice J.S. Khehar, Mr. Justice Sunil K. Sinha, Mr. Justice Mukul Mudgal, Mr. Justice S.K. Agarwal, Mr. Justice P.K. Misra, Mr. Justice H.L. Gokhale

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Hon'ble Mr. Justice Y.K. Sabharwal Judge, Supreme Court	<i>Member</i>
Mr. Dharendra Singh, Secretary Dept. of Justice, Govt. of India	<i>Member</i>
Mr. R.L. Meena, Secretary Dept. of Legal Affairs, Govt. of India	<i>Member</i>
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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 President of India formally dedicated to the Nation the beautiful, sprawling complex spread over in a 70 acre campus overlooking the Upper Lake at Bhopal. The President on the occasion propounded 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. "This Academy," he said, "may aim at developing necessary attitudinal changes to improve judicial integrity and efficiencies." NJA is now ready to commence that rather challenging journey towards achieving higher standards of excellence in the delivery of justice through human resource development and techno-managerial upgradation.

Registered as a Society under the Societies Registration Act in 1993, the NJA is managed by a Governing Council presided over by the Chief Justice of India. The Governing Council consists of two senior most Judges of the Supreme Court and three Secretaries to Government of India from the Ministries of Law, Home and Finance with Registrar General of Supreme Court as Member Secretary. A distinguished law professor who founded the National Law School at Bangalore and also the National University of Juridical Sciences at Kolkata has taken over as the first Director of NJA in October, 2003.

The mandate of the Academy under the Memorandum of the Society includes the following objects :

- (i) 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) provide training and continuing legal education to judicial officers and ministerial officers of the Courts; and
- (iii) 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 Supreme Court and High Courts, NJA has launched an ambitious plan of research, education and training activities to give the judiciary the required, intellectual inputs and technical know-how for better performance of its functions in the service of a resurgent India.

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