



Judicial Education

NJA

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National Judicial Academy

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JUDICIAL EDUCATION

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**NEWSLETTER OF THE
NATIONAL JUDICIAL ACADEMY**

Number 2

September 2004

From the Director

It is just seven months since the first issue of the Newsletter (January, 2004) brought to you a variety of information on NJA activities on judicial education and training. Keeping up the commitment and regularity of the Newsletter, the Academy is bringing out the second issue with more information on the subject hoping to narrow the gap between NJA and its beneficiaries — the 15,000 strong judicial fraternity of the country. The issue in hand reports not only the events and comments but also developments in judicial policy and administration. We will again be back with more informative stories in our next issue due in December this year.

Meanwhile, the entire NJA Family welcomes our new Chairman, the Hon'ble Chief Justice of India, Mr. Ram Chandra Lahoti. He is the 35th Chief Justice of the country and the eleventh Chairman of the Academy. Hon'ble Mr. Justice R.C. Lahoti has already announced that he intends to initiate a judicial revolution through judicial education and training and will take keen interest in the activities of the Academy. Elsewhere in this Newsletter we publish his call to the judiciary to take continuing education seriously. On his advice, a training calendar for a whole year is prepared and circulated to the High Courts. With his leadership and guidance we hope to put the National Judicial Academy among leading institutions of its kind within the current judicial year itself.

The Training Calendar for Judicial Year 2004-05 is already announced. This will bring to the Academy a large number of senior judicial officers from all over the country on a continuing basis throughout the year. A major research project on "Access to Justice" supported by UNDP is being undertaken with co-operation from seven High Courts, State Judicial Academies, NGOs and Law Schools. Four Occasional Papers on judicial administration have already been published. A research journal titled INDIAN JURIST is to be launched later this year. Collaboration with judicial training institutions around the world is being established. All these and more under the direct guidance of the Supreme Court and active support of High Courts and of retired justices promise to put the Academy at the centre of activities directed towards judicial reform and better administration of justice. Judges, Lawyers and Legal Academics interested to assist this organized effort in support of judiciary are invited to communicate with the Director giving suggestions on how they can contribute to the programmes and activities of the NJA.

September, 2004

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

Hon'ble Mr. Justice R.C. Lahoti : The New Chief Justice of India - A Judicial Profile



After more than ten years of service as a Judge, initially in the Madhya Pradesh High Court and later in the Delhi High Court, Mr. Justice R.C. Lahoti was appointed as a Judge of the Supreme Court on 9th December, 1998. On 1st June, 2004 he was sworn in as Chief Justice of India and will serve in that capacity till November, 2005.

Known for his down-to-earth, professional approach to judicial functions, Mr. Justice Lahoti is greatly admired by colleagues and lawyers alike.

Endowed with robust common sense and courage of conviction, the new CJI is a man committed to upholding the finest of judicial traditions while steering the institution successfully to respond to the challenges it is facing today. Speaking at the National Consultation Meeting of High Courts and Judicial Academies at NJA on Judicial Education and Training earlier this year, he said:

"Indian judicial system is being accused of delays and also of fall in standards. We should not feel let down by such observations of critics. We have to give a constructive, curative and positive response. The National Consultation Meet has been convened by NJA to initiate a plan of action for gearing up the judiciary for a revolution ...

I foresee a revolution in three things :

- (i) Full fledged functioning of State Judicial Academies in collaboration with NJA, avoiding duplication and acting together for innovation, systematizing and updating training curricula and methodology;
- (ii) Advent of ADRs while strengthening the existing justice delivery system which has withstood the test of times;
- (iii) Introduction of information technology in judiciary."

Obviously, judicial reform through judicial education and training is one of the priorities of the new Chief Justice of India. The National Judicial Academy of which the CJI is the Chairman, welcomes Hon'ble Mr. Justice R.C. Lahoti's assuming the stewardship of the judiciary of the world's largest democracy and hopes to serve the goals he identified for the revolution to happen.

We have pleasure in publishing excerpts from some of his leading judgements rendered in a long and distinguished career of a decade and half which manifest the personality of the judge.

Editor

Leading Pronouncements of the Hon'ble Chief Justice of India

In a recent judgement (May, 2004) **Tirupati Balaji Developers Pvt. Ltd. v. State of Bihar**, Justice Lahoti (as he then was) averted a judicial crisis when a High Court reacted sharply to a direction made by the Supreme Court Bench presided over by Chief Justice of India. He wrote : "... If the Supreme Court and the High Courts both were to be thought of as brothers in the administration of justice, the Supreme Court remains the elder brother ... the Constitution has clearly divided the jurisdiction between the two institutions and while doing so these institutions have to have mutual respect for each other ... Everyone would, it was expected, ... Keep within its bounds and would not over-step its limits so that the ideals and the values remain a living reality and do not become either as intrusion or an illusion. The constitutional and democratic institutions, complementing and supplementing each other, would lend strength to these handed down traditions and would also contribute to developing such rich traditions as would be respected and hailed by posterity. This would result in strengthening the working of the Constitution. In the realms of constitutionalism the values of mutual trust and respect between the functionaries, nurtured by tradition, alleviate the need to codify the rules of the relationship. Experience shows that any rigid codification of such delicate relationship is advantageous to those bent upon vilification. A rigid written law makes it difficult to maintain that dignity which is better and rightly left to be perceived by right-minded people who zealously uphold the dignity of others as they do their own."

In **P. Ramachandra Rao v. State of Karnataka**, (2002) 4 SCC 578 he said- "The goal of speedy justice can be achieved by a combined and result oriented collective thinking and action on the part of the legislature, the judiciary, the executive and representative bodies and members of the bar." Further, in **Makhan Lal Bangal v. Manas Bhunia**, (2001) 2 SCC 652 he observed - "... the obligation of the Presiding Judge to hold the proceedings so as to achieve the dual objective search for truth and delivering justice expeditiously — cannot be subdued. Howsoever sensitive the subject matter of the trial may be, the courtroom is no place of play for passions, emotions and surcharged enthusiasm."

Justice Lahoti displayed his concern for the future of the country in **Rohit Singhal v. Principal, J.N. Vidyalaya**, (2003) 1 SCC 687 where he said - "Children are not only the future citizens but also the future of the earth. Elders in general and parents and teachers in particular, owe a responsibility for taking care of the well being and welfare of children. The world shall be a better or worse place to live according to how we treat the children of today."

"Education is an investment made by the nation in its children for harvesting a future crop of responsible adults productive of a well-functioning society. However, children are vulnerable. They need to be valued, nurtured, caressed and protected. Developing an essentially symbiotic relationship between children coming from different cultural backgrounds having different dialect, diet and

desires — childlike and innocent — needs thoughtful approach so as to reach the coveted goal of an integrated nation."

In **AIIMS Students Union v. AIIMS**, (2002) 1 SCC 248 he struck down unreasonable reservation policies and said - "Constitutional enactment of fundamental duties, if it is to have any meaning, must be used by courts as a tool to tab, even as a taboo, on State action drifting away from constitutional values... In the era of globalization, where the nation as a whole has to compete with the other nations of the world to survive, excellence cannot be given an unreasonable go by... Mediocracy over meritocracy cuts at the roots of justice and hurts right to equality"...Referring to Preamble of the Constitution, Chapters on Directive Principles of State Policy, Fundamental Rights and Fundamental Duties, he said — "The Preamble to the Constitution of India secures, as one of its objects, fraternity assuring the dignity of the individual and the unity and integrity of the nation to "we the people of India". Reservation unless protected by the Constitution itself, as given to us by the Founding Fathers and as adopted by the people of India, is subversion of fraternity, unity and integrity and dignity of the individual." "Public health can be improved by having the best of doctors, specialists and super-specialists. Undergraduate level is a primary or basic level of education in medial sciences wherein reservation can be understood as the fulfilment of societal obligation of the State towards the weaker segments of the society. Beyond this, a reservation is a reversion or diversion from the performance of primary duty of the State. Permissible reservation at the lowest or primary rung is a step in the direction of assimilating the lesser fortunates in the mainstream of society by bringing them to the level of others which they cannot achieve unless protectively pushed. Once that is done the protection needs to be withdrawn in the own interest of protectees so that they develop strength and feel confident of stepping on higher rungs on their own legs shedding the crutches."

Medical graduates entering the state service are not temperamentally inclined to go and live in the villages so as to make available their services to the rural population; they have a temptation of going to stay in the cities on account of better living conditions, better facilities and better quality of life available not only to them but also to their family members as also better educational facilities in elite schools which are to be found only in cities. In-service doctors being told in advance and knowing that by rendering service in rural/tribal areas they can capture better prospects of higher professional qualifications and consequently eligibility for promotions, acts as a motivating factor and provides incentive for young doctors to opt for service in rural/tribal areas." He upheld constitutional validity of law assigning weightage to doctors who have served in rural/tribal areas for the purpose of admission in postgraduate classes (**State of Madhya Pradesh v. Gopal D. Tirthani**, AIR 2003 SC 2953).

His is also the proverbial iron fist in velvet gloves. In **In the matter of Anil**

Panjwani he said, "The dignity of the ocean lies not in its fury capable of causing destruction, but in its vast expanse and depth with enormous with contemptuous remarks made by a disgruntled litigant against a sitting judge of the Supreme Court. He accepted the apology of contemnor and dropped contempt proceedings."

In **Javed v. State of Haryana, (2003) 8 SCC 369** Justice Lahoti upheld a law disqualifying those with more than two children from standing for Panchayat elections. He held - "the right to contest an election is not a fundamental right or a common law right. It is creature of statute and is obviously subject to qualifications and disqualifications enacted by legislation ... none of the lofty ideals as contained in the Constitution of India can be achieved without controlling the population in as much as our materialistic resources are limited and the claimants are many. The concept of sustainable development too dictates the expansion of population being kept within reasonable bounds..." Comparing India with China, he noted that it was soon possible that India would overtake China to become the most populated nation in the world. This is nothing to be proud of, and indeed would multiply our problems if population explosion was kept totally out of control. There was no harm in having small steps taken to initiate population control.

A few other landmark decisions of constitutional significance delivered by Justice Lahoti deal with doctrine of separation of powers, (**Welfare Association of A.R.P. Maharashtra & Anr. v. Ranjit P. Gohil & Ors., (2003) 9 SCC 358**) doctrine of merger of the decisions of High Courts when appealed against into decisions of Supreme Court, (**Kunahayammed & Ors. v. State of Kerala & Anr., (2000) 6 SCC 359**) rule against unjust enrichment (**South Eastern Coalfields Ltd. v. State of M.P. & Ors., (2003) 8 SCC 648**) Extra-territorial operation of State legislation — doctrine of homogenous construction to settle conflict of laws and judicial versus administrative functions of Court. In **Kesoram Industrial, JT 2004 (1) SC 375** again a landmark decision Justice Lahoti interpreted several legislative Entries in Seventh Schedule of the Constitution leaning in favour of State's power to levy tax and fee unless it was specifically taken away.

Role of Judicial Academies to enable Judiciary Perform Better

Justice R.C. Lahoti
Chief Justice of India

The National Consultation Meet has been convened by NJA to initiate a plan of action for gearing up the Indian judiciary for a revolution. The Constitution of India has cast an obligation upon the Indian judiciary and has entrusted it with the task of upholding and implementing its mandates. The magnitude of the uphill task borne on the shoulders of a judge finds reflected well in the form of oath or affirmation to be made by the judge. The Third Schedule to the Constitution provides for the form of oath or affirmation being taken or made by the judge while entering upon the office. He has to swear in the name of God or solemnly affirm that he will bear true faith and allegiance to the Constitution of India as by law established—that he will uphold the sovereignty and integrity of India; that he will duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of his office; and that he shall do so without fear or favour, affection or ill-will; and that he will uphold the Constitution and the laws.

Significance of Judicial Oath

In my humble opinion, the oath or affirmation of a judge as framed by the Founding Fathers of the Constitution is not without significance. It is the Code of Conduct for a judge. It lays down the goals to be achieved by the judiciary. It projects the

expectations of "We the People of India" - the expression as employed in the Preamble to the Constitution, from the judiciary and its component judges. A judge who fails to read the message written in his oath or fails to rise to the expectations expressed and implicit in the oath or affirmation of a judge commits a breach of faith reposed in him by the Constitution and the people of India.

Mr. Justice Arthur T. Vanderbilt said, "It is in the Courts and not in the Legislature that our citizens primarily feel the keen, cutting edge of the law. If they have respect for the work of the Courts, their respect for law will survive the short comings of every other branch of government; but if they lose their respect for the work of the Courts, their respect for law and order will vanish with it to the great detriment of society".

Not only the Constitution of India places the judiciary on very high pedestal and assigns it a place of distinction, the judiciary by its historical background and the culture which it has developed on its own, has raised the expectations of the people from it. During the last few years, I have had occasions of participating in International Conferences, such as the Seminar on Constitutional Globalism at Yale Law School, the Conference of Chief Justices and Lawyers of Asia Pacific Region

held in Japan and very recently the Conference of Chief Justices and Law Professionals of SAARC Nations at Karachi. I also had the opportunity of interacting with the judges of America and Australia very informally and on one to one basis. It has been uniformly accepted that the Indian judiciary as an institution has emerged as one of the most powerful and independent institutions of constitutional democracies of the world. The glory so achieved demands its toll. More difficult than having achieved the glory is to retain it. Earning a success and bringing it home is easier, the price one has to pay is in installments, that is, to continue to labour harder and harder so as not to lose what has been earned.

Vedantic Conception of Judicial Role

There is no other profession in the world than that of a judge which ensures spiritual attainments of the highest order by simply discharging the duties attached with the office of a judge with sincerity and devotion so as to achieve perfection to the extent the human capacity permits. To be a perfect judge, it is essential to put in the best of efforts to learn the knowledge and live systematically. We are all human-beings made up of body, mind and intellect. These are the equipments which one needs to use for being a perfect dispenser of justice.

The philosophy of Vedanta speaks of *Gnana Yog*, *Bhakti Yog* and *Karma Yog*. *Gnana Yog* is training the intellect to think and contemplate upon the realities of life including understanding the purpose of human existence. *Bhakti Yog* is not to be misunderstood as a mechanical performance of rites and rituals. It has a much deeper import. *Bhakti* or devotion begins with an attitude of gratitude with an understanding of all the benefits that one has been showered with. A mysterious power bestows upon the judge such faculties to sustain him as a judge and guide his path towards perfection. True *Bhakti* or devotion unfolds with gratitude for the miracles in the performance of duties. *Karma Yog* is action performed with a higher ideal. Purposeful action that transcends mere ritualistic performance of day to day duties called disposal, encompasses the interests of the community, the progressive action that renders the mind peaceful and provides the initiative in dynamic action. Performance of the three yogas by a judge slowly reduces the selfish desire and develops a sense of detachment. When most of the desires are removed the mind becomes calm, cool and steady, fit for deeper contemplation and achievements. It is only such a trained and controlled mind that can be

directed to achieve perfect dispensation of justice. That is meditation and that is liberation. Once the personality has been set rolling to shape on such a path, a judge ceases to be bound to his service and feels liberated. We have to learn a lesson that work is worship and that independent labour is the highest form of prayer.¹ Katyayana, the great jurist said, "A Judge should be austere and restrained, impartial in temperament, steadfast, God-fearing, assiduous in his duties, free from anger, leading a righteous life and of good family."

It is well-settled that one who ceases to grow begins to perish. In order to efficiently perform and respond to the ever-increasing demands on judges the incessant desire to learn and expand the dimensions of personality are indispensable exercises for any judge. We have to break some of our inhibitions and preconceived notions under which unfortunately we have been belabouring so far.

Challenges before Judicial Academies

There are 24 (21+3) High Courts in the country. Out of these, as I understand, there are 14 High Courts having their own judicial academies operating at the State level. These academies aim at training the members of subordinate judiciary, that is, subordinate to the High Courts or

upto the level of the District Judges. It is believed - unfortunately a mistaken belief - that the members of the higher judiciary do not need to be trained. In the State level judicial academies also the training programmes and curriculum have been devised based on mere experience and I hold grave doubts if such programmes, and the study material available at the State academies, are preceded by any scientific research and innovation. Though the work that is being done at these academies is to be appreciated - and some of them are doing extremely well - yet there is scope for improvement. I wish to highlight two aspects.

First is from the point of view of the subordinate judiciary. They have all learnt the law. Each one of them has by his performance justified his selection as members of subordinate judiciary. But a mere knowledge of law does not make him a perfectly ideal judge. He ought to know the constitutional and legal history. He must instruct himself in sociology so as to be a practical judge. He has to learn minimal lessons in psychology so as to appreciate the working of human mind and thereby the art of marshalling the evidence and exercising discretion and equity jurisdiction. He must have knowledge of economics

1. Thoughts based on Practice Vedanta and Return to Godhead, Gautam Jain, The Speaking Tree, Times of India.

and accountancy to effectively sit in judgement over issues relating to black-marketing, money-laundering, stock exchange, insolvency and securitisation disputes. Without a few lessons in Information Technology he may not be able to correctly pronounce upon controversies arising for decision in cyber laws. Unless familiar with commerce and business and a little bit of science, he may not have confidence in dealing with disputes relating to intellectual property rights such as copyrights, trademarks, designs and patents. To decide a case of medical negligence a little bit knowledge of medical jurisprudence is a must. These are a few illustrations to highlight the demands on a judge. The demands increase with every next step on the stairs of hierarchy leading him to assumption of higher jurisdictions. It is necessary to train the members of subordinate judiciary not only at the threshold of entry but also with every next assumption of higher responsibility and periodically by way of refresher and capsule courses.

What is true of the subordinate judiciary applies with equal, rather added vigour, to the members of higher judiciary including the judges of the Constitutional Courts. A year before, I had an opportunity of visiting the Federal Judicial Centre in Washington which is run under

the control of the Supreme Court of United States. It is invariably headed by a judge of the Supreme Court of the United States who acts as Director of the Centre on deputation for a period of two years and then reverts back to the Supreme Court for discharging judicial functions. The Federal Judicial Centre aims at training the members of superior judiciary and they take such training and learn through the scheme of continuing education without any hesitation or reluctance. The law declared by the High Courts binds the State and the law declared by the Supreme Court is the law of the land. Declaration of law without flaws needs equipping oneself with the latest advancements in the field not only of law but of other sciences as well. The more instructed and trained a judge would be, the more perfect would be his pronouncements. He will be nearer to the truth and to the realities if he knows the subject with which he is dealing.

The National Judicial Academy will cater to the needs of the entire judiciary of India from the lowest level to the highest rungs.

Once the National Judicial Academy has accomplished the task of devising courses and curriculum for the judiciary, higher and subordinate, and commenced its regular courses, the Judicial Academy can aim at making its services available to all those who

are associated with the administration of justice such as executive magistrates, bureaucrats, police officers, lawyers, members of Tribunals and Commissions and so on.

I am happy to learn that during last two days in-depth discussions have been held on standardizing curriculum for training at different levels and even a draft curriculum has been adopted. I am confident that we would be returning from here with a positive mission for securing competence, efficiency and productivity in the judicial systems in our respective jurisdictions.

I would deem this five-day Consultation Meet a success if at the end of this meet and while returning to their respective High Courts and State level Academies the Senior Judges and the Directors of the Academies present here have learnt the art of motivation and identified their goals. Motivation is the force that provides strength and willingness to a learner who is encouraged to pursue learning with effort and perseverance. A person is motivated to learn when he is impelled by the societal norms that demand from him a desire to learn. This is extrinsic motivation. A learner who wants to raise his self esteem and thereby improve his social esteem as well is pulled by an intrinsic urge to learn and be more educated. This is

intrinsic motivation. A learner is driven to strive towards fulfilling an urge to get better equipped for solving problems faced by him day-to-day and in achieving the goals. True motivation lies in the joy of performing the act of learning itself. The extrinsic and intrinsic motivation is achieved by creating the requisite learning environment in the Academies. This is what the leaders in Judicial Academies shall have to learn-the art of motivation for a better judicial tomorrow.

Limitless is the Universe in which we live. There still are discoveries to be made, beauty to be created, secrets to be probed. What part are we going to play in the effort of unfolding cosmic plan is still unknown to us but we have to continue with our duties and responsibilities allocated to us by the supreme power. All those, who aspire to achieve, have to open themselves to the new forces and to the new orders. But for this, the transformation cannot be achieved. The establishment of NJA in Bhopal, I see as a new force, and we have to open ourselves to it.

Equally important is acquainting oneself with the lessons on ethics and morality relating to judiciary. A healthy body is the abode for a healthy mind. The curriculum devised for learning at the Judicial Academies must have a just and equitable blend of lessons in ethics and morality as also of physical and yogic exercises tailor-made to suit the requirements of judges keeping in view the nature of duties performed by them.

The Judicial Academies ought to devise courses of study or training for the administrative and ministerial staff too. Our staff is an integral part of justice administration system. Presently such staff is being recruited only on the basis of educational qualifications. Courts get only "babus" but not an assisting staff. The sincere of them try to assimilate themselves in the court system by learning through trial and error methodology. It is risky. Instead, we should aim at imparting them such education and such training as is suitably moulded to equip them for assisting in court management and actively contributing therein by sharing the burden of the judge.

Towards a Brighter Future

Indian judicial system is being accused of delays and also of fall in standards. We should not feel let down by such observations of critics. We have to give a constructive, curative and positive response. I foresee a resolution in three things :

- (1) Full fledged functioning of State level Judicial Academies in collaboration and interaction with NJA, avoiding duplication and acting together for innovation, systematising and updating training curricula and methodology.
- (2) Advent of alternate dispute resolution systems but at the same time not by any means blinking eyes at need for strengthening - qualitatively and quantitatively - the existing justice delivery system which has withstood the test of time.
- (3) Introduction of information technology in judiciary.

We have to come together and exert ourselves in achieving these resolutions.

Implementation of Article 51 of the Constitution of India : A Comment

Dr. Justice A.R. Lakshmanan
Judge, Supreme Court of India

The decade in which India gained its independence was marred with the bloodiest war the world had seen since the advent of civilization. It was a period of complete mistrust and disharmony. Alliances were being formed between the erstwhile allies of the Second World War. But they were alliances, which were polarizing the world and creating a chasm, which was never seen before. Having gained independence, one of the greatest challenges faced by India was to preserve the country's sovereignty at any cost. Yet, at the same time, it was the need of the hour to embrace the new world order which was sought to be based on social and economic progress by fostering co-operation and recognizing the mutual rights and liabilities of each country.

No country can survive as an island any more. A web of unseen bridges joins all the nations into the global village. Just like the traffic on any road, there are certain Rules and Regulations, which have to be followed on these bridges to avoid any mishap. International Law and International Conventions lay down these Rules and Regulations for a smooth flow of traffic.

The Founding Fathers incorporated into the Constitution the aspirations of the people of the country to consolidate peace and security in the world and for paving the way for the

establishment of a just social order. In 1949, Pandit Jawaharlal Nehru addressed the U.S. Congress and said that the objectives of the foreign policies of the new nation would be preservation of world peace and enlargement of human freedom. Thereafter, he evolved the principle of "Panchsheel", the five principles of harmonious co-existence of nations for establishing lasting peace on earth.

Before India became independent, the Indian Courts under British Rule administered the English Common Law. They accepted the basic principles governing the relationship between international law and municipal law. Under the Common Law Doctrine, rules of international law in general were not accepted as part of municipal law. If, however, there was no conflict between these rules and the rules of municipal law, international law was accepted in municipal law without any express incorporation.

Keeping in view the aspirations of the people of the country to consolidate peace and security in the world, the Founding Fathers incorporated into the Constitution Article 51 which directs the State to :-

- (a) promote international peace and security;
- (b) maintain just and honourable relations between nations;
- (c) foster respect for

international law and treaty obligations in the dealings of organized people with one another; and

- (d) encourage settlement of international disputes by arbitration for paving the way for the establishment of a just social order.

Leaving a little confusion, this provision differentiates between international law and treaty obligations. It is, however, interpreted and understood that "international law" represents international customary law and "treaty obligations" represents international law of treaties and conventions.

Article 51 as well as other Articles of the Directive Principles are considered by some Jurists to be of no potency and that they are only mere platitudes. They did not probably reckon with the pro-activism of the Indian Judiciary.

Prof. Weir, in his thesis "India's New Constitution Analysed" opined :

"As these principles cannot be enforced in any Court, they amount to a little more than a manifesto of aims and aspirations."

It is a general assumption that since Article 51 (c) is placed under the Directive Principles of State Policy in Part IV of the Indian Constitution, it means, it is not intended to be an enforceable provision. Since the principle laid down in Article 51 is not enforceable and India has

merely to endeavour to foster respect for international law, this Article would mean *prima facie* that International Law is not to be incorporated into the Indian Municipal Law, which is binding and enforceable.

However, when Article 51 (c) is read in the light of judicial opinion and foreign policy practices, it suggests otherwise.

Domestic Application of International Law

One such landmark judgement is of the Supreme Court of India which has dealt with the applicability of international conventions to the country. The Apex Court in the case of **Vishaka v. State of Rajasthan, (1997) 6 SCC 241** held :

"In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19 (1) (g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein."

"...Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions

to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee.... regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law".

Similarly in a string of landmark judgments, the Supreme Court has read the provisions of various International Conventions into Article 21 and the other Articles relating to Fundamental Rights. It would, therefore, appear that using Article 51 as a tool in its hands, the Supreme Court has been able to inject into Part III of the Constitution the vast number of rights flowing from the United Nations Charter, from the various Conventions and Protocols ratified by India and, in particular, the International Covenant on Civil and Political Rights, 1966 and the Convention on the Elimination of all Forms of Discrimination Against Women, 1979.

It is often said that, judicial activism in this field cuts into the prerogative of the Parliament to make laws and to the extent to which Article 51 should be implemented, by enacting laws for achieving objects of an international convention, is within the realm of Parliament's legislative competence under the Constitution. But the Courts, utilizing international conventions

for interpreting the different provisions of the Constitution, and implementing them *dehors* such provisions could be criticized as encroaching upon the power given to Parliament under Article 253 of the Constitution.

In **S.R. Bommai v. Union of India, (1994) 3 SCC 1** the Supreme Court of India rejected such criticism and said for the present, it would suffice to state that the provisions of the Covenant, which elucidate and go to effectuate the fundamental rights guaranteed by our Constitution, can certainly be relied upon by Courts as facets of those fundamental rights and hence, enforceable as such. The Supreme Court of India has a self imposed restraint when it is faced with a situation where it has to balance between the interpretation of the Constitution in such a way that the lacunae in the municipal laws can be filled without overstepping its limit in its zeal of judicial activism.

Article 51 (c) embodies the dream of the Founding Fathers of our Constitution, who wanted India to play a role for peace and harmony in the world. They were keen to incorporate whatever was in the best interest, of our Nation. At the same time, they also had to safeguard against the over enthusiasm of the legislature, lest in their zeal, they compromise on the basic integrity of our country and incorporate or ratify

conventions which we neither need nor can afford due to the complex and intricate character of our Nation. Therefore, the Constitution envisages a goal for the legislature in the form of Directive Principles. Article 51(c) is one such goal and the tool to fulfill this goal is in the form of enabling power of the Parliament under Article 253 with Entry 14 of the Union List in Seventh Schedule of the Constitution.

In the case of **People's Union for Civil Liberties v. Union of India**, (1997) 1 SCC 301 the Supreme Court referred to Article 17 of the International Covenant on Civil and Political Rights, 1966 and Article 12 of the Universal Declaration of Human Rights, 1948, so as to derive from

Article 21 a right to privacy in India. The Court observed in this connection :

"International law today is not confined to regulating the relations between the States. Scope continues to extend. Today matters of social concern, such as health, education and economics apart from human rights fall within the ambit of International Regulations. International law is more than ever aimed at individuals. It is almost an accepted propositions of law that the Rules of customary international law which are not contrary to the municipal law shall be deemed to be incorporated in the domestic law."

All these would indicate the pre-eminent position that Article 51 of the Constitution enjoys in this country fostering respect for international laws and treaty obligations with one another. This has resulted in international law being injected into the domestic law with the Constitution being classified as municipal law for this purpose. As a result, through a very pro-active judiciary which has utilized interpretative skill by utilizing the provisions of Article 51 for expanding the existing rights, by giving effect to International Conventions which it has ratified, though no municipal law has been enacted to implement them.

Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly, AIR 1986 SC 1571

D.P. Madon, J, "Legislatures are... not best fitted for the role of adapting the law to the necessities of time, for the legislative process is too slow and the legislatures often divided by politics, slowed by periodic elections and overburdened with myriad other legislative activities. A constitutional document is even less suited to this task, for the philosophy and the ideologies underlying it must of necessity be expressed in broad and general terms and the process of amending a Constitution is too cumbersome and consuming to meet the immediate needs. This task must, therefore, of necessity fall upon the courts because the courts can by the process of judicial interpretation adapt the law to suit the needs of the society."

Fast Track Courts : A Project for Change?

Mr. D.K. Sampath
Lawyer

It is two years and more since the fast track courts were organized all over the country. In each state, about 30 or 40 such courts have been established. One feature of this is that these courts are part of the legal system and not outside it. Initially, there was no clarity in the enunciation of the objectives which would motivate the functioning of these courts. It was announced that these courts would function on a fast track with a view to clear the backlog of cases which would have inevitably led to a docket explosion.

Has this objective been achieved at least in part in these years of their functioning? Do they show any promise of a quickening pace of disposal of cases? Is it not time for a study of their performance to find out if it matches the expectations raised at the time of their inauguration? There has been a commitment of public resources in the implementation of this project. There has to be accountability as to if and how such resources have been used purposefully. Normally there is a resistance to change in an established system. The routine functioning creates an inertia which preserves the status quo. But when a specially constituted team enters the field with a mandate for change, the anticipation generates a conclusive atmosphere reducing the inertia.

Faster disposal cannot be at the expense of fairness, needless to say. Hence there has to be an

identification of the areas of stagnation and how they can be eliminated while ensuring the quality of justice meted out. Has the procedural law been examined to accommodate such innovations as may be permissible to speed up the trial? The learning challenge has to be met. The fast track court experiment itself has to be worked as a project to achieve a congruence of working, learning and innovation. There has to be an interplay of values and innovation.

The reflective members of the Bar interacting with the conscientious judges have to look upon themselves as a project team. A body of skills, shared practice and keen motivation has to focus on the specific task of evolving a faster procedure. Otherwise, the new courts would be yet another court working on the same lines as heretofore. Once their term expires, we would be back on square one, none the better for the experiment.

A fast track court has to become a generator of new skills and methodologies. The objective is to speed up the trial of civil and criminal cases. The judicial trainees at the National Judicial Academy may be asked to start working on the project from the first day of their training. Before they disperse, each of them would present a brief report suggesting innovative changes in the existing rules of procedure to achieve a more expeditious disposal of cases. These reports may be circulated to the next batch of

trainees for comments and for fresh suggestions. By such a method, a focus on the needs of the situation and the nature of the solution, as seen by the judiciary may emerge. They can be crystallized into draft rules for being placed before the High Courts to facilitate the framing of new rules for fast disposal. Even as per the Code, such rules will prevail, over the rules framed under the Code. The agenda for change is part of the training.

There are two advantages in this. The focus will be on expedition as that would be the main objective of the experiment. This may promote a freshness of approach as the search for innovative procedures would be made by senior judicial officers while in the saddle and not as a committee after retirement or while off duty. The fast track judges would have opportunities of trying out the departures from the time-consuming routines then and there for shaping the remedy. More than this, they would have an opportunity for feedback at a national level. The courts are a state subject at the subordinate judiciary level. But the fast track court is an intrusion by the centre, breaking down the local delimitations. The bold experiment would have been worth the risk to which the constitutional balances have been put if the feedback at the national level is filtered to pick up the innovations that would achieve the speed that has eluded us so far.

Judiciary and the Quest for Equal Justice to Women

(Report of a Consultation Meeting of State Judicial Academies and High Courts held at NJA under support from National Commission for Women)

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

The Background

The fact that women are discriminated against is now widely acknowledged even though explanations and justifications vary depending on one's conceptions of equality and notion of an ideal society. At the same time, starting with the Universal Declaration of Human Rights, a series of international legal instruments have articulated a new Charter of Rights in which women's rights have been given special focus and importance. Following it, the Constitution of India, not only guarantees equality before law and equal protection of the laws as a fundamental right but also provides for affirmative action on the part of the State in favour of women. More importantly, discrimination by State on the basis of sex is prohibited while enabling the State to make special provisions in favour of women to overcome existing discrimination. A fundamental duty is cast on every citizen to renounce practices derogatory to the dignity of women. Despite such international obligations and Constitutional mandate, the fact remains that women still suffer a variety of disabilities related to their gender and they are forced to seek redress under law through Courts. These are documented in a

number of Government Reports and private studies.¹

In India the judiciary is the ultimate guarantor of Fundamental Rights and is the guardian of the Constitution. Naturally, the judges have a special role and responsibility in correcting the distortions in law enforcement and upholding the rights of women who approach the courts. Women generally approach the courts seeking reliefs in matrimonial disputes, in matters of maintenance and custody of children, in domestic violence and dowry harassment cases, in rape and sexual harassment as well as in discrimination in respect of employment. Parliament has enacted laws giving preferential rights to women in many of these situations. However, the enforcement of these laws depend first on the government departments entrusted with the task and when they fail to do so, with courts of law. The question for consideration is the treatment women receive in judicial proceedings even where the laws are favourable to them. There is enough evidence to suggest that there are many barriers in accessing justice. The Family Courts Act, 1984 is the legislative response to some of these barriers. Again, available data indicates that the situation is the

same even with Family Courts. What is the answer? There is a view that change in attitudes, priorities and approaches on the part of the judicial officers can make a difference in the prevailing situation much more than any amount of law reform can accomplish. There are examples of what judicial sensitivity can achieve in the matter of gender justice in the judiciary itself. By multiplying such examples and spreading the message to the entire judicial fraternity, a radical change towards gender justice is possible even while societal values take their own time to change. It is this conviction which persuaded the National Judicial Academy to join hands with the National Commission for Women to launch a Consultation Meeting with judicial educators and trainers from all over the country to prepare a plan of action for gender sensitization of the judiciary at all levels.

Sensitization or orientation is different from training. Most judges are sensitive to problems of women involved in litigation and are aware of the special provisions of law intended to give them preferential treatment in certain situations. Of course, the force of past precedents, institutionalized practices and prevailing social attitudes do play a part in what

1. Dr. Sarla Gopalan, *Towards Equality - The Unfinished Agenda - Status of Women in India*, 2001 published by the National Commission for Women, Government of India, New Delhi.

women receive in judicial proceedings. Can judges overcome this by sheer commitment to the cause of gender justice and play a proactive role when women appear before them in litigation either as parties, witnesses or otherwise aggrieved persons? Such an attitudinal change without doing violence to the principle of equal justice under law is what gender justice training aims to do. This was what the Consultation Meeting sought to explore in its two day deliberations at Bhopal.

The National Commission for Women not only extended funding support to the exercise, but also made available for distribution two important publications which contained lot of information on the status of women in India as on 2002 and a tentative curriculum which they developed for judicial training on gender issues. The two publications are :

1. *Towards Equality : The Unfinished Agenda - A Report on the Status of Women in India-2001*. Published by the National Commission for Women (2002).
2. *Course Curriculum on Gender Sensitization of Judicial Personnel*. Compiled by the National University of Juridical Sciences, Kolkata and published by the National Commission for

Women (2001).

The National Judicial Academy prepared and circulated a set of background materials which included the following :

1. Gender Training Module for in-service training of judicial officers suggested in the Report of the First National Judicial Pay Commission (2000).
2. A Study on Gender Justice Disposition of Lawyers as Perceived by Women Advocates.
3. A Report on the Indo-British Project on Gender Justice Training of 43 District and Sessions Judges during 1996-2000.
4. Proposal for Evolving a Common Curriculum for Gender Justice Training.

The Indo-British Project on Gender Justice was a four year experiment administered jointly by the National Judicial Academy and the British Council under which a dozen judicial officers from various states were selected each year for four months' training on gender issues partly in India and partly in England. The object was to identify best strategies and methods to cultivate women-friendly attitudes among members of the trial judiciary.

The methodology of the training was both extensive and intensive. The initial phase of training in India involved briefing and preparation where the officers

were to study materials on status of women, international treaties on women's rights, Constitutional provisions and their interpretations by High Courts and Supreme Court on gender justice issues and select reports on the subject by Expert Committees, Law Commission, Women's Commission etc. The idea was to refresh their understanding of issues and concerns on gender justice and clarify why judicial officers need to be trained on the subject. This was more a sensitization and orientation process. In this phase, the officers were made to prepare independent study plans for themselves in the next three months on which they will investigate, write dissertations, present and defend their views in seminars and recommend strategies for appropriate training for their brethren in judiciary.

The second phase of training mostly in England involved research and writing activities and group exercises directed towards attitudinal changes and skills development for gender justice delivery. They compiled their own materials for gender justice training which were later edited and printed by the Co-ordinator of the programme. Study visits to training institutions and interaction with expert trainers formed part of the programme.

Issues and Concerns

Given the tasks and

challenges as outlined above, the question for consideration is how to go about organizing judicial education and training in order to make gender fairness the attribute of every court room in the country.

The structure of judicial training is two fold : induction training and in-service training. First, the year-long mostly residential and partly field work based induction training given to newly recruited judicial officers who are fresh University graduates with an year or two in the profession. Their attitudes and values are less inhibited by age-old prejudices though they also do not generally accept equality of status, opportunity and treatment for women. Given their age, education and motivation to make a mark in their newly chosen career, it may be possible to devise a curriculum emphasizing the desired knowledge and skills for delivery of gender justice. With supervision and guidance, attitudes can be moulded over a period of time during training and soon thereafter to raise standards of fairness on gender issues. Assuming that two to four weeks of the year long training can be exclusively devoted to teach on equality and fairness (to women and other vulnerable sections of society), the course can have special detailed study on women in relation to laws and judicial decisions vis-a-vis crime, marriage disputes, employment

related issues and property rights. The efforts of the legislature and judiciary to strike gender balance in administration of justice and the strategies and techniques employed therefore can be examined to instill appropriate judicial behaviour expected from the trainee-judge. International treaties and human rights law can influence the attitude of the young men and women who have not yet developed the prejudiced mindset of the older generation.

The other type of training is in respect of judicial officers in service for whom training is optional and if offered, cannot be for periods more than two or three days. They are expected to follow the norms and guidelines set by the High Courts and Supreme Court particularly when they are brought to their notice during arguments by advocates representing parties to the litigation. If the advocates are themselves biased or ignorant of the decisions of higher courts there is likelihood of trial courts displaying the conventional attitudes towards gender issues. This necessitates interventions by superior courts by way of appeals, revisions and reviews and sometimes through writ jurisdiction for fundamental rights violation. Even then, attitudes need not necessarily get changed unless a discipline of accountability towards gender fairness develops as a part of

normal judicial behaviour. This can happen in either of two ways. Firstly, through training or otherwise, the judge has consciously cultivated the habit of gender neutrality and displays such attitudes naturally every time a gender issue is before him or whenever interactions take place with women in his court. The other way this can happen is a system of incentives and disincentives regulating his behaviour for which the High Courts have to change the service rules appropriately. Training performance linked to service benefits has not yet been accepted in judiciary or other civil services as in military or private sector establishments. Part of the reason for this is the non-availability of a well-developed scientific system of judicial training in the country.

In the circumstances, the Consultation Meeting on Curriculum Development on Gender and Courts have to not only propose two sets of programmes (one for Induction Training and another Continuing Education or In-Service Training) but also suggest strategies by which the Refresher Courses can really make a difference in attitudes and behaviour of the existing cadre of Judges who have been working under a different legal regime which tolerated socially accepted discriminatory practices. Naturally, the methods in short-term Refresher Course

have to be radical enough to question the mindset and to compel thinking and action differently in judicial proceedings. It is not so much the content of the course but the method of putting the issues which can make an impact on these adult learners. In this regard, some of the methods employed by the Warwick University team under the Indo-British Training Project (1997-2000) appears to be appropriate for adoption by training academies.

The National Commission for Women is naturally concerned with the discriminatory attitudes and practices still prevalent in judicial proceedings and is seeking to bring about change to the extent possible through training. The State Judicial Academies are the primary institutions concerned with training of the trial judiciary and it is for them to revamp the system appropriately. The National Judicial Academy can help them build their capacities and perhaps contribute towards standardization of curriculum, teaching methods, study materials etc. This was what was attempted in the Consultation Meeting sponsored jointly between the NCW and NJA at Bhopal between 29th February and 1st March, 2004.

Curriculum development is a continuing process and syllabus making based on acceptable curricular goals is a task which

the trainer himself must do after knowing his trainees. As such, curriculum making essentially involves stipulating the "learning objectives" in specific terms whether they relate to knowledge, skills, attitudes or values (ethics), organizing teaching modules (units) to fulfill the learning objectives, which includes carefully assembled study materials and methods chosen to impart training in each of those modules. Finally, one may suggest as part of the curriculum a set of relevant indicators to evaluate the impact of teaching/learning.

Organization and Participation

The Consultation Meeting among High Courts and Judicial Academies for standardizing training programmes for judges was held for the first time in India at the National Judicial Academy. Each High Court was represented by the Judge in charge of training who is one among the senior members of the High Court. The list of High Court Justices who attended the Consultation is attached as Appendix I. There are only fourteen High Courts which set up State level Judicial Academies or training directorates. These Academies were represented by their Directors or Deputy Directors. The list of participants from State Judicial Academies are also attached in Appendix I.

The Consultation was organized in a workshop format in which the High Court Justice participating themselves acted as Chairmen and Vice-Chairmen in different sessions and moderated the deliberations, while the Directors of Academies initiated the discussion and acted as rapporteurs and discussants. While the first session on 29th afternoon was a perspective session devoted to re-visiting the existing policies and practices in judicial training vis-a-vis gender issues, the technical sessions on the second day was devoted to examining the various models of gender sensitization curriculum circulated with the background materials and their viability for implementation in the context of available resources with Judicial Academies. In subsequent sessions, the Consultation Meeting discussed the selective use of study materials circulated in different types of training programmes and the choice of training methods and resource persons in them.

There was general agreement on the need for gender justice modules in every inservice judicial training programme on the lines of the scheme suggested in the National Judicial Pay Commission Report. In Introduction Training of newly recruited officers the scheme could be stretched to three or four weeks during the year-long

training at the Academies. It is important that the need assessment of each batch of trainees is done by the trainer before training and the syllabus suitably adapted to meet the requirements. Thus conceived, there cannot be something like a standard curriculum for gender training for all times and for all types of judicial officers. The objectives remain the same; the content, duration and methodologies vary depending on the audience and their needs. For this reason, it was felt that the best strategy is to circulate different models tried or recommended, among the actual trainers in Academies leaving the freedom to them to adapt, develop and experiment with whatever is considered appropriate to the tasks in hand. The core concerns are clear and the programme should necessarily address them. In this regard, for the success of the training, it is important to train the trainers of State Judicial Academies. Meanwhile, the judges in service or retired who had undergone the training under the Indo-British project should be utilized by the High Courts and Judicial Academies to build capacities in gender justice and training of judicial officers.

Deliberations and Recommendations

The deliberations were initiated with an eloquent call by Hon'ble Mr. Justice R.C. Lahoti (as

he then was) to put an end to discriminatory attitude towards women and adopt a pro-active approach towards gender harmony. In a prepared address (which is now published in the NJA Occasional Paper Series No.3), the learned Chief Justice of India pointed out that the role of judiciary can be examined from the stand point of "justice as an end result" or "justice as a processual experience in Court proceedings." In both these aspects, he found a satisfactory record of performance from the superior Courts in the country. In respect of gender justice as an end result (substantive justice) he gave, inter alia, the following examples :

- a) *Vishakha v. State of Rajasthan* (1997) 6 SCC 241.
- b) *Apparel Export Promotion Council v. A.K. Chopra* (1999) 1 SCC 759.
- c) *Gita Hariharan v. Reserve Bank of India* (1999) 2 SCC 228.

Two other judgments, *Shamim Ara v. State of UP* (2002) 7 SCC 518 and *State of Rajasthan v. Hat Singh* (2003) 2 SCC 152 were cited by the learned judge to illustrate the pro-active role the Supreme Court played to give relief to women.

Analyzing the need to keep in mind the gender dimension in processual justice, Justice Lahoti exhorted the judges to show

understanding and consideration whenever women appear either as a party, or as witness, or as victim so as to inculcate confidence in her during the court proceedings. He recommended few practices in this regard :

1. Women to be treated with courtesy and dignity while appearing in the Court. Any comment, gesture or other action on the part of any one in or around the court-room which would be detrimental to the confidence of the women is to be curbed with a heavy hand.
2. Any gender bias is carefully guarded against in the courtroom and this protection should be extended to any female present or appearing in the court either as a member of the staff or as party or witness or member of legal profession. A message should clearly go that any behaviour unbecoming of the dignity of women shall not be tolerated by the Court.
3. Court proceedings involving women must begin on time and be proceeded with in an orderly manner and with dispatch so that they are conducted as expeditiously as possible avoiding the need for repeated appearance of women in the Court.
4. The examination and cross-

examination of women witnesses must be conducted by the court itself or under the direct supervision of the presiding judge.

5. The female members of the Bar may be encouraged in the profession, may be by giving assignments as Court Commissioners for inspections and recording statements of witnesses.
6. Preference may be given to female lawyers in the matter of assigning legal aid work or amicus curiae briefs so that they have more and more effective appearances in Courts.
7. Crime against women ought to be dealt with on priority basis so as to decide finally at an early date lest the delay should defeat the justice.

On behalf of the National Commission for Women (NCW) Smt. Sudha Malliah made an impassioned plea for equal justice to women which she contended is still not available from courts particularly at lower levels. She explained the various initiatives of the NCW in reforming law and its administration directed towards improving the quality of justice rendered to women. She wanted Judicial Academies to have modules on gender justice in every course they conduct for which she promised full support

of the Commission.

Following the two main presentations, there was a lively discussion from the participating judges as to what judges can do and cannot do to correct the perception and to instill confidence in women. One judge asked how training can make a difference if the judges do not perceive any bias in their behaviour. He clarified that "gender justice" is not necessarily limited to women and it relates to absence of bias either way. He pointed out a study which found female judicial officers being accused of bias against women litigants perhaps more often than their male counterparts to illustrate that attitudes are influenced more by social values than sex or gender.

A participant wanted the social context of gender issues discussed in training programmes with carefully selected case studies demonstrating how subtle discriminating practices continue without being noticed. What women seek is not sympathy or compassion but rights on an equal basis with men. He was against using the questionnaire method to assess gender biases because of the possibility of using the responses (which are structured by the way questions are framed) to set the agenda of training. He was also not in favour of universal standards in discussion of gender issues as it distorts the socio-

cultural context of the debate.

Dr. Justice V.S. Malimath, a former Chief Justice and Member of the National Human Rights Commission wanted to consider the whole question in terms of fairness on the part of the courts to different sections of society. He favoured the use of the positive approach in training where the trainees are told of instances in which the judiciary has contributed to make justice more fair to women. The negative approach may prove counterproductive as a training strategy. He also wanted all Judicial Academies including NJA to keep gender justice as a major focus of training activities.

Many participants felt that a critical issue in gender justice relates to the judges' appreciation of evidence in matters involving women victims. There is scope for the judges to bear in mind the status of women while appreciating evidence. As such, in gender training appreciation of evidence should be a topic to be taught with case histories and record of evidence.

One judge pointed out a poignant incident which happened in his court to convey the message how sometimes law can be obstructive of gender justice. A Muslim couple with two children were litigating for custody and maintenance. The judge independently called the two in his chambers and sought their views. Having found that the talaq was

given by the husband on flimsy ground over cooking of particular dish one day and having ascertained that both wanted to live together as they love each other intensely, the judge wanted to give an order of reconciliation which was objected to by the Advocate as under Islamic Law, once talaq is given, they can remarry only if the lady marries another, consummates and then divorces that husband! The Court was helpless to render what was to be appropriate justice particularly to the women involved.

A judge who went for gender justice training under the Indo-UK project described an interesting methodology employed in the programme. The judges were asked to form themselves into pairs of two and to describe to the partner the sexual act he had with his spouse on the last occasion. The judges were stunned by the direction and protested. The trainer reacted by saying that, "if it was so embarrassing for you, how it would be for rape victims to describe the torture in your court." In short, the message was how judges should put themselves in the position of the victim when cross-examination was conducted in a manner embarrassing to the victim. Every judge should know what are the questions to be strictly avoided to a woman in court during cross-examination.

Even though gender bias

exists only amongst a small minority of judges, its existence cannot be totally denied. Otherwise, how could a judge come to the conclusion that an upper caste man could not have committed rape on a lower caste woman in a caste conscious village? (This was the finding in a reported judgment from Rajasthan).

Yet another participant characterized gender relations as an equation of power among unequal power holders. Viewed in this perspective, discrimination is the natural result. This is empirically established. Gender training should acknowledge this equation and try to moderate it with attitudinal changes on the part of the presiding judge.

The role of legal aid services to women in court and outside court was emphasized by most judges who pointed out that lawyers involved should be specially trained before being deputed in cases involving women victims. Much that judges could do for gender justice can be initiated or sought by legal aid lawyers.

On training materials, the suggestions of the group are the following:

- i. Legislations on women or laws containing special provisions on women. These should be grouped under Family Law, Criminal Law, Employment Law, Property

Law, Reproductive Rights Law etc. and what is expected of courts in each area is to be emphasized.

- ii. Constitutional provisions on equality and affirmative action should be given special attention. International instruments on women's rights and equality ratified by India also should receive proper instructional time.
- iii. Another major focus of reading materials is case law or decisional law again properly grouped under different heads for convenient reference. Judgments which are gender neutral, women-friendly and anti-women all should find place in the material for critical study on reasoning, on appreciation of evidence and on attitudinal differences.
- iv. Some selected pieces on feminist movement and feminist jurisprudence from India and abroad can be recommended reading to show how women themselves are perceiving the problem and articulating the demands. The difference between gender and sex in terms of social construction is desirable to be noticed.
- v. Reports on Status of Women, Law Commission Reports and Expert Committee Recommendations in Equality to Women have to

- be in the list of reading materials.
- vi. On gender bias in court there must be some reading material which may come from empirical studies or from opinion of experts. It is here the judge has to gather how discretionary authority can be used to advance the cause of gender justice.
 - vii. The training should include modules on human psychology and psychology of women victims of sexual offences. Similarly, the judge should have some familiarity with counselling techniques and skills of conciliation and mediation particularly in matrimonial matters.
 - viii. Using knowledgeable women activists and NGOs is a profitable method of training, provided the objects are clear and the methods carefully chosen. Visit to leading custodial and welfare institutions for women would be beneficial.
- Finally, as pointed out by the Chief Justice of India, the trainer has to keep in mind that the objectives of gender training of judicial officers are two fold,

namely to make aware how law has aimed to provide substantive equality and substantive justice to women (Superior court decisions and Special legislations) and how women are provided or denied processual justice in court. It is in the latter aspect of gender justice, training will be of much use because that is where attitudes and ethics make a big difference.

A final point in the deliberations centered around the choice of resource persons for conduct of gender training. For the substantive justice part of the training, judges who are sensitive to gender issues may be invited. For the processual aspects besides judges, the academies will be well advised to invite academicians, psychologists, women lawyers, women NGOs, sociologists and social work counsellors.

Concluding Observations

The two-day Consultation Meeting among State Judicial Academies, High Courts and the National Judicial Academy on "Gender and the Judiciary" has turned to be an innovative experiment in judicial introspection on a sensitive issue

affecting half the Indian population who have long been discriminated against in society. The meeting concluded that societal attitudes and individual mindset based on them have to do a lot with the plight of women even in litigation. However, the meeting felt that given the pro-women international human rights instruments, friendly judicial decisions, affirmative action strategies provided under law and the egalitarian provisions of the Constitution, Courts can do a lot to tilt the balance in favour of equal justice to women if judges are so inclined. It is more true in processual aspects than in substantive justice. In this regard, well conceived and imaginatively implemented training programmes can be very helpful. All Judicial Academies should therefore evolve programmes as discussed in the Consultation Meeting and introduce them both in the inductive training of fresh judicial officers as well as continuing education for officers in service. Judiciary should also consciously recruit more and more women judges to have gender balance among judges as well. Gender justice training should extend to ministerial staff of courts and advocates also.

Appendix I

LIST OF PARTICIPANTS IN THE CONSULTATION MEETING

High Court	Name of High Court Judge	Name of Director of Academy
Allahabad	Hon'ble Mr. Justice Yatindra Singh Judge, Allahabad High Court	
Andhra Pradesh	Hon'ble Mr. Justice B. Sudershan Reddy, Judge, A.P. High Court & President, A.P. Judicial Academy Secunderabad (A.P.)-500266	Mr. Kantha Rao, (Distt. & Sessions Judge) Director, A.P. Judicial Academy, Secunderabad (A.P.) 500 266
Bombay	Hon'ble Mr. Justice J.N. Patel, Judge, Bombay High Court Mumbai-400 032	Mr. G.S. Kaswa, Director, JOTI, Nagpur
Calcutta	Hon'ble Mr. Justice Dilip Kumar Seth Calcutta High Court, Kolkata, West Bengal 700 001	—
Delhi	Hon'ble Mr. Justice S.K. Agrawal Judge High Court of Delhi New Delhi 110 003	Dr. Sudhir Kumar Jain Addl. Director, Delhi Judicial Academy, New Delhi
Guwahati	Hon'ble Mr. Justice I.A. Ansari Judge, Assam High Court Guwahati 781 001	Mr. S.M. Deka Director, North Eastern Judicial Officers' Training Institute, C/o Assam High Court, Guwahati 781 001
Gujarat	Hon'ble Justice S.S. Sudhalkar	Mrs. Jyotsnaben, Deputy Director Gujarat State Judicial Academy
Jharkhand	Hon'ble Mr. Justice S.J. Mukhopadhaya Judge, Jharkhand High Court Ranchi 834 008	Mr. Dhruv Narayan Upadhyay, Director, State Judicial Academy C/o Jharkhand High Court, Ranchi 834 008
Karnataka	Hon'ble Mr. Justice B. Padmaraj, President, Karnataka Judicial Academy Crescent House, Crescent Road, Bangalore-560 001	Mr. V. Jagannathan, Director, Karnataka Judicial Academy Crescent House, Crescent Road, Bangalore - 560 001

Kerala	Hon'ble Mr. Justice K.S. Radhakrishnan Chairman, Judicial Training Committee	Mr. K. Abraham Mathew Dy. Director of Training, Judicial Training Committee, C/o Kerala High Court Kochi, Kerala - 682 031
Madras	Hon'ble Mr. Justice A.S. Venkatachala Moorthy, Judge, Madras High Court & President, Tamil Nadu State Judicial Academy Chennai-600 104	Mr. S.S.P. Darwesh, Director, Tamil Nadu State Judicial Academy C/o Madras High Court, Chennai - 600 104
Madhya Pradesh	Hon'ble Mr. Justice Dipak Mishra Judge, High Court of Madhya Pradesh Jabalpur 482 002	Mr. Ved Prakash Sharma Addl. Director, Judicial Officers' Training & Research Institute, Jabalpur 482 002
Orissa	Hon'ble Mr. Justice Ananga Kumar Patnaik Chairman, Orissa Judicial Academy Inside Board of Revenue Campus, Near High Court, Cuttack Orissa 753 002	Mr. M.P. Mishra, Director, Orissa Judicial Academy Inside Board of Revenue Campus Near High Court, Cuttack Orissa 753 002
Patna	Hon'ble Mr. Justice Nagendra Rai Judge, Patna High Court Patna - 800 001 Bihar	Mr. Vikas Kumar Sharma Director Judicial Officers' Training Institute, Gulzarbagh, Patna 800 001
Punjab & Haryana	Hon'ble Mr. Justice K.S. Garewal Judge Punjab & Haryana High Court	
Rajasthan	Hon'ble Mr. Justice Rajesh Balia Chairman, Rajasthan Judicial Academy Jodhpur Rajasthan 342 001	Shri D.N. Thanvi, RHJS, Director Rajasthan State Judicial Academy Jodhpur Rajasthan 342 001
Sikkim		Mr. Tashi Wangdi Bhutia District Judge (Special Division) Gangtok, C/o Sikkim High Court Gangtok, Sikkim
Uttaranchal	Hon'ble Mr. Justice Rajesh Tandon Judge, Uttaranchal High Court, Nainital, Uttaranchal	

N.J.A. TRAINING CALENDER 2004 - 2005

Schedule and Description of Training Programmes :

Course Number	Course Title	Objects and Contents	Tentative Dates	Participation
NJA-T 005	Round Table on "Role of Judiciary in IPR Development and Adjudication"	Critically assess status of intellectual property laws and their administration. Examine problems arising from privacy and counter-feiting and strategies to curb them. Know the impact of IT on IPR development. Review the role of courts vis-a-vis Copyright violations in respect of film, music and software industries.	1-3 July, 2004	Forty four High Court judges - two from each High Court.
NJA-T 006	First Advanced course on "Civil Justice and Alternative Dispute Resolution"	Evaluate the implications and impact of Civil Procedure Code amendments. Learn arrears reduction strategies through improved methods of case and court management. Understand the dynamics and skills involved in mediation, conciliation and arbitration. Learn the use of computers in judicial administration. Consider what District Judges can do to help improve the quality and speed in delivery of justice. Know more on standards of judicial ethics and accountability.	5-11 July, 2004	Forty two District Judges, two from each state.
NJA-T 007	Refresher Course on "Family Courts, Matrimonial Litigation and Delivery of Justice to Women"	Review of functioning of family courts in the context of objects of legislation. Understanding causes for delay/denial of justice. Know the nature of supportive services and scope of judicial control. Learn techniques of management of case flow and control of court proceedings. What do women want from family courts which they do not get from civil court? Learn the use of better techniques and choice of reliefs and remedies.	27-31 August, 2004	Sixty judges presiding over family/ matrimonial courts; three from each state.

Course Number	Course Title	Objects and Contents	Tentative Dates	Participation
NJA-T 008	Refresher Course on "Environmental Law and Adjudication"	<p>Understand problems in ecological management and sustainable development in relation to law. Analyze the Bhopal Gas Leak litigations and learn the strengths and weaknesses of adjudicatory process in environmental disputes and mass Torts.</p> <p>Use of ADR in settlement of environmental matters and disputes in natural resources. Role of Civil and Criminal courts in environmental justice. Scope of PIL and civil society interventions in matters of ecology and environment.</p>	20-25 September, 2004	Forty Judicial Officers, two from each state.
NJA-T 009	Refresher Course on "Juvenile Justice and Child Care Services"	<p>Understand the philosophy of J J Act on right-based approach in juvenile justice. Learn basic elements of child psychology and how to apply it while communicating with the child. Know the nature and scope of services contemplated by the Act and how to organize them in the best interest of the child.</p> <p>Differences in approaches and procedures in comparison with ordinary courts.</p> <p>How to use community resources in juvenile justice proceedings.</p>	6-10 October, 2004	Presiding Officers of Juvenile Boards and Child Welfare Committees, drawn from states which are implementing the J J Act, 2000
NJA-T 010	Workshop on "Cyber Laws Cyber Forensics and E-Governance in Judiciary"	<p>Learn the impact of IT on law and procedure. Understand the IT Act and role of courts in its enforcement. Know the modifications in IT law in respect of evidence and proof. Know the developments in cyber forensics and their use in administration of justice. Learn the prospects of e-governance in law and justice administration to increase efficiency and productivity.</p>	17-21 November, 2004	Forty Sessions judges and CJMs, two from each High Court with some level of proficiency in use of computers.

Course Number	Course Title	Objects and Contents	Tentative Dates	Participation
NJA-T 011	First Advanced Course on "Court Management, Judicial Planning and Judicial Administration"	Learn the elements of court planning, management and budgeting. Understand the use of automation and computers in different areas of judicial administration - Reduction of arrears. Examine various models of judicial performance assessment and accountability systems. Learn financial administration in judiciary. Learn modern methods of personnel management in courts. Understand use of classification and control in case distribution and disposal. Learn effective methods of maintaining court - media relations. Study techniques of judicial policy development.	18-31 December, 2004	Registrar Generals and Senior Court Administrators who have experience of at least 2 years in their positions and Law Secretaries to Government.
NJA-T 012	Judicial Colloquium on Science, Law and Ethics.	Explore the developments in science generally and Medical Science in particular to know how they impact in society. Look at genetics, genome research and reproductive technologies in relation to law and ethics. Examine critically advances in information and communication technologies and its implications for law and administration of justice. Study the issues for adjudication thrown up by the scientific advances and to learn from experience of other jurisdictions.	27-29 January, 2004	Two Judges from each High Court and Judges of Superior Courts of SAARC countries.
NJA-T 013	Workshop on "Designing Training Plans, Developing Study Materials, Innovative Training Methodologies and Standardising Evaluation Techniques"	Assess existing policies and practices in training and evaluation. Learn innovative techniques employed in adult education and professional development. Evaluate relative merits and demerits in the use of diverse methodologies designed to influence attitude and acquire skills. Revisit the scope of study materials. Learn modern evaluation techniques in judicial education and training.	9-13 February, 2005	Two members each from the faculties of State Judicial Academies, preferably those who will be in the service of the Academies at least for 2 years after the training.

Course Number	Course Title	Objects and Contents	Tentative Dates	Participation
NJA-T 014	Refresher Course on "Court-Media Relations in Advancing the Cause of Justice"	Understand the importance of the Right to know and scope of freedom of expression. Learn how to manage legal correspondents and law reporting without prejudicing the cause of justice. Study cases of "trial by media" and examine how it can be controlled for ensuring fair trial. Adopt best practices to ensure that rights of victims (women) in rape cases and children in juvenile proceedings) are protected from media publicity. Know methods for cultivating best relations between courts and media for the cause of better justice and transparency in judicial administration.	25-27 February, 2005	District Judges and Registrars of Courts Protocol Officers and Court Administrators.
NJA-T 015	First Advanced Course on "Mediation, Conciliation, Arbitration and Negotiated Settlement of Disputes"	Study ADR related provisions in CPC, Cr. P.C., Family Courts Act, Legal Services Authority Act, Arbitration & Conciliation Act and similar laws. Estimate the strengths and weaknesses of Lok Adalats as they are conducted now and find ways to strengthen its capacities. Learn the approaches and techniques of each type of ADR and determine appropriateness in application. Learn the ethics in employing ADR.	14-20 March, 2005	District Judges and Additional District Judges - three from each High Court - 60 participants in all.
NJA-T 016	National Seminar on "Judicial Reforms for Expediting Justice and Combating Corruption"	Identifying sources of corruption and examining effectiveness or otherwise of corruption reduction strategies. Study the system of accountability prevalent in different jurisdictions and determine adaptability. Prioritise reforms on the administrative side and prepare a plan of action for reduction of arrears, which can be put into operation immediately. Evolve a scheme of automation and computerisation on the model of Karnataka and few other High Courts. Look at the prospects of judicial reform through intensive programmes of judicial education and training.	8-10 April, 2005	Registrar (Vigilance), Registrar (Administration), Senior District Judges, Law Secretaries to Government and Directors of State Judicial Academies

Expeditious Disposal of MACT Cases : Judicial Activism through Procedural Reform

Mr. M.C. Garg

District Judge & President, MACT, Delhi

1. Section 169 of the M.V. Act reads as under :-

- (1) In holding any inquiry under Section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.
- (2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects, and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.
- (3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of and matter relevant to the inquiry to assist it in holding the inquiry.

2. Considering the powers conferred on a Motor Accident Claim Tribunal by the Statute under Section 169 as aforesaid and taking into consideration the provisions of Section 149 of the M.V. Act, I deem it expedient to lay down the

following procedure to ensure expeditious disposal of the Motor Accident Claim petition i.e. :-

- (A) Every petition to be filed by the petitioners either as the injured or as the legal heirs of the deceased who become victims of motor vehicle accident, should be accompanied with the following documents i.e.:-
 - (i) copy of the FIR registered in connection with the said accident, if any,
 - (ii) copy of the MLC/Post Mortem Report/Death Report as the case may be,
 - (iii) the documents of the identity of the claimants and of the deceased in a death case,
 - (iv) original bills of expenses incurred on the treatment along with treatment record,
 - (v) documents of the educational qualifications of the deceased/injured, if any,
 - (vi) disability certificate if already obtained in an injury case,
 - (vii) the proof of income of the deceased/injured,
 - (viii) documents about the age of the victim and
 - (ix) the cover note of the

third party insurance policy, if any.

An affidavit in support of these documents and about the relationship of the claimants with the deceased should also be filed.

- (B) Documents supplied by the police, prepared in discharge of their duty as public servant will be admitted in evidence if supported by an affidavit with regard to genuineness and authenticity subject to the right of opposite party to rebut any doubt or suspicion as to their genuineness to authenticity.

It is often felt, that the documents which are invariably supplied by the police are not attested or not even signed by any police officer which again makes incumbent on the court to call for certified copies of the record from the concerned M.M. To avoid this situation, it is directed, that the police officers will supply the attested copies of all the documents which must be signed by the SHO concerned or by the police officers with a seal of the police

official and in a performa as prescribed in Delhi Motor Vehicle Rules.

In case, the documents supplied by the police are duly attested by the SHO, that may be taken in evidence in place of the certified copies. It may, however, be observed that as per the circular directions have already been given to all MMs to supply certified copies as and when asked for either by the claimants or by any one else interested in the claim.

- (C) The SHO of the area in whose jurisdiction, the accident takes place and a case is registered either by way of a regular FIR or as information through D.D. Entry, should ensure compliance of the provisions of Section 158 (6) of the M.V. Act which mandates, that all the documents which might have come into their possession or are required to be obtained in accordance with the provisions of Section 160 of the M.V. Act are furnished within a period of one month

from the date of accident in this court, to the injured/relatives of the deceased victim of the accident and to the insurer of the vehicles involved. This would also be required to comply with the directions of the Hon'ble High Court as given in the case of **All India Lawyers Union**.

- (D) The Ahlmad of the court, on receipt of any such documents from the police, shall record the receipt thereof in a register to be maintained for the aforesaid purpose police station-wise. As and when accident claim is filed he will annex those documents along with the said petition. However, if documents have not been received, he would make a note of it and bring it to the notice of the court immediately so that necessary directions are issued to the police immediately. In this regard, it is ordered that the DCP who is present would ensure, that a Nayab Court who comes to Karkardooma Courts

every day shall be given an additional responsibility to get in touch with the Ahlmad of this court to ensure compliance of any directions without any delay on day to day basis.

The documents to be supplied by the police can be, the copy of the FIR registered, if any; copy of the driving licence seized in connection with the aforesaid accident; copy of the site plan prepared; copy of the cover note obtained from the owner of the vehicle; copy of the RC and the MLC/Post Mortem Report etc. besides mechanical inspection of the vehicles involved in the accident etc. There of course may be other documents which could be filed and may help this court in deciding the accident claim petition.

- (E) Coming to the role of the insurance company and the respondents, along with the written statement to be filed at the most within two months of the notice of proceedings, would

annex the verification report of the accident including the report about the driving licence, if any at the first possible opportunity. In case there is a plea of contributory negligence the same would be specifically pleaded.

- (F) The owners of the vehicles allegedly involved in the accident along with the written statement would annex copy of the 3rd party insurance policy if any covering the period of accident; copy of the driving licence of the

driver who was driving the vehicle at the time of the accident; copy of the RC. In case the vehicle has been sold to any other party, the documents pertaining to the said sale.

- (G) After the completion of the pleadings, the evidence of the parties would invariably be taken on affidavit. Issues will be framed if the parties fail to dispose off the matter by conciliation for which an opportunity would be granted to them or as per the convenience of

the court, after completion of pleading.

3. The aforesaid order will form the part of a procedure to be adopted by this court under Section 169 (1) of the M.V. Act subject to other provisions of Law and Rules framed, if any. A copy of the aforesaid order will be affixed in a conspicuous place of this court and a copy will thereof be sent to the Ld. District and Sessions Judge, Delhi and the Registrar General of the High Court of Delhi, so that it may also be put up if found appropriate in the web-site of the District Judge.

S.P. Gupta v. Union of India, AIR 1982 SC 149, 198

Bhagwati, J., "Judges should be of stern stuff and tough fibre, unbending before power, economic or political, and they must uphold the core principle of the rule of law which says "Be you ever so high, the law is above you." This is the principle of independence of the judiciary which is vital for the establishment of real participatory democracy, maintenance of the rule of law as a dynamic concept and delivery of social justice to the vulnerable sections of the community. It is this principle of independence of judiciary which we must keep in mind while interpreting the relevant provisions of the Constitution."

Training Course on Constitutional Adjudication, Governance and Role of Judiciary : A Report

Mr. R. Sreekumar

A week-long course for Senior District Judges (two from each State) was organized at NJA between 10th to 16th May, 2004. The programme had a two-fold objective. Firstly, to expose them to developments in public law generally and constitutional law in particular as administered in High Courts and Supreme Court as some of them who may sooner or later be promoted to such courts. Secondly, to focus on constitutional values and principles as applicable to judicial administration and practices in trial courts.

In all 42 senior District and Sessions Judges participated from all over the country including two judges from the Kingdom of Bhutan, pursuant to a special request from the Chief Justice of Bhutan.

Themes

Eleven specially invited faculty members comprising one retired Chief Justice of India, other retired and serving High Court judges, the Attorney General of India, senior advocates, experts on behaviour and stress management and the Director of the Academy were the Resource Persons. The topics discussed include :

1. Constitutional Governance - concept and scheme; rule of law vs. rule by law; role of courts; source of judicial review power and limits thereon; reasonableness.
2. Judicial Accountability - meaning and methods; All

India Judicial Service - National Judicial Commission : importance and status.

3. Right to Equality - development through judicial processes and techniques employed by courts.
4. Affirmative action : caste vs. economic criteria in reservation policy; problems created by perpetuating the caste factor; acceptance and benefit of diversity in plural societies.
5. Rights to various freedoms and scope of reasonable restrictions: judicial techniques and strategies in protection of citizen's freedom and balancing them with public interest.
6. Personal liberty, due process and right to life with dignity : creative interpretation of constitutional rights.
7. Social, Economic and Cultural Rights- importance; power and role of judiciary in their enforcement through Directive Principles of State Policy.
8. Judicial activism and PIL- its relationship with legal aid and access to justice; continuing mandamus and doctrine of public trust; use and abuse; limitations in its institutional development.
9. Judicial reform, contempt of court and criteria for judicial performance assessment.
10. Administrative law- concept and growth; administrative

discretion: its abuse and judicial remedies and principles of natural justice.

11. Arrears reduction; case flow management; court administration.
12. Improvement in interpersonal relationships and time and stress management.

Methodology

Participants were supplied with, in advance, two volumes of reading material containing articles, cases and empirical data on topics covered by the course. After an introduction about specific themes and issues by the course coordinator, participants were addressed in each session by more than one faculty member presenting various view points and perspectives. The emphasis was more on discussion and less on lecture to maximise the opportunity for judges to critically analyse, synthesise, assimilate, question, learn from each other and present their own experiences and view points. Finally, project work spread through the course gave the participants ample scope to interact with each other and learn about commonalities and varied practices from different jurisdictions.

Outcome

The training programme began with the understanding being imparted that Constitutional Governance is a method by which the power of people in a society is organised and managed it properly. In this scheme, the

judiciary has been given a role to oversee that nobody is overstepping their limits. The judiciary is also a coordinate arm of the state and therefore equally responsible for its governance without usurping the powers of other institutions.

In this regard, various issues and themes as mentioned above were taken up and debated upon. However, the most important outcome of the training programme was the awareness imparted to District Judges about their own powers to entertain problems in the public law domain and provide relief using the tools such as orders, injunctions, mandatory injunctions, declaratory orders, etc. under the general public law statutes and the Civil Procedure Code [CPC], Criminal Procedure Code [CrPc], Specific Relief Act. It was clarified that they had important power in this regard though in the constitutional scheme, administration of public law was mainly given to the superior courts. With illustrations and case studies such as **Virdichand v. Ratlam Municipality**, the point was driven home that wherever a duty conscious judge wants to do it, public law provisions could be invoked and administered even at the level of subordinate judiciary.

Given the massive number of cases, level of operation and contact with people, it was made clear that district courts constituted the cutting edge of the judicial system in the country and

the system will sustain itself and improve only if the district courts and judges took care of the situation.

Debate over the assumed superiority of civil and political rights codified in Part III of the Constitution over socio-economic rights in Part IV was settled when it emerged that without the realization of basic needs codified in Part IV, rights in Part III are of little use for the majority of the Indian populace. Even by a normal but alert, sensitive and creative reading of Article 37, it becomes clear that the State is obligated to initiate measures for the realization of rights codified in Part IV. There is no bar on the jurisdiction of courts but only on the citizens from the point of view of enforceability which again is increasingly becoming meaningless in view of the interpretative creativeness shown by courts at various points of time.

Need for open-mindedness and transparency in judiciary were emphasized. Potential of information technology and better case management techniques reported from Karnataka and Gujarat for managing arrears and case flow were appreciated. It was also suggested that there should be a separate cadre of professionally trained court administrators to relieve the overburdened judges. Participants were exhorted to be creative and innovatively flexible in judicial functions and be fair even in

administrative matters to enable judicial administration to be fair, just and reasonable in all respects.

Self-administered FIRO-B questionnaires were used to help the participants understand their own interpersonal skills and profile which affected their professional and personal lives. Better methods of time and stress management through positive attitudes for better interpersonal relationships, meditation, etc. were imparted to the participants.

Research Assignment

At the very outset participants were divided into four groups and were required to submit project reports on *What ails the Administration of Justice in the Country Today and what can District Judges do to improve the situation*. Judges were required to come up with suggestions on what could be done without much of legislative or executive interventions to begin with and on the assumption that High Courts would support their recommendations and suggestions.

The four teams deliberated upon the subject, pooled in various good practices and evolved a package of suggestions and recommendations which are collated and presented below.

Problems ailing the Judicial System and causes thereof

The consistent concern of all the teams was that the judiciary is suffering from a crisis of

credibility in the eyes of the public whose confidence was weaning due to pendency, delay, charges of corruption and lack of work culture. This, the participants felt was further complicated by clumsy procedural laws; poor working conditions of judicial officers; non-cooperation of the Bar; lack of infrastructure, support services, adequate and well trained support-staff and latest technology; absence of protection for witnesses; want of encouragement from superior courts and support to the subordinate judiciary; lack of recognition and compensation for additional work done; fear of mischievous complaints and inadequate training at the entry and in-service levels.

Suggestions and recommendations of the participants are classified as under :

Case Management

- Proper classification methods must be adopted for suits, interim applications, infructuous applications and the like for effective case management.
- Frivolous suits and those in which the cause of action does not survive or have become infructuous must be identified and weeded out.
- Due importance must be given to old cases.
- Effective control of the proceedings must be taken right from the beginning.
- Reducing the calling out time of first hearing cases more

time must be allotted for final disposal.

- Working time of courts must be increased by one more hour.
- Short and reasoned orders should be passed to prevent confusion and avoidable appeals.
- As in Tamil Nadu, District Monitoring Committees comprising of the District Judge and Superintendent of Police should be constituted to execute non-bailable warrants.
- High Courts should give incentive to judges clearing out backlogs.
- Concern must be developed for senior citizens and due priority given to matters involving physically infirm and handicapped litigants.
- Divorce and cases for custody of children must be routed through mediation or Lok Adalats.
- Special courts must be constituted to try cases of atrocities on women as already in vogue in some states.
- Cases of undertrial prisoners should not be adjourned and delayed in a routine manner.
- Trial of petty offences can be held in jails on weekends/ holidays by way of rotation between judges, appointed for the purpose by the District Judge.
- District Judges should obtain a periodical court-

wise status report from the copying agency at the District as also the Sub-Divisional/Tehsil level, enabling them to notice the factum of delay in the receipt of records from the concerned court.

- Day-to-day clearance of applications for certified copies would ensure timely dictation of judgments and also substantial [if not complete] eradication of corruption.
- Witnesses should be treated with respect; accorded due protection from hostile accused and unscrupulous lawyers.
- Priority should be given to hearing women, aged and other witnesses who are public servants to save on their precious time.
- On the positive side, District Judges should call members of the Bar at district and *tehsil* levels; take steps to remove their genuine difficulties and seek their cooperation.
- Legislation is required to prevent members of the Bar going on frequent strikes on the slightest pretexts.
- Bar Councils must take consistent and strict disciplinary action against erring lawyers.
- Lawyers whose license has been suspended even for a short time on account of malpractices should be

debarred from contesting elections as well as for selection to the judicial fraternity.

- District Judges should leave confidential notes about incorrigible lawyers for their successors.
- New amendments to the CPC must be utilised to maximum benefit along with an increased recourse to Section 89, Lok Adalat, alternative dispute redressal [ADR] schemes and pre-trial settlement procedures.
- The Bar must be persuaded to accept ADR schemes.
- Frivolous adjournments must be discouraged by imposing heavy costs and resorting to provisions like Order 8 Rule 10 of the CPC.
- Order 10 Rule 1 and Order 12 Rule 6 of the CPC must be utilised to resolve disputes between parties.
- Litigants must be encouraged to lead evidence by affidavits and unnecessary cross-examination must be controlled.
- Appellate courts should not admit appeals without proper assessment at the threshold itself and should try to dispose off the matter than remanding the case back for trial.
- Section 258, CrPC should be used to close petty matters where the accused cannot be found despite best efforts.
- Courts of revision should dismiss applications that are not maintainable under Section 397, CrPC and should not pass unconditional interim stay orders.
- Revisions filed on flimsy grounds should be disposed off summarily.
- All alimony and maintenance cases under Section 125, CrPC must be tried as summary cases.
- Interim relief in fatal accident cases must be granted immediately and then be referred for settlement through Lok Adalats.
- To prevent delay in cases where interim appeals are preferred pending final determination, records should be called from lower courts only where absolutely necessary.
- Miscellaneous, and other interim applications and appeals should be taken up together in the first instance and disposed off to allow expeditious conduct of proceedings.
- Section 245, CrPC should be amended as in the State of West Bengal fixing a maximum of one year for the prosecution to produce evidence after the first appearance of the accused, failing which, such pre-charge proceedings must be terminated.
- The CPC must be amended as in Maharashtra and Tamil Nadu allowing parties and their counsel to serve notices themselves.
- Section 294, CrPC should be applied to dispense with formal evidence of certain documents with oral evidence.

Infrastructure and Staffing Pattern

- The number of courts should be increased in proportion to population.
- Professionally trained court administrators and managers must be brought in.
- Basic amenities such as uninterrupted electricity supply, toilets, drinking water dispensers, witness sheds and adequate lock ups for undertrial prisoners should be provided in court complexes using funds from Central or centrally sponsored schemes.
- Workload of each court should be reviewed and staffing pattern changed accordingly.
- Staff designated for execution and other processes should be under the supervision of the District Judge and should not be allotted for any other work.
- There must be extensive computerisation to provide relief to judges, lawyers and litigants.

- Personal computers with internet facilities and relevant CDs connected with law should be provided to all judicial officers.
- There should be sub-jails atleast in every Division Headquarters.
- Contingency grants to courts must be increased.
- Government should allocate funds to District Courts through High Courts with authority retained with itself for re-appropriation at the end of the financial year.

Improvement in Quality of Work and Performance Assessment

- Judges need to follow ethics and punctuality scrupulously.
- Judgments should be pronounced on due dates without postponement.
- Monthly in-house review of judicial officers' work should be done with emphasis to upgrade their knowledge; judicial and management skills and the like through presentation of papers in which advocates may also be invited.
- Brotherly and helping attitude towards officers of the subordinate judiciary must be shown in managing their work as well as in disciplining the unruly lawyers while being strict in matters of punctuality and empathy towards victims and litigants.
- Time should be justly divided between judicial and administrative work.
- Regular training should be provided at entry and in-service levels to equip judges with latest case law and technologies and help them in managing time and stress.
- Computer training should be made a compulsory course for all judicial officers.
- For performance assessment, the existing criteria of number of cases dealt with should be supplemented with quality of work done.
- Weightage should be given to officers who conduct Lok Adalats, hold trials in jails, attend seminars, etc. particularly during holidays. Presently all these hold no additional credit as such.
- The good work done by judges should be brought to the notice of the concerned Administrative/Portfolio judge of the High Courts.
- Protection should be afforded to honest officers against frivolous and biased complaints.
- Unnecessary criticisms of judges by higher courts should be avoided.
- Effective steps should be undertaken for implementing the Shetty Commission Report.
- Fresh recruits to the judicial fraternity should be sent to

the National Judicial Academy, Bhopal and State Judicial Academies where legal ethics and the procedures and tact of dealing with different types of cases and advocates should be taught.

Corruption

- Strict vigilance should be kept over the life styles and activities of officers with bad/suspect reputation.
- A stringent attitude should be adopted against a corrupt subordinate judicial officer and no leniency should be shown in case the allegations of corruption are established against him.
- A pre-warning in monthly meetings to the corrupt officer always prove beneficial in having an effective control over his activities.

Utilization of Information Technology

- Voice activated computers and software having utilities to record evidence and to give open court dictation should be provided.
- Provision of computers and dictaphones during pre and post court hours would go a long way in expeditious pronouncement of judgments.
- Where possible, evidence should be recorded through video conferencing.

AN ACTION PLAN FOR JUDICIAL EDUCATION AND TRAINING

(A Report on the Deliberations of the Consultation Meeting between State Judicial Academies, High Courts and the National Judicial Academy held in Bhopal during 27th February-2nd March, 2004)

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

The Background

The content of this document is not just a report of a meeting but the product of a week long consultative process of Senior Judges of twenty different High Courts in charge of judicial training, the Directors/Deputy Directors of sixteen State Judicial Academies, two senior most judges of the Supreme Court and the Chairman of the Law Commission of India along with the Director and Faculty of the National Judicial Academy. The Consultation Meeting was based on data obtained on a survey of the existing policies and practices on judicial education & training in various High Courts and on a draft curriculum plan developed by the NJA in the context of proposals contained in the Report of the First National Judicial Pay Commission (FNJPC Report, 2000).

The recommendations on training of the FNJPC were accepted by the Supreme Court which directed the NJA to take steps to implement them throughout the country. NJA thought it appropriate to consult the High Courts and the State Judicial Academies who are the principal actors in organizing training for judicial officers to prepare an Action Plan through consensus of all the stakeholders and others involved. Hon'ble Mr. Justice S. Rajendra Babu and Hon'ble Mr. Justice R.C. Lahoti,

senior most Judges of Supreme Court (both of them later became Chief Justice of India) and Governing Board Members of NJA lent support and guidance to the deliberations along with Hon'ble Mr. Justice S. Jagannath Rao (Retd.), Chairman of the Law Commission of India and Hon'ble Mr. Justice V.S. Malimath (Retd.), Former Chief Justice of Karnataka and Kerala High Courts. Prof.(Dr.) N.R. Madhava Menon, Director, NJA co-ordinated the deliberations and prepared this Report for earnest consideration of the Chief Justices and Judges of the High Courts. As the Directors of the Academies have been active participants in consensus-building at the Consultation Meeting, the Action Plan will hopefully get implemented once the High Courts accept it with or without modifications. NJA will extend the necessary logistic support as recommended at the Consultation Meeting for successful implementation of the standard training curriculum for judges throughout the country.

The Objects of Consultation

The meeting, inter alia, had the following specific objects :-

- (a) Study the strengths and weaknesses of Induction Training Programme for Civil Judges (Junior Division) and directly-recruited/promotee District Judges, now being followed in different State

Academies and, in the context of the Model Curriculum recommended by the FNJPC (2000), evolve a STANDARD CURRICULUM for uniform implementation throughout the country;

- (b) Looking at the experience in continuing education being imparted to judges by different State Academies through refresher courses and district level programmes, evolve a Standard Set of Guidelines and Best Practices Code for organizing IN-SERVICE TRAINING for judges upto District Judge level on a continuing basis;
- (c) In the context of the Gender Sensitization Recommendations from the National Commission for Women and based on the experiences gained by the INDO-BRITISH JOINT PROJECT ON GENDER AND LAW (1997-2000) evolve the Syllabus and Training Modules for training of judges on gender issues with a view to ensure delivery of equal justice to women; and
- (d) Prepare and recommend an Action Plan for better and co-ordinated implementation of training activities between the National and State Judicial Academies with a view to maximize the use of

available resources and to build professional capacities of these institutions for the challenging tasks ahead.

The Start off

Two volumes of reference materials on training assembled by NJA were sent in advance to the participants, along with the proposed discussion format and a note on expected outcome from the consultation meeting. The participants included Directors/ Addl. Directors of State Judicial Academies and the Hon'ble Justices of the High Courts in charge of judicial training in their respective jurisdictions. Many judges put their thoughts on curriculum standardization in writing which were circulated among participants.

The Consultation Meeting commenced with a key note presentation from Prof. N.R. Madhava Menon, Director, NJA and Co-ordinator of the meeting in which he identified the tasks involved and suggested possible strategies to address them during the deliberations. This was followed by an inaugural address by the Chairman of the Law Commission who surveyed the best practices prevalent in judicial training all over the world and emphasized the need for upgradation of curriculum and training methods and the role of NJA in that regard. Following him retired Chief Justice Mr. V.S. Malimath in his presidential

address said that the judicial system rests on the confidence of the people, there are reports of some cracks in it and judges must wake up and ask themselves how to arrest the trends of possible decline in judicial standards and integrity. According to him the best method available to achieve the goal is careful selection and intensive training. Towards this end there is need for professional approaches in training which is lacking in most judicial academies. The business of training is too complex to allow adhocism in organization, in materials and methods. Hence the importance of the initiative in organizing the consultative process towards professionalising judicial training in the country.

Justice Malimath said that NJA should assume a supportive and complementary role and should not attempt to do what SJAs can do at the local level. NJA's primary role is in developing uniformly higher standards in the superior courts including the Supreme Court which NJA alone can do. Justice is being unduly delayed, becoming increasingly inaccessible to the poor and turning into unnecessarily complex at all levels. There is lack of predictability and consequent uncertainty in law. There are too many errors which require review and revision. In this context NJA should identify the ills of the system and come out

with proposals for research, training and education of judicial as well as non-judicial personnel of courts. In this context, he felt that there is a tendency of lawyers becoming stronger and judges becoming weaker in judicial proceedings and if a judge tries to assert his authority he often gets into trouble sometimes without support even from his colleagues and superiors. This is not a welcome development for administration of justice. After all lawyers are officers of court. As such, NJA should also consider to what extent it can play a role in lawyer's training so as to strike an appropriate balance in the judicial process.

Justice Malimath identified the following specific tasks to be undertaken by NJA in the matter of standardization of training :-

- (1) provide the leadership in innovation and in mainstreaming of training activities to assume a central role in judicial reform;
- (2) generate a data bank of resource persons available in different States who are competent to be invited as trainers with details on their expertise;
- (3) develop a multi-media learning library in which outstanding lectures delivered be video-taped, copied and circulated to all academies;

- (4) encourage co-operation and joint programmes between NJA and State academies as well as between NJA and academies in other countries.

Giving a succinct picture of training activities in Federal Judicial Centre, National Centre for State Courts and the National Judicial College in America as well as other national level centers in Europe, U.K. and the Pacific, Justice M. Jagannadha Rao, Chairman of the Law Commission emphasized the need for networking among leading institutions for greater efficiency in judicial education and training. He commended the efforts of the Commonwealth Legal Education Association which brought out in 1992 a document called "Continuing Judicial Education: A Review of Practice and Potential in the Commonwealth". Several reports of the Law Commission (14th, 54th, 114th, 116th and 117th reports) repeatedly emphasized the need to institute continuing education for judges and recommended the establishment of a National Judicial Academy for the purpose. Finally in the **All India Judges Association case, AIR 1992 SC 165** and in the order on the **Review Petition, AIR 1993 SC 2493**, the Supreme Court declared the urgent need to organize judicial education on a systematic basis through national and state judicial academies.

Justice Rao was of the opinion that judges of the High Courts, the Supreme Court and National Tribunals should also attend the continuing education programmes organized by the National Judicial Academy.

While endorsing the tasks identified by Justice Malimath for the NJA, Justice Rao felt that the Academy can give a national perspective even to the subjects on which State Academies impart training. Many functions of judges are common to all and they require national treatment if quality and uniformity are to be maintained. These include judgment writing, appreciation of evidence, judicial ethics, judicial accountability, court administration, case management, ADR methods, gender sensitivity, juvenile justice etc. NJA should embark on upgrading instruction on these and related topics and co-ordinate training activities in States jointly with State academies.

Justice Rao suggested that the starting point of discussion on judicial education and training should be the Report of the First National Judicial Pay Commission as it was prepared by "a Commission of experienced judges of the Supreme Court and High Courts and after wide consultation by way of issuing questionnaires and inviting opinions from judicial officers of all States". He concluded by saying that learning is a continuous process, judges

need it most and after two decades of service as judge, on retirement he is involved in learning a lot to be able to do his work in the Law Commission as "what we know is only a small fraction of what we ought to know".

Working Group Report on Induction Training

Soon after the inaugural session, the participants at the Consultation Meeting divided themselves into two Working Groups – one looking at the curriculum for initial training of District/Addl. District Judges and the other at the initial training of civil judges of junior division (ie. Munsiffs and Magistrates). Justices V.S. Malimath and M. Jagannadha Rao moderated the discussions in the Working Groups which continued for two days with incisive inputs from experienced judges involved in judicial training in the respective States. The participants had three models to work on, namely –

- (a) The Foundation/Induction Training Curriculum now being followed in the State Judicial Academies.
- (b) The Induction Training Curriculum recommended by the First National Judicial Pay Commission.
- (c) A modified/standardized version of Induction Training Curriculum proposed by the National Judicial Academy.

On the basis of the reports presented by the two Working

Groups and the deliberations thereon, the Consultation Meeting agreed on some basic approaches in curriculum development for induction training of judges. These may be summarized as follows :

1. There is need for standardization and quality control in judicial education and training. In this regard, the format provided by the FNJPC Report should be uniformly adopted by all the training institutions.
2. The duration for induction training of Civil Judges (Jr. Div.) shall be of twelve months (initial 6 months at the Academy on class-room instruction, next 3 months in field placement study and the last 3 months again at the Academy for reflective learning directed towards knitting knowledge and experiences with a view to build up the capacity and confidence to assume judicial roles) the induction training for newly recruited District Judges shall be of 4 months (3 months in the Academy, 2 weeks in field study and again 2 weeks on reflective learning in the Academy).

The duration of in-service training may vary between one day and one week depending on the nature and scope of the programme and in exceptional cases it may exceed one week

also. The practice followed in Kerala, Gujarat and some other States of having week-end workshops involving High Court judges (in charge of the District) and leading lawyers on selected judgments and chosen topics organized for the judicial officers of the District at some convenient location in the district itself will be an excellent continuing education device if properly planned and imaginatively administered systematically. It can help several administrative and reform purposes as well besides assisting the High Court in the monitoring of judicial functioning from close quarters. It helps in personality development of judges of lower courts and promotes fraternity among judges.

3. The Meeting endorsed the NJA proposal that curriculum should aim to impart learning on four specific themes, namely :

- (a) **Knowledge** (subject matter content of curriculum – the laws, society, governance, technology, etc.).
- (b) **Skills** (of court craft, application of law to resolve problem, judgment writing, management, etc.).
- (c) **Attitudes** (impartiality, sensitivity, confidence-building, credibility,
- (d) **Ethics** (integrity, court

room and out-of-court behaviour, discipline).

In the discussion, the Groups desired the order of priority to be reversed. Ethics, etiquette and personal standards ought to be the focus of all judicial training however difficult the process might seem. The emphasis to be given to ethics in judicial training was reiterated in all the sessions and judicial trainers have to design the modules appropriately to respond to the needs in this regard.

There is a clear need felt today for continuing education in all aspects of judicial ethics. Workload, diversity of cases, inadequate infra-structure support and pressure to perform leave little time for most judges to worry about judicial ethics. At the same time ethical issues often arise in judicial work. A judge has to appear to be ethical outside the court also. Continuing education through refresher courses and seminars would help judges in practicing judicial ethics in at least two ways. Firstly, the judge is made familiar with the norms and standards in the context of their application to particular fact situations. Secondly, such interaction with colleagues help to exchange experiences, learn from each other's perceptions and get the confidence to adopt the right path in adverse circumstances.

Integrity is integral to the function of judging and one has

to be constantly reminded of it in contemporary times when the general climate in society is not conducive to honest conduct. Ethics is the foundation of impartial judging. Public confidence of the system is entirely built on it. Respect from the Bar and the community comes from ethical behaviour and it is lost no sooner than unethical behaviour is noticed even once. The awe and authority of the court cannot restore it once it is lost. Therefore ethics is every judge's primary obligation to himself, to his office and to the institution of judiciary.

Ethics is involved in cases of conflict of interest. Ethics is involved in concern for the injustice suffered by others. Ethics lies in the capacity of judges to see themselves as others see them. Judicial independence depends on judicial ethics. A judiciary endowed with high degree of ethical conduct and a reputation for integrity can effectively withstand attacks from government or any other source.

Judges tend to willfully or knowingly violate ethical norms for financial gains or because of lust for unlimited power. But there are judges who cross the 'Lakshman Rekha' as a result of misplaced loyalty or pressure of family members and friends. These temptations can be overcome by peer group influences, constant interaction

with ethical colleagues and system mechanisms incorporating the pleasure-pain principle in regulating conduct. Training would also help to recognize the ethical issue in proper time and to impart ability to choose ethical options.

When one judge does a wrong, this reflects on the institution and ultimately on the public's perception of the integrity of each individual judge. This is so even when judges just retired do something which people have difficulty to reconcile with judicial integrity and independence. When media reports even minor or technical ethical infractions, judiciary as an institution loses much of its shine and credibility. What is important is not the judge's own perception of ethical conduct but what the people who interact with him perceive of him as a judge and as a person. Ethics, like justice, should not only be done but must be perceived to have been so followed.

4. Fair, quick and just settlement of disputes can well be achieved by alternative methods of dispute resolution (negotiation, mediation, conciliation, arbitration etc.) for which adequate provisions are now available in the laws. To be able to invoke them suitably, the judge should have fair

knowledge of the appropriateness and technology of these methods. This requires a new mindset and determination with capacity to persuade parties/advocates to employ ADRs. All programmes of judicial training should give special attention in ADR training with reference to skills, ethics and attitudes.

5. To make training attractive and useful to the trainees, the programmes have to be organized professionally by trainers who know their job. Such trainers are in short supply at present. Special effort should be taken by NJA to develop a cadre of competent trainers for all judicial academies. For this, those posted to the academies should have a reasonably long tenure and attractive conditions of service. Judges with academic interests who are to retire within a couple of years may be selected and offered a contract of five years of service with the Academy with clear instructions on what is expected of them. Such persons can be put through advanced crash courses on adult learning, educational psychology, skills teaching (clinical education), language and communi-

cation, ethics instruction and other techniques of judicial training before they are inducted as Directors or Deputy/Jt. Directors in the Academies.

The Judge-trainers can be supplemented by legal academics and subject-experts to make the core training team of judicial academies. Every academy should plan accordingly and put in place a set of trainers who are trained, motivated and professional in their approaches. They alone can motivate the trainees to take training seriously and benefit from the programmes.

6. In respect of the content of curriculum, the meeting generally adopted the scheme contained in FNJPC Report with the caveat that each High Court may add on or modify any part to suit local requirements and trainee needs.

The curricular goals as specified in the Report found support in the meeting and it was agreed that while designing the syllabus of each subject (paper) in a given training course, trainers should invariably spell out the specific objects (expected outcome) of learning every module (unit) of the subject concerned. These outcomes may be identified in terms of knowledge, skills and attitudes. Such clarity in objects specification would help the trainees to understand the scope

of training, enable self-learning and make it possible to evaluate the impact of training on the trainees. It will also help individualise the programme in terms of learning needs of each trainee. Object specification is difficult, yet an essential exercise for success of training.

For example, the broad purposes of Induction Training for newly recruited judicial officers may be summarized as follows :

- (i) To prepare newly appointed judges for performing their duties and functions;
- (ii) To ensure uniformity and predictability of decisions for which to equip the judges with adequate command of laws, procedures and the technology of judging;
- (iii) To educate judges on related areas of knowledge and skills useful for judicial work;
- (iv) To inculcate the right kind of values, attitudes and perspectives desirable for undertaking judicial functions;
- (v) To motivate and prepare for absorbing reformist initiatives, overcome resistance to change and to manage change in a manner beneficial of judicial administration;
- (vi) To recognize problems confronting the judiciary or problems faced by people vis-à-vis the judicial system and help develop and administer solutions for better access to justice; and
- (vii) To build institutional solidarity and a sense of common purpose.

These are too broad to convey the objects for study of particular subjects presented for induction training. Therefore they need to be broken down to clear, specific objects in terms of each subject and each module (unit) of each subject. If the trainers can articulate objects clearly for each unit of learning prescribed, it will be easier to select the materials for study, adopt appropriate methods of training and find out through evaluation whether the objects are achieved or not. Hence the importance of objects identification.

7. While there can be a core curriculum uniformly applicable throughout the country for Induction Training, there is a flexible component with varying content which has to be determined by the respective High Courts and the design of which has to be constantly upgraded by the State Academy. Thus,

the North-Eastern States may have courses on customary laws and problems arising out of non-separation of the executive from the judiciary while other States may have modules on land and revenue laws of the area and similar issues of local relevance.

8. Curriculum development and standardization should not be restricted to the syllabi or subjects of study alone, but should extend to the study materials recommended to the trainees, the training methods employed in the conduct of sessions, the evaluation techniques adopted to study impact assessment and the pattern of conduct and management of training programmes.
9. A major problem inhibiting the quality and impact of training is the non-availability of good trainers in adequate numbers. There is to be a judicial policy on training accepted by all the High Courts which the State and National Academies should implement in a co-ordinated manner. For this a cadre of judicial trainers needs to be developed who may come from among judges, lawyers or legal academics. They need to be trained first and given a tenure of

minimum five years in the Academy on attractive pay scales. Every Judge cannot be a trainer unless he has the aptitude for the job and competence to do it. The present practice of posting senior judges routinely to the Academies for short periods is neither good for improving the quality of training nor for developing administration of justice.

10. The Consultation Meeting was of the view that Bench Books or Judicial Manuals on specialized judicial functions should be prepared by the NJA and circulated as aids to judges. It is not to be a legal text book but a practice guide explaining good practices in the exercise of judicial discretion and judicial administration. Similar Bench Books are developed by judicial training institutions in U.K., U.S.A. and other countries. The National Judicial Academy should take the initiative in doing the necessary research and publishing standard Bench Books for assistance of judges particularly assigned for new jurisdictions and tasks.
11. Judicial selection procedures have to be integrated with training programmes if training has to be purposeful

in the long run. Grading and ranking have to wait till the completion of the training. Training has to be repeated in the case of those persons who could not show minimum level of satisfactory performance in training even if they managed good grades in the selection examination. In short, performance at training has to have a decisive impact in the matter of offering judicial office to a newly recruited officer.

In this connection, the meeting was told by the participant from Kerala that the High Court judge in charge of Training Directorate was authorized by the Full Court to let the evaluation at District level training communicated to the Chief Justice for recording it in the Confidential Reports or for deciding extension of probation or even to decide on discharge of the officer concerned. In all such cases the officer is informed of the assessment and given one or more opportunity to improve performance. When the performance is outstanding that also is conveyed to the officer, recorded in his CR and taken account of for service benefits.

There was a feeling that if

evaluation can be objective, transparent and participatory, it will do a lot of good in improving judicial performance and the quality of judicial training.

12. It is important that summary of recent laws and good practice declaring judgments are given to judicial officers in all training programmes. In writing the summaries in a standardized format on a regular and continuing basis the training academies have to take a leading role. It is to be part of continuing education of judges at all levels possibly using the distance education methods (electronic communication). In this regard the system prevailing in Gujarat, Kerala and few other jurisdictions under which a day long programme of one week end every month in every district is devoted to get the judicial officers discuss legal developments in the presence of the respective portfolio judge of the High Court was welcomed as a good initiative. The occasion is also used to resolve the questions which bother the judges of the subordinate judiciary and to assess the disparities in work load and its correction. These are called District-level training programmes

which are taken seriously by all concerned.

There is a lot that NJA and SJAs can offer in streamlining and institutionalizing these District-level training programmes found extremely useful by officers on the one hand and by the administration (High Court) on the other.

13. A point was made during the deliberations that co-curricular (moot courts, debates, symposia, project work etc.) and extra-curricular activities (sports, games, music, cultural events, yoga, meditation etc.) ought to find place in the schedule of induction training as well as, to the extent possible, in continuing education programmes. The object of developing a rounded personality capable of avoiding accumulation of stress being a major goal of training, it is important that Academies develop and institutionalize the expertise in this regard. Ethical conduct is appreciated more and personal biases moderated naturally in such intimate interactions and experiences. Some extra-curricular activity has to be cultivated by every trainee judge as a hobby in order to nurture a healthy mind in a

healthy body. A sedate life can be disastrous to personal and professional development particularly in advancing age when the judge is called upon to take greater responsibilities. Hence the importance of imparting hobbies and discipline in training programmes.

In this regard, the meeting felt that reading history books, biographies of great men, enjoying classical music and reading selected literary works can be recommended as required activities.

14. Language and communication is another key area which require special attention in training. Given the poor quality of English language competence of average graduates coming out of law colleges, it is essential that language education be imparted in judicial academies. There are now specialized learning/teaching modules available for improving competence in oral and written communication. Assuming that All India Judicial Service is a distinct possibility in the not too distant a future, it is prudent to train future judges to be able to handle judicial work at least in three languages – English, Hindi

- and a regional language.
15. Computer use must become a part of the training from Day One in the Academy so that before the training is completed every trainee judge is proficient in the use of computer and internet in legal research, legal writing and e-governance of the judiciary. For this, every judicial academy has to have a computer lab and a professional computer teacher.
 16. Etiquette and good manners also need to be taught as part of the professionalisation process. Faculty members in the Academy are role models to the trainees and as such they should themselves scrupulously follow highest standards of etiquette and good practices in words and deeds. Value of honesty and integrity has to be inculcated through story telling, practice exercises, religious discourses and through biographies of great achievers. Copying without proper acknowledgement has to be scrupulously discouraged and, if necessary, penalized. Intellectual honesty needs to be given due importance in performance of judicial functions.
 17. Another key area outside law which should find place in the training curriculum is Science and Technology. The litigation arising from Bhopal Gas Leak Disaster provides a good case study in this respect. Most environmental issues, cyber law matters and medico-legal issues provide entry points to take the trainees into the world of science and technology. Focus should be on scientific methodology, integrated approach to knowledge, the human side of science and technology and on scientific evidence in litigation.
 18. Yet another extra-legal subject requiring attention in judicial training courses is management and accounting. Under the present system, every judge is a manager of judicial administration and has to supervise accounting and financial management as well. It is therefore desirable to expose the young judicial officer to the developments in management sciences and elementary principles of accounting and financial administration. Human relations, organizational behaviour and inter-personal skills would form part of management training.
 19. The subject of Alternative Dispute Resolution is a new branch of professional expertise not ordinarily taught in law colleges. At the same time ADR has emerged as the key element in resolution of all kinds of disputes in future. It is now encouraged by the legislatures in Centre and States. The new provisions in CPC have made the invoking of ADR an obligation of every civil judge. As such, it is the duty of the Academy to equip the judge with the knowledge, skills and attitude necessary to use ADR effectively in legal proceedings. There is a new Code of Ethics too for conciliators, mediators and arbitrators different from that of a judge in adversarial trial. Being a novel subject in legal and judicial education, it would require extra effort on the part of judicial academies to mobilize appropriate resources for the tasks involved in this transformation in judicial roles.
 20. Finally, the meeting emphasized a great deal on methods of training. The traditional lecture method has outlived its utility in adult learning though it does perform the function of

information updating and knowledge verification. More importantly, training methods should address the affective domain (in contrast to cognitive learning) which relates to emotions, attitudes, value systems and behaviour. As every trainer knows this is not an easy task and requires individualized programmes designed to cater to the learning requirements of each trainee. There are methods of promoting learning from each other through group exercises, role plays, mock sessions, field experiences and critiquing others performances. To develop analytical faculties and reasoning abilities case study method and problem analysis method and panel discussion method are recommended.

Even the lecture method can be re-designed to serve adult learning by adopting an interrogative style and giving the synopsis of lecture in advance along with recommended reading materials, by inducting co-operative classes of two or more experts on the same subject in the same session, by liberal interspersing of audio-visual materials along with lectures and by inviting questions and comments from the learners on

every major proposition presented. A well prepared and imaginatively presented lecture is indeed a valuable tool to advance learning objectives particularly at the cognitive level of learning.

CONTENTS OF INDUCTION TRAINING (CIVIL JUDGE Jr.Divn.)

- (a) Total Duration : 12 Months in three parts.

Part I : Initial six months of institutional training at the Academy.

Part II : Mid-term Practical Training of 4 months at different offices and courts.

Part III : Final two months of Reflective and Integrated Learning at the Academy.

- (b) During institutional training, each day should begin with yoga, physical exercises and meditation (6 AM to 7 AM) and classroom learning between 9.30 AM and 12.30 PM and again between 2 PM and 4 PM. The rest of the evening is to be devoted for library work, recreation and group exercises. As young officers newly recruited, the trainees should be put to 8 to 10 hours of intellectual activity every day on a regular basis so that they develop a work culture and discipline conducive to exacting demands of judiciary. Preferably the Academy should work six days a week

and avoid giving too many holidays or letting officers go home on week-ends. There must be cultural programmes arranged on week-ends either in the Academy or in locations in the vicinity.

- (c) The items of learning during training includes the following :

- (i) Knowledge of Law and related Social/ Behavioural Sciences.
- (ii) Skills of Judging and Court/Case Management.
- (iii) Inter-personal Skills and Settlement outside Courts (ADR)
- (iv) Imbibing judicial ethics, attitudes and perspectives.
- (v) Development of Language and Communication Skills.
- (vi) Appreciation of impact of science and technology in justice delivery and judicial administration.
- (vii) Understand social reality and current social problems.
- (viii) Learn rationale and functional aspects of gender justice, juvenile justice and similar special jurisdictions.

- (d) The first week in the Academy is to be devoted to share learning objectives, ascertain special training

needs, if any, of any individual or group, preparing the study plans, clarifying the role and responsibilities, discussing the training methods and evaluation strategies and assigning project assignments in consultation with individual trainees. In the course of this exercise, the faculty should be able to identify the strengths and weaknesses of the group and determine where and how special assistance has to be organized to carry the programme forward.

(e) The subject-contents of the six months' institutional training :

The Consultation Meeting broadly endorsed the scheme recommended by the First National Judicial Pay Commission Report (2000) which gave a blue print of the objects, content and methods of induction training. Taking into account the developments of the last four years since the report was submitted and the local requirements of each High Court jurisdiction, it was agreed that the curriculum and the syllabii based on it would require a lot of change in terms of details. Moreover, curriculum planning is a continuing process and judicial training is no exception to it. In this context, the National Consultation discussed the NJA

Model Curriculum and broadly agreed on the following leaving the discretion to State Judicial Academies to further modify it in consultation with their respective High Courts.

The traditional approach of dividing the mainstream curriculum into two broad segments of Civil and Criminal requires change towards a more integrated approach generally. This is what the FNJPC model recommended. There will still be scope for detailed study of CPC and CrPC though in a more functional manner.

In this context the broad curricular framework adopted would have four major parts each with a specific set of objectives integrated at appropriate levels in the total 12 months training programme.

Part I : LAW, JUSTICE AND CONSTITUTIONAL GOVERNANCE

This part of the induction training curriculum may have as many papers (subjects) as the State Academy finds necessary to give the new entrant to the judiciary an understanding of (a) law in socio-cultural context in contemporary India, (b) the nature of political economy and the role of law in it, (c) the significance and meaning of rule of law and constitutional government, (d) the status of human rights, judicial review and basic structure of the Constitution,

(e) court system, bar-bench relations and the concept of fair trial, and (f) decentralized governance, court-civil society interface etc.

Taking account of the six months duration of institutional training, the time which may be assigned for training in subjects under Part I can be roughly one month or 1/6th of the taught curriculum. Of course, this time period is to be spread over the six month duration of institutional training at the Academy.

This part consists of subjects most of which can be taught through lecture-discussion, seminars, project writing and self-study.

Part II : LAW, COURTS AND ADMINISTRATION OF JUSTICE

This part of the induction training curriculum occupies the major part of time and effort in the whole scheme of things. The substantive and procedural laws listed in this part ought to have been studied by every judicial officer in the LL.B. programme. Nonetheless it is necessary to revisit these topics though in a different functional perspective. If these subjects are taught by lectures again it might be uninteresting at least to those who are otherwise knowledgeable. It is here the ingenuity and expertise of the trainer have to be displayed in organizing the syllabii and teaching methods in such a way that it is not repetitive of the

law school style of education, but attractive to the young professional keen to exercise judicial powers. Yes, C.P.C., Cr.P.C., Evidence, Limitation, Suits Valuation, Court Fees, Specific Relief, Registration, Transfer of Property, General Clauses Act, Penal Code and a number of local and special laws need to be taught. The difference lies in how they are taught in an integrated and practical manner keeping judicial functions in mind.

One approach could be to identify the routine functions of a trial judge and organize the subjects around it. Thus one may structure the syllabi in terms of (a) Jurisdictional issues under civil and criminal laws, (b) initiation of civil and criminal proceedings, (c) pleadings and discovery proceedings in civil cases, (d) judicial control of pre-trial proceedings in criminal matters, (e) interlocutory petitions and interim orders, (f) role of court in civil and criminal trials, (g) appreciation of evidence in civil and criminal cases, (h) judgment writing, (i) sentencing etc. The legal procedures, good judicial practices and role of the judge in different stages of court proceedings ought to be the focus in discussing the substantive and procedural laws in this segment of the curriculum.

This part would also have separate modules to give a broad

idea of special jurisdictions such as Family Court, Labour Court, Juvenile Court, Accident Tribunal etc.

Court administration and case management are two other topics which require to be taught in preparation for the field placement the trainees would have on completion of Part I of institutional training.

Alternative Dispute Resolution methods are assuming great importance in civil and criminal justice with recent amendments to procedural laws and the judicial officers should be trained on law and practice regarding conciliation, mediation, arbitration and negotiated settlements. Legal Aid Services is another aspect warranting attention in this part of the course.

Equally important module to be discussed in this part of training is about technology and e-governance in judiciary, scientific developments and forensic evidence, use of computer in legal research and judicial work. Apart from class room instruction the trainees should have hands on experience in these matters. Every judge in future should be enabled to work on computers and internet for which the induction training should be utilized. Another related module in which special instruction is to be imparted is intellectual property law and cyber

law both of which are likely to impact litigation in a big way.

Finally Part II will have to address issues of judicial ethics, discipline and integrity. The Consultation Meeting was of the unanimous opinion that this component should be given the first priority in induction training and should not be relegated as part of a module at the end. A Charter of do's and don'ts should be prepared which may provide the minimum standards for personal and professional conduct of judicial officers and every effort should be made to make the officers understand its fundamental importance. As the then Chief Justice of India put it Integrity, Industry and Intelligence in that order is what a judicial officer should have to discharge his functions fearlessly and independently. Knowledge of law is something one can always acquire as needed if one is hardworking and intelligent. However, for integrity there is no short-cut or substitute and must become part of one's personality if one has to administer justice without fear or favour. The challenge before judicial academies is to inculcate integrity and the habit of hard and sustained work on the officers.

It is difficult to prescribe a curriculum or any one method to train officers in integrity and hard work. Six months is sufficiently long period to try it provided

trainers know the strengths and weaknesses of each of the trainee and are prepared to work with them at one-to-one level to strengthen character building elements. There should be close monitoring of the progress in this regard during the entire period of training and even afterwards. The Consultation recommended an appropriate oath being developed and administered by the Academy at the end of training to be renewed every year on the LAW DAY (26th November).

Given the importance and vastness of subjects included in Part II, the Consultation felt that roughly three to four months of the available time in the Academy should be devoted to covering these subjects. Much of it is skill-based and attitude-development training which require different methods, materials and resource persons.

Part III : ADMINISTRATION OF JUSTICE VIS-À-VIS SELECT PROBLEMS IN SOCIETY

Indian Society is highly pluralistic in social, economic and cultural terms. It can be viewed as a strong point of Indian democracy. However, maintaining rule of law and social harmony in such a society is a matter of challenge to those in power. Nearly six decades of constitutional governance in which the judiciary at times played a critical role reveals the

complementarity of constitutional institutions and the need to act with tact and caution. This part is intended to put the role of judiciary in perspective by looking at how on key issues of administration and governance, judges can play a role maximizing justice and fair play in society.

It is for the State Academy to identify the problems/issues which needed to be addressed in a given cause, assemble the experts to give inputs for an informed discussion on the subject. The objective is not only to inform and educate, but also to find appropriate strategies when judicial intervention is called for. Many such problems may be directly be involving the judiciary itself such as problems of corruption, delay, access and cost. Issues such as secularism and management of communal conflict, equality and affirmative action, terrorism and human rights etc. are illustrative of the problems recommended for discussion to expose the trainees on judicial role in contemporary governance.

A seminar format rather than lecture will be better method to deal with problems selected for discussion in this part of the curriculum.

Part IV : FIELD TRAINING

Field training as an under-study with an officer of higher judicial service for a couple of months or more has been in the

past the major strategy and many a time the only method of training for newly recruited officers. The success of the programme depended on the length and preparation of such field placement, the availability of proper timely supervision and guidance and the motivation of the officer to learn which sometimes was absent due to lack of interest or compulsion. There was no method to evaluate the extent of learning in placement study and the level of professional competence achieved. In many jurisdictions because of lack of adequate number of officers in courts for long periods, high courts were in a hurry to post the newly recruited persons, trained or untrained. With the setting up of State Judicial Academies the situation has considerably improved and field training has come to occupy a central place in the scheme of training.

The FNJPC Report has laid lot of emphasis on the organization and integration of the practical training component in the overall scheme of Induction Training. The syllabus on practical training often mentions only the offices to be visited and activities to be observed. It does not give the objects of such visits or observation. Therefore the practical training syllabii have to spell out the knowledge to be acquired and skills to be learnt from each such visits and suggest

the methods to be employed towards that end. Set of questions should be formulated and assigned for each institutional visit, a prior briefing on the role and functions of the institution to be imparted and methods of evaluating the learning to be discussed with the trainees in advance. Perceptions about courts and their functioning on the part of each of these institutions visited should be gathered by the trainees for critical review and examination. Given the expanding role of trial courts in the liberalized economy, it is important to include in field visit offices of Patent, Trade Mark and Copyright officers, Pollution Control Boards and Environment Departments, Cyber Police Stations etc.

A suggestion made at the meeting was to explore the possibility of field training in neighbouring States which will maximize the potential for learning apart from appreciating integration

of judicial system.

The total duration of field training is to be of four months which has to be planned on an individual basis in consultation with the trainee officers and the authorities in places of visit. It requires enormous preparation and co-ordination efforts on the part of the faculty of the Academy and unless it is done with care the whole programme may fail to achieve the objective and will result in waste of time and resources. Retired judges with drive and supervisory competence should be enlisted by the Academy to exclusively deal with placement training efficiently and with professional accountability. The idea of an instructor or tutor being assigned to assist and co-ordinate the placement activities of a group of five to ten trainees can be a possible strategy to execute the programme efficiently.

Finally, the Consultation

Meeting wanted the Academies to arrange for advanced training in language and communication.

Part V : ROUNDING OFF TRAINING AT THE ACADEMY

The last two months of the year-long Induction Training is to be again at the Academy. This part of training is intended to achieve the following :

- (a) To check the differences if any of the law learnt and its practice in the system and to explain the reasons therefore as well as to know the judicial responses to the situation.
- (b) To clarify issues which still bother the trainee in the job he is to undertake.
- (c) To design his own plans for continued learning and professional development.
- (d) To have reflective and experiential learning in association with the experiences of others in the group in rounding up his learning.

All India Judge's Association v. Union of India, AIR 1992 SC 165, 179

Ranganath Misra, C.J., "The conduct of every judicial officer should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private, political or partisan influences; he should administer justice according to law, and deal with his appointment as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity."

Judges and Judicial Accountability

Edited by Cyrus Das and K. Chandra, Universal
Pub. Co. (2003) p.284. Price Rs. 250

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

Judiciary is emerging as a powerful institution of governance in many democratic countries around the world. The Indian Supreme Court is admittedly the most powerful judiciary in the world today. It is more so because of the faith and esteem it enjoys among a billion people. With power comes responsibility and the need to insulate it from corrupting influences both from within and outside the judiciary. Naturally reports of judicial corruption and non-performance create great concerns for which appropriate responses have to be found expeditiously preferably by the judges themselves. As Judge Clifford Wallace puts it, "Judicial corruption certainly exists, I know of no country that is completely free of corruption with its insidious effect of undermining the rule of law. Attempts to solve judicial corruption, however, can themselves weaken the rule of law if the judiciary comes under the influence or control of the legislative or executive branch. The challenge to all governments, therefore, is to eradicate judicial corruption without intruding on the independence of the judiciary". This is the challenge which judges from around the Commonwealth and outside deliberated in a Workshop in Malaysia in 2002 the outcome of which is now provided in a sleek volume, courtesy the Commonwealth Lawyers' Association.

Judicial accountability is a broader theme, all the dimensions of which are not addressed in the book under review. Today accountability raises questions of quality of judgments, the accumulated arrears and consequent delay in judicial proceedings, inequalities and inequities in accessing justice, balance of power and good governance, uncertainties in law arising out of conflicting opinions, the ineffectiveness of mechanisms to deal with judicial corruption etc. Regrettably, contempt of court power did act as a deterrent in democratic scrutiny of judicial performance. Half truths and untruths prevailed in discourses on judiciary which did greater damage to the institution in many ways. Judges are not in a position to defend themselves. Lawyers debated the issues selectively and in a manner which did not carry conviction. We are today in an uneasy situation in which what Judge Wallace feared might happen if the judiciary as a whole does not come forward acknowledging the malaise that has set in and instituting mechanisms in place which are credible and confidence-building. What is at stake is not just the independence of judiciary but the very survival of rule of law and constitutional values.

In this context, Commonwealth Lawyers' Association and

its President Cyrus Das, the editor of the book, has done great public service in getting the subject debated by judges themselves, in identifying the best practices on judicial accountability in different jurisdictions and in bringing them out in a well-edited volume at an affordable price through Universal Publishing Co. It is little surprising that there was no participant from the Indian Judiciary in the workshop. The Indian Parliament has under its consideration a vital legislation on setting up of a National Judicial Commission to address some of the issues debated in the workshop. The debate on the pending Bill will greatly profit from the views and experiences discussed in the book under view. The publication is timely and enriching in the Indian scenario. What has happened earlier in this regard by way of Statement of Principles, Guidelines and Declarations evolved in judicial conferences are included in the volume to give a total perspective of the efforts and initiatives under way in different jurisdictions.

Apart from opening addresses, keynote speeches and a workshop report, the book contains ten well researched articles on various aspects of judicial accountability including appointment processes, judicial corruption, code of conduct for judges and different methods employed for accountability while

maintaining judicial independence.

Justice Michael Kirby delves on the role of judges in advancing equality in plural societies. He wants judges to respect diversity while promoting equality. He wants the judiciary in plural societies "to educate itself about the way laws fall unequally upon different groups in the community. Judicial officers should endeavour to see the law through the eyes of those whom the law governs. They should be alert and sensitive to the inequality of legal protection. They should equalize the impact of law in a plural society so that the boast about "equal justice under law is not just empty rhetoric.... In a plural society judges are the essential equalizers". It will be interesting to make an assessment of judicial performance on this parameter of equalization through judging in unequal, plural societies.

Two informative articles on appointment processes throws light on how information is collected and independent scrutiny conducted to select best available candidates for the judiciary. In England, a Commission for Judicial Appointments is expected to maintain independent oversight of the procedures. The Commissioner first appointed in 2001 is a Vice-Chancellor of a University who has never practiced law. Ten Commissioners

assist him in doing a continuing audit of the procedures for judicial appointments. They act as observers in interviews, investigate complaints about the way procedures have been applied in individual cases and would intervene to correct the injustice, if any, through restoring the applicant to the point in the competition at which he or she was disadvantaged in subsequent cycle of appointments. It may also amend or expunge any part of the records of any individual. In addition, it may recommend that the Lord Chancellor take other forms of corrective action. Thus, the Commission with a supervisory role and with powers to take positive action without reference to the Lord Chancellor in certain cases works as a new initiative to bring about accountability in judicial appointments in England. Interestingly, the article concludes by saying that the new system of appointment in England may not necessarily bring better judges but will bring "greater public confidence in the system of judicial appointments and hopefully, greater respect for and confidence in the judiciary".

In a thought-provoking analysis of the problems in combating judicial corruption, Judge Clifford Wallance of the U.S. Court of Appeals examines the dilemma of how existing mechanisms proved inadequate

to the tasks on the one hand how proposals being advanced stand to undermine judicial independence if the mechanism is not carefully structured. There is apparently tension between judicial independence and judicial accountability. Nevertheless, a workable mechanism is inevitable. It is important to keep the process within the judiciary. But the process has to be at the same time objective and decentralized.

The only contribution to the book on Indian experience is from Mr. Andhyarujina, a senior advocate who discusses the unsatisfactory state of the law and practice of judicial accountability in India and the recent efforts to reform it. Judicial accountability in U.S. through citizen involvement (in election of judges, in participation as jury etc.) and media criticism of court proceedings is the subject of another article in the book.

Yet another interesting study of the dimensions of the problem is provided by Cyrus Das pointing out that the process of judicial review has often pitted the judiciary against the executive leading to charges of judiciary over-reaching itself. Emphasising the need to explain the exercise of judicial power, especially when pronouncing judgments of significance, he would argue in favour of public and media criticism of judges and judgments. It is important to educate the

public on the role of judges in order to contain scurrilous remarks undermining the independence of judiciary. Use of contempt power may not bring the desired results. Quoting approvingly from the judgment of the Indian Supreme Court in **In re D.C. Saxena, AIR 1996 SC 2481**, the author seems to argue that criticism of judgments is part of free speech and a measure of judicial accountability. He endorses the Latimer House Guidelines on accountability mechanisms which includes public criticism and

disapproves the use of contempt jurisdiction against it.

Given the crucial role judiciary plays under the prevailing notions of limited government and rule of law, questions on accountability of judges are bound to arise more often and more vigorously in the future. They are to be welcomed as that is itself part of rule of law. However, if the responses tend to erode independence of judiciary and the faith of the people in the judicial system, it will lead to disastrous consequences. As such, it is in

the interest of all concerned to revisit the issues of judicial accountability and adopt as many mechanisms as are available which are fair, transparent and workable to the situation prevailing in each country. Issues cannot be brushed aside or suppressed any more without causing injury to the system itself. In this ongoing exercise, the book edited by Das and Chandra is a significant input providing information of possible solutions based on practices from around the world.

Felix Frankfurter, Address, New York Times Magazine, Nov. 28, 1954

"A Judge should be compounded of the faculties that are demanded of the historian and the philosopher and the prophet. The last demand upon him-to make some forecast of the consequences of his action is perhaps the heaviest. To pierce the curtain of the future, to give shape and visage to mysteries still in the womb of time, is the gift of the imagination. It requires poetic sensibilities with which judges are rarely endowed and which their education does not normally develop. These judges must have something of the creative artist in them, they must have antennae registering feeling and judgment beyond logical let alone quantitative proof."

**Risk Management in Judicial Proceedings by
D.K. Sampath, NJA Occassional Paper Series no. 4,
Published by NJA (2005), Price Rs. 20/-**

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

"Risk Management in the Judicial Process," is the product of reflective thinking of an experienced lawyer who having reached the top of legal practice renounced it all to devote time towards evolving alternate methods for fair and fast dispensation of justice to the common people. D.K. Sampath is a living legend of law in Tamil Nadu, respected both by the legal fraternity as well as the people because of his dedicated services in the cause of justice. He became more active when he retired from legal practice in early 1980s and took to free legal aid services in the rural countryside in and around Chennai and Chenglepet. The Tamil Nadu Legal Aid Board endorsed his idea of village level mediation for enlarging access to justice for the poor. He soon became a change agent in the justice delivery system in the State, innovating, experimenting and in the process, increasing the credibility of the justice system in the minds of people who had little to do with it earlier.

That was the period, the National Law School was started in Bangalore. His services were requisitioned as a Professor in clinical legal education in which position he not only revolutionized the method of teaching legal skills to law students but also pioneered programmes which linked up the law school to neighbouring

communities through the programmes of legal aid. As the Director of the National Law School, it was my privilege to use the tremendous learning, enthusiasm and capacity to inspire young minds on the part of 70 year old Sampath to the advantage of the students. He has been a source of strength in innovative legal education at Bangalore and Kolkata. Together we published a book on judicial education and training in 2000. But for his advanced age (he is now nearing 90 years old) he would have been my colleague at the National Judicial Academy at Bhopal. Despite his physical age, he is mentally young and he wrote the manuscript of this book in the hospital while convalescing after a heart operation. His son Ramesh got it typed and sent it to me. I deleted one chapter on legal challenges and responses because of constraints of space and put the rest in print without much editing because I felt that if I do so it might hamper the spirit and simplicity with which Sampath dealt with the subject. I wrote this introduction after a close reading of the manuscript in order to give the reader a birds' eye view of the content and concerns of the book.

The National Judicial Academy will be receiving hundreds of judges from all over the country for different programmes all of whom, I am sure, will find the ideas contained

in this book interesting and instructive. Of course, the opinions in it are those of the author and do not necessarily reflect those of the Academy. The Academy records its profound thanks to Mr. D.K. Sampath for his contribution towards reforming the system to make it more efficient in the delivery of justice.

Risk in Judicial Process

Decision making on contested facts and arguments which affects the rights and duties of others is part of the daily functioning of a judge. Though he has the law and procedure to guide him, there are risks of varying degrees because of the discretion involved and the possibility of opposing view points being sustained under the same law and procedure. With experience every judge acquires expertise in managing risks efficiently, quickly and in a manner acceptable to standards of justice. However, the initial phase of a judge's career is full of doubts, apprehensions and hesitation to decide one way or the other not because of ignorance of law but because of the desire to do the right thing.

The pressure of workload, the demand for performance, the introduction of technology and the explosion of laws in every aspect of modern life have contributed to proliferation of risks in the judicial process, more importantly at the trial level. Judicial training and continuing judicial education are

intended to assist the judge in coping up with the management of these risks in a manner acceptable to the peers, fair to the parties in the litigation and promotive of the credibility of the justice system.

If risks are inevitable in the legal system and intelligently handling them is the key to development of the judicial process in tune with social change, it is incumbent on every judge not to delay taking it or try to mitigate consequences one way or the other. There may be genuine doubts about the relative benefits of one or other courses of action. Wisdom lies in managing the risks in a professional manner as they come even if bonafide mistakes occur in the process. While giving a wealth of information on how to manage risks judicially, the learned author correctly observes that, "...it is more a lack of effort than a lack of vision that holds back the legal system from marching with the rest of society".

In a lucid, simple and practical way, the author narrates the series of risks which arise in the processing of a civil litigation and suggests measures to overcome them. They appear to be natural and reasonable to any legal mind though it needs an effort to internalize it in practice. By putting himself in the shoes of a Judge, Mr. Sampath takes us through the vicissitudes of a

litigation to explain what he means by risk management in judicial process. Being an experienced lawyer himself, who played the game for over three quarters of a century, he is conscious of the dynamics of judicial decision making and how clever lawyers try to influence it one way or the other. He therefore takes us through a variety of fact situations as they evolve in the progression of a litigation and illustrates the risks and their implications in appreciation of evidence at different stages of the trial. Conscious of the judicial role and accountability, the author cautions the judge where caution is needed and encourages to be firm and decisive when the situation so warrants.

Type of Risks and Role of Lawyers

Many risks are created deliberately or otherwise by the parties to the litigation or their lawyers in the hope it will advance their interests. In the process, a number of unethical or even illegal practices have crept into the system putting the very institution at great risks. The author has many harsh words to say on the role of the legal profession. "The legal profession has not internalized any norm which creates a sense of shame or guilt at some of its members being motivated rather by self-interest than by rules of professional conduct. The tolerance of such

conduct shows scant respect for rights of others. The person defiant of such norms of propriety does not face the risk of forfeiting the goodwill of the society or even that of the immediate legal community. There is no risk of any private cost for violating the norms. The risk of such practices corrupting the judge is also very much there. The cost of being ostracized by the fellow practitioners of law is all but absent. The cost to the claimant is of wealth and the cost to the legal system is loss of credibility".

Management of Risks: Implications

The book divides risks into those which arise in the administrative role of the judge and those in his judicial role. Though the risks in the administrative side are relatively few and are remediable to a large extent by effective supervision and system changes, those on the judicial side are too numerous and are critical to the outcome of the judicial function- delivery of justice. In the judicial system, there are certain structural risks arising from the limitations of language, the compulsions in following precedents, the dominance of the males in the profession, distortions in evidentiary rules, the demand for speedy disposals, the developments in other branches of knowledge giving new meaning to legal concepts and rules, changing character of judicial

interpretation, the changing nature of advocacy etc. These inherent risks of the system can result in injustice if not properly managed. And management depends on awareness of the risk, capacity to disaggregate them from facts and principles and ability to resolve it without appearing to be unfair. Giving numerous examples, the author tries to educate the reader how to cultivate these capacities in management of risks.

One of the important risk obviously is delayed justice. These are caused by a variety of factors on many of which the judge has little control. At the same time, ultimately the judge is accountable for the delay in dispensation of justice. Accused has not been brought from jail by police. Witnesses have not turned up. Laboratory report is not received. Lawyer is not prepared. There is a strike of ministerial staff. The causes are endless. With the advent of computers and automation many of these causes are likely to disappear. Then management will assume a different quality and structure. There will always be more work than the judge can manage. Judicial reforms are inevitable if delay is to be reduced. Meanwhile, there are several steps identified in the book which help a conscientious judge to manage the situation far more efficiently if he is prepared to take some risks

on the administrative side. This is where the skills of personnel management, time management and records management become important. Technology is a great asset in this regard. But the mindset of the judges, lawyers and court staff has to change.

Values and Accountability in Risk Management

The role of values in risk management is dealt with in a full chapter in the book. Drawing upon illustrative examples which a trial judge handles every day in court, the author explains how value assumptions on human nature and transactions can play a decisive role in the exercise of judicial discretion and judgment. The author illustrates how being a bit cautious in coming to conclusions can help. Truth is the ultimate value in judicial proceeding. But in perceiving truth there can be many ways each riddled with risk possibilities because of the way the legal system (law of evidence) is structured. In criminal proceedings, the value premise of the judge can aggravate risk prospects in decision making. It is in the management of these risks the judge has to exercise caution and train his mind to adopt a balanced approach where justice is not only done but seen by the parties to have been done. It is a question of attitude which can be cultivated through training and experience.

Discussing how judicial accountability exists in the system the author writes about accountability on the judicial as well as administrative sides. Each has distinct types of risks involved and the judge needs to be familiar with the procedures available to reduce or manage such risks. He poses the question whether the justice system can be 'fast' and at the same time 'fair'? The answer is yes. There are areas of procedure where the system can be much faster than today without compromising fairness. It requires a different mindset to identify such areas and act to make a difference in the outcome. Technology can help in a big way to make this transformation work.

Risks are inevitable in any system including the judicial system. Learning from experience and using that knowledge to minimize or contain risks is what is called risk management. Thus, the author argues that knowing the nature of the risk and its causal factors is a pre-requisite to management of risks. Blaming it as part of the system's faults is not acceptable in the services sector as the consumers have a right to demand quality and efficiency. Thus, witnesses turning hostile is not sufficient excuse for non-performance of the criminal justice delivery system. Nor perfunctory nature of investigation. The orders of the

Supreme Court in the **Best Bakery case** illustrate how the above type of risks have not been managed by both the trial and appellate courts the way they were expected to do in criminal proceedings. This case is a supreme example of how the risks continue to plague the system with the judges being unable to manage them. Judicial accountability is related to the capacity to manage risks inherent in operating a system based on adversarial adjudication. Unscrupulous parties may manipulate and generate risk situations to support private ends. This puts the system in great jeopardy. It may lose its credibility. Judges have added responsibility to avoid such risks introduced by manipulators and manage the system to sustain credibility of the public in the justice system. Lack of motivation on the part of judges to achieve excellence is

seen to be a contributing factor for collapse of the system. Judges need to understand this and respond suitably lest the risks assume larger proportions.

In the concluding chapter of this interesting study of risks and risk management in judiciary, Sri. Sampath takes us to a management approach to judicial administration. Judiciary is a knowledge industry. Lawyers and judges are knowledge workers. The advent of information and communication technology makes the field of knowledge workers challenging and stimulating if the motivation level is maintained. The mind set is important as it can facilitate change as well as inhibit it. "An organization of knowledge workers has to take learning seriously," says, the author.

For the legal and judicial system to manage change in the present context would require,

according to the author, a vision and a set of policies futuristically oriented. "An aimless drift or just a survival attitude may not be conducive The first step is the realization that present practices are to be changed what is aimed at has to be much speedier justice the strategy has to be built on this assumption The chance of failure is the risk factor... The risk of obsolescence is real for the legal system today..... There is a performance crisis in the legal system".

How one wishes that the above message dawns on every member of the legal-judicial fraternity so that they seek to renounce the obsolescence and become change agents for faster and fairer justice in society. This monograph is a guide towards that end.

A.B.S.K. Sangh (Rly.) v. Union of India, AIR 1981 SC 298, 307

Krishna Iyer, J. "Law is a means to an end and justice is that end. But in actuality, Law and Justice are distant neighbours; sometimes even strange hostiles. If law shoots down justice, the people shoot down the law and lawlessness paralyses development, disrupts order and retards progress."

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Director, NJA

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 seniormost 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.