

By FAX/e-mail

OFFICE OF THE DISTRICT & SESSIONS JUDGE, CIVIL AND
SESSIONS DIVISION, KULLU, DISTRICT KULLU, HIMACHAL
PRADESH.

No.D&SJ, KLU. /P.F-2015..6190
Dated :Kullu , the 1st May, 2015.

To

The Director,
H.P. Judicial Academy,
Shimla.

Subject: Regional Judicial Conference on "
Strengthening Justice Delivery System:
Tools and Techniques" (North
Zone), (24.4.2015 to 26.4.2015).

Sir,

Jai Hind.

I have the honour to refer to letter No.
HPJA/NJA. Reg. Conf. Nomination /2015- 2399 dated
17.04.2015 and submit the detailed report of the
deliberations made in the conference , jointly
prepared by the undersigned and Sh. Yougesh Jaswal,
Addl. Distt. & Sessions Judge, Ghumarwin , for
record, as desired.

Encl: Conference Report.

Yours faithfully,

Virender Sharma
(Virender Sharma),
District & Sessions Judge,
Kullu, HP.

REPORT OF THE DELIBERATIONS MADE IN THE REGIONAL
JUDICIAL CONFERENCE ON "STRENGTHENING JUSTICE
DELIVERY SYSTEM: TOOLS AND TECHNIQUES (NORTH ZONE)
ON AND W.E.F. 24.04.2015.

Shimla, initially, a cluster of few villages under the domain of Rajas of Keonthal and Patiala, grew rapidly in the first half of 19th century, primarily as a sanitarium for the British invalids. Gradually, the English bought lands and built. It was much later in 1864, the summer capital of the imperial government was shifted from Muree, now in Pakistan to Shimla, by Sir John Lawrence, the then Viceroy of India. 'Peter-Hoff'-the venue of this conclave, is not a wanted site either in the history of Shimla. A wooden structure built in Tudorbethan style of architecture, has served as a residence to seven viceroys of British India, till the Vice Regal Lodge was constructed on the adjacent Observatory Hill.

After independence, Punjab High Court functioned here for quite sometime. Even trial of Nathu Ram Godse took place here. This building also got recolonization as the residence of Governor of Himachal Pradesh for many years. It was, however, completely burnt down in a monstrous fire in January, 1981. It was rebuilt thereafter. Since then, it has been a manifestation of magnificence. The deliberations made and decisions taken here affected the fate and destiny of the Indians in the past. Splendid snow caped and green towering hills dotted with conifers, cool misty breeze, the cozy sun, fragrance of wild roses and sparkle of blooming rhododendrons,

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present a picturesque of jingling , comeliness and a perfect ambiance for discussions over issues of concern. Conference, like the reported one are meant to ponder over some of the burning causes of concern crouching before the Indian Judiciary, namely, timeliness, responsiveness and quality of justice. The regional Judicial Conference (North Zone) was conducted by the National Judicial Academy in collaboration with Hon'ble High Court of H.P and H.P Judicial Academy on "Strengthening Justice Delivery System : Tools and Techniques" from 24th April, 2015 to 26th April, 2015, in which Judicial Officers from Northern States, put their heads together and came up with new ideas to tackle the problems being confronted by our judicial wheel.

FIRST DAY.

The tone for meaningful discussion was set in the opening address of the inaugural Session itself, when Hon'ble Shri Justice Mansoor Ahmad Mir, the Chief Justice of the High Court of H.P exhorted the participant Judicial Officers to actively get involve in the deliberations. His lordship pointed out that the concept of justice is as old as the society itself though the meaning of justice being dynamic has changed from time to time but equality, impartiality and virtue are its inseparable characteristics. His lordship stressed that 2.7 crore cases are pending in the country and they need to be attended to by employing principles of Case management and court management.

Hon'ble Shri Justice Alok Singh, Judge High

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Court of Uttarakhand spoke in his address that strong democracy has strong economy and strong economy, has effective rule of law, which gives quick justice to its people. Although, his lordship also spoke about fast tracking of cases, yet, his Lordship also cautioned that mere fast tracking of particular cases is not the solution in itself. Rather sincere efforts must be made to fast track all categories of cases. The over emphasis on the quota system of assessment of the performance of the Judicial Officers may also not be very desirable and instead of early disposal of cases, it may sometimes result in hampering the progress of the cases.

Hon'ble Shri Justice K.S.Panicker Radhakrishnan, former Judge, Honble Supreme Court also drew attention to the core issues of quality, timeliness and responsiveness of the justice dispensation system. The Courts at the grass root level are accessible to the ordinary people and the number of cases pending at the lowest hierarchy of the judicial system shows that the public indeed has immense faith in it. As such measures should be taken to enhance the potential, integrity and character of the officers at the lowest rung. Further, the assessment of the performance of the judge should not only be on the basis of quantity of cases resolved or the quality of judgment, but also his character, behavioural approach and integrity should be taken note of. The judge should acquired a high reputation and he must be true to his conscience. The Judge should be laborious worker and when at

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an Appellate Court, he must examine the pleadings filed before the trial Court, the issues involved and should not decide the appeal simply by reading the judgment rendered by the trial Court. The Judge should try to grasp the fundamentals of the case.

Regarding congestion of cases in the Courts, his Lordship said that there are many stakeholders in the judicial system, namely, the Judges, Advocates, litigants, witnesses etc. and each may be contributing to the delay. However, the National Judicial Academy must look into the matter and present all suitable and compatible solutions. The lawyers being one of the important pillars of the adjudicatory system should also be regularly updated and imparted required training.

His Lordship also laid stress upon human rights and socio economic justice by saying that in the recent years, there is marked shift from the traditional class and gender based rights and justice to the ecocentric system, which emanates on the premise that every one is equal and no species can claim supremacy over the other. Even the Courts must recognize the human rights of trans genders.

The next to address was of his Lordship Hon'ble Shri Justice S.J.Mukhopadhaya, also former Judge, Hon'ble Apex Court, who threw light on the deplorable state of infrastructure and lack of facilities which were outdone by the sheer hard work of the Judicial Officers on olden days. His Lordship also stated that now the working conditions in the courts have improved many fold.

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Thus, more efficient and quick steps should be taken to plug the loopholes where ever required. The delay caused in investigation, production of witnesses, framing of charges and issues need to be checked. However, the time cut down must not be compensated at the cost of the quality of the judgment. His Lordship also quoted the famous proverb stating that "justice hurried is justice buried". The justice should be victim centric irrespective of the fact whether punishment is imposed upon the offenders or not. The grievances of the victim should be looked into and compensated for .

The second Session of the day dealt with issues relating to transforming our justice delivery system from legalistic to justice orientation. It was moderated by Hon'ble Shri Justice Sanjay Karol, Judge High Court of H.P. His Lordship said that the Judge has always to dispense justice and there can be only one approach in dispensation of justice, namely, justice according to "Dharma". The conduct of the judge should be aboveboard not only in the court room but also outside. While imparting justice, the judge should work without fear and favour and he should not be apprehensive about anyone including media.

Hon'ble Shri Justice Ashok Bhan, a retired Judge of the Hon'ble Supreme Court of India, eloquently brought forward his thoughts on socio economic rights of the under privileged and the legal implications thereof. His Lordship said that the Constitution of India though has succeeded in

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establishing democratic political system by holding regular elections but it has not resulted in good democratic governance and the major issues regarding social and economic justice have remained unresolved. Though the Constitutional Courts have nullified to a large extent the negative impact of common law adversarial litigation by relaxing the rule of locus standi and treating the letters as Public Interest Litigation to give social justice to the downtrodden, issuing writs in the nature of continuing mandamus, yet the same powers are not available to the lower courts, as such, the judicial review powers as available to the Constitutional Courts need to be decentralized.

His Lordship said that the judges should take pro active role in the adjudicatory process and their mind set should be changed. The judges should understand the urgency involved in the dispute and the interim orders if passed should be monitored. As regards the delay, his Lordship spoke that non-availability of lawyers, strikes, un-necessary adjournments and works other than judicial works assigned to the Judicial Officers are the prime causes for the same. Besides this, the Legislatures are overburdening the courts by legislating more and more laws without assessing the number of new cases, such laws would generate. In fact, no provision is made for the creation of new Courts and the staff under the new statutes and the existing strength of judiciary cannot be reasonably expected to handle such cases within the specified time frame. As

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suggestive measures, his Lordship was in favour of creating separate Investigating Agency under the Control of Judiciary and also case management.

The next speaker in the second Session was his Lordship Hon'ble Shri Justice S. J. Mukhopadhaya, who distinguished the concept of legalistic justice from the concept of justice orientation and said that an order may be correct from the point view of law, but it may be totally devoid of contents of justice in a given factual matrix. Therefore, the judges should take justice orientation approach while passing orders.

Hon'ble Shri Justice Alok Singh said that at least 50 per cent of the criminal cases pending before the courts of Magistrates in the country are regarding petty offences under the M.V. Act, Shops and Commercial Establishments Act, Labour laws etc; which can be disposed of at the earliest if processes are issued as provided under Section 206 Cr.P.C. In matrimonial cases, the parties tend to file multiple cases, both civil and criminal, which are tried by different jurisdictional courts. The divorce petition is to be decided by the Family Court and maintenance application and dowry case by the Court of Judicial Magistrate. Thus, the cases get clogged. His lordship suggested that if the jurisdiction of the Family Court is enlarged and it is empowered to try all cases arising out of matrimonial discord, then the disputes will be settled at the earliest.

The third Session of the first day was on the topic "State of Justice Delivery System in India:

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Reflection by Judges". In fact, in the session the participants were divided into five breakup groups and were given different topics concerning the day to day Judicial Administration to deliberate and delve upon. The participants were required to interact with the members of their own group and also asked to make a report on the given topic which was to be presented by the Leader chosen by them. The details of the breakup groups, topics given to them and their presentations are as under:-

a) Group -1:

Infrastructure issues : What is the need ?

The presentation report of this group started with the general notion that the court doesn't mean the court room and the Judge only, but there are other functional aspects of this institution. The staff, proper infrastructure and the essential services required to run it, are also important. This group was of the unanimous opinion that there was a shortage of judges viz-a-viz the population and the staff appointed in the courts is also grossly inadequate. There was shortage of space for court rooms as well as the staff. The provision of stationery is not satisfactory and regular supply of forms, registers from the government press should be ensured. Where ever the computerization has been done, it is practically of no use because of poor supply of electricity and absence of power backup. This group also emphasized the need of having residences of Judicial Officers and the staff in the same colony

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and the building plans should be finalized in discussion with the local Judicial Officers in view of the peculiar needs of that area. The courts as well as the residences should also be furnished.

Group - 2:

Court Managers:

1. *What are functions ?*
2. *What should be functions?*

The Court Managers were appointed in the courts on the premise that the Judicial Officers are pre-occupied with the Judicial work and thus, neither have the time nor the skills to man the other non-judicial functions. It was desired that appointing a person having some knowledge of law and management would result not only in the better administration of court but also help the judge in devoting more time in disposal of cases. In fact, this group was asked to make a report on the working of the court managers and to suggest what work should be allotted to them.

However, the unanimous view of the group was that no specific duties have been assigned to them and there remains conflict between the Court Manager and Superintendent Grade-I regarding their respective areas of work. This results in confusion and also heartburning in the officials of the Court. And wherever there is specification of work assigned to them; the norms have not been implemented. The one view was that the post of Court Managers should be scrapped, whereas the other opinion was that they can be usefully deployed for time scheduling and categorization of cases and also in planning budgets and other

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related issues. His Lordship, Hon'ble Shri Justice, P.S.Rana said that probably, the non-legal background of the Court Managers is the reason that they are not of much help in the court administration.

Group -3:

Bench and Bar relationship: Issues and challenges .

The officer participants of this group were requested to present a paper on another serious issue concerning the relationship between the Bar and the Bench. From their presentation, it appears that the judges have viewed the issue only from their own perspective. The grievances of the judges are manifold from non-cooperative, dilatory attitude of the Advocates and their desire to get relief even by overawing the Presiding Officer.

However, the Hon'ble chair suggested that in adjudicatory process, the presence of Advocates, is unavoidable and there cannot be a divorce between the Bench and the Bar. There should be mutual respect and cordial relationship between the Judges and the Advocates. A judge can earn respect of the Bar by his behavioral attitude .

Group -4:

Performance , Assessments Unit System.

This group was asked to suggest whether the performance of the judge should be based only on the basis of unit system and if the system is scrapped , then how assessment of the performance is to be made?

The group furnished a report and the participants were of the unanimous view that the

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assessment of the Judicial Officer should not only be unit based as the same results in the delay of disposal of old and complicated cases , but also affects the quality of the judgment. That apart, in most of the States, the unit system of assessment of performance not being uniform, takes into consideration only the finally decided cases and the Judicial Officers get no points for disposing miscellaneous applications. This results in increasing the arrears of cases. The group suggested that the miscellaneous judicial work, should also be measured.

Group -5:

Low Civil Filings- causes and what does it indicate?

This topic is also based on the fast growing perception of the judicial fraternity that on account of enormous delay and cost involved in civil litigation, the litigants may be resorting to extra judicial measures for the redressal of their grievances. The group furnished a well reasoned report to the effect that exclusion of civil court jurisdiction and conferring the same on the tribunals, pendency of arrears as well as the cost involved in the civil litigation, are the main causes of low filing of civil cases.

The report was deliberated upon in the house. It came out that there is no empirical study which actually suggests low filing of civil cases. In fact, there is a low filing of traditional civil litigation but the same is replaced by new types of cases . There is growing trend of channelizing civil litigation to criminal and writ

jurisdictions. The difficulties in the execution of decrees may be one of the ground for low filing of civil cases.

Thus , on the first day of the workshop, the issues which dominated the sessions were the non-assessment of the financial implication before introducing new legislation, the need for conducting empirical study as to the causes of delay and the requirement of formulating a policy for good infrastructure for the courts.

SECOND DAY.

The first session of the second day was relating to the constitutional aspect in the criminal justice system and it was chaired by Hon'ble Shri Justice Deepak Gupta, Chief Justice , High Court of Tripura and co-chaired by Hon'ble Shri Justice S. Ravindra Bhat, Judge, Delhi High Court and Hon'ble Shri Justice Hasnain Massodi, Judge, Jammu & Kashmir High Court.

Hon'ble Shri Justice Deepak Gupta pointed out that the trial judges of the grass root judiciary nurture a wrong perception that they have no role regarding the constitutional provisions in their day to day functioning and the duty to interpret the constitutional value rests with the Supreme Court and the High Courts. His Lordship reminded that the Constitution of India provides fundamental rights to its citizens and the right to life and liberty , is the basic right and it can be curtailed in accordance with the procedure laid by the law which should be fair and reasonable .

His Lordship emphasized that the role of the

trial judge to enforce Constitutional provisions comes into picture the moment an accused is arrested and produced before him for remand. This duty continues during investigation, inquiry and trial as speedy and fair trial are the components of right to life and liberty. The fair trial means the accused has the proper legal assistance to defend him and where ever he requires legal aid, it must not be 'poor legal aid'. Further the trial courts are required to keep in mind that a person cannot be punished for ex post facto law nor he can be inflicted punishment more than what was prescribed when it was committed. The conditions of bail should not be harsh as it may amount to infringement of his fundamental right despite order of bail. His Lordship also stressed that fundamental rights against untouchability and forced labour have been enshrined in the constitution to promote social and economic justice and whenever infringement is found, the constitutional provisions should be taken note of while imposing penalty.

Hon'ble Shri Justice S.Ravindra Bhat, referred to Maneka Gandhi's judgment for his emphasis that the procedure curtailing the personal liberty of an individual should be fair and must be rigorously complied with and in that context mentioned statutory provisions of certain enactments like TADA, POTA etc. in which certain presumptions are there against the accused. His Lordship said that these provisions may be valid to certain extent to deal with grave situations like terrorism, but there is need to check the

