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NATIONAL JUDICIAL ACADEMY

WORKSHOP ON ACCESS TO JUSTICE

13TH -15TH NOVEMBER

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Introduction :-

National judicial academy has organized a workshop of the principal district and session judges on the topic “ access to justice” on 13th to 15th November 2015. Twenty nine from the different states like Gujarat, West Bengal, Andra Pradesh, Kerala, have participated in this conference. The conference was split into six sessions for each day, out of which four sessions were dedicated to the lectures by the distinguished speaker in the respective fields and few of the session were dedicated to the group discussion or simulation exercise. Two sessions were kept daily for the library reading and computer skills training. Dr. Parul Rishi, Justice Kurian Joseph, Justice D.M. Dharmadhikari, Justice Murlidhar, DrYogeshPratap Singh, Justice.G.S.Kulkarni,Justice B.P Singh, Justice V S Sirpurkar, JausticeMaanmohanSarin, Justice Gita Mital,Mr.VidyanandaJha and guided the sessions.

- Day 1 : **Session 1** : Shift from legal aid to legal service: Justice D. M. Dharmadhikari, Justice S. Murlidhar, Dr.YogeshPratap Singh,

The session started with a warm welcome of the speakers and the participants by the Prof(Dr) GeettaOberoi, she introduced the topic by giving a statement which is prevalent in the legal arena that judges are considered to be sensitive it is the system which is considered to be heartless through this the burden is shifted to the judges but is to be understood that the system is comprising only of judges and it is the duty of the judges to make the system more sensitive , reflexive an this can be done by making the lower judiciary more reflective because it is the ultimate face of the judiciary and from their the 80% cases are reaching to district court and very less to high court and too less to supreme court so it is extremely important that the lower judiciary is made accountable.

After a brief introduction Justice D.M.Dharmadhikari initiated the discussion stating that there are many type of factors which are restraining the Indian people to even institute the case and it is very important for the judges to understand that if the case is instituted then the it loaded with many type of burden, he even make an analogy of the other profession with that of the lawyer, and said that when there is any patient which is economically that well of then he will not be able to go the best doctor because he would be charging a huge fees, in the same way the poor people are not able to engage the good lawyer's and then they are the suffers. Now since India is a

welfare state it is the duty of the state that it must make one or more provision so that the justice must be in reach of the poorest of the poor. He emphasized that there is a duty cast on the shoulder of the other type of organization like NGO, SHG,, and so on to help more in justice delivery system. He gave two example that how such institution can help :-

- 1.) Self Help Group:- in the state of MP these groups are formed in accordance with the Domestic violence act, now certainly they are making more aware of their rights.

- 2.) ParivarParamarsh Kendra:-these are the groups with the help of state government in the state of MP which are making aware the poor people more of their rights.

He also discussed the following points as follows:-

- 1.) Lack of co-ordination :- it is up to the judges to understand that there is very lack of coordination between the government departments and if they are involve in the delivery of the justice then it is the duty of the judge to look after the coordination and issue the contempt of the court if the issue is not being set up or done in the accordance with the order of the court and until such is done the effective justice would not be done and at last a consistency must be made with the working of the other government departments so that a healthy coordination is made between the judiciary and other departments.

- 2.) Preamble:-the speaker state that it is negative obligation over the state to provide justice that is being caste by the preamble itself and the other fundamental rights as in the ART. 14 there is twofold definition of the equality is being emphasized and it is twofold and it must be given its meaning that equal protection of the law and equality of the law and that can only be done if there is effective access to the justice by everybody.

- 3.) P.I.L:- it was a tool which was initiated to help the poor of the society and it is now slap on the face of the judiciary that it is now being only used by the rich class society of the country, it can now only be corrected if the instituting of such issue mad by the legal service authority.
- 4.) Experiments which must be done by the judiciary like of transgender:-the example was made by the speaker of the transgenderthat the judiciary has taken a bold step while considering them as the third gender in the case NALSA v. union of India¹ and it is the duty of the judges to think out of the box and to make the justice available to as many people as possible. The speaker sited various other example that a special training must be given to the mediation officer so they are being sensitive to the public. Secondly it is the duty of the judge that he must create the legal awareness from the distance and not from direct participation. He also gave the example of the Forest Dweller Act that when this act was implemented then the Maoist were encouraging the people living in the forest to get a recognition letter in their name by the authorities under this act by this we came to know that only making of the enactment is not important but its aquaitenance to the concerning public is rather important. Certainly the speaker was of the view that the upcoming law college students can be inducted to create a legal awareness through various methods.
- 5.) No prioritization :- the speaker is of the view that the case related to the elderly people, the women, child are being categorized as the priority cases and the number of the priority cases is huge in number so that there is always a situation of the dilemma which one to take first.
- 6.) Delivery of justice:- the speaker made the categorical reference that people are interested in the solution they are not interested in the judgment, and it is very crucial for the judge to understand that judgment is made in the court where as the solution are given in the life and there is a lot of difference I between of them and the judiciary must try to inculcate the habit to revive the solutions rather then giving judgments, then only they would be able to make the justice accessible.

¹ Writ petition no 400 of 2012

The second speaker of the day was Dr. Yogesh Pratap Singh and he introduced the topic and discussed it as follows:-

- 1.) Belief in Rawlsian justice rather than utilitarian principle of Bentham :- he told that there is difference between the theories of the Bentham and Rawls which is Bentham proposed that there should be maximum good of maximum number of the people and that according to him is the justice which suffice this principle i.e. there is maximum happiness to maximum number of people by any law and it is not in concern of the minority whereas the Rawlsian argument is such that it is based on the principle of the theory of the veil of ignorance which says that the law should be made such that it is made to benefit the poorest of the poor in the society i.e. the lawmaker while framing the law must consider a veil in front of him and then think of that what kind of law will be like if he is the weakest person of the society.
- 2.) Discussion on Indian Court Fee Act:- the speaker is of the view that the this act was being introduced by the Britishers because they wanted to earn revenue from whichever source it was possible and such provision must be discarded by now as it is in violation of the provisions of the constitution.
- 3.) Cost of litigation:- he is of the view that in the context of the present scenario there is no priority and parlance with cost which can be paid by the higher income group and which can be paid by the lower income group which in itself is becoming the barrier to the access to the justice.
- 4.) Adversarial v inquisitorial system:- the speaker is of the view that adversarial system is the system where there is more dependence on the procedural laws and their must be less relying on the alternative mode of dispute resolution as they are

unconstitutional on the account that they involve one or the other kind of compromise and then it itself can become an issue.

- 5.) Judicial performance measure:- there is no measure to assess the performance of the judges. The speaker is of the view that it is the duty of the government to innovate such kind of measure and it is must according to the speaker.
- 6.) Legal aid committee:- the speaker is of the view that a committee must be formed in which the committee must only and only serve the practical purpose of solving the issues of the poor.

Now the participants were asked to share their experience on the issue of legal aid and some of the points discussed here as follows:-

- 1.) The response is not in accordance to the anticipation which is their :- the participants are of the view that they are not getting the response which they have anticipated from the state legal service authority and their contribution has been negligible in accordance with the expectations.
- 2.) Conviction is more important:- the speaker was of the view that conviction is more important of the accused but the legal service authority has done very less in getting the people to be convicted.
- 3.) Success of mediation in Surat:- the speaker from the Surat told that a coordination center has been set up to manage the process of the summon serving, clubbing of the lawyers, and also initiated the work of the lokadaltas and it is working very efficiently in the field as in accordance to the access to the justice.
- 4.) Payment of fees:- the state legal service authority is always complaining that they are not able to get the required fees, this is the main issue according to which they are very reluctant in doing the work and harassing the victims.

- 5.) Legal literacy campaign :- a campaign must be made as in accordance with the sec 436A of the Crpc and there should be a training must be made compulsory to the municipal counselor which can be proved to be a eye opener to them as they are the face which is in direct contact with the public.
- 6.) Training in religious places :- an initiative can be started through which they will be able to teach legal awareness in the religious places
- 7.) Example of lok-adalats in Kerala:- the participant told that in the state of Kerala there is a good response from the state legal service authority and it is able to curb the ragging issue to the extinct form and the state legal service authority is also helping the people referred by the court to the ADR.
- 8.) Individual experience of the judge from Andra Pradesh:- the participant told that there was a widow in her area whose only son was a accident victim and has gone to the coma she was not able to fetch bread and butter for herself and her son as she was a daily wager and she was totally engaged in the care of her child, on this pitiable condition the participants through a newspaper advertisement was able to collect 49 lacks rupees and then was able to help that lady. This effort was appreciated by all.
- 9.) Seminar organization:- there must be certain kind of seminar that must be organized for the judges, the local administration police, women, NGO so that they can help in the issue of access to justice.
- 10.) Example of DLS (Delhi Legal Service Authority Rules):- they are able to organize such kind of literacy camp, at that point another another participant shared that in his area there is still witchcraft and all practice, he has been able to curb it through the legal awareness and he gave an example in which their was a women who was fired from her job as she was a cook in the mid-day meal school and she used to feed her children from the food which was made for the school children and she was a widow and thus the participant tried and made her re-employed as looking to her social conditions.

- 11.) Other type of activities which can be taken up to making aware the legal public:- the other activities which can be used to have an easy access to the justice is to work initiated for the para-legal volunteers. Lok-adalats, helpline numbers, legal aid clinic.
- 12.) Problem of the legal awareness programs in the rural belt :- one off the major problem placed by the participant was that he was not able get all such activities in the rural areas and such polices or the practices are being done only in the cities and rural areas which are in dirt of the awareness, no attention is being made to them

At the end of the session the participants were required to give their introduction.

- **Session 2** : District legal service authority as effective tool to enhance access to justice : Justice D. M. Dharmadhikari, Justice S. Murlidhar, Justice G.S. Kulkarni

Justice S. Murlidhar initiated the discussion in the second session and stated the constitutional prospective of the term access to the justice and some of the points relate to it are discussed as follows:-

- 1.) Legal Service Authority Act :- the speaker is of the view that the legal service authority is the best way available to the judge to step outside the court, in

metamorphic sense and according to the speaker the justice as enshrined by the constitution is the implicit and explicit recognition of the word equality and it is the duty of the judge to aspire his decision from the word fraternity as it is the best word which according to the speaker signifies the Indian context and the judgment should be such given by the judge that each individual is inspired to become the brother of the fellow Indians.

2.) Access to justice must always serve two purposes:- the first and foremost purpose of every person is able to invoke the legal process or resources irrespective of the social or economic or status or opportunity. The second thing is that no one is above the law not even the king in the metamorphic sense.

3.) He discussed some of the common barriers to the legal service authority and they are :-

a.) Mystification of law and legal process :- as the layman is not aware of the rights a mystification of the aura of the court is being created according to which it is portrayed as spider web in which once you are tangled in it you will be not able to come out.

b.) Identification of vulnerable population:-there must be identification of the population which is really vulnerable, because it is the only population which is really in the dirt of the justice and once they are ascertained then only we will be able to give a proper channel to the access to the justice.

c.) Dependence to lawyers:- the legal service committee is more dependent on the lawyers which are very lazy in doing the work for the social cause, according to the speaker there must be an officer so that there is no dependence on the lawyer's.

d.) Circumscribing poverty is a great impediment in access to justice

e.) Section 165 of Indian Evidence Act:-

“The object of section 165 is to discover the truth or

to obtain proper or relevant facts. A judge should endeavor to elucidate the facts and record evidence in clear and intelligible manner. A judge in a criminal trial is not merely a disinterested auditor of the contest between the prosecution and the defence. But it is his duty to elucidate points left in ambiguity by either side, intentionally or unintentionally, to come to a clear understanding of the actual event that occurred and to remove the ambiguities as far as possible”²

- f.) Cost delays and uncertainty :- these are the barriers according to the speaker that is causing the fear in the mind of the people a fear regarding to which they are not coming up with issues and the access to the justice
- g.) Institutional model of state sponsored legal aid
- h.) Special disadvantage not only limited to the poverty :- in the Indian context the access to justice is not only impeded by the poverty but to many different societal factors even the social orientation is done like such that lower caste groups do not institute the cases.
- i.) Failure to integrate the non-formal institution with the formal legal system

4.) Three waves to access to justice :-

- a.) Representation to the poor :- this was the wave when the judiciary itself use to interpret the provision of the constitution and the various enactments were interpreted as to help the poor like the environment related cases were directly dealt by the article 21 and so on.
- b.) PIL move:- then after the move of Justice Bhagwati to treat the letter from an individual as a PIL then it was court’s devised tool to give justice to the

²<http://mja.gov.in/Site/Upload/GR/Criminal%20Summary%20Final%20workshop%20dt%2030%2011%2014%20.pdf>

poorest of the poor but now the PIL is only instituted by the moneyed people.

c.) ADR move:- the new move is of the alternate dispute resolution, it is done in the respect that the people which are reluctant in coming to the courts so that they are able to come as well as those issue which are not of much relevance and such issue on which the judicial time will be wasted, all these issues can be dealt by the ADR method.

5.) Response to above said problems are discussed as follows :-

a.) Court reaching the point:- if at all in any of the given case the judge is of the view that it is very necessary to have a site inspection, it must do so.

b.) Appointment of the commission:-the judges always try to have a Amicus Curiae as they might not having the ongoing societal factors and such committee must only be formed of the advocates.

c.) Immorality of the procedure

d.) Expand notions of the standing:- the speaker is of the view that there is need that the locus standi must be increased and even the interested parties must be allowed to institute the case in few of the situations.

e.) Discussion on Art. 17 and Art 23:- the speaker is of the view that we are still living in the feudal structure and not the liberal interpretation is made and there is the requirement that a broad interpretation is given to these precious articles which are in themselves the peculiar nature of the Indian constitution.

f.) Monitoring of the implementation: - the speaker is of the view that it is the duty of the judge that he not only delivering the judgment but he himself must monitor that after giving the judgment it is affected.

g.) Development of laws in specific areas

6.) Some of the other informal methods discussed by the speaker to resolve the problem of the access to justice are as follows :-

a.) Expand of reading :- the judges must read learn as much as possible, they must be acquainted with all the things which are going around it will help them to give justice which is not one way rather which is multi-sided so that it can be enjoyed by everyone.

b.) Informal legal system:- it is the duty of the judges that they must support the informal legal structure so that the justice is served.

c.) Training as done in the state of the Tamil Nadu to substantiate the above stated point the speaker gave the example of the committee formed in the state of Tamil Nadu of the women in which they are making their personal step in the religion of the Islam, it is relay a very bold step and must be praised

- **Session 3** : Decongestion of dockets : Justice B.P. Singh, Justice G.S. Kulkarni

The session was started with the introduction of the topic by Justice G.S. Kulkarni, he state the importance of the decongestion of the dockets and discussed the following points:-

1.) Magna carta:- according to the speaker the access to the justice is not a very new concept rather it was coined in the 12th century during the reign of the King John through the mantelpiece which is know as magna carta in which express provision were made that nobody should be condemned unheard, and even the king is subject to the laws and he is not above the laws and even it was interpreted in the bill of rights in the “ubiibi jus remedium” and if there is a right which is existing than their a must also be the mechanism to enforce such right.

2.) Law commission report was discussed

3.) Difference between the terms pendency, delay, backlogs, arrears:- pendency means that the cases which have been instituted and the cases which have been not disposed off, delay means that the cases which are in the court for the time which is longer than the prescribed time period or the period which is normally taken by the court to dispose off such cases. Whereas the backlogs indicate that number of case instituted is more in number to the cases which are disposed off and arrears are the case which are delayed unwarrantedly.

4.) Prescribing the time limit

P RamchandraRao v Karnataka³ :-The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Article 21. Speedy trial, again, would encompass within its sweep all its stages including investigation, inquiry, trial, appeal, revision and retrial — in short everything commencing with an accusation and expiring with the final verdict — the two being respectively the *terminus a quo* and *terminus ad quem* — of the journey which an accused must necessarily undertake once faced with an implication. The constitutional philosophy propounded as right to speedy trial has though grown in age by almost two and a half decades, the goal sought to be achieved is yet a far-off peak” thus in the given case the supreme court has given certain principles regarding the limits of the trial and it is the duty of the lower courts to abide the same.

5.) Who plays the important role in providing the speedy justice :-

a.) A judge must always look into his docket:- it is the duty if the judge to have a look to the docket he is possessing, so that he is always remembered of the pendency.

³Appeal (crl.) 535 of 2000

- b.) Pre-trial concepts must be given importance:- a option must always be offered by the judge to the parties coming for the adjudication of the pre-trial solution.
- c.) Importance must be given to the calendar :- a judge must always make a reference to the calendar while giving a adjournment
- d.) Recognition of the evidence :- it is the process which is taking a lot of time in the trial courts and it is the duty of the trial courts to take them as fast as possible so that justice must not suffers
- e.) Identification of the unidentified judicial mind:- there are always such points discussed in the case on which the application of the judicial mind is not very important and the judge must be able to differentiate such points and must not give his time on such issues.
- f.) Identification of the pendency's :- a judge must always be having a cognition of the pendency of the cases
- g.) Placement of judges :- the placement of the judges must be such that they are more likely to solve the cases in which they are having a expertise or rather a certain similar cases must be placed in a row so that the judge is able to save the time of reading.
- h.) Number of the courts:- if at all the need is felt that their must a additional courts the judge must always be ready to address the issue to the high courts.
- i.) Identification of the priorities:- the judge must always be ready to address the issue which is of the utmost priority and are of great social importance and must try to finish off the same.
- j.) Harish Uppal V Union of India⁴ :-

“The law is already well settled. It is the duty of every advocate who has accepted a brief to attend trial, even though it may go on day to day and for a prolonged period. He cannot refuse to attend court because a boycott call is given by the Bar

⁴1994 SCC, Supl. (2) 195 JT 1994 (3) 126

Association. It is unprofessional as well as unbecoming for him to refuse to attend court even in pursuance of a call for strike or boycott by the Bar Association or the Bar Council. The courts are under an obligation to hear and decide cases brought before them and cannot adjourn matters merely because lawyers are on strike. It is the duty and obligation of courts to go on with matters or otherwise it would tantamount to becoming a privy to the strike. If a resolution is passed by Bar Associations expressing want of confidence in judicial officers, it would amount to scandalizing the courts to undermine its authority and thereby the advocates would have committed contempt of court. If the lawyers participate in a boycott or a strike, their action is ex facie bad in view of the decision in *Mahabir Prasad Singh case*⁹ The advocates would be answerable for the consequences suffered by their clients if the non-appearance was solely on ground of a strike call."

- **Session 4:** Poverty as an impediment in access to justice : : Justice B.P. Singh, Justice G.S. Kulkarni

The session started with the feedback of the participants on the issue of the decongestion of the dockets and the points discussed in the discussion are as follows :-

Congestion:-

- a.) Adjusting the board:- the board must be adjusted so that all kind of similar cases and the cases which are represented by the same lawyer are in a row, so that they can be disposed off quickly.
- b.) Problem of the witness :- it is the stage on which a lot of time is being wasted and judge must try to record the evidences as fast as possible
- c.) Need of protecting and strength of the judges:- the judges are now solving the issue which are of very high net worth and in doing so they are being threatened and specially the lower judiciary which has to take care of the local mafias. There is a need that they are being protected.
- d.) Overloading of the administrative work: the judges are overloaded with the administrative work and in the same process the primary function of the judges is somewhat left over. Their must be another cadre created on whose shoulder the administrative work of the judges must be placed.
- e.) Orders from the high court to the PDJ:- the participants have complained that while they are adjudicating any issue they will receive order from the high court to decide the particular case and before they are able to finish the given case they are given another on a day to day basis which is really an impediment in the judgment giving time to the instituted case before them.
- f.) In MACT matter pre-litigation must be made compulsory
- g.) Discussion on the various provision like 165 of the Indian Evidence Act and 309 of Code Of Criminal Procedure

Points discussed on the issue of poverty as impediment in the access of justice:-

It is the process which is impediment in every aspect but it is the negative obligation over the state to provide the justice to the poor. For the following points the help of the paralegal volunteer, legal aid literacy campaign and so on must be made. The speaker is of the view that the courts play a role of the social engineering in the society and they must do it by taking out the fear from the mind of the people the phobia of the courts. Other points which were discussed at the end of the discussion are as follows:-

- There is overburdening of the court which is the serious impediment in the access of the justice.
- The judge must try to club similar cases and decide over them in a stretch as example of the teacher's pay scale cases, retirement cases and so on.
- The law making authorities while making the law must always do the anticipation of the application of the law
- The judges must look into their discretionary power to make the accessibility of the justice.
- They must never try to give adjournments as it is making the judges causal well as lawyer also become causal and then how can we expect them to be serious through the justice delivery system.

Session 5 :Role of PDJ in enhancing the user friendliness of courts : Justice Kurian Joseph, Justice V.S. Sirpurkar, Justice ManmohanSarin,

Session 6: Victim compensation and rehabilitation: Simulation Exercise: Discussion

Session 7 : Victim compensation and rehabilitation : Simulation Exercise Presentation
Justice Kurian Joseph Justice V.S. Sirpurkar, Justice ManmohanSarin

The discussion was initiated by the Justice Kurian Joseph stating that by the user friendliness of the court it is directly implemented that how much the court is accessible to the general public and whether there are means to get the information of the court, he stated the example of the bank where there is always a help desk at the reception with a board “may I help you” and if you go that person he will tell all the information asked by you and will provide you by requisite direction, in the same way when you enter an textile shop the shopkeeper is always asking you that what do you want ? How can he help you? He will help you with the identification of the product and in the same way is there a person employed by the court to give information or to guide the general public. The speaker raises the question that is any kind of the facilitation center is provided by the court in their premises which is similar to the above said example. Is there any kind of front desk in the premises of the court which will itself initiate the conversation stating that is there any way in which court can help. If it is their then who are the person who are monitoring it. Whether they are provided by the required equipment like intercom and computer.

The participants from the Delhi stated that they are possessing a table where a person can make enquiry and another table which is used for the filling purposes, another example from the participants from the Maharashtra was being given according to which they have employed a constable for the said purpose and in another example the participant told that they have a help desk but there is only one clerk for the above said task for the

14 courts but since he provided by the modern facilities like the intercom and the computer thus he is able to handle and provide the required information to the Bicomers.

The second query raised by the speaker was that if at all there is a help desk is anybody coming to it or they are been given a positive response.

The participant from the Delhi told that yes it is being visited by lot of person and there is sometime queue for that. Whereas many of the participants told that they have felt the need of the help desk and there is dirth of the computer services to the courts which are in the remote or rural areas, it was complained that only the developed cities are having these services and not the remote ones, some of the problems told in this regard by the participant are as follows:-

- 1.) Shortage of staff :- there is a lot of shortage of the ministerial staff and they are not able to cope up their work.
- 2.) Lack of coordination:- the police relation officer as appointed in the Surat police station is able to coordinate with other police station but this method is only effective in Surat and in all the other place the complaint is made there is a lack of coordination in the working of the staff. They hope that the introduction of the help desk will help to decrease the corruption at the lower level of which only the poor people are the sufferers
- 3.) Appointment made by the public service commission:- the complained that are appointed by the public service commission and in few of the courts they appoint the person who are deaf and dumb and as well know that court work requires a lot of reading and work such practice must be discarded.

- 4.) Meeting of the court manager :- the speaker stated that the issue regarding the help desk was told in the meeting of the court manager and whether they have advised to the PDJ in the regarding concern of the help desk
- 5.) Work of the court manager :- the speaker also told that these are the works of the court manager and judge must try to extract as much as possible managerial work from him as the court can be made user friendly only through the efficient management of the service provided.

The speaker stated that it is extremely important that it must be understood that it is that handicap section of the society which is reaching the district courts and not the rich ones as they can avail and afford to reach the higher courts and it is very important they are been given a pleasant talk otherwise there will be discontent in the society and slowly they will lose the faith they are possessing in the judiciary and ultimately it will affect the democracy.

One of the participants was of the view that there should be a new technique according to which judge must be consider as a service provider and the coming litigant must be considered as a consumer of the justice then only there will be user-friendliness of the court which can be brought up. Their was an old saying that god must save a person from the illness and the courts and there is a time that we must change such saying.

Some of the points discussed by the speaker regarding enhancing the friendly behavior of the court are as follows:-

- 1.) Court behavior:- the speaker is of the view that while dismissing the file the judge must do the same thing in the polite manner because if he do things in a rude way he will contribute to make the court more unfriendly and thus it is the duty of the judge to behave in a polite manner.
- 2.) Need of promoting the social sector:- while working for the user friendliness of the court it should be always in the mind of the judge that there is lack of awareness and lack of transportation and there is lack of economic factors and many other such

barrier after crossing to which the litigant is coming to the court and if they are not given a friendly response the weightage of such barriers will increase.

- 3.) Office of the lokaayuukta :-their should be an office as similar of the lokaayaukta who will review the fees of the advocates in the state legal service authority. The office of the legal service authority must also be recognized as well as giving due authority.
- 4.) Change in our mindset :- it is the urgent need that we must understand that the judiciary is not functioning in the colonial structure rather now they are service provider and it is their duty to assist the poor people. It is a kind of negative obligation which is imposed on the judiciary by the constitution itself.
- 5.) Collective responsibility:- it is the duty of the judges to understand that they are having a collective responsibility in the stability of the society and they must try and do coordinate their work with the other government departments.
- 6.) PDJ generally rest after they write letter to the judges of the high court:- the speaker complained that after sending the case to the higher judiciary the PDJ generally sit at the rest which must not be the attitude.
- 7.) Shift responsibility is the lame argument:- if at all when the complaint is made on the judges that they are not being user-friendly they shift the burden to the legal service authority that it is not working efficiently, now it is the time they must understand that such shift of the responsibility is a very lame argument and must not be made by them
- 8.) Training to the class 4 staff :- according to the speaker it is the class 4 staff which is actual face of the judiciary as they interact with many people and if they are made more receptive then it he system will become more user-friendly and it is the class 4 staff from where and through which the touts, middlemen, brokers, are working and if at tall they are trained in the respective field all such kind of problem will whither away.

After the tea break Justice V.S. Sirpurkar told that he had started his carrier in the district court and his parents were also in the same profession and when he was practicing he came to know that litigant is always under the fear that whether he should enter the court and whether if he would be doing so the whether he might got catch up inn the spider web of which he might not able to come out. He then gave them the analogy of the hotel that when you go to the hotel there is always someone to guide you in the same there is need that the PDJ take the lead role in the providing such services and he discussed about the zone of consideration that if any to the judge is coming into the zone of the consideration in lieu of the promotion to the high court then he would start recusing himself from deciding the sensitive issues and this is the major mal practice which must be discarded. Few of the other points discussed by the speaker are as follows:-

- 1.) Help desk must be made receptive with the qualities like how to smile and so on :- the speaker is of the view that the person appointed on the front desk must trained with the qualities which will enhance his receptivity and will automatically help the court to become user-friendly.
- 2.) It is the duty of the judge to see that if any of the litigants is being maltreated by the advocates and if they are then he must put up the same thing to the said advocate or to the state legal service authority.
- 3.) The judge must be scoffed up :- the speaker is of the view that the PDJ must consider himself as the head of the family and he must create a confidence in his staff that there are legal actions are backed by him and he must try to inculcate the habit of fearlessness in the mind of the subordinate staff.
- 4.) Assistance from the local politician :- the speaker made the argument that it is the hand of the judge to ask from the local MLA or the MP to provide a few fund for the construction of waiting room, tea facilities, urinal facilities and so on and if they will make such request the MP laid funds which are not utilized can be made to do so.

5.) Example :- he gave his example that in the city of the Nanital he found out that people were coming from the distant towns and in those towns no court is provided as there are very less number of cases in those area the speaker went to the local MP and asked him to contribute as it is very impediment ta the justice is provided at the door step.

6.) Sign boards:- the speaker said that their must be sign boards made in the premises of the court as they will make the litigant more :-

a.) Informative

b.) Educative

c.) More cautious

7.) Bringing of the infrastructure :- according to the speaker it is the fundamental thing which must be taken care off and it will have a great psychological effect on the mind of the litigants and thus it is duty of the judge to keep up the same.

The speaker initiated the topic by stating that difference between the management and the leadership is that the management is doing things right where as leadership will require doing right things and thus it is must duty of the judge to understand that they are the leaders of the society and it is their duty to look after the whole system the speaker asked the participant few question:-

1.) Do they know that how many jails come under their jurisdiction ?

2.) How many of them have visited them?

3.) How many of them have visited the central jail?

4.) If they have done all the above three things what they have observed?

In the response few of the things were discussed as follows :-

- 1.) No visit of the doctor :- there is no visit made by the doctor in the jails and no hygienic conditions are there and it is to be understood that the criminals are also humans and the system which we follow is reformative and it is our duty to work it in practical.
- 2.) Jail authorities are not allowing the arrested person to meet their inmates:- it is the frequent complaints that the jail authorities are not allowing the pupils there to meet their inmates and in the jail the moral support of the closed ones is very necessary and which is restricted by the them.
- 3.) No complaints is made in the complaint register :- the complaint register are always empty and if they want to write any complaint their then are given an ice beating and thus there is a need that such practices by the police must take in account by the judicial officer.
- 4.) Surprise inspection must be made:- the participant made a suggestion that practice of the surprise visit must be made so one is able to get the real situation of what is happening in the jail.
- 5.) Example of Kerala :- he told that there is a practice in the state of Kerala that all the inmates are always shirtless when he visited their he asked the jail authorities and then they were given shirts to wear but afterwards it was discarded.
- 6.) Example of Uthrakhand :- he told that lok-adalat is taking care of all the topics as are discussed above
- 7.) Overcrowding :- this is not a new problem as we all know that there is always overcrowding in the jails and they are living in an un human conditions

- 8.) Judges must take a pro-active step :- the speaker emphasized that it is the duty of the judge to take pro-active steps as the duty of the judge is not only limited to the give the judgments but to see that whether the rehabilitative system is working efficiently or not
- 9.) Literacy programs:- the judges must make effort to make literacy campaign with the help of the NGO, law students and so on.
- 10.) There is need to understand that many people are in the jail because they are not able to furnish jail bonds:- the judges must know that many people are in the jail merely because they are not able to furnish the jail bond and are there for very pity issues and can be reformed.

Then several points discussed in the session from the reading material are as follows:-

- 1.) There was an old belief that the leaders are god gifted, they are born with certain traits like given decisiveness, energy, personality and so on and they are very much different from the normal people the speaker emphasized on the page 239 of the reading material on which the result of the research is shown on account of which none of these characteristics exhibited really defines the leadership in the courts or anywhere else, for that matter. Certainly, these descriptions may help us understand what some leaders may be like, but they may be like but they do not experience leadership or provide template for becoming a successful court leader.
- 2.) The speaker is of the view that as people are now dragged into the commercial litigation which has taken the adversarial system to its death. To substantiate the same he has read the following extract from the reading material Keagan defined

“adversarial legal system to mean policy making, policy implementation and dispute resolution by means of lawyer dominated litigation. It is a method of governance, apart from a technique of dispute resolution.”

“ it is a markedly inefficient, complex, costly and unpredictable method of governance and dispute resolution.” in consequence he argues that :

“ the American legal system is often unjust. The complexity and unpredictability of its processes often deter the assertion of meritorious legal claims and the compel to compromise of meritorious defenses. The adversarial legalism inspires a legal defensiveness and contentiousness which often impede socially constructive cooperation, governmental action and economic development, alienating many citizen from the lord self.”

Even if the charge itself is not entirely true of all styles off the adversarial system of justice, there are reason to suspect the inability of the system to give equal justice to the poor unless mechanism are put in place to reduce adversarial legal excess. Social context education for the judges is one such mechanism to redeem the system from its own excess and to enable it to deliver equal justice under law irrespective of the status of the litigant.

Adversarial legalism procedural tools, writes the speaker :

“ exacerbates its potential for inconsistency and unequal treatment the outcome when criminal justice are shaped by the shifting and often unequal balance of competence, commitment, and resources between prosecuting attorney’s on side and defense lawyer on the other. In a regime of adversarial legalism, the quality of the justice is specially dependent on equality in the quality of the dueling lawyer. Adversarial legalism therefore is far less effective for achieving equal justice in everyday criminal legal process.”

- 3.) The speaker read out the following extract from the reading material which can be used to mitigate the above said problem they are as follows:-

- a.) *The state legal service authority must select the issues of the priority in equality and social justice, collect case studies on them, invite judges involved and conduct orientation and sensitization courses to demonstrate the strength and weakness of the social context judging. In all these programs the overarching principle of justice discussed and adapted is the “right to equality” and its exposition in the supreme court decisions and in the international human right instruments.*
- b.) *Introduce variety of social science data bearing on the adjudicative issues in the study material circulated among trainee judges and confront judges in the training session on their use in the adjudication. Take jurisdiction from the other jurisdiction if necessary.*
- c.) *Develop bench books containing the functional use of the social science knowledge in performing the judicial functions when the judges sit in the specialized courts adjudicating the social justice*
- d.) *Publish “occasional papers” by the jurist and the judges of the repute who have persuasively canvassed judges to be problem solvers performing social justice roles for which the conventional court is neither equipped nor inclined.*

At the end of the session a simulation exercise was their and the participants were divided into different groups and they were required to do the simulation. Through which their was a discussion on the following points

- 1.) 357 of Crpc
- 2.) 357 A of CrPC
- 3.) Poscso act

- **Session 8** : Physical infrastructure and security rules as impediment to access to justice : :
Justice Kurian Joseph, Justice V.S. Sirpurkar, Justice Gita Mital

The session was initiated by Justice Gita Mital and she was of the view that there is extreme dirt of infrastructure, she gave the example of the judge from the Howrah that the ceiling fan fell on his head this is the exact conditions of the courts, the rooms are dingy and they are very small and always filled with the pile of files all these things represent the dark picture of the courts and is actually showing that no work is done in the courts.

It is very essential that the judges must understand the infrastructure is closely connected with the mental understanding of the people coming to the court and they look up to the judges as their savior and if they perceive such a dirty image of the judge they will lose the confidence in the judges, all the libraries of the court are in deplorable conditions and it is the duty of the judge to see up to that as they will send a bad image of the judiciary.

The speaker is of the view that if there is any requirement of the courts which is felt by the judge then he must at the first instance and the habit of pushing people to work in the rural courts the speaker gave the example that in the state of Uttarakhand the court used to work in one room in some poor locality and the new court was not formed as there were not too many cases as the population is very less, the speaker initiated the construction of the court with the help of the local politician through getting the funds from him as he is of the opinion that if the courts are of such an image then the justice delivery system will fail ultimately.

The speaker told that access to justice should never be equated with the access to court and we must understand that there are many factors which are restricting the access to the court itself.

There are two stages :-

Stage 2

Access to the justice



Stage 1

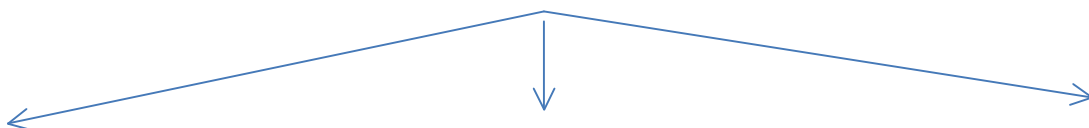
Access to the courts

Even before reaching the second stage there are many factors that are blocking the stage one even there are many people who are not able to put up their petition in the courts even and such factors which are restricting them are :-

- 1.) Illiteracy :- this is the main factor in India which is restricting people to go to the courts even many of the women who are suffering from domestic violence are knowing that they are having any law to protect them as hence they are not able to protect them
- 2.) Lack of legal awareness :- in many of the remote area there are many factories which are making poisonous substance which in result is effecting the lives of the people living their and the people their do not know they have a tight of clean environment and since they are not able to assert to their rights
- 3.) Fear of reprisal:-social obligation are such that if a women is complaining against the husband then the society will look at her as if she had done something wrong and this attitude restricts some person from instituting the case

According too the second speaker the there are three types odd barrier I the access to the courts and it is the duty of the court to look after them and curb them:-

Access to the courts :-



Physical	Financial	Technical
1.) Geographic proximity	1.) Payment of court fee	1.) Legal procedure
2.) How easy it is to enter the court on account of the social, economic factors and so on	2.) Payment to lawyer 3.) Poverty	2.) legal language

The few of the points discussed by the speaker as follows:-

- 1.) The court in India are not taking any effective step to provide services to the people coming to the court to substantiate the same she illustrated the case of *Tennessee v. Lane* “the plaintiffs were disabled Tennesseans who could not access the upper floors in state courthouses. They sued in Federal Court, arguing that since Tennessee was denying them public services because of their disabilities, it was violating Title II of the *Americans with Disabilities Act (ADA)*. Under Title II, no one can be denied access to public services due to his or her disability; it allows those whose rights have been violated to sue states for money damages

In *Lane*, the Supreme Court split 5-4. In an opinion written by Justice John Paul Stevens, the majority ruled that Congress **did** have enough evidence that the disabled were being denied those fundamental rights that are protected by the Due Process clause of the Fourteenth Amendment, among those rights being the right to access a court. Further, the remedy Congress enacted was congruent and proportional, because the "reasonable accommodations" mandated by the *ADA* were not unduly burdensome and disproportionate to the harm. *Garrett*, the Court said, applied only to Equal Protection claims, not to Due Process claims. Therefore, the law was

constitutional. Chief Justice William Rehnquist, and Associate Justices Clarence Thomas, and Antonin Scalia filed dissents.”⁵

2.) Security rules as impediment too the justice :- the speaker illustrated the real life example that after the bomb blast in the Delhi high court the police officer appointed at the court do not allow people to enter the court who are not having i-cards, once the speaker was adjudicating on the issue domestic violence and the husband was not able to come to the court at the third day they came to know that he was not having the i-card hence he was not allowed to come into the court at the end they have sent the officer of the court to take him. The speaker said that in India we use to possess the Indian open courts and now we are making them closed courts and it is our duty to see whether in the name of security or any other thing we are restricting the habit of open court and if yes then certain other methods in this regard must be evolved as US has done.

Session 9 ; Leadership Style : Justice V.S..Sirpurkar Mr. VidyanandaJha,

Session 10: Leadership Style : Justice V.S..Sirpurkar Mr. VidyanandaJha,

⁵(02-1667) 541 U.S. 509 (2004)
315 F.3d 680

The session was initiated by Mr. VidyanandaJha and he told that there is a lot of difference between the managers and leaders the leaders always take care extra-ordinary situations and he said that to discuss the issue of leadership it is best to exhibit the live example in the following line of discussion he initiated an exercise in which the participants were divided into groups and they were required to tell into the group any work which they have done and is exhibiting their leadership quality some of the experiences shared by the participants are as follows

- 1.) Mirzapur example :- the participant from the Mirzapur told that when he visited one of the subordinate court it was not having a toilet facility and the judge appointed their was a lady he at that time point of time asked the local MP to give some fund from his MP laid and constructed a toilet their.
- 2.) Example of the participant from the state of Andra Pradesh :- she told that she was deciding the case for the mercy killing in which facts of the case are that a widow was trying to kill his only child because he has fell and was extremely ill and hurt and she was not able to pay for the same at the same time she was not able to go to the work and due to which she was not able to fetch bread and butter and ultimately she decided to kill her child, the judge went to her house to see her miserable condition and it was true in its every extent after it the participant was able to raise the amount of 49 lakhs through a newspaper advertisement.

The speaker told that there are three qualities which must be inculcated as well as developed by the individual in himself to bring out his own leadership quality and they are as follows :-

- a.) Ability to envision the future :- the speaker told that a leader must be such that he is interpreters of the dream and it is this ability which distinguishes from other persons.

b.) Eye for detail:- the leader must always take a keep check over the minute details of the work.

c.) Bringing people to have a look like you:- the leader must have a persuasion power so that he is able to mold the people to think like him and make them move in the same direction.

Some of the other points discussed in the leadership quality are as follows :-

1.) *Yato dharmata jayaha*:- the saying is from the famous epic Mahabharata which is saying that the work should always be done according to the law and not even a king above the law and it was said by the Ghandhari while deciding between the Kauravas and Pandvas and said that nobody is above the law

2.) Fungibility of money :- the Mother Teresa has taken money from the rulers of the middle east who are considered to be very bad rulers as they were treating the people very badly when she was asked about it she told that the money is fungible and man are immortal and we must understand thus she was mold the people through her reason and that must be the approach of the leader.

3.) Transactional analysis :-

EGO STATES AND EGO PORTRAITS :- according to the speaker there are three types of ego which one individual possess and they are

a.) Parent :- the speaker is of the view that a person who is either always critically lecturing and it the way consolidating the others have a ego which is of parental in nature

b.) Adult :- this is the ego in the person who enables him to remain objective rational and oriented towards problem this is the most balanced approach according to the speaker

Child :- he is of the view that there is two kind of childish approach which generally people possess i.e. adaptive and natural; adaptive one is little adoptive behavior which person generally acquire to adapt or manipulate something or the other whereas the later type of childish ego is the one which helps a person to be impulsive, playful and naturally curious in everything but the thing is a person who is in habit of inculcating such type of ego may be considered as child forever. And it is the duty of the judge to possess a personality which can suit to every personality and is able to transact from one to another.

The session was concluded by the Justice V.S..Sirpurkar by discussing following points :-

- 1.) Time bound judges in America :- the speaker told that when he went to the America he was amused to see a strict time was given to both the sides to represent the case and this is the practice which must be initiated in the India also.
- 2.) No alternative for the judges except the time management :- he is of the view that there is no alternative for the judges except to develop the sense of time management as their job is such that they cannot avail to a strict time plan
- 3.) The judge must always try to do the following things :-
 - a.) Finish his board
 - b.) In time
 - c.) By becoming flexible
 - d.) He must give time to his family

Session 11 :Time management : : Justice V.S..Sirpurkar, Prof (Dr)Parul Rishi

The points discussed in the last session are as follows :-

- a.) Time v. Success:-the speaker is of the view that it is not necessary that if you are successful then you will be managing yourself accurately, but it is possible that if you manage yourself properly you can achieve success. And there is a need to understand that.
- b.) 80-20 rule :-she said that in a research it has shown that people always invest their 80% time in the trivial issues and their 20% time in the critical issues, although a good time management in the field of public work will come through experience but a person can try it by investing his 20% time in the trivial issues and 80% time in the critical issues.
- c.) Explanation of the above stated point :- to do the above stated practice the person must always try to quantify the things which he is going to do that how much is the weightage of those things in his life, after this he must do a causal analysis of it and at the last he must set an accountability for the delay and must relocate to previous position by stating that which thing holds what.
- d.) Setting up of time frame :- achieve timeliness in the difficult activities and to do so one must set a realistic and measurable goal which can be achieved in the given time, he must plan for it accordingly and at last must monitor it the same.
- e.) Time framing as practiced in different countries :- the speaker told the time management done in the different countries in the courts for example:- in Finland there is optimum time given to the disposal of different types of cases. In Slovenia 18 months are given to the judge to solve the case and the definition of the word “delay” is that whoever exceeds the given time must give a reason for it and even after 26 months he is not able to decide on it then a penalty is imposed on it.

f.) Management table:- the speaker told that there are different types of work and one must try to differentiate the same and work accordingly she has illustrated the types of work in the table :-

Urgent work	You must manage it like critically pressing the cases going to the meetings accessing the assembly question	At the same time you must avoid yourself from unwarranted works like going more to the media intervention
Not urgent	You must focus on the issues as some work which are not urgent can be of great significance and can become important in the near future like case list preparation, procedural issues and so on	You must limit your time so that the work which is not urgent as also it is not important you must remove it but to remove it you must be able to identify it first.

g.) Parkinson law :-the speaker illustrated that if you will fill the glass with big stone then it is not full, as it is having certain spaces in between them, then you must fill the glass with sand, still there is room for the space, then you must fill it with water then certainly there would be no space remaining thus in the same way you must set up your big goals like the big stones, then you can devote your time to your other works accordingly like the filling up of the sand and water, but you must understand that sand and water also very necessary in life metamorphic ally.