

NATIONAL JUDICIAL ACADEMY



*Colloquium to Develop Guidelines on Exercise of Supervisory
Power over the Subordinate Courts
22.04.2017 & 23.04.2017*

Programme Report

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Introduction

The National Judicial Academy organized a two day “Colloquium to Develop Guidelines on Exercise of Supervisory Power over the Subordinate Courts” on 22nd and 23rd April, 2017. The colloquium was attended by Guardian Judges from various High Courts.

The colloquium was designed to discuss the needs and way out for standardization of role and responsibilities of Guardian Judges. Underlying idea was to consider the prevalent best practices among each High Court. Deliberations were made on subject matters such as robust compliance of constitutional mandate, role of Guardian Judges in judicial performance assessment, protocols for effective inspection of courts and how to enhance objectivity and catalyze excellence in Annual Confidential Reports (ACRs). As to whether it is imperative that the roles, errands and requirements from Guardian Judges be clearly demarcated also formed part of the discourse. Proposed deliberation on the challenges faced by Guardian Judges and the way forward in developing guidelines for exercise of supervisory power formed an integral part of the objective of the colloquium.

Resource Persons for the Colloquium were:-

1. Justice Kurian Joseph – Judge, Supreme Court of India
2. Justice Deepak Gupta– Judge, Supreme Court of India
3. Justice P.V.Reddi– Former Judge, Supreme Court of India
4. Justice K. Chandru- Former Judge, Madras High Court
5. Justice Ravi Tripathi- Former Judge, Gujarat High Court
6. Justice Ram Mohan Reddy- Former Judge, Karnataka High Court

Day 1

Introductory Remarks:

The colloquium commenced with introductory remarks by Justice P.V.Reddi, he emphasised that High Court Judges are mentors to the Subordinate Judiciary and in discharging their duties they ought to work as democratically as possible. He also stated that it is the collective responsibility of the High Courts as well as the Subordinate Courts to achieve the goals for dispensation of justice at the grass root level. The power that a Guardian Judge exercises involves immense responsibility which should be taken up as a challenge by the judges in charge.

Session 1 - Supervisory Powers of High Courts- Constitutional Mandate: Robust Compliance

Speakers: Justice Deepak Gupta & Justice K. Chandru

Chair: Justice P.V.Reddi

The first speaker for the day Justice Deepak Gupta started the session by stressing that it is imperative for the High Courts to do their job and to make the judiciary work well. But the larger question that comes into mind is how to effectively administer the judiciary? According to him there is a lot of communication gap between the High Court Judge and Subordinate Court Judges that creates problems. He suggested that Guardian Judges should be in a practice to communicate with the District Judges at least ones or twice a week, this will help them understand the issues that are existing in the Subordinate Judiciary, as well as the day to day challenges that are faced by them. Guardian Judges should try their to work with the District Judges as a mentor and a leader rather than a boss. The existing practices suggest that the communication gap between Guardian Judges and the District Judges is so wide that they are scared to communicate with their mentors. Until and unless the means of communication between the two are not undone supervisory jurisdiction will not be exercised in its true sense. Hence, it is important for Guardian Judges to open the means of communication so that the interest of the institution is achieved. It is equally important for the District Judges to communicate with the junior judges so that the problems that exists in the system can be crystalized and further communicated to the Guardian Judge for proper

guidance and mentoring. The fundamental reason is that the issues are required to be addressed else they will impede judicial work. For instance, in many cases whenever issues arise between the bar and the judges, it is essential that the Guardian Judge supports the junior judge keeping in mind that the bar nowadays has become more aggressive.

The second speaker Justice K.Chandru, made an important distinction that the Subordinate Judge is subordinate to the High Court and not to the High Court Judge although the actual situation is rather different. It is important for a judge to function democratically and if he does not then it is most likely that supervision will not be possible. By functioning democratically the speaker meant that the judge is answerable to larger section of the society. He further opined that supervision involves two issues- firstly, self-restraint that is utmost important and secondly, Guardian Judges should not be bullies like, while writing Annual Confidential Report(ACRs) the Guardian Judge should try to be a guide rather than a boss to the junior judge. It is significant to understand that the purpose of Article 227 & 235 is to keep the judiciary together and take it forward. Article 235 not only vests total and absolute control of the High Court over the Subordinate Courts but it also enjoins a constitutional duty upon the High Courts which is to keep a constant vigil on the day to day functioning of the Subordinate Courts. According to the speaker Guardian Judges should be an example to the Subordinate Judiciary, they should not only preach but also practice in the same manner in which they expect the Subordinate Judiciary to be functioning within the bounds of law.

The discussion that followed accentuated upon the following points:-

- It was suggested that the supervision by the Guardian Judge should not only be administrative centric rather it should also focus on what kind of orders are being passed by the Subordinate Judiciary. In other words there should be a system for assessing judicial work as well. This will definitely enhance the quality of judicial work/pronouncements.
- The five or six senior most judges of the High Court should not be given the responsibilities of being a Guardian Judge rather Junior High Court Judges who have less responsibilities should be made Guardian Judges so that they have sufficient time for the Subordinate Judiciary.
- The best mode of bridging in the communication gap between Guardian Judges and Subordinate Judiciary is by way of conducting video conferencing sessions between the two.

Session 2- Judicial Performance Assessment: Role of Guardian Judges

Speaker: Justice Deepak Gupta & Justice Ravi Tripathi

Chair: Justice P.V.Reddi

Justice Ravi Tripathi commenced the session by stressing that judicial performance assessment by Guardian Judges is an honoured duty and it is therefore the duty of Guardian Judges to see that they can ease out the agony in the Subordinate Judiciary. He pointed out that the normal practice in most of the High Courts is that the files of the last three years of a judicial officer are called for assessment and the assessment is based on grading system which causes injustice to good officers, since good and average candidates end up getting the same grading. Rather, he suggested that the grading should be centred on classification of work and the marking should be according to the bifurcation based on performance vis-à-vis time basis. He also stressed that judicial performance assessment should be done sincerely otherwise there are all probabilities that a wrong officers may be promoted and that will largely affect the institution as a whole. At the same time it is also significant that judicial performance assessment should be free from personal subjectivity.

Continuing the discourse Justice Deepak Mishra pointed out that management is an important part of judicial performance, meaning thereby that the performance of judicial officers should be scientifically assessed. Personal prejudices should be kept aside while assessing. There can be regional committees which can rationalise the grading system. With respect to the issues involving integrity of a judicial officer it is substantial that all such perceptions must be based on some material at hand.

The discussion that followed accentuated upon the following points:-

- The quality of judgements that are sent for assessment is also in a crunch for the reason that many of the judicial officer take help of lawyers, academicians etc in writing their judgements. Therefore, assessments should be on a regular bases so that the judicial officers do not get time to indulge in such practices.
- The remarks in the ACRs should reflect serious application of mind

- There is a need for rationalisation of performance assessment and therefore, it is important for the High Courts to develop systems of moderations. If required systems of moderations are not developed then it may cause injustice to good judicial officers.
- Performance assessment of Judicial Officers must be done in a scientific manner.

Session 3- Protocols for Effective Inspection of Courts

Speaker: Justice Ram Mohan Reddy

Chair: Justice P.V.Reddi

The speaker for the session Justice Ram Mohan Reddy commenced the discourse by emphasising that Article 235 fixes a lot of responsibility upon the Guardian Judges and inspection of courts being one of the major responsibility. According to the speaker the objective of inspection is to assess the work done by Subordinate Judges. This includes assessment of the capability, integrity and competency of the judges so as to give a comprehensive meaning to inspection. The purpose of inspection is not just to fulfil a formality but the idea is to catalyse and do improved work from what had been done hitherto. It was also suggested that inspection must always be a “fact finding mechanism rather than a fault finding mechanism”. Thereafter, Justice Reddy discussed the types of inspections:

- i. Inspection done by the High Court that is by the Guardian Judge
- ii. Inspection done by the District Judge
- iii. Surprise inspection done by the District Judge
- iv. Annual inspection

After discussing about the types of inspection as stated above Justice Reddy stressed that a Guardian Judge apart from having judge centric information should also have information about the ministerial staff. It is only then that something can be done about the discrepancies involved and the inspection would be worthwhile. He also observed that with the augment of information technology inspections have become much easier. Nowadays through the National Judicial Data Grid [NJDG] Guardian Judges can keep a track of the daily work accomplished by the judicial

officers. Lastly, he opined that pre-inspection reports are very important and should be prepared as a regular practice which will benefit in conducting accurate inspections.

The discussion that followed accentuated upon the following points:-

- There should be a checklist for all the inspecting judges so that they can adhere to it while conducting inspections.
- It is the responsibility of the Guardian Judge to gather ideas from the Subordinate Judiciary for improvements as well as to see that the new ideas are executed in the required manner.
- The Guardian Judges should do regular visits of the courts under them. This will aid them to differentiate from what is stated in the pre-inspection report and what exists in reality. Most importantly, Guardian Judges are also required to be considerate towards the District Judges.

Session 4- ACRs: Enhancing Objectivity and Catalysing Excellence

Speaker: Justice Ravi Tripathi & Justice Ram Mohan Reddy

Chair: Justice Deepak Gupta and Justice P.V.Reddi

The first speaker contemplated that there is nothing confidential about ACRs and that is the reason due to which Guardian Judges are unable to write what they actually want to write in the ACRs. He stressed that this situation needs to be rationalised for which the High Courts should develop some system of moderation or else this will keep on causing injustice to good judicial officers. It is also necessary that Guardian Judges should not just rely on whatever the PDJs tells them about the judicial officers rather Guardian Judges should be unprejudiced and objective while assessing officers. It is significant to understand that ACR writing is an art which is a part of the duty of a judge and the key to writing ACRs objectively is TIMELINESS, the more the delay the less would be the objectivity. The speaker also emphasised that ACR should reflect some application of mind and must be written in a manner that shows objectivity.

The other speaker opined that while writing an ACR and rating a judicial officer, the Guardian Judge should call the judicial officer in private and tell him where his judgment went wrong and

where he/she is required to improvise. Such interactions will create a better relationship between the Inspecting Judge and the Judicial Officer and will also enhance performance of the judicial officer. It was also pointed out that Guardian Judges should avoid making general statements that a particular judicial officer is corrupt etc. since such affirmations destroys the integrity of the institution as a whole, rather such officers should be talked with in private. According to the speaker nowadays ACR writing has more to do with punishment rather than motivating which ultimately demotivates and demoralises a judicial officer who is actually serious about his/her work.

The discussion that followed accentuated upon the following points:-

- While assessing judgments, the administrative wing must strike down the name of the officer from the judgement and then forward it to the judicial wing so that the evaluation may be fair and impartial.
- The length of the judgement should be taken into consideration, how far it has been written by the judicial officer himself and how far it is plagiarised from other case laws.
- Instead of asking for five judgments of the judicial officers it was suggested that Guardian Judges should ask for the list of disposed cases and then should call for any judgment which they think fit.
- Only serious cases of corruption involving Judicial Officer should be send to the vigilance department and the rest should be left for the PDJ to handle.

Day-2

Session 5- Challenges faced by Guardian Judges

Speaker: Justice Kurian Joseph

Justice Kurian Joseph initiated the session by emphasising that though Article 235 talks about control over the Subordinate Courts i.e., the institution and not on the individual but in reality it is the other way round. Before going into the discussion about the challenges that are faced by the Guardian Judges the speaker highlighted that the best nomenclature for a Judge In-charge is “Guardian Judge” since he/she provides protection, grooming mentoring etc to the Subordinate

Judges while on the other hand ‘Administrative Judge’ sounds too harsh and implies command while on the other hand ‘Inspecting Judge’ implies as if the judge is just looking into the manner in which the judicial officers are functioning.

According to the speaker the major challenge that a Guardian Judge faces is with respect to the amount of stress he/she undergoes while discharging his/her duties as a guardian to the Subordinate Judiciary. The challenges that a guardian judge faces as per the discussion are:-

- Due to time constraints, administration is delayed which ultimately leads to delay in ACR writing which further delay inquires because of which a judge with a questionable integrity remains in the system for a much longer time.
- There is a wide communication gap between the Guardian Judge and Subordinate Judge because of which the former is unable to get the real picture of the practical problems that are being faced by the later.
- One of the Major challenge faced by Guardian Judge is the amount of stress they have to go through since there is constant transfer of judicial officers. It was also suggested that the tenure of the Judicial officers should be for longer duration so that the Guardian Judge is much more acquainted with the working of the Judicial Officers [their strengths and weakness]and can mentor them accordingly.
- The working systems and manners in the Subordinate Courts is very slow as compared to the working at the High Court and that is because the ministerial staff of the Subordinate Courts is not that skilled and qualified as that of the High Courts.
- Another major issue comes from the bar and the level of assistance that is available with the Subordinate Courts in handling aggressive bar.
- Many a times there are cases wherein everyone knows that a particular officer is questionable on the grounds of integrity. On the contrary all of the ACRs will show him clean due to the lack of material evidences etc. It becomes challenging for a Guardian Judge to deal with such a situation.
- Another challenge that hampers the institution as a whole is that the promotion must be based on the principle of merit cum seniority but the ground reality shows that it is based on seniority cum suitability bases.

Session 6 Developing Guidelines for Exercise of Supervisory Power: Way Forward

Speaker: Justice Kurian Joseph & Justice Ram Mohan Reddy

Both the speakers for the session emphasised that to have a way forward for coming up with some model guidelines for exercise of supervisory power it is important that the best practices of all the High Court can be shared so that the High Courts can imbibe each other's good practices in this regard. Furtherance to which the participant judges discussed as well as shared the practices adopted by their High Courts and also suggested some ideas which are as under:-

- It was reiterated that the suitable nomenclature as followed by many High Courts for an in-charge judge is "Guardian Judge" since these judges provide mentoring, protection and grooming to Subordinate Courts.
- The means of communication between Guardian Judges and the Subordinate Judges should always be open so that the Guardian Judge may get additional information about every aspect of the Subordinate Courts. For instance, having information even about the administrative staff at Subordinate Courts etc., such a condition is possible when the Guardian Judge works looking at the interest of the institution in mind.
- The National Judicial Date Grid [NJDG] is an important tool to see how the Subordinate Judges are doing.
- The Tenure of judges with special reasons or couple with same area posting is taken into consideration by many High Courts.
- The division of the districts can be zone based like- very difficult, difficult, and comfortable and more comfortable zone. In this way it will be easier to comprehend which judicial officer has been placed to which type of zone during his tenure.
- In many of the High Courts there are committees that look into the transfer of judicial officers. It was suggested that these committees should consult Guardian Judge before transferring the judicial officers.

- It was suggested that there can be judicial clinics for judicial officers from where they can get legal updates, knowledge etc. and on the same lines there can also be grievance redressal clinics for judicial officers
- Another view that was contemplated was that there should be PAN state calendar whereby, the High Court and Subordinate Courts should have working and non-working days in a similar pattern.
- It was also contemplated that there can be a monitoring system at all state judicial academies that can observe the improvements in judicial officers that could be by way of disposal rate etc.
- The Guardian Judges should be strict in observing that the judicial officers are not called for protocol duties. Although there are strict circulars by many High Court in this regard but still there are a few officers who prefer doing protocol work for the sake of pleasing their judge in-charge. Such practices should be strictly handled with.
- It was discussed that judges should be disassociated from non-judicial activities which will improve their judicial work. Ideally work related to lok adalats, legal aid etc. should be done by retired judges. The Annual Confidential Reports should not have credit head for such work and maybe removed from the unit system of assessment.
- It was suggested that newly elevated High Court Judges should be attached with a Guardian Judge so that they can understand how a Guardian Judge is supposed to function.
- It was also discussed that to improve the overall functioning of the Subordinate Courts the Guardian Judges must ensure that the administrative and ministerial staff of the Subordinate Courts are trained at the state judicial academies as has been an ongoing practice at many High Courts.
- Lastly, each High Court can identify on yearly bases a Model Court be it civil or criminal court etc. based on its disposal rate, court administration, timeliness etc. This will be a way of appreciating a good judicial officer besides this will encourage other officers to perform better.