

# **West Zone Regional Conference for Enhancing the Excellence of Judicial Institutions: Challenges & Opportunities**

**(P-1023)**

**29<sup>th</sup> & 30<sup>th</sup> April, 2017**

**Organised by National Judicial Academy in collaboration with Hon'ble High Court  
of Gujarat and Gujarat State Judicial Academy**

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**Venue: Gujarat State Judicial Academy, Gujarat High Court Complex, Sola, Ahmedabad,  
Gujarat**

**Report**

**DAY 1: 29<sup>th</sup> April, 2017**

**SESSION 1: Importance of Ethics, Integrity and Discipline**

**Speakers: Justice Kurian Joseph and Justice Ravi R. Tripathi**

**Chair: Justice Anil R. Dave**

**Following issues were raised and discussed in this session.**

- Judges must not be afraid of anyone in writing judgment. They should be afraid only of their conscience and almighty. If they are afraid of these two then ethics and integrity will follow automatically. Judges must follow their conscience then no problem will arise. The conscience must be bright and judges must practice what they want to preach. They must follow Saint Tukaram who first practice then preach.
- Earlier King used to select a person who has immense desire to do justice. The person selected were from good families and had good general awareness. Every judge must have reasonable common sense, knowledge of law and should be a just person. Above all they should be good human beings. The knowledge of law is necessary.
- Judges must not rationalise any indiscipline. Their conscience should say that we have to do justice and we have to be role model. Judges are constantly watched by public. Lawyers know judges very well i.e. whether they are intelligent and knowledgeable or not. Good judges know everything in their hearts. Most judges are knowledgeable and only 25% of judges require to gain proper knowledge of law. The case K.P. Singh vs. High Court of Himachal Pradesh is exemplary in this regard.
- There is a difference between business and profession. Business is done exclusively for profit whereas in profession the monetary gain is incidental. Profession is a way of life. If everybody practices their profession properly then the society will be Ramrajya. One can always inculcate skills after joining profession. The conduct of judges must be role model for others to follow.
- The Centre of International Crime Prevention, United Nations defines various principles of judicial integrity. In India judges follow Bangalore Principles. If judges follow the values of independence, impartiality, competence and diligence then they will be good and successful judges. The approach of judges towards life has to be different and then only others will follow them. Judges are not judges merely for 10 am to 5 pm but they are judges for their entire life.
- The Bangalore Principles define the value of independence. Judge who takes his own decision without fear or favour is independent. The independent judge is the exclusive master of his court. He is guided by law only. An independent judge cannot be told to decide in a particular way.

- The value of impartiality is implied by the statute of justice which indicates that judges should not be influenced by any party. Judges must maintain integrity beyond suspicion. Judges should never get influenced by media. They must decide judgment in the same manner without getting influenced by media. Judges must decide without fear or favour. The value of diligence implies practicing due diligence and care and caution in adjudication. Judges must keep updating their knowledge of law in this regard. The case Shirish K. Rangraj vs. Registrar of Bombay High Court deals with such aspects.
- Judges must decide cases without affection and ill will. Unconscious affection play a role in human conduct and judges must remain above its influence. They must avoid any inclination and should avoid branding by advocates such as pro labour, pro accused etc. The affection and ill will must be controlled otherwise these can get reflected in judgments. Judges must maintain distance in social gathering. The case Ram Pratap Sharma vs. Dayanand deals with such aspects.
- The judges must follow cannons of judicial ethics. They must ensure that justice is given and appeared to be done. There must be satisfaction on the part of litigants. Even remote allegations should not be there. The judges must not hear relative advocates in their courts. There must be proper time frame for deciding the case. The case Anil Rai vs. State of Bihar AIR 2001 SC 3173 deals with such aspects.
- Dishonesty is one of the major obstacles in excellence of judiciary. Dishonesty of judges, staff, advocates and litigants affects excellence. Media attack also influence excellence. Sometimes even biodata of judges are taken and judges are pressurised through media. The excellence of judiciary can be enhanced considerably by judges who have passion to do justice. Judges are servants of people and there should be humility towards litigants.
- The main stakeholders are those who get affected by the decision of court. Litigants are main stakeholder of court. Rest others i.e. judges, ministerial staff and advocates are duty holders of the judicial system. Advocates often misguide the court. The dishonesty of investigating officer affects prosecution.

## **SESSION 2: Strengthening Internal Vigilance Mechanism as Response to Rising Judicial Indiscipline**

**Speakers: Justice Kurian Joseph and Justice Ravi R. Tripathi**

**Chair: Justice Anil R. Dave**

**Following issues were raised and discussed in this session.**

- If judges knows and practice ethics and integrity then there is no need of internal vigilance mechanism. Mere competency is not enough and there should be integrity among judges. Person without integrity is of no use. If judge is honest then even if he makes mistake his reputation remains intact. There are very few judges who are indiscipline and judiciary

must strengthen system to catch such black sheep. In some states police officers are engaged to check the integrity of judges. Judges should not be money minded.

- Discipline can be ensured by way of behaviour, punctuality in work, in life and following code of conduct. A proper code of behaviour implies discipline. The violation of code of behaviour results into indiscipline. Rising indiscipline in judiciary is a result of violation of code of behaviour.
- There is rising indiscipline among advocates and there is practice of managing case which they charge from their clients. There is no direct judicial control on advocates. The report of the law commission of India has highlighted the problem of indiscipline among advocates. Advocates think that they are above and beyond control. Judge can control the aspect of adjournment frequently asked by advocates by making them fix the date of hearing. The judges should not allow advocates in the chamber when they are alone.
- The integrity of judges should be impeccable. They should follow timeliness, humility, right conduct, high degree of rectitude, knowledge, skills and a passion to do justice. There should be introspection on the part of judges. He must ask question about his conduct in office and discipline in his court. Judges' conduct is a message to society. The disciplined judge has nothing to hide and nothing to lose. The judges should practice the rule that "my discipline decide my destiny". One should not say that one is honest unless he has the proof that he had the opportunity to be dishonest but he remained honest and did not take any advantage out of that opportunity.
- Punctuality is one of the most important aspect of integrity. Judges must sit in court on time. In Gujarat there is no coffee breaks between court hours and this practice has been borrowed from the Bombay courts.
- The complaint regarding integrity of judge should not entertained unless it is accompanied by verifiable material. Anonymous complaint should be discarded. The principles of natural justice should be followed in vigilance hearing including principle of audi alterem partem and rule against bias.
- Uncertainty in the application of legal principles is also indiscipline. Judges should update their knowledge of legal principles. When legal principles are certain then judgment should be certain. If trial court find any grey areas concerning any legal principles then court may state a case and refer the same for the opinion of the High Court under section 113 of the Code of Civil Procedure.

### **SESSION 3: Impact of Media on Public Perception regarding Vitality of Justice Delivery**

**Speakers: Justice Anil R. Dave, Justice Akil A. Kureshi and Justice Sonia Gokani**

**Chair: Justice Kurian Joseph**

#### **Following issues were raised and discussed in this session.**

- The vitality of Justice Delivery System include those parts without which the system could not survive. The main vital elements of the system includes values i.e. independence, impartiality, relevance, no fear or favour and fine quality of justice.
- Judges should not be bother about news on proceedings pending in their court. One should treat every challenge as an opportunity. The media publication of judicial proceedings has two aspects. One is right of freedom of speech and expression which is inbuilt in the Constitution. Supreme Court in many judgements refused to put restrictions on media publication and ruled that restriction has to be on the case to case basis. There are many cases which have been brought to court by the media such as Nitish Katara case. Another aspect is irresponsible media publication especially on social media. These are mostly anonymous publications and it is difficult to trace their authors. There is need of regulation of irresponsible media publication. The media should not be unnecessarily restricted for its publication and there should be free exchange of information between institutions and public. The regulation must be there in case witness and victim need adequate protection
- The judges can follow certain rules to avoid negative media publications such as there should be impeccable conduct all the time, the judgements must have adequate reasons, the popularity must be avoided and there should not be any fear if the judgment is passed in a bonafide way. In sensational cases judges should not follow media and they should have courage to uphold truth.

### **SESSION 4: Relationship between High Court and District Judiciary**

**Speakers Justice Anil R. Dave, Justice Akil A. Kureshi and Justice Sonia Gokani**

**Chair: Justice Kurian Joseph**

#### **Following issues were raised and discussed in this session.**

- Articles 227 and 235 of the Constitution deals with the high court's power of superintendence and control over subordinate courts. The power of control and superintendence vests with full court and not with individual judge. The subordinate court as an institution is subordinate to high court but not individual judge.
- In some instances the high court judges have not been fair to judges of subordinate court. For instance sometime some high court judges do not pay for expenses during their visits.

The high court judge is a karta of the family and he should take care of the younger brothers in subordinate judiciary.

- There is need of some introspection on the part of high court judges regarding their behaviour towards the judges of subordinate judiciary. The judges of subordinate judiciary need support from high court. There is not enough reciprocation on the part of high court judges towards judges of subordinate judiciary. The effort must be made to eliminate the feeling of fear from the minds of subordinate judges. The trust and respect between judges of subordinate court and high court is required to be increased.
- The judges of subordinate judiciary should demand respect from their superiors. They must take stand for protecting their dignity. There should not be any desire for comfortable posting among the judges of subordinate judiciary. They should have courage to face consequences of their actions and should stand for their rights.

## **DAY 2**

**30<sup>th</sup> April, 2017**

### **SESSION 5: Social Context Judging (SCJ) as Principle for Exercise of Discretion and Application of SCJ in given Case Studies**

**Speaker: Justice Akil A. Kureshi**

**Chair: Justice Madan B. Lokur**

#### **Following issues were raised and discussed in this session.**

- There is a need of strengthening social justice to vulnerable sections. There must be equality in justice dispensation. The legal services authority has the mandate of providing legal assistance to people from vulnerable sections of society. The poor quality of advocates is one of the main challenges of legal services authority. The low fees of advocates is one of the reasons that advocates are not doing qualitative work in legal services.
- The social context adjudication requires purposive interpretation of statutes. Sometimes conflicting situations arises in cases which put judges in dilemma such as adjudication in serious crimes. Whether in such cases judge can decide in favour of a citizen? There must be ethical disposal of cases as society has lot of expectation from judges.
- The courts have infinite possibilities of doing social context judging. The Constitution provides for social, economic and political justice to everyone. The Indian Constitution is the result of years of hard work by the Constituent Assembly of India. The role of district judiciary in justice delivery system is very important as most cases do not go to appellate forum.

- At the moment of independence there was lot of inequality in India and property was unequally distributed. Government ordered redistribution of land to landless labourers and for this purpose the first amendment in Constitution was done to enhance equality. Law has provided level playing field to vulnerable groups. For instance the SC/ST group has been suppressed historically and Constitution provides them reservation and protection from violence. Even in the matter of private contract such as regulating rent for land tenancy the law has stepped in to enhance equality between private parties. Judiciary has stepped forward in many cases to ensure equality. The Husseinara Khattoon and Bandhua Mukti Morcha case are the shining example in this regard where the Supreme Court has expanded the scope of PIL. The ADM Jabalpur case another such instance where Justice Khanna has protected the liberty of people.
- The judiciary must be vigilant in ensuring gender equality. A study on Canadian judicial system found many stereotypes concerning women among judges such as women fantasises being a victim and about the conduct and demeanour of women. Such kind of stereotypes should be removed and judges should avoid them during adjudication. A State Commission report on the establishment of benches of High Court of Gujarat mentions stereotypes about women. Such kind of practices should be avoided.
- In many rape cases a confusing situation is emerging where the accused marry the victim and parties ask for withdrawal of the case. Judges must decide such cases according to law and punishment should be determined according to facts and circumstances of the case. Judges must have the capacity to recognize sensitive situation and must decide accordingly. Many times judges face situations involving ethical dilemmas. There is a book “What is right thing to do” by Michael Sandal which can be helpful in dealing with such situation.
- In many criminal case due to poor investigation the real guilty person escapes and poor innocent person is made an accused. There is need of intensive training to investigation officers and prosecutors. There must be adequate investigating officers and one officer should not be given lot of cases as it decreases quality of investigation. The investigation process must be done with adequate infrastructure such as mobile forensic labs.

## **SESSION 6: E- Justice: Re-engineering the Judicial Process through Effective use of ICT**

**Speaker: Justice S.G. Shah**

**Chair: Justice Madan B. Lokur**

### **Following issues were raised and discussed in this session.**

- The phase 2 of e-court project is over and more than 95% of the district courts have been computerized. The refresher training to trainers will be organized to take full advantage of the e-court project. Due to e-court project there has been lot of transparency and accountability in the functioning of courts.

- The high courts must make use of money released for e-court project. Lot of money is still lying unspent with the high courts. The money can be used for appointing more technicians for improving the functioning of e-court project in the state. The money can be used for proper maintenance of computer system in courts. There is need of more interaction between district court and high court e-courts committee for proper implementation of e-court project.
- Each high court can develop its module which can be integrated with the periphery of software system of e-court. This is need based and must be according to the requirement of the system in each high court. For instance Bombay high court has developed 44 modules in periphery whereas Sikkim high court has developed 1 module and Meghalaya high court has developed 2 modules.
- The awareness regarding e-court must be enhanced. Improper filing of cases is a major cause of delay. The litigants should be encouraged for e-file procedure for filing their cases in courts. There should be a prescribed format for filing cases. It is easier to access information if the documents are in soft copies and therefore all documents should be scanned. This will also save lot of storage space. Judges must increasingly use soft documents as it save lot of time and storage space. Through scanned documents judges can search database in less time.
- The National Judicial Data Grid has useful information regarding the institution and disposal of cases in various courts of the country. The performance of courts can be monitored through the data available on the National Judicial Data Grid.
- There should be greater use of websites of courts and kiosks in the court campus. The website should carry information related to cases such as hearing dates, stage of proceedings and contact numbers.
- The Supreme Court has asked for process reengineering report from all high courts. After analysis of these reports the model rules will be sent to all high courts for local changes and implementation.

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