

**East Zone-II Regional Conference on Enhancing Excellence of the Judicial Institutions:
Challenges & Opportunities
(P-1100)
12th & 13th May, 2018
Venue: Guwahati**

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The National Judicial Academy organized the “East Zone-II Regional Conference on Enhancing Excellence of the Judicial Institutions: Challenges & Opportunities” during 12th & 13th May, 2018 at Guwahati. The Conference was designed to provide a forum for exchange of experiences, knowledge and dissemination of best practices from across the cluster of High Court Jurisdictions of the eastern region; and amongst the hierarchy; to accentuate the experience of familial community between High Court and Subordinate Court judicial officers; re-visiting established and imperative norms of the constitutional vision of justice; elements of judicial behavior; social context judging and other specified topic. The conference also provided an opportunity to discuss several crucial issues relevant in the East Zone-II. Judges from six High Courts of East Zone-II viz, High Court of Calcutta, High Court of Sikkim, High Court of Manipur, High Court of Meghalaya, High Court of Tripura and High Court of Gauhati participated in the Conference.

SESSION 1

Constitutional Vision of Justice

The speakers raised issues regarding the topic including the nature of vision of justice judges need and whether there are infinite notions of justice? The vision of justice is required to guide judges in myriad situations. Despite the length of the Constitution of India, there are silences and gaps in the Constitution which create a need for guidance to judges. The speakers quizzed the participants regarding their individual notions of vision of justice. The speakers emphasized that Constitution is a charter for governance, and lays down structural and functional division between its organs. It elaborate functions from panchayat to president. Various features of the preamble such as social justice, economic justice and political justice were discussed. The basic features of the Constitution i.e. demarcation of powers between various organs of the government, independence of the judiciary and rule of law were highlighted and debated. The speakers emphasized the implementation of Part IV of the Constitution which provide a road map for governance. Like fundamental rights, the directive principles of state policy are also fundamental. It was asserted that one of the main reason that directives are non-justifiable is that their implementation is dependent on the financial capability of state. The speakers discussed doctrine of basic structure through judgments including *Shankarai Prasad Deo*, *Sajjan Singh* and *Keshavananda Bharati*. The speakers posed questions about relevancy of the Constitution to participants and referred to situations where trial court judges have to refer matters involving validity of a statute to the High Court. The speakers emphasized on the preparations required for forwarding such matters to the High Court.

SESSION 2

High Court and District Judiciary: Building Synergies

The session commenced with the role of judges in securing justice. The speakers discussed the meaning of “synergy”. The word synergy implies working as a whole. Working together with shared vision results into more qualitative output, as compared to working in isolation. It was further suggested that for administrative purposes, the expression ‘guardian judge’ should be preferred over terms such as ‘zonal judge’, ‘administrative judge’, ‘inspecting judge’, ‘instructing judge’ and ‘portfolio judge’. The speakers emphasized that guardian judges can only inspect courts and not judges. The next issue discussed was on how judges deal with contempt power and reference to high court. The judge must conduct preliminary inquiry and thereafter forward his/her observations to the high court through the concerned district judge.

It was highlighted that the administrative function of the high court over district judiciary should not be confined to exclusively dealing with negative aspects. There should be regular encouragement to younger judges by high court. The encouragement part at present is lacking in the administrative function. The high court should focus on communicating on quality work to district judiciary. The discussion on Annual Confidential Report [ACR] highlighted that meticulousness in preparation of ACRs is lacking. Many times the appraisal written by guardian judge is changed by the office of the chief justice without consulting the concerned high court judge. The speakers emphasized that communication between judges of the district judiciary and high court should be enhanced. It was suggested that high court judges should keep their ears to the ground to remain aware of the environment in district court. The process of mentoring by high courts should be based on dialogue and consent. The discussion involved the issue of budget and infrastructure problems in the district judiciary. It was suggested that high court should assess the situation in the trial court before giving direction to dispose cases within a stipulated time. The issue of transfer was discussed and the need for making transfer process transparent and participative was emphasized. It was suggested that for transfer the judicial officer can be provided with option of choosing one place from three places.

SESSION 3

Elements of Judicial Behaviour: Ethics, Neutrality and Professionalism

The speakers commenced the session by discussing integrity in the context of judging. The features of Bangalore Principles of Judicial Conduct were discussed. It was emphasized that these principles contain universal values, which all judges should follow. Judges have to keep in mind the expectation of people from them. There are certain expectations of people about the ideal image of a judge. Judges should make efforts to meet such expectations. This will go a long way in enhancing public trust and confidence in judiciary. Judges should follow a very high standard of accountability for oneself and should never get swayed by the power of the post. Double standard in judicial life should be avoided as it leads to dilution of ethics and neutrality. The belief in service to people should be followed by judges. Judges should live like an ascetic. The elements of ethical behavior and competence were debated extensively. The judges should remain above the biases

emerging out of caste, region, religion, hierarchy and power structure. Neutrality is the greatest virtue of being a judge and it should be maintained by judges. Judicial reasoning is a strong check against common prejudices. There are six core areas which should guide judicial behavior. These include independence, impartiality, integrity, propriety, competence and due diligence. Punctuality is another major elements of judicial ethics and judges should ensure punctuality in courts and while giving judgements. Judges should not show undue seriousness to a matter and neither should take any matter unnecessarily casually. The judicial focus should be balanced and rational. The session was concluded by emphasizing the need of inclusiveness. It was underscored that due to cost of litigation the judicial system often tends to exclude people who cannot afford it. Judges must strive for making system inclusive and accessible to poor people.

SESSION 4

Social Context Judging as a Controlling Element in Statutory Interpretation and Exercise of Discretion

The speakers commenced the session with the issue related to use of judicial discretion in adjudication; and how it can fill the void in situation involving conflicting interpretation of statutes. There are areas in each legislation where use of discretion is required, wherein judges should consider the social context of legislation while interpreting the provisions of statute. The text of the law should be analyzed according to its context and the application of law on people should be according to their social and economic context. The judicial interpretation should be informed by values of equality and diversity. There should be an awareness of widespread inequality as well as diversity in society and how to address it through adjudication. The impact of being at disadvantaged position should be evaluated. The social, cultural and linguistic factors shaping the litigant coming before court should be considered. It should be seen that whether the poor social background can be a mitigating factor for the litigant. The procedures should not hinder substantial justice. The speaker emphasized that social context judging should be essentially done within the Constitutional framework. Judge should avoid applying their personal values in adjudication. The adjudication process must be objective and should be informed by the laws and the Constitution. The session was concluded by referring to case laws involving social context adjudication.

SESSION 5

Access to Justice: Information and Communication Technology in Courts

The speaker initiated the session by emphasizing the value of access to justice. They said that access to justice is an 'objective' while Information Technology is the 'means' to achieve the 'objective'. The speakers discussed the use of electronic data and evidence in courts. Information technology facilitates the various facets of access to justice. Further speaking on the National Policy and Action Plan for Implementation of Information and Communication Technology in Indian Judiciary, the speakers asserted that it was the earliest step taken to harness information technology to enhance justice delivery by increasing accessibility, transparency, simplicity and user-friendliness of the judicial system. This further led to the Mission Mode Project and creation of the National Judicial Data Grid and the e-court project. CIS 3.0 which has been developed by the E-Committee of the Supreme Court of India and National Informatics Centre is a paradigm shift in the process of revamping the judicial process. It goes beyond mere uploading of data; and

would now ensure that litigants don't necessarily need to come to the court. The session focussed on challenges in the successful application of Information Technology in Courts which included the issues that only 40% of the funds allocated for the purposes of implementation of IT in courts has been utilised by the High Courts, several courts especially in the North-Eastern States face connectivity issues which hamper the effective use of Information Technology and different High Courts are using various software and there is a need to have a single system and software across the country. It was resolved that judges must take responsibility for the data that is uploaded on National Judicial Data Grid and not leave it for the IT officer. The other issues included alternatives for preservation of digital files, data and digital evidence such as cloud servers, regulation of technology, collecting data and privacy of litigants and citizens.

SESSION 6

Access to Justice: Court and Case Management

The speakers emphasised that civil and criminal cases are essentially different in nature and hence require different approaches in management. The case management systems for civil and criminal cases should be devised accordingly. Case Management for a judge essentially is the skill of managing one's board and understanding priorities. It also aids the court in becoming litigant friendly. Case management requires the judge to understand his/her own strengths and capacity and enables him/her to manage one's docket according to one's abilities. Some suggestions made for effective case management were as follows:

- Judges must sort through their docket and separate the ready and not-ready cases.
- Judges must fix a time in the day (preferably after lunch) to tackle routine work such as completion of service.
- Judges must ensure that the evidence of a witness is recorded on the day the witness has come before the court, so as to ensure that the witness is not unduly inconvenienced.
- Judges must have a predictable system with regard to final hearings. Final hearings should not be done suddenly at the end of the month to dispose the case just to clear one's board. This would not be justice in its true sense.
- Bench books should be developed by the State Judicial Academies to assist judicial officers to deal with cases.
- Judges should ensure that the orders are released at the earliest following the pronouncement of judgment. Delay in providing a copy of the order to the litigants creates doubt.

The speakers emphasised regular use of CIS 2.0 and the National Judicial Data Grid to analyse the pendency and the nature of cases on board. The benefits of digitisation in courts were discussed in the session.