

National Judicial Academy



*West Zone-II “Regional Conference on Enhancing Excellence of the
Judicial Institutions: Challenges & Opportunities”*

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*National Judicial Academy in association with High Court of Gujarat
and Gujarat State Judicial Academy*

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Submitted by-

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REPORT

The National Judicial Academy organized a two-day West Zone Regional Conference on the theme ‘Enhancing Excellence of Judicial Institutions: Challenges & Opportunities’ in collaboration with the High Court of Gujarat and Gujarat State Judicial Academy at Ahmedabad. The conference was attended by High Court Justices and Judicial Officers from the High Courts of Gujarat, Bombay, Rajasthan and Madhya Pradesh. The objective was to accentuate the experiences of the high courts and district courts, besides revisiting established and imperative norms of constitutional vision of justice, building synergies amongst hierarchies, impact of excessive appellate interference, significance of ICT and Court Management. The conference was designed to provide a forum for exchange of experiences, knowledge and dissemination of best practices to evolve horizons of relevant law and jurisprudence.

LIST OF RESOURCE PERSONS

1.	Justice A.M. Sapre
2.	Justice U. U. Lalit
3.	Justice Navin Sinha
4.	Justice M.R. Shah
5.	Justice S.G. Gokani
6.	Justice Sanjeev Sachdeva

A brief overview of the Sessions scheduled for the training programme is as under:

Day 1

- Session 1- Constitutional Vision of Justice
- Session 2- High Court and District Judiciary: Building Synergies
- Session 3- Revisiting Norms for Appellate Review: Consequence of Frequent and Excessive Appellate Interference

Day 2

- Session 4- Access to Justice: Information and Communication Technology in Courts
- Session 5- Access to Justice: Court and Case Management

Day 1
Session 1

Constitutional Vision of Justice

Speakers: Justice A.M. Sapre, Justice U. U. Lalit & Justice Navin Sinha

The panelists initiated the discussion on the basic understanding of the preamble and asserted that constitution is the source of all domestic laws. Further, with reference to the Preamble of Indian Constitution, the speaker discussed the following case laws:

1. *S.R. Bommai v. Union of India*¹
2. *Sajjan Singh v. State of Rajasthan*²
3. *Keshavanand Bharati v. State of Kerala*³

Furthermore, it was opined that what may be right according to the law might not serve justice in some cases, hence the higher courts should exercise inherent powers in such cases to do complete justice. Furthermore, it was suggested that it is not just the Supreme Court and the high courts which are entrusted with duty of interpreting the values enshrined in the constitution but every court in this country is required to fulfill its obligation while dealing with their routine matters. It was captivately pointed out that matters like divorce, sexual assault etc. involve pertinent constitutional issues to be dealt by the district courts, in a plethora of cases, the Supreme Court and High Courts have emphasized that even private affairs and transactions must be in conformity with the constitutional vision of justice.

Further, the speaker observed that the mission of the courts is to be in tune with the constitutional fundamentals i.e. to read every legal provision with reference to the constitutional vision of justice and the goal is to respect, regard and promote the fundamental rights. The courts are non-partisan institutions but are not constitutionally neutral. The speaker also elaborated on the vital role played by the Supreme Court to protect the fundamental rights and to ensure easy access to justice in case of its violation.

The session was concluded by highlighting that a negligible segment of the population in our country can afford the access to courts and even fewer to the appellate bodies, therefore, the courts of first instance assumes greater significance in maintaining the faith of the masses reposed in the organ of judiciary.

¹ (1994) 3 SCC 1

² AIR 1965 SC 845

³ (1973) 4 SCC 225

Session – 2

High Court and District Judiciary: Building Synergies

Speakers: Justice U. U. Lalit & Justice Navin Sinha

The panelists emphasized that predominantly the communication that takes place between the high courts and the district courts is disciplinary in nature, therefore, in order to accentuate harmony a continuous course of communication between the hierarchies is required to surge the productivity of the deliverables. It was stressed that any inspection or enquiry must be a fact finding rather than a fault finding as the superior courts exercise the responsibility of superintendence rather than the power of superintendence.

The discussion further went on to examine the advantages and disadvantages of unit system. It was asserted that there must be proper assessment of the work of judicial officers not just quantitatively but qualitatively. The participant judicial officers were advised to pass reasoned orders (it was termed as the “bullet proof vest” of judicial officers by one of the panelists) reflecting the application of judicial mind.

The practice of divisional workshop by the State Judicial Academy for cluster of 5 to 6 district was discussed wherein the workshop is attended by one or more portfolio judge(s). The problems and challenges faced by judicial officers are considered in such workshop, and it has positive effect in building synergies among high court and district judiciary. The speakers emphasized that the State Judicial Academies should act as a bridge between district judiciary and High Court. The State Judicial Academies should enhance synergies between two levels of judiciary.

The session was concluded by stressing that the High Courts must ensure that the district judiciary has adequate infrastructure, support staff, should appreciate good work done by the judges and also address the grievances of the district judiciary. The speakers advised that the practices of passing strong strictures, circulation of orders of the High Court to all subordinate courts, summoning the judge to explain his order and doubting orders passed in exercise of discretionary powers should be avoided.

Session – 3

Revisiting Norms for Appellate Review: Consequence of Frequent and Excessive Appellate Interference

Speakers: Justice U. U. Lalit & Justice M.R. Shah

The discussion began by stating that every judicial officer has a high court above his/ her shoulder hence reversals are inevitable. It is simply a fundamental nature of a tiered judicial system but excessive appellate interference results in loss of public faith in the courts of first instance. The panelists further explained that findings made by the trial court should not be looked upon with deference by the appellate courts as there have been cases when the reasoning of the trial court was upheld by the Supreme Court reversing the decision of the High Court.

Furthermore, it was emphasized that appellate court should not interfere with a lower court's order unless there is gross illegality and perversity. It has been observed that most of the time disputed questions of law are actually questions of facts and the High Court should restrain themselves from interfering with the lower court orders in such situation. The appellate court should not interfere with the lower court order unless there are defects which goes at the roots of the matter. The appellate court has power of remand and if there is order where the question of law is wrongly decided then the matter can be remanded back to the lower court. The appellate courts should refrain from the practice of admitting second appeal and subsequently leaving it undecided for many years. In most of such appeals there is hardly any disputed question of law. The appellate court should interfere only where the non-interference will amount to miscarriage of justice. There should be deference to the order of trial court as they have the opportunity to observe demeanor of witnesses. The speakers expressed concern on interference with the interlocutory orders and bail orders by the higher courts.

The speakers stressed on the need for impact analysis of new legislation especially the impact on litigation with the new law. The speakers advised the participants to be conscious and pass interim orders which cannot be easily challenged nor overturned in appeal. This can be achieved by –

- keeping the order in conformity with the statutory language and precedents,
- addressing all pleas raised,
- by passing a reasonable and legally sound order.

The session was concluded by stating that as a matter of fact every court must be presumed to be the court of last resort while delivering a judgment. It was also stressed that it is the law which has the discretion not the judge, therefore, the participant judges were advised to restraint themselves from exercising discretion in an arbitrary manner.

Day 2
Session 4

Access to Justice: Information and Communication Technology in Courts

Speakers: Justice S.G. Gokani & Justice Sanjeev Sachdeva

The speaker highlighted the importance of “Access to Justice” considering the impediments faced by majority of litigants. The speaker discussed the chronological phases of e-committee and how efficiently, the committee transformed the judicial administrative system and justice delivery were deliberated amongst the participating judges. A reference was made to the Delhi High Court by emphasizing that the entire record of decided cases upto 2012 have been digitized, 40,000 sq. ft. land has been vacated due to digitalization, certified copies of digital records with digital signature is available within 15-20 minutes of the order, installation of kiosks for information, e-cause list, e-court fee, e-summons etc.

Thereafter, the speaker also discussed the increasing significance and involvement of electronic evidence in cases before courts, and the sources of electronic evidence including digital footprint, metadata, social media accounts etc. The speaker discussed advantages of digital forensics in unearthing evidence that is usually ignored including GPS location, audio files, prior activity, photos etc. which aid in buttressing the case. Thereafter, the panelists tried to provide a technological blueprint for the existing and future courts:

1. Kiosks.
2. E-Tendering.
3. E-filing of cases, which would ensure easy issuance of remand but might encourage filing of fake cases, choking up the system.
4. Rules being framed to determine validity of evidence collected through video-conferencing.
5. Digital signatures.
6. Artificial Intelligence.
7. KOHA: integrated system of online libraries.

Lastly, the speaker, cited the case of *Swapnil Tripathi v. Supreme Court of India*⁴ wherein it was observed that technology can be used for expeditious disposal of cases and to ensure transparency and access to justice. It was highlighted that the judiciary as a whole stands far behind in the application of technology for swifter justice administration, therefore, litigant oriented use of technology should be adopted by the judiciary to improve the efficiency of courts.

⁴ (2018) 10 SCC 639

Session 5

Access to Justice: Court and Case Management

Speakers: Justice M.R. Shah & Justice Sanjeev Sachdeva

The session began with a discussion on the judge – population ratio and the statistics from National Judicial Data Grid (Jan 11, 2019). The speaker remarked that a judge should not only be a good adjudicator but also an efficient time manager. He should try to bring the best possible result in the earliest span of time. However, the expectation of this ideal role is a challenge for the overburdened judiciary in India. According to the statistics, 2.95 crore cases are pending in the three tiers of the judiciary. Approximately, 25% of the cases are more than 5 years old. Keeping the number of pending and backlog cases in view, a National Court Management System (hereinafter referred to as ‘NCMS’) has been constituted under the Chief Justice of India. The objectives of NCMS policy are:

1. Set measurable performance standards.
2. Set up systems for monitoring on quality, responsiveness and timeliness.
3. Enhance user-friendliness of the judicial system by way of computerization.
4. Set up a National System of Judicial Statistics (hereinafter referred to as NSJS) for recording and maintaining judicial statistics.

Thereafter the session was made an interactive session in order to allow participant judges/justices to place before the house the limitations they face with respect to the management of their courts as well as to share their experiences and exchange best practices. It was widely agreed that the effective administration of justice depends critically upon a successful partnership between the judiciary and the stakeholders. The panelists described disposal of cases as the most essential function of judiciary which needs to be expedited for speedy and impartial justice.

Further, the panelists listed certain parameters that ought to be followed by the judge while deciding cases:

1. Fixation of time limit for issuing notice.
2. Service of summons: a judge should prefer to do it electronically.
3. Procedure for the grant of interim relief: Interlocutories should not overreach the context or requirements which renders the *lis* useless.
4. Alternative Dispute Resolution mechanisms should be encouraged.
5. Procedure to be followed on failure of alternative dispute resolution mechanism.
6. Costs.
7. Proceedings for perjury.
8. Calling of cases.
9. Adjournments.
10. Miscellaneous applications.

Furthermore, it was also stressed that judicial officers must enhance their court management skills to deal effectively with frivolous litigations besides emphasizing prioritization of disposal of old cases. The panelists also highlighted that the influx of court managers in the judicial system has not yielded results but the courts have a crucial role in creating a policy to ensure that the court managers develop a congenial atmosphere in courts and an environment wherein judicial officers are able to concentrate fully on their judicial work.