

National conference of Judges of the District Judiciary on Access to Justice

(23rd – 25th January, 2015) P-893

Programme Report

The National Judicial Academy organized National conference of Judges of the District Judiciary on Access to Justice during 23rd – 25th January, 2015 to sensitize judges on obstacles faced by different sub groups within Indian society in accessing courts of law to get justice. The objective of this conference was to build the judicial capacity to appreciate persisting inequalities, power imbalance, lack of finance, intellect and physical resources that dissuade litigants to approach the courts and because of which litigants lose interest in pursuing their rightful claims before the courts. The resource persons included Justice G.M. Akbar Ali, Mr. Vineet Kapoor, Ms. Kalindi Kokal, Prof. (Dr.) Jane Schukoske, Prof. M.R.K. Prasad and Prof. (Dr.) N.R. Madhav Menon.

Following are the main issues discussed in the Conference:

SESSION 1: ACCESS TO JUSTICE IN INDIA: CONSTITUTIONAL PERSPECTIVE:

Justice G.M. Akbar Ali emphasized upon following points:

1. Access to justice means ability of society to use courts and other legal institutions to protect their rights and claims.
2. Legal protection of a person depends upon his legal awareness.
3. In justice system, there is a difference between grievances for which remedy is sought and enforcement of this remedy.
4. The biggest barrier to access to justice is poverty, illiteracy and lack of awareness of basic law. Our education system does not give emphasis on legal education.
5. Public is also reluctant to approach court because of slow and sluggish speed.
6. Lawyers are also a major reason for delay. They take advantage of loopholes in law.
7. Some of the existing laws are not being utilized to the fullest.

He emphasized on some invisible barriers to do justice:

1. Lack of courage to exercise legal justice
2. Tendency to suffer silently the denial of rights
3. Geographical and spatial barriers
4. Exploitation by powerful people
5. Complicated procedures and terminologies in judiciary
6. Multiplicity of interpretation
7. Ambiguities in policies
8. Lack of legal awareness and education
9. Delay in judiciary process
10. Cost of litigation in India is very high
11. Multiple adjournments
12. Mindset and bias
13. Indifferent attitude of government machinery and obeying the orders

The way forward:

1. E courts project: courts have all information updated with e-courts, but data is not being used in administration of justice.
2. Process re-engineering on access to justice: promotion of e-filings, e-registers, e-summons, SMS service under e-courts, uploading judgments and orders in CIS.
3. Promotion of Alternative Dispute Redressal mechanisms.

SESSION 2: ENHANCING USER-FRIENDLINESS OF TRIAL COURTS

A Questionnaire was given to all the participants by Justice G.M. Akbar Ali and then discussed. Following points came up in the discussion:

1. Generally judges feel that access to justice is not denied. But the answer depends upon what litigant feels about it.
2. Bias: judge may not be biased but litigant may feel him as a biased person because of social and economic backgrounds and pre-conceived notions.
3. Balancing the inequality is different from being biased. Judges are required to be compassionate, for this they have to balance inequality.
4. Hostile Witness: whether punish or leave them. it depends upon facts of each case. (*Best Bakery Case*¹)
5. Judges should do substantive justice and give remedy even where remedy is not available to an aggrieved within the strict letters of law.

SESSION 3: PROMOTING ACCESS TO JUSTICE IN COORDINATION WITH THE INVESTIGATING AGENCIES

Mr. Vineet Kapoor emphasis was on human rights approach to access to justice which according to him is based upon international law like UNDP.

His discussion highlighted following points:

1. 4 factors of access to justice: governance, human rights, rule of law and development
2. Barriers attached to the accessibility to justice:
 - a. poverty,
 - b. social vulnerability,
 - c. insecurity and violence,
 - d. lack of legal awareness
3. The concern is how a court based justice system can be made accessible? In this police can be of great use as they geographically most accessible building.
4. Policing can be of different kinds:
 - a. police Station,
 - b. community policing,
 - c. beat patrol and police intelligence
5. Role of law enforcement institution in promoting access to justice:
 - a. Removing insecurity
 - b. Removing violence

¹ Zahira Habibullah Sheikh v. State of Gujarat AIR 2006 SC 1367

- c. Promoting equal access
 - d. Focus on disadvantaged
6. Following can be done to balance Gender based violence and access to justice sensitizing police, creating special cells and help-lines, establishing special police stations for women, promoting contact of police with legal aid institution, crisis redressal cells and NGO hospitals. Government is taking steps in this regard e.g. reservation for women in police recruitment, laws like Dowry Prohibition Act and Section 498A enacted etc. but not much could be achieved.
 7. Access of Justice and Dalits: special police stations, police sensitization and training, better knowledge of legal provisions to police, connect with courts and prosecution, connect with other departments.
 8. Children and access to justice: Juvenile Justice Act requires special police officers for juveniles, but they hardly work practically. There is a need for special training of police and mechanism for monitoring and accountability.

In an open discussion, it was pointed out that Police can be effective in promoting access to justice. But people have stereotypical image of policemen and even afraid to go to them.

SESSION 4: LITIGATION EXPERIENCE AT DISTRICT JUDICIARY VIS-À-VIS ECONOMIC AND SOCIAL RIGHTS

Ms. Kalindi Kokal conducted a study on access of justice to people in India. She discussed following findings:

1. Economic and social rights are very rare in lower judiciary because of lack of awareness of such rights and absence of statutes on these rights. They mainly go to higher judiciary through PILs and writs.
2. Litigants perception on accessibility of courts:
 - a. Expenses are high
 - b. Complicated procedures
 - c. Unavailability of lawyers
 - d. Levels of fairness
 - e. Physical access to courts
3. Hurdles in access to courts:
 - a. Delays due to adjournments, non appearance of litigating parties, slow and lengthy procedures and execution machinery, multiple appeals, judge to litigant ratio
 - b. Illiteracy including legal illiteracy, lack of knowledge of English language
 - c. Scarce and irregular public transport
 - d. Financial constrains
 - e. Situation of women litigants: financial dependency on males, social challenges, lack of female lawyers
 - f. Lawyers: they do not allow litigants to speak to judges, prolong cases, demand money
 - g. Systemic Issues which include infrastructure of courts, lack of coordination with supporting machinery, frequent transfer of judges, difficulty in getting government record and documents, absence of adequate protection to witnesses, absence of legal aid and experts to consult.

SESSION 5: RURAL REALITIES AND BACKGROUND THAT ACT AS IMPEDIMENTS TO ACCESS TO JUSTICE AND WAY FORWARDS:

Prof. Schukoske discussed following issues:

1. Problems of rural areas which impediment access to justice:
 - a) Rural people are ignorant about their rights
 - b) Poverty
 - c) Transportation
 - d) Financial constraints
 - e) Fear of authorities
 - f) Lack of education facilities and electricity
 - g) Social problems like bias against women caste, in-built disputing resolution mechanism
2. Impediments for access to justice in the courts serving marginalized rural people:
 - a. Witness turning hostile due to threats
 - b. Lawyers
 - c. Lack of witness protection
3. E-panchayats could be a solution to rural problems, but no rural area has complete access to electricity.
4. Community radio is being promoted in order to acquaint villagers of certain legal issues on radio with the help of a judge and a lawyer.
5. Legal literacy camps also promoted by Legal Service Authority for increasing legal awareness.

SESSION 6: BARRIERS RESPONSIBLE FOR LOW CIVIL LITIGATION IN INDIA

This session was a break out session wherein participants were divided into 5 groups and each group was given a legal problem, on which they had to give their opinions.

Group 1: Here the problem was based on desertion of woman. The following points came up in the discussion:

1. Woman can approach para-legal volunteer or police station to seek legal advice.
2. She can file a complaint against her husband under Section 498A IPC, Domestic Violence Act or 128 CrPC.
3. Help-line 1091 can be accessed by women.
4. Legal Service Authority also has a help-line for women, which is available 24*7.
5. Some states like Karnataka have shelter homes for women.

Group 2: Here the problem was based on a under-trial prisoner. The following points came up in the discussion:

1. Magistrates should regularly visit jail to see if there are any under trial prisoners. If they have served half of their sentences, they should be released.
2. Plea bargaining should be encouraged.
3. Para-legal and NGOs can visit jails for the same.
4. Complaint against erring police officer can be filed.
5. For women prisoners, children above 5 years should be sent to care-taker home.
6. Bail should be given to under trial prisoners.

7. He should be given legal aid so that he can reach court.
8. Visits to jail by judicial officers should be in civil dresses and should be surprise without intimating jail authorities.

Group 3: Here the problem was based on poor quality seeds sold to farmers. The following points came up in the discussion:

1. Legal awareness programs can be organized for farmers informing them about quality seed and agricultural precautions and also about their legal rights and remedies available to them.
2. Legal Service Authority can be approached who can summon the accused even at a pre-trial stage and ask him either to compensate the aggrieved or to face the litigation.
3. Consumer courts can be approached by the farmer without any lawyers.
4. Farmers should be made aware that seeds and fertilizers can be purchased from government department.
5. Mediation can be done to settle dispute.
6. Compensation to be awarded to the farmer is calculated on the basis of yield on his land. This information is collected from village revenue authorities.

Group 4: Here the problem was based on domestic violence of a woman by her husband. The following points came up in the discussion:

1. Rehabilitation of liquor addicted husband is necessary.
2. District Judge, who is the in-charge of District Legal Service Authority, can ask District Legal Service Authority to provide legal aid to the woman.
3. Complaint under Section 489A, 323 IPC can be filed.
4. Complaint under Section 166, 176 IPC against the erring police officer can be filed as he has failed to perform his duty.
5. Restitution can be done by the judge as complaint against husband may bring greater problems to the woman.
6. Woman should be suggested by judges to retaliate. This hurts men's ego and he stops beating.

Group 5: Here the problem was based on delayed execution of decree. The following points came up in the discussion:

1. District judge can ask sub-divisional magistrate reasons for delay, officially and unofficially.
2. District administration including Collector can be called by the District judge and made accountable for the delay.
3. Such instances should be publicized in media. This causes defamation and may speed up the process.
4. Police can be used to vacate the possession.
5. Execution can be initiated with the help of Legal Service Authority.

SESSION 7: Movie '*In the Name of the Father*' shown.

SESSION 8: INDIGENT DEFENCE IN INDIA: MAJOR ISSUES

Mr. Rajesh Suman focused on the following issues:

- The development of right to legal aid and the enunciation of the role of judges in ensuring proper legal aid for fair trial by the Supreme Court of India were discussed.
- Emphasis was laid on the proper training of the legal aid advocate especially in the area of legal knowledge, evidence scrutiny, cross examination etc.
- There is need of public defender system in India where there could be permanent panel of the legal aid advocate who could be trained regarding the special legal needs of vulnerable groups.
- In the criminal cases involving indigent accused, the judges must guide themselves regarding the principles laid down by the Supreme Court for legal aid. Judges have to be proactive in such cases.
- The prosecution must cooperate with the court in cases involving indigent accused and should be fair in the exchange of evidence and information. The evidence favorable to the accused which are in possession with police or prosecution should be given to defense. The judges too review the prosecution evidences properly to avoid the possibility of suppression of evidence.

SESSION 9:

ACCESS TO JUSTICE AT GRASSROOT LEVEL: COORDINATION WITH UNIVERSITIES:

Mr. Prasad emphasized upon the role of law students in promoting access to justice in India. In his discussion, following points were highlighted:

1. Advantages of having students in efforts to legal aid to all are:
 - a) Law students can reach to remote areas where courts cannot reach.
 - b) Students can provide services at a low cost.
 - c) Legal aid cells are an excellent means of teaching legal skills.
 - d) Legal aid clinics are an effective means of community education and meeting legal service programmes.
 - e) There is no substitute for learning while working.
2. He re-iterated following elements of legal aid given by Justice Krishna Iyer:
 - a) Legal representation
 - b) Legal advice
 - c) Paralegal services
 - d) Public Interest Litigation
 - e) Law reform
 - f) Legal awareness
 - g) Promoting ADRs
3. BCI 2008 Rules makes it mandatory for all law schools to have a legal aid clinic.
4. The Legal Services Authority Act 1987: Section 4k, 4j: it is the duty of Legal Service Authority to develop clinical legal education in consultation with Bar Council of India.

5. National Legal Services Authority (Legal Aid Clinic) Regulations, 2011: makes it mandatory to establish legal aid clinic in all villages.
6. About 70% of the Indian population is entitled to legal aid under Section 12 of the Legal Services Authority Act. But the greatest problem remains of monitoring, because of which there are almost negligible legal aid camps by students across India.
7. He made a reference to UNDP & Government of India Report on Access to Justice for Marginalized People, which say that:
 - a. Majority of the colleges have legal aid clinics, but either they are not functioning or work once in a year.
 - b. Such clinics do not have proper functioning structure, place or policy
 - c. No workload and academic credit is given to teachers and students
 - d. Non involvement of Bar and Bench
 - e. Students and faculty lack skills.
 - f. Lack of collaboration with LSA.
8. He also gave certain problems that law colleges face, which include:
 - a. Lack of financial support
 - b. Restriction on faculty to practice
 - c. Absence of academic credit for students
9. But what is actually needed is on the part of law schools include following:
 - a. Mandatory collaboration with LSA
 - b. Involvement of Bench and Bar
 - c. Financial Aid
 - d. Trained faculty
 - e. academic credit for students
 - f. infrastructure
 - g. amending Advocates Act

SESSION 10: SOCIAL CONTEXT JUDGING FOR AFFORDING EQUAL JUSTICE

Prof. (Dr.) N.R. Madhav Menon, Former Member of Law Commission of India

Dr. Menon emphasized upon the need of social context judging by Indian courts due to the existence to wide cultural differences across the country. Social context judging is giving light to the equality given under Article 14 of the Constitution. He stated that:

1. He referred to Sachar Committee Report which talked about denial of equality to minority. Legislative actions have lead to denial of certain facilities to minority.
2. Unless both prosecution and defense is equally competent, there would not be equal justice.
3. We follow adversarial system of litigation. If equal access to justice not given, it may lead to miscarriage of justice.
4. Complexities of adversarial system may result in denial of access of law and courts to people.
5. In criminal matter, adversarial system leads to inequality between prosecution and defense, leading to inequality in justice.
6. In civil matters, adversarial system causes delay and is expensive leading to litigants abandoning just claims.
7. All PILs, as per the Supreme Court, are non- adversarial, but co-operative litigation.

8. In India, parties are unequally placed and unless legislature finds a way for equal justice, adversarial system will remain tilted in favour of few who have economic resources and a power to manipulate.
9. He suggested the legislature has adopted following alternatives to address the issue :
 - a. affirmative actions for weak
 - b. shifting burden of proof
 - c. Raising presumptions by statutes. E.g. Section 304B IPC
10. He made following recommendation:
 - a. Selection of public prosecutor should be from the civil judge examination.
 - b. Administrative control of prosecuting lawyers should be with High Courts.
 - c. Need for limiting the principle of proof beyond reasonable doubt, rather the standard of clear and convincing proof as suggested by Malimath Committee should be adopted.
 - d. Need for fast-track and mobile courts.
11. While delivering judgments, courts should take into account the social context in which that offence took place. This is the reason that judging in literate state like Kerala is different from judging in tribal states like Orissa.
12. This is not the question of blame but of accountability. Being part of the justice delivery system, every person has to take the blame.
13. The three pillars have to work in consonance with each other to deliver equal justice. But laws and institutions cannot function on their own unless we have efficient personnel including judges, lawyers there can be no change in the system.
