

NATIONAL JUDICIAL ACADEMY



Programme Report

Annual Conference on mapping Public Trust and Confidence in the Justice System

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DAY- 1

Session 01- Significance of public trust in the adjudication process

Speakers- Justice M.J. Rao and Justice Manmohan Sarin

The speaker commenced the session by stressing that the judiciary in India is held in high esteem in its own right and merely in comparison with the law makers and members of the executive. He then initiated the session by quoting Honore Balzac, French novelist, who said:

'To distrust the judiciary marks the beginning of the end of society. Smash the present of the institution, rebuild it in different basis.... But don't stop believing in it.'

Thereafter the speaker referred an article by Prof. Arthur Selwyn Miller titled "Public Confidence in the Judiciary: Some Notes and Reflections". While speaking on public trust, he asks the question what is meant by 'public' and says that indeed 'a series of publics exist' in the society. There are pluralistic social groups in the basic social unit. The question he says can be broken into at least in the following components:

- (a) Which groups (or the leaders thereof) within the nation hold
- (b) How much esteem(or respect) for
- (c) The Courts (trial and appellate) through
- (d) Selected periods of time.

He then analyzed periods where some judgments delivered during a particular period were criticized by certain groups and other periods when judgments were acclaimed as soon as an opposite opinion was rendered by the courts. Among the factors bearing on public confidence in the judiciary, the speaker referred to the performance of the judges both inside the courts and also in their non-judicial activities, to the competence of judges to handle complex social problems and says that one of the remedies may be the way in which judges are chosen.

According to the speaker public confidence is necessary for the effective performance of the judicial function. Like any occupational group, judges want to be well regarded by the rest of the community, they are pleased if their work is valued; they are concerned by criticism that is fair; and they are offended by criticism that is unfair. But confidence goes deeper than that, it goes beyond the public reaction of legal issues that from time to time, becomes newsworthy. The comments on such issues have an effect on public opinion. We cannot afford to ignore it; and we look for appropriate ways to respond to unjustified criticism. But confidence is not maintainable by stifling criticism of the courts or for their decisions. Confidence in the judiciary does not require a belief that all judicial decisions are wise. Or all judicial behavior is impeccable.

Referring to Prof. Miller the speaker opined that by and large, judicial temperament, intelligence, ethics, courage and personal integrity, independence, experience and education, hard work both at home and at the court, suitability to work load, punctuality, and courtesy, a good and patient hearing, good judgments meeting the points raised by the counsel and pronouncement of judgments in prompt time are the important facets of a good judge. If a majority of judges practice these essentials, there would be a good judiciary.

Therefore, all the goods qualities in judges as mentioned above would inspire public faith and confidence not only in the individual judge but also in judiciary as a whole and in the adjudication process. According to the speaker, eventually, it is the quality of the judges which raise the esteem of the judiciary and the adjudication process in the eyes of the public.

As per the speaker the whys and wherefores that affect public trust in the justice system are as follows:

1. Delay in disposal of cases on account of shortage of number of judges
2. Delay on part of the state or public sector undertaking or other public authorities in filing their responses in spite of several chances given to them
3. Lack of interest shown by respondents and also because of the poor quality of standing counsel appointed by the respondents
4. Lack of infrastructure

The speaker stressed on the necessity of judicial impact assessment as well as significance and need for financial support to the courts in India as has been done in the various countries like US, UK, Australia, Canada etc.

The second speaker for the session Justice Manmohan Sarin started by saying that we are living in different times earlier people never used to suspect the integrity of a judge but now the judges are questioned over their integrity. According to him what is required at the moment is to find out ways to deal with the problem that diminish public trust and confidence the justice system. These solutions could be identified from within the system itself. Judiciary is the trustee of law. It administers law not for its own benefit but for every member of the community. For instance, in matters related to the eviction of slum dwellers given by the judiciary there are protests etc. but ultimately the decision of the court is accepted. That implies that the people have realized that judicial decisions are to be respected and followed since it is the basis on which the whole society rests. It is the reservoir of good faith and public trust which insures which is required to be maintained.

Rendering further, the speaker said that, lack of trust or reducing trust in the justice system should be dealt by making reforms in the system by means of amendments etc., criticism of the judiciary is acceptable but

if people lose faith in the judiciary then that stage of dissatisfaction is probably not curable. What is required is that the systems should be made more and more affective as well as transparent to all the stakeholders involved in the justice delivery system. All this is achievable through proper court administration that is driven by innovative and fast rendering initiatives. It is imperative that fairness and impartiality should be visible to all.

Session- 02: Instruments to mend opinion on Public Trust and Confidence

Speakers: Prof. Upendra Baxi and Dr. Aman M. Hingorani

The speaker started the session by talking about the art of writing of a judgement. He was of the view that the judgments should be more streamlined and reasoned. A judgement is unity of reasoning and result, it is not just an order, anybody can pass an order. So according to him one way of achieving public trust is to make the judgments more readable and observe the unity between reasoning and result in every judgement. He was of the view that India had invented juristic activism in which reasoning goes south and result goes north.

The speaker opined that doing justice in complex cases takes time but then we need to ponder upon two things i.e., justice delayed is justice denied and justice hurried is justice buried. So where will the people of India go, we need to find a middle way for reaching justice which according to the speaker is between hurried and buried. Thereafter, the speaker talked about inter-generational justice that is justice across generation that has been talked about quite often but in reality 'justice' cannot be with respect to generations. And the question he posed is how and when did we started believing in this word. That means that you believe in the other world and when one believes in the other world then the judge should not be worried about public discontent because that does not matter and what matters is the content from the divine, what matters is divine displeasure. But judges are for this world they take oath for this world. Judges should not recuse themselves because they have taken oath and the oath requires a judge to do justice. According to him the criticism of the judges by the academics is the social responsibility and academic review of judges should not be taken as numeric review of judges

The next speaker took over the session by referring to what Professor Upendra Baxi said that academicians do not criticize the judges rather they criticize the judgements. He also mentioned that it won't be wrong to say that there is public trust deficient that is so that the credibility of the judges is much less now as compared to earlier times. For instance there had times when the Supreme Court has to remind the high courts that they are bound to follow the guidelines of the Supreme Court. There are issues of proprietary,

like in a recent case on copyright a learned single judge found a judgement of the division bench, said it has not been cited by either party , it's not relevant. The speaker opined that such judgement was wrong. The same case invited a review from the division bench. These kind of issues which are in the public domain are bound to break institutional cohesion which ultimately leads to lack of public trust and confidence in the justice system. According to the speaker as and when the Supreme Court has redefined the judicial role, it has not really thought out to put in mechanisms to check excess of power by the judges. Although the common law system has in built checks on the judges- the requirement of being bound by the pleadings, deciding issues arriving from the pleadings, evidence, more neutral role, not being able to go for what is beyond the court- such limitations are in-built checks on the judicial process. When the court goes beyond its limits then it exposes itself to criticism that has been evident in the Sahara case and many more. A judicial decision should always be supported by reasons, if a judge does not give reasons it implies that there is no reason to be given. A reasoned judgements is what attracts public confidence in the system. So it is important to note that there is a situation that within the system there enough scope for a judge to legally be subjective and that too without giving any reasons and that won't be arbitrary exercise of power. Courts are created for the people and the public has all the reasons to know the reasoning behind the judgements that are given. Time has come to define the expanded judicial role for the sake of credibility of the institution itself.

Session 3: Strengthening Public Trust and Confidence: Requirement of radical restructuring of the systemic defects in the adversarial system

Speaker- Mr. Venkatramani

The speaker started by saying that the session on the face of it seems to be of significance to the judiciary and its administration but there is much more to this. That is to say that the working of the court is very very important and inseparable to the people who comes to the courts. Public trust in the administration of justice rather than the institution of justice is of priority and therefore, investments in administration of justice are necessary. That is to say that the relationship between administration of justice and sense of belonging to the community are both in itself significant. What is also import is to understand the difference between distrust and dissatisfaction.

According to the speaker there are some essential features in the adversarial system that cannot be defected but the idea and way to bind these systems is called the systematic defects in the adversarial system. Rendering further the speaker was of the view that -

- Criminal justice system in an unequal social structure- how best the adversarial can be derived from the role that is played by the stakeholders- police etc.
- Judges ought to look into all the actors and the compartment style should be done away with
- In Australia they have done away with the adversarial system
- Emerging areas of civil law should be taken into considerations as well as the internal functioning of the court is not taken into consideration while making a legislation
- Role played by the bar in aiding the judges for adjudication is very significant
- How public perceives the adversarial system should be seen with a different perspective, there should be an outcome visible from the adversarial system
- Professional virtues are important for the administration of justice
- Comforting solutions are pragmatic which we not looking at
- Since the institutions are to be set under the constitution therefore, their assessment will also be under the constitutional vision and it is then that comes in the public perception
- How a judge looks into the issues?—there are any number of explanations which are to be looked into

Session 4: Role of ICT in augmenting Public Trust in the Justice System

Speaker- Justice Sunil Ambwani

The speaker emphasized and explained the E-court Mission Mode Project to all the present participants to the conference. According to him the eCourts Project is an Integrated Mission Mode Project as part of the national eGovernance plan (NeGP) for Indian Judiciary. The objective of eCourts Project is to provide for ICT enablement of courts to enhance judicial productivity both, qualitatively and quantitatively as also to make justice delivery system, affordable, accessible, cost effective, transparent and accountable. The e-Courts project was conceptualized on the basis of the “National Policy and Action Plan for Implementation of information and communication technology (ICT) in the Indian Judiciary – 2005” submitted by e-Committee (Supreme Court of India). Phase I of the eCourts Project was approved in February 2007 and revised in September 2010 with revised time lines of 31st March 2014. It was again extended till 31st March 2015, for completion of balance activities.

Thereafter, the speaker explained the importance of National Judicial Data Grid (NJDG) and how it is intended to be the National Data Warehouse for case data including the orders/judgments for Courts across the country. The public can access the portal using the web link- http://njdg.ecourts.gov.in/njdg_public/

The NJDG will be useful for policy planners and policy makers to manage case loads and bring in effective case management systems. The data available in NJDG can also be used for Data mining Online Analytical Processing (OLAP) Business Intelligence (B. I.) Tools Integration with Interoperable Criminal Justice System (ICJS).

The speaker then explained that the e-Courts project Phase- 2 aims to achieve a few major targets that will ultimately be playing a vital role in enhancing public trust and confidence in the justice system. The major targets of the second phase are - Computerization of uncovered, additional and new courts, District Legal Services Authority (DLSA) and Taluka Legal Services Committee (TLSC), Computer training labs in SJAs, and additional hardware in existing court complexes. Enhancement of connectivity, Service delivery through cloud technology. Video-Conferencing for Courts and Jails, Judicial Process Re-engineering, Judicial Knowledge Management System, Services Delivery (30 services to litigants, lawyers and other stake holders through 7 platforms), Common Case Information software to be prepared for High Courts with Core and Periphery Models.

He then discussed about the new initiatives of the project that will increase the public trust in the system. This includes- Improving the system of serving notices and summons through hand-held authentication devices for process servers, Information kiosks at each court complex Solar Energy for Power Backup for 5% of court complexes, Central filling Centers, eFiling Integrated Library Management System, On line Certified Copies, Implementation of Cloud computing with Disaster Recovery and Back Up facility, Unification and Standardization of all data including meta data.

DAY-2

Session 5: How Media / Movies Influence People's Perspectives towards the Justice System

Speakers – Justice Manmohan Sarin and Mr. Anup Jairam Bhambhani

According to the speaker media's own understanding of the Justice System is often rudimentary, sometimes immature and there is a long distance between the "layman concept of justice" and the "systemic concept of justice". The media acts as a surrogate of the masses to witness, collect and collate information in order that information may be presented to the people. The speaker then referred to "Freedom of Media vis-à-vis Independence of Judiciary- by Justice Shiva Kirti Singh" and said that, the freedom of media in the matters of reporting of court proceedings serves useful purposes. The general public in a democratic set up like ours has constitutional and legal right of information in respect to all matters of public importance. The working of the legislature, the executive and the judiciary must be visible to the public at large and it is for this

purpose that the courts are required in ordinary circumstances to always function in open where public has access. Fair reporting of court proceedings by media and writings touching the merits of judicial pronouncements invariably add to the prestige and dignity of the courts because openness dispels misgivings and doubts. Secondly, constructive and intellectual writings in respect of court proceedings are also helpful to the judicial system which gets insight into the feelings of its citizens and an opportunity of self-correction. Building an informed and educated public opinion is the duty and responsibility of the media and for that purpose it must have the requisite freedom of fair reporting of court proceedings.

Sometimes the lack of specialised knowledge of law may also lead to wide publication of a particular view in a sub-judice matter which may create wrong expectations in the mind of the general public regarding the outcome of a judicial proceeding. This may lead to two unwanted situations: (i) judicial proceeding itself getting influenced by public opinion and expectations, or (ii) a fair decision may appear unreasonable to the people at large because of wrong views disseminated by the media. Such a result in either case, will harm the judiciary and in the process, the people too. Hence, in reporting court proceedings as well as police investigation, prevention of abuse requires three precautions—(1) reporting must be based on correct facts, verified and verifiable; (2) the views must be just, fair and reasonable. To ensure this, the author or writer should have specialised knowledge of the branch of law concerned; and (3) the timing of publication of views on sub-judice matters must be chosen carefully so as not to be inappropriate.

Session6: Procedural fairness: A key component in public satisfaction

Speakers- Prof. Upendra Baxi and Mr. N. Venkatraman

Professor Baxi started the session by requesting the participant justice not to use the word subordinate judiciary for the district judiciary since it is a mere violation of the basic structure of the constitution. Thereafter he discussed about the significance of judicial legal consciousness and how at all that does arises. According to him legal consciousness is a very contradictory term and it should also include lawyer's consciousness because as Gemy Bentham said that law is made by the judge and the company and the lawyers are the company. Therefore, it is important to know how lawyers think. In India we do not have any study to support this idea.

The reason why procedural justice is more important than substantial justice that is for the reason that justice needs to seem to be have been done. Many judges devote their attention to being fair i.e., to correctly apply the law to the facts of each case but do not think how at all will that be perceived by the public at large. According to the speaker law is nothing but the prophecy what the judges say is and an academic is nothing

but the prophecy what the court will do. Procedure and subject dichotomy is misleading. The speaker then referred to the American systems and said that many judges devote their attention in being fair, i.e., to correctly applying the law to the facts of each case, but do not think about how they can communicate that they are being fair to the parties in the case or to the public more generally.

A fair judge is one who correctly applies the law to the facts in a particular case, usually with the goal of achieving the correct outcome. However studies of the popular meaning of procedural justice suggest that the public considers a broader range of issues when evaluating the fairness of judicial decision making. These broader issues are referred to as relational issues because they are related to the social messages communicated by the courts. In other words decision making is not only about the issues in dispute but is also about the rights of the public to come before the court so that their needs and concerns are addressed by the court. According to Justice Sotomayor it is important to understand as to what relational aspects of procedure matter to the public and why? The public first focuses upon whether they feel treated with dignity and respect. High quality treatment by legal authorities conveys the message of inclusion. While on the other hand when the authorities are disrespectful to someone appearing before them that indicates marginal social status.

Secondly, our procedural justice is based on the basic principles of administrative law and more than the principles. Administrative law is the constant reminder to the public decision makers to follow basic procedures of the law. The public obviously violates it but the decisions makers keeps on doing it like this way procedural justice works- the judges keeps on doing it and after a point the public start believing them. It can also be said that constant reiteration is administrative law. There is nothing magical, just keep on deriving and that is also the doctrine of public trust. However judges are directly not accountable to the public. According to the speaker, there is a theory of rationality which he call “fly now pay later rationality” on which administrative law thrives. For instance, a judge orders that the transfer is invalid the party goes to the Supreme Court and in the meantime the concerned person retires and later on he get the benefits. The question he posed was whether there is way out for the judges to do away with this “fly now pay later rationality”? He also pointed out that why the judges do not use the power of contempt for the disobedience of orders is big question.

Thirdly, according to Prof. Philips Hamburger an American Professor in his book “Is administrative Law unlawful”, if it is unlawful what follows and what are the other remedies that are there. What is wrong with CPC, CrPC that we need to develop administrative law, is it just because the British developed it.

Fourthly, Post listed hearing clearly violates procedural justice. The Supreme Court has a very narrow window for post listed hearing that is open post listed hearing in the matters of urgency.

Finally, the oath that the judges take is that they have to uphold the constitutional values without fear or favor and the speaker questioned the participants that does this oath binds the judges in giving their decisions on day to day basis or oath is only an occasion. According to him there are two kinds of judges in India- one, who swear by the constitution and the other who swear at the constitution. Does the oath plays any part in the decision making of a judge or conceptualizing procedural fairness. It is not just the oath of the judges but even the directive principles of state policy which says that the state shall endeavor to show respect to international customary law. According to the speaker there are only 2 Indian judges who imported international law in India, one is Justice K. Ramaswami- Supreme Court – in his 15 decisions he brought in the whole jurisprudence of development declaration and Justice Geeta Mittal of Delhi High Court brought in the entire law of the international displaced persons in the United Nations Resolution.

The next speaker discussed about the key ingredient related to procedure fairness and same according to him had been bothering both the judges, litigants and the lawyers and that is “quality of time in hearing a matter”, which is an essential ingredient in procedural fairness. Why this problem exists and for that it is important to reach to the root cause of it. To explain the same he rendered that there are three major litigants before the courts- the government [which is the biggest litigant], people with strong economic and influential power who can sustain long litigations ie., people who litigant just for the sake of litigation and the third category is those people who cannot sustain litigation but are dragged to courts and who are waiting for years to get justice.

Elaborating further the speaker discussed at length the first category of litigants that is the government how it contributes to the inefficiency of the courts in its decision making through due process of law. The basic problem according to the speaker is that the executive stress, inefficiency, the executive’s decision making process collectively bundles up over a period of time and hits and storms the courts and it is this which adds to the backlog of cases and makes the work extremely stressful. The starting point of this pressure is bad investigation, bad filing of cases and bad sustenance at the executive level. There are reasons for these inefficiencies and they are – absence of neutrality, absence of accountability, absence of independence, respect to the hierarchy and absence of institutional commitment which has landed us into an abnormal situation in the dispensation of justice. At the same time there is a need to find solutions to achieve procedural fairness that will restore public trust this could be achieved through two kinds of solutions that is executive bucket solutions and judicial bucket solutions. Under the executive bucket solutions discretion should be avoided and substituted to verification which should be outsourced so as to avoid executive pressure; common problems should have common solutions otherwise no solution; repetitive action should invite discontinuation and decision making ought to be transparent - invite comments-put in public domain. The judicial bucket solutions may include- aspect of technology must be mapped to find out the judicial

issues-this will do away frivolous issues-then would be left; multiple issues delay justice; wherever possible allow withdrawal of cases and taking written submission from the parties.

The conference concluded with the closing remarks by the Director, NJA