

**REGIONAL CONFERENCE ON ENHANCING EXCELLENCE OF THE JUDICIAL INSTITUTIONS: CHALLENGES & OPPORTUNITIES (NORTH ZONE-II) (P-1158)**

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National Judicial Academy organised the North Zone Regional Conference on the theme 'Enhancing Excellence of the Judicial Institutions: Challenges & Opportunities' in collaboration with the High Court of Uttarakhand and the Uttarakhand Judicial and Legal Academy. The conference aimed to foster dialogue and exchange between the judicial hierarchies on evolving horizons of knowledge and best practices.

The conference provided a forum for exchange of experiences, communication of knowledge and dissemination of best practices from across clusters of High Court jurisdictions in the northern region; to accentuate the experience of familial community between High Courts and Subordinate Courts judicial officers. Besides revisiting established and imperative norms of a constitutional vision of justice, the conference also sought to promote discussion on the benefits of information and communication technology and skills of court and case management in ensuring timely and quality justice.

**Session I: Constitutional Vision of Justice**

**Speakers: Justice K. Kannan & Justice Sudhanshu Dhulia**

The speaker dwelt on the relevance and interplay of the constitutional vision of justice in the exercise of jurisdiction by the district judiciary. It was stated that the trial court is the first interface of the judicial system with the common man and it is at this stage that the courts are duty-bound to ensure equality and non-discrimination in keeping with the provisions of Article 14 of the Constitution of India. The Constitution aids in the interpretation of statutes as it underscores the objective of the law and the goals to be achieved through law. The participants were exhorted to consider imbalances in the power and position of parties before the courts and to address the imbalance while adjudicating cases so as to ensure justice to both parties. The speaker distinguished between restitutive and distributive justice. The speaker pointed out the increasing tendency of seeing people through the lens of regional, cultural, religious, gender

and social background and to identify people on the basis of such imposed identity, instead of viewing people as individuals separate from such background. It was stated that all persons carry baggage of their social, familial and religious background and judge on the basis of such baggage. The need for objective judging according to law, shirking the influence of personal biases, prejudices and baggage was stressed on. The need for sensitivity towards the concerns of litigants especially disadvantaged groups; in keeping with the constitutional vision was emphasised upon. The speaker also cautioned the participants to avoid being swayed by arguments made by advocates and decide a case on the law and not on the basis of which side has argued better. The judge must also guard against false arguments made and be conversant with the law on the issue. The speakers emphasised on the Constitution of India as a social document which expresses the vision of the constitution makers and provides the tools to achieve this vision. The founding fathers envisioned the creation of a just society based on the principles of equality, freedom and justice as expressed in the Preamble, Part III and Part IV of the Constitution. The Preamble along with Parts III & IV are the conscience of the nation. The speakers raised concerns on the increasing gap between the rich and poor and the implications of this inequality on the democracy.

## **Session II: High Court and District Judiciary: Building Synergies**

### **Speakers: Justice K. Kannan & Justice Lok Pal Singh**

The speakers stressed on the role of the district judiciary as the face of the judiciary and the need to maintain conversation between the hierarchies in the judiciary and to dissolve barriers between the hierarchies. It was stated that presently the conversation between the hierarchies is disciplinary in nature, and there is a need to foster constructive communication between different levels of the judiciary. The speakers discussed the provisions pertaining to the superintendence powers of the High Courts and the extent and limits to such powers. Superintendence powers are exercised in respect of administrative superintendence including setting targets, ACRs, counselling, complaint mechanisms, appointment of clerical staff, adverse entries, monitoring disposals, ensuring quality in judgments and inspections. The speakers advised that strictures on lower courts should not be unnecessarily harsh and should not harm the public perception of the judiciary. The speakers discussed the practices of setting targets by the High courts. The speakers also discussed writing of Annual Confidential Reports and suggested that ACRs should not be filled mechanically; should be fair and objective, based

on material rather than spoken reputation. It was suggested that the criterion for evaluation in ACRs need to be reconsidered. The speakers suggested the inclusion of a 360 degree feedback system for objectivity in assessment in ACRs. The speakers also stressed on the duty of the High Courts to look after the needs and concerns of the district judiciary. 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 III: Revisiting Norms for Appellate Review: Consequence of Frequent and Excessive Appellate Interference**

**Speakers: Justice K. Kannan & Justice U.C. Dhyani**

The speakers stressed that courts of error clog the judicial system and create faith deficit in the judiciary. However, finality of law is not a reality as even Supreme Court decisions are overturned in subsequent decisions. Reversal of decisions and appeals would not be possible if law is settled or considered to be final. However, frequent overturning of the Supreme Court judgments erodes the majesty of the judicial system and introduces uncertainty in the judicial outcomes.

The hierarchy of courts does not mean that the higher courts are not fallible. The hierarchy exists to correct mistakes in law. Certainty in outcomes is necessary to ensure public confidence in the judicial system. Certainty in outcomes also includes a timeliness of justice to give an assurance to the litigant that their case will be decided within a certain period of time. It is the bounden duty of the judicial system to live upto the expectations of the people.

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 the order without delay,
- by passing a reasonable and legally sound order,

The speakers also advised that in cases of appeals, the court should not interfere with the order of the lower court unless a serious error of law is involved. The appellate court should not interfere in factual issues unless prejudice is caused to a party. If the decision by the lower court is one of the possible views that can be taken, then the appellate court should not interfere with the order. The participants were also advised to avoid passing status quo orders.

The speakers discussed the cases of *Awani Upadhyay* and *Hiten Thakur* to emphasise that the appellate court must exercise moderation, constraint and sobriety in saying anything to a lower court and that the appellate courts must strike a balance so that the appellate interference is not frequent and excessive, nor is it not exercised at all.

#### **Session IV: Access to Justice: Information and Communication Technology in Courts**

##### **Speaker: Justice Sanjeev Sachdeva**

The speaker dwelt on the advancement of technology in recent times and its impact on the judicial system. Technology has resulted in the transformation of the court room, the administration of the judicial system including the filing section and process serving. Technology empowers the judge to ensure speedy justice. The speaker discussed the introduction of paperless courts which has facilities including digital applications for judges and advocates, storage of documents in digital format, publication of cause list in digital format and accessibility of the case file in digital mode. The speaker also discussed the increasing relevance 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 benefits 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. The speaker also highlighted the security and privacy concerns with the proliferation of social media, smart phone and devices which access all information and build profiles of individuals based on their activities, locations etc. The participants raised concerns regarding the security of judicial data with the digitalisation of courts and the possibility of hacking and theft of crucial data. The speaker advised the participants to take safety measures including limiting

the use of devices only for judicial work on the LAN in the court premises and to refrain from copying data on other devices or accessing the data on other systems. A query was raised regarding the method of authentication of voice recordings to which the speaker replied that voice recordings can be authenticated by the forensic science lab through the voice layering test and the court should only admit voice recording as evidence only when it is authenticated by a certificate from the forensic science lab.

## **Session V: Access to Justice: Court and Case Management**

**Speakers: Justice U.C. Dhyani & Justice Sanjeev Sachdeva**

The speaker dwelt on the usual timelines in which cases progress through the judicial system and emphasised on the need for timely and speedy justice which is the objective of court and case management. The speaker stress on human resource management as part of court management and identified the judge, lawyers, litigants, prosecutors, witness and the staff as the stakeholders as the stakeholders in the judicial system. The human resource issues that affect court management identified in the course of the discussion are – frequent boycotts by lawyers, staff management and failure to facilitate and enable accessibility of the courts to the witnesses who appear before the court as invitees of the court. The speaker emphasised on court processes and terminology as a part of court management and on the need to streamline the court processes with the aid of technology. The levels of management in the judicial system [top level which lays down the policy (Supreme Court and High Court), middle which translates the policy into functional language and systems (District Judge) and the bottom level which implements and assists the court in the implementation of the policy (court staff)] and tiers of management [conceptual (policy formulation), human (implementation) and technical (execution of policy)] were discussed and management was stated to be the skill of effective functioning within prescribed norms. The speaker stressed on people management as the most crucial skill for effective court management. The speaker discussed the tools of mind management, time management and stress management as necessary elements for effective judicial functioning, and emphasised on motivation, communication, knowledge, skills, attitude, leadership and team building as management skills that every judge must develop for effective management of the court. The speaker discussed the challenges in effective justice delivery *viz.* access to justice, backlog and pendency, increasing cost of litigation and delay in disposal of cases. The problems of docket exclusion, docket explosion and budgeting were

discussed in the session and it was emphasised that the judge as the leader of the court must play a proactive role in developing an efficient court system through court management skills.

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