

## **P-1202: Seminar for Principal District and Sessions Judges**

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National Judicial Academy organized a three day National Seminar for Principal District and Sessions Judges on Legal Aid and Access to Justice from 31st January to 1st February 2020.

### **Session 1: Constitutional Vision & Mission of Legal Aid & Access to Justice**

**Speaker: Justice Ravi R Tripathi, Justice R.Y Ganoo & Justice Ved Prakash**

The session initiated by deliberating that Access to Justice is the ability of the people to seek and obtain a remedy through justice delivery system for grievances in compliance with human rights standards. Justice has different connotations to different people. The notion of constitutional Vision encompasses not only Equality, Dignity, and protection of Rights but it lies in the spirit and propagates Justice (Social, Economic and Political). The session discussed 5 components for Access to Justice. Namely:

- Legal Awareness of the Rights
- Capacity (Social & Financial) to move for redress
- Legal aid service support
- Swift and Timely redress
- Effective Enforcement.

The speaker emphasized about the Preamble, Article 38(1) and Article 39 A of the constitution and the right to free legal aid while discussing *Kahtri II vs State of Bihar (1981) 1 SCC 627*. It was submitted that the rule of Law, independence of the judiciary and access to justice are conceptually interwoven. All three bring to bear upon the quality of aspirations that are guaranteed in our constitution as explained in *Imtiyaz Ahmad vs State of U.P & Ors, (2012) 2 SCC 688*.

The speaker opined that legal services are for marginalized people and access to justice is the bare minimum for the preservation of Rule of Law for the vulnerable section of the society. Discussing the statutory framework of The Legal Services Authority Act, 1987 section 4 was focused.

*Kushwaha vs Pushpa Sadan, AIR 2016 SC 3056, Bihar Legal Support Society vs Chief Justice of India, AIR 1987 SC 38 and New India Assurance Co. Ltd vs Gopali, AIR 2012 SC 3381 were discussed.* The speaker concluded by emphasizing that the barriers to access to justice and the Role played by Judiciary to bridge in the gap by strengthening legal aid service and support system also requires a simultaneous pro bono, eliciting support from Law colleges and civil society.

## **Session 2: Legal Aid & public Trust: Enhancing User Friendliness of Trial Courts**

**Speaker: Justice Ravi R Tripathi, Justice R.Y Ganoo & Justice Ved Prakash**

It was emphasized that User-friendliness interface is something that any manufacturer would like to impress upon with Judicial System being no exception. In common parlance quality of goods and services and user-friendliness of systems/establishments normally means quality as perceived by the customer/user, with many factors contributing to it. The rapid changes brought in by ICT has raised the level of awareness of the common man about the performance of various organs of the government including the judiciary as well. The expectations of the stakeholders in the justice system is growing, which means that there is a constant need to improve the functionality of courts. The speaker stressed upon a few questions like whether imparting justice by the courts is a service? Whether courts are service providers with exclusive domain control? Whether courts are obliged to render quality service? What should be the quality parameters regarding the justice system? By referring to this, the speaker mentioned that it is the constitutional responsibility of the state to provide necessary infrastructure and that of the High Courts to monitor the functioning of the subordinate courts, to ensure timely disposal of the cases.

Citing *P. N. Duda v. P. Shiv Shanker & Ors.*, (1988) 3 SCC 167, the speaker explained that Judges are accountable to the society and their accountability must be judged by the conscience and oath to their office i.e. to defend and uphold the Constitution and the laws without fear and favors.

In *Rajendra Sail vs. M.P. High Court Bar Association & Ors* (2010) 8 SCC 281, it was emphasized that the confidence of the people in the judiciary is necessary to be preserved at any cost. That is its main asset. Lack of confidence in institution of the judiciary would mean end of the Rule of law. The speaker opined that there are three quality parameters regarding Justice System i.e., The Process, it should be accessible, affordable and Impartial, The decision, should be legal, clear in

reasoning, well structured, comprehensive and must be responding to the issues raised. The Customer Service, must possess the attitude of serviceability, give advice and guidance. The litigants deserve to be treated consistently with human dignity regardless of their role in the proceeding.

Citing, *Makhan Lal Bangal v. Manas Bhunia and others AIR 2001 SC 490*, the speaker discussed about the Role of a Judge by mentioning that "an alert judge actively participating in the court proceedings with a firm grip on oars enables the trial smoothly negotiating on shorter routes avoiding prolixity and expeditiously attaining the destination of just decision".

To enhance the user-friendliness and trust some evaluation mode was suggested like - conventional mode, evaluation by expert and feedback form. The idea of user-friendliness of courts can be worked out in cooperation with the law enforcement agencies. The speaker deliberated that public trust and legal aid should go hand in hand and suggested ways to attain the same. For instance, the front office should be created to extend help to common man, to make public satisfied with their legal rights, success stories should be discussed, help of paralegal volunteers should be gathered, Toll-free number should be provided etc.

The judicial system is passing through a critical phase. The role of a district judge is very significant as they are at the implementation level. Introspection and a fresh look at the strategy are required because even after implementing ICT the pendency of the case has increased by 15% in the last three years and so the delay in imparting justice.

### **Session 3: Bar & Legal Aid**

#### **Speaker: Justice Ravi R Tripathi, Justice R.Y Ganoo & Justice Ved Prakash**

The speaker initiated the session by quoting Dean Roscoe Pound "*Law is a tool of social engineering*", therefore, lawyers are supposed to play the role of social engineers. Lawyers play a crucial role in providing access to justice because our justice system is designed by and for layers, and those lacking support of lawyers may find it difficult to navigate. Out of the fifty-six men who signed the Declaration of American Independence Twenty-five were layers.

Citing Justice *Krishna Iyer in M.H. Hoskot vs. State Of Maharashtra AIR 1978 SC 1548*, -it was reiterated that "*Judicial justice, with procedural intricacies, legal submissions and critical*

*examination of evidence, leans upon professional expertise; and a failure of equal justice under the law is on the cards where such supportive skill is absent for one side*". Access to justice is the foundation of realising all other constitutional & legal rights. The dream of justice for poor and disadvantage cannot become a reality unless lawyers as a professional community come forward to play a proactive role in helping them to have access to justice. Pro Bono Declaration, 2008 of the International Bar Association proclaims *'that access to justice is essential to liberty, fairness, dignity, progress, development and the Rule of Law'* and *'that access to justice for all individuals is a human right*. The speaker lectured about "Pro bono publico" which is a Latin phrase in the context of the legal profession means "for the good of the people," it refers to legal services rendered free of charge or at reduced fees for the public good.

Alleging about the Role of Bar, the speaker discussed four perspective, Historical, social, Moral and Need Perspective. The speaker quoted Rule 46 of the "Standards of Professional Conduct and Etiquette", Bar Council of India Rules. Article 38(1), Article 39-A of The Constitution of India were discussed in detail followed by the recommendations of the Law Commission of India given in its 131<sup>st</sup> Report in 1988. The session concluded by reviewing *S.C. in B. Sunitha vs. State of Telangana & Anr. (2018) 1 SC 638* and *New India Assurance Co. Ltd vs. Gopali & Ors. (2012) 12 SCC 198*. The participants were suggested to bridge in the gap between theory and practice like fixing schedule as per advocates choice, accommodating them as per their preference, junior lawyers or lawyers with less briefs should be encouraged to extend their help as legal aid etc.

#### **Session 4: Access to Justice & Legal Service Authorities: Role and Responsibilities**

**Speaker: Justice S. Talapatra, Justice N. Kotiswar Singh & Justice D. Sheshadri Naidu**

The speaker commenced the session by stating that Role of Judges is now multifaceted proactive and not isolationist, he focused not only on free legal aid but free and competent legal aid. The speaker deliberated upon the Trinity of the Constitution i.e. Article 14, Article 19 & Article 21. Discussing about the Legal Service Authority Act, 1987, the speaker clarified that the Act talks about a three tier system, National Legal Service Authority where The Chief Justice of India is the Patron in Chief. The senior most Judge of the Supreme Court of India is the Executive Chairman of NALSA, State Legal Service Authority where The Chief Justice and the senior most judge of the High Court are the Patron-in-chief and lastly he discussed about District Legal Service Authority which is headed by the District Judge as the Chairperson. He stressed that the participant

judges should talk to the Bar and convince them to opt for legal service authority not by force but as a matter of choice and with the intention to serve the society. Remind them about the Rules and Regulations framed by the Bar Council of India. Enlighten them about the NALSA Witness Protection Scheme of 2018. The speaker also discussed about the other authorities like Supreme Court Legal Service Committee, High Court Legal Service Committee and Taluk Legal Service Committee where Senior Most Judicial Officer operating within the jurisdiction of the Committee to be the ex-office Chairman.

The speaker opined that there is an attitudinal change among the people and the legal culture has to be inculcated among the society. Talking about the Empowerment of Litigation he mentioned, power corrupts and absolute power corrupts absolutely but now sometimes power saves not absolutely but relatively. The session concluded by considering about the permanent establishment of Lok Adalats, functions of para-legal volunteers in the legal aid clinic, free legal aid clinics in jails and important schemes of NALSA.

#### **Session 5: Strengthening Access to Justice at Grassroots Level: Informal Modes of Access to Justice**

**Speaker: Justice S. Talapatra, Justice N. Kotiswar Singh & Justice D. Sheshadri Naidu**

The speaker commenced the session by casting duty upon the District Judge to sensitize the establishment of legal aid clinics, the working of para legal volunteers should be more professionalized. Unlike formal mode, the informal mode are those which essentially do not follow the typical conventional justice delivery system. It was highlighted that “Informal Mode” do not compete with “Formal Mode” but they rather complement them. To strengthen Access to Justice at a grassroots level it is paramount to establish Lok Adalats, Legal Aid Clinic, Legal literacy Club, Front Office, Para Legal Volunteers’ and Victims Compensation. The speaker recommended that para legal volunteers’ should be selected amongst the Teachers, Retired Government Servants, Doctors, Anganwadi Workers, and Self Help Groups and also from students. The session concluded by underlining the responsibility of District Court to come forward and do the hand holding of the common masses. In the entire session judges were insisted to encourage young, energetic and budding lawyer to get empaneled with Legal Service Authority at various levels to strength its pool.

## **Session 6: Socio-Economic Impediments in Access to Justice**

**Speaker: Justice S. Talapatra, Justice N. Kotiswar Singh & Justice D. Sheshadri Naidu**

The speaker deliberated upon the list of person (trafficked women and children, people from the lower strata of the society, transgender etc.) who generally suffers this socio-economic impediments. It was advised to all the district judges to enable a system where some of the judges should sit together and decide over the matter, unlike in America where all the judges sit together and decide a case. It was emphasized that when a judge retires he takes pride in his judgment just like when a professor retires he takes pride in his students. It was indicated that legal profession resists change, judges are 'xenophobic' (fear of new things.). in the entire session it was pointed out that judges should not be fearful in their decision until they are doing it with the intention of helping the society more particularly to help the suppressed class of the society.

## **Session 7: Legal Aid to Victims: Compensation and Rehabilitation**

**Speaker: Justice Manmohan Sarin, Justice M Seetharama Murthy & Justice Talwant Singh**

Discussing about Criminal Justice System which focuses only on the perpetrator of Crime. The focus is always upon the Rights of Accused, he being the center stage the concern is to let accused be reformed and accepted back in the society. In this complete process, the victim is sidelined, he feels neglected. But now the system speaks about compensating and rehabilitating the victim of crime. With the insertion of the word 'Victim' as defined in Section 2(wa) and Section 357 – A Victim Compensation Scheme in 2009 there seems an attitudinal change in the system.

Citing cases like *Rudul Sah vs State of Bihar, (1983) 4 Supreme Court Cases 141* and *Ankush Singh Gaikwad vs State of Maharashtra (2013) 6 Supreme Court Cases 770*, the speaker highlighted that victims should not be a forgotten party. Major reform came in 2009 following the recommendations of the Malimath Committee. Discussing about the compensation, the speaker mentions Section 357-B which was added by the Criminal Law (Amendment) Act, 2013. The speaker deliberated upon the urgency of the interim compensation. Judges should help the victim by giving them Physiological Support, Medical treatment and Counselling. The DLSA and SLSA should be empowered enough to execute Suo-Moto and grant Compensation to the victim.

The other speaker commenced by quoting section 12 of The Legal Service Authority Act, 1987, as “Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is .....”. He affirmed that legal aid to victim is important but legal aid to accused is also important. It’s even more important to provide speedy and timely justice than compensation and rehabilitation. Citing *K.A.Abbas H.S.A. vs Sabu Joseph & Anr Criminal Appeal No. 1052 of 2010* and *R.Mohan vs A.K Vijay Kumar Special Leave Petition (Crl.) No.2299 of 2012*, the speaker clarified that Compensation is just an addition to regular punishment (Imprisonment & Fine) and it gives an immediate relief to the victim. The participant gave a situation when a victim was not a truthful and he being wrongly compensated. In this case, it was suggested that judge need to pass an order to pay back the accused from the victim compensation fund. Restorative and Reciprocate approach should be followed while awarding victims.

The Indian Constitution, the supreme law of the land, enunciates no specific provision for victims. However, Part IV Directives Principal of State Policy, Article 41 and Part V, Fundamental Duties, Article 51A lays down assistance in case of disablement, compassion of living creatures and develop humanism respectively. The session concluded by analyzing Victim Compensation Model its objective, functions, implementation & monitoring body along with their eligibility criteria for compensation.

### **Session 8: Undertrials & Access to Justice**

**Speaker: Justice Manmohan Sarin, Justice M Seetharama Murthy & Justice Talwant Singh**

Unfortunately justice is not easily available. To become an ideal legal system, a balance between victim and accused should be maintained and this can achieved by following the basic fundamental principle i.e. Audi Alteram Partum and Presumption of Innocence. Though many of the Fundamental Rights gets compromised like liberty once a person is an undertrial prisoner but he still have the right to dignity and right to freedom of expression. Citing *Leelawati Bohra vs State of Orrisa (1993) 2 CC 746*, *Hussainara Khatoon vs State of Bihar 1979 SCR (3) 532* and *A.R Antulay vs R.S. Nayak AIR 1992 SC 1701*, the speaker firmly mentioned that the accused has a right to speedy trial and have certain restrictions like liberty. Furthermore, it was highlighted that Article 21 read with Article 31-A led to the establishment of Legal Service Authority Act. Section 436-A of Criminal Procedure Code, 1973 about the maximum period for which an undertrial prisoner can be detained was discussed. The other speaker addressed the various reasons for which

an undertrial is languishing in jail not because he is guilty or a sentence has been ordered. He mentioned, firstly an undertrial should be given bail, bail is rule and jail is an exception principle - should be followed, some humane conditions should be present in jail. He asserted that committee should be formed and members from the committee should visit the jail, report should be submitted and further directions be issued. The speaker concluded by discussing the delay in trial by mentioning the causes for the delay like, nonappearance of the police, non-production of case property and officers going on leave. He clarified that speedy trial does not mean hastening of things rather it should be fair. Quoting *Anokhi Lal vs State of Madhya Pradesh criminal appeal nos.62-63 of 2014*, in this case the accused was vulnerable to engage a counsel and therefore, Amicus Curiae was appointed and same day he was asked to submit the report, he did not have time even to reflect upon a case. Thus, even before the Amicus Curiae could come to grips of the matter, the charges were framed. The session concluded by emphasizing that Justice should neither be delayed nor hurried rather it should be timely.