National Judicial Academy, Bhopal

PROGRAM REPORT

[P-1233]

National Workshop for High Court Justices

12 & 13 December, 2020

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A two day "National Workshop for High Court Justices" was organised at the Academy on a virtual platform. The online workshop sought to sensitize senior High Court Justices on "Administration & Leadership Skills" including discourse on conferencing and collegiality among judges. Participant justices were provided with a platform to encourage sharing knowledge and experiences on the "Styles of Judicial Reasoning" in the process of decision making. The workshop also aimed to initiate discussions on "Introduction of Artificial Intelligence (AI) in Judicial System" and contemplated the prospective intricacies and nuances of AI in judiciary. A dedicated session on clinical discourse over "Inner Re-engineering for Attitudinal Changes & Bias" formed an integral part of the deliberations in the workshop. Identifying challenges and evolving optimal solutions/strategies to effectuate qualitative justice delivery was the agenda during the workshop. A special session was conducted by the e-Committee of the Supreme Court of India on e-Court services.

Justice Indira Banerjee, Justice Dipankar Datta, Sr. Advocate Mr. Arvind Datar, Prof. Tania Sourdin, Justice A. Muhamed Mustaque, Justice Ram Mohan Reddy and Dr. Harish Shetty guided the sessions.

Session-wise Programme Schedule

Day-1

Special Session - Presentation by e-Committee, Supreme Court of India on e-Court Services

Session 1 - Administration & Leadership Skills: Conferencing & Collegiality among Judges.

Session 2 - Styles of Judicial Reasoning: The Process of Decision Making.

Day-2

Session 3 - Introduction of Artificial Intelligence in Judicial System.

Session 4 - Inner Re-engineering for Attitudinal Changes & Bias.

Session-1

Theme - Administration & Leadership Skills: Conferencing & Collegiality among Judges

Proposed areas for discussion

- ✓ Guardian/Portfolio Judge – A Mentor & Monitor.
- ✓ Evolving operational rigors: Developing "Standard Operating Procedures" (SoPs) for effective administration of District Courts.
- ✓ Relationship Management: Vertical and Horizontal
- ✓ Leveraging & Maximizing e-resource planning & management
- ✓ Developing & nurturing fiscal discipline.

Speaker: Justice Dipankar Datta, *Chair: Justice Indira Banerjee.*

The context for the session was set by the chair. The advantages and limitations of e-workshops was narrated. A hybrid model was considered to be more appropriate to better serve the process. It was unequivocally asserted that accountability can be ascertained only on evaluation and it can be improved by supervision. While evaluation can be used as a milestone tool, supervision is a continuous and systemic procedure to ascertain desirable result(s). The scope of the discourse extends to understand, examine and critically review the supervisory functions of the High Courts in India. It was emphasized that there is dearth and absentia of any standard central legislation, national guidelines or policies applicable as a "standard operating procedure" (SoP) for pan India. The qualitative hiatus, blind spots, difficulties *viz*. *adhocism* and conflicts in law, apparent at the face of supervisory dispensation faced by Indian judicial system in managing the mammoth superstructure of the judiciary was discussed. It was argued that certain standard guidelines (with limited operative flexibilities as safety valves) would enable objective and more qualitative supervisory role of High Courts in India. The scope of a guardian or portfolio or administrative or zonal judge (as they are variously referred by various High Courts) is much wider than mere administrator, pervading into the developmental horizon of being a mentor and coach. *Bishwanath Prasad Singh v. State of Bihar,* (2001)2SCC305 was quoted wherein the apex court held that the High Court has to act and guide the subordinate officers like a guardian or elder in the judicial family. The Supreme Court in *K.P. Tiwari v. State of M.P,* [1993]Supp3SCR497, held that, "It [must] be remembered that the lower judicial officers work

under a charged atmosphere and are constantly under a psychological pressure with all the contestants and lawyers almost breathing down their necks - more correctly up to their nostrils. They do not have the benefit of a detached atmosphere of the higher courts to think coolly and decide patiently, and therefore the role of a guardian judge to act as a mentor and armour was underscored. The merits and disadvantages of "incognito visits" by a guardian judge was discussed. Occasional yet regular physical visits to the districts as an adjuvant to technological leverages to interact with the subordinate judicial officers was insisted as an unequivocal need for a guardian judgeship. However, it was emphatically urged to utilize technological advances to reach-out, sensitize, resolve and communicate to the deepest stationed judicial officer, enabling him/her in his/her endeavours to deliver. The importance of vertical and horizontal management of cordial and administrative responsibilities of a High Court judge was emphasized. With reference to collegiality and to establish and nurture ease of communication, reduce semantic impediments, drive trust and evolve high level of interdependence with functional synergy, continues engagements and discussions with colleagues was suggested. On management of fiscal discipline it was lamented that judges not being domain experts in budgeting and allied financial mainstays, a voluntary effort must be made to engage and mobilize State administration to assign and depute domain experts as resources to coordinate, facilitate and assist in the meticulous fiscal planning and help in its execution mechanisms as may be required by the High Court.

Session-2

Theme - Styles of Judicial Reasoning: The Process of Decision Making

Proposed areas for discussion

- ✓ Judicial Methods and Concept of Judicial Reasoning
- ✓ Judicial Reasoning: A key differentiator where contours of AI fails
- ✓ "Precedential Constraints" in the changing socio-political eco-system

Speaker: Mr. Arvind Datar *Chair: Justice Indira Banerjee.*

The session focused on judicial reasoning, its jurisprudence, categories and classifications into various schools. The application of judicial reasoning by the different schools were discussed. The evolution of decision-making process using a particular type of judicial reasoning was traced from the historic classics of "divine mandate" propounded by Blackstone who maintained that God has already pre-ordained the law which the judges need to apply while deciding a case or settling an issue. Laws are divine creations, perpetual, flawless and eternal and are binding on human who never create them. As opposed to the "Blackstonian Divine School", the "Formalist Theory" argues on a more certain, calculative and predictable approach. According to the "Formalists" every judicial opinion can be based on the formula [R x F = D] wherein, R constitutes the rules of law (including common law and statute law); F denotes the specific facts of the case in hand; which when guides the decision by a judge indicated by D. It was reiterated that R (i.e. rule of law), as established by precedent or statutory authority, is uniform in this equation which guides the judge's decision. Hence, with the change of F in specific cases the D will vary; and for the same case (i.e. F = facts remaining the same), any judge would arrive at a similar conclusion (i.e. D = decision). Thus, providing predictability, stability and reduced arbitrariness. A third school was discussed thereafter who rely on "Legal Realism". Under this school the judicial decision is first reached by the judge, and supporting judicial reasoning to affirm the conclusion and test its veracity to determine whether conclusion is in line with established legal principle follows. Only in unique circumstances where such a premise cannot be found will the judge change his or her

conclusion to one which can be justifiably maintained. It was highlighted that the choice of a style of reasoning depends upon many factors including: different jurisdictions *viz.* criminal, civil, tax, etc.; nature of litigation *viz.* PIL; types of litigation *viz.* Writs - *habeas corpus* etc. Hence, the proposition "one size fits all" does not apply since, one style may not be preferred to another. Every style has its distinct advantages *viz. Realism* promotes the true ends of justice as against *Formalism* which is more suitable to promote systemic predictability and consistency. Judges often tend to prefer a hybrid model to suit as case as well. The permutations of judicial reasoning also depends upon the scope of interpretability of statutory words *viz.* Equality, life, liberty, compensation, property etc. which had acquired myriad meanings in case law jurisprudence. The utility of "Six Thinking Hats" propounded by Edward De Bono to analytically choose an appropriate style of judicial reasoning was underscored.

Regarding implication of a judgment or decision contesting and provoking positions were argued. Whereas on one hand the example of a school of thought of judges was cited which maintains that the duty of a judge is to decide a case/issue before him/her and not to indulge in the implication of his/her judgement. Essentially, the thought of delivering or evaluating justice or whether a decision imparted justice should not be considered by a judge while deciding.

The scope and extent of "judicial creativity" in relation to "judicial reasoning" was delved, touching the contours of "continuous mandamus", "Court monitored investigations", and "Sealed-cover procedures".

An underscored emphasis was laid on the minority judgement of Khanna, J. in the famous *ADM Jabalpur Case*, (1976 SCR 172), wherein multiple theories were applied by the judge including "Historical - Plato, *Magna Carta* to the prospective UNDHR as an exemplification of situational application of styles of judicial reasoning to arrive at a decision.

Session-3

Theme - Introduction of Artificial Intelligence in Judicial System

Proposed areas for discussion

- ✓ Role of AI in Judiciary: A feasibility check
- ✓ AI and judiciary: A SWOT (Strength Weakness Opportunities & Threats) Analysis
- ✓ Identifying the specific areas likely to have a progressive incremental impact with AI in the judicial system
- ✓ The Neural machine translation (NMT) tool called SUVAS (Supreme Court Vidhik Anuvaad Software).

Speakers: Prof.Tania Sourdin *Chair: Justice A. Muhamed Mustaque.*

The session rolled out with a brief overview of Artificial Intelligence (AI) and its extant application especially with reference to Indian judiciary. The functional use of AI by the apex court of India in SUPACE and SUVAS was delineated. SUPACE (*Supreme Court Portal for Assistance in Court Efficiency*), is an AI enabled project of the Supreme Court of India aimed at data mining, tracking progress of cases, legal research and other uses to ensure timely delivery of justice by judges. Similarly, SUVAS (*Supreme Court Vidhik Anuvaad Software*) is an AI supported dedicated open-source judicial domain language translation tool. SUVAS is an initiative to translate judicial documents from English to nine vernacular languages (Marathi, Hindi, Kannada, Tamil, Telugu, Punjabi, Gujarati, Malayalam and Bengali) and *vice versa*. Moreover, the Supreme Court's indigenously developed software SCI-Interact enables all the 17 benches to become paperless, a secured initiative with extremely limited access only to the apex court. The progress towards adopting zero touch claims (particularly in the case of Motor Vehicle related offences) already successfully implemented internationally by a few jurisdictions *viz.* Australia, are prospective developments expected to be adopted by the Indian judiciary (with its mammoth docket explosion) in the *genre* in near future.

The impact of AI on judging and the judicial system was discussed. The propositions and the oppositions contesting the probabilities of AI replacing the adjudicatory role of a judge was explored. It was asserted that although the low-end judicial functions involving routine and mundane functions are likely to be assigned to AI machines and robots, however the adjudicatory role may not witness a "Robot-Judge" immediately. It was underscored that, as

and if the adjudicatory role of the judge is usurped by a "AI-Judge" it would start from lower level of judiciary, which is more proximate to execute and implement established and codified procedural law. Apprehensions were aired on the prospective role of AI as a problem solving court and in the evolution of therapeutic jurisprudence. It was argued that advent of AI in the court system as a phase-I early mode (especially as support systems or enablers) is only a matter of time. These AI enabling tools are likely to have detrimental impact on the employment especially on the unskilled, semi-skilled segments, owing to its dispensable capability on counts *viz.* efficiency, accuracy and speed of delivery of the mundane and automated data oriented access and analytics.

It was discussed that the current state of the AI adoption at the global level in judicial system appears to have pervaded the 1st stage and perhaps entered the 2nd stage of the taxonomy referred above. The discourse was embedded with illustrations of "Adieu Boutique" as an effective AI interphase in the replacement technology which is a comprehensive online dispute resolution application that aims to provide collaborative, positive and legally-sound post-divorce financial settlements and parenting agreements. A Strength, Weakness, Opportunity, and Threat (SWOT) analysis of the disruptive technology was done. The negative aspects of the tech-transition to the final stage or the stage engaging AI as a disruptive technology revealed factors such as job-loss, threats to privacy, loss of social interactions etc.

Session-4

Theme - Inner Re-engineering for Attitudinal Changes & Bias

Proposed areas for discussion

- ✓ Managing Judicial Stress
- ✓ Work-life Balance
- ✓ Re-engineering of thought process

Speakers: Dr. Harish Shetty. *Chair: Justice Ram Mohan Reddy*

The speaker focused on clinical approach to deliberate on the subject matter. Quoting Thomas Hobbs "Ideal Judge is divested of all fear, anger, hatred, love and compassion", it was contested and argued that judges do have emotions, and emotions influence decision making and hence, dispassionate judges appears like "mythical beings". It was underscored that, judges being flesh and blood are subject to the same emotions and human frailties as affect other members of the species. Judges are not robots and do have feelings. It is only that, good judges recognize these feelings and puts them aside.

Three simulated situational problems were placed before the participating justices to brain storm and share opinions and solutions to navigate through the issues involving human emotions while being at the bench deciding a case in hand. Several novel and time-tested approaches were aired by the participating justices which were consumed as best-practices by the guild. It was reiterated that "reputation is fantasy, character is the key". A few intrinsic points were raised in the group in a Socratic discussion relating to the relationships between the quadruple, emotion – motivation – mood – thinking.

The various etiology of "stress" was discussed. The anatomical and physiological response(s) to the "emotional stressors" were discussed. A few related queries *viz.* what are the stressors? What are the commonly identified stress triggers to judges? What is work-life balance? How can it be achieved? etc. were posed. It was explained that stress is a reaction to *stimuli* and not *per se* the issues or problems that triggers them. The 21st century leaking bucket hypothesis on "emotional wealth" and "emotional equity" (being the two vital objectives which needs to be nurtured) to enable better control over ones reactions propelling stress was shared. It was underscored that "peace is difficult to find within, but impossible to find outside". It was shared that whenever one is not happy, and he/she tracks back and analyzes to look out for the reasons,

(s)he must be able to find out one out of the following two bases: a) either (s)he is comparing or b) (s)he is not living in now. While discussing various ways to reduce or control stress, it was suggested that slowing down one's autonomic nervous system is a cardinal way to reduce stress. It was suggested that one needs to consciously adopt practices to reduce stress. A few ways to do the same include, sleeping; meditation; activities elevating mindfulness; spending time with those we love; abdominal breathing; regular exercise; reframing negative experiences into a more positive approach; expressing oneself in a personal journal; laughing; doing activities that we enjoy; and being in the present etc. Explaining emotions, it was deliberated that "anger" is a positive emotion as compared to "aggression" which is negative emotion. It was also emphasized that other daily tools to help negotiate stress included: micro pranayama; micro distractions; black humor; silence & solitude; greeting staff members; self-talk; strolling within the chamber etc. It was prescribed that while indifference leads to dehumanization, awareness magnetizes equanimity.