



# *Judicial Education*

# NJA

Newsletter of The  
National Judicial Academy

Number 1

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# **JUDICIAL EDUCATION**

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**NEWSLETTER OF THE  
NATIONAL JUDICIAL ACADEMY**

Number 1

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**V.N. Khare**  
Chief Justice of India

## **MESSAGE**

*I am happy to learn that the National Judicial Academy is proposing to bring out its first Issue of Newsletter in January 2004 highlighting the need for judicial education and training and the role of the Academy.*

*In order to promote efficiency, glory and quality of judiciary, the training of judicial officers is of utmost significance. The training and orientation courses which will be conducted by the Academy for the newly appointed Judicial Officers as well as in service Judicial Officers will polish their talent and sharpen their adjudicating skills, and will also assist them to discharge their duties efficiently in the administration of justice.*

*I send my best wishes for the successful publication of the Issue.*

*New Delhi,  
December 20, 2003*

**(V.N. Khare)**



## From the Director .....

*With virtual completion of pending civil-electrical works in the campus and the assumption of office by the Director, National Academy is set to take off with a variety of research, training and publication activities in the service of the judiciary. In the history of institution building, one generally finds an apex organization coming up first followed by regional and local units. In judicial education and training, it happened the other way. Since long Judicial Academies have been operating in several states, some with their own building, faculty and training/publication agendas. Judicial education at the federal level was perhaps felt unnecessary in the beginning. With the judgment of the Supreme Court in All India Judges Association case the situation changed. The National Judicial Academy is conceived around that time though it took nearly a decade to build the infra-structure. Meanwhile some activities have been initiated, though in a modest scale and a lot of planning and preparation done to assess the needs and demands for judicial education and training. The Report of the First National Judicial Pay Commission, the training recommendations of which have been accepted by the Supreme Court, gave an impetus to plan activities of the Academy. Elsewhere in this Newsletter some insights into these activities are given.*

*Any training organization is as good as its programmes in support of professional development. Conscious of this fact, the National Judicial Academy is embarking upon an action plan in consultation with State academies and judges of Superior Courts. Through the medium of the Newsletter, NJA is expecting to be in touch with its constituency which is indeed large and dispersed. We hope judges irrespective of their status in the judicial hierarchy will welcome the initiatives of the NJA and support all its endeavours in pursuit of excellence in court administration and dispensation of justice.*

January, 2004

Dr. N.R. Madhava Menon

## First advanced course on criminal justice : a report

What ails criminal justice in India today? Is there no solution to the perennial problem of arrears and delay in the delivery of justice? Are there too much unmerited acquittals and "miscarriage of justice" as is made out to be and what role courts can play in this regard? Given the advances in Forensic Sciences and computer-enabled services, how should the judiciary prepare itself to employ modern technology for better management of available resources to achieve greater productivity in criminal justice administration? Can victims receive a better treatment from the system particularly when women, children, Dalits and disabled persons are involved? These and related issues were the focus of discussion in the fourteen-day advanced course on criminal justice organized by the National Judicial Academy for Senior District and Sessions Judges from all over the country between 27th October and 8th November, 2003.

The course when announced received instant support from every High Court in the country which sponsored five of their Senior District Judges with the result the total number of participants swelled to eighty eight (88). Perhaps there was never a training course held in the country with such large number of heads of district judiciary and

that too for a period of fourteen days. It is indeed a landmark for the fledgling National Judicial Academy seeking to establish its credentials in the service of the Indian judiciary. Over thirty two (32) distinguished experts from all over India drawn from among experienced judges, Senior Advocates, forensic scientists, IT and computer professionals, management experts and legal academics constituted the Faculty for various sessions of the course. A well-conceived agenda spread over the entire spectrum of criminal justice balancing theory with practice kept the participants busy between 9.30 AM and 5.30 PM on all days including Sundays and other holidays. The methodology employed was participatory and interactive. Every session had a panel of experts who presented varied dimensions of the subject under discussion presenting alternative perceptions, interpretations and experiences providing thereby ideas and tools for critical appraisal of the positions held by individual participant judges. It was a process of learning and unlearning from each other's knowledge and experience which invariably continued even outside the sessions. Multi-media presentations made the sessions lively and instructive. Three volumes of selectively assembled study materials containing

significant Supreme Court pronouncements and Law Commission/Expert Committee recommendations circulated in advance enabled the participants to clarify the issues and formulate their interventions in the discussions. A detailed Questionnaire to evaluate the impact of the whole exercise was filled in by each one of the 88 judges whose individual performance in the course was also assessed by the Academy through a different Questionnaire.

An interesting activity associated with the course was the syndicate studies prepared by groups of judges from different States on common problems in administration of justice. Early at the commencement of the course nine groups of ten judges each were formed who were assigned a topic to research and write a project report for submission at the end of the course.

Yet another highlight of this course has been the attempt possibly for the first time in a training programme to critically appraise judgments written by District & Sessions Judges by their own brethren from other States. The Academy asked each participant to send copies of two of their recent judgments which were circulated partly among the faculty members and partly among participant judges from other States. The idea was to understand the strengths and



weaknesses of judgment writing at the trial court level and to learn from one another in the matter of marshalling facts, appreciating evidence, formulating issues for determination, articulating reasoning for decision and deciding appropriate sentence in the facts and circumstances of the case.

Another distinctive feature greatly appreciated in this course has been the session on "Yoga and justice delivery" followed by regular yoga exercises customised to the needs of individual judges under the expert supervision of a reputed yoga teacher. Chief Justice G.C. Sohani (Retd.) took personal interest to enthuse and initiate the judges on yoga practice clarifying their doubts and counselling them on its uses in better performance of the demanding tasks of justicing and court administration. The recommendation seems to be unanimous that yoga should be an integral part of judicial training at the NJA. The Academy is advised to have a yoga expert in its staff to begin with as an adjunct faculty who can study the stresses and strains judicial officers are exposed to at different levels and evolve a system of exercises appropriate to the situation.

The sessions on advances in Forensic Science including DNA fingerprinting and Cyber Forensics created lot of interest

among the judges who wanted to learn more of its evidentiary value and dependability in judicial decision making. The need for a scientific lab attached to the Academy for demonstration purposes and to help standardize norms and procedures in the use of technical data in investigation and trial was keenly felt by the participants. The Academy has to have a cyber law unit which would not only train judicial officers but also give research and consultancy services to courts everywhere when problems arise.

The subject of e-governance in the judiciary in the perspective of the success story in Karnataka courts generated lively discussion on the prospects of computerisation and networking of all court transactions. The initial apprehensions which prevailed among judges in this regard are no more there and there is an increasing demand to have the system mounted while preparing the staff and judges to upgrade their skills for the tasks involved.

Another interesting session conducted by a behavioural scientist and a management expert which enthused the judges was on the subject of enhancing inter-personal skills and promoting efficiency of an organization. The participants felt that there is immense scope for developing the management module in judicial training. The

National Judicial Academy should launch a management training unit for research and education in management principles as applicable to judges and court administrators. This will not only enhance efficiency in respect of judicial planning and judicial behaviour development but also make the courts a more attractive public service institution.

Finally, a theme pervasive throughout the two-week course has been the Malimath Report and the Criminal Procedure Code Amendment Bill based on it. By and large the judges agreed that criminal justice system required some drastic changes in law, procedure and its administration. The emphasis on search for truth as the primary goal of judicial proceedings is welcome though in its application opinions can differ on strategies and procedures. Victim's rights being given statutory recognition is a desirable reform. So also the recommendation for protection of witnesses and punishment for perjury. There is need for settlement of cases through plea bargaining. However, there are reservations on recommendations regarding investigative powers of the police and modification of the standard of proof in criminal cases. There were mixed reactions on the proposal for assigning a more active role being assigned to trial judges.



## Consultative meeting of judicial academies

One of the first steps NJA has undertaken in designing its activities is the holding of a Consultative meeting with those in charge of judicial education and training in different High Courts and Academies around the country. This five-day meeting scheduled for 27 February to 4 March 2004 is aimed to prepare a joint plan of action on the following:

Standardizing curriculum, teaching methods, and study materials for training of newly recruited judicial officers. Designing refresher courses for continuing education.

Standardizing curriculum and methodology for gender sensitization courses for delivery of equal justice to women.

Deciding patterns of

collaboration between State and National Academies for capacity building and resource mobilization. The meeting expected to be attended by the Directors/Dy. Directors of the State Judicial Academies and the Judges in charge of Training in different High Courts will be addressed by Senior Judges of the Supreme Court and experts in professional training.

## NJA Journal to be published in the summer of 2004

Every Academy intending to promote professional development has to not only disseminate existing knowledge but should address practical problems facing the judicial system and generate new knowledge to resolve them. National Judicial Academy is therefore launching a number of research projects and is seeking to publish the results along with comparative experiences of other jurisdictions in an annual research publication. The name of the

journal is being finalized. Meanwhile original articles, research notes, comments on cases as well as on new legislations and summary of important events relevant to the judiciary are being organized for publication in the very first issue of the journal due in August, 2004. Contributors desirous of sending their articles for consideration of the Editorial Board may send them to the Director of the Academy.

To enable every judicial

officer in the country to have a personal copy of the NJA journal for himself, the annual subscription is kept at a nominal sum of Rs. 100/- only and if desired to be sent by Registered Post - Rs. 150/- only. Every subscriber of the Journal would receive the Academy's Newsletter free of cost. Furthermore, monographs published under NJA's Occasional Paper series will be available to Journal subscribers at subsidized prices.

"We become just by performing just actions, temperate by performing temperate actions, brave by performing brave actions".

ARISTOTLE

## What district judges say on.....

### Code of ethics, all india judicial service, corruption in Subordinate courts, arrears-reduction, court management and recruitment system

*Note: Between 26th October and 8th November, 2003 over 88 Senior District and Sessions Judges from twenty High Courts/ States were in residence at the National Judicial Academy attending the First Advanced Course on Criminal Justice Administration. As part of the course they divided themselves into groups of ten each and worked on preparing a project report/ syndicate study on an assortment of topics relevant to administration of justice at the trial level. The reports were presented and discussed in plenary meetings and revised in the light of comments received.*

Excerpts from the reports are being published with permission of authors. (Ed.)

#### 1. On code of ethics

"A great deal is expected from a Judge by the Society. People desire persons of '24 carat' in character to adorn the judiciary! There was a time when nobody had dared to question the integrity and nobility of the learned members of the judicial fraternity; but slowly we find that there is a downfall in the standards. It is high time that the permitted and prohibited areas for Judges are defined so that some sort of culpability could be fastened for the violations; Norms for District Judges, prepared by the Group includes the following:

Judges to maintain social aloofness; not to attend any

functions of any litigant or witnesses.

Judge not to deal with any case of a person related to him or with whom he has close contacts.

Judge not to disclose identity unless the situation so warrants.

Judge not to meet or visit any person who is litigant or witness before him.

Judge not to use vehicle of litigant or witness

Judge not to associate with or appear in places serving liquor or places of disrepute.

Judge not to accept gifts from any person, except close relative;

Judge not to give interview to media except with prior permission of High Court.

Judge not to use intemperate or unparliamentary language against litigant, witness, staff or members of public.

Judge not to lose temper in court

Judge not to permit lawyers to frequent his chamber or residence.

Judge not to maintain personal relationship with any lawyer, nor to receive favours from him nor extend favours to him. If he has so received, matter to be reported to High Court.

Judge shall not indulge in sycophancy of superiors expecting to receiving favours in service nor allow subordinate

judicial officers to do the same towards him.

Judge has to be decently dressed. A dress code is to be prescribed for judges in court, in meetings and in judicial academies.

Judge shall treat women & children with utmost decency and dignity

Directives in Visakha case to apply mutatis mutandis to every court.

#### 2. All India Judicial Service:

Creation of AIJS would bring the judiciary, an important limb of the State into parity alongwith other All India Services and would do away the discrimination with which this limb of the State has been treated till now.

The hurdles in the implementation of AIJS are :

Apprehension that it would adversely affect scheme of control by High courts over subordinate judiciary and erode its powers under Art 235 of the Constitution. This is unfounded. Power to suspend or remove a judge, power to evaluate performance etc. will continue to be performed by High Courts.

Reluctance on the part of the State Government - Parliament should take steps to mobilize support. Uniformity in matters of designations and pay structure of subordinate judiciary in almost all States have already been brought about. The next natural step is the AIJS.



AIJS is to be established as follows :-

(a) Present occupants of Higher Judicial Service to be members of AIJS. Their inter-seniority on All India level shall be determined on the basis of rules to be made in this regard.

(b) For future appointments - 50% shall be filled up on recommendation by the concerned High Court by promotion from members of State Judicial Service and remaining 50% to be filled by competitive examination by the Judicial Service Commission. The seniority of these candidates at the national level shall be fixed on the basis of their ranking in the merit list. Seniority vis-a-vis promotees to be reckoned by a formula of "Promotee-direct-promotee-direct and so on".

(c) The minimum qualification for appearing in the AIJS examination to be law degree with 7 years practice as an advocate. The age limit shall be 45 years maximum and 35 years minimum. The members of the State Judicial Service who have completed 7 years of service or those who prior to joining judicial service had practiced as advocate and with service period completed 7 years should be eligible to take the examination irrespective of minimum age restriction.

(d) All officers to be on probation for a period of two years

during which period they shall undergo training at the National Judicial Academy.

(e) 75% of vacancies in High Courts should be filled by way of elevation of the officers of AIJS and 25% by direct recruitment from the bar.

(f) To remove stagnancy and frustration and to increase efficiency, District Judges who have put in more than 12 years of service and not elevated to High Court because of non-availability of vacancies, shall be entitled to draw salary equal to a judge of a High Court and similar pensionary benefits.

### **3. Corruption in Subordinate Courts**

Computerization of Courts and e-governance of judiciary would help reduce corruption at the level of court staff.

All judicial officers and staff shall declare assets and liabilities of himself and close family members every year. Purchase of moveable property worth Rs. 10,000 and above as well as immovable property above the value of Rs. 50,000 should be under intimation to the High Court. Every staff member should inform the presiding officer if he has brought to office on any working day amount in excess of Rs. 100. If on surprise inspection on any given day excess amount is found, it may be presumed to have been received as bribe.

Whenever a judicial officer

is reported to be corrupt, Departmental enquiry should be completed expeditiously and in any case within one year.

Every High Court to have Registrar Vigilance with two other Judicial Officers and police to assist him. He is to admit only written complaints supported by affidavit and supporting documents with name and address of the complainant. Registrar Vigilance will seek a preliminary report from the District Judge having jurisdiction over the judicial officer or staff as the case may be. If the complaint is against the District Judge himself, he with the approval of the Chief Justice, shall make direct enquiry and submit his report to the Chief Justice. In all cases, the report of Registrar Vigilance shall be submitted to the Chief Justice and the Administrative Judge in charge of the District concerned.

### **4. Arrears Reduction in Criminal Courts.**

There is need to have the will to solve the problem at the District Court level. It should be followed by mobilization of lower courts through personal rapport and friendly persuasion.

Compounding of offences under Section 320 should be employed liberally and quickly to settle petty offences clogging dockets of different courts.

Similarly in cases registered against agitationists or others on



political grounds, the Court with some activism should explore prospects of withdrawal by the prosecution under Section 321 Cr.P.C.

By improving management Strategies, docket explosion can be avoided to a large extent. For this, criminal cases pending over 6 months should be classified as "long pending cases" and special efforts taken to streamline proceedings of such cases, including refusal of adjournments for them.

By equal distribution of cases among all the available Criminal Courts exercising the powers under section 408, 409 and 410 Cr.P.C. - the District Court can help overcome the "Systems delay" factors to a considerable extent.

District Courts should take the initiative at statutory meetings or otherwise through appropriate rapport with police to ensure that summons, notices, warrants are expeditiously executed.

Trial judge should exercise his powers to control unnecessary questions from prosecution or defense to witnesses. Judge should learn to manage the time for which the District Judge should give tips to his subordinate officers.

Recording of evidence in instalments to be strictly avoided as it causes hardship to witnesses and counsel. District Judge through his powers should

stop such practice.

At the cost of the time of court, witnesses and prosecutors, many judges give too many adjournments to accommodate Advocates. It invariably works to the advantage of the accused. District Courts should prevent it happening in their subordinate courts by insisting on day to day trial promised under Section 309 Cr. P.C.

Absence of one or more accused in some cases lead to adjournment of such cases causing delay. A tough attitude to be taken by creating a fear that such persons will be kept in judicial custody till disposal of the case. In case of absconding accused, the case can be split up against such accused and trial proceeded against others; and if the main case ends in acquittal, then the separated case has to be withdrawn under Sec. 321 Cr. P.C.

With Judges having full control of facts of a case, advocates cannot take the liberty of prolonged arguments.

Instead of mechanically framing the charges, if judge hears both sides on charges, he may sometimes discharge the accused as per procedure.

Magistrate has to take special care to know whether cases of civil nature are given a mischievous twist for making a criminal case. Powers under Section 258 Cr. P.C. (or Section

232) should be exercised in such cases saving considerable time of Court.

Again at the time of framing charges, particularly under Special Acts, judge should ensure that permission/sanction is obtained whenever necessary so that proceedings may not be stopped in the middle for fulfilling sanction requirement.

Judges who do not promptly deliver judgment after arguments, will ordinarily seek fresh hearing for refreshing memory causing avoidable delay. Hence judgment should promptly follow after arguments are completed.

##### **5. Recruitment of Judges**

Art 233 provides for two ways of appointment to the post of District Judge-from judicial services and from advocates with seven years practice in the High Court. Art 234 prescribes the procedure for other appointments. All India Judicial Service can be created by Parliament through a law passed for that purpose under Art 312.

Given the nature of job of a District Judge, he should be an ascetic, a man who understand inner values of life and has strong commitment to the cause of justice.

Selection of judges through State Public Service Commission is not desirable. For All India Judicial Service, the recruitment can be done by the National Judicial Service Commission

selecting through a competitive written examination and interview.

To prepare the judges for the job there should be intensive training for atleast 15 months of which 3 months to be with National Judicial Academy, 3 months with State Judicial Academy, 3 months as understudy in District Courts, 3

months in Sub-ordinate Courts and 3 months with High Court.

In service there should be quarterly appraisal of work of the judicial officers by the District Judge on objective criteria. 3 to 5 bad appraisals might lead to termination without any further enquiry. This must be part of service condition. All complaints of dishonesty to be considered

seriously and acted expeditiously.

Every promotion to higher cadre to be only after written qualifying test and examination of service records. 3 to 4 bad entries should be enough to debar promotions.

The training aspects of judicial officers are to be reviewed from time to time by the National Judicial Service Commission.

(N.R.M.)

"We should not let our fears hold us back from pursuing our hopes"

**JOHN F. KENNEDY**

"Grief can take care of itself, but to get the full value of joy you must have somebody to divide it with".

**MARK TWAIN**

"As we acquire more knowledge, things do not become more comprehensible, but more mysterious".

**ALBERT SCHWEITZER**



## NJA endowment chairs in judicial education

As a national institution dedicated to the improvement of administration of justice through research, training and continuing education, NJA has to have an expert faculty from different disciplines related to Law & Court Management. NJA Governing Council welcomes the participation of professional bodies and public-spirited

individuals in developing the faculty by creating endowments from which the salaries and cost of supportive services will be met to maintain a Chair in any branch of law. The Chair can be named according to the choice of the donor with the approval of the Council. The endowment will be held in perpetuity and the interest alone will be utilized for services

under it.

Lawyers, Judges and others who are interested to institute Professional Chairs in the Academy may write to the Director for details. Every Donor will enter into a Memorandum of Understanding with the NJA stipulating the terms and conditions for operating the Endowment Fund.

## Judicial colloquium on adjudication of IPR disputes

In association with the Ministry of Human Resources Development of the Government of India and the National Alliance Against Piracy of FICCI, the National Judicial Academy is organizing a three-day colloquium on Adjudication of IPR disputes.

About sixty judges from superior courts are expected to participate in the meeting in which several judges from Asia-Pacific region will present case studies on enforcement of intellectual property rights in their respective jurisdictions.

A standard curriculum and study materials for training of judges on IPR implementation are expected to be evolved during the deliberations of the Colloquium.

The colloquium is scheduled for the Summer of 2004.

"The greatest mistake you can make in life is to be continually fearing you will make one".

ELBERT HUBBARD



## Independent Judiciary : the nation's asset\*

Hon'ble Shri V.N. Khare chief justice of India

This day of the 26th November, which is celebrated every year as "Law Day" is a momentous day for the legal fraternity and is also a red letter day in the history of Indian Judiciary. It is on this day, we adopted a sacred document, Constitution of India, under which our founding fathers had pledged to secure to all its citizens' justice-social, economic, political'; and liberty of thought, expression, belief, faith, worship and assuring the dignity of the individual and also the unity and integrity of the Nation.

This is an occasion to thank the founding fathers who had spent a good deal of their time and energy in giving shape to this Constitution of India, which is a well thought-out, well designed and a well drafted document. The responsibility lies upon the judiciary, to a great extent, to enforce its mandates and to make it a vehicle of nation's progress, prosperity and peace. The main theme of our Constitution is to secure justice for all.

### **Independent Judiciary : Nation's Asset**

Our Justice delivery institutions still command high esteem in spite of its drawbacks and failings. The citizens of our country have placed confidence in the judiciary. We have to maintain their confidence in the justice delivery system by bringing about transparency in the

system.

The Judiciary, in the first place, has the biggest role to safeguard the statutory and constitutional rights of citizens and to protect and preserve their human rights and secondly, it has an obligation to achieve the cherished socio-economic and political objectives which is enshrined in the Constitution.

In order to maintain and enforce 'Rule of Law', Judicial independence is absolutely necessary. Every civilized society emphasizes the need for an impartial and independent judiciary. This judicial independence which is so sacred in our constitutional scheme, has not been eroded. The citizens of this country have reposed utmost faith and confidence on the judicial wing. It is, therefore, absolutely essential for those concerned with the judicial wing to rise to the occasion and to do justice.

The responsibility which fall on the higher judiciary as the watchdog of people's fundamental rights has to be fulfilled with circumspection and a high sense of responsibility.

A respected and independent judiciary and a respected and strong bar are indispensable if we want to maintain our system of freedom under law. An independent judiciary is Nation's asset.

There is need for a strong independent judiciary and a strong

Bar, as both are the two main organs of the administration of justice. The litigant, who, with great difficulties, knocks the door of the Courts just to get justice for redressal of his grievances within a reasonable time-frame, must feel that he will get a fair trial, that the disputes will be resolved by an independent and trustworthy court, which will be assisted by the competent trustworthy lawyers.

This court is a firm supporter of the independence of the Bar and that is why it treats an Advocate as an officer of the Court. It is a relationship of friendship in the administration of justice. Responsibility for proper administration of justice is to be shared by the Bench and the Bar. It is, therefore, imperative to retain public confidence, which is the real source of strength of the Judiciary.

The Bar has always remained helpful in rendering their assistance to the Courts in the expeditious disposal of cases and to mitigate the burden of the Courts.

### **Judicial Integrity and Bar-Bench Relations :**

Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a judge must be a man of high integrity, honesty and required to have more vigour, ethical firmness and impervious to corrupt or venial influences. Any conduct, which tends to

\* Excerpts from Law Day address delivered on 26 November, 2003



undermine public confidence in the integrity and impartiality of the judge, would be deleterious to the efficacy of judicial process. There cannot be any compromise on these fundamentals.

The courts have, therefore, to protect the integrity of the judicial process, which requires that stringent standards be imposed upon the administration of justice. In the words of Justice Black, "Courts stand, against any winds that blow, as havens of refuge for those who might otherwise suffer".

A Judge is always a Judge and he cannot have a split personality with different traits at different times. All actions of a Judge must be judicious in character.

The Bar comprises of not only the seniors, but it also comprises of juniors. We must not forget the significant role which is played by the junior members of the Bar in the administration of justice. The juniors contribute significantly and assist the Court in adjudication of the matter.

The knowledge and ability of the junior Bar can be utilized effectively by giving them an opportunity in rendering their valuable assistance to their seniors as also to the court in the administration of justice. The juniors' Bar should take initiative like holding discussions on the latest and landmark judgements and give their valuable opinions. They should also keep themselves update on the latest laws and various amendments

being made. They have to concentrate and develop the new laws. Juniors should be familiar with the technology and should use those methods in their research for making it impressive and efficient.

The senior lawyers should train the junior lawyers and should give them opportunity by way of giving them briefs to argue cases under their able guidance. Junior lawyers, whenever get an opportunity to argue cases, must put their hard work. I advise junior lawyers to maintain the highest degree of integrity.

It is indeed encouraging to notice vast improvement in their performance in handling court cases. It shall be my endeavour to recognize their merit and give them their due at different levels of the judiciary.

For efficient discharge of the responsibilities of the courts, it is essential that the broad confidence, which people have in them, the high prestige and the great respect that they have enjoyed should be maintained and be not allowed to be eroded in any way. I am pleased to inform you that the present circumstances of the Court are far better and we have reason to be optimistic about the future. The pendency of the present cases is within manageable limits and this has allowed the Court to turn its attention to matters awaiting adjudication. The Courts in the Supreme Court are being computerized and the work is in progress with the introduction of

the latest technology. The pendency of this Court as on today has gone down to 25,206 while the filing of fresh matters have increased.

The National Judicial Academy has begun to undertake programmes towards attaining its objectives. The training of the judicial officers has been started at the Academy which is in good progress.

In the area of legal aid, the National Legal Services Authority has been striving hard with coordinated efforts of various State Legal Aid Authority and Advice Boards in holding Lok-Adalats across the nation and has remarkably achieved the target in bringing down the back-log of arrears of cases in the High Courts and subordinate courts and is on the progress march.

In conclusion, I wish to say with all emphasis at my command that relationship of the Bar and the Bench based on principle of mutual respect has been very healthy and it is essential to maintain such healthy relationship. Problems do arise but they need to be sorted out. They cannot be wished away. Those of us who are concerned about the institution have to remain very vigilant that the healthy atmosphere is not allowed to be vitiated.

Let us on this day re-dedicate ourselves to serve the poor and disadvantaged section of the society to ensure equal justice to all and mitigate the grievances of the weaker sections of the society.



## What district judges expect from NJA.....

*Note : National Judicial Academy had recently concluded a major training programme extending for two weeks to eighty eight (88) Senior District and Sessions Judges from all over the country which represented nearly one-sixth of the entire District Judiciary. About thirty (30) faculty members drawn from the Supreme Court, High Courts, Science and Technology institutions and law academies constituted the panel of experts for presentation on different topics in various sessions. The focus was on case and court management, personality development, induction of technology and management in court work and criminal justice reforms for quicker and better delivery of justice. Professor N.R. Madhava Menon, Director of NJA acted as the Course co-ordinator.*

With such a wealth of experience from the whole country in residence at NJA, the judges were asked to identify training needs at different levels of subordinate judiciary and recommend specific tasks for NJA to perform in the service of the judiciary in the immediate future. One full session was devoted to the subject, besides collecting opinions through a written proforma. On analysis of the suggestions and recommendations at the end of the course, a list of things emerged which District Judges in

the country expect the National Judicial Academy to do by way of training and research to improve the quality and efficiency of subordinate judiciary. The recommendations are published here for information of the entire judicial fraternity.

- Computer training to be compulsory part of all courses at the Academy.
- Training for mediators to effectively conduct Lok Adalats - Study and evaluation of Lok Adalats.
- Training for Family Court judges - on effective counseling and child psychology - Counsellors from NGOs are found incompetent for the job.
- Spouses of trainee judges also be allowed to accompany and stay in the Academy during courses of duration above 3 days.
- Prosecutors functioning in Sessions Courts and Magistrates' Courts be also trained in the Academy.
- Study materials to be supplied to judges through Internet.
- To know the impact of Court judgments on society, there should be periodical social audit done by the Academy. If the impact is negative, NJA should propose law reform.
- NJA to have a Forensic Laboratory for giving hands on experience to judges during training.
- CD roms and video cassettes should be prepared and distributed by NJA on issues like sentencing, plea bargaining etc.
- NJA should attempt Restatement of the Law in selected areas in which too many changes occurred due to amendments or interpretations.
- Registrars and senior ministerial staff to be imparted training in internal administration of courts.
- Regular programmes for training of advocates to be undertaken by the Academy.
- NJA should establish at least four Regional Training Centres.
- Moot courts and practical exercises to form part of the training methodology.
- Courses to be announced for the whole year in advance and circulated through Newsletter.
- NJA should identify appropriate Faculty for different courses in each State and empanel them for the benefit of State Academies.
- Question papers for recruitment of judicial officers should be prepared by NJA and kept in a



Question Bank in order to enable States to avail of standard questions.

- Value education (spiritual education including yoga & meditation) to be part of the course curriculum.
- Selection Examination to All India Judicial Service to be done by NJA.
- Distance education techniques should be developed by NJA to enable it to reach out to all judicial officers throughout the country.
- Research on a continuing basis on judicial problems and new areas of law impacting on society/economy should form a major activity of the Academy.
- NJA to have a Health Clinic and dispensary.
- Personality development should receive the pride of place in judicial training.
- NJA should study the grievance redressal mechanisms available to subordinate judges and recommend a more speedy and fair system for adoption.
- There is need for a judicial policy statement on major issues concerning administration of justice and NJA should help evolve it. To ensure judicial independence, there is need for developing a judicial

fiscal policy as well.

- A standard course on legislative drafting and statutory interpretation should be introduced in the Academy.
- NJA should provide consultancy to courts in the development of their libraries.
- There must be a Yoga Centre in the Academy with a qualified yoga teacher.
- Constitutional law and international law should form a part of training of Senior Judges of the Districts.
- At least one months' notice to be provided for participation for which information should go from NJA at least three months in advance.
- The idea of introducing Discussants and Moderators from among participant judges in every session is useful and they should be continued as a training methodology.
- The idea of critically appraising judgements written by participant judges is also good provided it is done on an agreed format and procedure.
- There must be a system of senior judges trained in NJA sharing the substance of their training with subordinate judges of their

respective Districts immediately after returning to their headquarters. If necessary, High Courts should be approached to direct them to do so.

- NJA should convene conference of High Court judges on the same pattern of Chief Justices' Conference to discuss issues of common interest. Possibly they might utilize one of their LTC concession to visit NJA if hospitality is extended.
- Training is important for superior court judges as well. Even if such training does not generate new ideas in judicial work, it would at least help "bury old ideas" which is equally important in learning and influencing mind-sets.
- There is need for judges from different regions to meet often for evolving standards of judicial conduct and fraternity.
- Academy should soon have a multi-disciplinary Faculty from different regions of the country as part of its regular staff without which neither research nor training is possible.
- The primary object of the academy should be "REFORM - reform ourselves, reform institutions, reform the tools

we work with" in order to serve the cause of justice better and better. In this perspective the agenda of work should be developed.

- To avoid duplication of work and to achieve optimum use of resources, NJA should try to co-ordinate with State Judicial Academies. Besides NJA should help standardization and quality improvement of the programmes of State academies.
- Judicial Academies should avoid transforming themselves as "Super Law Colleges teaching the same subjects in the same way". Programmes of the Academy have to address the needs of judges which should be assessed first by consultation, questionnaire and meetings.
- In the curriculum, judges should be taught "how to say 'No' to advocates" or "how not to lose temper even when provoked". The art of listening and the capacity to manage bullying tactics are necessary to be cultivated in the course of training.
- A search should be conducted to identify national level Resource Persons for deployment in judicial training. It should be continuously updated with biographical notes and

special expertise.

- There is need for NJA to study judicial education schemes elsewhere and adapt appropriately the techniques for enhancing skills and influencing attitudes.
- NJA should research and prepare manuals and handbooks containing Guidelines on important aspects of judicial functioning such as Sentencing, Appreciation of Evidence, Issue Determination etc. An Advisory Committee constituted for the purpose can get it revised and finalized which may be made available to all judges.
- NJA should have a broad-based Academic Advisory Committee which can give inputs to develop programmes and activities appropriate to training needs and justice demands.
- NJA should try to respond to the needs of judiciary in SAARC countries. There is already a request for a programme for SAARC judges on two subjects, namely Public Interest Litigation and Intellectual Property Rights under WTO.
- While imparting training in the new economic laws, NJA should take care to explain the basic economic

concepts underlying them. This would require multi-disciplinary learning and the policy choices underlying the legislation.

- NJA should impress on the trainees that judiciary is on trial now and judicial accountability should be the abiding concern of every member of the judicial family. To maintain independence, impartiality and public confidence, judges individually and collectively should re-examine their role and functioning.
- Training should inspire people to get rid of negative thinking and approaches. One can do better whatever one is doing, only if one enjoys that work. This is equally applicable to judges as well. A poor self-image and a complaining attitude to situational problems contribute to judicial delay.
- Annual calendar of training programmes should be prepared well in advance and circulated to all High Courts and nominations sought for all courses in the beginning of the year itself. This will help High Courts to identify the right persons for different types of training. The Academy should also directly accept individual applications from eligible



applicants. To be able to keep the training group small, the Academy should either repeat the courses if required to accommodate all applicants or make a selection on agreed criteria.

- Academy should write to the High Courts to ensure that the right persons are nominated. Further after training, High Courts may be requested to let the trained person continue doing the job for which she is trained. This is easily done while sponsoring candidates for particular type of training course in the Academy.
- There must be a system of rewards and disincentives built into the service conditions of judges to motivate them to taking training seriously and change attitudes and performance accordingly.
- NJA has to have an independent website costantly updated with useful information for judges. The syllabus of every course should be given in the website along with list of study materials.
- Initial training being the foundation of judge-making, it is important that NJA make every effort to strengthen its structure, content and methodology. This cannot be left to the

State academies alone as many of them do not command the resources required. NJA should take the lead in standardizing courses, materials and methodologies.

- Duration of training ought to be for six months for new Munsiffs/Magistrates, two weeks for civil judges and one week for District Judges. In the next five years all judicial officers should be covered in such an exercise by NJA.
- It is important that the Hon'ble High Court judges should also be called for training at the Academy in the first year of their career.
- Computerisation and e-governance is essential for judiciary if the problem of delay and arrears is to be tackled. NJA should take a lead role in preparing the judges and court staff for this change over in reasonable time. Towards this end the documentation on how it was accomplished in Karnataka should be collected and circulated to all High Courts and District Courts immediately.
- NJA should develop a core group of trainers from all over India, classify on basis of experience and publish a Directory of Trainers based on expertise.

- NJA should create an "Experience Bank" which will have deposits of worthwhile experiences narrated in stories, reports, anecdotes or statements from senior judicial officers irrespective of their status and rank. This must be compiled and circulated through web-site, circular or otherwise.
- Training in each State under direct supervision of NJA is needed at least initially to convey the benefits of training and prepare a climate to take training seriously.
- The project study method (Syndicate/Group study) employed by NJA is indeed very useful and should be employed selecting the topics carefully keeping in mind the needs of training of the group concerned.
- NJA should initiate steps with High Courts to protect the interest of honest and hardworking judicial officers who are now at the receiving end of a "patronage-sychophancy" system.
- To promote reading habits of judges, NJA should prepare a selective list of books which are recommended reading for judges.
- Training for personality development of judges must be emphasized. Draw up a



## National seminar on judicial reforms

profile of judges in each cadre, project the ideal type and make an inventory of things to be attempted in training for balanced development of the judge's all round personality.

- A self-assessment proforma should be developed for judges to evaluate themselves and be circulated.
- Thorough research to be organized on court forms and procedures with a view to modernize the system and to eliminate dead wood.
- NJA should collect data periodically from High Courts for comparative analysis and performance appraisal. Only from such empirical data can one project the needs and demands for judicial reform and judicial training.
- Hon'ble judges of Supreme

Court and High Courts should also have meetings at the Academy to evolve common judicial policies vis-a-vis the subordinate judiciary.

- Judicial discipline should be given first priority in all training programmes.
- After each training course, a summarized evaluation report should be sent to High Courts and Supreme Court in the form of recommendations.
- Newly recruited/promoted DJs and ADJs require substantial training in court/case management and judicial administration.
- Training should first be organized to those State level officers who are in charge of judicial academies.
- Appreciation of evidence and writing judgements are

two important functions of every trial judge. Innovative and participatory methods in respect of both should be evolved by NJA. Giving facts of hypothetical case and asking participants to write judgement is one such method.

- Tackling difficult lawyers and managing court effectively are two other set of skills which ought to be given attention in training.
- It is worthwhile to have some joint training courses with officers from the Executive, particularly of the Law Department, Police and Social Welfare.
- What is more important in training is skills and attitude development rather than knowledge development. The methodology of the course should reflect this objective.

"A man's real possession is his memory. In nothing else is he rich, in nothing else is he poor".

ALEXANDER SMITH

## National seminar on judicial reforms

Judicial reform is part of the priority agenda in the new millennium. The object is to enlarge access to justice by reducing the time taken for adjudication through courts. Parliament has made several changes in legal procedures to expedite trial and to settle disputes without trial whenever possible. The seminar would examine inter alia, ways and means to implement the legislative changes by training the judges on strategies and techniques. The

seminar would discuss and develop a plan for research on implementation problems and choices available to overcome them.

The research plan evolved in the seminar will be implemented in different states over a two year period with the help of High Courts, State Judicial Academies, Bar Associations, Law Schools and Social Science/management Institutes in the region. The research and training activity will be so juxtaposed as

to generate enough empirical data and trained personnel to carry through the reform process throughout the country. Obviously, the proposed National Seminar is the forerunner of a major project on research aimed to address the vital problem of delay and arrears in judicial administration.

NJA has set up a Research Centre and has sought financial assistance from the Government for the purpose. The proposed seminar is tentatively scheduled for May, 2004.

"A man should never be ashamed to own he has been in the wrong, which is but saying, in other words, that he is wiser today than he was yesterday".

JONATHAN SWIFT

"Originality does not consist in saying what no one has ever said before, but in saying exactly what you think yourself".

JAMES FITZ - JAMES STEPHEN



## Criminal procedure code (amendment) bill, 2003: a comment

Dr. N.R. madhava menon

One of the innovative reform introduced by the Bill is what is called "Plea Bargaining" or "mutually satisfactory disposition" in all cases other than an offence punishable with death or imprisonment for life or imprisonment for a term exceeding seven years. The idea obviously is to avoid expensive, unpredictable trials and the potential for avoidable harassment in all small and medium crimes where the harm to society is relatively small. The philosophy is the same as in compounding of crimes already existing in the Cr. P.C. but the techniques differ and the range of offences covered are numerous and varied. The natural result of the reform when adopted by Parliament would be to reduce the flow of criminal cases in the system and to release the time, resources and energy of the system managers (police, prosecutors and judges) to deal with serious crimes threatening national security and large scale damage to life and property. It is a device to ensure that victims receive acceptable justice in reasonable time without risking the prospects of hostile witnesses, inordinate delay and non-affordable costs. It helps to ensure that hard crimes are not rewarded with soft justice because of pressure of work of the criminal justice apparatus. Finally it reduces arrears and

pendency in the system by diverting a large number of crimes for alternate settlement without trial under control of the court to ensure fairness in the process and avoidance of fraud and coercion from either side in reaching the satisfactory disposition.

The device of "plea bargaining" is nothing new and it does exist though unofficially, for example, in accident compensation cases. Lok Adalats dispense justice using variations of the same technique. However, the term "bargaining" in criminal matters is reprehensible to a section of society though it is very popular with the Americans and few other jurisdictions. The Amendment Bill used the term only in the title and sub-title to the chapter (chapter XXI-A of Cr. P.C.) and has used the expression "mutually satisfactory disposition" to describe the process of settlement without trial. It is important that the people generally and the criminal justice functionaries in particular understand clearly the purport and procedure underlying this important reform lest vested interests should mislead, despise and bury the initiative even without giving a reasonable time to demonstrate its utility.

"Plea of guilt" is part of existing criminal procedure. "Plea on sentence" is also an essential aspect of criminal judicial

proceedings. If the accused is allowed to "bargain" or get into negotiation voluntarily with the Prosecutor and the victim on issues relating to charges and sentence, the possibility of proceedings coming to an end with conviction (not necessarily of all or the same charges or sentences) increases. If such conviction and consequent reliefs are acceptable justice to the victim, would it not be appropriate for the court to dispose of the case accordingly instead of labouring under the myth that justice can emerge only after a detailed trial and appeal as provided under the law. After all, every crime is a tort also for which what the law provides to the victim is compensatory relief. If such reliefs could be obtained by voluntary action of the victim under the supervision of court and, wherever needed, with assistance of counsel, should society refuse to accept such disposition in "minor" crimes on the plea that "society as victim cannot compromise a challenge to its morality by criminals buying their freedom through bargaining". A pragmatic approach to management of crime and streamlining of criminal justice administration under a system burdened with 3 crore pending cases warrant some compromises and short-cuts which are fair, just and reasonable even if not in tune with



conventional notions of morality and standards of administration of justice. The first thing therefore is to appreciate the gravity of the prevailing justice scenario, accept choices which appear to be rational and cost-effective and adapt institutional arrangements in managing the situation by containing conflicts and innovating on justice delivery systems. What does the Bill provide in this regard?

The proposed amendment through introduction of a new Chapter in Criminal Procedure code (Chapter XXI A Sections 265 A to K) enables persons accused of certain offences to file an application for plea bargaining in the court in which such offence is pending for trial. He gets this benefit when the report under section 173 Cr. P.C. is forwarded to the Magistrate in a police case or when the Magistrate took cognizance of the offence on a private complaint. However, this privilege is not available to one who is charged with -

- (a) an offence punishable with death or imprisonment for life; or
- (b) an offence punishable with imprisonment for a term exceeding seven years; or
- (c) the offence is one included in the list to be notified by the Central Government as injurious to socio-economic conditions of the country; or
- (d) it is an offence committed

against a woman, or a child below the age of fourteen years.

Given the inherent weaknesses of children and women victims and the growing atrocities against them, it is only natural that the Government thought it appropriate not to let negotiated settlements to undermine gravity of such crimes. However, it is not clear what are likely to be included in the offences injurious to socio-economic conditions of the country, particularly when they are anyway excluded, if serious, by the earlier prohibition of offences punishable with more than seven years' imprisonment.

It is made obligatory on the part of the Court receiving the application to examine the accused in camera to satisfy that he filed the application voluntarily after understanding the offence and its punishment. The Court is then required to issue notice to the Public Prosecutor or the complainant as the case may be to work out a mutually satisfactory disposition of the case. Notice is also to be issued to the Investigating Officer, the accused and the victim to attend the meeting called to work out satisfactory disposition acceptable to both sides. The Court has the continuing duty of ensuring voluntariness of the entire process of plea bargaining. Accused as well as victim, if they

want can participate with their advocates if they are engaged in the case. The negotiation of a mutually acceptable settlement is left to the free will of the prosecution (including victim) and the accused. If such settlement is arrived at, the Court records such observation which is signed by the judge and all other participating persons. Following it the Court awards the compensation to the victim according to the settlement and proceeds to hear the parties on punishment. The Court may release the accused on probation if the law allows for it in the offence charged. If minimum sentence is provided under the law for the offence committed, the judge may sentence the accused to half of such minimum punishment. In other situations the court may sentence the accused to one-fourth of the punishment provided for such offence. The benefit under section 428 Cr. P.C. of settling off the period of detention undergone by the accused against the sentence of imprisonment is permissible in plea bargained settlements as well.

The Court is obliged to deliver the judgment in the open court according to the terms of the mutually agreed disposition and the formula prescribed for sentencing including victim compensation. No appeal excepting special leave petition to



Supreme Court under Article 136 or writ petition to High Court under Articles 226 and 227 of the Constitution is allowed against the judgment. In other words, there is finality of the judgment of the trial court in all cases settled through plea bargaining.

Nothing spectacular can happen to criminal justice by this innovative experiment unless the judges, the prosecutors and the defense lawyers take a lead in impressing upon the accused and the victim the benefits they derive from invoking this privilege and sincerely work towards getting rid of weak prosecution cases out of the criminal justice system. In the United States over 95 per cent of criminal cases never go to trial because of the bargain struck between the prosecutor and the defendant's attorney well before the trial date. This is done without such court supervision as is provided in the proposed Indian Amendment Bill. In the U.S., the charge and the sentence are open to bargain well before the commencement of the trial. In other words, the U.S. system in effect is trading a lenient deal in exchange for a guilty plea. The role of the judge under plea bargaining in U.S. is relatively insignificant and is limited to observance of constitutional guarantees. So much so in American criminal justice, plea bargaining is the norm rather than the exception. This has come

about as a reaction to the ever-increasing case loads of criminal courts and desire on the part of accused to avoid a conviction for serious offences involving social stigma. Dropping of more serious charges in exchange of less serious offenses is thus a part of the plea bargaining process. So also consolidation of charges for different offenses into a single charge for one offence only is common in the U.S. system. Again, as a result of sentence bargaining, the prosecutor agrees to ask the judge for a lighter sentence which is officially favoured partly because of the reality of over crowded jails and limited prison resources. The judge ordinarily accepts such recommendation of the prosecution. Thus 95 per cent settlement through "plea guilty" in the U.S. system today is the result of a number of factors reinforcing the conclusion that diversion and settlement are the acceptable modes of getting out of a system which has become non-functional, counter-productive and unjustifiably expensive.

Of course, plea bargaining in criminal cases is not an unmixed blessing. While it does help the accused to get away with lenient punishments avoiding the ignominy of adverse publicity of prolonged trials and provide the police and the prosecution get higher rates of conviction with lesser use of time and resources

leaving more time to tackle serious crimes, it does make the correctional goal of punishment meaningless and promote the tendency to overcharge in the hope of strengthening the prosecution side during negotiations. By providing for a more positive/active role to the Court in the proposed Indian scheme, the Bill takes care to ensure that unfair, unjustified and involuntary elements of plea bargaining do not vitiate the process and the Court would have enough power to prevent such developments. There is scope in the new Bill for judicial activism at the trial level to reduce the case load substantially and at the same time to maintain the sanctity of the criminal judicial process.

The Indian criminal justice system is in need of some urgent surgical remedy to restore the faith of the people in its ability to protect society. In this context the remedy of "plea bargaining" proposed under the Bill is a bold and desirable experiment. It is hoped that the investigating officers, the prosecutors, the defense lawyers and the judges will appreciate its importance and implement it honestly in the spirit in which it is being enacted into law.

## NJA occasional paper series.....

### Judicial Accountability

by Justice S. Rajendra Babu

Written in a lucid persuasive style, the monograph expounds the "Swadharma" of a judge in the background of "Restatement of values of Judicial Life" adopted by the Chief Justices' Conference in 1999.

The various dimensions of judicial accountability-legal, public and professional-are examined with a view to find an appropriate balance with judicial independence. The author distinguishes personal independence from institutional independence. He argues that "judging involves some degree of seclusion, abstention from social and political struggles, restriction on the freedom of expression and a large amount of isolation". The judge must learn the limits imposed on him as a judge. A judge must be ready to recognize his mistakes. He concludes by saying: "When we sit at trial, we are on trial".

The booklet includes the Code of Conduct adopted in 1999, the Resolution on Declaration of Assets adopted in 1997 and In-House procedure for Remedial Action recommended by the Supreme Court Committee in 1997 as Annexures.

### Contempt of Court

by Fali S. Nariman

Contempt Law is both civil and criminal. In the monograph Mr. Nariman deals with the uncertain scope of criminal contempt which is widely criticized in recent times. Examining the evolution of the law on the subject in Common Law jurisdictions, the author questions the necessity of criminal contempt and suggests few guidelines to end the unsatisfactory state of the law at present.

The author recommends what he calls the Atkin approach and the Temple man approach by which the contempt power is hardly to be used and an attitude of "benign neglect" adopted by the judge. "Treat contempt with contempt" is his advice.

Mr. Nariman finds it impossible to codify the law regarding scandalizing of court. However, he would have truth and good faith as valid defences. He would not want the judge scandalized to exercise the power himself and he would rather like the matter to be decided by a Bench of at least five judges. Finally he is opposed to give the contempt power to Commissions and Tribunals even if they are manned by retired judges of the highest Court.

"Experience is not what happens to you; it is what you do with what happens to you".

ALDOUS HUXLEY



# Competence of judges to ensure quality of justice

Justice V.R. Krishna Iyer

Excerpts from an article in Indian Express dt. 27.11.2003

The observations by an erudite, experienced former judge of the Supreme Court makes a significant point in respect of judicial competence and judge selection. One would respectfully submit that the solution perhaps lies not in narrowing the universe of selection by reducing the percentage of promotee judges (in High Courts) but in Strengthening the in-service training programmes. In the absence of organized training, what Justice Iyer apprehends might happen - Editor

Early litigative finality is an utter unreality. Appeals, remands, revisions and reviews offer tantalising opportunities for dilatory holidaying. Precipitous, procrastinatory and procrustean justicing processes often mar people's confidence in courts.

Frequent reversals of decisions in the judicatural hierarchy promote uncertainty. Judicial mediocrity, elitist affront and class bias shake the faith in judges even as indignant or indolent hearing, hustling or somnolent sitting spoil forensic fairness.

A judge who does not know the law or the art of controlling counsel in pointless or offensive examination of witnesses or arguments is a liability. Overbearing ignorance, loquacious pretensions, myriad mannerisms and open differences with brother judges on the bench blemish the decorum, dignity and credibility of the court.

The powerful point I seek to stress is that the protagonist of the judicial process is the presiding judge. If we mean serious business in annihilating Himalayan arrears we have to consider the major factors contributing to the creation of arrears in court.

So long as the Civil Procedure and Criminal Procedure Codes are not streamlined, no magic can produce a short-cut to disposal

of such cases. Except for tinkering with the codes no real radicalisation has been undertaken.

The strength of the judges in the Supreme Court has been augmented, but with little marked improvement in the matter of reducing the backlog of cases. In every high court more judgeships have been created, in every state more tribunals have been set up but, alas, the chronic disease of terrible delays has defied the numerical nostrum.

Interim stays and injunctions, and then forget about the case for years, is a "stay" syndrome in vogue. Public interest litigation, a creatively serendipitous expansion, has pollutively been exploited and judicial jurisdiction quantum-jumped and publicity-prone brethren on the bench avidly hear long-winded submissions.

Courts, without self-restraint, flood the cause-list with contempt petitions with intimidatory hauteur, making the court process an imperium in imperio.

Tribunals were created for early finality. But high courts have claimed a supervisory power under Article 227, thus another incarnation for the litigation. In brief, more work is spun into the system, defeating the very object of tribunalism (presided over by the equivalent of high court judges).

More Lordships without substantial procedural reforms and more incompetent elevations leading to dilutive devaluation of the bench and poor disposal are pathological prospects.

Parkinson's Law states work expands to fill the time available for its completion and subordinates multiply regardless of the amount of work produced. Applied to the judiciary, a single judge hears long arguments, then refers a matter to a division bench. A division bench discovers the need for a full bench, thus expanding judicial work for six judges that could have been disposed of by one.

The Supreme Court practices the same game in different forms and yet all the judges are busy, over-worked and create a good case for more number.

The story is complete only when we realise the application of the Peter Principle. This is the theory that in a hierarchy people rise to the level at which they are incompetent.

The judicature is a pyramidal structure with various decks from bottom to the top. A law person with experience in the trial court may be good as a trial judge, and when he is promoted as a district and sessions judge, he may manageably be competent.

His jurisdiction will not familiarise him with the

# Competence of Judges to ensure quality of justice

Justice V.R. Krishna Rao

Constitution and the myriad uses of Article 226 or other laws rarely figuring in the subordinate courts but frequently in consideration in the high court.

But if a district judge, for reasons of seniority or successful disposal, is elevated to the high court he may be incompetent in that office, not because he is a mediocre hand but because the jurisdiction and jurisprudence is somewhat new, the type of hearing is different and judgments have a different texture. There he is incompetent (not a personal reflection, but an occupational inadequacy).

Unfortunately some Supreme Court decisions that I consider decided wrongly, has directed that around 40 per cent of high court judges should come by promotion. The result is the Peter Principle applies, more time is taken for grasping the

constitutional issues, raised in the case, and incompetence is writ large in the end product.

When an advocate is directly appointed as a judge in the high court, appreciating his competence at that level, he may be satisfactory on the bench.

But an elevation to the Supreme Court summons a wider constitutional vision, familiarity with law in a new dimension and pronouncements that become final under Article 141 or Article 32 may expose the incompetence of the midget judge in the Supreme Court, although he was a senior judge in the high court. Sometimes we find some benches of the high court and even the Supreme Court function as a kind of glorified district court.

True, some district judges do perform with excellence at every level but a good proportion may drag their feet to make the

noble in situation a wee-bit moronic. The Supreme Court is often called upon to face dominant social, political, economic and even philosophical issues that confront the nation. It finds its finest hour not when to fill the quota and rotary second-rates spiral up in numbers to reach the bloated Bench, but when distinguished subordinate judges, luminous leaders at the bar or celebrated members of the high courts lend dynamic lustre to the rule of law governing the nation.

I mean no disrespect to any judge but do feel that each person has limitations that must be taken into consideration, so that the institution may not have large patches of incompetence. I have been at pains to prove my case that multiplication of judge-strength will not give the country the quality of justice promised by the Constitution.

"Aim at the sun, and you may not reach it; but your arrow will fly far higher than if aimed at an object on a level with yourself".

J. HAWES



## NJA appoints adjunct professors in its faculty

Assembling the full time Faculty for a judicial training institution is a difficult job inasmuch as there are not many experienced experts available who can fill the bill and willing to join on a full-time basis. Ideally senior judges with an academic bent of mind or academics with sufficient knowledge of judicial processes are appropriate candidates for the job. The Academy has now undertaken a search for such persons and advertised for Faculty positions.

Meanwhile, the Governing council resolved to invite those who can come for short periods as and when required for specific tasks of training and research to assume the position of Honorary Adjunct Professors of the National Judicial Academy. Under this scheme, the following persons are being invited to be part of the NJA Faculty to begin with:

- Mr. Justice G.G. Sohoni, Former Chief Justice of Madhya Pradesh and Bihar High Courts
- Mr. Justice V.S. Malimath, Former Chief Justice of Karnataka and Kerala High Courts
- Mr. Justice U.L. Bhat, Former Chief Justice of

Madhya Pradesh and Assam High Courts

- Mr. Soli Sorabjee, Senior Advocate and Attorney General of India
- Mr. Fali S. Nariman, Senior Advocate and President of Bar Association of India
- Dr. Mohan G. Gopal, Former Director of National Law School of India

### **NJA Research Project on Access to Justice/Delay Reduction**

Several commissions and committees appointed from time to time have made recommendations for revamping the judicial system with a view to reduce delay and enlarge access to justice. Some amendments to procedural laws have also been introduced. The system is still burdened with mounting arrears which results in delay in disposal and denial of justice to those who are unable to manage prolonged litigation. This project aims to look at controlled experiments and pilot studies organized to implement some of the legislative amendments to speed up justice with cooperation of lawyers, judges and court staff. The mechanisms now provided under

the amended CPC, the Legal Services Authority Act and the Family Courts Act and Arbitration and Conciliation Act are the broad designs for the experiments and pilot studies.

The main research project has in its fold many components including training packages monitoring and evaluation systems as well as management patterns suited to local conditions. The project will be implemented over a period of two years in the jurisdictions of seven or eight high courts across the country. The involvement of State Judicial Academies, High Courts, Law Schools, Bar Associations and Management Institutes are now being sought and depending upon the responses, the project is expected to be launched by April/May, 2004. NJA will co-ordinate, fund and monitor the project under the guidance of a National Advisory Committee based in Bhopal.

The National Conference on Implementation of Judicial Reforms proposed for May, 2004 at NJA will have brainstorming sessions directed towards finalizing the project details and deciding the structure of administering it efficiently with partner institutions.

## Training for efficiency in courts\*

Dr. N.R. Madhava Menon

It does not need any argument to establish the simple fact that performance at any level of the judicial hierarchy is directly related to the method of selection of judges on the one hand and the quality of education and training offered on the other. Admittedly, on both counts there are inadequacies in the existing practices thereby disabling the system to perform at optimum levels of efficiency. Of course, there are other systemic and environmental factors outside the control of judiciary which undermine judicial efficiency and performance. However, in the work of intellectual activity including administration of justice, it is the quality and competence of the human material (judges and lawyers) who operate the system which is critical for the job rather than the physical infrastructure it commands or the professional tools it employs.

Every section of society is concerned with the efficiency and quality of its justice system. In liberal democracies under rule of law, the task of administration of justice is left largely in the hands of the professional body of lawyers and on an independent judiciary. It is they who determine eligibility criteria, selection norms and procedures, training needs and methods, performance

evaluation and correction, accountability standards and efficiency. There is very little participation of government or the public in judicial selection, promotion, performance evaluation, discipline and accountability assessment. By and large, Indian judges have discharged their responsibilities reasonably well with the result even today the common people have unqualified faith in the competence and integrity of their judicial system. However, the times are changing and expectations are mounting as in every other department of governance. It is in this context judicial performance has to be assessed and accountability established.

### Selection of Judges

In Common Law countries judges are selected almost exclusively from among lawyers with some experience at the bar. Depending upon the quality of education received at the law college and the opportunity extended to learn the skills during legal practice one could expect minimum competence in performance of judicial personnel newly inducted into service. The Law Commission, the First National Judicial Pay Commission and the Supreme Court felt it necessary for

expanding the available pool for selection of judges and for attracting career-minded young law graduates at the beginning of their professional lives to the judiciary. This resulted in dropping the legal practice requirement from eligibility criteria for selection of judges and establishment of the All India Judicial Service with much better pay scales and opportunities for professional advancement. The widening of the universe of selection definitely provided better chances to select more talented and motivated persons.

The next question is how far the process of selection (the selectors, the methods, the criteria, professionalism) is conducive to find the best available persons from the larger pool of candidates. The recommended process is of written examination with minimum prescribed grades and an interview test of short listed candidates both to be conducted by an empowered body of independent experts. It is too much to expect in the present circumstances in the country to have a totally unbiased professional approach in the choice of selectors and the method of selection. Consequently, there is no guarantee that the candidates

\* Excerpted from an address delivered on the occasion of the inauguration of the Orissa Judicial Academy at Cuttack on 20th December, 2003.



finally chosen are the best available for holding judicial posts either in terms of professional competence or in terms of personal qualities and disposition. If this is a correct assessment of the prevailing scenario, the only strategy to achieve at least the minimum level of judicial performance is the training that is offered before assigning judicial functions. This underlines the importance of judicial training. Induction training, however rigorous, at the initial stage of judicial recruitment is not a complete solution to the problem of occupational inadequacy of judicial personnel. Selection takes place directly to the higher levels of judicial establishment as well. At the level of District Judge, advocates with seven years of legal practice experience are also made eligible for appointment along with subordinate judges already in service. The method of selection again is not uniform and the best available talents are not necessarily inducted. It is here the proposed All India Judicial Service to be constituted through nationwide examination and interview can possibly make a difference in the quality and competence of personnel in the higher judicial service. Similarly at the level of High Court judge, another round of selection either by promotion or through open selection from the practicing bar takes place. Despite a lot of

attention given to this stage of judicial selection, the process is said to be still unsatisfactory to attract the best of professionals to the High Courts in the country. The result has been a number of high court positions remaining unfilled for long periods. There is also reluctance on the part of successful advocates to accept judgeships. In respect of promotees from District Judges' cadre there is criticism based on unfamiliarity with constitutional law and adjudication. A former Supreme Court judge cited the Peter Principle to say that ".... if a District Judge, for reasons of seniority or successful disposal (two criteria mainly adopted for promotion to High Court) is elevated to the High Court he may be incompetent in that office, not because he is a mediocre hand but because the jurisdiction and jurisprudence is somewhat new, the type of hearing is different and judgments have a different texture" (Justice V.R. Krishna Iyer in Indian Express dt. 27.11.03).

The obvious inference from the above discussion on judicial selection at different levels is that the system does not guarantee high level of professional competence expected of judges at the recruitment stage. If people are to be appointed without adequate knowledge, skills and experience there is the danger of distortion, delay and miscarriage of justice. This may result in too

many appeals to higher courts. It will tend to create popular dissatisfaction with the entire justice system.

Judicial officers once appointed cannot be compelled to undergo any training. They have to be persuaded through a system of incentives and disincentives. The programmes should address the training needs at different levels on the judiciary. There must be a judicial policy towards self-assessment of performance, peer group consultation for professional development and scope for specialization in judicial tasks.

#### **Judicial Training and Continuing Education**

The objectives of judicial education is primarily of providing the required knowledge on fair, efficient performance of judicial responsibilities. This includes knowledge of law and legal skills in areas where they are not familiar with for whatever reasons and the capacity to apply that knowledge correctly and fairly in the course of the proceedings. To be able to preside over adversarial adjudication and to manage the proceedings without undue delay, the judge has to have special expertise which can be imparted through training and education. Furthermore, it is the objective of judicial education to promote each judge's endeavour to the highest standards of personal development with social



commitment and ethical conduct.

For continuing education after appointment, the objectives are slightly different. These include sharpening of decision making and judgment writing skills, fostering fairness through elimination of biases and prejudices, as well as promotion of awareness of cultural diversity and judicial detachment, improvement of management skills, adjustment to new perceptions of justice in the context of changing knowledges, value and technology and finally achieving higher levels of professional excellence in the administration of justice.

According to one study in USA the transition of a judge takes several years to complete. In the process of defining his or her role as a judge, the person has to resolve dilemmas in role perceptions, organize changes in self concept by adjusting role conflicts and strengthen commitment to the bench marked by a satisfaction with judicial life. Technology is changing the role of the judge. Globalisation demands an international dimension to the judge's perception and equipment. The explosion in knowledge and systems of communication warrant inter-disciplinarity in approaches and analysis. Ideas of human rights and democratic accountability are putting new parameters to judicial functioning

in relation to other wings of government. In short, there is so much to be learnt by the contemporary judge which even experienced lawyers cannot get from professional work alone. The context in which judges are called upon to function today warrant a proper educational response which the judiciary will be well advised to consider on priority basis.

There are many recommendations on the table for judicial education and training, the latest being the one formulated by the First National Judicial Pay Commission. Since the Supreme Court has accepted the recommendations in toto and directed the National Judicial Academy at Bhopal to implement them, it is appropriate to acknowledge certain assumptions and pre-requisites for enhancing judicial performance through education and training.

1. Firstly, it is important that the judiciary as a whole should accept that continuing education is an essential requirement for maintaining competence. Judicial independence will not be jeopardized by accepting training and related activities of modernization of courts.
2. Secondly, the judiciary, the government, the legislature and the public should accept the close relationship

between judicial selection on the one hand and training and education on the other. The policies and practices of judicial selection should accordingly be changed to give the judiciary a free hand in organizing reform and development.

3. Thirdly, judicial training institutes should be properly funded to maintain the right kind of training staff and equipments. The quality of programmes should be of such a nature that judicial officers are attracted to participate in them. The institutes and academies presently in operation have a long way to go in this regard.
4. Training academies for judges have to plan three basic things to move towards professional excellence. The kind of training and continuing education programmes they should organize require great deal of consultation, deliberation and experimentation. It is to be founded on training needs and reform goals at each level of the judiciary. To find out the actual training needs, precisely and comprehensively, some experimentation and research are required which pre-supposes the



acceptance of such experimentation by judicial authorities and the willingness of judges to participate in such exercises. Once the objectives are clear and the needs are ascertained, academies should plan the courses, evolve a curriculum and a training methodology in consultation with judges themselves. For quite some years in the beginning of implementation of training, there should be a process of curriculum development towards standardization and fine tuning of the system to respond to educational expectations and professional needs.

Another central issue for training is the kind of trainers that academies assemble. Lecturing even by experienced judges cannot amount to training. At best it can achieve a degree of sensitization to issues. Adult learning is different from education imparted in schools and colleges. Interactive learning processes with the help of modern educational aids on the basis of trust and acceptance are essential to make attitudinal and behavioural changes in judges particularly when they have been on the job for varying periods. It is a task yet to be attempted with the seriousness it deserves. Though judges are eminently

suited to train other judges, in the modern context where the demands are different and the challenges are many, it is axiomatic that the training faculty should represent a blend of learning and experience drawn not only from law but other behavioural sciences including management and technology. The nature of judicial function and objectives of training dictate the composition of training faculty. To be able to achieve the right mix and to enable them to work together for the common cause there has to be training for the trainers themselves.

A third aspect on which training institutions have to prepare themselves is on training methodology, study materials and evaluation techniques. On all these, there are valuable suggestions given in the reports of the Law Commission and that of the Judicial Pay Commission. It is here that Indian training institutions can learn a great deal from their counterparts in other countries where some degree of proficiency has already been achieved after long periods of experimentation and adaptation. Of course, training needs in India may not be the same as in foreign countries, but there is not any vast difference in training methodology and goals. There is scope for mutual co-operation among the State and National academies in this regard particularly in the

context of non-availability of trainers and training materials of the kind contemplated.

5. Finally no effective training intended to reform the system can succeed without constant supply of reliable information on what is happening in judiciary and why it is happening that way. Given the complexity and diversity of Indian legal cultures it is misleading to generalise on the basis of experience of any one group, in any one region or period. This means multi-disciplinary research on a continuing basis generating useful information on judicial working is a *sine qua non* for conceptualizing the nature and scope of judicial training and continuing education. To illustrate the point one may consider implementation of two significant procedural reforms now being adopted to expedite judicial proceedings - one relating to CPC through court initiated mediation to settle disputes prior to trial and the other relating to CrPC through negotiated settlement or plea bargaining in criminal cases. Both are significant reforms conceived after great deal of consideration on the part of reformers and the government. The function of judicial education

and training in this regard is to prepare the players and stakeholders of the system to play the game as intended by the law makers to achieve the expected results. A number of questions arise : What is intended by the law? What are the role and responsibilities of different players and institutions? What are the possible bottlenecks and barriers that need to be overcome in the process? What are the possible consequences to the reform, known and unknown? What are the abuses possible in implementation? What resources are required and where? How does one evaluate the performance? How to tackle the existing mind-set and prevailing practices which are inimical

to the reform process?

For all the questions and more, ready answers are often given based on experiences, convictions and on which side of the debate one is placed. However, for implementation based on training and continuing education of judges, one needs more accurate answers based on empirical data and pilot studies on the ground. This demands training institutions to function as laboratories for monitoring the system, planning change and implementing reforms. Every training institution is necessarily a research and development center as well. It is R&D which injects relevance and realism to continuing education and training. Unfortunately Indian judicial academies are not organized to perform research tasks of the nature and dimension as proposed here. It is costly and

requires organized effort over a period of time among academic researchers and legal practitioners with some amount of freedom to change policy details if and when required. It is asking for too much in the present situation. Nevertheless it needs to be acknowledged by those in charge of judicial education and training that without research back up, training will not influence change in any significant way.

The tasks before training academies are indeed complex and formidable. There are no easy or simple solutions. If the government and judiciary are serious on enhancing judicial performance and accountability, it is necessary to compensate for the neglect of the past and put their acts together towards better selection methods and improved strategies of training and continuing education.

"He who will not reason is a bigot, he who cannot is a fool; and he who dares not is a slave".

**WILLIAM DRUMMOND**



## First Advanced Course on Civil Justice

Having organized an advanced course on Criminal Justice for Senior Sessions Judges from all over India, NJA is now ready to receive another batch of Senior District Judges for a programme directed towards civil justice and Alternate Dispute Resolution (ADR) systems. We expect to invite not more than two judges from each State for a

ten days residential programme in April, 2004 in which some of the experienced judges from the Supreme Court and High Courts will act as the core faculty. The focus will be on implementation of section 89 C.P.C. and introduction of techno-managerial innovations for efficient management of cases and courts. Another issue to be addressed is

the institutionalization of Lok Adalat and the effective use of mediation and conciliation methods.

A communication is being sent to the various High Courts seeking nominations. Meanwhile programme details are being finalized and study materials are being prepared for advance circulation among participants.

## Project on Reduction of Congestion in Delhi Courts

Under Technical Assistance from ADB, a project on reducing congestion and developing sustainable improvements in delivery of, and access to, speedy justice is launched in Delhi in early 2004. Among the expected outcomes of this six months study are a series of recommendations many of them

pilot-tested to modernize the court system including human resources development, information management, budget controls and management etc. with a view to expedite justice and enhance access to justice. In this process, a series of steps to build capacities of the legal profession are also envisaged

under the study. A number of task groups and consultants have already started the work in Delhi under the Management of Association of Universities and Colleges of Canada who have been assigned the contract. The Project Steering Committee is guided by Judges of the Supreme Court and Delhi High Court.

## Refresher Course on Constitutional Adjudication and Court Management

Constitutional adjudication particularly under writ jurisdiction is a subject which has assumed critical importance in human rights protection and governance under rule of law in recent times. The emergence of public interest litigation has added a new dimension to this jurisdiction of the High Courts. District Judges promoted to the High Courts

sometimes face difficulties with constitutional litigation which does not happen at the district level. It is in this context a ten day Refresher Course is being mounted by NJA in the summer of 2004. Eminent Senior Advocates, Legal Academic and Judges of the Superior Courts will address the course on the skills and strategies while

discussing the law and remedies applicable in matters of Public Law. An additional item proposed in this course is the technological and management inputs necessary in efficient court management. A request for nominations is being sent to the High Courts and those desirous of participating may contact their respective High Courts or write to the Registrar, NJA.

## Book Review

### **Law & Justice, edited by Soli J. Sorabjee and published by Universal Law Publishing Co., Delhi (2003) pp 410**

Are 'Law' and 'Justice' two independent concepts linked together by lawyers and judges in the process of administration of justice? This seems to be the view of the legal community though philosophers and cultural anthropologists might think otherwise.

Justice is the natural urge of every living creature and is not fully captured by any or all laws made by man ostensibly to dispense justice. It is in this context the expression "justice according to law" is to be understood which incidentally accommodates ideas like "unjust laws" or "lawless laws" and gives powers to courts to determine the legitimacy of laws themselves. At the end of the day what people perceive as justice is more a set of limitations on arbitrary exercise of power fair hearing or a reasoned judgement rather than recognition or substantive rights. It is this jurisprudential dilemma between law and justice that connects several essays contained in a volume on Law and Justice edited by the eminent lawyer Soli Sorabjee and published by Universal.

Most of the essays in the book have been published earlier in the journal of the United Lawyers Association of which Mr. Sorabjee is the President. Nevertheless, there is contemporary relevance to the

themes discussed and the issues raised in the writings contained in the anthology. The dominant themes covered in the book are human rights, constitutionalism, rule of law, and independence and accountability of judges. The authors are the best-known lawyers and judges in India and in other Commonwealth Countries and the concerns are universal in application. Hence the value of the publication to freedom loving people generally and law persons in particular.

The later half of twentieth century is well known for uniting the world around universal values of human dignity and individual freedom captured substantially in the Bill of Rights in the laws and constitutions of nation states. The United Nations and several human rights treaties starting with the Universal Declaration of Human Rights have made human rights the organizing theme of all governments and the test of its legitimacy. The initial piece on the 'Justice Manifesto of the Human Person' by the Justice V.R. Krishna Iyer is an eloquent expression of this universal value tested against prevailing injustices of human suffering and indignities. He invoked the idea of 'Dharma' from ancient Indian jurisprudence to establish the integral relationship between law and justice and pleads for using human rights instruments to fight starvation, ill health,

poverty, homelessness and to dispense humanitarian justice. Sorabjee argues for a standing Judicial Committee of the Security Council to determine justifiable circumstance warranting U.N. intervention to uphold human rights. Rolv Ryssdal, former President of the European Court of Human rights at Strassbourg explains in his article how the machinery set up under the European Convention has advanced the cause of human rights in the region. Giving illustrations of the Courts' review work, the author explains how international implementation of human rights can help develop new instruments to maintain a human rights order for the benefit of all people of all nations.

The African experience with human rights is highlighted in a number of pieces in the volume which demonstrate how a new social order informed by human rights is evolving in different legal systems under the influence of the Universal Declaration and related treaties.

Richard Cullen from the City University of Hong Kong gives an interesting insight on the compability of legalized systems of human right implementation developed in Western Countries to the cultural values of East Asian Countries. While one is developed around a conflict model of State vis-a-vis citizens, the other has features



of a consensus model of individual and society. Confucianism, he points out, emphasizes a more community based, as opposed to individual based, approach to social organization and nation building. This has serious implications in the articulation of human rights, he argues.

While Dr. Kamal Hossain expresses concern in defending human rights in a market-driven economy, Mr. Alan Phillips advocates the need for networking to promote minority rights as group rights. There are interesting articles on Women's rights and refugee rights which project different dimensions of the human rights movement.

The right to freedom of expression and its evolution through judicial interpretation to sustain democracy and rule of law is the subject of a series of articles by Anthony Lester, Soli Sorabjee, Gilbert Marcus, and Justice A.M. Ahmadi. Similarly the manner in which judicial proceedings helped to develop sustainable environmental management is discussed in human rights perspective in a couple of articles.

A second major theme around which a number of contributions are written relate to the influence of history in the making of democratic constitutions (South African experience in particular) and the manner in which the foundational

principles are re-visited at critical junctures in the working of the constitution. The German Scholar Mr. Dieter Conrad writing on the Basic structure doctrine of Keshavananda Bharati case (AIR 1973 S.C. 1461) highlights how the Indian Supreme Court has come to play the role of an exporter of constitutional ideas. He substantiates his thesis by pointing out that at least in the matter of public interest litigation and the basic structure theory, the Indian Supreme Court has indeed been an innovator and exporter in the free trade of constitutional ideas. He, however cautions that the jurisprudence of principles has its own distinct dangers arising out of too much of flexibility and lack of precision inviting a loosening of judicial discipline in interpreting the explicit provisions of the constitution.

As if to remove any such lingering suspicion, Mr. Justice J.S. Verma in his article on Indian Experience under Rule of Law argues that judicial activism and creativity during the last 50 years has advanced the cause of justice and achieved the constitutional purpose invoking principles in a balanced manner. According to him, the rights of the people are safe in the hands of Indian Judiciary.

A final theme discussed in the book under review is about judicial independence and

accountability of judges.

Justice Michael Kirby of the High Court of Australia makes a comparative study of judicial independence in India and Australia and points out illustrative examples of erosion at the hands of executive government particularly at lower levels of the judiciary.

In an interesting and critical piece titled "Making the Angles Weep" Sir Robin Cooke of the Newzealand Court of Appeal while appreciating the importance of judicial independence explains why he support the minority view in the Advocates on Record Association Case (1982 (2) SCR 85). In declaring the primacy of the Chief Justice of India in the matter of appointment of Judges, the majority equated "consultation" with "concurrence" which the author finds difficult to agree with. He queries, "perhaps it is sufficiently obvious that in ordinary contexts the two words are quite different in their senses. If so, the issue becomes whether in the context of a constitution, construed as a living and developing instrument and permeated by powerful ideas such as the separation of powers, the vital word may be perceived to bear a special meaning..... In the Indian Constituent Assembly, amendments proposed to require the concurrence of the Chief Justice of India for high judicial appointments were defeated.

Granted that the meaning of constitution can evolve with time, it is still not easy to see how in less than half a century 'consultation' as the term presumably must have been understood by the Constituent Assembly has been transmuted into concurrence". According to the author, "the majority of the Court may have gone too far, if their conclusions be viewed as an interpretation of the constitution intended to be binding law. And the overall impact of the decision is a blow struck for the principle of judicial independence that will not be felt in India only".

The beauty of this anthology is that there are articles on the similar issues argued admirably with contradictory reasoning and conclusions which make the reader wonder whether the final word is yet to come on what is believed to be basic principles of law. To the criticism of Justice Cooke in reading consultation as concurrence there is a funny rejoinder from Justice Chinnappa Reddy with an equally laughable title "Humpty-Dumpty and the Law". He is puzzled by the magic of the judge who turned 'swine'

into 'cattle' and 'ice cream' into 'meat' in the court of interpretation. Suicide by one many mean murder by another in the world of law. He concluded by quoting Balfour that English and Law are different!

In a learned piece by Dr. Cyris Das on Judicial Accountability, public and media criticisms of judges and judgments are examined in the context of the use of contempt powers by courts. He finds a basic difference in the use of contempt power between courts in Asian countries as compared to courts in western countries and queries whether it is because of the cultural factors and attitude towards criticisms generally? He quotes with approval the "Latimer House Guidelines" to establish judicial accountability. The two principles contained therein for good governance as they relate to judiciary are :

- "(i) Legitimate public criticisms of judicial performance is a means of ensuring accountability.
- (ii) The criminal Law and contempt proceedings are not appropriate mechanisms for restricting

legitimate criticisms of the courts."

Within four hundred odd pages, the anthology contains forty illuminating articles conveying judicial trends in organizing democratic governance and protecting human rights and rule of law. The central focus of all these articles is the judiciary not only of India but of a host of countries across the globe. For the lawyer, judge, law teacher and student the book is a reservoir of jurisprudential ideas and the limits of its application. To the non-lawyers it is informative reading helpful to understand legal development in context and pass his own judgments on the institutions which govern him.

Recently the Supreme Court complimented Soli Sorabjee for his vigorous advocacy of human rights and rule of law. The book he edited is a standing testimony of his contribution within and outside courts in developing a constitutional jurisprudence dynamic enough to sustain world's largest democracy and an independent judiciary. The book must be prescribed reading for all lawyers, judges and those in public life.

**N.R. Madhava Menon**



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NJA proposes to recruit purely on contract basis for 2 to 3 years eminent jurists/scholars for its core faculty capable of designing and conducting training and research activities in support of administration of justice and court management. Academy provides accommodation in the campus and pays salaries offered in comparable positions in the Central Government.

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Applications in plain paper supported by copies of certificates of educational qualifications, experience, proof of age and a passport size photograph may be sent so as to reach the undersigned on or before Monday, 29th March, 2004. Attempt to canvass in any form will disqualify the candidate.

NJA will shortlist the applicants on basis of comparative merit and such short listed candidates may be called for interview to Bhopal. Faculty positions may be decided without interview by negotiation at the discretion of the Academy. The Academy may consider persons found suitable from even outside the applicants. The decision of the Academy shall be final in the matter of deciding comparative merit and suitability of persons for the positions.

For further details about the Academy visit our website [www.nja.nic.in](http://www.nja.nic.in)

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Name of the Participant-Judge & Postal Address	Telephone/Fax & E-mail Address
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Sri Jagmohan Paliwal District Judge, Lucknow (U.P.)	(R) 2208588 (O) 2223383
Shri Raghunath Kishore Rastogi District & Sessions Judge Allahabad (U.P.)-211002 Email : dcall@up.nic.in	0532 - (O) 2641350 2440935 (R) 2642700, 2441700
Sri Prakash Narain Rai District & Sessions Judge Meerut (U.P.)	(O) 2660580 (R) 2641602
Sri Ganga Prasad Srivastava District Judge, Bareilly (U.P.)	0581-(O) 2427045 (R) 2457037
Sri Shiv Shanker District & Sessions Judge Budaun (U.P.)	05832- (O) 266419 (R) 268370
<b>Andhra Pradesh High Court :</b>	
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Sri N. Vidya Prasad Prl. District & Sessions Judge Visakhapatnam (A.P.)	0891-(O) 2563626 (R) 2754637 (F) 2525649 (M) 9849098485
Shri G. Bhavani Prasad Prl. District & Sessions Judge Chittoor (A.P.)-517001	08572 (O) 227100 (R) 234507 (F) 227140
Sri G.V. Seethapathy Metropolitan Sessions Judge Red Hills Nampally Hyderabad (A.P.)	040- (O) 23399093 (R) 23413969 (F) 23398332
<b>Bombay High Court :</b>	
Shri V.K. Deshpande District & Sessions Judge R/O "TORNA" Trimbak Road Nasik, Maharashtra	0253- (O) 2578695 (R) 2578694
Sri S.D. Mohad District & Sessions Judge District Judge Bungalow, Takiya Ward, Bhandara, Maharashtra	(O) 252254 (R) 252279
<b>Calcutta High Court :</b>	
Sri Prasenjit Mandal District & Sessions Judge Dakshin Dinajpur at Ballirghat Res. : B.C.-3, Samarpally, P.O. Krishnapur, Kolkata-700102, W.B.	03522- (O) 255207 (R) 033-2571-9629
Sri Krishna Gopal Roy, District & Sessions Judge Uttar Dinajpur at Raiganj, West Bengal	03523- (O) 252281

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Shri Sabyasachi Banerjee District & Sessions Judge Nadia, West Bengal	03472- (O) 2524101 (R) 033/23505056
Sri Susant Kumar Majumdar District & Sessions Judge Purulia, West Bengal	03252- (O) 227338 (R) 222339
<b>Chhattisgarh High Court :</b>	
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Sri G.C. Bajpai Law Secretary, Govt. of Chhattisgarh, Mantralaya, D.K.S. Bhawan, Raipur (C.G.)	(O) 2221346 (R) 2100257
Sri A.L. Nimokar Distt. & Sessions Judge Raigarh	07762-(O) 222077 (R) 222078
Shri R.N. Chandrakar Distt. & Sessions Judge Bilaspur (Chhattisgarh)	(R) 223571 (O) 223572
Sri R.L. Jhanwar Distt. & Sessions Judge North Bastar (Jagdalpur) (Chhattisgarh)	(O) 222587 (R) 222589
<b>Delhi High Court :</b>	
Miss Rekha Sharma D-II/59, Kaka Nagar New Delhi or 28 South Patel Nagar New Delhi	011-24351171 25841455
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Sri J.M. Malik 13, Delhi Govt. Officer Flats Greater Kailash I, New Delhi-48	26485213 26282757
<b>Guwahati High Court :</b>	
Sri Sudip Ranjan Sen Macabe Road, Shilong-I	(O) 2227444 (R) 2227835
Sri Kanak Sarma Ujan Bazar, Nowjan Road Guwahati	03774-(O) 280072 (R) 280073 0361-(R) 2605273
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# FIRST ADVANCED COURSE FOR DISTRICT & SESSIONS JUDGES ON COURTS AND CRIMINAL JUSTICE ADMINISTRATION

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Sri G.B. Shah, Judge City Civil and Sessions Court Block-A-T/1, Rajdhani Aptt. Vrajraijee Colony, Navarang Pura- Ahmedabad, Pin-380009	(R) 7910781
Sri V.C. Modi A/73 Prernaviraj Tower No. 1 Satellite, Jodhpur Village Road Ahmedabad	(O) 7494625 (R) 6924626
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<b>Himachal Pradesh High Court :</b>	
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Sri T.N. Vaidya District & Sessions Judge Kangra at Dharamsala (H.P.)	01892- (O) 223478 (F) 224878 (R) 222232
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Sri V.K. Sharma Presiding Officer, H.P. Industrial Tribunal-Cum-Labour Court Shimla (H.P.) - 171001	0177- (O) 2652530 (R) 2652988
Sri L.N. Sharma District & Sessions Judge Nahan (H.P.)	01702- (O) 224565 (R) 224564
<b>Jharkhand High Court :</b>	
Sri Dhananjay Pd. Singh Judicial Commissioner Ranchi Civil Court Ranchi, Jharkhand	0651- (O) 2202600 (F) 2202414 (R) 2280613
Sri D. Ganeshrao Patnaik District & Sessions Judge Chaibasa, West Singhbhum Jharkhand	06582- (O) 256255 (F) 256398 (R) 256255

Name of the Participant-Judge & Postal Address	Telephone/Fax & E-mail Address
Sri Pradeep Kumar Singh District and Sessions Judge Chatra Jharkhand	0631-(O) 222841 (F) 222840 (R) 222842
Sri Pradeep Kumar District & Sessions Judge Giridih, Jharkhand	06341-(O) 222171 (F) 224187 (R) 222119
Sri Shree Krishna Murari District & Sessions Judge Godda, Jharkhand	06422- (O) 222001 (R) 222101
<b>Karnataka High Court :</b>	
Sri G. Narahari Principal District Judge Bidar, Karnataka	08482- (O) 226448 (R) 226449
Sri Chidanada Rao Principal District Judge Belgaum, Karnataka	0831- (O) 2420851 (R) 2420500
Sri Choudapurker Arun Principal District & Sessions Judge, Raichur Karnataka	08352 (O) 228476 (F) 227200 (R) 226116
Sri Veerannag Tigadi Principal District & Sessions Judge Dharua, Karnataka	0836- (O) 2448552 (R) 2778140
Rudragouda S. Patil 1st Addl. District Judge, Gulbarga, Karnataka	08472- (O) 420827 (R) 420593
<b>Kerala High Court :</b>	
Sri V. Ram Kumar Law Secretary, Government Secretariat Thiruvananthapuram Kerala	0471- (O) 2332955 (F) 2333497 (R) 2727230
Ms K. Hema District & Session Judge & State Transport Appellate Tribunal Kochi, Kerala	0484 (O) 2368090 (R) 2539012 djekm@ker.nic.in djekm@ker.nic.in
Sri K.P. Balachandran District Judge Thodupuzha Idukki District Kerala State	04862 (O) 256016 (R) 201819
Sri S. Sainudeen District and Sessions Judge Pathanamthitta Kerala Sate	0468 (O) 2222740 (R) 2354100
Sri M.N. Krishnan District Judge Kozhikode, Kerala	0495- (O) 2366091 (R) 2366362
<b>Madras High Court :</b>	
Ms. K.B.K. Vasuki Prl. District udge Namakkal (Dr) Chennai	04286- (O) 225911 (R) 226008

# FIRST ADVANCED COURSE FOR DISTRICT & SESSIONS JUDGES ON COURTS AND CRIMINAL JUSTICE ADMINISTRATION

Name of the Participant-Judge & Postal Address	Telephone/Fax & E-mail Address	Name of the Participant-Judge & Postal Address	Telephone/Fax & E-mail Address
Smt. S. Vimala Sessions Judge, Mahila Court (Magalir Neethimandram) Chennai	044- (O) 25354462 (R) 28511998	<b>Punjab &amp; Haryana Court :</b>	
Sri M. Jeyapaul Principal Judge Chennai	044- (O) 28525051	Sri M.M. Aggrawal L.R. and Law Secy. Punjab, Chandigarh	0172 (O) 2740168 (R) 2727646 (F) 2740080
Sri S. Tamilvanan District Judge Administrator General and Official Trustee of Tamil Nadu High Court, Chennai-600104	044- (O) 25342278 (R) 26448288	Sri Somnath Aggrawal Distt. & Sess. Judge Jalandhar, Punjab	0181 (O) 2458384 (R) 2459739
Sri V. Periya Karuppiah Principal District Judge Chengalpattu Tamil Nadu	04114 (O) 231442 (R) 226353	Sri Amar Nath Jindal Distt. & Sess. Judge Patiala Punjab	(O) 2212089 (R) 2212092
<b>Madhya Pradesh High Court :</b>		Sri Pritam Pal Registrar General Punjab & Haryana High Court Chandigarh	0172 (O) 2742756 (R) 2728735
Miss Sheela Khanna Law Officer to Governor (M.P.) A-3, B.D.A. Colony (In front of J.P. Hospital), Bhopal	0755- (R) 2551713 (O) 2551035	Smt. Nirmal Yadav Distt. & Sess. Judge Faridabad, Haryana	0129 (O) 226698 (R) 22855031
Sri Shyam Sunder Dwivedi District Judge, Bunglow No. A/3 Idgaha Hills, Bhopal	0755- (O) 2533279 (R) 2541361	<b>Rajasthan High Court :</b>	
Sri R.C. Chandel District Judge Pili - Kothni, Civil Line, Panna	07732 (O) 252079 (R) 252081	Sri Gyan Prakash Pandey RHJS K-25 Income Tax Colony Tonk Road, Durgapura Jaipur, Rajasthan 302018	(O) 01427-223320 (R) 0141-2551457
Sri Subhash Chander Vyas District Judge Bunglow No. 8 A, Gandhi Road, Gwalior (M.P.)	0751 (O) 2320119 (R) 2343233	Sri Guman Singh RHJS Distt. Judge Bhilwara Rajasthan	01482- (F) 227292 (R) 227447
Sri Mohit Kumar Vyaas District & Sessions Judge Civil Lines, Rewa (M.P.)	07662 (O) 241847 (R) 241606	Sri Suresh Chandra Singhal RHJS 55, Nemi Nagar Extn. Vaishali Nagar Jaipur	0141- (R) 2351184 & 2247100
<b>Orissa High Court :</b>		Sri Ganesh Dan Charan RHJS Judge, Family Court Jaipur	0141- (R) 2245533
Sri Gopinath Panda, Judge Family Court, Birajapali, P.O. Uditnagar, Rourkela, Distt. Sundergarh, Orissa	0661- (O) 251602 (R) 2400946	<b>Sikkim High Court :</b>	
Sri Sarat Kr. Mishra Addl. Distt. & Sess Judge Distt. Khurda, Orissa	06755- (O) 221366 (R) 220180	Sri Tashi Wangdi, Deorali School Road Judge Building Deorali, Gangtok, Sikkim-737101	03592- (O) 284542 (R) 281157
Sri Bijaya Kr Nayak Distt. & Sess Judge Balasore, Orissa	06782- (O) 262107 (R) 262124 (F) 262107	Sri B.C. Sharma Distt. Court Namchi, P.O. Namchi, South Sikkim	03595- (O) 284542 (R) 281157
Sri Sanjay Kr. Mishra Distt. & Sess Judge (Sundergarh) Orissa 770001	06622 (O) 272844 (R) 273857	Sri A.P. Subba Registrar General High Court of Sikkim Gangtok-737101	03592- (O) 222280 (R) 222248
Sri Chitta Ranjan Dash Distt & Sess Judge Keonjhar, ORISSA 758001	06766 (O) 253483 (R) 255589 (F) 255210 (M) 943715773	<b>Uttanchal High Court :</b>	
<b>Patna High Court :</b>		Sri Bipin Chandra Kandpal District Judge, 47-E.C. Road, Dehradun (Uttanchal) - 248001	0135- (R) 2656932 (O) 2623781 (F) 2623781
Sri Sayed Mohamad Mahfooz Alam District & Sessions Judge Presently Secretary, Bihar Legislative Council, Patna	0612 (O) 2224667 (R) 2282562	Sri Vimal Kumar Jain District Judge, Civil Court Roshnabad, Haridwar (U.P.) PIN-249401	01334- (R) 239054 (O) 239700 (F) 239700



## SCHEDULE OF TRAINING ACTIVITIES AT NJA

**FEBRUARY - JULY, 2004**

27 FEB - 2 MARCH	-	CONSULTATION MEETING WITH STATE JUDICIAL ACADEMIES ON STANDARDISING INDUCTION TRAINING CURRICULUM
29 FEB - 1 MARCH	-	CONSULTATION MEETING FOR DEVELOPING TRAINING MODULES ON GENDER & JUDICIARY IN ASSOCIATION WITH NATIONAL COMMISSION FOR WOMEN.
2 APRIL - 11 APRIL	-	FIRST ADVANCED COURSE ON CIVIL JUSTICE ADMINISTRATION INCLUDING ADR FOR DISTRICT JUDGES.
7 MAY - 9 MAY	-	NATIONAL SEMINAR ON "ACCESS TO JUSTICE"
10 MAY - 16 MAY	-	REFRESHER COURSE ON CONSTITUTIONAL LAW AND ADJUDICATION IN SUPERIOR COURTS.
1 JULY - 3 JULY	-	JUDICIAL COLLOQUIUM ON ROLE OF COURTS IN PROTECTION OF INTELLECTUAL PROPERTY RIGHTS- IN ASSOCIATION WITH NAAP AND HRD MINISTRY.

The National Judicial Academy will announce its training programmes on half-yearly basis and intimate the High Courts for nomination of suitable judges in advance for participation in different courses. It is the policy of the Academy to send the study materials and programme details to the participants one month ahead of the course. It would facilitate the organization and help the participation if High Courts decide on participants for all the activities scheduled for a six months period at the same time. The schedule is so arranged as to permit least disruption of the functioning of courts.

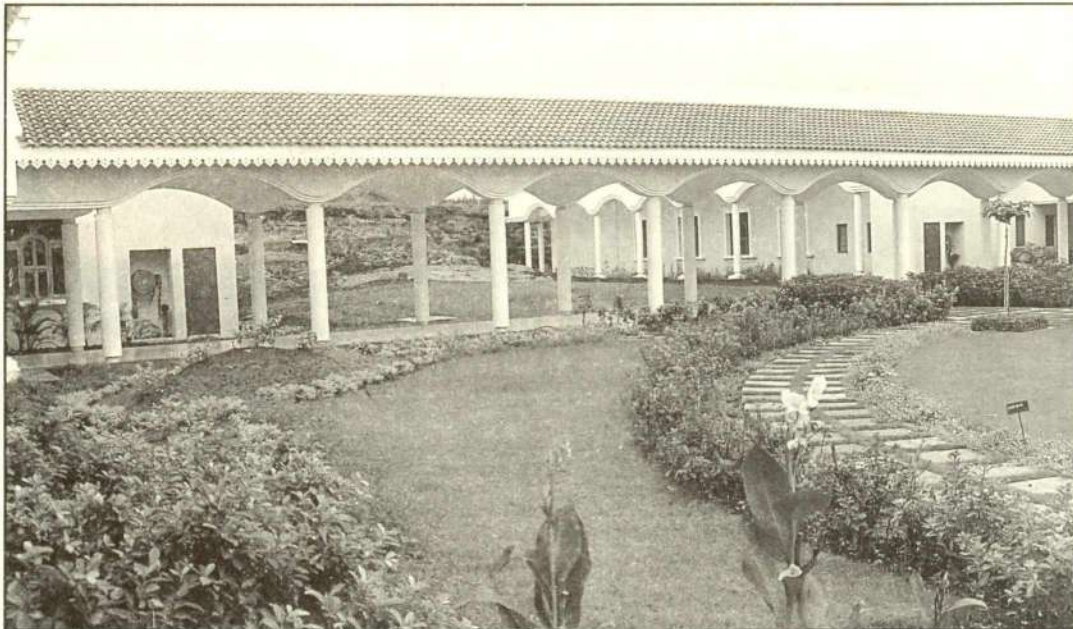
**For others details contact Director, NJA at 0755-2696766**

## GLIMPSES OF NJA CAMPUS





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# National Judicial Academy Governing Council

Hon'ble Mr. Justice V.N. Khare, Chief Justice of India	Chairman
Hon'ble Mr. Justice S. Rajendra Babu, Judge, Supreme Court	Member
Hon'ble Mr. Justice R.C. Lahoti, Judge, Supreme Court	Member
Mr. N. Gopalaswamy, Secretary Dept. of Justice, Govt. of India	Member
Mr. R.L. Meena, Secretary Dept. of Law, Govt. of India	Member
Mr. D.C. Gupta, Secretary Dept. of Expenditure, Govt. of India	Member
Mr. J.C.S. Rawat Registrar General, Supreme Court	Member Secretary

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Hon'ble Mr. Justice R.C. Lahoti  
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Hon'ble Mr. Justice R.C. Lahoti

**Prof. (Dr.) N.R. Madhava Menon**  
Director

**Mr. R.C. Mishra**  
Registrar

## **National Judicial Academy**

Conceived in early 1990s by the Supreme Court of India, the NJA had to wait nearly a decade to get its infrastructure in place. On September 5, 2002 the President of India formally dedicated to the Nation the beautiful, sprawling complex spread over in a 70 acre campus overlooking the Upper Lake at Bhopal. The President on the occasion propounded a Second Vision for the Republic in which a new and dynamic role for the judiciary was envisaged with a view to make India a developed country by 2020. "This Academy", he said, "may aim at developing necessary attitudinal changes to improve judicial integrity and efficiencies". NJA is now ready to commence that rather challenging journey towards achieving higher standards of excellence in the delivery of justice through human resource development and techno-managerial upgradation.

Registered as a Society under the Societies Registration Act in 1993, the NJA is managed by a Governing Council presided over by the Chief Justice of India. The Governing Council consists of two seniormost Judges of the Supreme Court and three Secretaries to Government of India from the Ministries of Law, Home and Finance with Registrar General of Supreme Court as Member Secretary. A distinguished law professor who founded the National Law School at Bangalore and also the National University of Juridical Sciences at Kolkata has taken over as the first Director of NJA in October 2003.

The mandate of the Academy under the Memorandum of the society includes the following objects :

- (i) establish a center of excellence in the study, research and training of court management and administration of justice and to suggest improvements to the judicial system;
- (ii) provide training and continuing legal education to judicial officers and ministerial officers of the Courts; and
- (iii) disseminate information relating to judicial administration, publish research papers, books, monographs, journals etc. and collaborate with other institutions both within the country and abroad.

With the support and guidance of the Supreme Court and High Courts, NJA has launched an ambitious plan of research, education and training activities to give the judiciary the required, intellectual inputs and technical know-how for better performance of its functions in the service of a resurgent India.