

Winter 2011

MESSAGE FROM THE EDITOR



Inside this issue:

Message from the editor	1
Biennial meeting of Commonwealth judicial educators, April 24-27, 2012 Poster	2
The Right Honourable Sir Dennis Byron appointed as the new president of the Caribbean Court of Justice	3
The imperatives of living by our Constitution Honourable Dr. Justice Willy Mutunga, SC	4
Sri Lanka welcomes its first woman Chief Justice Mrs. Justice Chandra Ekanayake	9
Pakistan Federal Judicial Academy, Islamabad Parvaiz Ali Chawla	10
Indian Supreme Court gets its fifth woman Judge Dr. Shalini S. Phansalkar-Joshi	13
Sesquicentennial celebration of Bombay High Court Dr. Shalini S. Phansalkar-Joshi	13
Need-based judicial education in tribal regions Chief Justice Madan Lokur	14
Restatement of Indian law Professor N.R. Madhava Menon	17
Activities of the Delhi judicial academy (January 2011- December 2011) Anu Malhotra	20
Upcoming events	24
Obituary	24
Contact us	24

Technology-enabled distance learning is becoming increasingly popular with adult learners not only in formal university education but also with professionals seeking on-the-job education and training. It is cost-effective, learner-centred and adaptable to different situations and contexts. The Delhi experiment with CJJI support (reported elsewhere in this issue) is worth emulating by judicial academies particularly in countries where resources are scarce and demands are many.

Court culture and the role of management practices in judicial administration are discussed by two sitting justices making interesting points often not noticed by members of the Bench.

The Indian Law Institute under the guidance of Supreme Court justices has come out with three publications – Public Interest Litigation, Contempt of Court and Legislative Privileges – in a new initiative called Restatement of Laws with a view to consolidate and update the law in an easily accessible format and at a modest price. The expectation is that it will speed up judicial proceedings by avoiding possible confusion when lawyers argue on conflicting interpretations and apparent uncertainties favourable to their side. More importantly, it will be an additional tool for judicial and lawyer education on issues which are not yet codified.

Finally, it is gratifying to note that the CJJI Report is gaining wide readership in judicial circles across the Commonwealth promoting fraternity and understanding for better justice delivery. While thanking our contributors and readers, we would welcome more contributions from judges and judicial educators to enrich the content of future issues. Look forward to seeing you in the Seychelles at the Biennial Meeting ±

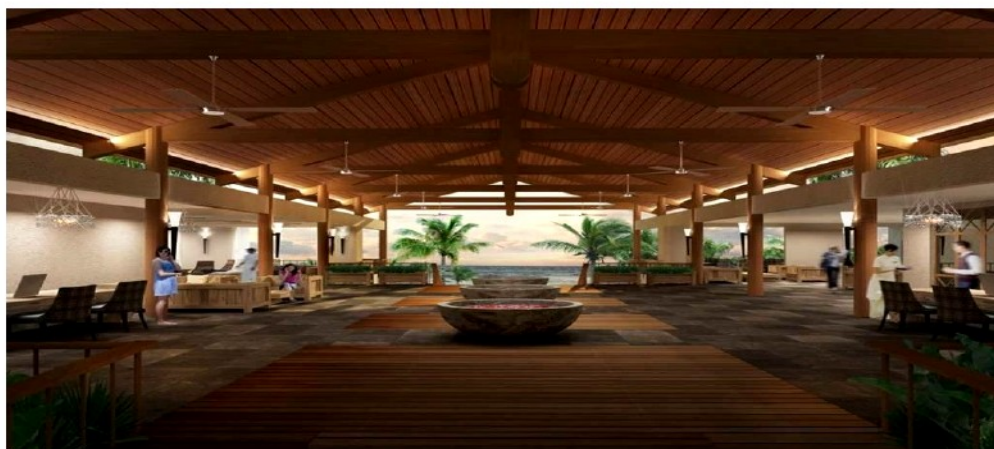
Professor N.R. Madhava Menon



***Biennial Meeting of Commonwealth Judicial Educators
April 24 – 27, 2012
Kempinski Seychelles Resort Baie Lazare
Mahé, Seychelles***

***Theme: Designing and Delivering Judicial Education Programmes
to respond to Contemporary Needs***

Topics include: *New Developments in Teaching Judicial Skills; Developing Education Programmes in Management Skills for Chief Justices and Administrative Judges; Judicial Techniques in Protecting Minority Rights – Constitutional Charter of Rights versus Statutes and Common Law – Definition of Rights; Judicial Remedies in Protecting Minority Rights in a Democracy; Piracy; Recent Developments in Electronic and other Teaching Tools; Problems and Solutions in establishing and running Commonwealth Judicial Education Bodies; Measuring your Impact – Evaluation of Judicial Education Programming; New Developments in Experiential Learning; Teaching diverse Judicial Skills for Conflict Resolution; Successful Case Flow Management for Small Jurisdictions; and Developing Programming on Urgent Social Issues, i.e. Environment, Human Trafficking.*



Kempinski Seychelles Resort Baie Lazare

For more information, please contact CJEI at
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THE RIGHT HONOURABLE SIR DENNIS BYRON APPOINTED AS THE NEW PRESIDENT OF THE CARIBBEAN COURT OF JUSTICE

The Right Honourable Sir Charles Michael Dennis Byron took the oath of office as President of the Caribbean Court of Justice (CCJ) on Thursday 1 September 2011, at Government House, Basseterre, St. Christopher (St. Kitts) & Nevis.

The programme for Sir Dennis' installation as President began with an invocation by Reverend Dr. Wycherly Gumbs, Superintendent Minister of the St. Kitts Circuit of the Methodist Church of the Caribbean and the Americas. This was followed by a "Passing the Mantle" feature, as the assembly was addressed by the Right Honourable Mr. Justice Michael de la Bastide, retired first President of the CCJ, who formally said goodbye to the Presidency of the Court and passed the gavel to Sir Dennis.

Mr. Justice de la Bastide's address was followed by greetings from the Honourable Dr. Denzil Llewellyn Douglas, Prime Minister of the Federation of St. Kitts & Nevis, in which he expressed the pride and satisfaction of the islands in seeing a son of the soil elevated to the Presidency of the CCJ.

The Honourable Mr. Justice Saunders, Judge of the CCJ, and himself a former Chief Justice of the Eastern Caribbean Supreme Court, next took centre stage to introduce the President-



Designate. This was followed by the solemn taking of the oath of office by Sir Dennis. The oath was administered by His Excellency Sir Cuthbert Sebastien, Governor-General of St. Christopher & Nevis.

This having been completed, Mr. Paula Pierre, Registrar and Chief Marshal of the CCJ, then presented Sir Dennis with the Seal of the Court, the symbol of its authority. The final formal part of the proceedings was an address by the new President of the CCJ.

All the formalities having been completed, His Excellency the Governor General hosted a reception for all guests. ±

THE IMPERATIVES OF LIVING BY OUR CONSTITUTION

by **Honourable Dr. Justice Willy Mutunga, SC**
Chief Justice and President, Supreme Court of Kenya



Mr. President, Mr. Prime Minister, Mr. Speaker, Mr. Vice-President, the Chair and Members of the AU Panel of Eminent Persons, retired presidents, friends, colleagues fellow citizens, it is an honour to have received invitation to address you today particularly on an issue no less important than that of 'Living By Our Constitution'. I want to thank Dr. Kofi Annan and his Panel both for their courageous and selfless service to this nation at a difficult time, and also for hosting this Conference to enable us as a country to reflect and look into the future.

There is an influential section of legal scholarship that has made the argument that, the crisis of governance in contemporary Africa, has been a deadly combination of bad Constitutions, often imposed and subsequently serially amended to create imperial presidencies, on the one hand, and an absence of constitutionalism - the absence of a culture to obey and respect rules, on the other. Coupled with bad leadership, and general institutional malaise, the transition to democracy has been inchoate, dominated by reversals at every stage. The result: a tortured population inhibited from realizing its full potential; an institutional culture of timidity, even where no threats exist; and a society and politics characterized by violence, fragility and instability. The economic, political, and human costs have been incalculable. Hence the reason we must not be blithe and casual in our treatment of constitutional texts, once freely enacted, after years of struggle and sacrifice.

There is no doubt that Kenya has a very progressive Constitution. It is long not just in size but also in aspirations - an ambition of a nation codified and expressed in very clear accents. And it was also long in coming, itself a denotation or proof of the importance of this social contract. But we will only live it if we understand it; only if we embrace it; and only if we respect it. As leaders and citizens, these are the three simple tests we must meet in order to breathe life into this Constitution.

For those who may be tempted to bear the illusion that Constitutions are mere pieces of

officers take office, whether in the Executive, Legislature, or Judiciary, or even in other independent constitutional offices, they are required to take an oath as prescribed in the Constitution. If it did escape your attention before, now it must not: whereas those oaths bear different textual forms, there is always a common refrain: 'to protect, defend and uphold the Constitution and other laws'. The meaning of this ubiquitous line is direct: all state officers are creations of the Constitution and the law. Its implication is plain and simple: in the words of a philosopher who was here long before us - be ye so high, the law is above you. Its political and philosophical foundations very clear: the Constitution is a social contract among citizens and once leaders are elected or appointed into office they are sworn and bound to respect this contract.

Citizens and leaders of this country must internalize and understand why the assumption of high office is preceded by the taking of an oath that constantly binds them to act in accordance with and defend the provisions of the Constitution. Understanding the import of this basic act is the beginning of living our Constitution. Any leader who doesn't is unfit to be in office. Any citizen who hasn't is failing the test of good citizenship. Strict compliance with the Constitution and the law is so important that it forms the *first ground* for impeachment of the president.

But this law that is above all of us, and which we must do our duty to obey, is not an imposition. It is a product of popular will and consent to be ruled by its edict. The excitement and good spirit of this Conference today, may very easily obscure or conceal its tragic origins. These series of dialogues are an expression of institutional failure. It is because of a failed electoral system, a failed judiciary, a failed police force, and a general failure of the state in 2007/2008 that provided the basis for this and other consultations before it. Restoring confidence and faith in our institutions is part of living our Constitution. It is the small things that we do as institutions and citizens that begin the process of building confidence.

The promulgation of the Constitution on 27th August, 2010, was a historic moment in our country. The Constitution was a culmination of the work of a lifetime for most people in this gathering and many other Kenyans not at this meeting. It may also stand out in history as the singular achievement of Kenyans in this time. Needless to say, many Kenyan persons paid for the achievement of this constitutional dispensation with their tears, blood, and sweat. Lives and personal liberty were lost, friendships were strained, and families were shattered. It is all too easy to forget these heavy prices paid by our compatriots. In short, we need to remember that the consideration for this Social Contract that is Kenya's Constitution was the highest possible price the citizens could have paid for it.

For that reason, the taking of effect of this Constitution is an achievement of a once far-off dream. Yet, my concern is that there appears not to have been a proper appreciation of the essence of this Constitution after its promulgation. From the statements, actions, inactions and perfidy that is evident among some citizens, some authorities and persons are signals of another reversal.

In our democratic transition that has been the bane of most African countries is becoming evident. Some of these actions are by default; others are by design but the category does not matter for their cumulative effect is the same. I have come to the inescapable conclusion that there are Kenyans at all levels who are yet to make the mental shift to the national and individual conduct that the Constitution heralds.

It is depressing that one year after the promulgation of the Constitution, the country falls in the corruption index, we still hear of extrajudicial killings, institutions and leaders play fast and loose with constitutional deadlines and so on. Constitutional provisions are there to be obeyed and any public or state official who finds certain clauses administratively inconvenient must be reminded that vacation of office is a honorable option if one no longer feels capable of honoring his or her oath of office to protect, defend and uphold the Constitution.

There is discernible stone-walling by certain sections of this country to the establishment of the institutions that are required to be formed, deliberate disregard to the rights of the citizens, and utter refusal to incorporate its principles in the instruments of governance.

My response is this: living by the Constitution of Kenya is not a choice for any individual, institution, office or authority. All Kenyans must comply and live within the edicts of the Constitution.

Compliance with the Constitution is not about picking those that afford us our desired rights and ignoring our responsibilities therein. It is not an all or nothing situation. Kenya must comply with the whole Constitution all the time and in every office. From the tiniest hut to the State House, this Constitution must apply, to the lowliest hawker no less than it will apply to the corporate titan, to the governor no less than the governed. That is what the rule of law means. It is what equality before the law requires.

I do not underestimate the difficulty of living by this Constitution. Yet, the rule of law is not for the faint-hearted. There is not time or opportunity to implement the Constitution in half-measures. We cannot live only with our likes and ignore your dislikes. This is particularly true in light of the fact that it may be possible that there are certain

clauses that may be more appealing to us than others. For those of us within the arms of Government, we must remember that we are under obligation to abide by the whole Constitution not individual clauses.

We must foster the realization in all that this Constitution is for all Kenyans. That is why its destiny has been placed upon all of us. It has placed responsibilities to ensure its implementation on all. No one is immune from the duty to uphold the Constitution. In short, we must be each other's keeper in ensuring that the Constitution is lived to its fullest.

Therefore, living by this Constitution means that we must do what it requires to be done, when it is required it to be done whatever the cost in finance, in effort and in personal convenience. Secondly, we must reconstitute, reform and dismantle those institutions and offices it compels us to. Public participation is one of the fundamental principles in the new Constitution. It runs the entire gamut of the document. Citizen vigilance is important in protecting and promoting our Constitution.

But the public should not merely demand of their leaders to respect the Constitution, they must also live by its edicts. It worries me when I see daily individual transgression where citizens routinely violate the rights of other citizens. Living the Constitution is not a preserve of the leadership; it is an obligation that reposes in the citizen as well. In your daily conduct, in your relationship with other Kenyans, in exercising your right to choose leaders you have a responsibility in giving life to the Constitution.

If you choose to elect a leader who fails the test of Chapter Six, you will be as guilty of undermining the Constitution as a leader who thinks that ignoring court orders is an act of nobility. Choosing to support extrajudicial killings, as opposed to submitting to due process, amounts to killing the Constitution. In choosing the path of electoral violence, instead of a free, fair, and peaceful electoral process is to subvert the Constitution. In choosing to play ethnic politics, instead of patriotic politics contributes to the killing of the Constitution. Fellow citizens, we have made a contract with ourselves; let us perform it.

The Constitution is the performance contract we have signed among us as citizens as well as between citizens and the governed. Every single day, we must ask whether we are hitting our constitutional targets in this performance contracting.

The business community must learn that it is in its long term interest to have a constitution that works, and a country that respect the rule of law. The effort it put in the referendum after years of mistaken belief that the constitution was not its business will be wasted if it does not pay attention to the implementation of the constitution. I also want to recognize the immense contribution of the international community to the struggle for the new constitution. They provided significant resources and support at critical stages and still have a responsibility to continue supporting this country in building its democracy.

The Judiciary will play its role as mandated by the Constitution. As I said in my statement during the inaugural sitting of the Supreme Court, we shall not blink or flinch in interpreting the Constitution and also remaining true to the oath of office we took. The Constitution has radically changed the way the Judiciary is organized and operates. Every day we are doing our part to live by the Constitution. That is why we have embarked on an ambitious transformation framework for a functional judiciary which is a major determinant for good politics and good business. For the security of tenure you have given us, the judiciary must and will show its independence. We shall not hesitate to act as long as we are doing so within the confines of the law. It is a commitment I want to give to the country: that when it comes to upholding and protecting the Constitution, the Judiciary will not be for turning.

To the two Principals, I have this to say: you have made your own sacrifices to have this Constitution. I remember your struggles on the trenches for a better Kenya and a new Constitution. I particularly recall your participation in the National Convention Executive Council and the mass action of 1997. It is a good thing that you have ascended to high office. However, I hope that you appreciate that the biggest legacy that you will leave for this country is not so much the fact that you ascended to power but that you facilitated the delivery of a new Constitution and defended it when it was under attack. To fail to protect this Constitution will be a betrayal of your own struggles; a betrayal of your own oaths of office, and a betrayal of the struggles and aspirations of the many Kenyans. Fellow Kenyans, we must all go back and read the Constitution. Each institution must go back and read the Constitution and systematically understand what it means for their work. Living by our Constitution demands that we learn and know its contents not through some remote imbibing or 'I hear the Constitution says' type of discussions - it means taking individual responsibility to read and obey it. Thank You. ±

This speech was delivered at the Kenya National Dialogue Conference in Nairobi on 5 December 2011. Reproduced with permission from the Chief Justice's office .

SRI LANKA WELCOMES ITS FIRST WOMAN CHIEF JUSTICE



Dr. Shirani Anshumala Bandaranayake obtained her Degree of Bachelor of Laws with second class honours in the upper division becoming first in the order of merit in 1980 from the Faculty of Law, University of Colombo. Dr. Bandaranayake was awarded the Degree of Master of Philosophy from the University of Colombo in 1983 and in the same year she was enrolled as an Attorney at Law of the Supreme Court of Sri Lanka. In 1986 she obtained the Degree of Doctor of Philosophy from the University of London.

Dr. Bandaranayake is a recipient of several scholarships and awards. She was awarded the Commonwealth Open Scholarship in 1983, the Chevening Scholarship in 1989, Fulbright-Hays Fellowship in 1996 and the British Council Asser Award in 1993 and 1994. The Zonta club awarded the Woman of Achievement Award in the field of Law to Dr. Bandaranayake in 1998 and the District 306 C of the International Lions Club made an Award to her in 2004. The Independent Television Network had made an award to Dr. Bandaranayake on account of the International Women's Day in March 2007.

Dr. Bandaranayake has written several Articles and Monographs and has presented several papers in the field of Public Law. Dr. Bandaranayake commenced her career as a visiting lecturer attached to the Faculty of Law, University of Colombo in 1981 and after holding the positions of Assistant Lecturer and Senior Lecturer, became the Head of the Department of Law in 1987. After serving several stints as the Acting Dean of the Faculty of Law, she became the Dean of the Faculty in 1992. Dr. Bandaranayake has also held the position of Acting Vice Chancellor of the University of Colombo on several occasions. She became an Associate Professor of Law on merit in 1993. Dr. Bandaranayake has served as a member of several Committees of the University of Colombo and other Universities and has also functioned as a member of the Human Rights Task Force, the Council of Legal Education and the Law Commission of Sri Lanka.

After serving the University of Colombo for over 16 years, Dr. Bandaranayake was appointed as a Judge of the Supreme Court in October 1996, at a time when she was functioning as the Associate Professor of Law and the Faculty of Law of the University of Colombo. Since joining the Judiciary, she has functioned as a member of the Judges Institute and the Judicial Service Commission. Dr. Bandaranayake has served as the Acting Chief Justice 11 times. She is the first woman Judge to be appointed to the Supreme Court of Sri Lanka in which capacity she has served in for over 14 years. Dr. Bandaranayake became the first woman Chief Justice of Sri Lanka in May 2011, making her the 43rd Chief Justice of The Republic of Sri Lanka. ±

By Mrs. Justice Chandra Ekanayake
Supreme Court of Sri Lanka
(CJEI Fellow 2011)



PAKISTAN FEDERAL JUDICIAL ACADEMY, ISLAMABAD



by *Parvaiz Ali Chawla*

Director General Federal Judicial Academy
(CJEI Fellow 2010)

In 1988, the Government of Pakistan established the Federal Judicial Academy (FJA) through a resolution dated 14th September 1988. In 1997, the Federal Judicial Academy Act was passed by the Parliament of Pakistan and the Academy was given the status of a body corporate with its own seal and perpetual succession. However, the Board of Governors remained a judiciary controlled body to maintain its independent status. It is so, because, the judiciary is the best judge of its own training and educational needs.

The aims and objects of the Academy were defined as under:

1. Orientation and training of new judges, magistrates, law officers and court personnel;
2. Publishing of journals, memoirs, research papers and reports, etc.

The Academy is being run by its Board of Governors, headed by the Chief Justice of Pakistan, while Chief Justices of all the four High Courts, the Federal Law Minister, the Federal Law Secretary, the Attorney-General for Pakistan and the Director General of FJA are its members.

The faculty was appointed by the Board of Gover-

nors, consisting of district and sessions judges. For technical subjects, outsourcing was always used to bring the best and quality trainers for the Academy.

The emerging paradigm shift in its working

The independent status given to the Academy helped in improving the working of the Academy. The improvement in the working was evident from the fact that the Academy prepared its curriculum in the year 2002 and also conducted the first of its kind Training Needs Assessment (TNA) for the judiciary. The ICEE (Integrity, Competence, Efficiency, Effectiveness), approach was adopted by the Academy, in this regard, for improvement of justice delivery in a qualitative manner. In 2009-10, under the leadership of Hon'ble Chief Justice of Pakistan Mr. Justice Iftikhar Muhammad Chaudhry, the Academy took another vital step towards improvement in its working by issuing its first ever Annual Calendar, whereby the programs were defined, having measurable objectives.

The Academy has conducted 175 training programs for judicial officers, since its inception. From July, 2009 to September, 2011, 50 training programs were organized and conducted wherein more than 1150 trainees of various categories incl-



uding 200 lawyers of District Bar Association Rawalpindi, were imparted training. In a nutshell, the thrust of the last two years' programs was on implementation of National Judicial Policy, 2009. It is apt to mention here that the role of Academy has expanded and now it is going to take up soon, after the approval of uniform service rules for promotion of judges, linked with compulsory training at the Federal Judicial Academy.

It has been finally decided that the FJA will concentrate on in-service training, while the provincial judicial academies will cater the needs of pre-service training programs for judges, magistrates, law officers and court personnel. It has also been decided that the Academy will provide training to judges and magistrates for their promotion to next ranks.

Proposed departments

Since the Academy is mostly focusing its activities to the judges and magistrates, other human resources of justice sector such as law officers and court personnel are not given due share in training and education. Hence, it has been decided that there must be independent departments in the Academy that can cater for needs of every category of trainees provided in the FJA Act, 1997. Therefore, six departments have been proposed in the new structure that will be built in the Academy. These departments are:

1. Department for Judicial Training and Education (for judges and magistrates)
2. Department for Prosecutors, Public Defenders and Law Officers training and education (for law officers)
3. Department for Court Administrators and Court Personnel Training and Education (for court personnel)
4. Department of Research, Curriculum Development, Publication and Linkages;
5. Department of Seminars, Conferences, Workshops and Symposia
6. Department of Information and Court Technology

The departments proposed will provide concentrated judicial education plans for their own target groups, using modern teaching tools. The Judicial Education Policy can be prepared to further enhance the focus of training for any particular year.

The facilities in the new campus

The Phase II will be having an extended hostel, suites for faculty members, state of the art computer labs, class rooms, mock trial rooms and big judicial law library. It will also cater for the needs of electronic resources. The Computer labs will meet the needs of 21st century to provide the backbone to the district judiciary for training facilities in IT and through online educational programs. The audio visual rooms have been proposed to have facilities for creating judicial education movies, CD ROMs, audios and other online data for trainees. The façade of the building is designed having Pothohar touch, which is environmental

Continued on page 19

INDIAN SUPREME COURT GETS ITS FIFTH WOMAN JUDGE



Mrs. Ranjana Desai is now appointed as the Judge of the Supreme Court of India after distinguished career as Judge of Bombay High Court for 15 years and before that as eminent Lawyer and Public Prosecutor for 22 years. She is only the fifth woman Judge in the history of Supreme Court of India and with her elevation the count of women Judges in the Supreme Court of India rises to two. She has delivered various landmark decisions and orders on issues relating to women, environment, conditions in jails, civic affairs, etc. and recently upheld the death penalty of 26/11 terrorist convict Ajmal Kasab. Known as a sensitive and balanced Judge, she is expected to infuse a new gender prospective and dimension in the work-culture and justice delivery system during her tenure, which continues up

to October 2014.±

SESQUICENTENNIAL CELEBRATION OF BOMBAY HIGH COURT

On 14 August 2011 the Bombay High Court, which is one of the premier High Court, established under Letters Patents Act on 14 August 1862, entered into a new chapter into its own history by celebrating inaugural of sesquicentennial ceremony. Since its inception Bombay High Court has been a continuous saga of glory and history. Just exactly 149 years ago, this Court was started with a mere solemn declaration by seven Judges and has now the strength of 75 Judges and lakhs of cases to be handled, enjoying Civil, Criminal, Maritime, Original, Appellate, Revision, Writ - all types of jurisdiction and has two more Benches and further exercising jurisdiction over the State of Goa also.

In this simple but solemn ceremony the Bombay High Court not only celebrated its past achievements but also reaffirmed its commitment to the cause of justice. Gathered for the historic event were 8 Judges of the Supreme Court of India, elevated from the Bombay High Court, present and former Judges of Supreme Court and High Court. Speaking on the occasion Honourable Chief Justice of India Shri. S.H. Kapadia remarked “Judicial Integrity will always be above Judicial Independence”.

As expressed by Shri. Goolam E. Vahanvaty, Attorney General of India, “Once you have practiced here you fall in love with it. It is one love affair which is forever.” ±



By Dr. Shalini S. Phansalkar-Joshi
Joint Director, Maharashtra Judicial Academy, India
(CJ E I F e l l o w 2 0 1 1)

NEED-BASED JUDICIAL EDUCATION IN TRIBAL REGIONS

By Chief Justice Madan Lokur
Gauhati High Court, India
(CJEI Fellow 2008)



The North East Region (NER) in India consists of seven States, the largest in population and area being the State of Assam. The remaining six States are comparatively smaller in size and also thinly populated. I would like to share my experiences in introducing judicial education in two of these States – Manipur and Mizoram.

Manipur has a population of about 2.7 million and a density of 122 per sq. km. The State is shaped like a plate and a majority of the people lives in the “valley”. Since the area of the State is not very large, access to the valley from any part of Manipur is relatively easy. There is a problem of insurgency in the State and almost all judicial officers live in the capital city of Imphal, in the heart of the valley. The total number of judicial officers in the State is about 30.

Mizoram has a population of about 1.09 million with a density of 52 per sq. km. The terrain is mostly hilly, and I would be quite surprised if I came across any part of Mizoram that was plain. Access is, therefore, a bit of a problem although it is not very difficult to reach the capital city of Aizawl, except perhaps from one or two towns. The people of the State take pride (and rightly so) in calling their State the most peaceful in the country. The total number of judicial officers in the State is also about 30, the same as in Manipur.

I have made this lengthy comparison only because Manipur and Mizoram pose very different challenges and in the Commonwealth, there would be quite a few countries having issues (other than insurgency) similar to Manipur or Mizoram. Sharing my experiences in setting up judicial education programmes in these two States would, therefore, facilitate readers facing similar challenges in their jurisdiction in structuring an appropriate response to setting up judicial education programmes.

The first issue of significance given the topography of the region is the location of the training. A cost-effective method was evolved which focussed on State-specific judicial education programmes for the judicial officers of Manipur and Mizoram by getting them to a close central location and getting a resource person or judicial educator to that location. This alternative did not pose any logistical or financial problem and was the most convenient.

The second issue is the content of the programmes. I have had several discussions with judicial officers of both States, at different times, to assess their requirements for holding judicial education programmes. Interestingly, the needs assessment resulted in my discovering that judicial officers in Manipur were more interested in programmes of substantive law, while judicial officers in Mizoram were keen on issues of procedure. This was an important lesson.

Programmes have to be designed to suit the needs of the participants. It would be advisable, therefore, to have a needs assessment for determining the programmes necessary for judicial officers, rather than to have a top down approach of what the academy thinks is best for them.

The third issue which really came out of discussions with judicial officers was the necessity of preparing a long-term calendar of programmes. This was a collateral advantage of the discussions. It gave an opportunity to schedule programmes on convenient dates, taking into account local festivals and other local factors, including the weather.

The preparation of a long-term calendar gives flexibility in scheduling programmes depending on the availability of judicial educators. I have had occasions, though not too many, when a judicial educator having a prior commitment is not available for a programme as fixed in the calendar. But since the calendar is a long-term one (for six months in the first instance) necessary adjustments could easily be made well in time, without changing the dates and inconveniencing the participating judicial officers. In other words, though all dates remained fixed, particular programmes were shifted to a more suitable date depending on the availability of the judicial educator. To avoid uncertainties, we have decided on a long-term schedule of programmes so that Plan B is readily available.

The fourth issue is the venue of the judicial education programme. Are you looking at an “education” programme or are you looking at improving justice delivery, or both? It is necessary to be sure about the goal that you are trying to achieve otherwise the participants may be left groping in the dark and wondering why they were called for the programme.

My experience has been that a programme designed only to “educate” judicial officers is best conducted in a business-like environment, something like a small conference or a meeting room. This sets the tone for the day and indeed for the programme. Yes, the judicial officers would still be wearing their thinking caps, but would not be using them as much as the judicial educator would be using his or her cap. This is because they would be at the receiving end, as it were.

However, a judicial education programme intended to educate the participants in improving justice delivery (a programme on case management, for example or a programme on an exchange of views for systemic changes) is best conducted in a totally informal setting. I would love to have such a programme conducted outdoors since it creates an air of informality for a free, frank and critical exchange of ideas. It is difficult to overemphasize, but the ambience and setting of a judicial education programme has a lot to do with its success.

The fifth and final issue is getting the right judicial educator. This is one area where experimentation can be fraught with danger. Having an “untrained” judicial educator is about as perilous as having an untrained family counselor. Your judicial officers need the best and you should give them the best – there cannot be any compromise on this.

I have had long discussions with resource persons with little or no experience in judicial education. The purpose of these discussions has been to make them appreciate the goals and objectives of the programme. Therefore, even though they were first-timers and, therefore, not “trained” judicial educators, since they were experts in their field, they knew what goods to deliver, and the discussions made them sufficiently conversant with how to deliver the goods. This is important, since judges sometimes tend to be like Google – they know everything there is to know. The judicial educator must, therefore, not only be an expert in his or her field, but must be able to command respect from all judicial officers. In this regard, one tends to live and learn – there is no way you can get it right every time, but it is wise to be circumspect and err on the side of caution. Inviting the right judicial educator is perhaps more important than anything else.

As you can well imagine, judicial education is serious business. We still have a lot to learn how to go about it in the best possible way. I have learnt a lot through the CJ E I and through experience. Sharing ideas and knowledge on judicial education cannot but be for the betterment of society and justice delivery. ±

RESTATEMENT OF INDIAN LAW



by *Professor N.R. Madhava Menon*
Former Director
National Judicial Academy, India

One of the reasons for popular dissatisfaction with the administration of justice is the uncertainty of law which results sometimes in the miscarriage of justice. The multiplicity of interpretations, the inadequacies of legislative drafting, ambiguities in policies and the variety of languages in which transactions are made add to the confusion and make repeated litigation inevitable. The use of simple English is now being canvassed in Common Law countries for legislative drafting and legal documentation. In the United States, complex and ambiguous laws have been simplified, codified and re-stated by the American Law Institute for the convenience of the legal community and the litigant public. In India, the problem remained alienating the people from the Law itself and providing heyday for litigants and their advocates often to delay and manipulate the process to their advantage. Rule of law and access to justice have been in jeopardy in the circumstance.

On 11 October 2011 at New Delhi the Chief Justice of India, Mr. S.H. Kapadia released three Restatement volumes on three different legal subjects prepared by a committee headed by senior Supreme Court Judge, Mr. Justice R.V. Raveendran and published by the Indian Law Institute. The volumes are on various themes which have long been discussed in the public domain without any clarity or certainty as to where the law stands for guidance of the people who are supposed to know it in any case.

The Restatement Series which the Indian Supreme Court started included Legislative Privileges, Contempt of Court and Public Interest Litigation. The event marked a quiet revolution in the simplification, clarification, consolidation and dissemination of the law authoritatively. It is all the more significant to note that the project was initiated without any public funding and through the voluntary contribution of time and expertise by the contributors, consultants, editors and publishers. Even the printers and distributors have agreed to price the publications in public interest at the bare cost of paper, ink and printing. Soon it may be available free in digital form as well.

According to Mr. Justice Raveendran, Restatement is intended to be an authoritative neutral statement of the law on the subject, identifying and removing uncertainties and ambiguities surrounding the legal

principles and clarifying the current law for its better adaptation to the needs of the society. The method adopted to produce the Restatements is not the usual method of writing books or drafting documents. The Restatement Committee deliberated on the choice of subject from the point of public interest, the legal doctrines and principles involved, the issues that deserve clarification, the uncertainties or ambiguities to be removed and the structure of presentation to serve the multiple consumers of the relevant Indian law. Care was taken to avoid views and opinions on what the law ought to be and to make the propositions purely based on statutes and judicial pronouncements so that the Restatement is an authoritative reproduction of current law which can be acted upon by lawyers and judges whenever differing judgments from different jurisdictions offer diverse interpretations on the same issue. In that sense, it can save judicial time and expedite disposal of cases. Lawyers may not have to carry or cite multiple decisions or run the risk of overlooking judgments; nor judges be afraid of being misguided by overruled propositions or amended statutory provisions.

The process of preparing the draft of the Restatement involved two revisions first when it was sent for critical feedback among selected expert consultants and secondly when the revised text was subjected to scrutiny by the respective editorial committees consisting of judges, jurists and academics. The concern all through has been on clarity and accuracy. These Restatements are thus easily accessible, clearly understandable, non-technical statement of the current law otherwise spread into many constitutional provisions, voluminous statutory texts, innumerable judicial pronouncements sometimes conflicting and confusing. If they are translated into vernacular languages, the general public will have free access to understand the law which is fundamental for access to justice.

Congratulating the Supreme Court Project Committee and the Indian Law Institute, the Chief Justice of India announced that this ambitious project would publish Restatements on various important topics in future and Mr. Justice R.V. Raveendran would continue to be its Chairman even after his retirement from the Supreme Court. Mr. Justice Raveendran, in turn, announced a list of topics which would engage priority attention of the Committee for preparation of further Restatements in the coming years.

The law governing contempt is shrouded in mystery despite there being a statute and innumerable pronouncements of the Supreme Court clarifying its scope. Yet the common people and the journalists are uncertain about the principles involved, the scope of the statute and the constitutional limitations on contempt power. Similar is the case with privileges of elected representatives of the

Assemblies and Parliament. Such a situation in the functioning of two important institutions of governance is prejudicial to democracy and rule of law. This is what the two Restatements attempt to redeem by clarifying the current law on the subject. Of course, the law can change with changes in society and Restatements may need to be updated whenever new editions are planned. Furthermore, Restatement can never act as a substitute to professional advice if and when legal action is required. Yet they help to avoid problems and to solve problems effectively as and when they arise.

Public Interest Litigation is a legal tool invented by the Indian judiciary for giving a voice in court to those vast masses of people who would otherwise have not been able to access justice because of ignorance, incapacity and the way the system works. For that very reason it is a part of the jurisprudence of the masses which they ought to know for seeking justice. In the absence of any Statute on the subject, the law has to be articulated from judicial practice and pronouncements over the last several decades and more. This is what the Restatement on the subject has done for the lasting credit of Indian justice system.±

Continued from page 12

friendly and energy efficient. Women judges in sufficient number have now entered into the field of judicial service, therefore, facilities for females have been proposed to cater their needs, e.g., a Day Care Center will also be built. Needs of special persons are also taken care of while designing the structure of building.

Liaison in and around the globe

The Academy is in active collaboration with umpteen world renowned judicial training institutions and other organizations dealing in administration of justice for imparting the judicial training to its subjects. The prominent institutions include CJEI, NJI (Canada), Commercial Law Development Programme (CLDP), United States Patent and Trademark Office (USTPO), ILO, UNIFEM, UNDP, USAID, and British High Commission, Islamabad.

Conclusion

The FJA is an educational and training institute for justice sector. Its expansion and conversion into a “Center of Excellence” is, indeed, an investment in the future and also investment in the human resources. Of course, its impact cannot be measured in immediate terms. The output will be quality of justice administered in the courts and that is an un-measurable target in terms of its immediate impact on the society. ±

ACTIVITIES OF THE DELHI JUDICIAL ACADEMY (JANUARY 2011- DECEMBER 2011)



by *Anu Malhotra*
Special Judge CBI (Prevention of Corruption
Act Cases) Delhi, India
(CJEI Fellow 2010)

The Delhi Judicial Academy (DJA) aims to produce an ideal judicial workforce that is instilled in judicial ethics, professionally competent, socially relevant, sensitive, responsive and necessary administrative and management skills. The officers are also to be independent and accountable and are to be endowed with the constitutional vision of justice as they are guardians of people's rights. The DJA also works towards equipping officers of the Delhi Higher Judicial Service (DHJS) and Delhi Judicial Service (DJS) with

knowledge, skills, attitude and ethics that would enhance their performance as Judges. In 2011, six trainings were conducted by the DJA on:

1. In-service Refresher Courses
2. Induction Training for Officers of Delhi Judicial Service
3. Training Programme for Officers of CBI/Special Public Prosecutors of CBI
4. Training for Special Metropolitan Magistrates
5. E-Course on Judicial Ethics and Conduct
6. Refresher Training for Officers of the North-Eastern States

Orientation Courses for Officers of DHJS promoted from the Bench, Orientation Courses for Officers of the DHJS recruited from the Bar, and Orientation Training for Administrative and Ministerial Staff of the High Court and the District Courts, were also conducted as and when required.

In 2011, nineteen in-service Refresher Courses were conducted by the DJA. All these training programmes were of five and a half days duration and was offered to all the serving officers of the DHJS and DJS in batches of about 20-25. In the Refresher Courses, the foundational subjects included the Constitutional Vision of Justice, Forensic Evidence, Electronic Evidence, Judicial Ethics, Judicial Settlement, Bias Minimization besides two workshops on the DJA Draft Code of Judicial Conduct - 2011 and the Case Flow Management – Time Guidelines project.

The Judge holds appointment in trust for the benefit of society at large. He/She acts as a trustee and

is a servant of the public. The status of the judiciary as the exclusive authority to adjudicate disputes and its status of autonomy, independence and public trust reposed in it, requires that a judge uphold high ethical standards. *The objective of the Workshop on the DJA Draft Code of Judicial Conduct – 2011 was to enable officers to identify the best practices of judicial ethics by comparing the Draft Code with other National Codes of Ethics and to identify appropriate conduct for Judges.*

Just like all other public institutions, Courts are expected in modern times to deliver better services than before. A conscious effort has to be made to assess the quality of the judicial system at the interface between consumers of the judicial system and the Judge. *The objective of the workshop on Case Flow Management Time – Guidelines project was to quantify the estimated optimum workload which may be allocated to courts of special jurisdictions dependent upon the nature of cases.* The attempt was not to evaluate the quality of work of an individual Judge, nor for the detection of possible shortcomings, but pertained to an entire Court. Court dockets are ever growing. Likewise, disposal of cases is also on the rise. To a seeker of justice, however, the mere disposal of a case is insufficient. It is necessary that adjudication of a case is done in a manner that upholds and enhances the responsiveness of justice, and ensures procedural fairness of justice at each stage of the judicial process as well as equal access to justice for all.

The time required to dispose of a case from its institution varies according to various factors. Ascertainment of average time taken in disposing of cases category-wise will help to arrive at a weighted case load figure for each category on which, the case load, management of docket by Courts and consequently, the evaluation of efficiency of the Court can be based. The DJA proposes a future weighted case load study addressing both the efficiency of the processing of the case while essentially taking into account the aspect of quality outcomes. The Refresher Courses, apart from the above mentioned foundational subjects had sessions focusing on bias minimization, health, environment, new laws, best practices and practice directions, field trips, depiction of judges in films besides target group specific sessions.

A new batch of 36 Induction Trainees, newly recruited officers of the DJS commenced their one year Induction Training from 22nd February 2011. The Induction Training comprises of academic training, Field Visits, Court Placements, Village Immersion Programme and Education, Excursion Programme, with divided time



duration slots. The focus is on developing knowledge of legal provisions, procedural laws, evidentiary principles and judicial skills besides sensitization of officers to social issues. The training also includes practical training exercises like order/judgment writing through mock trial exercises. The trainees were taken for a week long Village Immersion Programme to the villages of District Alwar, Rajasthan to inculcate a 'people oriented' approach in justice administration. The program aimed at sensitizing judges to the realities and complexities of the lives of the majority population of India living in villages. The trainees were divided into six groups with one group assigned to each village for intensive study on aspects of poverty, inequality of opportunities, access of facilities to education, health, agricultural and land reforms, gender, Panchayati Raj Institutions, Crime Rate and Nature of Crime, Informal Dispute Resolution and Legal Awareness Programmes undertaken by the Legal Service Authority. The officers studied the above issues and made presentations based on the data collected through interviews.

Five training programmes for a total of 69 Judicial Officers from the States of Nagaland, Manipur, Mizoram and Meghalaya were conducted. The Training Sessions included sessions on Substantive and Procedural Laws besides visit to the E-Court, Mediation Centre and the Delhi Legal Services Authority and also Court Attachments for practical training with judicial officers in Delhi. Two Courses for a total of 50 Law Officers of the CBI/Special Public Prosecutors of the CBI were conducted to enable participants to critically examine previously acquired knowledge and to bring about attitudinal shifts to ensure responsible and sensitive prosecution. Two Induction Training Programmes for newly appointed Special Metropolitan/Municipal Magistrates were also conducted.

A pilot E-Course on Judicial Ethics and Conduct was conducted by DJA in collaboration with the Commonwealth Judicial Education Institute, Canada from 21 February–20 April 2011. The objective of this Course was to familiarize the participants to the different canons of judicial ethics both at the national and international levels, compare these principles and identify preferred canons of ethics. Completing the course work required the participants to spend 40 hours reading, watching podcasts, joining the chat-room, participating in discussions and preparing and submitting assignments.

Foreign delegations from the Nepal Judicial Academy and the Malaysian delegation of Judges led by the Chief Judge of Malaya, the Rt. Hon'ble Tan Sri Arifin Bin Zakaria, visited the Academy to learn more about the working of DJA and exchange views on training programmes, to share experiences on curriculum design, training management and research activities. A five member delegation from the Ethiopian Federal First Instance Court led by its President, Hon'ble Mr. Desaigne Berhe, visited the DJA to share experiences related to the Indian judicial practice regarding Criminal matters, Bankrupt-

cy issues and Execution of Civil Court decrees. A visit was also made by four senior Judicial Officers of Jharkhand to study the 'Best Practices' followed by Courts in Delhi.

A two day Judicial Programme for exchange of Best Practices between the Indian and American Judiciary in the Area of Intellectual Property Rights (IPR) was conducted from 10 to 11 September 2011 at the DJA. Importance of IPR to India, including Economic Health and Safety Risks of counterfeiting and privacy, copy right and trade mark infringement analysis were some of the topics deliberated upon. Hon'ble Consuelo Maria Callahan, Judge, U.S. Court of Appeal for the Ninth Circuit, led the United States delegation. On 24 April 2011, a special discourse on "Judicial Ethics and Discipline" for all the officers of the DJS and DHJS was held at the Auditorium of the Integrated complex of the DJA, National Law University, Delhi and the National Institute for Mediation and Conciliation, Dwarka, New Delhi. This discourse was addressed by Hon'ble Mr. Justice G.S. Singhvi, Judge, Supreme Court of India.

To break the monotony and to enable participants to take advantage of connecting with nature and environment, develop team spirit, bonding and leadership qualities, four three day retreats for Stress Management and Personality Development were held at Sariska, Jim Corbett National Park in Uttaranchal, Kasauli in Himachal Pradesh and Chowki Dhani in Rajasthan for the Officers of DHJS and DJS.

This year has seen an increase in the faculty strength of the DJA. Ms. Anu Malhotra DHJS, Director of the DJA (since April 2009 will return to her Court posting as Spl. Judge (CBI), Mr. Alok Agarwal, DHJS, Ms. Santosh Snehi Mann, DHJS, and Ms. Aditi Chaudhary (Additional Directors) are faculty of the DJA. Ms. Kiran Bansal and Mr. Pulastya Pramachala, Senior Officers of the DJS with the DJA till September 2011, during which they ably shaped the training programmes.

The former Ld. Chairperson Prof. (Dr.) Ved Kumari demitted office in early July 2011, having infused a fresh air of sensitivity in adjudication, by field visits and a culture of open participatory discussion at the Academy. Prof. (Dr.) M.P. Singh a renowned international expert on Constitutional and Administrative Law and former Vice-Chancellor of the West Bengal University of Juridical Sciences and former Head and Dean, Faculty of Law, Delhi and Director, Indian Law Institute, New Delhi, has taken over as Chairperson of the DJA w.e.f. December 2011 and we look forward to his continued visionary guidance in shaping judicial education for fair and responsive administration of justice.

The fusion of the academic insight into as to what the law is and its practical application through judicial input is helping nurture a culture of critical self analysis and reflection, which would result in fairer administration of justice.±

UPCOMING EVENTS

CJIE Biennial Meeting of Commonwealth Judicial Educators	April 24-27, 2012, Seychelles
International Association of Women Judges (IAWJ), 11th Biennial Conference	May 2-5, 2012, London, United Kingdom
CJIE Intensive Study Programme for Judicial Educators	June 3-22, 2012, Halifax, Ottawa and Toronto, Canada
Commonwealth Magistrates' and Judges' Association (CMJA) Triennial Conference	September 10-14, 2012, Uganda

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We are eager to share in the CJEI Report news on judicial education developments, judicial reforms, elevations, honours, or obituaries and other news related to the judiciary such as new innovations to tackle arrears and delays, strategies to improve access to justice, landmark judgments, or recent judicial education initiatives in your country.

Archive

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JUSTICE GILBERT MENSAB
QUAYE
[JUSTICE OF THE COURT OF APPEAL]

FUNERAL ARRANGEMENTS ARE AS FOLLOWS

LYING IN STATE: @ Quaye Nungua House on Fri. 24th Feb. 2012
BURIAL SERVICE: @ Quaye Nungua House on Sat. 25th Feb. 2012.
THENCE TO THE NUNGUA ROYAL MAUSOLEUM FOR INTERMENT

WIDOW: MRS. BEATRICE OHENEWAH QUAYE

CHILDREN: Alfred Nii Afotey Quaye, [A.D.B. Accra], Emmanuel Nii Laryea Quaye [London], Mrs. Dora Naa Afotey Teki Quaye Odai [Attorney Generals Dept Accra]

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