

NATIONAL JUDICIAL ACADEMY



Programme Report

National Judicial Conference for High Court Justices

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22nd – 24th September 2017

Programme Coordinator

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National Judicial Academy, Bhopal

A three days National Judicial Conference for High Court Justices was organized by the National Judicial Academy, Bhopal from 22nd – 24th September 2017

The conference for High Court justices are conceived with a view to provide a platform, for the judges to share their experiences, insights and come up with suggestions with a panel of distinguished resource persons from the judicial branch and other relevant domain experts. These conferences are designed to facilitate discussions on developments in constitutional law, economic crimes, supervisory powers of High Courts over subordinate courts, laws governing Intellectual Property, and Impact of tribunalisation on justice in India.

Identifying challenges and evolving optimal solutions/strategies to effectuate qualitative justice delivery has been agenda of the conference.

Nineteen High Court Justices participated in the conference. Hon'ble Mr. Justice Kurian Joseph Judge, Supreme Court of India, Hon'ble Mr. Justice P.V.Reddi Former Judge, Supreme Court of India, Hon'ble Dr. Justice S. Muralidhar Judge, Delhi High Court, Hon'ble Mr. Justice Rajesh Bindal Judge, Punjab & Haryana High Court, Mr. O. P. Gupta, IAS Controller General of Patents, Designs & Trade Marks, Intellectual Property India, Mr. Shamnad Basheer Former Professor, National University of Juridical Sciences, Kolkata, Ms. Abhilasha Nautiyal Anand and Anand, Managing Associate, Litigation, Mr. Somasekhar Sundaresan Counsel, Mr. Rajiv Awasthi Advocate were the Resource Persons of the Programme.

Day 1

Session-1

Theme: Developments in the Area of Constitutional Law

Speakers- Hon'ble Justice PV Reddi

It was emphasized that law is dynamic and the fabric of constitutional and legal space. Keshvananda Bharti case was discussed in detail where it was held by the Supreme Court that right to property was not a part of the basic structure. The aspects of various freedom and right to life and liberty as enshrined in the constitution of India were discussed during the discourse. It was stated that so far as legislative monitoring is concerned the Supreme Court is fairly strict in its scrutiny and whenever there was an application of legislative responsibility and framing out the essential legislative powers to the executive, the courts intervened. But post 70's the court have been more accommodative. It was stated that India has a robust interpretation of the constitution by the generation of great lawyers/judges who came from essentials civil background to interpret the constitution. It was highlighted that language of the law is much more precise than the language of literature. It was delineated that knowledge is the progressive elimination of ignorance.

It was stated that in our democracy, the highest is not above the people and humblest is also not below the people. Throughout the constitution as interpreted by the Supreme Court the evolution

of constitutional law in our country as demonstrated as not a static document but a vibrant instrument and is for the progress of the nation. As per the necessities of the times, there are constitutional amendments and judicial pronouncements. There has been a tremendous development in constitutional law especially with respect to the concept of fundamental rights which has undergone sea change. Significant developments in constitution legislations and judicial trends were discussed during the discourse. It was delineated that history of the Indian constitutional law is, in essence, the history of the power of judicial review as exercised by the constitutional courts. Our Constitution has withstood the test of times retaining all its basic features and with value based amendments coupled with the judicial contribution. Article 14, 21 with regard to right jurisprudence were highlighted. The relationship between the directive principles of State policy and fundamental rights were discussed with reference to Minerva Mills case.

Session-2

Theme- Evolution of economic crimes: Money Laundering, Bribery and Corruption.

Speaker- Mr. Rajiv Awasthi

Chair- Justice PV Reddi

It was deliberated by the speaker that Prevention of Money Laundering Act, 2002 is an Act passed by the Indian Parliament to prevent Money Laundering and to provide for confiscation of property derived from, or involved in, money laundering and for matters connected therewith or incidental thereto and also the prosecution of the persons involved in money laundering. The Prevention of Money Laundering Act 2002, provides two parallel action; First, attachment of properties derived or obtained from proceeds of crime. Second, upon completion of investigation the prosecution of persons for committing offence under section 3 of the Act. Briefly the scheme of the Act was discussed during the discourse. The three stages of Money laundering which includes placement, Layering and integration were also discussed. It was stated that Money laundering often involves five different directional fund flows Viz. Domestic money laundering flows, Returning laundered funds, inbound funds, out bound funds and Flow-through. It was emphasized that the Act is a special Law and a self-contained code intends to address the increasing scourge of money laundering and provides for confiscation of property derived from or involved in money laundering. The Act also provides a comprehensive scheme for investigation, recording of statements, search and seizure, provisional attachment and its confirmation, confiscation and prosecution. It was delineated that elaborate and fair procedures are incorporated in the Act. The order of provisional attachment shall be only by the Director or any other officer not below the rank of a Deputy Director, specifically authorized by the Director. Various other important sections of the Act were discussed during the discourse. It was stated that shifting of the incidence of the burden of proof, which is rebuttable, is an essential component of the scheme of the Act. The session highlighted some major effects caused by economic crimes such as: Increase in inflationary pressure, uneven distribution of resources and creation of elitism, marginalization of tax base, generation of abundant black money, creation of parallel economy, undermining of developmental works/efforts, becomes a breeding ground for corruption, weakens morale and commitment of citizens and includes the country's economic equilibrium at stake.

Session-3

Theme- Supervisory power of High Courts over Subordinate Courts: Monitor and Mentor

Speaker - Justice PV Reddi

It was an open discussion session. Justices expressed that there is a lot of communication gap between the higher judiciary and subordinate judiciary which makes difficult for the higher judiciary to assess the performance of subordinate courts. It was suggested there should be a mechanism where smooth communication may take place between these two tiers of the judiciary so that optimal and holistic delivery of justice may take place. It was stressed that judiciary as a whole should be treated as one family. Higher judiciary should act as a mentor and guide subordinate judiciary when in need. It was emphasized that reflective office is the need of the hour.

The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. It was stressed that there is no specific guidelines for effective implementation of Article 227 of the Constitution of India and every judge act per his own wisdom.

The importance of Article 235 and Article 237 of the constitution of India which speaks about the supervisory power to the High Courts in order to have a control over subordinate courts was discussed. True role of the High Courts in relation to district judiciary for fulfilling its constitutional responsibilities and measures to be taken to improve the function of the district judiciary was also emphasized during the discussion.

It was stated that majority of people know only district judiciary. It is the collective responsibility of the High Court as well as of the district judiciary to come up to the expectation of the people. The support, the parental care bestowed by the High court goes long way in achieving the goal of efficient and effective justice dispensation. Building of a work culture is a key factor to sustain the justice delivery system. District judiciary works under the gaze and watchful eyes of the High court, if control and supervision has to be effective there shall never be communication gap between the district judiciary and High Court. That's why the system of reporting, review, inspection and conferencing has been devised. Interacting with the judicial officers on continuous basis is very important. The performance appraisal and disciplinary control are important facets of the High Courts. It was stressed that power of control vested in the High Courts carries enormous responsibility. Frank and free expression of views, understanding the problems, issues raised by subordinate judicial officials and try to find solutions in consultation with the district judge or registrar concerned are all expected with the inspecting/ guardian judge. It was suggested that parental care as well as the monitoring role is required by the High Court Justices.

Session-4

Theme- IPR in India: Emerging Trend

Speaker - Mr. O.P. Gupta

Chair - Justice Dr. S. Muralidhar

The theme of session 4 was During the discourse introduction to IPR the historical Perspective & Evolution of IP Laws, Indian IP Laws, TRIPS & International IP Regime, Unique legislative provisions in Indian patent law, Trends and Technology challenges in current patent laws and National IPR Policy were discussed. It was stated that Intellectual property rights is the creation of human minds and IPR play more important role as assets for an enterprise than physical assets. It was further deliberated that international conventions ensure minimum rights and provide certain measures for enforcement of rights by the contracting states. The concept of patent, Design, Trademark, Geographical Indications and Copy right were discussed in detail. The landmark cases Southern v How, 1617, Darcy v Allein- (1602) 74 ER 1131, The British Trademark Act of 1875, Venetian Patent Act of 1474, U.K.: Statute of Monopolies, 1623-24, Statute of Anne 1710 also became a part of the discourse. The resource person delineated IPR laws that includes The Patents Act, 1970, The Trade Marks Act, 1999, The Copyright Act, 1957, The Designs Act, 2000, The Geographical Indications of Goods (Registration & Protection) Act, 1999 (GI), The Semiconductor Integrated Circuits Layout- Design Act, 2000 are administered by the Controller General of Patents, Designs and Trademarks whereas laws administered by other ministries includes Ministry of Environment and Forests, Department of Agriculture and Cooperation, Biological Diversity Act, 2002 and The Protection of Plant Varieties and Farmers' Rights Act, 2001. It was emphasised that the object of the patent law is to encourage scientific research, new technology and industrial progress. The salient features of the TRIPS and Paris Convention were discussed. It was stated that Paris convention provides equal treatment to applicants from member countries, and does not differentiate nationals of member countries, for the purpose of grant and protection of industrial property. Thus, applicants from member countries shall have the same protection after grant and identical legal remedies against any infringement. It was sated that TRIPS establishes minimum standards for the availability, scope, and use of seven forms of intellectual property: copyrights, trademarks, geographical indications, industrial designs, patents, layout designs for integrated circuits, and undisclosed information (trade secrets). It was stated that the policy lays down seven objectives along with the steps to be undertaken by the identified Nodal Ministry/ department that includes IPR Awareness: Outreach and Promotion, Generation of IPRs, Legal and Legislative Framework, IPR Administration and Management, commercialization of IPR, enforcement and Adjudication and human Capital Development.

Session-5

Theme- Role of the judiciary in IPR Evolution and Adjudication.

Speaker - Prof (Dr) Shamnad Basheer

Chair - Justice Dr. S. Muralidhar

The concept of creative courts was discussed whereby it was suggested that to dispense with "interim" phase when the matter is complex and dispute may be settle expediently and in this regard TVS Vs Bajaj case was discussed in detail. Vardhman Mills case was also been deliberated

where the Supreme Court held that matters relating to trademarks, copyrights and patents should be finally decided very expeditiously by the trial court instead of merely granting or refusing to grant injunction. In matters of trademarks, copyrights and patents, litigation is mainly fought between the parties about the temporary injunction and that goes on for years and years and the result is that the suit is hardly decided finally which is not proper. Merck vs Glenmark, Baba Zarda case, Loreena Mckennitt vs Deepak Dev and Roche vs Cipla were diissused during the discourse. The concept of Public interest and participatory justice were also deliberated upon.

Session-6

Theme- Jurisdictional Issues in Trademark, Copyright & patent disputes: Law and practice.

Speaker - Ms. Abhilasha Nautiyal

Chair - Justice Dr. S. Muralidhar

The theme of the session 6 was Section 20 CPC was deliberated which states the jurisdiction filing of suits by the plaintiff. It was delineated that the suit can be filed were the cause of action arises or were the defendant actually and voluntary resides/ carries on business/ personally works for gain. In this reference section 134 of the Trade Marks Act and section 62 of Copyright Act was discussed. The case of Patel Roadways v. Prasad Trading was emphasized which stated that if cause of action and defendant's subordinate office overlap, then corporation deemed to carry on business only at such place and not at its sole or principal office whereas when there is no such overlap, then at its sole or principal office. It was deliberated that principal place of business is the nerve center of the corporation; where the governing power of the corporation is exercised.

It was delineated that when an objection to jurisdiction is raised by way of demurrer and not at the trial, the objection must proceed on the basis that the facts as pleaded by the initiator of the impugned proceedings are true. It was further deliberated that while in the case of an O. VII R. 10 application, the issue of jurisdiction is decided on the basis of what is stated in the plaint and, that too, after assuming the statements to be correct, an application under O. XXXIX R. 1 & 2 requires the examination of the contentions of the defendants in written statement, reply, and other material placed before court. It was stated that O. 6 R. 2 requires every pleading, which includes a plaint, to contain, "and contain only", a statement in concise form of the material facts on which the party pleading relies for his claim, but not the evidence by which they are to be proved. In the light of these provisions the cases of *Exphar SA v. Eupharma*, *Ford Motor Co. v. CR Borman*, *RSPL v. Mukesh Sharma and Allied Blenders v. RK Distillers* were discussed. It was stated that cause of action not only refers to the infringement but also the material facts on which the right is found. The cases *Casio India v. Ashita Tele Systems*, *India TV v. India Broadcast*, *Banyan Tree v. A. Murali*, *WWE v. Reshma* were discussed.

The theme of **session 6 and 7** was **Tribunalization of Justice in India: Boon or Bane and Effect of Tribunalisation and judicial Review Contours respectively.**

Speaker for the sessions were **Justice Rajesh Bindal and Mr. Somasekhar Sundaresan. The sessions were chaired by Justice Kurian Joseph.**

Reasons for Establishment of Tribunals were discussed. It was stated that Tribunals may work rapidly and more efficiently than ordinary courts and there is a need for specialization and speedy justice. It was emphasized that tribunals follow principles of natural justice and has less procedural delay and legal obligations. It was stated that there are more tribunals as per State Acts. 42nd amendment in the Constitution of India that added Articles 323A and 323B were discussed during the discourse. It was stated that Art. 323A provides for the establishment of Administrative Tribunals by the Parliament for adjudication of service matters. Article 323B provides for the establishment of Tribunals, to adjudicate on the matters with regard to which the respective State Legislature has power to make laws, as specified in Article 323 B(2). After the 42nd amendment, The Administrative Tribunals Act, 1985 was enacted under which Central Administrative Tribunal was established. It was stated that in R.K.Jain v. Union of India¹ the Supreme Court opined that these tribunals could not be effective substitutes of High Courts under Articles 226 and 227. This case reflect the dissatisfaction of the Supreme Court with regard to functioning and effectiveness of Administrative Tribunals. It was further stated that the Constitution Bench Judgment of Hon'ble Supreme Court in S.P. Sampath Kumar², was referred to be considered by a larger Bench in L. Chandra Kumar v. UOI³ in which it was held that that Articles 323A (2) (d) and 323B (3) (d) of the Constitution were held to be unconstitutional which excluded jurisdiction of High Courts. It was stated that the powers of judicial review vested in the Supreme Court and High Courts under Arts.32 and 226 form part of the basic structure of the Constitution. Union of India Vs. Delhi High Court Bar Association⁴, Recommendations by Law Commission after L. Chandra Kumar's case, UOI v. R. Gandhi⁵, , UOI v. Debts Recovery Tribunal Bar Association⁶, Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014, Madras Bar Association Vs. UOI⁷, Union Of India Vs. Major General Shri Kant Sharma⁸, Madras Bar Association vs. UOI⁹, Inter-State River Water Disputes (Amendment) Bill, 2017, Finance Act, 2017 which deals with Merger of Tribunals were discussed during the course of discussions.

Hon'ble Justice G. Raghuram, Director National Judicial Academy concluded the conference and extended vote of thanks to the resource persons and participating justices.

¹ (1993) 4 SCC 119

² (1987) 1 SCC 124

³ AIR 1997 SC 1125

⁴ (2002) 4 SCC 275

⁵ (2010)11 SCC 1

⁶ (2013) 2 SCC 574

⁷ (2014)10 SCC 1

⁸ (2015) 6 SCC 773

⁹ (2015) 8 SCC 583