

National Judicial Academy



Programme Report

P-1089

NATIONAL JUDICIAL CONFERENCE FOR HIGH COURT JUSTICES

(09th - 11th March, 2018)

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The NJA organized a three day “*National Judicial Conference for High Court Justices*” from 09th March 2018 to 11th March 2018. The conference was intended to provide a platform, for justices to share experiences, insights and suggestions with a panel of distinguished resource persons from the judicial branch and other relevant domain experts. The conference was designed to facilitate discussions on developments in constitutional law, corporate fraud and manipulations, supervisory powers of High Courts over Subordinate Courts, reproductive rights and contribution of the Supreme Court and High Courts to development of laws, tribunalisation of justice delivery and election laws.

Session 1

High Courts: Guardians of District Judiciary

Speakers: Justice Sunil Ambwani & Justice Manjula Chellur

The first session commenced with emphasis on the relationship between the High Courts and the Subordinate Courts. The discourse broadly covered issues with respect to the tensions within the judiciary, the communication gap between the higher court judges and district judiciary, monitoring and mentoring functions of high court, disciplinary conversations etc. The role of guardian judges and the supervisory role of the High Courts over the subordinate courts under Article 235 of the Constitution were discussed at length along. The discussion also highlighted the difficulties faced by judges in managing judicial work and administrative work which needs equal attention and caution. Therefore, judges were suggested to inculcate such habits that can help manage their administrative as well as judicial responsibilities. It was suggested that supervision by guardian judge should not only be administration centric rather it should also focus on the kind of orders being passed by the subordinate judiciary. There should be regular assessment of judicial work as well. This will definitely enhance the quality of judicial work/pronouncements. Through National Judicial Data Grid [NJDG] Guardian Judges can keep track of the daily work accomplished by the judicial officers. The session emphasized that for effective inspection of courts, it is important to understand that inspection is not just to fulfil a formality but the purpose is to catalyse and do value-added work from

what had been done hitherto. It was also suggested that inspection must always be a “fact finding mechanism rather than a fault finding mechanism”.

Session 2

Tribunalization of Justice: Boon or Bane

Speakers: Justice Aftab Alam

The session emphasized that increasing tribunalization excludes jurisdiction of civil courts. On the other hand judicial members having no experience of the technicalities of the tribunal or *vice-versa* creates problems. The discourse highlighted that there is no normative basis as to why the tribunals are created. The larger question that arose during the course of discussion was how can tribunals be made supplementary limbs of the judicial system? In response it was suggested that the tribunals ought to be made independent being free from departmental control. An eco-system resembling independent judiciary is must for an effective and efficient administration of justice through tribunals. Questions about the role of the mainstream courts in respect of certain category of cases and the questions on the structural validity and reliability of having specialized tribunals to supplement the ordinary courts formed an integral part of the session. The other view suggested that there are certain sectors, such as intellectual creativity, finance, taxation, power, telecommunications, transport, infrastructure etc. that are basic to the economic growth and development of the country. Any adjudication arising in these sectors require complete knowledge of the dynamics of that sector and calls for specialized skills and expertise. Further, any delay in the adjudication of disputes arising in these sectors will have dire consequences that would go beyond the individual parties to the dispute and would cause harm to the growth of the sector as a whole.

Session 3

Superior Courts: Managing Judicial Review within the Democratic Framework

Speakers: Justice Sunil Ambwani & Justice Manjula Chellur

The session commenced with discussions on the challenges of a democratic set-up. It was stressed that initially judicial review was very limited which is quite in contrast to the present scenario. The case of *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), a landmark judgement by Chief Justice John Marshall

of the United States Supreme Court, which forms the basis for the exercise of judicial review in the United States under Article III of the Constitution, was discussed at length. It was highlighted that the problem with the constitution is that it is not a majoritarian constitution and contains many non-majoritarian provisions. The balancing of majoritarian and non-majoritarian tensions in the constitution texture has to be done by some organ, and judiciary is best suited for it, because of its non-subjection to periodic review of its actions.

Session 4

Contemporary Challenges for Judicial Review, Policing Governance within Separation of Powers framework

Speakers: Justice Prabha Sridevan & Mr. Sujit Ghosh

Chair: Justice P.V. Reddi

The fourth session exemplified that rule of law in all its dimensions has been given upliftment by way of historical judicial review. However, judicial review has also been subject to criticism which expounds that judiciary has disregarded the theory of checks and balances. Nonetheless, the power of judicial review given to the constitutional courts is a power coupled with duty and it is a power which shall not remain underutilized so as to entrust public trust and confidence in the justice system. It is the duty of judges to keep this in mind while resolving the dilemmas. The discourse highlighted that the power of judicial review is a tool by which judges make the constitution respond to the social, economic and political requirements. Therefore, courts should make sure that the constitution is for those who do not have a voice. It was suggested that if our constitution respond with time then it can mold itself by way of judicial review.

Session 5

Construing the Sounds of Constitution's Speech: Meanings Beyond Text

Speakers: Mr. Sujit Ghosh

Chair: Justice Prabha Sridevan

The session commenced by drawing inference from classical music emphasized that sound and silences brings about symphony in the constitutional text. Mentioning about what Dr. Radhakrishnan, once said that Constitution is the fundamental law of the nation, it should embody and express the passions, ideas and

expression of the people, it must be based on the consent of all, and reflect the right of the people of this great land. It should reflect the interest of the people. Substantial part of the session discussed interpretative approaches in India classified in three phases - Phase I – where textualism was the dominant interpretative approach, Phase II – Structural/purposive was the dominant interpretative approach, and Phase III – result-oriented decision making using both the above approaches is dominant. In the light of these interpretative approaches the case law *AK Gopalan v. State of Madras*(AIR 1950 SC 27); *Sri Sankari Prasad Singh Deo v. Union of India* (AIR 1951 SC 458); *Sajjan Singh v. State of Rajasthan* (AIR 1965 SC 845); *Golak Nath v. State of Punjab*(AIR 1967 SC1643); *Kesavananda Bharati v. State of Kerala* (1973 4 SCC 225); *Maneka Gandhi v. Union of India*(1978 AIR SC 597); *PUCL v. Union of India; 2013 10 SCC 1*, *Suresh Kumar Koushalv Naz Foundation* (2014 1 SCC 1), *National Legal Services Authority (NALSA) v. Union of India* (2014 5 SCC 438) were discussed.

An Illustration of how interpretation of the Constitution is not static but progressive to absorb new ideas and meet new situations in the light of the decision of *Shreya Singhal v. Union of India*; (AIR 2015 SC 1523) whereby the Supreme Court held S. 66 A of the IT Act as unconstitutional on the ground of infringement of freedom of speech was discussed at length. Recent interpretative conundrums with respect to the cases of *Aadhar* and *Right to Privacy* were elaborated upon.

Session 6

Free and Fair Elections – Vitalizing our Democratic Fabric: The way forward

Speaker: Mr. V. S. Sampath

Chair: Justice P.V. Reddi

The session commenced by discussing the jurisprudential aspects of election laws. The case of *People's Union for Civil Liberties and Anr. v. Union of India*, 2013(12) SCALE165 was emphasized. It was highlighted that the 225th Law Commission Report has a chapter on election petitions which discusses how

delay in election petitions frustrates the purpose of elections. The discourse suggested that there should be a special bench to dispose off election petitions at the earliest. There is no disclosure of information at the high courts on the number of pending election petitions. The session elaborately discussed on the role, importance, strength and challenges faced by the Election Commission. It was emphasized that the governance of the country lies in the hands of the Election Commission. The judgment of *M.S.Gill & Anr v. The Chief Election Commissioner, New Delhi & Ors* 1978 AIR 851 was discussed on how independently free and fair elections should be conducted.

Session 7

Corporate Fraud & Manipulation: Repercussions, Deterrent Mechanisms & Judicial Approach

Speakers: Mr. Sandeep P. Parekh & Mr. Somsekhar Sundaresan

Chair: Justice Uday U. Lalit

The session commenced with broad discussion on fraud; fiduciary duties; types of fraud; ingredients of fraud; types of liabilities and origin of the modern corporate fraud. The discourse addressed issues like- Can fraud be done without an intention? How is legislature dealing with bail related to fraud cases? Can a minimum penalty be evolved? When can negligence constitute fraud? Can an auditor unaware of fraud in a company be liable for fraud? It was stressed that the line between the victim and perpetrator is becoming thin in the corporate world which needs to be addressed at the earliest. For this, there is a dare need to change the diagnostic practices rather than increasing the dosage of expired medicine. It was suggested that a regulatory institution building, as is being worked upon by the Financial Sector Legislative Reforms Commission [FSLRC] is also required and the judges too need to be pro-active and get into the depth of the information in such matters coming before them.

Session 8

Jurisprudence of the PC & PNDT Act:
&
Cultural, Social and Economic Factors that Promote Gender Bias: Context of the PC & PNDT Act
in India

Speaker

Justice S.S. Phansalkar Joshi, Justice Prabha Sridevan & Ms. Anuja Gulati

Chair : Justice Uday U. Lalit

The last session started with a brief discussion on the social and cultural bias against women in the society. It was emphasized that a judge ought to understand what a woman thinks and what are the reasons because of which she do not come to the court that easily. Talking about the Child Sex Ratio [CSR], it was highlighted that what started as an urban problem or issue has slowly disseminated in the rural areas. On the other hand the statistics suggested that women with no education have good sex ratio as compared to educated women. The reason being that educated women have knowledge of contraception which the rural or uneducated women does not have. Talking about the *PC & PNDT Act [thereafter the act]* it was highlighted that Constitution of India emphasizes on equality of status and opportunity. PCPNDT Act draws its origin and rigor from the Constitution. The act per say is very small but it calls for establishment of various bodies for its proper implementation. Section 4 and 24 of the act were discussed at length. The case law of *CEHAT v. Union of India* (2001)5 SCC 577 ; *CEHAT v. Union of India* (2003)8 SCC 398 ; *Gaurav Goyal v. State of Haryana Civil Writ Petition No 15152 of 2007*; *Hemant Rath v. Union of India* AIR 2008 Ori 71 formed an integral part of the discussion.