

**National Conference of High Court Judges on Public Law
September 6-7, 2014 (P-840)**

Report of the Conference

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The National Judicial Academy organized the National Conference of High Court Judges on Public Law during September 6-7, 2014. The main objective of the Conference was to discuss issues regarding public law litigation in India. The resource person in the Conference included Prof. Dr. I. P. Massey, Justice A.K. Goel, Justice Madan B. Lokur, Justice A.K. Patnaik and Justice D.M. Dharmadhikari.

Following were the major issues discussed in the Conference:

- State is withdrawing from public space and it is outsourcing its power. Now many government functions constituted of public and private partnership. Many areas which were restricted to the government bodies are now open for the private sector and the role of state is shrinking. This poses many challenges to the higher judiciary which have to protect the fundamental rights of the people and fundamental rights are available against state action only.
- Courts cannot enter into the area meant for executive and therefore courts should not branch separation of power in this regard. The Courts however have all the powers to review the action of other branches of State on the standard of fairness and legality. The executive actions are therefore remain amenable to judicial review is performed in an arbitrary manner.
- Courts have moved considerable in interpreting state action from legalistic to functionalism and towards realism. This reflects the influence of changing socio-economic realities which led to liberal interpretation of State action in India. This has resulted in the wider protection to the fundamental rights of the people.
- The progressive interpretation in *Zee Telefilms case* by Justice Sinha advocates focus on the victim of arbitrary action of organizations. The focus therefore should be on the victim and not the authority. Article 15 (2) of the Indian Constitution also provide protection of fundamental rights against private individuals. So even private bodies can be sued for the violation of the fundamental rights mentioned in the Constitution.

- The meaning of phrase “any other purpose” under the Article 266 of the Indian Constitution should be widened. The function of the authority should be analyzed to see the element of public duty in it.
- The Jurisdiction of the writ courts in the environmental matters flows from the Article 21 of the Constitution of India as right to clean environment has been declared as part of the right to life under this Article. The clean environment is a basic necessity of life and therefore comes within the scope of right to life.
- Courts have to maintain fine balance between sustainable development and environmental concerns. The industries are required for the development of the country and at the same time it has to be ensured that there should not be violation of fundamental rights. In *sterlite case* the Supreme Court did not allowed closure of polluting industries but imposed exemplary cost of Rs. 100 crores on the basis of polluter pay principle. If some industry is polluting then it should pay the cost of pollution. The Courts should consider all aspects while adjudicating the environmental issues
- Because of rising awareness of socio-economic rights among people different kinds of litigations are coming to court. The courts must be ready to face challenges in this regard. Many such litigation requires continuous monitoring by the courts and courts in this regard should be cautious that they do not encroach upon the area meant for the executive.
- The Part of the Constitution dealing with the Directive Principles of State Policy has posed numerous challenges before the courts as the same is not justifiable. These provisions require resources on the part of the state and therefore resource constraints are usually cited by the State as an inability to enforce the provisions of the Directive Principle. However courts can always direct the executive for giving relief related to such provision as government has constitutional obligation in this regard. However this should be according to the factual situation of each case.
- The public interest litigation requires proactive action on the part of the courts. The progress of the case would be required to be monitored by the court and that can result in intrusion in the domain of the executive. The courts therefore required to balance its actions in the PIL matters.
- The power of the judicial review of the courts will always be available to the court if the executive action is arbitrary and ultra vires of the Constitution. The courts must see that everything has been done by the executives in the Constitutional framework. The courts must support its findings with sound reasoning.

- The courts are required to prepare themselves for adjudicating the new and unconventional issues coming to the courts. Many non government organizations are raising difficult issues in the court and courts must be equipped to deal with those issues.
- In the matter of land acquisition the executive tries to give the colour of public purpose to the private purpose. This shows a very vague understanding about the public purpose among executives. The courts must therefore analyze the public purpose and should see that whether the acquisition has been done according to the doctrine of public domain.
- With the enactment of the new law on the land acquisition, new challenges will come before the courts and courts must be equipped to deal with that. The litigation for lapse of former actions of the acquisition and compensation u/s 24 of the new Act are now coming before the court. That section has created lot of confusion and courts must be cautious in interpreting and applying this provision.
- The courts must see that there was proper rehabilitation of the displaced people and the executive should not be allowed to get off with the matter by merely providing compensation to the displaced people. The case of displacement due to Omkareshwar dam in the Madhya Pradesh is the best example in this regard.
- In the matter of human rights violation greater coordination is required between the high court and the state human rights commissions. The high courts can ask the commission for conducting enquiry if the matter of human rights violation has come to their notice.
- The human rights commissions are manned by retired police officer and it is not a healthy trend. The experts on various issues related to human rights must be appointed in the commission.
- Courts should not PIL to be monopolized by the lawyers. The courts should call experts on various issues raised in the PIL. The PIL has become adversarial. The courts should ask the SLSA and DLSA to make enquiry in relation to violation of rights of the people.
- There can be no guideline by the court as to the amount of compensation for the violation of human rights. The compensation is only exemplary according to the *Nilabati Bahera case*. The quantum of compensation in each case has to be decided according to the facts and circumstances of each case. If any guidelines are to be issued in this regard then it should be done by the legislature and not by the court.
- The human rights special courts are not able to perform properly as the offences are not defined regarding violation of human rights. The government has also not notified rules and procedures for the human rights courts.

- Judicial review is one of the basic features of the Constitution and it has well defined scope in the matter of the allocation of natural resources. Court must apply the Constitutional provisions according to the situation of each case in the matter of allocation of natural resources. The allocation must confirm to the requirement of the Article 14, 19, 21 and the Article 39 B of the Indian Constitution. All actions of the government has to be according to the mandate of the Constitution. The Courts must consider their action considering all the complexities involved in the tender process.
- The court must see that the action of the government has been according to public trust doctrine in reviewing government action as provided in Article 297, 298 and 299 of the Indian Constitution. The state must perform its action with due consideration of Article 48A and 51A of the Indian Constitution.
- In Coal allocation the Supreme Court scrutinized 31 meetings and cancelled the allocation of coal blocks because of arbitrariness in the meetings. So the contracts awarded to various companies were not final and the Court can review the actions of the government on the standard of fairness.

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