

NATIONAL JUDICIAL ACADEMY



**National Judicial Conference for Newly Elevated High Court Justices on
Public Law at NJA, Bhopal
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PROGRAMME REPORT

Submitted by

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Object and Background of the Programme

This conference was organized by the NJA to facilitate deliberations among participant Justices on contemporary topics such as Information and Communication Technology in Courts and Court Management Techniques to improve efficiency and strengthen justice administration; Core constitutional principles such as the concept of Judicial Review, Federal Architecture, Separation of Powers, Theory of Basic Structure and Fundamental Rights under our constitutional arrangement. The sessions were organized in a manner to provide for interaction and round table discussions based on designated theme among the participant justices. In the introductory session Hon'ble Director, National Judicial Academy set the theme of the conference and introduced the Speakers for the day.

Session - 1

Information and Communication Technology in Courts

Speakers: Justice Sunil Ambwani & Justice G. C. Bharuka

Justice G. C. Bharuka started his presentation by citing works done so far in the application of Information and Communication Technology in Courts. He said that the computerization in the Courts began way back in 1990s when the first computerized Cause List was prepared. Then he moved on to the Case Management and use of ICT in courts. He tried impress on the participants that as compared to the other sectors, we the judiciary are much behind in the use of technology. He said that we have to devise more litigant oriented use of technology and the artificial intelligence. Then he discussed about the collection of data from Courts all over India and its availability on NJDG i.e. National Judicial Data Grid. But at the same time he expressed the concerns about the accuracy of said data available on NJDG.

Thereafter, Justice Sunil Ambwani started his presentation. He said that Justice Bharuka has already talked about first phase of ICT in Indian Courts and works done by the eCommittee of Supreme Court of India. Hence, he will talk about second Phase. In second phase, he said, the Supreme Court has provided the Hardware to almost all the Courts such as Scanners, Printers, Computers, etc. The eCommittee of Supreme Court of India has trained some Judicial Officers in ICT and they have been nominated as the Master Trainers, who are now providing training in ICT to other Judicial Officers. We are working on the more improved version of CIS i.e. Case Information System. In near future, we will be using cloud computing and other technological advancements also in the Indian Judiciary.

Hon'ble Director, NJA then summed up the session.

Session - 2

Court Management

Speakers: Justice Sunil Ambwani, Justice G. C. Bharuka, Justice R. C. Chavan and Prof. G. Mohan Gopal

Justice R. C. Chavan started by saying that managing your work has become so much of importance to the judges. He said that a judge should manage his docket in such a manner that old matters are given priority but at the same time it should be seen that while doing so, new matter does not become old. We have to check our habits of Keeping back and Adjournments, interim Stay Orders etc. which are the main causes of congestion in the courts. He emphasized that in order to prioritize our work we should apply the concepts called Tracking, Clubbing and Grouping of Cases. Thereafter, he concluded his presentation.

Prof. G. Mohan Gopal started his presentation with an opening remark that ‘there was no framework for gathering ideas and policy about court management’. It is only during the Chief Justiceship of Justice S. H. Kapadia the ‘National Court Management Committee’ (NCMS) was formed. It gave some institutional framework to the Court Management in India. The borrowed the themes from International Framework for Court Management and then prescribed the Minimum Standards for Court Infrastructure, Court Management and Court Excellence. Then he dealt with the terms ‘Court Management’ and ‘Case Management’. He said that how the experiences of the litigants are managed is most important for court and case management. The success of the Court Management depends upon the Quality, Responsiveness and Timeliness of the Method employed in it. He said that on the line of ‘International Framework for Court Excellence’ the NCMS has built up ‘the National Framework for Court Excellence’. The committee has published ‘A Model National handbook on Court Management’.

Thereafter, Justice Bharuka presented his thoughts on court Management in brief. Justice Sunil Ambwani then expressed his thoughts in brief about the Court Management and concluded the session saying that ‘now the participant judges have to achieve the task to make the litigants feel that this court is for him’.

Session - 3

Constitutional Vision of Justice: Round Table Discussion

Speakers: Prof. G. Mohan Gopal

This was the interactive session. Prof. G. Mohan Gopal started the session by asking three Questions to the participant justices –

- 1) What is mean by Justice?
- 2) What is the Constitutional Vision of Justice?
- 3) Is Indian Constitutional Vision of Justice is unique?

Then he said that after answering these questions we have to find it out as to whether it has anything to do with judges. Because the answers to these questions will have a great impact on the work of a judge.

Here, Participant 1 said that “Justice for her is what is according to Law”. Second participant said that “Finding the Right Balance between what is right and what is wrong is the Justice”. Participant 3 said that “justice is finding the right balance where powerful don’t oppress weaker” and so on.

Then Prof. G. Mohan Gopal said that “Justice” according to dictionary meaning means “A Judicial Officer”. He said that for him “Justice means Nothing”. It is a just an empty glass. One has to pour meaning into it and that is the justice. Then he quoted Justice Krishna Iyer who said that – “Centre of gravity of Justice should shift to the Society”. That is the justice. Then he said our Constitution is a document of Social Justice. The constitution demands you to stand for the poor, for the oppressed etc. That is the Constitutional Vision of Justice. Creating a new social order as envisaged under Art. 38 and 39 of the Constitution of India is a Constitutional Vision of Justice. Then Prof. Gopal concluded the session saying that “Justice is a feeling, Justice is a standard of human conduct”.

Session - 4

Theories of Judicial Review

Speaker: Justice Madan B. Lokur

Justice M. B. Lokur started his presentation with opening words “what is Judicial Review”. He said that there are three forms of Judicial Review viz. “Judicial Review of Executive/Administrative Action” in which Court can review and strike down the administrative action is known as weak form of Judicial Review. The second is “Judicial Review of Legislative Action” in which court can strike down the Law Made by the Legislature is known as Strong form of Judicial Review. Third is that when the High Courts and Supreme Court reviews the decisions rendered by its subordinate courts, that is also a judicial review. He said that there are two contexts of Judicial Review. One UK model where Parliament is Supreme and second is USA model where Separation of Powers is given more weightage than Parliamentary Supremacy. We are following the USA model of Separation of Powers. Then he quoted Montesquieu, who said that – “Judiciary is on equal footing with Legislature”. Then he discussed the proportionality principle and its application for judicial review.

Then he discussed case laws viz. TATA Cellular case, Balco Employees Union Case, I. R. Coelho’s case, Kesavananda Bharati case and Indira Gandhi’s Election case. Thereafter, he

concluded saying that there much criticism being done against the judiciary for judicial review and judicial overreach and it is being undemocratic, but our country needs it. We need judicial review to have check on the governmental abuse of power, to further authenticate the democracy and to allow the constitution to evolve with times through progressive interpretations by the Judiciary in the context of challenges to governmental actions.

Session - 5

Separation of Powers

Speakers: Justice Madan B. Lokur

Justice M. B. Lokur started the session citing the Montesquieu's Theory of Separation of Powers. He said that placing all the powers in the hands of only one organ or group in Government leads to tyranny. North Korea is the greatest example of this. He said "Power corrupts and absolute power corrupts absolutely." Then he said that unlike USA we don't have strict separation of powers. Then he quoted Dr. Ambedkar's speech before the Constituent Assembly on 26th Nov. 1949, who said that "However the constitution is good, if the implementers are bad it is of no use and if people/implementers are good then the constitution does not matter." He said that separation powers in India has two facets viz. separation of powers between Judiciary, Legislature and Executive (which is also the basic structure of the constitution) and separation of powers between States and the Union (Schedule VII of Indian Constitution). But at the same time there are some overlapping provisions in the Indian Constitution e.g. Art. 123 – President's Power to promulgate ordinances, Art. 357 – Exercise of Legislative power during emergency etc. are the examples of overlapping powers. Judiciary's Rule making power, Vishaka Case etc. are also the examples of overlapping powers.

Then he discussed some important case law about the separation of powers viz. State of UP vs Jeet Bisht, State of HP vs Satpal Saini, D K Basu vs State of WB etc. Thereafter, he concluded the session.

Session - 6

Allocation of Legislative Powers: The Federal Architecture

Speakers: Justice Madan B. Lokur

Justice Lokur started the session by opening statement that we have derived the idea of distribution of powers from Government of India Act, 1935. He said that Legislature has the power to make the laws subject to Legislative Competence and Constitutional Limitation. The distribution of

powers between Union and States in India is based on two things i.e. Legislative Competence and Territorial jurisdiction. Then he discussed the Distribution of powers under Art. 246 of the Indian Constitution viz. Union List, State List and Concurrent List. He also discussed the Doctrines of Repugnancy and Pith and Substance as well as Colourable Legislation. He said that Doctrine of Colourable Legislation means “What cannot be done directly, cannot be done indirectly also”. Then he discussed case laws on colourable legislation viz. Kartar Singh vs State of Punjab, State of Bihar vs Kameshwar Singh, K C Gajapathi Narain vs State of Orissa etc. Then he concluded his session.

Session - 7

Fundamental Rights and Restrictions on Entrenched Rights

Speakers: Justice Kurian Joseph and Adv. Krishnan Venugopal

Adv. Krishnan Venugopal started his session saying that work of the drafting of constitution started even before the independence. During that period there were two groups in leaders one is Nehru and his followers who were overwhelmed with the Socialist Experiment in Soviet and the other was Sardar Patel and his followers who believed in Capitalistic Approach. Our constitution is the mixture of such approaches. He further stated that inequality is inherent in our religious set up and our Constitution is the first document which directly departs from this theme and makes equality the basis. We have taken this philosophy from western philosophers like Thomas Hobbes, John Locke, Grotius, Rousseau and others. He said that since after the independence, the Indian Judiciary can be broadly divided into 5 periods viz.

- 1) 1950 to 1975 – During this period Indian Judiciary and more particularly, the Indian Supreme Court was of Traditional mindset. It protected liberties zealously but also had distance from the policies.
- 2) 1975 to 1977 – This is the period which has a great significance and impact on all walks of the country. This was the judiciary during the period of emergency. During this period judiciary tried to protect the fundamental freedoms but unfortunately Supreme Court of India didn't stand to the expectations of the people and nation witnessed the Judgement of ADM Jabalpur case and abrogation of almost every fundamental right.
- 3) 1977 to 1989 – This is the third stage of Indian Judiciary which is also known as the Post Emergency period. The Supreme Court of India realized the mistake committed by it in ADM Jabalpur case and during this period started coming down heavily on the state in protection of fundamental freedoms of the citizens. This period is also known as golden era in the Indian Judiciary. Justice Krishna Iyer, Justice Bhagwati, Justice O Chinappa Reddy are the judges from this period who have completely changed the approach of Indian Judiciary towards the rights of the individuals and the people as such. We can find Maneka Gandhi case, Minerva Mills's case and all other major Constitutional cases which brought

paradigm shift in the approach in the functioning of the Indian Supreme Court are decided during this period.

- 4) 1989 to 2013 – This is the third phase of the Indian Judiciary. During this entire period there was no strong government at the centre and in most of the states. This period is known as the period of Coalition Governments. During this period Judiciary and particularly Indian Supreme Court of India acquired more powers and had its impact even on the policy matters. The system of appointments to High Courts and Supreme Court through collegium is the gift of this period. Judicial over activism and judicial overreach are also the criticisms made against the judiciary during this period.
- 5) Post 2014 period – This is the fifth phase of Indian Judiciary. In 2014, National Judicial Appointments Commission Act was passed and collegium system was sought to be scrapped. After a long gap during this period nation had Government at Centre with full majority and therefore it started asserting its rights in appointments to the Higher Judiciary. For that only NJAC was brought but by way of NJAC Judgement, Supreme Court of India has struck down said constitutional amendment. Now the Government and Supreme Court of India are trying to finalize the ‘Memorandum of Procedure’ for appointments to the Higher Judiciary. The relations between the two organs are strained to a great extent. It remains to be seen what result it gives to the nation.

Thereafter, Justice Kurian Joseph initiated the discussion and then summed up the session.

Session – 8

Part I

Theory of Basic Structure: Contours

Speakers: Justice Kurian Joseph & Adv. Krishnan Venugopal

Adv. Krishnan Venugopal started the session. He said that though it is popularly known that theory of basic structure has been devised from Kesavananda Bharati case, actually seeds of the basic structure were sown in the Dissenting judgement of Justice Mudholkar in case of Sajjan Singh v. State of Rajasthan. The same theme has been propagated by Justice H R Khanna in Kesavananda Bharati’s case. But there is no unanimity between the judges themselves as to what forms the “Basic Structure of the Constitution of India”. Various judges have defined basic structure differently. In various cases such as Indira Gandhi vs Raj Narain, Minerva Mills vs Union of India, Waman Rao’s case, L. Chandrakumar’s case, I R Coelho’s case and recently in NJAC Judgement the Indian Supreme Court has defined the basic structure differently. He further said that in fact, there is a lot of criticism against this theory. It is being said that “A body which says that there is the basic structure of the Indian Constitution which cannot be amended, only they know what the basic structure is”. By taking recourse to this doctrine they have become a self-regulatory body which framers of the constitution never intended.

In reality, “the Basic Structure was meant to have a check on the temporary majority in Parliament from converting itself into a permanent one”. This is the justification for existence of theory of basic structure.

Then Justice Kurian Joseph summed up the session that basic structure means those basic values without which our democratic set up cannot exist.

Session – 8

Part II

The Art of Hearing

Speakers: Justice Kurian Joseph, Justice G. Raghuram & Adv. Krishnan Venugopal

Hon’ble Director NJA justice G. Raghuram started the session saying that till the time we have heard about the art of judgement. But this is the new concept called art of hearing. A Judge has to have this art to give justice to his duty. It is expected that a judge will give patient hearing to the case of the litigant. He should be open minded while hearing the case. He shall not look as to who is arguing the case or in manner it is being argued, but he should try to look at the litigant who is waiting for the relief. He said that no doubt there is sub-optimal lawyering but still judge should not show so. He has to do the justice to his chair. He said that most of the judges who are elevated to High Courts are the lawyers before their elevation and it takes some time to change them from their argumentative approach. They should try to understand that now they are not lawyers but judges. Earlier they begged the judges for time to argue and now they are being begged for the same by some different lawyers. They should not forget what they expected from a judge when they were lawyers. Thereafter, Justice Kurian Joseph and Adv. Krishnan Venugopal expressed their thoughts on the subject and concluded the session as well as the Conference.
