

**National Judicial Conference for High Court Justices (P-1054)**  
**October 27-29, 2017**  
**Programme Co-ordinator – Ms. Shruti Jane Eusebius, Law Associate, NJA**

**Programme Report**

National Judicial Academy organised the second National Judicial Conference for High Court Justices On October 27-29, 2017. 19 High Court Justices participated in this Conference.

**Objective of the Conference**

The objective of the conference was to facilitate discussion on the areas of Constitutional Law, Judicial Review, Supervisory Powers of the High Courts over Subordinate Courts, Intellectual Property Law and Economic Crimes. The programme aimed to engage the participant high court justices in discussion on the evolving jurisprudence in these areas, the challenges and possible solutions for such challenges. The conference aimed to provide a forum where the High Court Justices from across the country could meet their counterparts and to discuss concerns and issues faced by various High Courts.

**Session 1**

**Theme: Emerging Issues on IP Regime in India**

**Speakers: Mr. Rodney D. Ryder & Mr. Anand Grover**

**Chair: Dr. Justice B.S. Chauhan**

Highlighting the “*Emerging Issues in the Intellectual Property Regime in India*”, the speakers threw light on the area of pharmaceutical patents and the concerns as to striking a balance between incentivising invention and protecting public interest especially the right of access medicines at reasonable cost. The speakers also discussed the concept of Patent Evergreening and its repercussions for invention incentivising. Another development in the commercial world of making money on the intellectual property of others (the premise of social media like Facebook) was highlighted. Another issue that was highlighted in the discussions was the challenge of protecting IPR in digital media in view of the fact that perfect copies can be made of digital media and it is difficult to identify the infringing copy. The speakers also dwelt on the trend of invention harvesting as a commercial practice. The challenges in deployment of intellectual property were also stressed on. Another major issue discussed in was the issue of data privacy, the absence of clear policy on data privacy and the need for data protection law.

**Session 2**

**Theme: Role of the Judiciary in Effective Enforcement of Intellectual Property Rights**

**Speaker: Mr. Rodney D. Ryder**

**Chair: Dr. Justice B.S. Chauhan**

On the theme of “*Judicial Role in Effective Enforcement of IPR*”, the speaker stressed that the fact that the servers were located outside India is a major challenge to the implementation of Intellectual Property Law as the servers lie outside the court’s jurisdiction. Another emerging area that concerns the courts is the liability of internet intermediaries for content and activities hosted by them which potentially infringe the intellectual property of others. It was stated that the 21 days period prescribed under the Information Technology (Intermediary Guidelines) Rules, 2011 is too long as the duration that the offending content is online is crucial to the

interests of the person whose rights have been infringed. The speaker also threw light on the dispute resolution system that is in place for intellectual property related disputes. It was emphasised that the award of damages in intellectual property disputes, like disputes related to domain names proves to be a hindrance as it results in the delay in execution of the order of the court which is detrimental to the commercial interest of the owner of the Intellectual Property as it delays the take down of the infringing material. Another issue highlighted was the trend of forum shopping in IPR disputes and the jurisdictional challenges in tackling transnational and transboundary cases of IPR infringement. Another major issue in Intellectual Property disputes is the challenge in identifying copies of Intellectual property in digital media as technology has enabled the making of perfect copies.

### **Session 3**

**Theme: High Courts: Guardians of District Judiciary**

**Speaker: Dr. Justice B.S. Chauhan**

Stressing on the role of the “*High Courts as Guardians of the District Judiciary*”, the speaker stressed that effective administration of the subordinate judiciary as mandated by Article 227 of the Constitution of India is the collective responsibility of the High Court. Administrative control over the subordinate judiciary is a basic feature of the Constitution. This function must be exercised by the High Courts in a circumspect manner to ensure that the independence and accountability of the judiciary is upheld, and the dignity and respect of the Judiciary is protected. Asking a judicial officer to appear before police officers or before outside agency is against the dignity of the court. Discipline in Courts is a crucial element of the administration of justice. The major elements of a disciplined court is efficiency, timeliness, respect of the court by the Bar. The speaker stressed that complaints against judicial officers must be handled discreetly especially anonymous complaints. Before proceeding with the complaint, the High Court must conduct a discreet enquiry to ascertain the legitimacy of the complaint received to weed out the false complaints. The High Court must stand with the judicial officers as a guardian and guard against judge bashing. The speaker also discussed the crucial role of a judge in judicial administration and stressed on the need for administrative training for judges. It was opined that lack of administrative integrity is worse than lack of judicial integrity as administrative inefficiency affects a larger number of people. A suggestion made in the discussions was that reasons should be recorded even in administrative tasks to ensure fairness in administration.

### **Session 4**

**Theme: Developments in the Area of Constitutional Law: Entrenching the Constitutional Vision of Justice**

**Speakers: Justice A.K. Sikri , Mr. Arvind Datar & Mr. V. Sudhish Pai**

In the discussions on the theme “*Developments in the Area of Constitutional Law: Entrenching the Constitutional Vision of Justice*”, it was pointed out that major developments in constitutional law has happened in cases of small factual scenarios. The recent developments in jurisprudence was discussed in detail. The contours of judicial power vis-à-vis the executive and the Parliament’s powers and functions was discussed. It was stated that the judiciary cannot supplant the executive and the legislature and must not enter into the domains of the executive and the legislature. The issue raised by the speaker was – Under Article 142 can the court by a judicial order render something which is statutorily legal to be judicially illegal? The speaker also stated that the Indian Constitution has endured because of its qualities of specificity of provisions, flexibility and inclusiveness. It was further stressed that access to justice and the

removal of inequalities is the constitutional vision of justice. The speakers also advocated the need for self-imposed restraints on the exercise of judicial power. There is a need to have a system of checks and balances between the Judiciary and Executive and to ensure that one wing of the State does not overtake the other wing's functions. The speaker also attributed the endurance of the Constitution due to the attributes of specificity, flexibility and inclusiveness. The speakers cautioned that if the judiciary takes up all sorts of cases, it would raise the aspirations of the people towards the judiciary. The speakers also cautioned the participant judges against thrusting one's own ideology in cases before them.

### **Session 5**

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

**Speakers: Justice A.K. Sikri , Mr. Arvind Datar & Mr. V. Sudhish Pai**

On the theme of "*Construing the Sounds of Constitution's Speech: Meanings Beyond Text*", the speakers pointed out that originalism/ textualism which has been discarded in most countries was never followed in India. The speakers referred to the Organic theory of constitutional interpretation stating that the Constitution evolves with society and the interpretation also changes with the societal changes. In the interpretation of the Constitution, care has been taken in interpreting the silences of the Constitution. The speakers differentiated between 'door-closing silences' and 'door-opening silences' in the Constitution and indicated the permissible limits of giving meaning beyond text in such cases. The speakers traced the interpretation of the Constitution of India by the Supreme Court such as inclusion of various rights under the right to life and the enlargement of the scope of the fundamental rights.

### **Session 6**

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

**Speaker: Mr. Shekhar Naphade**

On "*Corporate Fraud & Manipulation: Repercussions, Deterrent Mechanisms & Judicial Approach*", the speaker stressed that corporate fraud is a generic term with wide scope. This term does not find mention in the statute. Under company law, there was no concept of fraud until recent amendments were made. Fraud was merely an offence under the Indian Penal Code, 1860. The speaker traced the genesis of corporate fraud and its development into a distinct category of crime. The speaker dwelt on the major corporate fraud cases in India, highlighted the modus operandi of the perpetrators to beat the system and the failure of the regulators to check such crimes. The speaker stressed on the need for greater vigilance by the regulators to check corporate fraud. The speaker also expressed his view that corporate fraud investigation requires in-depth knowledge of financial laws. Our investigators are not sufficiently trained to tackle such investigations. There is need for a trained cadre of investigators who are skilled in corporate fraud investigation. Similarly the judges handling corporate fraud cases also need to be trained in financial laws. The speaker made the following suggestions –

- Bigger players in the corporate fraud are most often not caught and only the small players are caught. There is a need to check and keep tabs on the investigation to ensure that the bigger players are caught.
- It is not enough to charge the Chief Administrative Officer and other administrative officials in a company. The Board members should also be held accountable and there should be a provision for deemed awareness of the Board members where awareness and acquiescence should be equated with consent.

- A separate cadre of investigators should be created to investigate corporate fraud cases.

### **Session 7**

**Theme: Superior Courts: Managing Judicial Review within the Democratic Framework**  
**Speaker: Mr. V. Sudhish Pai**

On the theme “*Superior Courts: Managing Judicial Review within the Democratic Framework*” the speaker quoted the Supreme Court of Israel – ‘judicial review is the soul of the Constitution’. The speaker traced the development of judicial review through the judgments of the Supreme Court and stated that judicial review was a legal doctrine as well as a political power. Judicial review does not mean the judicial is supreme rather it means that the Constitution is supreme. However, usurpation of the powers of one wing of the state by another wing is anti-democratic. The issue discussed at length was ‘Assuming a decline in the credibility of political executive, can the judiciary act as ‘co-governor’ of the nation?’. It was stated that there is a need for imposition of self –restraints by the judiciary on the power of judicial review and a need to exercise the power of judicial review in a circumspect manner. The judiciary should refrain from entering into the domains of the executive and the legislature and should only exercise the power of judicial review in limited cases and refrain from assuming such a wide unchecked power to itself.

### **Session 8**

**Theme: Precedents: Challenges of Managing Conflict; Evolving Doctrinal Coherence**  
**Speaker: Mr. V. Sudhish Pai**

In the discussion on the theme “*Precedents: Challenges of Managing Conflict; Evolving Doctrinal Coherence*” the speaker stated that a divided court signifies an absence of structural leadership and leads to individualisation of the court. There is a need for stability in the decisions of the court, principalisation of decisions and standardisation of the output of the court as an institution. There must be a sense of continuity. The speaker stated that in case a court is departing from or disagreeing with the previous judgment of the court or the superior court, it must distinguish the judgment with reasons or refer the matter to a larger bench. The court is an institution that must reflect a common view of justice rather than a collection of varied views of judges. There must be an institutional coherence, standardisation and consistency in the view of the court which is free from individual views, biases and prejudices.

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