

NATIONAL JUDICIAL ACADEMY



PROGRAMME REPORT (P-1110)

SEMINAR FOR PRINCIPAL DISTRICT AND SESSION JUDGES ON CONSTITUTIONAL AND ADMINISTRATIVE LAW

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Prepared by:

Mr. Krishna Sisodia,

Law Associate, NJA.

Rapporteur-

Ms. Komal Nagarkar,

Barkatullah University, Bhopal.

OBJECTIVE

The objective of the Seminar is to re-acquaint participant judges who are at the cusp of elevation with core constitutional and administrative law principles and to provide a forum for participants to discuss, deliberate amongst themselves, share experiences, knowledge and best practices in exercise of jurisdiction evolving horizons of relevant law and jurisprudence.

The Seminar is structured to facilitate deliberations on the art of hearing, overview of the Constitution, fair trial rights and the doctrine of stare decisis. The sessions would also enable discussions on core Constitutional principles such as the theories of judicial review, doctrine of basic structure and the rule of law.

Following were the Resource Persons for the programme:

Names of Resource Persons	Sessions
Dr Justice B.S. Chauhan	1, 2, 3, 6, 7 & 8
Prof. (Dr.)V. Vijayakumar	1, 2 & 3
Prof.(Dr.)V.K. Dixit	1, 2 & 3
Justice M.S. Sonak	4, 5 & 6
Mr. V. Sudhish Pai	4, 5, 6, 7 & 8

SESSION 1

THEME –THE ART OF HEARING

SPEAKERS- DR.JUSTICE B.S.CHAUHAN, PROF. (DR.)
V.VIJAYAKUMAR, PROF. (DR.) V.K.DIXIT

The speakers dealt with the art of hearing as it forms an integral part of the justice administration system, primarily the art of hearing pertains to encouraging or promoting rational discourse in the courtroom but in a wider sense it includes in its ambit the principles of natural justice.

Socrates, a Greek philosopher has enunciated four components of decision making process. They are:-

- ✓ Hear courteously
- ✓ Answer wisely
- ✓ Consider soberly
- ✓ Decide impartially

The speaker on a lighter vein stated that the judges should spread light not heat in their judgments, light means the ability to go in depth of facts of the case, raise questions and decide the truth of the matter.

The second speaker stated that a judge should not be a mute spectator rather he should participate with the witnesses to ascertain the truth of the matter. A congenial atmosphere should be provided for giving him opportunity to answer the relevant questions.

The third speaker highlighted that the Code of Criminal Procedure, 1973 codifies the principles of natural justice. It basically protects the rights of the accused guaranteed under Art.20 and 21 of the Constitution. The police report provides the opportunity of hearing to the accused at the time of framing charges.

State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan ¹, cross examination was conducted to test veracity of the disposition of the witness. Thus it was stated that cross examination is a part of principles of natural justice.

Thus judges should become active listeners while dealing with a case. Some of the basic elements which can be outlined for this are- must hear with humility; must respect the views of others; should not punish the client on the basis of misbehaviour by their counsel and adjudicate on the merits of the case.

SESSION 2

THEME- ACCESS TO JUSTICE AND RULE OF LAW

SPEAKERS- PROF. (DR.) V.VIJAYAKUMAR AND PROF. (DR.)
V.K.DIXIT

CHAIR- DR. JUSTICE B.S.CHAUHAN

This session primarily stressed on the concepts of access to justice and rule of law and how they are inextricably linked to each other as there can never be rule of law without access to justice.

Access to justice means the opportunity which has been provided to the party to approach the court of law. Since it is a very ancient concept, we find its roots in the Roman law; “*Ubi jus ibi remedium*” which means where there is a right, there is a remedy.

The term justice is difficult to define, but it is visualized as the right to get one`s due. Justice is an act of rendering what is right and equitable towards one who has suffered a wrong. Court has to strike a balance and do justice in conformity with law and the procedure established under the Constitution. Justice is a virtue which transcends all barriers. Articles 32 & 226 of the Constitution of India, read with the directive principles of state policy provides for access to justice. In Rudal Shah v State of Bihar² it was held that the conglomeration of judicial activism and executive commitment can accelerate the ends to access to justice.

Articles 14 and 22(1) of the Constitution have been interpreted in a way that access to justice has been recognised as a fundamental right, thus imparting life and meaning to law.³

¹ AIR 1981 SC 1623

² AIR 1983 SC 1086

³ Hussainara Khatoon v Home Secretary AIR 1979 SC 1377

The rule of law means supremacy or predominance of law as opposed to the influence of arbitrary power.

The broad principles of rule of law were provided in the famous work of A.V. Dicey [The Law of Constitution] in 1885. They are as follows –

- ✓ Law is made by the parliament and hence it is supreme
- ✓ All are equal before law
- ✓ All are subject to the ordinary law courts.

The world justice project has developed nine factors to measure how the rule of law is experienced by the ordinary people. They are:-

- ✓ Absence of corruption
- ✓ Fundamental rights
- ✓ Regulatory enforcement
- ✓ Criminal justice
- ✓ Constraints on governmental power
- ✓ Open government
- ✓ Order and security
- ✓ Civil justice
- ✓ Informal justice

The session was concluded by stating that the justice administration system needs a reform with technology playing the significant role in removing obstacles to access to justice.

SESSION 3

THEME- FAIR TRIAL RIGHTS: ROLE OF A JUDGE

SPEAKERS- PROF. (DR.) V. VIJAYAKUMAR AND PROF. (DR.)
V.K.DIXIT

CHAIR- DR. JUSTICE B.S.CHAUHAN

Fair trial is an integral part of justice administration system and is recognised under Article 21 of our constitution; also includes the right to speedy trial which encompasses all stages, namely the stage of investigation, inquiry, trial appeal, revision and re-trial.

Some of the failures faced during the fair trial are as follows:-

- ✓ Overemphasis over old cases
- ✓ Fresh cases are ignored which leads to delay
- ✓ Hostile witness

Some of the suggestions which were given by the participant judges are as follows-

- ✓ Challan should be scrutinized
- ✓ Investigating should be independent
- ✓ Videography should be done of the evidence
- ✓ Provisions should be recorded in an app which should be developed soon
- ✓ In app, audio as well as video should be available
- ✓ It should be easily accessible to the judges
- ✓ CD should be prepared and produced
- ✓ A judge should be calm , silent at Dias and his conduct should speak
- ✓ Expert witnesses are required

SESSION 4

THEME – OVERVIEW OF THE INDIAN CONSTITUTION

SPEAKERS- JUSTICE M.S.SONAK AND MR.V. SUDHISH PAI

In this session, part III and IV of our constitution discussed at length with focus on the principles which are considered the pillars of our democratic fabric. Historically the need of the constitution was felt to curb arbitrariness of the people in power, hence the Constitution forms the source of order in the life of people, lifeline of a vibrant democracy and is a vehicle which is constantly helping in the progress of our nation.

Mr. Pai discussed the history of fundamental rights by stating the natural law theory wherein which states that fundamental rights are inherent in every person, the constitution merely recognises it. In the Indian Constitution the fundamental rights were borrowed from the U.S. Constitution.

The directive principles of state policy are borrowed from the Irish constitution and the Irish Constitution borrowed it from Spain. These are the type of rights which are non-justiciable in nature, but carries political sanction. It is an integral part of our constitution. It has positive obligations towards the state.

Our constitution carries the concept of relationship between centre and state which has been derived from Anglo Saxon roots. The theories of our constitution state that it is a source of legislation; considered as a grundnorm which helps to test the vires of existing laws; a great source of social values; reflects our political philosophy; and is not rigid but a flexible document.

The session was concluded by stating that our constitution has often been criticised that it has been considered as a quilt of foreign clothes with several patches of principles derived from other countries. Though the principles have been borrowed from other countries, but they have been fully developed and nourished in our soil.

SESSION 5

THEME- OVERVIEW OF THE INDIAN CONSTITUTION

SPEAKERS- JUSTICE M.S.SHONAK AND MR.V. SUDHISH PAI

The session commenced by discussing the core constitutional principles and the silences in our constitution. The provisions of a Constitution are pregnant with meaning. Even a written Constitution does not expressly provide for every conceivable situation. The silences also sometimes speak very tellingly. They have to be sagaciously construed, not lazily assumed or piously hoped. The silences in some areas are deliberate; some open up possibilities of purposive construction; and some are advisedly so left. Most of the provisions of the constitution particularly the various fundamental rights have no fixed content. They are merely empty vessels into which each generation pours its content by judicial interpretation in the light of its experience. Gaps in a Constitution should not be seen as simply empty space. It must be filled by developing proper conventions in the working of the Constitution.

There are three wings of a state namely the legislature, executive and the judiciary. The feature of the three organs is that because of their interdependency, no wing is remotely supreme as all are creatures of the constitution. For instance, Art 368 is not a charter to sign death wish, the parliament is not an official liquidator of constitution; it is only a creature, not a master of it.

SESSION 6

THEME- THEORIES OF JUDICIAL REVIEW

SPEAKERS- JUSTICE M.S.SONAK AND MR.V. SUDHISH PAI

CHAIR- DR. JUSTICE B.S. CHAUHAN

Judicial review has been defined as the power of the court to determine whether the acts of legislature and executive are consistent with the Constitution. The constitutional courts are guardians of the constitution, hence it is their power to strike down laws/ administrative action which are inconsistent with the Constitution.

The concept of limited government and judicial review constitute the essence of our constitutional system. It involves three main elements:

- Written constitution
- The constitution functioning as a superior law
- Sanction by which any superior law may be prevented or restrained, and if found unnecessary, annulled.

Judicial review has in its foundations essentially in common law is, in India, enshrined in the constitution –Art 13 read with Art 32,226, 227 expressly confer that power. Judicial review of purely executive action, of statutory orders and statutory discretion, quasi-judicial orders, subordinate legislation, plenary legislation and also constitutional amendment. There is also judicial review of other constitutional functions like imposition of President`s rule. The range and intensity standards and tests of judicial review of all of these vary according to the circumstances.

SESSION 7

THEME – DOCTRINE OF BASIC STRUCTURE- CONTOURS

SPEAKERS- JUSTICE B.S. CHAUHAN, JUSTICE M. SUDHISH PAI

The doctrine of basic structure signifies the basic features of the Constitution, which are immune to amendment through. This concept is inspired from Art 1-19 of the German constitution which has been termed as the basic law for the federal republic of Germany. It deals with rights, which are not mere values, rather, they are justiciable and capable of interpretation. Those values impose a positive duty on the state to ensure their attainment as far as practicable.

The doctrine of basic structure was discussed for the first time in case of *Sajjan Singh v. State of Rajasthan*⁴ where it was observed that the constitution formulated a solemn and dignified preamble which appears to be an epitome of the basic structures of the constitution.

The doctrine of basic structure is a judicial innovation, and it continues to evolve with the pronouncements of the apex court. There is no exhaustive definition as what constitutes the basic structure.

The *Kesavananda Bharati vs. State of Kerala*,⁵ certain features were considered basic structure of our constitution like- supremacy of the constitution; republican and democratic form of government; secular character of the constitution; separation of power among the three wings of government; federal character etc. The court also noted that the principle of free and fair elections can also be part of the basic structure of the constitution as it involves democracy which is also an essential feature and forms the part of the basic structure. Thus it was observed that the concept of a basic structure, as brooding omnipresence in the sky, apart from specific provisions of the Constitution, is too vague and indefinite to provide a yardstick to determine the validity of an ordinary law.

In *Minerva mills v. Union of India*,⁶ it was held that whether a particular feature of the constitution is basic structure is determined on the consideration of various factors such as its object and purpose as a fundamental instrument of country`s governance.

In *S.R. Bommai v. Union of India*,⁷ it was held that secularism was an essential feature of the Constitution and therefore considered to be a part of its basic structure.

⁴ AIR 1965 SC 845

⁵ AIR 1973 SC 1461

⁶ AIR 1980 SC 1789

⁷ AIR 1994 SC 1918

The session was concluded by the speaker by stating that the term basic means the base or the foundation on which one stand, if amended, it would demolish the very identity of the constitution.

SESSION 8

THEME- DOCTRINE OF STARE DECISIS

SPEAKERS- DR. JUSTICE B.S.CHAUHAN AND MR. V.

SUDHISH PAI

In this session, the rule relating to the doctrine of precedent (stare decisis) in reference to our constitution was discussed at length highlighting the history and showing the current trends regarding the doctrine.

The principle of stare decisis is based on the maxim *Stare decisis et non quieta movere* which means “to stand by and adhere to decisions and not disturb what is settled”. Historically, the law of precedents or stare decisis is not a codified law and has its origin from English common law. Precedents are the foundations for the consistency and stability of justice.

The rule of precedents may be considered as one of the greatest safeguards of rule of law and most effective check on judicial arbitrariness and uncertainty. The policy of stare decisis is vital to the proper exercise of judicial function as it promotes reliance on judicial decisions.

The criticism of the doctrine of stare decisis is that judgements of the court are not computer outputs ensuring consistency and absolute precision but they are product of human thoughts based on the given sets of facts, interpretation of the law and the changing needs of the society. Thus, it can be stated that the doctrine of stare decisis is neither an inexorable command nor a mechanical formula of adherence to the latest decision, but is considered as a principle of policy.

