

Report

CONFERENCE ON DEVELOPMENT IN THE AREA OF CONSTITUTIONAL LAW: P-950

(OCTOBER 15-18, 2015)



Rapporteur- Aman Srivastava

(Vips IP University Delhi)

Objectives of the programme:

The programme aimed towards initiating a discussion among the High Court Judges with regard to the hitherto existing constitutional machinery and the efficiency of the constitutional framework. The programme divided into different sessions aimed towards discussing the constitutional amendments so far and their practical position by the means of various case laws and judicial pronouncements.

Programme Coordinator:

Dr. Amit Mehrotra (Asst. Professor, NJA)

Resource Persons:

1. Prof. G Mohan Gopal
2. Dr. Usha Ramanathan
3. Justice C.K. Thakker
4. Justice B.S. Chauhan
5. Prof. C. Raj Kumar
6. Prof. Sandeep Gopalan
7. Prof. Khagesh Gautam
8. Dr. K.P. Krishnan
9. Prof. Gopal Guru
10. Mr. P.P. Rao
11. Prof. Arun Thiruvengdam
12. Justice J. Chelameswar
13. Mr. Anup Jairam Bhambhani
14. Justice Mukundam Sharma
15. Justice Sujata V. Manohar

Day1- 15/10/2015

Session 1: Evolving a constitutional vision of Justice:

BY- Prof. Dr. G Mohan Gopal

Prof. Dr. Mohan Gopal started the session by introducing himself and sharing the plethora of his experience in the field of judicial education. Prof. Dr. Gopal emphasized upon the importance of academics for the proper functioning of the judges and the actions taken by the judiciary. It helps in strengthening the judicial system and the National Judicial Academy being the ace institutional mechanism to look into and address the judicial problems academically. On the other hand, the ongoing internal institutional mechanism to look into and address the problems by forming state level committees is still in a nascent stage.

The participants then introduced themselves, and the session proceeded further. Prof. Dr. Gopal started with the concept and idea of justice. And held that there are various broad perspectives related to the idea of justice in India, viz: Indian Judge's View and European Philosophers view, American philosophers view on justice. The European philosopher's view is further divided into pre 1950 and post 1950 period.

"Consider what you think is justice and decide accordingly, but never give your reasons, for your judgment might probably be right but your reasons will certainly be wrong"- Lord Mansfield (18th Century colonial journalist)

The above quotation was cited by Prof. Dr. Gopal to point out the dynamic nature of justice and the reasons which bind it. The concept of justice varies immensely. For instance, the idea of justice was different in the pre-colonial era as that being biased towards the feudal lords. However, the idea of justice would be completely sham going by present norms as it failed to grant an equal status to the majority of the population. The idea of justice lies on the very basis of the reasoning and is influenced primarily by the judicial sense of a particular judge. Ultimately justice is an individual's perspective and the lawyers study a particular judge's human cognitive process before arguing a matter. Dr. Gopal highlighted drastically different approaches of Justice Arijit Pasayat and Justice S.P. Singh in the matter of death sentence. Both had their independent reasoning and hence different ideas of justice. Justice is not a legal idea, but a humanitarian idea but has a huge impact and consequences on the judicial sector.

Dr. Gopal emphasized on the fact that the evolution of the Indian Constitution emerged from the freedom struggle. It is supposed to be a blend of modern and colonial tradition. Hence it was emphasized by Dr. Gopal that the idea of justice must be evolved from the internal machinery of the constitution itself just like the western society who derived their ideas justice from their own socio-political history and struggles. Their ideas are not pooling in through a vacuum but through practical experiences. Here it was observed that the struggle and plurality of the struggle played a very important role in evolution of the constitutional principles. The code has emerged through the rigorous socio-cultural mass struggle and is thus comprised of

both modern thought process and the colonial traditional approach. The republic of India would be in trouble if the judiciary and the executive work discreetly upon the idea of justice and hence a uniformity must be derived by basing it upon constitutional principles. The greatest consensus of the idea of justice in India is derived from the constitution for the reason that India being an extensively diversified cultural entity. The constitution of India does not simply copy ideas from the European countries but its principles have been developed by the rigorous mass freedom struggle. Thus it is of paramount importance to derive the ideas of justice from the constitution itself.

Subsequently Prof. Dr. Gopal emphasized on the question that “What is Justice?”

It was put up before the participants that is justice a perfect institutional arrangement and decisions emanating therefrom?

Or does it lie in the consequences of those decisions?

Does Justice lie in showing compassion towards the offender or striking a balance between the sentence and the offence?

Dr. Gopal suggested that for an absolute system of justice, there must be an absolute absence of injustice. Dr. Gopal critically analyzed the institutional arrangement of various societies to explain the relativity of the concept of justice.

Dr. Gopal stated that no single parameters but multiple parameters should be considered while approaching justice as an objective goal. Dr. Gopal viewed the idea of justice in an etymological explanation. Etymologically, justice can be fragmented into- *JUS*- i.e. a norm or a value governing human conduct and *STICE*- i.e. to take a stand or hold up. Thus the idea of Justice etymologically sums up to the *eternal values*.

Dr. Gopal stated that constitutionally India is a union of states for the reason that all princely states voluntarily submitted their sovereignty to the union governed by a single constitution. Etymologically constitution means codification of eternal values, which can't be changed. The state has a duty to protect those values which constitute a nation. Dr. Gopal elaborated that the concept of these eternal values lies in the concept of *Dharma* or righteousness. *Dharma* forms the basis of standard human conduct and not just the decision of the court. Hence, Dr. Gopal summed up that justice is a measure of standard human conduct.

According to Dr. Gopal a judge stands for- *JUS DICRE* or the upholder of norms and values. Here Dr. Gopal cited the judgment of the case- *Authorised officer Thanjavur and Anr. V. S. Nagantha Iyer and Ors. (1979SCR1121)* which emphasizes the importance of judiciary to maintain the constitutional values and order.

According to Dr. Gopal in a society there exist a constant, direct and continuous conflict between the constitutional values and the social values; both cultural and traditional. Especially in a country like India where there is a large amount of socio-cultural diversity being governed

by uniform set of supreme constitutional values. However, it is also emphasized by Dr. Gopal that to maintain an effective system of social order and justice, constitutional values must always prevail over the social values. Dr. Gopal also cited a judgment of the Supreme Court of India that says- "social values are diversified to bring equality- change social mindset to a uniform egalitarian mindset;" i.e.- constitutional values. Hence judicial education must work to enhance the purpose of constitutional values of justice.

Dr. Gopal opined that diversity, non-uniformity and difference in culture lead to gaps resulting in oppression and deprivation of human rights. In England the system of "*Unity in uniformity/homogeneity*" is followed. Whereas in India the system of "*Unity in Diversity*" is observed. The five fundamental principles/values around which justice can be established by the idea of preserving Equality in Diversity are:

- *Swaraj*- Independence not only for the nation but also for every individual.
- *Satya*- Truthful Discourse
- *Ahimsa*- Non Violence
- *Sarvodaya*- Fundamental Rights
- *Antodaya*- Fundamental Duties

The above mentioned values must be followed uniformly and not optionally. The values were evolved as a part of the freedom struggle and hence close to the roots of the very existence of India. Thus people and citizens are free to abide by the social values. Public servants and officials are expected to strictly abide by the constitutional values. It is also a duty of the judges to expand the ideas of justice and equality so as to reach the objective goals of the aforementioned five fundamental principles.

Dr. Gopal then discussed the case of *Ram Lakhan V. State of Delhi* pertaining to prevention of begging Act 1959. Justice Badr Ahmed while passing the judgment stated that- "No society should reduce a citizen to the limit of forcing him to beg and in a case where a person is found to be a beggar then he should not be penalized for the act." Dr. Gopal related the view taken by Justice Badr Ahmed with the idea of Duress and Necessity.

Thus according to Dr. Gopal, the measure of justice need to be evaluated from the unified freedom struggle. Hence steps must be taken to eradicate diversity in terms of casteism. On a concluding note, Dr. Gopal opined that diversity is constant and natural whereas uniformity is artificial.

Session 2: contribution of civil society organisations in making constitution relevant to disadvantaged sections of the society.

By: Dr. Usha Ramanathan

Dr. Usha Ramanathan started the session by discussing the role and contribution of civil society organisations in making constitutional framework and safeguards relevant to the disadvantaged sections of the society. The speaker opined that in various parts of the country such civil society organisations have proved to be very efficient in addressing to the issue of lack of education and knowledge about the constitutional rights of the people.

Thereafter the discussion was focused upon the need and essence of the fundamental rights. The speaker shed light upon the ground reality that the lack of knowledge and ignorance of these rights is causing prejudice to a major chunk of the society, mostly belonging to the lower strata of the society. This is also causing a grave prejudice to the essence and the intent of our constitutional framework.

Dr. Ramanathan opined that the constitution is not about the 'Powers' of the State but about the limits over the powers of the state. Constitutional essence lies in the protection of the weaker section of the society from the comparatively stronger section of the society. The speaker observed that the lower strata of the society is often observed to be suppressed because of their ignorance regarding their fundamental rights which the constitution guarantees. This is the major cause of failure of the constitutional machinery. This is where the role of civil society organisations comes into play to develop a stronger constitutional awareness among the socially deprived and uneducated lot. Dr. Ramanathan held a view that the basic essence of the constitution lies in the fact that it is an anti-majoritarian piece of legislation. It considers the interests of minorities equally at par with the interests of the majority.

Thereafter, the role of judiciary and the constitutional courts was discussed as a protector of the rights of such segments of the society. It was observed that the issue of poverty is the gravest concern to be addressed by the courts as it is the root cause of all deprivations which are caused to the lower strata of the society. Deprivation of the right to equality and a right to enjoy equal social status must be stringently observed by the courts according to the speaker's view. With these pertaining issues, Dr. Ramanathan pointed the attention of the assembly towards Gandhiji's trial, where he was tried for publishing influential writings against the British government. While testifying, Mahatma Gandhi said that his stand was not against unjust conviction, but against unjust laws.

Another prevalent issue discussed was with regard to the problem of paternalism being followed by the Indian judiciary. The judges are being deeply influenced by a sense of paternalism. They seek to redress the issues of the society by having a sense of sympathy over

the society. According to Dr. Ramanathan paternalism is well intentioned but often wrongly interpreted by the courts. Also the problem lies in the fact that courts are often inaccessible by the poor people. The judges are often unknown to the ground realities of the litigants and hence fail to act appropriately in such matters. The solution according to the speaker is to appoint an *Amicus curiae* in the cases of Public Interest Litigation so as to assist the court with the practical scenario from time to time.

Dr. Ramanathan pointed out that the constitution does not ask the judges to be neutral. The duty of the judges is to ensure and zero upon the victim and reach to the root cause of the problem and then find effective remedies to redress the issue. The remedy must be such to redress the wrong caused to the victim and also to eliminate the problem from its root so that no one else would be affected by it in the society at large.

Thereafter, Dr. Ramanathan shed light upon the issue that sometimes the poverty struck population demands more than their fundamental rights which should also be carefully dealt with the courts. Also a brief discussion was initiated on the failure of plea bargaining system. The problems of underprivileged petty offenders was also discussed as bearing a negative impact upon the offender if he is sentenced and penalized in the present judicial system. There is a difference in the formulation of laws and the difference only increases at the time of their implementation. Dr. Ramanathan observed that when a poor person gets entangled in the claws of law then he is termed as a 'Law Breaker'. All these issues arise because of the rampant unawareness among the people regarding their rights.

Sometimes the issues get so mishandled that they lead to illegal arrests, illegal detentions, illegally enforced disappearance, not presenting the accused before the magistrate within the prescribed time etc.

Dr. Ramanathan pointed out that all such issues need to be addressed and the amount of impact which they are causing over the society must also be relatively assessed to have a detailed knowledge upon the problem. This is of utmost importance to redress the root cause of the problem.

With this Dr. Ramanathan shared an instance where a renowned minister of a state publically stated in a gathering that a pot bellied man and a poor man if come before the court then the pot bellied man is more likely to be acted against by the court. The court acted adversely upon this vague statement and charged the minister with contempt.

While Concluding, Dr. Ramanathan shared the example of highly inefficient organization of Delhi Development Authority and the prejudices that its projects have been causing to the underprivileged class of the society. Also Dr. ramanathan suggested that judges should read and interpret the law in the interests of the weak and powerless sections of the society while referring to Gandhiji's speech to the judge tryin him for sedition.

Session 3: Movement away from the public function test laid down in *Ajay Hasia* and followed up to *Pradeep Kumar Biswas*

By- Justice C.K. Thakker

Justice Thakker started the brief session by discussing some of the developments in past few years in the field of constitutional law.

With this regard, Justice Thakker stated that it is important to take note on the functioning of the three limbs of the Indian democracy, namely- the legislature, the executive and the judiciary. Justice Thakker discussed the role and importance of each of them in detail in the shaping up of the social norms and the changes brought about.

Justice Thakker observed that in the 1950's the system was much more so called traditional in nature when the provision of locus standi was strictly available only to the aggrieved. But steadily, by the cooperative action of the three wings of the judiciary while catering to the changing norms of the society, the provisions relating to locus standi were liberalized which lead to the widening of the scope of locus standi. Henceforth locus standi was available to even a person who acts in public interest, thereby paving way for Public Interest Litigation.

Thereafter Justice Thakker Discussed the scope of Article 12. Justice Thakker opined that Article 12 has an expansive scope of interpretation and includes a number of interpretations of the term 'State' within its sweep as iobserved in various landmark judgments of the supreme court like-

- *Bangalore water-work's case*
- *Ajay Hasia's Case*
- *Anandi Lal's case*

Justice Thakker opined that the importance of principles of natural justice and fair play in action was strengthened by such cases. The tests which were laid down in the series of cases was- Prejudice Test, and according to Justice Thakker the test must not be an empty formality. Another important consideration was doctrine of estoppel which is also mentioned under sections 115 and 116 of the indian evidence act.

Another landmark case which was discussed in the session was the *Ratlam Municipality Case*. The important consideration before the court in this case was 'Power Coupled with absolute discretion' and its negative effects. Justice Thakker also discussed the mechanisms laid down by the court to curb the problems connected therewith.

Justice thakker then diverted the discussion towards the fundamental rights and the fundamental duties enshrined in the constitution of India by highlighting the glaring point of difference between the two being that part III being justiciable and part IV being non justiciable. Justice Thakker suggested that a legislation must always be read as a whole. The

courts have always laid down time and again the importance of reading a legislature as a complete document in the whole letter and spirit as a legislation is written with the same pen and ink. Therefore Justice Thakker opined that part III must be so construed to give way for the realization of the intent of Part IV under the doctrine of Harmonious Construction.

Thereafter, Article 14 providing for equality before law and equality by law, was discussed. Pertaining to which Justice Thakker cited the case of *Anwar Ali Sarkar*. Related to the discussion of Articles 19 and 21, *A.K. Gopalan's Case* was discussed. Thereafter while discussing judicial review and its importance, Justice Thakker deliberated that court is not concerned with the legality or illegality of a decision but the court shall look into the process of reaching that decision. The ambit and scope of judicial review was contended to be very wide and the views of the participants were taken. Various writs of Mandamus, Habeas Corpus and certiorari were also discussed while discussing the scope of judicial review. Under The De Facto doctrine, *Boka Raju's Case* of 1981 was discussed which pertained to the removal of a district judge on the account of his non qualification.

While concluding Justice Thakker discussed Dicey's concept of Rule Of Law in detail as bearing the following basic premises:

- Supremacy of Law
- Equality before Law
- Validity of Judge Made Law

Justice Thakker contended that the concept of rule of law forms the very basis of our constitutional structure and has proved to be of utmost importance while the evolution of constitutional law by the supreme court in its land mark judgements till date.

Session 4: Equality as a tool to achieve justice

By- Justice C.K. Thakker

Justice Thakker started by discussing his judgement on section 11 of the arbitration and conciliation act as being a relevant consideration with regard to the topic at hand. Justice Thakker related the topic with the concept of Prospective overruling, and the discussion started with the merits, demerits and the necessity of the concept of prospective overruling.

Thereafter, the discussion was channeled towards the development in fundamental rights and there amendments so far. The cases which were discussed under this were- *I.C. Golak Nath's Case Sankari Prasad Deo's Case*. Subsequently the issue of *Fait Accompli* was discussed and the question which was considered for generating views from the participants was that what would be the possible outcomes and issues if *Fait Accompli* is applied retrospectively. Continuing the discussion, Justice Thakker observed that thereby the issues were addressed by introducing the doctrine of prospective overruling which was an adopted principal of American Law. But the question which was put up before the assembly was that whether the doctrine can be applied by the High Courts or not? To this Justice Thakker contended that both the High courts and the Supreme Court are constitutional courts hence similar in exercising powers, but certain powers are vested oonly with the apex court i.e. the highwst authority for the larger interests of the society.

Day 2- 16/10/2015

Session 5- Debating National Judicial Appointments Commission

By- Justice B.S. Chauhan

Prof. C. Raj Kumar

Prof. Sandeep Gopalan

Justice Chauhan presided over the session, started the discussion on the topic by stating the developments which led to the establishment of collegium system of appointment of the judges. In 1998 the introduction of veto power in the collegium system and the effect which it brought along were also tendered. Justice Chauhan termed it to be a breakthrough step in the judicial appointments. In contrast to this, Justice Chauhan opined that the major problem with the proposed system of NJAC is that

1. it does not provide for the veto power, and
2. The term 'Eminent Person' is very vague

The 1961 case of *State of M.P. V. Baldev Prasad* was cited by justice Chauhan while discussing the problems related to vague terminology. In the present case Supreme Court pronounced upon the demerits and the negative effects which are caused by a terminology being vague. The supreme court however in 1971 held that an act cannot be struck down merely because a term was not defined or vaguely defined in it. It is at this juncture judicial activism plays an eminent role to decide upon and construe such vague term in such a manner so as to assign a definite meaning and scope to it. An act can only be struck down on 2 grounds namely:

- It is unconstitutional, or
- It is against the benefit of the society at large

The supreme court went on to state that if anything is not defined, the judiciary should make an endeavor to fill the gap.

Thus, Justice Chauhan highlighted broadly the two contrasting views put forward by the supreme court with regard to vague terminology.

Hereafter, Justice Chauhan contended that the concept of Independence of judiciary derives its force from the Magna Carta. It is from the introduction of NJAC that this age old concept will lose its significance. Justice Chauhan contended that another argument against NJAC is that the independence of judiciary will be hampered if executive is granted a say in judicial appointments. Also the involvement of consultation by India's Chief justice in the matters of judicial appointments would be against the integrity of the functioning of the post.

After Justice Chauhan's brief take on the situation, Prof. Dr. C. Raj kumar started his submissions.

While speaking against NJAC, DR. Raj Kumar contended that having an objective criteria for the selection of judges may hamper the very secrecy of the procedure. Prof. Raj kumar concluded his arguments by stating that Constitutional amendment is a legislative process and not a mere trial and error method.

Prof. Sandeep Gopalan started his deliberations by making a comparative analysis of the system of judicial appointments similar to the NJAC model successfully adopted by various other developed nations of the world. In Ireland and U.K. judicial appointments are made through a similar system and the system has not witnessed any discrepancies or anomalies so far. The detailed provisions of both the systems were discussed in detail. In Ireland *Ireland Judicial Appointments Advisory Board* is constituted on the other hand U.K. has adopted U.K. constitutional reform Act.

The anti democratic nature of judicial review was emphasized by Prof. Gopalan. According to prof. Gopalan this poses a great difficulty in the counter majoritarianism. Prof. Gopalan discussed about the presumption of constitutionality off legislations.

Thereafter Prof. Gopalan discussed on the point of Vague Terminology and the Veto power system.

While concluding Prof. Gopalan cited the example of U.S.A. where judges appointed by political influences eventually turn out to be liberal in their approach.

Session 6: Evolution of Statutory regulatory Authorities- Implication of separation of powers

By- Dr. K. P. Krishnan

Dr. Krishnan discussed Montesque's theory of separation of powers, and its adoption in the Indian democratic system. Dr. Krishnan pointed out Alexander Hamilton's view on the theory of separation of powers. The evolution of the theory of separation of powers has led to the modification into the system of checks and balances which has been adopted in the Indian system.

Constitutionally, Dr. Krishnan contended that articles 50, 53(1) 53(2) 72, 151, 152, 211, 212 part IV chapter VI provide for separation of judiciary from executive. Broadly there is no rigid application of the theory of separation of powers in India. There are several instances of overlapping observed. Dr. Krishnan cited the 2012 *Super cassette industry case* as an example to the same. The principle of *Delegatus non potest Delegare* was discussed in detail. The question which followed for discussion was that till what extent delegation of powers is allowed?

Moving Further, Dr. Krishnan discussed on the point of statutory regulatory authorities. It was observed that there has been a significant rise of Statutory regulatory bodies in India and Globally in recent times. The constitutionality of statutory regulatory bodies derives its significance from the nexus between separation of powers and rule of law.

Thereafter financial sector laws in India were discussed and their effect upon the application of separation of powers was critically examined. It was contended that the fields which require technical expertise are bound to be conferred upon legislative and adjudicatory powers. Dr. Krishnan then discussed upon a way forward to the approach of overlapping and the solution to it. For the sake of efficiency it is required that a certain amount of delegation of powers is necessary. Dr. Krishnan contended that as the complexity increases it is important to keep the rules malleable. To cater to the problems of conflict of interest it is necessary that the system be so framed to effectively involve separation of powers. In contrast to the theory of conflict of interests, Dr. Krishnan contended that the credible commitment theory finds a compulsory mention. Dr. Krishnan observed that the system of United Kingdom is far more developed in the formulation of such agencies and authorities which require technical expertise. In the post liberalization period, it has been observed that India has emerged as a rising regulatory state. Various regulatory organizations were put up in the form of *Securities and Exchange Board of India, Telecom and Regulatory Board of India, Competition Commission of India, etc.*

Article 53(1) provides for the basis of constitutional validity of statutory regulatory authorities. Article 53(1) provides for the exercise of executive powers of union by the officers of the union. Similarly, 53(3) enables the parliament to confer by law the functions of legislation and adjudication to an authority. Thus the theory of separation of powers was

not adopted in its original form by any of the countries. Montesque's concept has evolved into the theory of checks and balances.

Prof. Sandeep Gopalan deliberated his views on the topic hereinafter. Prof. Gopalan made a comparative analysis of two u.s. supreme court cases under the concept of separation of powers. Dr. Gopalan contended that Prof. Waldron first segregated the concept of separation of powers for the very first time into the following constituents:

- Separation of functions of the government
- Against the concentration of too much power
- Veto against checks and balances
- Principle of Bicameralism
- Federalism

All the above important constituents of the theory of separation of powers were discussed in detail.

John Locke's second treatise on government policies emphasized the importance of separation of powers and the inter connection with judicial review of statutory regulatory authorities and their decisions.

While Concluding, Prof. Gopalan cited *chevron's case*.

Session 7: Striking down administrative orders/circulars impeaching civil liberties.

By Prof. Khagesh Gautam

Prof. Gautam directed his deliberations on the topic towards the inter dependence of civil liberties over economic and political liberties. Prof. gautam started the discussion from a period of liberalization where economic liberties were given much more importance and recognition by the government.

Prof. gautam stated that Economic liberties form an important part of civil liberties and hence centred his deliberations on the point of prejudices caused to the economic liberties of the people by government actions. Prof. Gautam also critically discussed a judgment in a case pertaining to Haryana where the commissioner issued a notification against the functioning of brick kilns in Haryana. Prof. Gautam also criticized the system of taxes against the collective good of the society by quoting the western philosopher- Olson who compared all taxation to theft.

Commenting on the Indian judicial activism in the cases of economic liberties, Prof. Gautam cited the example of *Shagir Ahmed's Case* where by the means of a government order the road transport business of the petitioner was brought to a standstill. The government passed orders to the effect of restraining the licences to the plying of bus owned by the petitioner and justified the action by stating that we did not take away your bus but the licenses. The speaker contended that the protection of civil liberties from executive orders is to be considered in the light of the theory of separation of powers. To this effect the speaker cited the case of *Raysaheb Ram Jawaya Kapur* for discussion. Prof. Gautam contended that the judgment, though a landmark one, but was very wrongly directed. The counsel argued on behalf of the petitioner that civil liberties cannot be just taken away without a proper legislation just by passing of the office order. The speaker did not confirm to the idea that Indian system is similar to the American or the English system. Prof. Khagesh Gautam contended that the Indian system is one of a kind and the Indian constitution being different from the bill of rights and the magnacarta.

Prof. Gautam pointed out the demerits of governmental orders affecting economic liberties by stating that an economic planner sitting in a government office cannot formulate policies to have an affect of taking away the economic liberties of citizens. He reinstated that economic liberties can be taken away but only by the due process of legislation. Prof. Gautam asserted that the economic and civil liberties being an indispensable part of the constitution cannot be ignored and the citizens be deprived of it by a central planning agency. Prof. Gautam suggested that the constitutional provisions must be revisited and referred again to clarify the concept of civil liberties of India. At this juncture the participants raised a question with regard to the increasing need of planning commissions observed in the developing countries and the speaker's critical stand against the same. Prof. Gautam asserted the fact that the planning commissions should not have a legislative effect of depriving economic liberties. Another

contention which was raised by the participants was with regard to the conflicting points of view adopted by the American system in the way that '*lesser the government the better the government*' on the contrary the Indian view with regard to the same being '*Stronger the government the better the government*'. The paradox in the two systems stands independent of the fact that government intervention must not affect the economic liberties of the citizens of the country.

The focus of the discussion was regarding the taking away of the economic liberties from the citizens, but only through the due process under the constitutional mandate. The role of the judiciary was emphasized to be paramount while mitigating the damage caused by administrative orders.

The session was concluded by Prof. Gautam by making the ground open for discussion and inviting views of the participants with regard to the topic after discussing the views of Herbert Spencer and other eminent economists on the touchstone of libertarianism.

In the end, Justice Chauhan shed a light on the developments in the recognition of civic, economic and political liberties through the Indian Judiciary and the Legislature as a knee jerk reaction to the social change.

Session 8: Constitutionality of unequal representation in the public sphere

By: Justice B.S. Chauhan

Prof. Gopal Guru

Justice Chauhan marked the inception to the topic by mentioning the specific constitutional provisions providing for the state to ensure equal representation of weaker sections of the society. It was contended by Justice Chauhan that it is a mandatory positive constitutional obligation upon the state to ensure adequate reservation for socially and economically weaker strata of the society. Justice Chauhan also discussed the practical issues involved with the present system of reservation. It was observed that the constitutional framers did not intend the provision of reservation to be permanently established. But presently, Justice Chauhan contended that, the practical difficulties which are arising in the application of the constitutional provision of reservation is that the people are striving towards being more backward. The people have started considering the provisions of reservation as an advantage and everyone wants to derive the benefit out of the system of reservation. This has resulted in hampering the growth and degradation of the quality of the human resource in India. Another problem highlighted by Justice Chauhan was that the people who have already taken the benefit of reservation, their children continue to take the advantage of reservation and the person who is actually deprived of the resources does not get a chance of upliftment. Also the reservation system has become a tool in the hands of the politicians to extract votes by establishing vote banks in a particular community. Justice Chauhan stated that the issue of reservation was first considered in the Indira Swahney case, in which it was held that the extent of reservation must not exceed 50%.

With the introductory submissions of Justice Chauhan the session was taken over by Prof. Gopal Guru, to be dealt in detail. Prof. Guru cleared the distinction between the reservation system in India and the system of affirmative action used in America on which the system of reservation is based. The system was introduced in India to bring the discriminated people to a level playing field. But Prof. Guru questioned the competency of the system of liberalism and the appointing authorities in India. Prof. Guru thus clarified that affirmative action and reservation being two different concepts merged into one concept in India.

Secondly, Prof. Guru stated that there is a rider to the reservation system that in order to support the egalitarian society, there must be a system of social liquidation in the system so as to provide for reservation for women and underprivileged people of the society. Prof. Guru shed light on the reality that pressures of aspirations of people are being fed by the politicians by accommodating castes into the purview of reservation. The essence of the constitutional power lies in the check of unreasonable populism asserted by the people's aspirations on the political parties and the government giving up to such demands. There must be a reasonable ground to be tested by the judiciary to strike a balance between the need of social equality and meritocracy. Here Prof. Guru cited the Mandal Commission's example where the concept of

restricting the extent of reservation and the concept of creamy layer. Prof guru asserted that the system of reservation was provided for in the constitution for serving a particular cause of having an egalitarian society, and hence was meant to be systematically removed from the functioning of the democracy to promote ultimate meritocracy. But the present state of affairs; as opined by Prof. Guru; are inconsistent with the intentions of the constitutional framers. This gives rise to the active involvement of judiciary to restrict the extent of reservation and strike a balance by not allowing the system of reservation to drift away under social and political pressures.

Another example stated by Prof. Guru with regard to the actions of the judiciary with regard to reservations was in the case of Medical entrance tests where the reserved seats which were left unoccupied were merged in the unreserved seats. According to Prof. Guru, steps like these are effective in achieving the constitutional intent of striking a balance between reservation and meritocracy.

Subsequent to the above submissions, Prof Guru discussed some legislations based on the articles of the constitution which provide for facilitating the benefits of reservations to the inadequately represented scheduled castes and scheduled tribes. Thereafter *M Nagaraja's case* of 2007 was discussed in which the supreme court upheld the validity of article 16(4) by saying that it does not affect the provisions of Article 335 and the class in question was found to be really very backward, thereby putting forward a glaring example of judicial activism in the matter of reservations and their constitutional interpretation. Similarly, the judgment in *Ashok Thakur's case* of 2007 upheld the reservation to minorities and not just restricting it to the castes and tribes scheduled in the constitution.

Prof. Guru discussed the views of some eminent philosophers and sociologists like Ronald Dworkin and J.L. Hart on the concept of reservation and its implementation in its true essence. While concluding, Prof. Gopal Guru suggested that the role of a judge is that of a custodian of the constitutional values and their efficiency is directly effective upon the judicial system's efficiency. Thus judges play a very important role while upholding and interpreting constitutional provisions with regard to reservation and representation of socio-economically weaker sections of the society.

Session 9: Innovative interpretation of the constitution

By- Advocate Mr. P.P. Rao

Prof. Mr. Arun Thiruvengdam

Mr. Rao started the discussion with an introductory note on the constitutional strength and the brief history of its evolution and amendments taken place. Mr. Rao contended that the constitution of India presently is a mix of- very innovative changes brought about by the way of amendments, and also some long standing stagnant provisions which still need a change pertaining to the evolving needs of the society. Mr. Rao tendered the example of the reservation system. It was observed that the presently followed system of caste based reservation has halted the progress of the society and the stringent need for the system of meritocracy to take its place. Another aspect where constitution needs innovative interpretation according to Mr. Rao is the in the interpretation of the provisions pertaining to the Right to Life. Mr. Rao emphasized that it is the most crucial aspect of the constitutional framework and the Indian democracy that it provides for the inherent right to live freely and with a sense of liberty. This provision has been time and again been provided with an expansive interpretation, innovating the provision as per the needs and the social realization. In a series of cases Supreme Court has broadened the scope of the right to life provided for in the constitution. From *Maneka Gandhi's case* to *Major Sandeep Unnikrishnan's case*, the judiciary of India has always been successful in interpreting the right to life broadly as per the demands of an extensively developing society. But Mr. Rao also discussed the negative impacts of this in some cases pertaining to the right to life where the state government is granting leases, which in turn is leading to a lot of exploitation. Therefore Mr. Rao emphasized upon the role of the constitutional courts to interpret such scope of the constitutional provisions with a due regard to its negative impacts as well.

Another instance where the judiciary successfully interpreted the constitutional provisions in the favor of the citizens innovatively is the list of *M.C. Mehta Cases* filed in the form of PIL's. The government policies were rigid with regard to the transport in metro cities as a result of which there was lack of maintainance and a very bad state of emissions from the public transport vehicles. The Supreme court took an innovative step by including right to pure air under the sweep of the right to life and providing a relief to the citizens against the resistance of the government for not changing its policies to convert the state transport vehicles from diesel to CNG. Therefore this example of the court showing due regard to the people's need is a brilliant example to show the benefits that wise interpretation of the constitutional provisions can lead to according to the speaker.

Thereafter, the historical background of innovative interpretation of the Indian constitution was observed stagewise by the speaker. Mr. Rao started with the view laid down in the dissenting opinion in the first case pertaining to the amendment of the constitutional basic structure; The *Kesavananda Bharti's Case* answered the dissenting opinion of the above mentioned dissent in

a 1965 case. This was a major step by the judiciary towards evolving the methodology of interpretation based on reasoning. Mr. Rao summarized that these steps which find their inception from the very beginning of the Indian judicial system have led to the most promising provision of PIL's which is the most glaring example of broadening the scope of judicial activism in India and has indeed been the most innovative step for the benefit of the citizens and the society at large as well.

However, Mr. Rao contended, that the policy of innovative interpretation has led to its own sets of difficulties as well. The problems which it has led to is the expansive scope of judicial review has led to the overcrowding of the courts and as against the interests of a harmonious society has led to a rampant rise in the litigation. The already burdened courts have observed an even higher and steady rate of rise in the disputes and thus the process of justice has become slower for the people. There have also been instances where gross misuse of PILs has been observed. People manipulate the liberties provided in the form of PIL to denigrate the process of law. Thus the tremendous workload and occasional misuse is leading to the negative impacts of an otherwise well intended concept of innovative interpretation by the courts, according to Mr. Rao.

Mr. Rao stated that moulding of relief is more important than adjudicating the matter. This principle is the basic running thread in the concept of innovative interpretation. Mr. Rao contended that the courts are not meant to merely adjudicate the matters between two litigants. The scope of the constitutional courts is much higher as is the duty conferred upon them as the guardians of the Indian Constitution. Mr. Rao deliberated that the Judges need to broaden their perspective while delivering a judgment so as to confer the benefit not just to the litigant but for the society at large so that the problem can be eliminated from its root. It is of utmost importance to bring harmony in the society according to Mr. Rao. Mr. Rao also contended that the courts while pronouncing a judgment should also be vigilant about the repercussions which their pronouncement is going to cause. Therefore the judges should not merely state the law but also justify it with sufficient reason. The problem also lies in the political system which the speaker critically examined as to have become merely a vote catching technique unlike the past. This is leading to the formulation of blunt and unreasonable legislations thereby enhancing the scope of judges as the shapers of relief to the society against such unreasonable legislations.

Thereafter Prof. Arun Thiruvengdam started his deliberations on the topic. Prof. Arun stated discussed the evolution of the approach of the Supreme Court from the old conservative in the post emergency period to the much more people centric activist and progressive since the period of liberalization in the 1990s. Prof. Arun contended that the judicial system has become much more welfare centric towards the society.

Thereafter Prof. Arun discussed Justice P.N. Bhagwati's views in the judgment of *A.D.M. Jabalpur Case* and questioned the innovative interpretation of the courts between the period of 1975-1983. After a detailed examination of the status then and the subsequent evolution, Prof. Arun

initiated a discussion with the participants on the issue that how to assess whether the interpretation of the constitutional provisions by the constitutional courts has been really innovative or not. What should ideally be the ascertaining criteria for assessing innovative interpretation was the crux of the discussion. To this Prof. Arun shared the example of the judgments of Justice Vivian Bose which laid down a clear picture of being progressive. The comparative analysis somewhat cleared the picture as to the question that what is progressive and what is restrained interpretation.

Thereafter, Justice Chelameswar shared his critical views on the hypothetical concept of innovative interpretation by disclosing the state of affairs where the judiciary is still not clear as to the nature of the right to vote and the right to contest elections. With this regard Justice Chelameswar gave the example of the *PUCL case* judgment in which the matter was in question and Justice Chelameswar gave a dissenting opinion. Justice Chelameswar opined that constitution being the most crucial legislation must be interpreted with utmost care and precision and not like any other subordinate legislation. For this he discussed the *S.R. Bommai Case* where according to him that although innovation was certainly welcome but often the judiciary takes a safer option and sadly more often the constitution is not even read at all.

Justice Chelameswar concluded with an example of innovative interpretation by the supreme court where freedom of speech was interpreted as a freedom to the press as against various other nations of the world where press still has a restrained functioning subordinate to the wishes and interests of a state. This was observed to be a very important step for any Democracy. With this Justice Chelameswar also set the ground open for discussion in the subsequent session post a brief tea break of half an hour.

Day 3- 17/10/2015

Session 10: Freedom of press and libel: Constitutionality of gag orders, criminal defamation etc.

By- Prof. Arun Thiruvengdam

Justice J. Chelameswar

The session started with a detailed discussion on the constitutional provisions pertaining to freedom of speech, viz: Article 19 (1) (a), Article 19 (2); and the statutory riders which criminalize the acts which fall beyond and exceed the constitutional liberty of freedom of speech, viz: Sections 499, 500, 124A of The Indian Penal Code. Also various case laws were discussed in which the interrelation of the right to freedom of speech and the duties which it calls for were discussed.

Prof. Thiruvengdam contended that the underlying issues of Right to freedom of speech and its limitations within which it needs to be exercised should be understood by studying the constitutional theory along with the Indian history which prove to be very relevant for a concise understanding of such issues. Prof. Thiruvengdam discussed the restrictions provided under Article 19(2) subject to which the right to freedom of speech can be used.

Thereafter the constitutional theory of free speech was discussed. Prof. Thiruvengdam argued that the following contentions form a backbone of making available the right to freedom of speech in our constitution, viz:

- Argument of Truth
- Argument of Democracy
- Argument of Autonomy
- Argument of sovereignty

Prof. Thiruvengdam also asserted that the constitutional history of freedom of speech is based on the Gandhian philosophy to a major extent. Gandhiji's speech in the sedition trial for which he was being tried for the first time, led to a massive influence upon the minds of the people involved in the freedom movement and thus set the foundation stone of the right of freedom of speech. Even prior to the freedom movement, Mahatma Gandhi was a strong proponent of the fact that every individual must have a right to express his views freely.

Another important proponent of the right to free speech according to Prof. Thiruvengdam was Raja Ram Mohan Roy. Prof. Thiruvengdam contended that he was one of the very first persons who materialised the ideas of having vernacular newspapers to be published across India in various languages. Also Raja Ram Mohan Roy started various institutions which imparted education to everyone. English schools were established by Raja Ram Mohan Roy for increasing the number of English speaking people so that they can effectively communicate with the

british government and respond to them effectively. He himself started publishing a Persian Newspaper for encouraging free speech and communication of thought freely. Thus Prof. Thiruvengdam summarized that free press is an idea conceived from that period of the Indian history, as being important to question and disclose government's oppressive decisions. These privileges form an important part of any democratic system.

Another luminary who outrageously promoted the freedom of press was Bal Gangadhar Tilak. Tilak published different vernaculars in various languages. Prof. Thiruvengdam contended that Tilak started the newspaper *Kesari* in hindi language and *Maharatta* in the English language and was convicted thrice for the offence of sedition by the british government. J.C. Bose was also one of the first persons who got prosecuted for sedition for publishing articles aimed against the british government in his Bengali newspaper *Bangobashi*.

Pointing out the role of judiciary, Prof. Thiruvengdam stated that Justice Strachey interpreted the sedition provisions very broadly while convicting the offenders during the british rule. It was a brilliant example of a neutral judiciary free from the influences of the government. Thereafter Prof. Thiruvengdam pointed out towards the rising Nationalist movement and its impact upon further elaborating the idea of free speech. The constituent assembly when first met to frame the constitution the right to free speech was discussed and the provision found a place in our Constitution.

While concluding Prof. Thiruvengdam critically commented upon the paradox of speech in the legislative assemblies in the present times. Also the Indian Judiciary was criticized for not taking bold and innovative steps to uphold right to freedom of speech to the press as against the constitutional history of India.

Session 11: Constitutionality of Hidden Cameras and Hidden Truths.

By: Anup Jairam Bhambhani

Mr. Bhambhani started his deliberations by posing certain questions before the gathering to form a premise for evaluating the position of the societal needs and norms pertaining to the disclosure of truth. He questioned:

- As a society, what value do we attach to truth? Are the principles of *Satyamev Jayate* being preached in its true sense or is the conception of truth based only upon the principles of morality and has no mandatory existence in our society?
- Is the constitutional mandate compulsory for the disclosure of truth in our society? What came first; The Constitution or the pursuit of truth in our values?
- When is the public domain principle applicable? Is it when the information is in public interest or if the information is true? To this question Mr. Bhambhani cited the example of actor Salman Khan and his expensive gift to his adopted sister in her marriage. Mr. Bhambhani questioned that whether the truth of the information is only relevant or whether it was actually relevant for the interest of the public at large?
- What is public interest? This question, as Mr. Bhambhani contended, was much more profound in the sense that it is a matter of relative perception. Thereby citing the example of the famous golf player Tiger Woods and the media coverage of his downfall in the public domain. Was it actually public interest or merely public curiosity? And whether the two are meant to be considered as same?
- Is a public person entitled to lesser right of privacy than a common person? Is the fact that a person enjoying social status and public recognition must relinquish his right to privacy? The instance of Indu Jain was considered apt by the speaker for this question, who being the wife of the owner of leading business conglomerates featured in the forbes magazine as one of the billionaresses. She filed a suit for injunction against the article of the magazine on the ground that she did not want her personal information to be disclosed and she lived an isolated and simple life, which was rejected by the Delhi High court by stating that the information published was true and hence she had no right to challenge the information.
- Does our society permit free speech merely as a concept or do we actually attach any value to it?
- Is it expected by our society that the truth be disclosed at the first instance by the media or is the role of media started by introducing facts in the public domain and then conclusively the final truth be disclosed after a public consideration of all facts? Is the role of media restricted to bring the final truth in the public domain when it is so

ascertained, or to merely introduce the facts leading to the truth to be analyzed publically to derive truth out of them?

- Finally, Mr. Bhambhani contended that is merely the motivation of disclosure of information relevant in such matters or does the character of the person disclosing truth play any influential role in the disclosure of truth?

The above questions put up by Mr. Bhambhani were meant to critically analyze and question the societal philosophy and the interpretation of constitutional provisions as per the demand of the society.

The deliberations of Mr. Bhambhani were based on the premise established by the aforementioned questions, for which he tendered various examples where the press in India conducted sting operations on different instances and the public reactions to the same. Mr. Bhambhani contended that the first sting operation was conducted against a president of a leading political party and chief defense personnel, thereby bringing out a major scam in the public domain. The public reaction to the new concept was very positive. Another instance was observed in 2008 where a series of sting operations were conducted upon various t.v. actors. In 2007 sting operation was conducted against some senior lawyers trying to manipulate prosecution witness. However this operation failed miserably for lack of credibility. Another sting operation in 2007 was conducted against school teachers engaged in a prostitution racket and involving students as well. This operation too failed miserably as after investigation it was disclosed to be sham. Similarly in case of a professor of AMU, where he was alleged to be involved in homosexual activities, a sting operation was conducted. The supreme court strictly opposed the act as being violative of the privacy of the individual.

Mr. Bhambhani contended that the core principles of constitutionality with regard to hidden cameras are:

- Satyamev Jayate- There cannot be any confidentiality with regard to the act of wrongdoings. For this Mr. Bhambhani cited the example of *RajaGpala's Case*
- Evidence is admissible, provided it is relevant regardless of how it is obtained: the Case of *R.M. Malkani V. State of Maharashtra* and *Umesh Kumar's case* are the appropriate examples for the same.
- Activism by malice is not legicidal (legally suicidal): The principle based on the views of Justice Krishna Iyer
- Public interest may not be the same as what public is interested in: as propounded in *Javed Akhtar/Shabana Azmi's Case*.

Mr. Bhambhani observed that the consequence of freedom of press with regard to sting operations is that it is leading to the trial being conducted by media and influencing the minds of the people at large and possibly to some extent the minds of a judge too. Mr. Bhambhani thereby pointed out the need of "Prior Permission" in case of media reports of

sting operations and how its absence is affecting the system. Here Mr. Bhambhani pointed out the 2014 supreme court judgment in the case of *Rajat Prasad V. C.B.I* in which it was held by the apex court that means of conducting sting operations and the principles governing the same are still not developed for the Indian media.

While concluding the topic Mr. Bhambhani contended that truth emerges from debate and upheld the importance of sting operations by stating that merely a fact that a camera is hidden, it is deceptive in nature. However the resource must be used with due checks and restrictions. Truth is a matter of relative points of view and has a wide range of perspectives.

Session 12: Judicial Activism V. Judicial Restraint

By- Justice J Chelameswar

Prof. Sandeep Gopalan

Justice Chelameswar introduced the topic of judicial activism by analyzing it critically and by stating that the term is otherwise too much hyped. Justice Chelameswar observed that the term is widely being confused with the concept of “Adventurism”. Where judicial activism refers to active involvement of the judiciary in redressing the problems and issues of the society, adventurism refers to a phenomena where a judge ventures out of the norms of conformity or common practice to deliver a judgment. After a brief explanation of two colluding concepts, Justice Chelameswar handed over t=further deliberations to Prof. Sandeep Gopalan.

Prof. Gopalan observed that judicial activism lies in the fact of having a broader perspective than following narrow statutory provisions. It is the matter of discretion to be exercised by a judge. For t elaborating the point prof. Gopalan Discussed two eminent U.S. Supreme Court cases on the topic namely: *Dredd Scott’s Case & Citizens United Case* pertaining to Hillary Clinton’s movie where the question of free speech rights to corporate entities was involved. In the above case, Prof. Gopalan observed that court rejected the narrow interpretation of “Public Distribution” as a term and held that a video on demand is not a public distribution.

For this Prof. Gopalan held Posner’s Theory to be most appropriate to describe the concept of Judicial activism. Thereafter a number of U.S. Supreme Court Judgments were discussed. Prof. Gopalan thereby contended the difference between judicial activism and judicial restraint and the importance of co-existence of both the concepts for a balanced judicial discretion. It is very important for a judge to exercise judicial activism and judicial restraint to fill up the gaps in the legislation.

The session was concluded by Justice Chelameswar by stating that- Always base the discretion of applying judicial restraint and judicial activism under the limitations of Article 226 for the judges of the High Court.

Day 4- 18/10/2015

Session 13: Rationale behind Constitutional Mandate over subordinate courts

By: Justice Mukundam Sharma

Justice Sujata V. Manohar

The rationale of exercise of checks by High Courts over the respective subordinate courts falling under their jurisdiction derives its force from Article 233 of the constitution as stated by Justice Manohar. Article 233 provides for the selection of judicial officers for subordinate judiciary in consultation with the High Court. The appointing authority although being Governor of the state but the provision of consultation with the chief justice of the respective high court itself provides for a discretion of check to be exercised by the High court over its subordinate courts and the officers, as deliberated by Justice Manohar. Also the importance of Articles 234 and 235 was discussed by Justice Manohar in establishing the supremacy of high courts over the subordinate courts.

With regard to the topic Justice Manohar discussed the 2008 case of *Majhar Sultan V. U.P. State Judicial Services & Ors.* The importance of accelerated promotions was also discussed by Justice Manohar.

Justice Manohar observed that the rationale behind the mandate is to free the judiciary from the influences of the executive. The basis of constitutional mandate is upon the theory of separation of powers and for having a judicial system free from external influences it was of utmost importance that the subordinate judiciary be only governed by the respective High courts.

Thereafter a round of discussion was held and various participants tendered their views upon the prevalent system of checks which the high court exercises over the subordinate judiciary and the practical problems which are observed in the administration.

Various views and advice for the improvement in the system and innovative steps to be involved were also suggested by various states. The major problem which was commonly observed was the lack of experience in the officers of lower judiciary. This problem was leading to a major setback for the functioning of the subordinate courts as mutually observed by various participants. A plausible solution to the problem which emerged out of the discussion was that ample amount of training, both practical as well as theoretical must be planned by the respective state judicial academies and the training schedule must be justly divided. Also an important submission which was made in this regard was that training of judicial officers must be a continuous process and not merely one time procedural obligation.

Session 14: Constitutional reforms must for India

By- Justice Mukundam Sharma

Justice Sujata V. Manohar

Prof. Sandeep Gopalan

The premise of the discussion was based on the suggestion that the constitutional reforms must be such that they stand relevant and suit the necessities and demands of the society at that particular point of time. Justice Manohar broadly referred to a list of suggestive reforms mentioned in the reading material provided to the participants. Justice Manohar observed that for a constitution so long and being amended for more than 100 times in its history is a matter of great appreciation. It was observed that more than amending the provisions of constitution it requires innovative interpretation on the part of the judges. Justice Manohar cited the example of interpretation of part III providing for Fundamental Rights to the citizens and various international treaties which provide for human rights. Also various judgements of foreign courts in the cases before them prove to be of great help for the Indian judiciary to base their interpretation of the laws for the benefit of the society, innovatively. The judiciary must take recourse to interpreting such provisions which a certain amount of innovation. Justice Manohar contended that there must be some norms for the Judiciary to interpret the law innovatively and should not always be dependent upon the legislature for formulating the laws.

Justice Manohar tendered the example of some underdeveloped countries of Botswana and Africa which have amazingly provided for better system of civil and social rights to the people than most of the developed and developing countries.

It was observed that the amendments must always be subservient to the basic structure doctrine formulated by the supreme court of India. Justice Manohar thus contended that the amendment of constitution must not be solely a legislative prerogative and should also involve public discretion to a certain extent. And being constitutional courts the supreme court and the high court must take care of the needs of the people and changes in the constitution accordingly.

Justice Mukundam Sharma took over the deliberations on the topic from this stage onwards. Justice Sharma based his submissions on the premise that the constitution must be made a workable document for the present trends prevalent in the society. If the constitutional reforms do not take place time to time it would certainly become a dead document. Justice Sharma contended that being constitutional courts, it is the duty of the high court and the supreme court that the constitutional principles enshrined in the preamble and other parts of the constitution must be given due effect and thus a need of innovative interpretation arises on the part of the judiciary. Interpretation not only plays an eminent role in redressing the needs and problems of the society.

Justice Sharma contended that the amendment of the constitution is important but however restricted to the extent of the basic structure doctrine. Justice Sharma advocated the fact that even though the amendments can be made only after carefully testing on the touchstone of the Basic Structure doctrine, but the reforms necessary must be compulsorily discussed. Justice Sharma opined that recommendations of Justice Venkatchelliah on constitutional reforms being very precise and important for consideration. Thereafter Justice Sharma precisely discussed the recommendations of Justice Venkatachelliah:

- The first suggestion was pertaining to limit the jurisdiction of the definition of 'other authority' under article 12 of the constitution.
- Secondly the importance of innovative interpretation was discussed with the example of freedom of press which was expanded by the means of judicial interpretation of the right to freedom of speech under Article 19 of the constitution. Therefore the reforms need to be from the judicial efforts as well.
- Another suggestion put forward was the discretion to decide contempt cases to be vested only with the constitutional courts, ie- The Supreme Court and the High Courts. The prevalent practice of conferring power to decide contempt cases to tribunals is causing a lot of hassle in the present system.
- The suggestion by Justice Venkatchelliah pertaining to the model of National Judicial commission proposed by him was also appreciated by Justice Sharma.

Prof. Gopalan tendered his submissions towards the end of the sessions by making a comparative analysis of different practices pertaining to various issues in different countries of the world. Prof Gopalan observed that reforms must be so made in the constitution by adopting the reforms in different countries. Prof. gopalan broadly discussed the topics discussed in the previous sessions of the programme and the reforms pertaining to the betterment of those issues. An example cited by Prof gopalan was pertaining to the concept of Judicial Activism in developing countries like India as compared to the concept in developed countries of U.S.A.; where judges are considered to be anti democratic. Therefore while concluding Prof. Goplan contended that find where the system of our country is the weakest and make the reformative developments accordingly.

-Programme Concluded-