

**NATIONAL JUDICIAL ACADEMY**



**SEMINAR ON ROLE OF COURTS AND REGULATOR**

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**REPORT**

**SUBMITTED BY**

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## **Session 1**

### **Theme - Violation of the Separation of Power Doctrine in the Regulatory Framework**

#### **Speaker- Prof. Upendra Baxi**

In this session, Prof. Baxi discussed the evolution and the exercise of curative petition by the Supreme Court. Prof Baxi dwelt on the Naz Foundation case to discuss the issue of review of Supreme Court decisions by the Supreme Court itself. He then dwelt on the adjudication power vested in the regulators and stressed on the need for constitutionally sound decisions by regulators which are free from personal prejudices. Prof Baxi discussed the doctrine of separation of powers and stated that the Constitution of India does not adopt a strict separation of powers. Prof Baxi then dwelt on the delegation of powers to the regulators and stressed on the need for such powers of the regulators to be circumscribed by certain checks to ensure that the delegation of powers is constitutional justified.

## **Session 2**

### **Theme - Regulatory Regime – Purposes, Achievements and Problem Areas**

#### **Speaker- Mr. PK Malhotra**

The speaker commenced the discussion by briefly defining the term regulator and the role of the regulator. The speaker also briefly dwelt on the changing role of the state from policy maker, provider of welfare services to regulatory functions. The speaker discussed the concept of regulation and evolution of the regulatory regime in India. The speaker identified the role of the regulators to be the prevention of market failure, to check anti-competitive practices and to protect and promote public interest. The speaker also put forth the point that independent regulation is required to guarantee a level playing field. The speaker then discussed the two types of regulatory authorities existing in India i.e. statutory regulators and non-statutory regulators. The speaker briefly discussed a few of the major regulators like IRDA, SEBI and TRAI and the role of these regulators. The speaker then dwelt on the major issues relating to the regulators – independence, transparency and accountability. Firstly the issue of the independence of the regulators, their relation with the government in terms of control and supervision by the respective ministries and the need for independence of the regulators was discussed. The degree of autonomy that needs to be given to the regulators and the implications of the control of the government on the regulators was discussed at length. The issues of transparency was discussed and the speaker highlighted two factors that were crucial for greater transparency – participation of stakeholders in the regulatory process and openness in decision making process. The speaker then dwelt on a problem areas in the regulatory regime that is - lack of co-ordination of the regulators and the government, clarity and uniformity in appointment procedure. The participants raised the issue that since policy making which was earlier a government function has been given to the regulators, whether the regulators can be said to be skilled enough to define such policy. To this query the speaker responded that broad policy was framed by the government and the regulators actions were determined to be within this policy. So they were involved in the implementation of the policy of the government and not in the formulation of the policy itself.

### **Session 3**

#### **Theme - Competition Commission of India as a regulator of trade practices**

##### **Speaker- Mr. Ashok Chawla**

In this session the speaker discussed the origin of the competition regulator in India by the creation of the Controller of capital issues which was a part of the government. Thereafter the speaker discussed the broad policy issues that led to the creation of a non-sectoral regulator like the competition commission of India. The speaker discussed the functions of the Competition Commission I watching behavior of market players, enforcement of the provisions of the competition act in case of violations and advocacy; and the role it plays in the market in creation of a level playing field and to prevent manipulation of the market. The speaker then discussed the concept of abuse of dominance. The speaker opined that in the short time since the new regime has been set in place by the amended competition act the competition commission has done well and has been vigilant about the market activities and has been able to ensure a fair market regime in India.

### **Session 4**

#### **Theme - Regulation of Financial Sector**

##### **Speaker- Mr. Sandeep Parekh**

The speaker commenced the discussion by giving a broad picture of the financial sector industry, the agencies involved and the activities in the financial sector. The speaker also briefly dwelt on the new areas emerging in the financial industry – collective investment schemes, derivatives and peer to peer. The speaker then briefly discussed the major players that are involved in the financial sector i.e. the investors, the intermediaries, the regulators; and the judicial involvement in this sector. The speaker then discussed the objectives of the regulatory activity in the financial sector and stated that regulators seek to keep a check on the sector in order to regulate the intermediaries, protect the financial deposits, enforce disclosure, investor protection and to prevent systemic failure. The speaker then highlighted and discussed the weaknesses in the financial sector – issues in coordination, effect of external economic and global forces, complexity of the financial products, weakness in the laws and issues in enforcement. The speaker then broadly discussed the mechanisms that can be adopted to address the weaknesses in the financial sector. The speaker then dwelt on the multiplicity of regulators in the financial sector and highlighted their role, powers and functions. The speaker then dwelt on the aspect of judicial review and the role of the Securities Appellate Tribunal in the financial sector disputes.

### **Session 5**

#### **Theme - Economics and Politics of Regulations**

##### **Speaker- Prof. Upendra Baxi**

In this session Prof. Baxi dwelt on the issue of political influence and control over the regulators. He stressed on the need for regulators to be at arm's length from the political class and the executive. He discussed financial control, political involvement in appointments in the regulatory body as the factors that make regulators independent or dependant from the government. He also stressed on the regulatory design as an important method to ensure regulatory independence. Prof. Baxi discussed the issue of accountability of the regulators and the methods currently used such as reporting to the parliament. Prof. Baxi emphasized on the need for autonomy of the regulators as well as accountability.

## **Session 6**

### **Theme - Indian Securities Market -Regulatory Landscape**

#### **Speaker- Mr. UK Sinha**

In this session, the speaker presented the regulatory landscape of the securities market i.e. the regulators that function in the securities market and their functions and scope of authority. The speaker then discussed the recommendations of the FSLRC with regard to the consolidation of the regulatory mechanism in the securities market sector. The speaker then pointed out the legal framework within which the regulators function and the objectives that they are guided by. The speaker then discussed the evolution of the securities regulator SEBI and the unique features of SEBI. The speaker discussed the exception made in the separation of powers doctrine in the case of SEBI whereby SEBI is vested with legislative, executive and judicial functions. The speaker then discussed the quasi-judicial powers of the SEBI. The speaker briefly presented the structure of the SEBI and the accountability mechanism with regard to the SEBI. The speaker then discussed the important functions of SEBI – investor protection, enforcement mechanism.

## **Session 7**

### **Theme - Important Focus Areas in recent years in the Securities Market**

#### **Speaker- Mr. UK Sinha**

In this session the speaker discussed the major developments in the securities market in recent times. First development discussed was the merger of the Securities Exchange Board of India and the Forward Markets Commission which was announced in the budget 2015-16 and executed in September 2015. The second development discussed was the recent changes in corporate governance norms. The major areas discussed in corporate governance included the norms regarding the terms of appointment and tenure of independent directors, role and functions of the independent directors, role of the audit committee and the shareholder protection measures. The speaker then discussed the recent developments in the area of insider trading regulations and the Comprehensive review and strengthening of the regulations based on recent global and domestic developments. The speaker then discussed the developments in the regulation of money collection schemes, the law applicable in various types of schemes and the regulator responsible for

monitoring the same. The speaker then discussed the enforcement mechanism with regard to collective investment schemes. Thereafter the recent changes in the merger and amalgamation process was discussed. In conclusion the speaker highlighted the global standing of the Indian securities market and identified the major challenges existing in the securities market which would need to be addressed.

## **Session 8**

### **Theme - Key Aspects of Regulation of the Securities Market and Important Cases**

#### **Speaker- Mr. J. Ranganayukulu**

The speaker commenced the discussions by tracing the source of authority of the SEBI as a regulator. The power conferred under the Securities Contracts Regulation Act to make regulation, the process for the same and role of the parliament in this legislative function was discussed. The speaker then broadly discussed the major areas in which the SEBI has made regulations. The speaker then focused on the executive function of SEBI. Thereafter the quasi-judicial function of SEBI was discussed - the nature of the function, the authorities empowered to exercise quasi-judicial function and the process of exercise. The speaker then discussed the takeover regulations as an important area for regulatory action by SEBI and the major decide cases in this area. Another major areas of regulation discussed were the prohibition of fraudulent and unfair trade practices, insider trading and collective investment schemes. The speaker discussed the regulations governing these areas and the major cases decided. The speaker in conclusion presented the key statistics on SEBI's functions.

## **Session 9**

### **Theme - Enforcement Actions by SEBI**

#### **Speaker- Mr. J. Ranganayukulu**

The speaker highlighted the enforcement actions that SEBI is empowered to undertake as a regulator. The first enforcement action discussed was the power of the SEBI to undertake criminal prosecution. The speaker discussed the scope of SEBI's power and the appropriate court before which SEBI undertakes such criminal prosecution. The speaker threw light on the scope of SEBI's powers under Section 11, 11B and 11D of the Securities Contract Act to give directions with regard to securities market activities. Thereafter the adjudication process with relation to securities market default was discussed. The speaker dwelt on the monitoring system for detection of violation of the Act and the SEBI regulations; and the enforcement process adopted by SEBI.

## **Session 10**

### **Theme - Regulation of Corporate Governance – Role of Registrar of Companies**

## **Speakers- Justice AK Goel & Mr. Somasekhar Sundaresan**

### **Panel - Justice UU Lalit**

Hon'ble Justice AK Goel commenced the session by discussing the major developments and challenges emerging in the corporate sector with the impact of liberalization and globalization and the increase in scams and frauds in the corporate sector. The discussion ranged on the issues of public interest that were linked to the major cases of corporate fraud. With this background Justice Goel stressed on the need for effective regulation of the corporate sector. Justice Goel highlighted the issue of multiplicity of regulators in the corporate sector and also the issue of accessibility of these regulators to the common man. Justice Goel then dwelt on the provision of judicial function to the regulators and stated that exclusion of the jurisdiction of the courts was not a feasible solution as the common man would not be able to access the regulator which mostly sits in major metropolitan cities. The discussion then centered on the role of the registrar of companies in corporate governance and the need for a better mechanism to regulate corporate governance. Mr. Somasekhar Sundaresan dwelt on the issue of lack of effective governance in the corporate sector and the trend of social expectation of legislation being the remedy for all issues. Mr. Sundaresan dwelt on the role of the Board of Directors and especially the independent director – the expectations and the reality in corporate governance. Mr. Sundaresan further stressed on the need for capacity building in the corporate sector governance. Mr. Sundaresan also dwelt on overlap in function of SEBI and the company affairs ministry in the area of regulation of corporate governance. Mr. Sundaresan then discussed the major changes in corporate governance with the new companies act.

## **Session 11**

### **Theme - Courts Versus Regulators**

#### **Speaker- Prof. Upendra Baxi**

### **Panel - Justice UU Lalit**

Prof. Baxi dwelt on the constitutional values and objectives that have a bearing on the corporate sector. He stressed on Article 39 as the constitutional goals of the corporate sector and stressed on the need for all corporate policies and actions to be gauged with the provisions of Article 39. Prof. Baxi dwelt on corporate practices and on the issue of whether corporate social responsibility has been adopted effectively by companies. Prof. Baxi then dwelt on the evolution of the principles of natural justice and its use in adjudication of cases involving corporate sector players. Prof Baxi then discussed the concept of demosprudence as the recent development in legal theory and its impact. Prof. Baxi then discussed the Subrata Roy Sahara judgment and discussed the findings of the court as to market abuse being a serious issue and market integrity as a constitutional value. Prof Baxi then pointed out that the Sahara case could have been decided on the basis of Article 39 rather than by logic or by the statements of the regulator. He stressed on the need for courts to link their judgments to the constitution. Prof. Baxi then additionally pointed out the scope of the courts power to punish for contempt as exercised in the Sahara case and stressed that the constitutional

rights of all persons rich or poor should be equally guaranteed. Justice Sirpurkar dwelt on the role of the appropriateness of vesting judicial power in the regulator and also on the need for effective control of the market for common good of all people. Hon'ble Justice Lalit cited the example of the development of the airport at Delhi and stressed on the need for strict control over regulators and the regulatory policy.

## **Session 12**

### **Theme - IRDA and the Regulation of the Insurance Sector**

**Speaker- Mr. RK Nair**

**Panel - Justice UU Lalit**

Mr. Nair commenced the discussion by presenting a brief background of the insurance sector and its development. He drew a comparison between the banking sector and the insurance sector to highlight its unique features. Mr. Nair then dwelt on the creation of the IRDA as a regulator, its powers and functions. Mr. Nair then also highlighted the major proposals in the new Insurance Bill. The discussion centered also on the concept of comprehensive policy of insurance. Mr. Nair conclude by pointing certain issues in the insurance sector practices that posed a challenge for the sector as a whole and the regulator.

## **Session 13**

### **Theme - TRAI as a Telecom Regulator**

**Speaker- Mr. N. Parameswaran**

**Panel - Justice UU Lalit**

In this session Mr. Parameswaran presented a brief background of the Telecom Regulatory Authority of India. He discussed the scope of function of TRAI as a regulator of the telecom sector and the demarcation of regulatory functions of the government and TRAI with respect to the issues in the telecom sector. Mr. Parameswaran elaborated on the regulatory principles and the procedure followed by TRAI. He then discussed the recent developments in the telecom sector and the major issues in the sector.

## **Session 14**

### **Theme - Regulation of Media**

**Speaker- Justice UU Lalit & Mr. N. Parameswaran**

Mr. Parameswaran commenced the session by giving a broad view of the broadcasting sector in India and its various elements. He discussed the various forms of broadcasting service that are

available and the emerging services in the sector. He set out the value chain of the broadcasting sector to give an idea as to the multiplicity of players and agencies involved in the broadcasting sector. Mr. Parameswaran discussed the role of TRAI as a regulator of media. He stressed on the limited scope in which TRAI could regulate media. He discussed the major regulations prevalent in the broadcasting sector and their key features. Mr. Parameswaran then discussed the emerging areas and issues in the broadcasting sector – media ownership, digitization of cable tv services and vertical integration of broadcasting agencies. In conclusion Mr. Parameswaran dwelt on the need for a strong and unified regulator in the media sector and stressed on the need for the regulator to be independent. Hon'ble Justice Lalit discussed the need for regulation of the media sector and the constitutional implications of such regulation. He dwelt on the fundamental right to free speech and expression under Article 19(1)(a) of the Constitution of India and the limitations imposed by this Article on the regulation and control of media. Justice Lalit discussed the major issues with regard to the media – sting operations, censorship, interests of state security, defamation; and the need to regulate the media.

## **Session 15**

### **Theme - Regulation of Public Utilities & Natural Resources**

#### **Speaker- Prof. Upendra Baxi**

The session was commenced by Justice Sirpurkar who commented on the value of natural resources and the problems that are emerging due to scarcity of essential resources and the need for regulation of these resources. Prof Baxi then dwelt on the law relating to economic resources and the government control over the same. Prof. Baxi discussed the case of delay of setting up of the Assam Gas Pipelines and stressed on the Supreme Court's decision where it has been held that the government is has control over the resources as a public trust. Prof. Baxi then discussed the Madras High Court judgment and the 2016 Supreme Court judgment in the case of a contract between GAIL and the Government and raised the question as to the position of a state in the matter between GAIL and the central government. Prof. Baxi then discussed the jurisprudence developed by the High Courts and the Supreme Court with regard to regulation of natural resources. Prof. Baxi stressed on some vital issues in regulation and ownership of natural resources and the principles that should govern the utilization of the resources.

## **Session 16 & 17**

### **Theme - Role of Sports Regulators (BCCI & Others) and Role of Judiciary in Regulatory Regime**

#### **Speaker- Justice VS Sirpurkar**

In this session, Justice Sirpurkar discussed the nature of regulatory control over sports and the involvement of government in the regulation of sports. Justice Sirpurkar discussed the major decisions on the nature of the sports regulators. Justice Sirpurkar dwelt on the fact that the sports



regulators like BCCI which were non-governmental bodies were regulating the sports and the need for a statutory regulator. Justice Sirpurkar stressed on the need for law to govern the area and for a unified system of regulation in the sports sector

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