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CONFERENCE FOR HIGH COURT JUSTICES

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Objective of the Conference

The Conference for High Court Justices was designed to provide a platform, for justices to share experiences, insights and suggestions with a panel of distinguished resource persons on various thematic areas. The conference included eight sessions over the course of 3 days which facilitated discussions on areas related to Constitutional Vision of Justice; Social Context Adjudication within Constitutional Framework; and, Impact of Media on Public Perception regarding Vitality of Justice Delivery. The other themes covered during the course of the conference included – Precedents: Navigating through Precedential Conflicts; Managing Judicial Review within Democratic Framework, Adjudicating Electoral Disputes: Free & Fair Elections. The conference further included deliberations on Adjudicating Economic Crimes like Corporate Fraud and Money Laundering.

Identifying challenges and evolving optimal solutions and strategies to effectuate qualitative justice delivery was the key objective during the conference.

Session 1: Entrenching Constitutional Vision of Justice

Speakers: Justice Sujata V. Manohar, Mr. Sujit Ghosh

Chair: Justice B.S. Chauhan

The session was commenced by the Hon'ble chair enlightening the participants on Constitution as a living document and the concept of justice. It was pointed that framers of the constitution had a broad vision of justice in mind which is evident in the preamble itself, the text used in the constitution is of illustrative nature and is subject to liberal interpretation rather than strict interpretation. Furthermore it was emphasized that the constitution must have a wider interpretation than civil or criminal law. It was deliberated that India is a pluralistic society therefore there bound to be conflict of interests. The session further moved on to discuss the definition of the term 'justice' which has not been defined anywhere but, an idea about what justice is according to forefathers of our constitution is evident in the preamble. It was further stated that justice is a dynamic concept which could be different for different individuals. It was deliberated that the idea of justice of an individual is not greater than the idea of justice of community. Further deliberations were made upon Part III & Part IV of the Constitution. It was mentioned that

these parts have more often led to realization and enforcement of certain fundamental rights. It was stated that fundamental rights are interlinked to each other and cannot be read in isolation. The concept of equality was discussed through the prism of Article 14, 15, 16 and 21 and further highlight how these articles have ensured in entrenching a constitutional vision of justice. The doctrine of proportionality was briefly discussed by the panel. Recent judgments of the Supreme Court which have ensured to secure constitutional vision of justice as imagined by the framers of the Constitution were discussed at length such as Sabrimala Temple case, Haji Ali Durgah Case, Shah Bano case, Vishakha Case, Indira Swahney, N.M. Thomas Case and other landmark judgements. Lastly, the evolving jurisdiction of Public interest litigation was also discussed.

Session 2: Social Context Judging as a Controlling Element in Statutory Interpretation and Exercise of Discretion

Speakers: Justice B.S. Chauhan and Mr. Sujit Ghosh

Chair: Justice Sujata V. Manohar

The second session began with a discussion on the landmark decisions given by the courts in different decades. The concept of judicial discretion was deliberated upon. Some of the landmark judgments discussed in detail were *Indira Swahney vs Union of India*, *Railway Board vs Chandrima Das* and *Jospeh Shine vs. Union of India* to highlight upon the subject. The doctrine of “sovereign immunity” was briefly discussed by the speakers. The philosophies and theories of Jurisprudential thinkers such as H.L.A Hart, Dworkin and Barak were highlighted to understand the concept of “judicial discretion”. A.K. Gopalan and Kharak Singh’s case were also pointed in relation to judicial discretion. It was observed that “judicial discretion” changes with time. The difference between American and Indian Jurisprudence in relation to exercise of judicial discretion was pointed out by the speakers in detail. Justices were suggested that judicial discretion must be applied only when there is an ambiguity in law and when there are multiple alternatives available to judge. The justices were asked to be sensitive to cases pleaded before them and to write plain and simple language with shorter judgements. Some of the articles of the Constitution discussed were Art. 21, Art. 21 A, Art. 29, Art.39A, Art. 51A etc.

Session 3: Impact of Media on Public Perception Regarding Vitality of Justice Delivery

Speakers: Justice Sujata V. Manohar and Mr. Sujit Ghosh

Chair: Justice B.S. Chauhan

The session focused upon how media and judiciary are interlinked. It was highlighted that media is the fourth pillar of democracy and bulwark of any democratic society. The session involved discussions on how media has played its role in the time of crisis. Furthermore, the concept of social media and how it has impacted justice delivery was deliberated upon. The advantages and disadvantages of media to the judicial institution as a whole was highlighted by the speakers and the participants. It was mentioned that due to advent of media specifically social media, information travels a lot faster than it used to and therefore, controlling media inside the court is very important. The concept of media trial and how it impacts the justice delivery system was discussed in detail. It was further pointed out that “media trial” often overlaps the fundamental right of “free and fair trial” which hampers the delivery of justice. The concept of “media trial” and a matter being “sub judice” was also discussed. It was further observed that speech and expression is a fundamental right whereas the free press is not a fundamental right. It emerged from the discussions that there is a need to form uniform rules on what should and should not be reported. It was observed that the journalism can either be of “positive” or “negative” nature. Also it was felt that there is a need to raise the standards of journalism in India since the essence of freedom is right to be informed.

Session 4: Precedents: Navigating Through Precedential Conflicts

Speakers: Justice B.S. Chauhan and Mr. Arvind P. Datar

The session commenced with discussion on some basic concepts as to what are precedents, its role, history in common law. It was mentioned that Art. 141, 144 and 227 deals with the law of precedents in India. The binding nature of judgements by the Supreme Court under Art. 141 was discussed at length. It was stated that precedents are of two types namely horizontal and vertical precedents, and that the former type of precedents could be ignored as they are based on facts whereas the latter vertical precedents determine the rule of law which cannot be ignored. It was further deliberated that not following precedents when

required creates judicial anarchy and indiscipline. Importance and advantages of precedents in common law was deliberated upon. It was further deliberated that ‘precedents’ in criminal law requires finding of facts. It was mentioned stated by one of the speaker that precedents originate from a pyramidal structure of judicial hierarchy. Emphasis was drawn upon the concept of ‘*per incuriam*’, ‘*stare decisis*’, ‘*obiter dicta*’ and ‘*ratio decidendi*’. Theory of “Explicit” and “Implicit” ratio decidendi was also briefly discussed by the speakers. The “Wambaugh test” of American Rule of Interpretation was pointed out with regard to determining the ratio decidendi of a decision. Various case laws through which the concept of precedents has developed in India were also discussed during the session like *CID V. Godawari Devi Saraf* 113ITR589, *Vishnu Traders V. State of Haryana* (1991), *Afcon’s Case*, *Ramana Shetty’s case* and *Waman Rao’s case*. Some of the landmark judgement like *Keshavanada Bharti*, *Minerva mills* and *Maneka Gandhi* were discussed at length.

Session 5: Role of Judiciary in Adjudicating Electoral Disputes: Free and Fair Elections

Speakers: Mr. T.S. Krishnamurthy and Prof. Trilochan Sastry

The session commenced with speakers highlighting the statistics in relation to criminal records of the MP’s and MLA’s. The situation of electoral process in relation to criminal records of candidates standing in national or state elections was discussed in detail by the speaker. Recent judgments given by the Supreme Court in relation to electoral disputes and its implications were discussed by the speaker. The speaker further pointed out various electoral issues that need judicial consideration such as electoral bonds, funding of political parties from outside India and whether political parties are a public authority under RTI Act was highlighted by the experts in the area. The discussion further moved onto the role of courts in preserving the sanctity of elections. Representative of People Act was discussed extensively during the session. Deliberations further included the role of Election Commission in keeping the electoral process free and fair from any kind of influences. The session concluded with an overview of the “model code of conduct” in relation to elections and electoral process.

Session 6: Managing Judicial Review within Separation of Powers and Democratic Framework

Speakers: Justice B.S. Chauhan, Mr. Arvind P. Datar and Mr. Sujit Ghosh

The session began with an overview of the doctrine of separation of power and judicial review. Art. 50 was referred to which provides for separation of judiciary from executive in public services of the state. Various facets of the same article were discussed during the discourse along with the 7th schedule of the Constitution. The concept of basic structure of Constitution through separation of power and judicial review was deliberated upon. Further, discussion moved onto the development of “judicial review” wherein the landmark judgment of *Marbury vs Madison* was discussed by the speaker. It was pointed out that judicial review is a tool to keep checks and balance powers of other two limbs of any democratic society i.e. executive and legislature. The fine line between judicial activism and judicial overreach was highlighted in context of the theme of the session. The session further included a comparative overlook of Constitution of various countries wherein these doctrines have been provided and how their courts have drawn a fine line between judicial review and separation of powers. The session concluded with reference to recent landmark judgments given by the Supreme Court of India which have been a by-product of judicial review such as the case involving Liquor Ban on Highways, Sabrimala temple case, BCCI case were discussed by the speaker with participants.

Session 7: Adjudicating Economic Crimes, Corporate Fraud and Manipulation

Speaker: Mr. Somasekhar Sundaresa and Mr. Shekhar Naphade

It was highlighted by the speakers that corporate law and corporate fraud is a vast subject and involves several laws within itself. The statistics relating to number of corporate fraud over the recent years was mentioned. It was pointed out that India does not have a robust financial mechanism in dealing with the cases of corporate fraud since this area is still evolving. There is a phenomenal change in economic market with incidents of bank frauds, hackers, corporate frauds have increased tremendously. The definition of corporate fraud was discussed and it emerged that there is no comprehensive definition of corporate fraud and the existing machinery of state dealing with cases of economic fraud is outdated and rigid in nature. Furthermore, it was discussed that to control such frauds there is a need to

develop comprehensive legal method. The speakers discussed various case laws and *modus operandi* of various financial fraud that have taken place in the country. Cases such Haridas Mundhra scam, Harshit Mehta case, Speak Asia Case, and Nirav Modis' case were discussed in detail with special emphasis on their mode of operation and laws applicable in the country. The role of investigating agencies in dealing with cases of corporate fraud was deliberated upon by the speaker. The session further involved discussion on various definitions of "fraud" as provided in different legislations. Section 17 of the Indian Contract Act, 1872; definition of Fraud as defined in SEBI Regulations, 2003 was discussed. The session concluded with deliberations being made upon Regulation 3 and 4 of SEBI Regulations, 2003.

Session 8: Money Laundering: The Prevention of Money Laundering Act, 2002: Current Challenges

Speakers: Mr. Somasekhar Sundaresan and Mr. Shekhar Naphade

The speakers gave a background of enactment of Money Laundering Act, 2002. It was stated that the same act was introduced in compliance with FATF (Financial Action Task Force). The speaker highlighted that the fundamental principle of Prevention of Money Laundering Act was "not only to chase the person but chase the money as well". It was further discussed that there is absence of jurisprudence in context of PMLA, 2002 as the appeal lies with the tribunal thus bypassing the higher judiciary. For jurisprudence in matters of PMLA high courts have to be empowered to deal with the matters of money laundering. Further the speaker gave a brief overview of the act by explaining various sections and their implications. During the discourse it was mentioned that Prevention of Money Laundering Act, 2002 was enacted with an objective to curb terrorism but with passage of time PMLA Act, 2002 has been used as a legislation to curb other illegal activities as well. The session concluded with discussion upon the benefits of using Aadhaar card to increase transparency and curb incidents of money laundering.