

NATIONAL JUDICIAL ACADEMY



NATIONAL SEMINAR ON CONSTITUTIONAL AND ADMINISTRATIVE LAW

[P-1326]

(21st & 22nd January, 2023)

PROGRAMME REPORT

PROGRAMME COORDINATORS:

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Overview of The Workshop

The National Judicial Academy (NJA) organized a two-day National Seminar on Constitutional and Administrative Law for district judges on 21st & 22nd January, 2023 at the NJA, Bhopal. The seminar was conceived to provide a forum for discussing normative issues concerning the constitutional status of district judiciary and interpreting Constitutional issues; Constitutional validity and legality of Legislations. It explored the intersection of the principles of administrative law in court management; principles of natural justice and the doctrine of precedent. The objective of the seminar was to provide a forum for participants to discuss, deliberate amongst themselves and share experiences, knowledge and good practices in exercise of jurisdiction.

DAY – 1

Session 1

Theme - Constitutional Status of Trial Judiciary

Speakers: Justice N. Seshasayee and Justice Poonam A. Bamba

On the theme of ***Constitutional Status of Trial Judiciary***, the session commenced by emphasising that the district judiciary is the founding pillar of judiciary and they must ensure to provide speedy and timely justice. The Constitutional mandate to follow the Constitution under Article 375 and to act in aid of the Supreme Court under Article 144 were delineated. The scheme of the district judiciary under Articles 233 to 237 was also expounded. It was asserted that the district judiciary derives its independence from the constitution whereby they are subordinate only on administrative side and not on judicial side.

Thereafter, on the aspect of superintendence of High Courts over the district judiciary it was pointed that Article 235 essentially deals with administrative control related to transfers, posting etc., however, it was opined that in practice it has cultivated inherent control of the High Courts over district judiciary. It was suggested that the only affinity and accountability of the district judiciary is towards the Constitution. Similarly, while emphasising the role of a district judge as a guardian of judicial officers it was iterated that it indicates a position of trust and not merely control or superintendence. As regards annual confidentiality reports and appraisals, it was asserted that the object is to inculcate discipline and not to castigate the judicial officers while maintaining their dignity and independence. Further, whilst asserting that the function of a judge is not divine as judges are accountable a detailed “Ten Commandments” was shared with the participants.

Lastly, on the point of judicial independence it was stated that a balance in discharge of judicial functions has to be struck, as on one hand the constitution bestows a robust independent framework for judges, yet as any government servant there are service rules governing them.

Session 2

Theme - Interpreting Constitutional Issues; Constitutional Validity, Legality of Legislations and Jurisdictional Bar of Civil Courts

Speakers: Justice C.V. Karthikeyan and Justice N. Seshasayee

On the theme of ***Interpreting Constitutional Issues; Constitutional Validity, Legality of Legislations and Jurisdictional Bar of Civil Courts***, the deliberations commenced by highlighting the Apex Court's decision in ***State of Punjab v. Davinder Singh, (2020) 8 SCC 1***, wherein it was observed that "a constitutional court declares law as contained in the Constitution, but in doing so, it rightly reflects that a Constitution is a living and organic thing, which of all instruments has the greatest claim to be construed broadly and liberally as was observed in ***Goodyear (India) Ltd. v. State of Haryana, (1990) 2 SCC 71***.

Thereafter, the essentials of Section 9 CPC were discussed and the following cases were highlighted:

Ganga Bai v. Vijay Kumar, (1974) 2 SCC 393

It was held that there is a basic distinction between the right to file a suit and the right of appeal. There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. However, the right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. Therefore, right of appeal is a creation of statute.

Vishnu Dutt Sharma v. Daya Sapra, (2009) 13 SCC 729

It was held that any person may as of right have access to the courts of justice. Section 9 of the Code of Civil Procedure enables him to file a suit of civil nature excepting those, the cognizance whereof is expressly or by necessary implication barred. Order 7 Rule 11(d) is one of such provisions which provides for rejection of plaint, if it is barred by any law. Order 7 Rule 11(d) of the Code being one of the exceptions, thus, must be strictly construed.

Nagri Pracharini Sabha v. Vth Addl. Distt. and Sessions Judge, 1991 Supp (2) SCC 36

It was observed that a litigant having a grievance of a civil nature has, independently of any statute, a right to institute a suit in the civil court unless its cognizance is either expressly or impliedly barred. The position is well settled that exclusion of jurisdiction of the civil court is not to be readily inferred and such exclusion must be either express or implied.

Dhulabhai v. State of M.P., (1968) 3 SCR 662

The diverse views expressed by the Court may be stated as follows:

(1) Where the statute gives a finality to the orders of the special Tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegality collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are

declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.

Thereafter, the following decadal instructive judgments of the Supreme Court on Civil Matters were delineated:

SCG Contracts (India) (P) Ltd. v. K.S. Chamankar Infrastructure (P) Ltd., (2019) 12 SCC 210

It was held that “A perusal of the amendments (Order 5 Rule 1, sub-rule (1), second proviso) (Order 8 Rule 1, proviso) (Order 8 Rule 10, proviso), to the Code of Civil Procedure in the wake of the promulgation of The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 which came into force on 23-10-2015 would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record. This is further buttressed by the proviso in Order 8 Rule 10 also adding that the court has no further power to extend the time beyond this period of 120 days.”

High Court of Madras v. M.C. Subramaniam, (2021) 3 SCC 560

It was held that the provisions of Section 89 CPC must be understood in the backdrop of the longstanding proliferation of litigation in the civil courts, which has placed undue burden on the judicial system, forcing speedy justice to become a casualty...The object and purpose of Section 89 is crystal clear — to facilitate private settlements, and enable lightening of the overcrowded docket of the Indian judiciary....The purpose of Section 69-A (T.N. Court Fees and Suits Valuation Act, 1955) is to reward parties who have chosen to withdraw their litigations in favour of more conciliatory dispute settlement mechanisms, thus saving the time and resources of the Court, by enabling them to claim refund of the court fees deposited by them.. Thus, even though a strict construction of the terms of Section 89 CPC and Section 69-A of the 1955 Act may not encompass such private negotiations and settlements between the parties, it was emphasised that the participants in such settlements will be entitled to the same benefits as those who have been referred to explore alternate dispute settlement methods under Section 89 CPC.

Rahul S. Shah v. Jinendra Kumar Gandhi, (2021) 6 SCC 418

It was held that “While CPC under Rules 30 to 36 of Order 21 provides for execution of various decrees, the modes of execution are common for all. Section 51 CPC lists the methods of execution as by delivery of property; by attachment and sale; by arrest and detention in civil prison; by appointing a Receiver or in any other manner as the nature of relief granted may require. Having regard to the above background, wherein there is urgent need to reduce delays in the execution proceedings we deem it appropriate to issue few directions to do complete justice. These directions are in exercise of our jurisdiction under Article 142 read with Article 141 and Article 144 of the Constitution of India in larger public interest to subserve the process of justice so as to bring to an end the unnecessary ordeal of litigation faced by parties awaiting fruits of decree and in larger perspective affecting the faith of the litigants in the process of law.”

The cases of *State of Kerala v. Sudhir Kumar Sharma and others* (2013) 10 SCC 178, *Ram Prakash Agarwal v. Gopi Krishan* (2013) 11 SCC 296, *Rajni Rani v. Khairati Lal* (2015) 2 SCC 682, *Banwari Lal v. Balbir Singh* (2016) 1 SCC 607, *Alcon Electronics (P) Ltd. v. Celem S.A. of France* (2017) 2 SCC 253, *United Finance Corpn. v. M.S.M. Haneefa* (2017) 3 SCC 123, *Prabhakara Adiga v. Gowri* (2017) 4 SCC 97, *Jayantilal Chimanlal Patel v. Vadilal Purushottamdas Patel* (2017) 13 SCC 409, *Jaswant Singh v. Parkash Kaur* (2018) 12 SCC 249, *Pam Developments (P) Ltd. v. State of W.B.*, (2019) 8 SCC 112, *SCG Contracts (India) (P) Ltd. v. K.S. Chamankar Infrastructure (P) Ltd.*, (2019) 12 SCC 210, *Urmila Devi v. National Insurance Co. Ltd.*, (2020) 11 SCC 316, *Raghwendra Sharan Singh v. Ram Prasanna Singh* (2020) 16 SCC 601, *High Court of Madras v. M.C. Subramaniam* (2021) 3 SCC 560, *Rahul S. Shah v. Jinendra Kumar Gandhi* (2021) 6 SCC 418, *K. Karuppuraj v. M. Ganesan* (2021) 10 SCC 777, *Vaishno Devi Construction v. Union of India* (2022) 2 SCC 290 were also referred.

Session 3

Theme - Doctrine of Precedent

Speakers: Justice N. Seshasayee and Prof. V.K. Dixit

On the theme of Doctrine of Precedent the common law origins of the doctrine of stare decisis was discussed. It was iterated that the doctrine of precedent is founded on judicial discipline to stand by the decision of earlier court or superior court. Precedent was alluded to as a generalization of facts and establishment of a certainty in outcome in similar fact scenarios. Further, it was stated that Article 141 of the Constitution mandates the law declared by the Supreme Court to be binding on all courts within the territory of India. While navigating through the constitutional history of India, the speaker stressed that Constitution is not limited to the bare text but is what the judiciary interprets it to be.

Exceptions to the doctrine of precedent were highlighted by discussing the concepts of sub silentio and per incuriam. Further, the case of *Bengal Immunity Co. Ltd. v. State of Bihar* (1955) 2 SCR 603 was cited wherein it was observed that the Supreme Court has the power and authority to overrule its own decisions when it is found that an error has been committed in the past and it can't be perpetuated in public interest. In such a scenario, in a fit and appropriate case, the Supreme Court can overrule its own decision.

While dealing with the evolution of fault liability into no-fault liability to strict liability to ultimately absolute liability, the cases of *Ryland v. Fletcher* (1868) UKHL 1, *Union Carbide Corporation v. Union Of India (Bhopal Gas Tragedy)* AIR 1988 MP 206 and *M.C. Mehta v. UOI (Oleum gas leak case)* (1987) 1 SCC 395 were discussed. The cases of *Donoghue v. Stevenson* (1932) UKHL 100 and *Doctor Bentley's* case were deliberated to emphasise as to how courts in the earlier times had taken inspiration from the Holy Bible to enunciate new principles of law such as the 'neighbor's rule'.

Thereafter, the issue of determination of binding precedent in case of conflicting decisions of coordinate benches was elaborated. It was asserted that the decision of a larger bench will be binding on a smaller bench. Thus, it is the strength of the bench that determines the binding effect of its decision.

The identification of *ratio decidendi* from a precedent was discussed in light of Apex Court's judgment in *S.I. Rooplal v. Lt. Governor through Chief Secretary, Delhi* AIR 2000 SC 6594 and *Delhi Administration v. Manohar Lal* 2002 7 SCC 222. The different methods to determine the *ratio decidendi* of the judgment, including the method laid down by A. L. Goodhart and Eugene Wambaugh was also discussed. Lastly, in light of *Kesavananda Bharti v. State of Kerala* (1973) 4 SCC 225 and *Islamic Academy of Education v. State of Karnataka* (2007) 15 SCC 693, the method of finding out *ratio decidendi*, in decision given on more than one ground or by multiple judges was elaborated. It was opined that identifying *ratio decidendi* is an art which one gradually acquires through experience and practice.

DAY – 2

Session 4

Theme - Principles of Natural Justice for Procedural Fairness

Speakers: Justice C.V. Karthikeyan and Justice Gautam Kumar Choudhary

On the theme of ***Principles of Natural Justice for Procedural Fairness*** it was stated that the term 'Natural Justice' is not expressly mentioned in the Constitution, however, it is embedded in the Preamble, Articles 14, 19, 21, 22, 39A, 311, 32, 136 and 226. It was asserted that broadly, the principles of natural has two facets:

- '*Nemo judex in causa sua*'- No one shall be made a judge in his own cause.
- '*Audi alteram partem*'- No one shall be condemned unheard.

Thereafter, the Wednesbury Principle was delineated. It was stressed that “irrationality” is applicable in a decision which is outrageous in its defiance of either logic, or morals, that no sensible person could have arrived at that conclusion on proper application of mind. Subsequently, the decision in *Maneka Gandhi v. Union of India* AIR 1978 SC 597 was discussed wherein it was held that the order to impound a passport could be declared invalid under Article 19(1)(a) and (g) if it was so drastic in nature as to impose unreasonable restrictions on the individual’s freedom. The Judgment established a relationship between Articles 14, 19 and 21 of the Constitution (known as the ‘golden triangle’ or ‘trinity’). It held that a ‘procedure’ under Article 21 of the Constitution cannot be arbitrary, unfair, oppressive or unreasonable.

Further, the Doctrine of Proportionality was deliberated. It was asserted that the doctrine is applicable in cases where rights are violated by administrative action more extreme than it should be to achieve the desired result. It was iterated that in a nutshell the underlying principle of the doctrine of proportionality is that “One cannot use a cannon to shoot a sparrow”. The case of *Coimbatore District Central Cooperative Bank v. Employees Association* (2007) 4 SCC 669 was highlighted wherein it was observed that the court would not allow administration to use a sledgehammer to crack a nut where a paring knife would suffice. Courts should analyse administrative objectives and procedures for making or reversing a decision.

Subsequently, the following case law were highlighted on the different aspects of the principles of natural justice:

Allauddin Mian and Ors. Sharif Mian and Anr v. State Of Bihar, (1989) 3 SCC 5

It was held that a Judge should indicate the basis upon which he considers a sentence of a certain magnitude justified. If a Judge finds that he is unable to explain with reasonable accuracy the basis for selecting the higher of the two sentences, his choice should fall on the lower sentence. The choice of the sentence has to be made after following the procedure set out in sub-section (2) of section 235 of the Code. The requirement of hearing the accused is intended to satisfy the rule of natural justice. If the sentence is made without giving the accused an effective and real opportunity to place his antecedents, social and economic background, mitigating and extenuating circumstances, etc. before the Court, the Court’s decision on the sentence would be vulnerable.

Manoj Suryavanshi v. State of Maharashtra, (2020) 4 SCC 451

It was held that the Trial Court heard the accused on sentence the very same day on which the conviction was recorded, therefore it vitiates the award of sentence. Section 235(2) of CrPC satisfies a dual purpose; it satisfies the rule of natural justice by affording to the accused an opportunity of being heard on the question of sentence and at the same time helps the court to choose the sentence to be awarded.

Govind Ramji Jadhav v. State Of Maharashtra, (1990) 4 SCC 718

It was held that in matters of enhancement of sentence the Court should give the accused a reasonable opportunity of showing cause against such enhancement as contemplated under the first proviso to Section 386 as well under Sub-Section (3) of Section 377 of the Code.

Poonam v. Sumit Tanwar, (2010) 4 SCC 460

It was held that in case, petitioner's counsel is not able to raise a factual or legal issue, though such a point may have a good merit, the Court should not decide the same as the opposite counsel does not "have a fair opportunity to answer the line of reasoning adopted". Such a judgment may be violative of the principles of natural justice.

Siddharam Satlingappa Mhetre v. State Of Maharashtra, (2011) 1 SCC 694

It was held that if a wise discretion is exercised by the concerned judge, after consideration of entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the judges.

Narinder Singh Arora v. State (Government of NCT, Delhi), (2012) 1 SCC 561

It was held that it is well settled law that a person who tries a cause should be able to deal with the matter placed before him objectively, fairly and impartially. No one can act in a judicial capacity if his previous conduct gives ground for believing that he cannot act with an open mind or impartially.

Sankaran Govindan v. Lakshmi Bharathi, (1975) 3 SCC 351

It was held that the expression "contrary to natural justice", when applied to foreign judgments, merely relates to the alleged irregularities in procedure adopted by the adjudicating court. If the proceedings are in accordance with the practice of the foreign court but that practice is not in accordance with natural justice, the court shall not allow it to stand. The maxim *audi alteram partem* is deemed to be universal, not merely of domestic application.

Session 5

Theme - Application of Principles of Administrative Law in Court Management

Speakers: Dr. Justice S.N. Pathak and Justice C.V. Karthikeyan

On the theme of ***Application of Principles of Administrative Law in Court Management*** it was asserted that the term 'Court Management' is a comprehensive system of management of line and events in a law suit, as it proceeds to justice delivery system from initiation to resolution. The two essential components of case management system are the setting of time-table for pre-determined events and suspension of the progress of the law suit through its time-table.

Thereafter, on the issue of disciplinary proceedings it was iterated that departmental proceedings are quasi judicial proceedings. As a consequence, the concerned authority is bound to observe the Principles of Natural Justice. Further, the essentials of Disciplinary Proceedings were expounded:

- Disciplinary proceedings commence only when a chargesheet is issued to the alleged delinquent employee.
- The enquiry has to be proper with utmost transparency. (***Nemo judex in causa sua***)
- The show-cause notice shall be provided to the alleged and reasonable opportunity to rebut the allegations shall be provided. (***Audi alteram partem***)
- In case the disciplinary authority differ with findings of enquiry officer, the disciplinary authority must give the enquiry officer a proper hearing .
- The inquiry must end with a reasoned decision. (***Ratio Decidendi***)

Subsequently, the following cases were discussed:

Suresh Chandra Nanhorya v. Rajendra Rajak, (2006) 7 SCC 800

It was held that non-issuance of notice to other side for hearing is grossly against the settled principles of natural justice. Right of a person to be heard in his defence is the most elementary protection and is the essence of fair adjudication.

State of Bihar v. Phulpari Kumari, (2020) 2 SCC 130

It was held that the High Court ought not to have interfered with dismissal order passed against respondent by re-examining evidence and taking view different from that of disciplinary authority which was based on findings of enquiry officer. Therefore, the standard of proof required in criminal trial is a proof beyond reasonable doubt based on

strict rules of evidence and preponderance of probabilities is test adopted in finding delinquent guilty in departmental proceedings.

P.S. Malik v. High Court of Delhi, (2020) 19 SCC 714

It was held that under Article 235, High Court is the sole authority to initiate disciplinary proceedings against subordinate judicial officers.

Krishna Prasad Verma v. State of Bihar, (2019) 10 SCC 640

It was observed that there is zero tolerance for corruption and misconduct, and acts unbecoming of judicial officer must be dealt with strictly. However, merely erroneous orders passed should not lead to disciplinary action unless they are passed for extraneous reasons, illegal gratification, etc.

Subsequently, on the aspect of recording performance evaluation the following case law were discussed:

High Court of Punjab & Haryana v. Ishwar Chand Jain, (1999) 4 SCC 579

It was held that the object of inspection is for the purpose of assessment of the work performed by the Subordinate Judge, his capability, integrity and competency. Since Judges are human beings and prone to all the human failings, inspection provides an opportunity for pointing out mistakes so that they are avoided in future and deficiencies, if any, in the working of the subordinate court.

Bishwanath P. Prasad Singh v. State of Bihar, (2001) 2 SCC 305

It was observed that an assessment of quality and quantity of performance and progress of the Judicial Officers should be an ongoing process continued round the year and then to make a record in an objective manner of the impressions formulated by such assessment. An Annual Entry is not an instrument to be wielded like a teacher's cane or to be cracked like a whip. The High Court has to act and guide the sub-ordinate officers like a guardian or elder in the Judicial Family.

Sukhdev Singh v. Union of India, (2013) 9 SCC 566

It was observed that communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant.

Thereafter, on the aspect of guaranteeing public access to Courts and digitization of Court records, the need of an official line of communication between the Judiciary, its stakeholders, and the general public to give attention to requests for assistance and

information, queries and concerns was stressed. Further, the following responsibilities of principal district judges and chief judicial magistrates was highlighted:

- Ensuring even distribution of work among civil and criminal Courts.
- Recommending constitution of new Courts.
- Identifying constitution of Special Courts – NI Act cases, Mahila Courts, Additional NDPS Courts, POCSO Courts, Family Courts, etc
- Promotion of staff.
- Examining Staff vacancies and periodic recruitment.
- Coordination with Advocate Associations to ensure avoidance of Court boycotts affecting access to Justice.

While dealing with the legal representation to vulnerable section it was opined that measures should be adopted to enhance access to justice to the indigents and uneducated. The robust system of legal aid envisages to establish a social framework in which the duty of dispensing justice is easily and economically available to the public. Thereafter, statutory provisions which encompass access to justice were delineated:

- **Article 39A** of the Constitution mandates that the states to provide legal assistance to the ignorant and poor sectors of society.
- **Article 21** of the Constitution recognizes the privilege to a timely trial and free legal representation as an element of the right to life and personal liberty.
- **Section 304** of the Code of Criminal Procedure provides that if an accused person does not have adequate means to hire a lawyer, the court must provide one at the expense of the state.
- **Order 33 Rule 1 C.P.C.** deals with leave of the court to sue as an indigent person.

Thereafter, on the aspect of legal aid the following cases were discussed:

Hussainara Khatoon v. State of Bihar, 1979 AIR 1369

It was held that Article 39-A entails free legal service as an inalienable element of reasonable, fair and just procedure which finds its genesis in the principle of rule of law.

Khatri v. State of Bihar, AIR 1981 SC 262

The Court held that right to free legal services is an essential ingredient of reasonable, fair and just procedure for a accused of an offence and it must be held implicit in the guarantee of Article 21. The State is under a constitutional obligation to provide a lawyer to an accused if the circumstances of the case and the needs of justice so require.

Manoharan v. Sivarajan, (2014) 4 SCC 163

It was held that the primary aim of legal aid is distributive justice, elimination of structural and social discrimination, illiteracy, and effective implementation of welfare benefits.