NATIONAL JUDICIAL ACADEMY


**National Judicial Conference for High Court Justices**

**31st August – 2nd September, 2018**

PROGRAMME REPORT

PROGRAMME COORDINATOR:

Prasidh Raj Singh, Faculty, NJA

## OUTLINE OF THE PROGRAMME:

*The Academy organized a three-day Conference for High Court Justices from 31st August – 2nd September 2018. The conference initiated discussion on various issues like- Social Context Adjudication within the Constitutional Framework; Precedents: Navigating through Conflicting Decisions; Contemporary Judicial Review and Separation of Powers; Construing the Sounds of Constitution's Speech and Free and Fair elections.*

*The objective of the conference was to provide a platform for justices to share experiences, insights and suggestions with a panel of distinguished resource persons from the judicial branch and other relevant domain experts. Identifying challenges and evolving optimal solutions/strategies to effectuate qualitative justice delivery were among the agenda during the conference. The conference was attended by 24 High Court judges*.

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| Session 1 | Social Context Adjudication within the Constitutional Framework |
| Session 2 | Impact of Media on Public Perception regarding vitality of Justice Delivery |
| Session 3 | Precedents: Navigating through Conflicting Decision |
| Session 4 | Contemporary Judicial Review and Separation of Powers |
| Session 5 | Adjudicating Electoral Disputes: The Role of Judiciary: Balancing Core Values |
| Session 6 | Construing the sounds of Constitution's Speech: Meanings Beyond Text |
| Session 7 | Corporate Fraud & Manipulation: Repercussions, Deterrent Mechanism & Judicial Approach. |
| Session 8 | Money Laundering: The prevention of Money Laundering Act 2002: Current Challenges. |

**Session 1**

***Session***- Social Context Adjudication within the Constitutional Framework

***Speakers****: -Prof. Shashikala Gurpur & Prof. V.Vijaykumar*

The speaker initiated discussion on various aspects of social justice and its norms prevailing in contemporary time. The speaker highlighted the constitutional scheme incorporated in the Preamble which ensures equality, cultural and religious rights. A reference was made to the Canadian jurisdiction where the concept of social context adjudication for judges have been introduced and implemented effectively. Further, during the course of discussion a reference was made to the *Shani Shingnapur* case where the Apex Court upheld equality and discarded the ban prohibiting women to enter inside the temple. It was also deliberated that social context adjudication is a constitutional mandate reflected in Part III of the Constitution. The speaker further highlighted that a judge has to be not only sensitive to the inequalities of parties involved but, also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice.

**Session 2**

***Session***- Impact of Media on Public Perception regarding vitality of Justice Delivery.

***Speakers****:- Prof. V. Vijaykumar & Prof. Shashikala Gurpur*

The impact of media on public perception regarding vitality of justice delivery was deliberated upon. A reference was made to *Ramesh Thapar* case where the Apex Court identified various functions of media, such as; information, responsibility to connect, mediate the right news, debate, discuss and dialogue in order to aware the citizens in a rightful manner. The speaker further suggested few points on resolving the conflict between media and the judiciary.

- Educate the media, civil education
- Court news should be framed by an expert who knows the law

- Avoid ‘Bench Bashing”

A reference was made to an article, *Do the media influence judiciary?* According to the Mark Potter following are the factors who contributes in influencing the judges-

- Quality of subordinate court judgement: means Every Higher court assess the quality of subordinate court judgement. On that basis they critically evaluate the decision making power of subordinate court.
- Counsel argument: also influence the judges.
- Interaction with colleagues: i.e. interaction with the senior and other person
- Legal academic opinion: opinion of people like academic or jurist who read a lot also influence the Judges.

**Session 3**

***Session***- Precedents: Navigating through Conflicting Decision.

***Speakers****:- Mr. V.Sudhish Pai & Prof. V. Vijaykumar*

The speaker initiated discussions on the precedents and a reference was made to Article 141 of the Constitution. Article 142 was also discussed which states that the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as necessary for doing complete justice in any case or matter is pending before it. Article 143 was also highlighted with regard to Rules of court. During the course of discussion following cases were deliberated upon; *Shankari Prasad v. Union of India, I.C. Golaknath and Ors. v. State of Punjab, Kesavananda Bharati v. State of Kerala, Sampathkumar v. Union of India, Shamsher Singh v. State of Punjab, Maneka Gandhi v. Union of India.*

***Session 4***

***Session***- Contemporary Judicial Review and Separation of Powers.

***Speakers****:- Mr. R. Venkataramani, Mr. SujitGhosh and Mr. V.SudhishPai*

On the theme of 'Separation of Power', the speaker stated that Montesquieu formulated this doctrine and, it is couched in terms of independence of judiciary. A reference was made to American Constitution where separation of power can be inferred from the first three Articles.

- Article I vests the legislative power in the Congress (consisting of Senate and House of Representatives)
- Article II vests the executive power in the President of the United States
- Article III vests the judicial power in the Supreme Court of America and the courts below

Now when we talk about separation of power in India:-

- Indian Constitution expressly vests executive powers in the President and the Governor [vide articles 53(1) and 154(1)] –but no corresponding vesting provision for legislature and judiciary
- President/Governor exercise legislative functions through ordinances, formulating law while proclamation of emergency is in force [Article 357(1)]judicial functions through granting of pardons
- Parliament/State legislatures exercise judicial powers for breach of privilege (contempt powers)

Judicial review essentially provides a set of legal standards, enforced through writ petitions, to enable people to challenge the lawfulness of decisions made by public bodies/others exercising public functions. Such legal standards, as may be gleaned from various judicial precedents are encapsulated below:

- Where a statue/the Constitution gives a public body a discretionary power, that power must be used to further the scope and object of the statute/Constitution –not for an extraneous purpose. 'May' can be read as 'shall' in certain cases
- Public bodies should take into account all legally relevant considerations and avoid taking into account those that are irrelevant
- Where a statue/the Constitution give decision-making power to a public body that body (not another one) must exercise such discretion: except in some recognized circumstances, delegation is unlawful.
- Fair procedures must be followed: these may be derived from statute, the Constitution or some other valid source of law. They may, according to the context, include requirements to give notice of a proposed decision before making it; to consult and receive written representations; to disclose information before a final decision is reached; to provide oral hearings; and to give reasons for a decision.
- A public body acts unlawfully if it breaches a fundamental right.

**Session 5**

***Session***- Adjudicating Electoral Disputes: The Role of Judiciary: Balancing Core Values

***Speaker***:- *Dr. S.Y. Quraishi*

The speaker deliberated that the role of the Election Commission is to ascertain free and fair election, independence of election commission, citizen's right to informed choice, equality and transparency. The speaker pointed out the case of *N. P Ponnuswami v. Returning Officer* where the Supreme Court highlighted the central importance of "time schedule". Further, it was stated that "all controversial matters and all disputes arising out of elections must be postponed till the end of the elections, so that, the proceedings are not unduly retarded or protracted and judicial intervention be barred till results are announced. The case of *Peoples Union for Civil Liberties v. Union of India* was also referred where the Apex Court empowered the Election Commission to direct candidates to disclose their criminal

antecedents, assets, liabilities and educational credentials by affidavit which enabled electors to make an informed choice of their representatives.

**Session 6**

***Session***- Construing the sounds of Constitution's Speech: Meanings Beyond Text.

***Speakers:-*** *Mr. R. Venkataramani, Mr. V.SudhishPai*

On the theme 'Construing the Sounds of Constitution's Speech: Meanings Beyond Text, the speaker referred to the Organic theory' of constitutional interpretation stating that the Constitution evolves a with the society and interpretation also changes with the changing society. The speakers highlighted the difference between 'door-closing silences' and 'door-opening silences' in the Constitution and indicated the permissible limits of giving meaning. The speaker further deliberated on the interpretation of the Constitution by the Supreme Court through its judgments such as the inclusion of various rights under the right to life and enlargement of the scope of fundamental rights.

**Session 7**

***Session***- Corporate Fraud & Manipulation: Repercussions, Deterrent Mechanism & Judicial Approach.

***Speaker:-*** *Mr. Somasekhar Sundaresan*

On the theme 'Corporate Fraud & Manipulation: Repercussions, Deterrent Mechanism', the speaker stressed that corporate fraud is a generic term with wide scope. This term does not finds mention in the statute. Under company law, there was no concept of fraud until recent amendments were made. Fraud was merely an offence under the Indian Penal Code, 1860. The speaker traced the genesis of corporate fraud and its development into a distinct category of crime and dwelt on the major corporate fraud cases in India. Further, the *modus operandi* of the perpetrators to beat the system and the failure of the regulators to check such crimes was also discussed during the course of discussion.

**Session 8**

***Session***- Money Laundering: Prevention of Money Laundering Act 2002: Current Challenges.

***Speakers****:- Mr. Anand Grover, Mr. Rajiv Awasthi*

On the theme of "Money Laundering: Prevention of Money Laundering Act 2002: Current Challenges", the speaker stressed that money laundering poses a serious threat not only to financial systems, but also integrity and sovereignty of countries. The statute came into force on 1st July 2005. It applied to the offences contained in Part A and Part B of the Schedule (Scheduled or Predicate offences) as the statute stood originally. Part B also imposed a minimum threshold of Rs. 30 lacs for the Act to be attracted. In 2015 Amendment by Finance Act to raise the monetary threshold of Part B offences to above Rs. 1 crore. Some other offences were also added to Part B through this amendment.

During the course of discussion some important definition were explained. A reference was also made to section 44(1) (a) which provides that the Prevention of Money Laundering Act offence and connected scheduled offence to be tried by the Special Court constituted in this regard.