

**PROGRAMME REPORT (P-1160)**



**NATIONAL JUDICIAL ACADEMY**

**Conference for Newly Elevated High Court Justices**

**12<sup>th</sup> - 14<sup>th</sup> April, 2019**

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The NJA organized a three day *Conference for Newly Elevated High Court Justices* from 12<sup>th</sup> April, 2019 to 14<sup>th</sup> April, 2019. The conference facilitated deliberations on the use of ICT in courts and court management techniques to improve efficiency and strengthen justice administration; core constitutional principles such as judicial review, federal architecture, separation of powers, doctrine of basic structure and fundamental rights. 26 Newly Elevated High Court Justices nominated by 18 High Courts participated in the Conference. The Conference was divided into Nine Sessions on the following themes.

### **Session 1: The Constitutional Vision of Justice**

**Speakers: Justice B. D. Ahmed Justice R. C. Chavan**

It commenced with discussion on the meaning of justice, what does justice seek and what is the constitutional vision of justice. It was highlighted that '*justice*' has been defined differently by various authors and jurist. It is important to understand that law and justice are not necessarily the same instead, laws are enacted to meet the end of justice. The session further discussed the historical perspective of the Code of Hammurabi 1790 BC, Code of Assura 1075 BC, Draconian Constitution 620 BC, the Twelve Tables of Roman Law 451 and 450 BCE, Laws of Manu 200 BC and the sharia Law 575 AD. The limitations associated with these codes was also discussed at length. It was stressed that law changes because the concept of justice changes. The discussion further emphasized that justice has several aspects i.e., natural, social, political etc. However, when we look at justice from the perspective of the Preamble of the Constitution of India it talks about social, economic and political justice. The discourse reiterated that "*Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision making process and the decisions*".<sup>1</sup>

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<sup>1</sup> *Sarla Verma & Ors v. Delhi Transport Corp. & Anr* on 15 April, 2009

## **Session 2: Court Management**

**Speakers: Justice B. D. Ahmed Justice R. C. Chavan**

The session initiated by highlighting that, managing work in the court is of utmost importance to a judge. A judge should manage his docket in a manner that s/he prioritizes old matters and do not let the new matters become old. It was emphasized that in order to prioritize work a judge should implement techniques like- tracking, clubbing and grouping of cases. It was suggested that to manage and streamline the work in courts there is an inevitable need to have well trained and certified court managers who can professional handle the management of the court. Their job profile may include- maintaining record of cases, classification of cases, planning and listing of cases etc., which will be in consultation with the Chief Justice. These court managers will ensure that the court runs efficiently both administratively and judicially.

## **Session 3: Information and Communication Technology in Courts**

**Speakers: Justice B. D. Ahmed Justice R. C. Chavan**

The session commenced with emphasis on the fact that technology cannot and should not substitute human decision making. It was stressed that technology has changed, systems have evolved from analog to digital. This has obviously changed the medium to record. The discussion highlighted the benefits of e-courts and also the significance of paperless courts was emphasized. The participant justices were suggested to frequently adopt technological advancements, must surely embrace soft skills and go paperless. Alongside, the judges should also ensure that the litigants who do not have access to technology must not get devoid of justice. For instance, the High Court's website should not only be in English but also in the vernacular language.

#### **Session 4: Theories of Judicial Review**

**Speakers: Justice S.C. Dharmadhikari Adv. Dushyant Dave Adv R. Venkataramani**

The session commenced by stressing that evolution of the theories of '*Judicial Review*', has transcended from the narrow limits of English Administrative Law Writs to new scope and horizon of expanding and re-examining the bounds of the meaning of such writs developed to regulate a part of a specific societal or social order. The discussion highlighted that balancing between the rights of citizen and power of executive and legislature is a great weapon to declare any law, action of public authority as unconstitutional. The participant justices were advised to read the Constituent Assembly Debates and develop their own jurisprudence to effectuate Judicial Review. The later and dynamic societies throws up new challenges which must be over seen by the judges to ensure that the Rule of Law prevails. The deliberation further stressed that judicial review does not mean that judges have additional power of governance instead, it is a power in the nature of trust. It was advised that judicial adventurism in the name of judicial review should be avoided.

#### **Session 5: Separation of Power**

**Speakers: Justice S.C. Dharmadhikari Adv. Dushyant Dave Adv R. Venkataramani**

The session began with a brief discussion on the meaning of '*separation of power*'. It was accentuated that the question of separation of power is not just between the executive and legislature, rather it is between the executive, legislature and the judiciary. The deliberation opined that separation of power must not be seen monochromatically through the lenses of Montesquieu reasonably because separation of power varies from country to country. Law intends to change while keeping in mind practices, conduct, transaction and attitudes of people.

## **Session 6: Allocation of legislative power – The federal Architecture**

**Speaker: Adv R. Venkataramani**

The session commenced by accentuating that the legislature has the power to make laws but that power is subject to legislative competence and constitutional limitations. The structure of the Indian Constitution with reference to schedule VII, XI and XII was discussed. It was emphasized that the constitution has an excellently structured basis including Schedule VII. Without Schedule VII, XI and XII basis of our constitution would not have been further reinforced. Doctrine of Repugnancy was elaborated in the light of List III entry 13 of the constitution. . A comparison of the federal structure of US and EU was made and its relevance and substance was discussed with reference to Indian quasi federal structure.

## **Session 7: Fundamental Rights and Restrictions on Entrenched Rights**

**Speakers: Adv R. Venkaramani Adv. N. Venkatraman Adv. Aryama Sundaram**

This session was initiated with a brief discussion on Magna Carta and how there was a shift from human rights to fundamental rights. The expansion of the fundamental rights was discussed in the light of various landmark judgments like- *Shankari Prasad Case* 1952 SCR 89, *Sajjan Singh Case* 1965 SCR (1) 933, *Golaknath Case* 1967 SCR (2) 762, *Kesavananda Bharti Case* (1973) 4 SCC 225, *Bhim Singh Case* AIR 1981 SC 234, *I R Coelho Case* : (2007) 2 SCC 1, *K T Plantation Case* (2011) 9 SCC 1, *Puttaswamy Case* Writ Petition (Civil) No. 494 of 2012 (Sup. Ct. India Aug. 24, 2017). The relationship between fundamental rights and the basic structure of the Constitution was deliberated upon. It was suggested that judges need to be very cautious in applying their judicious mind while adjudicating a matter which violates the fundamental rights. It was suggested that courts should be very critical in interpreting and entrenching the scope of fundamental rights and should be very objective in its decision. Freedom of expression, concept of privacy, state freedom *viz a viz* citizen aspiration, Article 14, 19 and 21 also formed an integral part of the discussion.

## **Session 8: Theory of Basic Features: Contours**

**Speakers: Adv R. Venkaramani Adv. N. Venkatraman Adv. Aryama Sundaram**

The session highlighted that the theory of basic structure has been devised from *Kesavananda Bharati Case*. But actually the seeds were sown in the dissenting judgement of Justice Mudholkar in the case of *Sajjan Singh v. State of Rajasthan*. This was further disseminated by Justice H R Khanna in *Kesavananda Bharati's Case*. In *Bhim Singh Case*, it was highlighted that the doctrine of basic structure is to be applied only when there is an amendment in Article 368. In *Bommai Case* 1994 SCC (3) 1, the doctrine was to be applied even to presidential proclamation and not only to the legislative statute. The discussion further stressed that there is no unanimity between the judges themselves as to what forms the “*Basic Structure of the Constitution of India*”. Various judges have defined basic structure differently. In various cases such as *Indira Nehru Gandhi v. Raj Narain* 1975 SC 2299, *Minerva Mills v. Union of India* 1981 SCR (1) 206, *Woman Rao's Case* 1981 2 SCR 1, *L. Chandrakumar's Case* 1997 3 SCC 261, *I R Coelho's Case* and recently in *NJAC Judgement* the Indian Supreme Court has defined the basic structure differently. Discussion on the distinction between entrenched rights and basic structure was also integral to the session.

## **Session 9: The Art of Hearing**

**Speakers: Adv R. Venkaramani Adv. N. Venkatraman Adv. Aryama Sundaram**

The last session emphasized that a judge has to have this art to give justice to his duty. The basic essence to indoctrinate this art of hearing is to be patient and open minded while hearing a case. A judge should not look as to who is arguing the case or in what manner it is being argued, however a judge should try to look at the litigant who is waiting for the relief. It was highlighted that most of the judges who are elevated to the High Courts are the lawyers before their elevation and it takes some time to change them from their argumentative approach. It was stressed that the art of hearing involves the art of letting the lawyers speak. This makes it easier for the judge to write a well-reasoned judgment. Judges need to act like a catalyst.

