

NATIONAL JUDICIAL ACADEMY



National Judicial Conference for High Court Justices

5th – 6th October, 2019

PROGRAMME REPORT

PROGRAMME COORDINATOR:

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OUTLINE AND OBJECTIVE OF THE PROGRAMME:

The Academy organized a two-day Conference for High Court Justices from 5th- 6th October, 2019. The discussions were held on various issues like- A written Constitution: Construing the sounds of Constitution's Silences: Meanings Beyond Text, Judicial Review: Separation of Powers, High Court: Supervisory Powers, Free and Fair Elections, Judicial Contribution to Electoral Reforms and Corporate Fraud and Manipulation covered in over 5 sessions across both the days.

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 14 High Court judges.

Session 1

Session- A written Constitution: Construing the sounds of Constitution's Silences: Meaning beyond text

Speakers: -Mr. R. Venkataramani & Mr. Somasekhar Sundaresan

Chair Person: Hon'ble Mr. Justice P.V. Reddi (Retd.)

The session was inaugurated by the Director of academy, and was initiated by the speaker with a remarkable statement that *"There is a hyphen between sounds and silences of the Constitution and it is here where a reference needs to be made"* as sometimes *what Constitution does not say becomes more important than what it says*. 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 said that silences leave a wide scope for interpretation to bring about revolution and can also be used for statutes beyond the Constitution to fill in the gaps and identify innumerate rights. Reference was given to various judgements on the success and failure of the doctrine of Constitutions Silence like in the cases of *Manoj Narula v. UOI (2014) 9 SCC 1*, *Keshavananda Bharti Case AIR 1973 SC 1461*, *Vipulbhai M. Chaudhary v. Gujarat Cooperative Milk Marketing Federation Ltd.(2015) 8 SCC 1*, *Census Commissioner v. R. Krishnamurthy AIR 2014*, *Justice K. S. Puttaswamy (Retd.) and Anr. v. Union of India and Ors . Writ petition (civil) no 494 of 2012*. In the landmark judgement of *Krishnakumar Singh v. State of Bihar AIR 2017*, a constitutional bench of 7 judges held that *"Silences viewed to enhance the role of law*

can become a dangerous precedent". A differential point of view observed that silences cannot always denote an inability in the statute as with the evolution of time the society changes and what could have been relevant yesterday may not be prevalent tomorrow. The ideas of Constitution differ across the world and therefore it cannot be formulated as mathematical theorems. It was stated that human liberty emanates the whole idea of Constitution and that all sections of the society participate to enhance the meaning of Constitution and it cannot be an individual job of either the courts, legislature, executive or the union of people. In several contexts fundamental rights prevail over moral wrongs; *Mohd. Hanif Quareshi & Others v. The State of Bihar* 1958 AIR 731, 1959 SCR 629, the right to practice any profession, or to carry on any occupation, trade or business under Article 19(1)(g) of the Constitution prevailed over the DPSP stated under Article 48. Other cases referred were *The State of Bombay and Another v. F.N. Balsara* ILR 1951 Bom 17 and the *A.K Gopalan case* AIR 1950 SC 27. In context of the silences it was viewed that anything which is left out in a statute does not give specific inference for or against something. Articles 38,39,43(B), 44 and 47 were analyzed in context of different theories, the idea of constitution in UK and the US was compared with that in India. It was concluded that constitutional silences are only matters of theoretical debate and a large chunk of its implementation is left to the subjective interpretation of judges who become partners as the author of Constitution; however, at the same time societal revolution and impact cannot be ignored.

Session 2

Session- Judicial Review: Separation of Powers

Speakers:- Mr. R. Venkataramani & Mr. Somasekhar Sundaresan

Chair Person: Hon'ble Mr. Justice P.V. Reddi (Retd.)

The speaker stated that Montesquieu formulated this doctrine and, it is couched in terms of independence of judiciary however, it was questioned whether considering the dynamics of society today is this 18th century doctrine still relevant? The legislature is a primary law making body, they cannot be ideal entities. The judiciary is expected to be creative when they again interpret the laws already made by legislature as it brings out the mind of the judge, the executive however only addresses questions. All the tiers have different understanding of laws and that does not violate the separation of power. The common law principles should also be looked into as law is a narrow culmination of ideas and principles. The purpose of all the bodies should be to commonly promote the constitutional values and prevail the rule of law. The

speaker noted that Separation of Powers makes us see law in multiple dimensions but it shouldn't vitiate the constitutional boundaries. 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. Reference was also given to the regulators in context of the Vodafone case.

In context of the SOP and Judicial Activism it was said that judicial activism is not opposed to separation of power, its implicit and required in cases where the SOP are not clear with well-defined frontiers and is aimed to remove the defects in law. Judicial outreach is a result of executive under-reach; this was referred in the 1970s cases of *Indira Gandhi v. Raj Narain* 1975 AIR 865, *Minerva Mills case* AIR 1980 SC 1789, *Keshavananda Bharati case* AIR 1973 SC 1461, which brought a series of constitutional amendments. The primary role of judiciary is to interpret law but their greatest task is to find the dividing line as to what extent they can go in interpreting the law. A prolonged discussion was made on disputable topics of Euthanasia and right to die in context of right to life (who has the power to grant), legality of abortions, and other rights falling under the purview of right to life. Other cases that were discussed were *Ramchandra Rao case* AIR 2002, and *Roe v. Wade*. It was concluded by stating a quote of Justice Frankfurter, "All power is of encroachment nature, judicial power is not immune to this; only restraint upon judicial power is of self-restraint."

Session 3

Session- High Court: Supervisory Powers

Speakers:- Mr. R. Venkataramani & Mr. Somasekhar Sundaresan

Chair Person: Hon'ble Mr. Justice P.V. Reddi (Retd.)

The session was largely based on discussing the validity of the articles 227, 235 in vesting supervisory powers on the High Courts and its efficacy and problems. In order for the article 227 to be effective there has to be uniformity between the high courts across India. The High Courts have administrative power over the subordinate courts and not the judges under article 235 of the Constitution and exercise judicial supervision under article 227. Interpretation is different from administration of justice and the judgement given by a particular high court cannot be made as a law of the state. The High Courts while exercising supervisory powers cannot vitiate their regulations and should play a role of mentors in monitoring the work of subordinate courts. The speaker pointed out that there shouldn't be any communication gap

between the high courts and the subordinate courts and also between all the high courts as all are collectively accountable to the public at large. Performance evaluation should also be carried out by high courts in assessing their roles. The judges should not blindly follow the precedents unless self-analysis of the case or judgement is done otherwise the mind becomes biased and the judgement delivered is a mere copy-paste. The problems faced by the high court judges in exercising their supervision and independence were also discussed vehemently, the fallacies of article 227 clause (2) and (3) were also looked into and it was suggested that less intrusion by high courts can sometimes yield better solution for the subordinate courts as there are cases in which the judicial process goes wrong instead of the judge. It was also suggested that states should build a mechanism (agency) that coordinates with all the High Courts and have some legislation to assess the judicial impact on society citing example of HMCTS (Her Majesty's Courts and Tribunal Service) UK and also an impact assessment that was carried out by Bihar High Court. It was concluded that the high courts should follow their supervisory powers according to the guidelines which are provided to them.

Session 4

Session- Free and Fair Elections: Judicial Contribution to Electoral Reforms

Speakers:- Mr. T.S Krishnamurthy & Dr. Jayaprakash Narayan

Chair Person: Hon'ble Mr. Justice Kurian Joseph (Retd.)

The session mentioned the importance of all the subjects lectured during the seminar and gave few key notes that the judges should ruminate during their practice. It was stated that *the judges do not have any power and that they merely exercise their jurisdiction to not distribute but administer justice*, a connection was made to the silence of constitutional institutions in promoting free and fair elections which has proven to be detriment in our country. Discussion was made to understand the roles and responsibilities of the Election Commission, the Judicial Bodies and other tiers of democracy for enhancing free and fair elections with distinguished ideologies from the speakers.

The speakers also deliberated on the immortality of electoral process, role of the Election Commission to ascertain free and fair election, independence of election commission, its evolution over the period of time in contesting elections, people's participation in the whole process- Casting of vote to be made a fundamental duty citing the example of Australia wherein people have imposition on their salaries if they

don't cast vote, and the immense contribution of judiciary in implementing the varied objectives of the election commission through several cases; like NOTA, using of central force in election, affidavits and information of assets required to be produced by candidates before contesting election, criminalization of candidates, redressal of cases pertaining to election, independence of electoral process without judicial intervention.

Further a discussion was made on the various aspects of elections wherein the judiciary can and cannot intervene, the role of political parties and the objectives with which they should work, postulates of a good democracy, fallacies of the Indian electoral system and the mindset of the public while electing candidates. The session was concluded by giving suggestions on the aspects wherein with the help of judicial intervention defects in electoral system can be cured and how enhancing local self-governance, awareness amongst voters, and having clear separation of powers can ultimately preserve the faith of people in the whole process which if lost would become precarious to the Indian democracy as pretending democracy will always give irrational conclusion.

Session 5

Session- Corporate Fraud and Manipulation

Speaker:- Mr. Somasekhar Sundaresan

Chairperson:- Hon'ble Mr. Justice Kurian Joseph (Retd.)

The session mentioned the importance of combining the various regulations on fraud and manipulation in a pragmatic manner and defining manipulation in legal language. Further the speaker posed three aspects that need to be deliberated while understanding Fraud and Manipulation in the Corporate Sector:

- 1) The evolution of concept of fraud overtime.
- 2) The inefficacy of jurisprudence in defining ingredients of fraud.
- 3) Mixing up the concept of fraud and unfair trade practices in security regulations which creates conflicts.

The speaker stressed upon the definition of Fraud under various statutes and regulations like the Indian Contract Act, 1872, SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, and the Companies Act, 2013 and stretched upon the anomalies in definition

within the same provisions of an act and between different acts which disturbs the very foundation of fraud. A reference was made to the landmark cases of *Sahara India Real Estate v. SEBI [2012] 174 Comp Cas 154 (SC)* and *UOI v. Satyam Computer Services Ltd AIR 2009*. which bring out the vagueness of legislation pertaining to Fraud and Manipulation. Another aspect of discussion was the confusion of roles set to different bodies of constitution which creates hurdles for enhancing justice. Other loopholes which burdens the security market are the lack of understanding of the regulations and legislations amongst people, the lengthiness of statute and vagueness in provisions, improper procedures of investigation and absence of procedural laws in addressing security cases, quality of legislative drafting and the lack of pre-legislative homework. The judiciary is expected to be the only resort in prevention of corporate frauds and other security issues.