

NATIONAL JUDICIAL ACADEMY



**SEMINAR FOR
PRINCIPAL DISTRICT AND SESSIONS JUDGES
ON
CONSTITUTIONAL AND ADMINISTRATIVE LAW (P-1187)
NOVEMBER 8-10, 2019
PROGRAMME REPORT**

Submitted by

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OBJECTIVE OF THE SEMINAR

National Judicial Academy organised a seminar for senior Principal District and Sessions Judges on Constitutional and Administrative law, with the objective of sensitizing senior officers of the District Judiciary to, and provide an overview of, the constitutional framework in India. The seminar aimed to facilitate deliberations on Constitutional and Administrative Law, application of public law norms during adjudication, broad features of the doctrine of basic structure; the doctrine of stare decisis and precedential conflict; separation of powers and judicial review; elements of fair trial; and contours of judicial activism within our constitutional framework. The seminar aimed to sensitize participants to the imperatives of adhering to constitutional and administrative law principles while construing, applying and executing substantive and procedural mandates applicable to causes coming before courts.

RESOURCE PERSONS

1. Hon'ble Mr. Justice Navin Sinha, Judge, Supreme Court of India
2. Hon'ble Ms. Justice Ruma Pal, Former Judge, Supreme Court of India
3. Hon'ble Mr. Justice Kurian Joseph, Former Judge, Supreme Court of India
4. Mr. R. Venkataramani, Senior Advocate, Supreme Court of India
5. Mr. Samaraditya Pal, Senior Advocate
6. Prof. (Dr.) V. Vijayakumar, Vice Chancellor, NLIU, Bhopal
7. Mr. V. Sudhish Pai, Senior Advocate

SESSION 1

Theme: Separation of Powers & Contours of Judicial Review

Panel: Justice Kurian Joseph, Prof. (Dr.) V. Vijayakumar and Mr. V. Sudhish Pai

The speakers dwelt on the doctrine of separation of powers as propounded by Montesquieu and historical necessity and rationale for separation of powers of the state. The models of separation of powers were discussed viz. the Rigid or Watertight Model and the Pragmatic or Overlapping Model. Checks and balances as a system of constitutional nudging or correction was highlighted. The concept of Judicial review in a system of Separation of powers and the grounds for judicial review of legislative and executive action were discussed.

The speakers emphasised on the Constitution as a document which provides for distribution, division and management of power and establishes institutions, delineates powers of such institutions and institutes accountability. The uniqueness of the Constitution of India – quasi-federal, was highlighted. It was stated that the division of powers in the Constitution is done to ensure that no wing of the state is supreme, rather it the Constitution that is supreme. However, Separation of Powers is not rigid in India; rather a broad and generalised pattern of separation of powers is adopted. The Constitution does provide for separation of judiciary from the executive to ensure a system of checks and balances on the executive and the legislature. Separation of powers also serves to limit the power of the government and to ensure that the rights of the people are not encroached upon. The speakers discussed the cases of *In re Delhi Laws Act*, *Chandra Mohan v. State*, *State of Tamil Nadu v. State of Kerala*, *Second Judges Case* and *Ashwini Kumar v. Union of India* (2019 SCCOnline SC 44). The participants were reminded that the Constitution assigns functions and duties and not powers. Hence, it is the constitutional function of the wings of the state to uphold the rights of the people.

SESSION 2

Theme: Rule of Law and Justice: Role of Judges

Panel: Justice Kurian Joseph, Prof. (Dr.) V. Vijayakumar and Mr. V. Sudhish Pai

The session commenced with discussion on the meaning of justice, its components and the constitutional dimensions of justice. The judges were reminded of their crucial role in the dispensation of justice and were exhorted to uphold the constitution and the values enshrined in the Constitution while deciding cases, rather than deciding cases on a personal moral system

or conscience. Justice as fair treatment to all persons on the basis of the Constitution and the law was emphasised upon.

The speakers expressed concerns on the Increasing faith deficit in the judiciary. The applicability of the subjective notions of justice and equity to the realities of social asymmetry was discussed. The issues of accessibility of courts for protection of fundamental rights was discussed and the role of the District Legal Services Authorities in ensuring access to justice was stressed. The concept of Judicial Review and its role in enforcing Rule of Law was discussed. It was stated that Rule of Law as a Diceyan concept required that every action was to be supported by law. The two elements of Rule of Law viz. specificity and certainty were emphasised upon India with a written Constitution has rule of law and the reign of law. The Indian legal system adheres to the system of specificity of rights and the subordination of all wings of the state to the Constitution.

The speakers threw light on the 4 universal principles of Rule of Law viz. -

- Accountability of govt officials
- The laws must be clear stable, publicised and just and must protect persons right, liberties and property
- The process of enactment is accessible, fair and efficient and reasonable
- Justice is delivered timely by competent justice officials

The role of the judiciary in ensuring justice according to law and balancing rights of the people with social interests was emphasised upon. The case of *Sakiri Vasu v. State of UP* [(2008) 2 SCC 409] was discussed.

SESSION 3

Theme: Judicial Activism and Judicial Restraint

Panel: Justice Kurian Joseph, Prof. (Dr.) V. Vijayakumar and Mr. V. Sudhish Pai

The speakers dwelt on judicial review as a system of checks and balances in the Constitutional structure. It requires a mutual respect for the functions of each wing of the State. The grounds for judicial review were analysed to highlight the limitations to the power of judicial review. It was stressed that unconstitutionality of a legislative or executive action is the subject of Judicial Review. The Court can test the action on the touchstone of the Constitution. Testing the wisdom

of the action is not within the scope of judicial review. The recent case of *R v. the Prime Minister* ([2019] UKSC 41) and *Manoj Narula v. Union of India*, ([2014] 9 SCC 1) was discussed. It was stated that both judicial activism and judicial restraint are necessary and it is the judicial wisdom to draw the line between the two. In matters of fundamental rights, judicial activism is necessary, but judicial restraint must be exercised in other areas as it is not the judicial role to decide policy matters. Policy decisions are the mandate of the elected representatives. The speakers also distinguished between judicial activism and judge activism, and stated that personal opinions should not be elevated to constitutional morality. Executive and legislature to be given widest amplitude to function within the ambit of their area. The cases of *Union of India v Rajasthan High Court*, *Ashwini Kumar case (2019 SCC ONLINE 1144)* and *Trop v Dulles* Justice Frankfurter's judgment were discussed. The speakers stressed that judges must be aware of the role they are performing and the limitations imposed by the nature of the work/ role. While exercising appellate jurisdiction, judges should be cautious and avoid activism; and while exercising judicial review role, it is the duty of the court to enforce the law, and activism should be rooted in law and not personal convictions.

Theme: Rule of Law

Speaker: Prof. (Dr.) V. Vijayakumar

The speaker discussed the concept of Rule of Law as a doctrine which though not mentioned in the Constitutional text, is a foundation of all constitutional ideals. The evolution of Rule of law from the Magna Carta to the present day system was discussed. The broad principles crystallised into Rule of Law by A.V. Dicey were discussed –

- Supremacy of Law
- Equality before Law and
- All are subject to the ordinary law courts

The significance of Rule of Law in the growth of Administrative law as a separate branch was highlighted. The reflections of Rule of Law in the Constitution were discussed through a critical examination of Articles 14, 19, 20, 21, 22, 32, 226, 323A and 323B. The speaker discussed the minority opinion of Justice HR Khanna in *ADM Jabalpur v. Shivkant Shukla* (AIR 1976 SC 1207), *Golaknath v. State of Punjab* (AIR 1967 SC 1643), *Indira Gandhi v. Raj Narain* (AIR 1975 SC 2299), *A.K. Kraipak v. Union of India* (AIR 1970 SC 150), *S.P. Gupta v. Union of India*

(AIR 1982 SC 149) and *Zahira Habibullah v. State of Gujarat* (AIR 2004 SC 3114) to highlight the evolution of Rule of Law

SESSION 4

Theme: The Indian Constitution: An Overview

Panel : Justice Navin Sinha and Mr. R. Venkataramani

Chair: Justice Ruma Pal

The speakers established linkages between the Constitution of India and procedural laws to emphasize the constitutional ramifications of the jurisdiction exercised by the court. It was stated that questions of validity of a statute or instrument under Order 27A has constitutional implications. Similarly social and economic justice is implicit in cases such as land matters, labour matters etc. Bail matters have direct link to the fundamental rights. The speakers emphasised on the Constitution as a significant document in establishment of a state. It is a document which generates power within the state. The speakers dwelt on the early experiments in constitution making and evolution of constitutional principles. The speakers threw light on the Constitution as a normative framework to test the validity of any action or law and as a basic document laying objective guidelines for functioning of the state and to judge actions undertaken by state functionaries. The Constitution lays down fundamental principles as a normative framework. The speakers dwelt on the relevance of the structure of the Constitution as the foundation and base. The speakers dwelt on the constitutional ideals enshrined in the Preamble as the foundation of the State. Recognition of Fundamental Rights in the Constitution was stated to be a recognition of inalienable rights vested in all human beings, and making provision for enforcement of the same. The Fundamental Rights were stated to be goals of the State. The speakers discussed the provisions of Articles 32 and 226 and distinguished between the scope of the powers of the Constitutional courts under these articles. The term 'any other purpose' in Article 226 was analysed and it was opined that the term has to be confined to constitutional objectives and purposes. The recent judgments on Constitutional law i.e. *Navtej Singh Johar v. Union of India* (2018 SCC OnLine SC 1350) and *Indian Young Lawyers Association v. State of Kerala* () were discussed.

SESSION 5

Theme: The Indian Constitution: An Overview

Panel : Justice Navin Sinha and Mr. R. Venkataramani

Chair: Justice Ruma Pal

The speakers discussed the Doctrine of Basic Structure and its development. It was stated that basic structure are features of the Constitution that are so basic that they cannot be prejudicially changed. These basic principles are the foundation on which the Constitution stands. The Doctrine of Basic Structure as a limitation on the amending power of the Legislature was discussed. It was stated that this check on the power of the Parliament is necessary

- to ensure judicial independence,
- to restrain populist governance action, and
- to prevent autocracy.

It was stated that the doctrine adds rigidity into the Constitution. The speakers dwelt on whether constituent power can be fettered and the Doctrine of Basic Structure as a limit on constituent power of the parliament.

Session 6

Theme: Doctrine of Stare Decisis

Panel : Justice Navin Sinha and Mr. R. Venkataramani

Chair: Justice Ruma Pal

The speakers dwelt on the challenges faced by judges in harmonising the principles laid down in precedents and the factual circumstances of the cases before them. The speakers dwelt on precedents are legal principles that are binding. The speakers advocated qualified respect for precedents and not blind adoption. The role of precedents in ensuring doctrinal stability, reduction of error in judging, maintaining institutional discipline and in elimination of uncertainty in outcomes was emphasised upon. The importance of the Doctrine of Stare Decisis as a guidance to the parties, in ensuring certainty of outcomes and expediting the process was discussed. The participants were caution not to blindly follow the precedent without co-relating to the facts of present case. The speakers also stressed that precedents should not stand in the

way of the development of law. It necessarily must make allowance for differences in constitutional adjudication. The speakers discussed the precedential value of *obiter dicta*, *per incuriam* and *sub silentio* judgments. The speakers also dwelt on the incoherence in precedents due to polyvocal courts.

SESSION 7

Theme: Introduction to Writ Jurisdiction

Panel : Mr. Samaraditya Pal and Prof. (Dr.) V. Vijayakumar

The speakers dwelt on Articles 32 and 226 as a check on the legislature and executive. Writ jurisdiction was held to part of the Basic Structure of the Constitution in *L. Chandra Kumar*. The speakers opined that the powers of the 3 wings of the State are delineated in the constitution and excesses in function needs to be checked by an independent institution. The judiciary is that institution which acts as an agency to preserve the constitution and that is why this part is identified as the basic structure. A system of checks and balances is necessary to the existence of the Constitution.

Article 32 is a fundamental right by itself – the right to move the Supreme Court in cases of violation of Fundamental Right is a right in itself. The distinction between the scope of powers under Articles 32 and 226 was discussed.

The speakers discussed the origins of writ jurisdiction as Prerogative Writs in UK as a statutory remedy against the state. The speakers discussed the features of the various writs – Habeas Corpus, Mandamus, Certiorari, Quo Warranto and Prohibition. The requirements to be satisfied for issuance of a writ were highlighted *viz.*

- No other alternative remedy available – exhaustion of remedies
- Petitioner is not guilty of unexplained delay
- The case does not involve single disputed question of facts
- Petitioner is not guilty of questionable misconduct – clean hands – equity
- It would not be futile to issue the writs

SESSION 8

Theme: Delegated Legislation

Panel : Mr. Samaraditya Pal and Prof. (Dr.) V. Vijayakumar

Chair: Justice Ruma Pal

The concept of delegated legislation was explained and it was stated that the early thought was that the legislature is exercising delegated power i.e. power delegated by the people to the parliament, and hence such power cannot be delegated any further. However, the theory underwent a change due to the following factors –

- Limited time available to the legislature to sort out all details. Hence, details were left to be filled by administrative authorities
- Increase in state functions led to divesting of non-core activities to other authorities
- Lack of expertise of the legislature on technical areas

The objective of delegation is to meet immediate needs and provide necessary expertise in law making. The speakers distinguished between president's rule making power and delegated legislation. The speakers discussed the concepts of delegated legislation, sub-delegation and conditional legislation. The speakers discussed the checks and balances on delegated legislation and expressed concerns over the inadequate exercise of these checks by the Parliament. The speakers discussed the case of *In Re Delhi Laws Act* to emphasise on what can be delegated.