

NATIONAL JUDICIAL ACADEMY



WORKSHOP FOR NEWLY ELEVATED HIGH COURT JUSTICES

[P-1201]

18th and 19th January, 2020

Programme Report

PROGRAMME CO-ORDINATOR

Mr. Shashwat Gupta, Law Associate

The National Judicial Academy organized a workshop for Newly Elevated High Court Justices on 18th and 19th January, 2020 which was attended by 24 participants. The workshop included discussions on constitutional vision of justice; judicial review; federal architecture; separation of powers; doctrine of basic structure; fundamental rights and restrictions therein. The workshop also provided a forum for the judges to discuss court management techniques and application of information and communication technology in courts to improve efficiency and strengthen justice administration.

Session 1- Constitutional Vision of Justice and Theories of Judicial Review

Panel - Justice Indira Banerjee, Justice M.B. Lokur and Prof V.K. Dixit

The session was initiated by focusing upon various roles of a judge. Thereafter, the speaker dwelt the on constitutional vision of justice. It was stated that circumscribing the definition of constitutional vision of justice within watertight compartment is not feasible, as the concept is very broad and fluid and is subject to varied interpretation. The Preamble to the Constitution was emphasized upon as a major indicator of the vision of the Constitution of India. It was stated that the goal of social justice and political justice as laid down in the Preamble was sought to be realized through various judgments of the Supreme Court of India. The Preamble was highlighted as being an ideal expectations of the people. It is the duty of the government and the courts to give effect to the principles (embodied in the Constitution). It was emphasized that although the people have delegated power to the legislature, but that does not mean that they can have more power than the people. It was opined that public confidence in the judicial institutions is necessary for maintaining law and order in the society. The judiciary should strive to maintain public trust and confidence in the system. It was also opined that justice means giving to the person his due. It was also

highlighted that secularism is a core feature of the constitutional vision of justice. The concept of fraternity provided in the Constitution was also emphasized and it was stated that it is an important pillar of the Constitution. It was stated that the Constitution is an evolving document which evolves as per the needs of the society. The speaker also elaborated upon the development of the concept of Public Interest Litigation as a tool to remove injustice. It was opined that scope of Article 21 of Constitution of India has expanded from mere right to biological existence to an all-encompassing right inclusive of various rights to the individuals.

Session 2- Separation of Powers & Allocation of Legislative Powers: The Federal Architecture

Panel - Justice M.B. Lokur and Prof V.K. Dixit

The concept and history of separation of power was traced and it was stated that initially the king was considered to be a divine manifestation, and he had ultimate power over his subjects. Thereafter, there was development of strict separation of power with strict demarcation between the power of the judiciary, executive and the legislature and encroachment on the power of the other wing was frowned upon. Presently, that strict separation of powers has diluted; and now it appears to thrive more upon convenience. It was opined that there is a need to reconsider the concept of separation of power propounded by Montesquieu. It was stated that in certain situations the theory of separation of power cannot be followed strictly and judiciary has to encroach upon the domain of legislature: Firstly, when the Parliament was not reactive to a situation and there was no law of Parliament or competent legislature. Sometimes, a social evil which was being ignored by the legislature and there was abdication of responsibility by the government. In such situations the court laid down guidelines or gave directions to fill the *lacunae* in the law e.g.

Vishakha v. State of Rajasthan [(1997) 6 SCC 241]; *Municipal Council, Ratlam v. Shri Vardhichand & Ors* [(1980) SCC (4) 162]. Secondly, in situations where there is non-implementation of law and therefore the judiciary had to intervene and direct the executive to undertake necessary action. Lastly, it includes situations where there is faulty implementation by the government. It was stated that the court should use power of 'continuing mandamus' in cases of faulty implementation. It was opined that the theory of separation of power can only be applied where the organs of government are willing to perform their duty. In situations where the other organs had abdicated their duty and the fate and rights of citizens were at stake then the Judiciary had deviated from the theory of separation of power and stepped into the shoes of Legislature and Executive so as to redress the grievances of the citizen. It was opined that all the organs should undertake their functions with due care and caution. It was also opined that there should be more coordination amongst the various organs of the state.

Session 3- Fundamental Rights and Restrictions on Entrenched Rights & Theory of Basic

Features: Contours

Panel - Justice Indira Banerjee, Justice M.B. Lokur and Prof V.K. Dixit

It was stated that Part III of the Constitution is the heart and soul of the Constitution. The speaker discussed the various categories of fundamental rights provided under Part III. The speaker also drew a distinction between fundamental rights which are available to all persons residing in India, and the fundamental rights which are only available to citizens. The restrictions to Article 19 were discussed in detail in the session. It was opined that right to personal liberty under Article 21 is sacrosanct and could only be curtailed under specific circumstances. The speaker also discussed Section 144 of the Code of Criminal Procedure, 1973, preventive detention and restriction on the rights of personal liberty of an individual.

Session 4- Court Management and Information & Communication Technology in Courts

Panel - Justice A.Muhamed Mustaque and Justice Atul Sreedharan

The speaker initiated the discussion in the session by focusing upon the impact of advancement in technology. The speaker also focused upon modernisation of courts through technology i.e improved access to courts; digital management of files; networking between the courts; digital signature; video conferencing; recording evidence etc. The speaker gave a brief overview of the various uses of technology in existing system in India like virtual courts, electronic service of summons, e-filing etc. The speaker highlighted various softwares incorporating Artificial Intelligence which are being used including IBM Watson and ROSS, and their potential impact on the legal profession and administration of justice. There was discussion on blockchain technology and methods by which it can be utilized in the working of the judicial system. It was stated that it is imperative that the stakeholders in the justice delivery system should prepare and adapt themselves for the future changes in the justice delivery system. It was opined that the technological revolution has thrown up new challenges and therefore, there is necessity of redesigning existing systems and to bring a change in mindset. The technology would also assist in enhancing 'access to justice' since new advancements would allow litigants to approach the court from remote locations. The speaker also displayed a system design which can be used for legal violation redressal. The session also involved sharing of 'best practices' by judges of various High Courts with regard to Information & Communication Technology in courts. One major concern highlighted was where the line should be drawn between machines and human. It was opined that human sensibilities and understanding of social realities and discretion are important and can never be replaced by machines. The usage of technology should aid and not replace the judge. It was suggested that the Rules Committee and E-Committee of each High Court should meet and make

required changes in the Rules which are not in consonance with respect to the technological advancements since most of the existing rules are obsolete.

Session 5 - The Art of Hearing

Panel - Justice A.Muhamed Mustaque and Justice Atul Sreedharan

The session involved sensitization on appropriate protocols required and approach of judges for effective listening; and the importance and methods of effective listening. It was opined that the judge should always patiently hear the advocate since it will increase confidence of the Bar in the judge and the judge would be effectively aided by the advocates. It was also suggested that anger due to any action of the advocate should be set aside during adjudication since it would adversely affect the outcome of the case and the litigant. It was opined that art of hearing includes various facets which include listening, perceiving, learning and understanding, which enable the judge to fully appreciate arguments and facts and to arrive at a just conclusion. Furthermore, it was stated that the judge should be an active listener. The speaker also emphasized upon various aspects which affect the proceeding including media trial and pre-trial publicity in criminal cases. It was also stated that perception of the judge affects the outcome of the case, and therefore a judge should never allow his/her prejudices or biases to colour the hearing. It was suggested that judges should not disrupt the advocates during their arguments and should listen to them attentively, while maintaining eye contact with the advocate. The judge should make required interruptions to classify his doubts. It was stated that the judge should give an impression of being the master of the court and should structure the hearing. The judge should have control over the submissions when the counsel becomes repetitive or irrelevant. The participants were advised to control the

aggressive behavior of the advocates and also to reserve orders only in a limited number of cases. Lastly, it was suggested that a judge should devise innovative ways as per his/her convenience for making the process of hearing effective.