

NATIONAL JUDICIAL ACADEMY



NATIONAL WORKSHOP FOR HIGH COURT JUSTICES [P-1286]

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Programme Report

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The National Judicial Academy (NJA) organized a two-day *online* National Workshop for High Court Justices. The workshop provided a platform for justices to share experiences, insight and suggestions with a panel of distinguished resource persons from the judiciary, Bar and experts from legal field on contemporary themes: Impact on Litigation Post-Covid 19; Exercise of *Suo Moto* Power in Civil and Criminal Cases; Developments in Insolvency and Bankruptcy Laws; and Land Reforms and Courts: Amendments to the Land Acquisition Act.

DAY 1

5TH MARCH, 2022 (Saturday)

SESSION 1

THEME - Impact on Litigation during Covid 19

SPEAKERS – Justice A.S. Oka & Justice P. N. Prakash

It was stated that the course of Indian history can be broadly divided in two phases - pre-Covid-19 and post Covid-19. In the pandemic the judiciary was impacted severely, especially the district courts as there was no advance warning of the lockdown and the judiciary had to overnight cope with the resultant scenario. As a consequence the judicial system has undergone a drastic change. The litigant was primary class that suffered in the pandemic.

With regard to the adoption of a hybrid model of courts in the pandemic, it was stated that the adoption of video conferencing by the judiciary was an immediate reaction to the lockdown with the Supreme Court and the High Courts shifting to video conferencing. The challenges that arose in the adoption of video conferencing were the lack of sufficient infrastructure to enable video conferencing and the reluctance on part of the stakeholders towards the adoption of video conferencing in judicial proceedings. The effectiveness and consequences of the hybrid model were outlined -

- The hybrid model proved to be convenient for advocates who could attend hearings before multiple High Courts in the course of a single day. Advocates could attend the court proceedings from their home/office and also from other cities and countries. Conversely, this also impacted local lawyers as senior advocates and lawyers based abroad attended the court. However, on the whole, the hybrid model served to advance the cause of justice by making the courts accessible.
- The hybrid model posed challenges in the recording of evidence through video conferencing, especially as it proved to be difficult to confront witnesses with physical evidence and documents through video conferencing.
- Operational challenges also posed challenges as the court infrastructure also included large screens which blocked direct interactions between stakeholders present in court, and also due to the difficulty in focussing on and transitioning between the stakeholders present in court and attending online.

It was stated that the hybrid model of courts should be continued even after the pandemic to ensure effective access to justice. However, there is a need to devise standard procedures as a national model for the hybrid system, and also provide proper infrastructure for the seamless functioning of the system. It was underscored that access to justice had been denied in the pandemic due to the following reasons -

- Lack of adequate video conferencing and internet connectivity at the district and taluka level.
- Lack of appropriate equipment and hardware to enable video conferencing
- Lack of knowledge regarding video conferencing
- Hesitance and reluctance on part of the stakeholders towards the adoption of video conferencing and hybrid model of courts.

The major issues which impacted access to justice included -

- Challenges in verifying sureties for bail
- Inability of litigants in withdrawing compensation
- Dependence on the Bar for accessing courts due to the closure of physical hearings.
- Inaccessibility of courts and police machinery for victims of domestic violence.

The pandemic has resulted in the increase of pendency of cases; and also brought about a change in the litigation areas with a significant increase in cases relating to domestic violence, matrimonial cases, POCSO cases, employment, tenancy and rent, loan repayment etc. Emphasis was placed on the need for scientific study of the pendency at the district and taluka court level to identify major bottlenecks and evolve suitable solutions. Solutions mooted to address pendency included the appointment of retired judges to deal with old cases, and increasing the working hours of the court.

The need for disaster management plans to safeguard the judicial institutions and their data in the event of disasters like earthquakes, cyclones, floods etc. was emphasised upon. It was stated that appropriate record management systems must be employed to safeguard judicial data and prevent its loss due to disasters and natural calamities. IT based systems must be devised for this purpose and e-seva kendras must be at every court and at the grassroots level to ensure IT functionality at every court, connectivity between courts, and accessibility of the courts for the litigant at the grassroots level. Emphasis was also placed on the adoption of e-payment services to eliminate corruption and to ensure access to justice. The need for simplification of the e-filing was underscored to make the process less cumbersome for the litigant. It was stated that the challenge in the pandemic and the hybrid model is to ensure access to justice for the 'have nots' and to ensure citizen-centric judicial systems which are simple and accessible.

It was stated that the negative incidents associated with the hybrid model are aberrations which should not deter the judicial system from evolving and adapting to the present scenario. Emphasis was placed on the need for training of the court staff on the IT based court systems to ensure its seamless functioning. It was also highlighted that the pandemic led to an increase in *habeas corpus* petitions. Emphasis was placed on Order 10 of the Civil Procedure Code, 1908 as a power of the court which would assist the court to identify the factual scenario in cases. The role of the portfolio judges in identifying and addressing bottlenecks in access to justice at the district level was emphasised. Concerns were expressed regarding the security of judicial data and records and the need to provide adequate IT security and the creation of backups was emphasised. The solutions suggested in the course of discussion were -

- Establishment of e-seva kendras at every district and taluka
- Training of stakeholders to familiarise them with the e-seva facility, video conferencing and e-courts systems.
- Enabling e-certified copies to ensure litigant friendly and cost effective systems; to eliminate corruption; and reduce footfall in the court.
- Exploring the possibility of entering into an MOU with banks to provide e-payment services
- Provision of smart phones to bailiffs with NSTEP application for service of summons and notices
- Enabling digital signatures for judicial officers in the District judiciary

SESSION 2

THEME - Exercise of *suo moto* Power in Civil and Criminal Cases

SPEAKERS - Dr. Justice B.S. Chauhan & Mr. Sidharth Luthra

The session initiated by underlining that *Suo moto* power exercised by courts is the recognition of sovereignty exercised by judicial governance under the constitution. It was emphasized that this power makes the judiciary the sole arbiter of laws. While discussing the concept of Epistolary Jurisdiction it was highlighted that in the 1970's and 80's many Letter Petition(s) were allowed by the Supreme Court as Writ Petitions under Article 32 of the Constitution particularly in cases of marginalized, illiterate, ignorant and inarticulate persons, who could not approach Courts due to paucity of resources or knowledge of their rights. Reference was made to *M.C. Mehta v. Union of India.*, AIR 1987 SC 1086; *Pratul Kumar Sinha v. State of Orissa.*, AIR 1989 SC 1783; *Bholanath Tripathi v. State of U.P.*, (1990) Supp SCC 151; and *M.L. Sachdev v. Union of India.*, AIR 1991 SC 311. It was stressed that Epistolary Jurisdiction is also exercised by constitutional courts in Public Interest Litigations [PIL] where serious allegations of violation of Fundamental Rights of Citizens are made and substantial public interest is involved in addition, after scrutiny and response from the Statutory Authorities, the Courts endeavor to remedy the situation. The purpose of initiating Epistolary Jurisdiction is to serve the substantial public interest however, due to the non-existence of any procedure it is often misused. In *State of Uttaranchal v. Balwant Singh Chauhan.*, (2010) 3 SCC 402, the Supreme Court issued directions to avoid the misuse of PILs.

- The Courts must encourage genuine and *bonafide* PIL and effectively discourage and curb the PIL filed for extraneous considerations.

- Each High Court to properly formulate Rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives.
- The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.
- The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.
- The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.
- The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.
- The Courts should ensure before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury and there is no personal gain, private motive or oblique motive behind filing the PIL.
- The Courts should ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

In *Rajat Sharma v. Union of India.*, (2021) 5 SCC 585, the Supreme Court dismissed the Writ Petition with exemplary cost, labelling the petition as the Publicity Interest Litigation as the petitioner did not produce anything which was offensive as to give a cause of action for the Court to initiate proceedings for sedition. More so, the petitioner had nothing to do with the subject matter.

Recently, in *Esteem Properties Pvt. Ltd. v. Chetan Kamble & Ors.* 2022 SCC OnLine SC, the Apex court stated that one of the methods to confirm that frivolous or private interests are not

posed as genuine claims, is to be watchful when examining locus standi. Mostly, PIL, being a summary jurisdiction, has limited powers to examine the bonafides of parties. It is ordinarily on the pleadings that the Court must take a prima facie view on the bonafides of the party. If the Court determines that the litigation was commenced under the shadow of judicious doubt, then the Court may decline to entertain the claims on merits. In such cases, Courts have several alternatives such as - dismissing the PIL or appointing an amicus curiae, if the cause espoused in the case requires the immediate attention of the Court.

The discussion on 'Extraordinary Judicial Interventions vis-à-vis Separation of Powers', emphasized that a judge has a duty to interpret provisions of the Constitution by keeping in mind the intention of the constitutional framers. The purpose of separation of powers is to put checks and balances over other organs of the government and to prevent tyrannical rule. Similarly, judicial activism can be regarded as active interpretation of existing provisions for the purposes of enhancing the utility of a legislation to achieve the constitutional aspirations of socio-economic justice. There had been many cases in which courts have pro-actively issued directions to curb the misuse of legislations at the hand of contemptable persons. A few of these cases are *Laxmi Kant Pandey v. Union of India*, AIR 1986 SC 272; *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610; *Rama Murthy v. State of Karnataka*, AIR 1997 SC 1739; *Vishakha v. State of Rajasthan.*, AIR 1997 SC 3011; *Vineet Narain v. Union of India*, AIR 1998 SC 889; *Supreme Court Bar Association v. Union of India*, AIR 1998 SC 1895; *Kalyan Chandra Sarkar v. Rajesh Ranjan*, AIR 2005 SC 972; *Common Cause v. Union of India.*, AIR 2008 SC 2116; *Dayaram v. Sudhir Batham.*, (2012) 1 SCC 333; and *Chairman, Rajasthan State Road Transport Corporation v. Santosh*, AIR 2013 SC 2150]. Recent interventions by the Supreme Court and High Courts amidst Covid-19 pandemic also formed an integral part of the session.

DAY 2

6TH MARCH, 2022 (Sunday)

SESSION 3

THEME - Developments in Insolvency and Bankruptcy Laws

SPEAKERS – Mr. N. Venkataraman & Mr. R. Venkatavaradan

The session emphasised that the Insolvency and Bankruptcy [IBC] Laws jurisprudence is developing rapidly and the role of courts is very limited because of the structure of this law. The adjudicatory route of an IBC matter goes from the National Company Law Tribunal [NCLT], to the National Company Law Appellate Tribunal [NCLAT] and finally to the Supreme Court. Consequently, the jurisdiction of the High Court as the Appellate Court is not in the Act hence, it is limited only to the interventions wherever essential under Article 226. However, it was stressed that High Courts will definitely have a lot to underwrite in this area in the coming years. The discussion further underlined that it is significant for judges dealing with IBC matters to have a good amount of grouting over economics/public finance and how commercial business is done in India which has a compartment on regulations. IBC is completely driven by the participants in business that includes- corporate debtor, financial creditors, operating creditors, the resolution applicant who files to take over, resolution professional, individual creditors, committee of creditors, personal guarantors and the corporate guarantors. These sects of stakeholders have their own plural rights, duties, privileges, powers, immunities. The IBC law endeavors to synthesize these diverse interests. More significantly, to filter genuine cases from those which can be very abusive in nature. Subsequently, for these abovementioned plural stakeholders with diverse interests there is need

to have a strong economic and public finance background with prudent commercial business operations. It was accentuated that IBC is extremely fact intensive law.

Consequently, some of the major economic principle involved in IBC were discussed- firstly, the whole idea of IBC law is resolution instead of litigation, secondly, maximization of the value of the assets involved in the dispute and thirdly, how to balance interest i.e., there must be input on how to promote entrepreneurship, protect and preserve the credit market availability. The biggest departure of IBC from the earlier laws is that it is a one stop solution. It was empahsised that IBC aim to extinguish slowly and steadily earlier prevalent practice of defaulters' paradise.

Another advantage of the IBC law is that it gives the facility to identify the stress at a very early stage. It also permits genuine exit whenever there is a genuine business failure. The role of court is significant in IBC matters because of the timing, initiation and commencement of the process is very crucial. When a case comes before the court the commercial fundamental economic principles are required to be applied at the first instance so that the court can size up the case and see how and in what part relief can be given to ensure that the transaction is preserved and intact. More importantly, public money involved through banks is retrieved to the best extent possible. The three value chain imbided in IBC law at the time of resolution were emphasized, these are– value for time, value for assets and value for economics.

While discussing the changes brought about by the Insolvency & Bankruptcy Code, 2016 [*hereinafter*, Code] it was highlighted that the Code has been introduced to streamline, expedite and to have more rational insolvency resolution processes. It was empahsised that the Code is enacted to consolidate and amend laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, for availability of credit and

balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India (IBBI).

The discussion on Article 14 of the Constitution *vis-à-vis* Voting Rights of the Operational Creditors in Committee of Creditors [CoC] highlighted that in *Swiss Ribbons Private Limited and Another v. Union of India and Others* (2019) 4 SCC 17, the Supreme Court decided whether the non-inclusion of operational creditors in the CoC was violative of Article 14 of the Constitution. The court observed that:

- Since equality is only among equals, no discrimination results if the Court can be shown that there is an intelligible differentia which separates two kinds of creditors so long as there is some rational relation between the creditors so differentiated, with the object sought to be achieved by the legislation.
- The reason for differentiating between financial debts, which are secured, and operational debts, which are unsecured, is in the relative importance of the two types of debts when it comes to the object sought to be achieved by the Insolvency Code.
- It was already seen that repayment of financial debts infuses capital into the economy inasmuch as banks and financial institutions are able, with the money that has been paid back, to further lend such money to other entrepreneurs for their businesses.
- This rationale creates an intelligible differentia between financial debts and operational debts, which are unsecured, which is directly related to the object sought to be achieved by the Code.
- So long as there is some legitimate interest sought to be protected, having relation to the object sought to be achieved by the statute in question, Article 14 does not get infringed.

It was further highlighted that in *Committee of Creditors of Essar Steel v. Satish Kumar Gupta (2020) 8 SCC 531*, the Supreme Court reiterated the differences between financial and operational creditors. The discussion concluded by emphasizing that every aspect of IBC law is filled with commercial ideas, economic realities and public finance implications. To make IBC law robust there is a need to have strong insolvency professionals, good valuation professionals, technically reliable information utilities, honest CoC, fast-track adjudicating authorities and a responsible regulator. The court can run successfully only when all these individuals put their combined strength into it.

SESSION 4

THEME - Land Reforms and Courts: Amendments to the Land Acquisition Law

SPEAKERS – Dr. Justice B.S. Chauhan & Justice N. Seshasayee

An exposition of the land reform movement and its genesis was provided by touching upon the historical account of land ownership in the pre-independence period. The agrarian reforms brought about post-independence was discussed. Land acquisition was emphasised to be the counterpart of the law of eminent domain of America or the law of compensation in England. Acquisition of land was stated to be only permissible in public interest. A historical account of land reforms was provided referring to various enactments including Acts XVII and XLII of 1850, Act VI of 1857, Act X of 1870, the Land Acquisition Act, 1894 (1894 Act) and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (2013 Act). A detailed overview of the 1894 Act was provided and the term ‘public purpose’ under the 1894 Act was discussed with reference to the judgments in *State of Bombay v. R.S. Nanji.*, AIR 1956 SC 294, *State of Karnataka & Anr v. Ranganatha Reddy & Anr.*, AIR 1978 SC 215; and *Delhi Administration v. Gurdip Singh Uban & Ors.*, (2000) 7 SCC 296. It

was stated the person interested under the 1894 Act is a person who has some interest in the land and who should suffer legal injury in the event of the acquisition of the land. Emphasis was placed on the adherence to the principles of natural justice especially *audi alteram partem* in the acquisition proceedings to ensure that the person whose land is acquired is given adequate hearing. Sections 6 (declaration of acquisition), 11 (enquiry and award), 11A (period within which award must be made), 17 (special powers in case of urgency), 18 (reference to court), 23 (matters to be considered in determining compensation), 28A (re-determination of the amount of compensation on the basis of the award of the court) and 48 (completion of acquisition not compulsory, but compensation to be awarded when not completed) were discussed at length. Reference was made to the judgments in *Special Land Acquisition Officer, Bombay v. Godrej & Boyce.*, AIR 1987 SC 2421 and *Tukaram Kanaji Joshi & Ors. v. MIDC & Ors.*, AIR 2013 SC 565. The term ‘public purpose’ under the 2013 Act was discussed. Emphasis was placed on the resettlement and rehabilitation provisions of the 2013 Act as a novel measure introduced in the land reform law. The social impact assessment mandated under the law was also discussed at length. Lapse of acquisition proceedings under Section 24 was discussed with reference to the judgments in *Pune Municipal Corporation & Anr. v. Harakchand Misrilal Solanki.*, AIR 2014 SC 982; *Union of India & Ors. v. Shiv Raj & Ors.*, AIR 2014 SC 2242; *Shree Balaji Nagar Residential Association v. State of Tamil Nadu.*, (2015) 3 SCC 353; and *Indore Development Authority v. Shailendra (Dead) through L.Rs. and Ors.*, v. *Shailendra.*, (2018) 1 SCC 733. The judgment in *Indore Development Authority v. Manoharlal.*, (2020) 8 SCC 129 was discussed in detail. The drawbacks of the 2013 Act were identified to be –

- Difficulty in calculating market value due to running parallel economy, cash transactions often made with black money, and understating the market value to avoid payment of stamp duty.

- no policy of rehabilitation and resettlement in cases of temporary acquisition of land
- forcible acquisition by the government for its own use, hold and control, including for PSUs and for public purpose under Section 2(1) where prior consent of the affected families is not required.
- Chapter III of the Act 2013, dealing with acquisition of agricultural land, infringes the right of transfer and alienation of agricultural land, accorded to States under the “State List”-Entry 18.
- The application of the provisions of the Act 2013 to all the 13 enactments dealing with land acquisition, specified under the Fourth Schedule, has been done away with eg. Railways Act, 1989, National Highways Act, 1956.

Section 24(1) of the 2013 Act reflects the intention of the legislature to ensure continuity of acquisition proceedings between the 1894 Act and 2013 Act with Section 24(2) operating as an exception to this rule of continuity. The judgment in the case of *Ravi Subramanian v State of Tamil Nadu*, 2017 4 MLJ 402 was discussed. The mandate for environment impact assessment (EIA) study and social impact assessment (SIA) as pre-condition for notification under Section 11 was discussed. Rehabilitation and resettlement was emphasised as a necessary measure to be adhered to before the publication of declaration under Section 19. It was stated that abandonment of acquisition is possible upto the stage of declaration under Section 19. Sections 10 (Special provision to safeguard food security) and 41(Special provisions for Scheduled Castes and Scheduled Tribes) were highlighted as restrictions under Section 19(2). The major grounds on which judicial review of land acquisition were identified to be (i) violation of requirement of EIA (ii) violation of SIA provisions (iii) inadequate hearing under Section 15 and (iv) alternate land available, hence operation of the restrictions under Sections

10 and 41. With regard to EIA under the 2013 Act, the judgment in *Pandarinathan Govindarajulu v. Union of India*, 2020 SCC Online Mad 809 was discussed. It was stated that Section 23 of the 1894 Act does not prescribe the method for determination of market value; however Section 26 of the 2013 Act provides the mandatory parameters and criteria for assessing and determining market value of the land. This market value is relevant in and considered in the determination of award under Section 28. Challenges in determination of market value, and the possible methods to determine value including capitalisation method and build up method were discussed. On the term 'public purpose' it was stated the acquisition must serve the larger interests of the public. Section 2(1) provides an inclusive definition of the term public purpose which if examined reveals that the term largely encompasses infrastructural purposes. With regard to the scope of 'public purpose' the judgment in *J. Deepak. v. Secretary to Government, Government of Tamil Nadu* 2021 SCC OnLine Mad 5985 was discussed. Reference was made to the judgment in *Walchandnagar Industries Ltd v. State of Maharashtra* 2022 SCC Online 145 on the issue of valuation of damage due to severance of property. In this case the Supreme Court held that compensation is required to be paid to the extent that the property has been rendered unusable for the landowner.