

NATIONAL JUDICIAL ACADEMY



NATIONAL WORKSHOP FOR HIGH COURT JUSTICES

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26th & 27th March 2022

Programme Coordinators:

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Faculty National Judicial Academy

The National Judicial Academy, Bhopal organized a two day Online National Workshop for High Court Justices on 26th & 27th March, 2022. The workshop facilitated the deliberations among participant justices on contemporary topics including Administration and Leadership Skills: Conferencing and Collegiality among Judges; Pragmatic Approaches in Decision Making; Independence of Judiciary; and Jurisprudence of Interpretation. The Workshop provided a forum to the judges for discussion and brainstorming on these themes. In the introductory session Director NJA explained the background theme of the seminar and stressed its importance in the contemporary times.

SESSION 1

ADMINISTRATION AND LEADERSHIP SKILLS: CONFERENCING AND COLLEGIALITY AMONG JUDGES

Resource Persons: Justice S. K. Kaul and Justice Akil Kureshi

Session 1 on the topic *Administration and Leadership Skills: Conferencing and Collegiality among Judges* emphasized that every judge is a leader of his own court. The judge should never give control of his court to anyone else other than himself. He should strive to keep the atmosphere in the courtroom healthy but at the same time, he shouldn't allow a jocular atmosphere in court. Apart from this role as a leader in his own court, a judge of a High Court also has to develop the leadership qualities that are required for his work and life outside the courtroom. It was opined that generally, a judge has to show his/her leadership role in five events *viz.* (1) While he/she is attending the Full Court or other committee and sub-committee meetings on the administrative side; (2) When he/she is dealing with the members of the Registry; (3) When he/she is dealing with lawyers' delegations, bar delegations, etc.; (4) When he/she is dealing with staff members and their

representatives; and (5) When he/she is dealing with the district judiciary. It was emphasized that each of these five types will require a different set of leadership qualities to be inculcated and also requires a different leadership approach. However, it was highlighted that one common and most important leadership quality that everyone must possess is “the art/skill of communication”. It was iterated that in communication no doubt what one says matters, but more than that, it matters as to how it was started and when it was spoken. It was suggested that for effective communication one must eliminate his own ego and should be well equipped to manage the egos of others. A good leader always develops confidence in their subordinates and also inculcates a feeling of independence in them. A leader always gives credit to his team and bears the responsibility of the failure. It was suggested that judges should think about the legitimacy of the issue and should not give any unreasonable and false promises to any of the stakeholders. It was proposed that as regards dealing with subordinate judiciary, a High Court judge should try to drive in democratic approaches. Transparency and integrity of purpose are very important to work as a team and the leader should make clear that he has no hidden agenda. It was stressed that there is no fixed definition of a leader. Finding the right person for the right job is very important be it the care of a High Court or as a Chief Justice. The judge as a leader, while dealing with colleagues and bar must ensure that they have full confidence reposed in him/her. A judge or Chief Justice shall endeavour to perceive long-term as well as short-term effects in the administrative decisions. The participants also expressed their thoughts on the leadership qualities of a judge.

It was advised that a judge should maintain a cordial relationship with the district judiciary, both on administrative as well as on judicial side. A High Court judge should act as a guardian instead of just an inspecting judge. A judge should always assist senior judges

including the Chief justice to take appropriate decision and help in the implementation of the same. It was emphasized that while entertaining the petition under Article 227 of the Constitution of India, a judge should not convert it to appellate jurisdiction in lieu of widening the scope as superintendence jurisdiction. It was suggested that the foremost duty of a judge is to consult and deliberate with the senior most judges before accepting or assuring the demands of advocates. It was also suggested that a judge should always resort pragmatic ways to resolve the problems and conflicts between the bar and with the registry including the staff members of the chamber.

SESSION 2

INDEPENDENCE OF JUDICIARY

Resource Persons: Mr. Salman Khurshid and Mr. Rakesh Dwivedi

The second session was on the theme *Independence of Judiciary*. The speaker commenced the session by stressing the importance of an independent and impartial judiciary. The methodology and independence of the judicial mind were deliberated upon. It was iterated that the judicial mind should not be influenced by any likes/dislikes or prejudices. The interphase between right and policy was discussed. It was stated that the judicial independent decision-making process includes rational decision-making. It was delineated that no supreme power should be bestowed on a single individual but should be vested in collegiality.

Constitution provides division of power between the executive and judiciary. Judiciary has a role to keep the executive within constitutional bounds. It was emphasized that it is very important to maintain a clear line between the independent judiciary and the executive.

However, the participants were advised not to encroach on the work of executive and should not generally interfere with the functions of the government. It was stated that the executive at times also performs quasi-judicial functions. The role of the judge should not be judging the policy of the governments and in this light, the supremacy of the legislature and role, power, and functions of the constitutional courts were elaborated upon. It was stated that the role of a judge is to fill in the gaps in the law. Constitutional morality and constitutional values were also discussed during the discourse. It was emphasized that a judge has to decide a case without any fear or favor and should do justice to a case. The approach of deciding a case when the law is silent and when it is backed with precedents was discussed. Scientific investigation to resolve the disputes was emphasised upon. The concept of 'Khap Panchayat' was also the part of the discourse. It was emphasized that the duty of the judge is not only to punish the wrongdoers but also to see there should not be abuse or misuse of the power. Appointment of judges and transfer of judges in reference to the independence of the judiciary was also pondered upon in this light of the *Supreme Court Advocate on Record v. Union of India*, (2016) 5 SCC 1 (NJAC judgment) and *S.P. Gupta v. Union of India and Ors.*, AIR 1982 SC 149 (First judges' case) was discussed. Independence of the judiciary *vis-à-vis* accountability of a judge was deliberated upon and it was remarked that both are interlinked with each other. The participants were suggested to read Books titled "Moral Reading of the American Constitution" authored by Ronald Dworkin and a book titled "How Judges Decide Cases" authored by Andrew Goodman. It was suggested that the constitutional court should interpret the law while taking into consideration the concept of modern welfare state.

SESSION 3

JURISPRUDENCE OF INTERPRETATION

Resource Persons: Mr. C. Aryama Sundaram and Prof. V.K. Dixit

In session 3 *Jurisprudence of Interpretation* the precepts of interpretation and theories of interpretation were elaborated upon. The three precepts of the interpretation include statutory precept (rules and laws made by the legislature), traditional precept (role of a judge in making a rule), and third precept in reference to the source of the law were deliberated.

The rule of 'higher generality' and the rule of 'lower generality' were discussed during the discourse. It was iterated that 'higher generality' is not precisely designed, but they get slowly evolved over the centuries. Thus, rules of higher standards were emphasized. The concept of *grundnorm* with reference to interpreting a legal provision was discussed. The intricacies and insight of literal/grammatical and purposive/liberal/Haydon's Rule of interpretation were expounded. It was stated that in legal interpretation the words acquire their meaning from the context. The interpretation of the Constitution of India by the framer of the constitution and later by the Supreme Court of India in the light of the landmark judgment *Kesavananda Bharati v. Union of India*, (1973) 4 SCC 225 was formed the part of the discussion. *I. C. Golaknath & Ors v. State of Punjab & Anrs*, 1967 AIR 1643, *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664, *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, *Mohd. Ahmed Khan v. Shah Bano Begum*, 1985 (2) SCC 556, *Indian Young Lawyers Association and Ors. v. The State of Kerala and Ors*, (2019) 11 SCC 1, *Shayara Bano v. Union of India*, AIR 2017 9 SCC 1, were highlighted w.r.t. regards constitutional interpretation.

In order to get the holistic understanding on the jurisprudence of interpretation the participants were requested to read the following seven Supreme Court judgments:

1. *Dokiseela Ramulu v. Sri Sangameswara Swamy Varu*, (2017) 2 SCC 69;
2. *Arcelormittal India (P) Ltd. v. Satish Kumar Gupta*, (2019) 2 SCC 1;
3. *State (NCT of Delhi) v. Union of India*, (2018) 8 SCC 501;
4. *Regl. Provident Fund Commr. v. Hooghly Mills Co. Ltd.*, (2012) 2 SCC 489;
5. *Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill*, (2012) 2 SCC 108;
6. *Vipulbhai M. Chaudhary v. Gujarat Coop. Milk Mktg. Federation Ltd.*, (2015) 8 SCC 1;
7. *Dharani Sugars and Chemicals Ltd. v. Union of India*, (2019) 5 SCC 480.

It was stated that the 'higher generality' of a judge is to render justice. High Courts are constitutional courts and have to interpret the statute or the constitution itself whenever required keeping in view the high pedestal duty of a judge to render justice. It was suggested that law should be interpreted according to the societal interest. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the Rule of Law and harness their power in the public interest.

It was emphasised that the duty of a judge is to fill the gap and interpret the law rather than to create a new policy. It was suggested that interpretation of any statute/policy should be in accordance with public interest/public order. The interpretation w.r.t. to the tax laws and tax evasion matters was discussed. The principle of justness, reasonableness and fairness

as laid down in *Maneka Gandhi v. Union of India*, 1978 AIR 597 was emphasised upon. The object of the interpretation is to obviate the mischief in furtherance of good. It was stated that there is no specific definition of reasonableness, fair trial, or Rule of Law rather it has been left to authorities to interpret it by applying the principle of 'higher generality' and as per the contemporary times and needs of the society. It was emphasised that the foremost duty of a court is to achieve constitutional functionalism by adopting a pragmatic approach.

SESSION 4

PRAGMATIC APPROACHES IN DECISION MAKING

Resource Persons: Justice R. V. Raveendran and Justice A. K. Sikri

In the fourth session on the theme *Pragmatic Approaches in Decision Making* formalist approach, idealistic and pragmatic approaches formed the part of the discussion. It was iterated that when a judge needs to take a formalist, idealist, or pragmatic approach depends upon the facts and circumstances of each case. The participant judges were also advised to read a book titled “Courts and their Judgments” authored by Mr. Arun Shourie, as book probes into aspects as to whether judges merely enforce and interpret the law? Or do they at times interpolate words into statutes, even into the Constitution? Where do interpretation end and rewriting commence? The book looks at judicial activism through some brilliantly argued cases and the need and pitfalls of such overreach.

It was opined that generally in motor accident cases judges should adopt an idealist approach and be pragmatic in constitutional and administrative law. Judges should perceive that the decision of the executive may not cause grave injustice to the public and should be in accordance with the public interest. An interception between pragmatic and traditional decision-making formed the part of the discussion. It was asserted that a judge should adopt

pragmatic decision-making in cybercrime cases and while dealing with bail matters in a criminal appeal. It was opined that the idealistic view may be preferable in civil law. It was suggested that judges should not step beyond the jurisdiction of the law. It was suggested that judges should always keep themselves abreast with the latest nuances of special laws in order to arrive at a just decision. It was remarked that perceiving the problems of the society by the judge becomes an important aspect in decision making.

A judge should see that no Party should be prejudiced by the act of the court. It was opined that a judge should not award interim orders without considering its consequences. It was suggested that a judge should be sensitive as to where cases are related to larger public interest, substantial question of law or matter related to constitutional interpretation is involved an decide suitably therein. A Judge should be guided by the constitutional vision of justice while making a decision. Difference between the creativity and pragmatism was deliberated. It was suggested that binding judgments should not be ignored and has to be applied if facts and circumstances are the same. The object of any approach whether it is pragmatic, idealistic, realistic, or formalistic is to impart justice. However, pragmatism refers to innovative ways of providing a new kind of relief to uphold justice. It was opined that if a judge through the pragmatic approach enters into a negotiation and settles the matter, but later if Parties refuse and do not agree with the settlement then the judge ideally should refrain from hearing that matter. It was emphasized that pragmatic approach means to exercise judicious discretion and judicial maturity.

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