

NATIONAL JUDICIAL ACADEMY



National Seminar on Constitutional and Administrative Law [P-1357]

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PROGRAMME REPORT

PREPARED BY:
RAJESH SUMAN & KRISHNA SISODIA,
FACULTY, NATIONAL JUDICIAL ACADEMY,
BHOPAL

Overview of the Seminar

The National Judicial Academy (NJA) organized a two day National Seminar on Constitutional and Administrative Law on 26th & 27th August, 2023. The seminar aimed to provide a forum for discussing normative issues concerning the constitutional status of district judiciary. The seminar explored the intersection of the principles of administrative law in court management; principles of natural justice; speedy justice and fairness in trial; and the doctrine of precedent. The objective of the seminar was to provide a forum for participants to discuss, deliberate amongst themselves and share experiences, knowledge and best practices in exercise of jurisdiction.

Session 1: Constitutional Status of Trial Judiciary

Speakers: Justice Ram Mohan Reddy and Justice C.V. Karthikeyan

The session was commenced by highlighting the importance of the trial court in the hierarchy of the Indian justice delivery system. The speakers explained the constitutional provisions relating to the trial judiciary and Article 233 (Appointment), Article 233A (validation of judgments), Article 234 (recruitment), Article 235 (Conditions of Service), Article 236 (Interpretation) and Article 237 (power of governor) were referred. The mandate to follow the Constitution under Article 375 and the mandate to act in aid of the Supreme Court under Article 144 were discussed. It was opined that the Constitution of India plays a crucial role in the functioning of the trial judiciary and it provides the framework within which the trial judiciary operates and ensures that its independence is protected. Various aspects relating to the administrative control of High Court on trial judiciary were discussed and Article 235 of the Constitution was discussed in detail. Various parameters for the assessment of the performance of the judges of trial court were discussed and it was emphasized that it is a paramount duty of High Courts to ensure dignity and independence of the judges of trial court while assessing their performance. Article 233 of the Indian Constitution dealing with the appointment of District Judges was referred and the role of the district judges in administering the district court was explained. Various aspects of the administration of district court were also highlighted.

The principle of judicial sovereignty was discussed and it was opined that power of the judiciary to interpret and enforce the law independently, without interference from other branches of government is well recognized in law and it is a fundamental principle that ensures rule of law and protects the rights of citizens. Judicial sovereignty provides a check on the power of the executive and legislative branches, ensuring that they do not overstep their constitutional limits. It also guarantees impartiality and fairness of the legal system which is essential for upholding the principles of justice. Various judgments of the Supreme Court dealing with the appointment of judges of district judiciary, independence of the trial court judges, control of the high court, judicial propriety and judicial ethics were discussed. The judgments *Ram Lallan v State of UP*, 2012 (111) AIC 372, *V K Jain v. High Court of Delhi*, (2008) 17 SCC 538, *T N Godavarman Thirumulpad v. Union of India*, (2006) 10 SCC 486, *Jasbir Singh v. State of Punjab*, (2006) 8 SCC 294, *K.H. Siraj*

v. High Court of Kerala, (2006) 6 SCC 395, *Tirupathi Balaji Developers (P) Ltd vs State of Bihar*, (2004) 5 SCC 1, *All India Judges' Assn. v. Union of India*, (2002) 4 SCC 247, *Delhi Bar Assn. v. Union of India*, (2002) 10 SCC 159, *SP Gupta V Union of India* (1981) Supp SCC 87, *Baradakanta Mishra v. High Court of Orissa*, (1976) 3 SCC 327, *State of Assam v. S.N. Sen*, (1971) 2 SCC 889, *Chandra Mohan v. State of UP* (1967) 1 SCR 77 and *Ram Saran Tewari v. Raj Bahadur Varma*, 1961 SCC OnLine All 227 were discussed in this regard.

Session 2: Doctrine of Precedent

Speakers: Justice Ram Mohan Reddy and Justice C.V. Karthikeyan

The sessions was commenced by explaining the meaning of the term stare decisis, ratio decidendi and per incuriam. The method to find out ratio decidendi of a judgment was explained to the participants. The role of precedent in ensuring discipline and legitimate expectation was highlighted. Article 141 of the Constitution was discussed in detail and it was opined that strict adherence of this Article is required to ensure judicial consistency across the hierarchy of courts. Various principles related to precedent were highlighted and it was opined that a judgment is used as a precedent only if it decides or resolves a question of law. Sometimes while deciding a case, if the court is divided, the decision taken by the majority of judges alone can be used as a precedent. The speakers then discussed various judgments of the Supreme court dealing with the principles relating to precedents including *Hari Singh v. the State of Haryana* (1993) SCR (3) 61, *ICICI Bank v. Municipal Corporation of Greater Bombay* (2005) 6 SCC 404, *Bengal Immunity Co. v. the State of Bihar* AIR 1955 SC 661 and *Pandurang Kalu Patil v. State of Maharashtra* (2002) 2 SCC 490. The issue of determination of binding precedent in case of conflicting decisions of coordinate benches was highlighted and it was stated that the decision of a larger bench will be binding on a smaller bench and it is the strength of the bench that determines the binding effect of its decision.

The speakers then focused on decisions that are not considered binding under Article 141 of Indian Constitution. They are the decision that is not expressed, the decision not founded on reasons, the decision that does not proceed on consideration of the issue and it was concluded that obiter dicta of a case are not binding, hence it cannot be relied upon solely as a ground to hold any statutory rule invalid. It was stated that decision rendered per incuriam is not binding and per incuriam means lack of due regard to the law. Then it was emphasized that a decision which is sub-silentio cannot be treated as a precedent and sub-silentio means a situation when the point of law involved in the decision is not determined. Observations on the facts of a case are not binding. The judgments *State v. Synthetics and Chemicals Ltd. and Anr.* 1991 SCC (4) 139 and *Dr. Shah Faesal and Others v. Union Of India and Another* (2020) SCC Online SC 263 were discussed in this regard.

Then speaker focused on the need for good precedents to be delivered by the court and it was opined that they are necessary to fill in the gaps present in the legislation. Since it is up to the courts to ensure proper application of the rules, it is often required that they read between the words of the law and interpret certain rules to expand or limit the scope of the statutes. It is also required that the courts lay down rules to solve matters on which the law is silent. This is an essential role

of judicial precedents as they ensure that the rights of the people are not compromised. It was further added that there is a need for good and exhaustive precedents to be set to avoid ambiguity when applied in future cases. A clearly laid down precedent will save the court's time and reduce the chances of wrongful application of law. The session was concluded by discussing the authority of dissenting judgment and it was opined that dissenting opinions are valuable in shaping the law by presenting alternative perspectives. However, they do not have the same authority as the majority opinion and are not binding on future cases. It was further added that in some cases, a dissenting opinion may eventually become the majority view and lead to a potential resurrection of the issue.

Session 3: Applications of the Principles of Administrative Law in Court Management

Speakers: Justice Dr. S.N. Pathak and Justice U.C. Dhyani

The session was commenced with discussion on principles of administrative law which can be applied to court management. Various principles of natural justice were discussed including that justice should not only be done but seen to be done, no one can be a judge in his own cause, no party should be condemned unheard, impartial hearing must be extended to the person against whom a charge is framed to state his case and final decision should be by way of a speaking order. The value of neutrality and objectivity was discussed and it was suggested that these values should be scrupulously followed in the management of court. Then various aspects concerning parameters of performance evaluation of judicial officers and ministerial staff were explained to the participants.

The issue of disciplinary proceedings was discussed and it was suggested that principles of natural justice should be followed by the concerned authority. The principles of *nemo iudex causa sua* and *audi alteram partem* were then focused upon. It was suggested that delinquent employee should be made aware of the charges against him and proper opportunity of hearing should be given to him. The decision of the authority should be supported by valid reasons. Various judgments of the Supreme Court about assessment of performance and annual confidential report were discussed in this regard. The judgment *Sukhdev Singh v. Union of India*, (2013) 9 SCC 566 about communication of entry in the ACR of public servant was discussed. The judgment *Bishwanath P. Prasad Singh v. State of Bihar*, (2001) 2 SCC 305 was discussed where the Supreme Court held that the performance of a judicial officers should be assessed on continuous basis and the performance of the entire year should be taken in record and the entry in the annual confidential report should be made accordingly. The judgment *High Court of Punjab & Haryana v. Ishwar Chand Jain*, (1999) 4 SCC 579 about the object of inspection of courts was discussed. The judgment *Krishna Prasad Verma v. State of Bihar*, (2019) 10 SCC 640 about causes for disciplinary action against judicial officers was discussed. It was held in the judgment that merely passing of erroneous orders should not lead to disciplinary action unless they are passed for extraneous reasons, illegal gratification, etc. The judgment *P.S. Malik v. High Court of Delhi*, (2020) 19 SCC

714 dealing with the scope of Article 235 relating to disciplinary proceedings against subordinate judicial officers was discussed.

The speakers then focussed on guaranteeing public access to the courts and the court records with ICT integration and it was opined that e-Seva Kendras can provide all relevant information about case to the litigants and litigants should be encouraged to use this facility. The importance of e-filing and paperless courts was explained to the participants and various strategies for seamless implementation of the e-filing system were explained.

Session 4: Principles of Natural Justice for Procedural Fairness

Speakers: Justice P.N. Prakash and Justice G.R. Swaminathan

On the theme of Principles of Natural Justice for Procedural Fairness it was asserted that non-adherence to any of the principles of natural justice viz., *audi alteram partem* (opportunity of being heard) and *nemo judex in causa sua* (no man shall be a judge in his own cause) renders the whole proceeding void. The case of *Ridge v. Baldwin*, [1964] AC 40 was referred in this regard. Thereafter, the decision in *Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise*, (2015) 8 SCC 519 was discussed wherein the Supreme Court observed that *ratio decidendi* (resoned decision) is the third principle added to the principles of natural justice which is of recent origin. Further, it was stated that the term ‘Natural Justice’ is not expressly mentioned in the Constitution, however, it is embedded in Articles 14, 19, 21 and other provisions of the Constitution.

Further, the decision in *C.B. Gautam v. Union of India*, 1993 1 SCC 78 was referred wherein it was held that even when observance to the principles of natural justice is not expressly provided in the statute even then a Court or quasi-judicial authority is bound to follow the principles of natural justice. It was commented that any departure from the principles of natural justice is permitted only when it is expressly provided in the statute.

Lastly, the Wednesbury Principle and the Doctrine of Proportionality was delineated. The case of *Internet and Mobile Association of India v. Reserve Bank of India*, (2020) 10 SCC 274 was highlighted wherein the Apex Court held that the circular released by RBI (prohibiting banks and other regulated businesses from dealing in Virtual Currencies (VC) or Cryptocurrencies, and providing services to any individual or entity dealing with or settling VCs.) as unenforceable and unlawful on the ground of proportionality.

Session 5: Speedy Justice and Fairness in Trial

Speakers: Justice P.N. Prakash and Justice G.R. Swaminathan

On the theme of Speedy Justice and Fairness in Trial the discussion commenced by highlighting the judgment in *Hussainara Khatoon v. State of Bihar*, 1979 AIR 1369 wherein it was held that the “right to a speedy trial” is a fundamental right implicit in the right of life and personal liberty

provided under Article 21 of the Indian Constitution. The court-mandated greater access to bail, more humane living standards and a significant reduction in time from arrest to trial. Further, in *Abdul Rehman Antulay v. R.S. Nayak*, (1992) 1 SCC 225 it was held that right to a speedy trial under Article 21 is available at all stages namely, the stage of investigation, inquiry, trial, appeal, revision and retrial. Thereafter, in *Moti Lal Saraf v. State of J&K*, (2006) 10 SCC 560 the Supreme Court following *Hussainara Khatoon v. State of Bihar (supra)* and *Abdul Rehman Antulay v. R.S. Nayak (supra)*, observed that “in order to make the administration of criminal justice effective, vibrant and meaningful, the Union of India, the State Governments and all concerned authorities must take necessary steps immediately so that the important constitutional right of the accused of a speedy trial does not remain only on papers or is a mere formality”.

Subsequently, while dealing with the legal representation to vulnerable section Article 39A of the Constitution of India, Section 304 of the Code of Criminal Procedure, 1973 and Order 33 of the Civil Procedure Code, 1908 was discussed. It was opined that measures should be adopted to enhance access to justice to the indigents and uneducated. The robust system of legal aid envisages to establish a social framework in which the duty of dispensing justice is easily and economically available to the public. The cases of *Khatri v. State of Bihar*, AIR 1981 SC 262 and *Manoharan v. Sivarajan*, (2014) 4 SCC 163 were discussed.
