

NATIONAL JUDICIAL ACADEMY



**ORIENTATION COURSE FOR NEWLY ELEVATED HIGH
COURT JUSTICES [P-1375]
9TH & 10TH DECEMBER, 2023**

PROGRAMME REPORT

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Overview of the Seminar

The National Judicial Academy organized an “Orientation Course for Newly Elevated High Court Justices” on 9th & 10th December, 2023. The participants were newly elevated High Court Justices nominated by respective High Courts. The course aimed to discuss core jurisdictional areas of High Courts including Article 226 and 227 and also focused on court and case management, law of contempt and doctrine of precedent.

Session 1: Scope of Writ Jurisdiction under Article 226

Speakers: Justice Dipankar Datta, Justice Ujjal Bhuyan, Justice M. Sundar and Mr. Sujit Ghosh

The session was commenced with discussion on the role of constitutional court in judicial hierarchy and it was stated that it is the duty of High Court Justices to serve the nation. It was stated that judges perform divine function and judges should never do anything that would tarnish the image of parent institution. It was added that whenever the legislature has bypassed the judicial scrutiny under Article 226 in any legislation, the Supreme Court has rendered that legal provision unconstitutional and void. The judgment of *L. Chandra Kumar vs. Union of India* (1997) 3 SCC 261 and *Kumar brahm Prasad vs. Union of India* 1992 2 SCC 428 were referred in this regard. The judgment *Kihoto Hollohan v. Zachillhu* 1992 Supp (2) SCC 651 was discussed and four grounds for judicial review over Speaker's order were mentioned including violation of constitutional mandate, non-compliance with principles of natural justice, mala fides and perversity.

The extent of territorial jurisdiction of the High Court under Article 226 was discussed and it was opined that when a part or fraction of the cause of action arise within the territorial jurisdiction of the High Court, the High Court can exercise its jurisdiction over the subject matter. The judgments *Saka Venkata vs. Election Commission of India* AIR 1953 SC 210 and *Oil & Natural Gas Commission v. Utpal Kumar Basu and Ors.* (1994 (4) SCC 711) were discussed.

The discussion then focussed on the issue relating to locus standi and it was opined that only the aggrieved person can invoke the jurisdiction of High Court under Article 226. The issuance of writ against state authority was discussed and it was stated that a writ can be issued to a person, authority or in appropriate cases to the government. The authority or the corporation must be instrumentality of the State as interpreted by the Supreme Court in *Ramana Dayaram Shetty v. Airport Authority of India* AIR 1979 SC 1628 and *Ajay Hasia vs Khalib Mujib* 1981 1 SC 722. The judgments *Zee Telefilms vs. Union of India* 2005 4 SCC 649 and *BCCI vs. Cricket Association of Bihar* 2015 3 SCC 251 were also discussed in this regard. The issue of parens patrie for persons in vegetative state was discussed and the judgments *Aruna Ramchandra Shanbag vs. Union of India* 2011 4 SCC 454 and *Rajni Hariom Sharma vs. Union of India* 2020 SCC Online Bombay 880 were referred. The issue that whether the existence of alternate remedy is a bar on the exercise of writ jurisdiction under Article 226 was discussed and the judgment *Titaghur Paper Mills Co. Ltd. vs. State of Orissa*, (1983) 2 SCC 433 was referred.

The power of the High Court to direct investigation was discussed and the judgment *State of West Bengal vs. CP Behar* 2010 3 SCC 571 was referred. It was opined that jurisdiction for

quashing of criminal complaint and FIRs under Article 226 is wider than power under Section 482 Cr.P.C.. It was stated that due to enormity of jurisdiction, it is necessary to exercise some restraint in expressing opinions on matters outside the purview of courts and decisions of some high courts were referred in this regard. The handbook *Combating Gender Stereotypes in the Judicial Discourse* was referred. The case of *Bhawari Devi* and enunciation of *Vishakha Guidelines* were discussed.

The 42nd Amendment to Constitution and 44th Amendment to Constitution were discussed. The judgments *Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd.*, (1985) 1 SCC 260, *Whirlpool Corpn. v. Registrar of Trade Marks*, (1998) 8 SCC 1, *United Bank of India v. Satyawati Tondon*, (2010) 8 SCC 110, *State Bank of Travancore v. Mathew K.C.*, (2018) 3 SCC 85, *Assistant Commissioner of State Tax Vs. Commercial Steel Limited* 2021 SCC OnLine SC 884, *State of Maharashtra v. Greatship (India) Limited* 2022 SCC OnLine SC 1262 were referred in the session. The issues related to Habeas Corpus petition were deliberated upon and judgments *Liversidge Vs. Anderson* [1942] A.C. 206, *A.K. Gopalan vs. The District Magistrate, Malabar* 1948 SCC OnLine Mad 257, *A.K. Gopalan vs. State of Madras* AIR 1950 SC 27, *Ram Manohar Lohiya Vs. State of Bihar*, AIR 1966 SC 740 and *R.C. Cooper vs. Union of India* (1970) 1 SCC 248 were referred.

Session 2: Supervisory Powers under Article 227

Speakers: Justice Dipankar Datta, Justice M. Sundar and Mr. Sujit Ghosh

The session was commenced with discussion on Article 227 and various aspects of Article 227 were highlighted. Then distinctions between Articles 226 and 227 was discussed and the principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution as formulated in *Shalini Shyam Shetty v. Rajendra Shankar Patil*, (2010) 8 SCC 329 were explained. On the scope of Article 227 it was suggested that the power of interference is limited to ensuring that the lower forum functions within the limits of its authority. High Court in exercise of its jurisdiction of superintendence can interfere only to keep the tribunals and courts subordinate to it, within the bounds of their authority. In cases where an alternative statutory mode of redressal has been provided, that would operate as a restraint on the exercise of this power by the High Court. An improper and frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality. It was stated that High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted. Judgments *Waryam Singh And Another vs Amarnath And Another* 1954 AIR 215, *Nagendra Nath Bora v. Commr. of Hills Division and Appeals*, 1958 SCR 1240 and *Hari Vishnu Kamath v. Syed Ahmad Ishaque*, AIR 1955 SC 233 were referred.

The revisional power of the High Court was discussed and Section 115 of the Code of Civil Procedure was referred. The impact of amendment of Section 115 on the revisional power of the High Court under Article 227 was discussed and judgments *Shiv Shakti Coop. Housing Society, Nagpur vs. Swaraj Developers and others* (2003) 6 SCC 659, *Surya Dev Rai vs. Ram Chander Rai* (2003) 6 SCC 675 and *Radhey Shyam vs. Chhabi Nath* (2015) 5 SCC 423 were discussed. The adverse remarks against lower forums by High Court in judgments were highlighted and opinion of Lord Denning was referred in this regard. The judgment *K.P.*

Tiwari v. State of M.P. 1994 Supp (1) SCC 540 and *Naresh Shridhar Mirajkar vs. State of Maharashtra* AIR 1967 SC 1 were discussed.

Session 3: Court and Case Management

Speakers: Justice Dipankar Datta & Justice A.M. Mustaque

The session was commenced with issues related to judgment writing and it was stated that tendency of writing unnecessary lengthy judgments should be avoided. The use of dragon software was discussed and effective management of different stakeholders in the justice delivery system was deliberated upon. The guidelines of the Supreme Court on reserving judgment were discussed and judgment *Anil Rai vs. State of Bihar* (2001) 7 SCC 318 was referred. Then discussion focussed on the core values of a robust judicial system. These values included responsiveness, which is arising from procedural fairness and includes recognition of mediation. The value of Public trust arises from judicial independence. The value of efficiency is based on the element of sustainability. The last value is transparency which is based on the aspect of fairness. The issue that how changes in the management of court can be done was discussed and it was opined that real change comes from the compound effect of many small decision and not just from thinking big. It was stated that habits and experience of judges and court staff play an important role in this regard and there should be emphasis on changing habits towards the goal to achieve efficiency of highest level.

The characteristics of a leader were deliberated upon and it was opined that a leader should practice efficiency with consistency and should treat colleagues and staff as part of family. The participative leadership theory was referred and it was stated that it teaches leaders to listen to their employees and involve them in the decision-making process. It encourages an inclusive mindset, proactive communication, and the willingness to share power with team members. Then relational leadership theory was discussed and it was stated that it is all about the process of bringing people together to accomplish change or achieve a goal that benefits common good. The Japanese concept of Ikigai was discussed and its various aspects were highlighted. The essential leadership skills including accessibility, empathy, communication, conviction in decision making, planning and collaboration were discussed. It was emphasised that a leader should not fall for personal desire and should stand for value that institution cherishes. The true leadership ability is based on the competence which brings qualitative impact. Then guiding principles for case management were discussed. These principles included judge centric approach, service oriented approach and whole of system approach. The session was concluded by highlighting the need of a case manager in courts and data analysis of the National Judicial Data Grid.

Session 4: Doctrine of Precedent: Identifying the *Ratio Decidendi*

Speakers: Justice S. Talapatra and Justice Ashwani Kumar Mishra

In this session, the rule relating to the doctrine of precedent in reference to the Constitution was discussed highlighting the history and the current trends regarding the doctrine. It was stated that the principle of *stare decisis* is based on the maxim *stare decisis et non quieta movere* which means “to stand by and adhere to decisions and not disturb what is settled”. It

was iterated that the rule of precedents may be considered as one of the greatest safeguards of rule of law and most effective check on judicial arbitrariness and uncertainty. The doctrine of precedent is vital to the proper exercise of judicial function as it promotes reliance on judicial decisions. It was opined that it is the means by which we ensure that the law will not merely change erratically, but will develop in a principled manner. Further, the case of *Bengal Immunity Co. Ltd. v. State of Bihar (1955) 2 SCR 603* was discussed wherein it was observed that the Supreme Court has the power and authority to overrule its own decisions when it is found that an error has been committed in the past and it can't be perpetuated in public interest. The judgment in *East India Commercial Co., Ltd., Calcutta & Ors v. Collector of Customs, Calcutta, AIR 1962 SC 1893* was also discussed. Subsequently, the decisions rendered by the Supreme Court under Article 142 were examined. It was asserted that the decisions rendered by invoking the power to do 'complete justice' are not binding precedents rather it is a view taken in light of the peculiar fact and circumstances of the case.

Thereafter, on the issue ascertaining binding precedents *vis-à-vis* the strength of the bench, the case of *Trimurthi Fragrances (P) Ltd. v. Government of N.C.T. of Delhi, 2022 SCC OnLine SC 1247* was discussed wherein it was observed that a decision delivered by a bench of largest strength is binding on any subsequent bench of lesser or coequal strength. It is the strength of the bench and not number of Judges who have taken a particular view which is said to be relevant. Lastly, the principles related to *ratio decidendi*, *stare decisis*, *obiter dicta* and *subsilentio* was elaborated.

Session 5: Law of Contempt

Speakers: Justice S. Talapatra and Justice Ashwani Kumar Mishra

On the above theme emphasis was placed on the definition of Contempt of Court. It was stated that the Contempt of Court is disobedience to the court by acting in opposition to the authority, justice, and dignity thereof. It also implies a wilful disregard or disobedience of the court order. Further, the history of contempt jurisprudence was traced. In *R. v. Almon (1765) Wilm. 243; 97 E.R. 94*, it was observed that "*whenever men's allegiance to the law is so fundamentally shaken, it is the most fatal and most dangerous obstruction of justice, and, in my opinion, calls out for a more rapid and immediate redress than any other obstruction whatsoever; not for the sake of Judges, as apricate individuals, but because they are the channels by which the King's justice is conveyed to the people.*" Thereafter, Lord Denning's observation in *Regina v. Commissioner of Police of The Metropolis, Ex Parte Blackburn, (1968) 2 Q.B. 150* was highlighted. "*Let me say at once that we will never use this jurisdiction [contempt of court] as a means to uphold our own dignity. That must rest on surer foundations. Nor we will use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself.*" Further, Lord Atkin in *Andre Paul Terence Ambard v. The Attorney General of Trinidad and Tobago, 1936 SCC OnLine PC 15* observed that "*the path of criticism is a public way: the wrongheaded are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune.*"

Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men”.

Thereafter, emphasis was placed on the decisions of the Supreme Court. In *Pallav Sheth v. Custodian & Ors.*, (2001) 7 SCC 549 it was observed that “*just as power or jurisdiction under Article 226 has to be exercised in accordance with law, if any, enacted by the legislature it would stand to reason that the power under Article 129 and/or Article 215 should be exercised in consonance with the provisions of a validly enacted law. In case of apparent or likelihood of conflict the provisions should be construed harmoniously*”. In *Pravin C. Shah v. K.A. Mohd Ali and Another*, (2001) 8 SCC 650 it was observed that “*purging oneself of contempt can be only by regretting or apologising in the case of a completed action of criminal contempt. If it is a case of civil contempt, by subsequent compliance with the orders or directions the contempt can be purged of. There is no procedural provision in law to get purged of contempt by an order of an appropriate court.*” Lastly, while dealing with the aspect of tendering unconditional apology the decision in *Balwantbhai Somabhai Bhandari v. Hiralal Somabhai Contractor*, 2023 SCC OnLine SC 1139 was highlighted wherein it was observed that a Court should not accept the apology when it appears that it is nothing but a "legal trick to wriggle out of responsibility." It was further observed that even if the apology is unconditional, unqualified and bona fide, yet, if the conduct is serious and has caused damage to the dignity of the Court, the same need not to be accepted by the court.