

Orientation Course for Newly Elevated High Court Justices [P-1426]
7th - 8th December 2024

Programme Report

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The National Judicial Academy (NJA) organized a two-day **Orientation Course for Newly Elevated High Court Justices** on 7th - 8th December 2024 at NJA, Bhopal. The participants were newly elevated High Court Justices nominated by the respective High Courts. The Course focussed on thematic issues concerning functions of newly elevated High Court Justices and involved discussion on Scope and Limits of Writ Jurisdiction under Articles 226 & 227; Digital Transformation in Courts and Fundamental Rights & Free Speech.

Session 1: Scope of Writ Jurisdiction of the High Court under Article 226

The session was commenced with discussion on the historical background of writ jurisdiction and the Indian High Courts Act, 1861 was referred. The scope and nature of writ jurisdiction under Article 32 and Article 226 was compared and differences were highlighted. The judgment *Than Singh vs. Supdt of Taxes* AIR 1964 SC 1419 and *K.K. Kochunni v. State of Madras* AIR 1959 SC 725 were referred in this regard. It was stated that power of the High Court under Article 226 is original where it acts as the court of first instance as well as extraordinary where it act as the court where limitations of ordinary legal remedies do not apply. Further it was added that a litigant should exhaust all alternative remedies before invoking Article 226 and concern was expressed on indiscriminate filing of writ petitions even when there is existence of alternative remedy. Various grounds on the basis of which the writ is issued were explained including where the lower forum had lack of jurisdiction or exercised its power in excess of jurisdiction or where there is an abuse of jurisdiction. A writ can also be filed when there is a violation of the principles of natural justice or there is an error of law apparent on the face of record in the verdict of the lower forum. The scope of Article 226 was explained and types of writs that can be filed under writ jurisdiction i.e. writ of mandamus, writ of certiorari, writ of habeas corpus, writ of quo-warranto and writ of prohibition were discussed.

The testing of validity of legislations under writ jurisdiction was discussed and various parameters to test the validity were explained including legislative competence, manifest arbitrariness and compatibility with basic structure of the Constitution and fundamental rights. It was stated that the test to determine manifest arbitrariness is to decide whether the enactment is drastically unreasonable and / or capricious, irrational or without adequate determining principles. The judgments *Ramana Dayaram Shetty vs. International Airport Authority of India & Ors.*, 1979(3) SCC 489, *Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722, *K.R. Lakshmanan (Dr) v. State of T.N.*, (1996) 2 SCC 226, *State of A.P. vs. Mc Dowell & Co.* 1996 (3) SCC 709, *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3 and *Shayara Bano v. Union of India* [(2017)9 SCC 1 were referred.

Then the scope of interference by High Court in tender matters was discussed. The issue regarding granting stay in a matter by High Court and then not disposing the matter expeditiously was highlighted and Article 226(3) was referred in this regard. The exercise of power of judicial review in land acquisition matters was discussed and the concept of eminent domain was referred. It was stated that the High Court should see that the natural justice principles and all due procedures have been followed in the acquisition process. It was further added that the writ court should ensure that the deserving litigant gets the amount of compensation in such land acquisition process. The issue related to delay in approaching court in land acquisition matter was also discussed. The judgment *State of Andhra Pradesh and Others v. Dr. Rao, V.B.J. Chelikani* [Civil Appeal Nos. 3791-3793 Of 2011] was referred. The principles of natural justice, proportionality and reasonableness and Wednesbury principle were also discussed. The judgments *Arvind Kejriwal v. Central Bureau of Investigation* 2024 SCC OnLine SC 2550 and *Army Welfare Education Society New Delhi v. Sunil Kumar Sharma* (2024 SCC OnLine SC 1683) were referred in this regard.

Session 2: Limits of Writ Jurisdiction of the High Court under Article 226

The Session was commenced with discussion on the issue related to the remedy of compensation against private persons under the writ jurisdiction. It was stated that there are no limitations imposed upon it by law but the High Court under Article 226 exercises certain self-imposed limitations. The writs of habeas corpus and mandamus can be issued against private entities. It was added that a writ of mandamus can only be issued against a private entity if it is performing a public duty and acting on behalf of the government and the writ of mandamus is enforceable against private bodies only when they have a public duty to fulfill. The judgment *Kaushal Kishore v. State of Uttar Pradesh & Ors.* (1991) 1 SCC 691 was referred in this regard.

The issues related to disputes regarding title, possession and ownership were discussed and judgments *Ram Singh v. State of Uttar Pradesh* 2008 SCC OnLine All 344, *Union of India and Others v. S.M. Hussain Rasheed and Others* (2003) 3 AP LJ and *Dushyant Somal v. Sushma Shomal* AIR 1981 SC 1026 were referred. The issue about the exercise of writ jurisdiction against social media platforms was highlighted and the nature of remedy in situation where the social media platform bans the post of an individual was discussed. Then the issues related to judicial interference in policy matters was deliberated upon and it was stated that the judicial review in policy matters emphasizes non-intervention, and policy decisions are rarely subject to judicial review. The government can make reasonable changes and policy decisions when necessary. It was further added that the aim of judicial review is to guarantee fair treatment to individuals rather than to ensure that authorities reach a valid conclusion recognized by the court on legal matters. The judgments *Satya Dev Bhagaur & Ors. vs. State of Rajasthan & Ors.* (2022) 5 SCC 314, *CSIR vs. Ramesh Chandra Agrawal* (2009) 3 SCC 35 and *State of Rajasthan vs. Basant Nahata* (2005) 12 SCC 77 were discussed.

The issue related to land acquisition matters under writ jurisdiction was highlighted and it was stated that the court should see that the process of acquisitions has been completed after following all due procedures and after considering the objection of owners. The areas where a High Court may refuse to exercise writ jurisdiction were highlighted. These included existence of alternative remedy, delay and laches, disputed questions of fact and conduct of the petitioner. The judgments *Punjab National Bank v. O.C. Krishnan*, (2001) 6 SCC 569, *Celir LLP v. Bafna Motors (Mumbai) (P) Ltd* (2024) 2 SCC 1, *Mrinmoy Maity v. Chhanda Koley* (2024) SCC Online SC 551, *HMT Ltd. v. Rukmini* (2024) SCC Online 2614, *Union of India v. T.R. Varma* (1957) SCC OnLine SC 30, *Sangitha Vilas Ingle v. the State of Maharashtra* (2017) 2 SCC 728, *State of Haryana v. Karnal Distillery Co. Ltd.* (1977) 2 SCC 431, *E.P. Royappa v. State of Tamil Nadu* AIR 1974 SC 555 and *K.D. Sharma v. Steel Authority of India Ltd.* (2008) 12 SCC 481 were referred.

The limitations on writ jurisdiction were discussed which included private rights, legislative direction, and policy decisions. The judgments *Federal Bank Ltd. vs Sagar Thomas & Ors* (2003) 10 SCC 733, *R.S. Madireddy and Another vs. Union of India and Others* 2024 SCC OnLine SC 965, *S.C. Chandra vs State of Jharkhand* (2007) 8 SCC 279, *Divisional Manager, Aravali Golf Club vs. Chander Hass and Anr.* (2008) 1 SCC 683, *Ramakrishna Mission and Another vs. Kago Kunya and Others* (2019) 16 SCC 303, *Uttam Chand Rawat vs State of U.P.* (2021) SCC Online ALL 724, *Seth Chand Ratan v. Pandit Durga Prasad* (2003) 5 SCC 399, *Radha Krishan Industries v. State of H.P.* (2021) 6 SCC 771 were referred in this regard.

Session 3: Enhancing Court Efficiency, Access to Justice and User-Friendliness through Digital Transformation

The session was commenced with discussion on the rapid changes in the internet and communication technology and it was emphasised that judiciary has also adopted its processes and functioning according to it. The working of the information technology and computer committee at High Court was highlighted and functioning of the paperless court was discussed. The scanning and digitization of records by the Odisha High Court was appreciated. The concept of technical bridges was explained and its need was highlighted. It was stated that the technical bridge is required for adoption of monolithic approach while adopting IT based architecture or when there is fragmentation of data, information and knowledge across multiple Government Agencies, multiple Systems are incompatible to provide seamless user experience, lack of collaboration, scattered systems, data and its access points results in duplication of resources.

The details of Phase III of the e-courts project was shared and its various features were highlighted. It was stated that now with the use of technology the cause list, case status and orders of courts are available in the public domain. The processes which require technological upgrades were highlighted including scrutiny, segregating similar cases, grouping, listing such cases together, instant searches of contents of cases, generating prompts and alerts for older matters, identify bottlenecks in the progress, intimation to trial courts, FSL etc., on outcome of lis. It was stated that core values including mitigation, containment and resolution should be focussed to enhance access to justice and there should be virtual courts for simple cases. It was added that the e-filing process should be further simplified for enhanced user-friendliness and technological improvement in various other services were discussed including video conferencing, live streaming, e-payment of court fees and fine, information delivery including SMS, e-certified copy and translation of documents.

The discussion then focussed on the integration of artificial intelligence and it was stated that the judiciary has used basic technology and made routine work efficient and easy but there is need to focus on Artificial Intelligence and Machine Learning. The courts still depend on the manual analysis of the information derived from the databases and it was stated that courts should use the CIS data to the optimum extent. The need of enormous data is required for functional adoption of the artificial intelligence or machine learning as patterns are followed in such technologies. The issue of bias and skewed data feed were highlighted and it was stated that use of such technologies on judicial side is not advocated in present scenario.

Session 4: Scope of Jurisdiction of the High Court under Article 227

The session was commenced with discussion on the historical background of Article 227 and the Government of India Act, 1935 and the Indian Independence, 1947 were referred. The establishment of High Courts under the Indian High Courts Act, 1861 was discussed and the power of superintendence by High Court under the Indian High Courts Act, 1861 and the Constitution of India were compared. Article 227 was analysed while highlighting the power of superintendence of High Courts. It was opined that the scope of judicial review under Article 227 of the Constitution of India is limited to examine whether the order suffers from any jurisdictional error, palpable procedural impropriety or manifest perversity.

The judgment *Dalmia Jain Airways Ltd. v. Sukumar Mukherjee*, AIR 1951 Cal 193 was referred wherein it was held that the power of superintendence conferred by Article 227 is to be exercised

most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. Then the judgment *State of Gujarat etc. vs. Vakhatsinghji Vajesinghji Vaghela* AIR 1968 SC 1481 was referred wherein it was held that the power under Article 227 cannot be fettered by State legislature but this supervisory jurisdiction is meant to keep the subordinate tribunal within the limits of their authority and to ensure that they obey law. The judgments *Mani Nariman Daruwala @ Bharucha (deceased) through Lrs. v. Bhatena and others etc.* (1991) 3 SCC 141 and *Laxmikant Revchand Bhojwani and another v. Pratapsingh Mohansingh Pardeshi* (1995) 6 SCC 576 were referred while explaining the scope of interference by High Court under Article 227.

The discussion then focussed on the impact of the amendment of Section 115 Code of Civil Procedure on the revisional powers of the High Courts. The judgment *Radheyshyam v. Chhabi Nath* AIR 2015 SC 3269 was referred and the difference between Article 226 and Article 227 was discussed. The issue of entertaining property disputes under writ jurisdiction was highlighted and judgment *Shalini Shyam Shetty and Another v. Rajendra Shankar Patil* (2010) 8 SCC 329 was referred in this regard. The issue of using the writ of certiorari as the cloak of an appeal in disguise was highlighted and the judgment *Morris, L.J. in Rex v. Northumberland Compensation Appellate Tribunal* (1952) 1 KB 338 was referred.

The issue of staying the order of subordinate court under Article 227 and then not deciding the matter expeditiously was discussed. The issue regarding existence of alternative remedy and exercise of power under Article 227 was discussed and it was opined that the availability of an alternative remedy does not automatically bar the exercise of jurisdiction under Article 227 but the High Court typically refrains from intervening when a statutory remedy is available unless special circumstances justify its intervention. The judgments *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society* (2019) and *Phoenix ARC Pvt. Ltd. v. Vishwa Bharati Vidya Mandir* (2022) were referred in this regard. The judgments *Joginder Singh (Dead) Thr. Lrs v. Dr. Virinderjit Singh Gill* 2024 SCC OnLine SC 3024, *K. Cheriya Koya v. Mohammed Nazer M.P.* 2024 SCC OnLine SC 2818, *Yogesh Goyanka v. Govind* (2024) 7 SCC 524, *G.M. Shahul Hameed v. Jayanthi R. Hegde* (2024) 7 SCC 719 and *Allahabad High Court Bar Association v. State of U.P.* (2024) 6 SCC 267 were also discussed in the session.

Session 5: Fundamental Rights & Free Speech

The session was commenced by focusing on the impact of internet and social media on society. The right to freedom of speech and expression under Article 19(1)(a) and restrictions on this right under Article 19 (2) including public order, defamation, sovereignty and integrity of India, and decency or morality were analyzed. The regulation of the internet was emphasized and the legal framework under the Information Technology Act, 2000 was discussed and it was opined that provision like Section 69A, which allows blocking of content, has faced criticism for its potential to stifle free speech. It was stated that the rise of internet has blurred traditional territorial boundaries, raising complex jurisdictional issues and Indian courts have jurisdiction over disputes involving fundamental rights, even when violations occur on digital platforms operated by foreign entities. The judgment *Kartar Singh v. State of Punjab* (1994) was referred wherein the Supreme Court emphasized that fundamental rights are enforceable against actions impacting citizens, irrespective of the locus of origin.

The concept of defamation was highlighted and defamation through digital medium was discussed. The distinctions between traditional and online defamation were explained and the judgment *Subramanian Swamy v. Union of India* (2016) was referred wherein the Supreme Court upheld criminal defamation under Sections 499 and 500 of the IPC, stating that the right to reputation is an

integral part of Article 21. With regard to online defamation it was stated that it is difficult to police the digital platform where the information dissemination pass through several jurisdictions and immediate arrest is difficult because of complexity about the origin of the information. The imposition of injunction on the circulation of information was highlighted as another challenging area.

The liability of internet intermediary was discussed and Section 79 of the IT Act which grants intermediaries immunity for third-party content, provided they comply with government directives was referred. The judgment *Shreya Singhal v. Union of India* (2015) was referred which clarified that intermediaries cannot be compelled to take down content unless directed by a court or the government, thereby striking a balance between free speech and liability. It was stated that social media platforms have become the de facto public squares of the digital age, leading to debates on their role in protecting constitutional rights like free speech. The issue of suspension or ban on social media accounts and whether such actions violate the right to free speech was discussed. The IT Rules, 2021 were referred which mandate platforms to ensure due diligence in moderating content. The case of *Ajay Gautam v. Union of India* (2022) was referred which raised questions about the liability of platforms for blocking accounts, emphasizing the need for a clear legal framework. The issues related to defamation through artificial intelligence and deep fake in the form of impersonation and challenges to restraining and prosecuting such actions were discussed.

The judgments *Apoorva Arora v. State (NCT of Delhi)* (2024) 6 SCC 181, *Bloomberg Television Production Services India Pvt. Ltd. v. Zee Entertainment Enterprises Ltd.* (2024) SCC OnLine SC 426, *Javed Ahmad Hajam v. State of Maharashtra* (2024) 4 SCC 156, *Sanjay Upadhya v. Anand Dubey* (2024) 3 SCC 718, *Arup Bhuyan v. State of Assam* (2023) 8 SCC 745, *Madhyamam Broadcasting Limited v. Union of India* (2023) SCC OnLine SC 366, *Facebook v. Delhi Legislative Assembly* (2022) 3 SCC 529, *Vinod Dua v. Union of India* (2021) SCC OnLine SC 414, *Amish Devgan v. Union of India* (2021) 1 SCC 1, *Arnab Ranjan Goswami v. Union of India* (2020) 14 SCC 12, *Anuradha Bhasin v. Union of India* (2020) 3 SCC 637, *Google India Pvt. Ltd. v. Visaka Industries* (2020) 4 SCC 162 and *Shreya Singhal v. Union of India* (2015) 5 SCC 1 were referred in the session.