Program Report

NATIONAL JUDICIAL ACADEMY

NATIONAL CONFERENCE FOR HIGH COURT JUSTICES

ON

DEVELOPMENT OF CONSTITUTIONAL LAW BY THE SUPREME COURT AND HIGH COURTS

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REPORT ON NATIONAL CONFERENCE FOR HIGH COURT JUSTICES ON DEVELOPMENT OF CONSTITUTIONAL LAW BY THE SUPREME COURT AND HIGH COURTS
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The two day National Conference was attended by 26 High Court Justices from 16 High Courts of India. The conferences delved into examination of the developmental trends in constitutional jurisprudence underscoring the aspects especially dealing with interpretation of constitutional silences, constitutional morality, transformative constitutionalism and dissents in the constitutional architecture. Notable contributions of the constitutional courts were highlighted mapping the trends in constitutional jurisprudence over last seven decades. Seminal topics on protection and conservation of environment and ecology, and the role of ICT in the judicial sphere also formed part of the discourse.

Session 1: Developments in Constitutional Law

Panel: *(Dr.) Justice B.S. Chauhan & Mr. R Venkataramani*

The session squarely focused on tracing the "Evolution & Development of Constitutional Law" and "Constitutional Jurisprudence from Inception till the Present Day" especially mapping the decadal trends. The scope of what is "law" once India established its constitutional supremacy was explained by a careful examination of Article(s) 13(1),(2), (3), & 372 (which provided that the "law in force" on the date of commencement of the Constitution would continue to be in force unless the same are amended, modified or repealed. Elaborating on delegated legislation the explanation by Alexander Hamilton on 14th June, 1788 was quoted while the US Constitution was being drafted as:

> [E]very act of delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do, not only what their powers do not authorize, but what they forbid.

A brief outline of the pre-constitutional chronology of developments during the British regime was discussed. Before the adoption of the Constitution, India's legal and administrative system evolved through successive colonial interventions. Following the *Battles of Plassey* (1757) and *Buxar* (1764), the East India Company assumed political control, which was regulated by the Regulating Act of 1773. Administrative and judicial reforms under Warren Hastings and land revenue restructuring through the Permanent Settlement of 1793 consolidated colonial governance, while personal laws governed religious matters. The Crown assumed direct control under the Government of India Act, 1858, leading to codification of laws. Subsequent reforms between 1909 and 1935 gradually expanded representative institutions, culminating in the formation of the Constituent Assembly in 1946. The Constitution of India was inspired by numerous Constitutions of other Countries and particularly the Government of India Act, 1935 (Act 1935). Act 1935 was enacted by the British Parliament, which had the benefit of experience of working of the British North America Act, 1867 (Act 1867 - Canada) and the Australian Constitution Act, 1900. Nearly 80 per cent of the provisions of the Constitution have been reproduced from 1935 Act with suitable adaptations and modifications. Aspects of the *Preamble* to the Constitution was discussed with the evolving jurisprudence citing *Kesavananda Bharti v. State of Kerala,* AIR 1973 SC 1461, wherein the Supreme Court held that Preamble is the part of the Constitution and must be used as a meaningful mechanism to understand and interpret the Constitution. In *Indra Sawhney v. Union of India,* AIR 1993 SC 477, the Supreme Court used the Fraternity to justify the Constitutional practice of reservation for backward classes to bring about progress for marginalized sections of the society as reservation. In *Shri Raghunathrao Ganpatrao v. Union of India*, AIR 1993 SC 1267, the Supreme Court used this phrase "fraternity" to reject an argument that the erstwhile princes formed a separate class under the Constitution and were therefore entitled to special privileges. Discussing "secular" & "socialist" many caselaw were discussed including *Dr. Balram Singh v*

Union of India, 2024 INSC 893 was cited along with *SR Bommai v. Union of India*, (1994) 3 SCC page 1, and ; *M Ismail Farukhi v. Union of India*, (1994) 6 SCC 360). In a nine judge bench of the Supreme Court in *Properties owners Association v. State of Maharashtra*, 2024 INSC 835, cleared that the Constitution allows the elected government to adopt a structure for economic governance to serve the policies for which it is accountable to the electorate. Constitution being a living and organic document Justice Vivian Bose was cited in *State of W.B. v. Anwar Ali Sarkar*, AIR 1952 SC 75, at para(s) 98 & 101 wherein he held that:

> [Constitutional provisions] are not just dull, lifeless words static and hidebound as in some mummified manuscript, but, living flames intended to give life to a great nation and ... potent to mould the future as well as guide the present... What is considered right and proper in a given set of circumstances will be considered improper in another age and vice versa. But that will not be because the law has changed but because the times have altered and it is no longer necessary for the Government to wield the powers which were essential in an earlier and more troubled world. That is what I mean by flexibility of interpretation."

The discussions on the decadal trends dealt with in myriad other landmark judgments developing the constitutional jurisprudence formed part of the discourse including *A.K. Gopalan v. State of Madras*, 1950 SCC 228, *Rustom Cavasjee Cooper (Banks Nationalisation) v. Union of India* (1970) 1 SCC 248, *Maneka Gandhi v. Union of India* AIR 1978 SC 597, *ADM Jabalpur v. Shiv Kant Shukla* AIR 1976 SC 1207. Discussions also examined the evolutions of the doctrine of separation of power vis-à-vis basic structure and the amendability of the Constitution. Reference was made to the judgements in *Sajjan Singh v. State of Rajasthan*, 1964 SCC OnLine SC 25, *State of Bihar v. Kameshwar Singh (1952)*, *I.C. Golak Nath v. State Of Punjab* AIR 1967 SC 1643, *Kesavanada Bharti v. State of Kerala* (1973) 4 SCC 225. Reference was also made to the opinion of Justice Mudholkar in *Sajjan Singh v. State of Rajasthan,* 1964 SCC OnLine SC 25 wherein the judgment of the Pakistan Supreme Court in *Mr Fazlul Quader Chowdhry* v. *Mr Mohd. Abdul Haque* [1963 PLD 486] has been referred with regard to the doctrine of basic structure. Discussions was also undertaken on the issue of equality and the addressal of discrimination through affirmative action. Reference was made to the judgments in *T.Devadasan v. Union of India* AIR 1964 SC 179, *State of Kerala v. N.M. Thomas*, (1976) 2 SCC 310, *Indra Sawhney v. Union of India* AIR 1993 SC 477, *Neil Aurelio Nunes v. Union Of India*, and *Janhit Abhiyan v. Union of India* (2023) 5 SCC 1.

Session 2: Trends in Constitutional Interpretation

Panel: *(Dr.) Justice B.S. Chauhan & Justice Ravindra S. Bhat*

The session primarily sought to explore the jurisprudence of interpretation of "Constitutional Silences" by the apex court of India. Specifically the doctrinal development and evolution of "Constitutional Morality", "Basic Structure" & "Transformative Constitutionalism" formed part of the scope of discussions. Fundamental inquiries *viz. Can "Basic" be equated with "Rigidity"?* and notions of *Basic Structure & constitutional evolution as dynamism, adaptability as against perceived constraints* were examined. The deliberations on constitutional interpretation focused on how the Constitution addresses its own silences, particularly through the scheme of Parts III and IV. Part III guarantees fundamental, inalienable rights and, through provisions such as Article 32, obligates the State to protect these rights while simultaneously allowing their scope to evolve beyond a closed or exhaustive formulation. This deliberate openness reflects a constitutional silence that permits judicial development of rights over time. Part IV reinforces the values underlying Part III by articulating directive principles intended to guide the State in law-making and governance. Together, these Parts serve as normative guides for State action. The discussions highlighted that concepts such as the right to privacy and the doctrine of separation of powers emerged from such silences and were later recognized as constitutional features. At the same time, concern was expressed regarding the institutional competence to fill these silences, especially in non-legal domains, underscoring the need for judicial restraint. It was emphasized that constitutional interpretation must remain anchored in the constitutional text to preserve democratic legitimacy, while retaining sufficient flexibility to respond to

changing social conditions. In this context, the principles articulated in *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi* (1975) 1 SCC 421 and the contemporary approach to constitutional amendability affirmed in *Janhit Abhiyan v. Union of India* (2023).

It was underscored that the apex court in *State of Madras v. V.G. Row*, AIR 1952 SC 196, held that the judiciary stands as a "*sentinel on the qui vive*" for protecting the fundamental rights against the excessive State action. *A.K. Gopalan v. State of Madras*, 1950 SCC 228 was referenced to emphasize that the Constitution should not be interpreted in a legalistic manner. The session delved into the concepts and jurisprudential developments by referring to several landmark judgments including: *Rustom Cavasjee Cooper (Banks Nationalisation) v. Union of India* (1970) 1 SCC 248, *Kesavanada Bharti v. State of Kerala* (1973) 4 SCC 225, *Minerva Mills v. Union of India* AIR 1980 SC 1789, *Kihoto Hollohan v. Zachillhu* 1992 Supp (2) SCC 651, *SR Bommai v. Union of India* AIR 1994 SC 1918, *L Chandra Kumar v. Union of India* [1997] 2 S.C.R. 1186, *M. Nagaraj v. Union of India* (2006) 8 SCC 212, *I.R. Coelho v. State of Tamil Nadu* AIR 2007 SC 861 and *Supreme Court Advocates-on-Record Assn. v. Union of India (NJAC)* (2016) 5 SCC 1.

Session 3: Dissents in the Constitutional Architecture

Panel: *Justice Ravindra S. Bhat & Justice Ajay Bhanot*

The Session exclusively dealt with the cardinal principle of "dissents" in a constitutional courts' judgment and interpretation of law. The concept is so innate to the Constitution of India that it secures an explicit mention under Article 145(5) worded as:

> 145(5) - No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but *nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion*.
>
> [Emphasis supplied]

Dissents were highlighted as a vital element of judicial independence under Article 145(5), which mandates Supreme Courts' judgment by majority Bench view but explicitly allows minority views, fostering pluralism in a robust system of constitutional democracy, where consensus remains the "golden rule" and dissent serves as an "exception to the rule" when convergence fails. Factors contributing to the genesis of dissents were discussed to include irreconcilable interpretive differences. It was discussed to classify dissents into atleast four kinds, namely:

1) *Reargued action dissent* – wherein the dissenting court revisits and challenges the prior arguments forming the basis of the established principle of law.
2) *Observation dissent* – here in such type of dissents the court disagrees to certain specific points without overturning the core ruling.
3) *Eruptive dissent* – these are dissents which arise out of certain passionate divergences in views during the decision making process.
4) *Analytical dissent* – these are methodical process of breaking down of a reasoning highlighting the flaws, gaps or infirmities.

It was opined that dissents strengthens democracy by rigorous application of judicial mind(s), promoting epistemic humility, and aiding future jurisprudence through persuasive contra views. It reflects differing perceptions in interpreting constitutional text within its context, without deeming majority reasoning as unsound. However, it was cautioned that:

1) Dissents must not weaken judicial authority or serve as propaganda for unpopular causes.
2) Since social "digestibility" differs from "acceptability" judges must be mindful of keeping constitutional fidelity over popular public opinion.
3) Language and words in dissents demands care to maintain institutional integrity of judiciary.

The discourse underscored the balance between democratic essences heralded through dissenting opinions

with the paramount necessity of expositing judicial unity and conformity.
Landmark dissents from the Supreme Court of India, which raised to the heights of becoming "majority views" on a future date includes:

- *Golakhnath v. State of Punjab*, AIR 1967 SC 1643 – wherein, the minority view (6:5 split) that Fundamental Rights are not amendable by Parliament under Article 368 was substantially adopted in *Kesavananda Bharti v. State of Kerala,* (1973) 4 SCC 225, limiting the amending powers through the doctrine of "Basic Structure".
- *ADM Jabalpur v. Shivkant Shukla,* (1976) 2 SCC 521 – The solo dissent of Justice H.R. Khanna upholding the fundamental right under *habeas corpus* during national Emergency invoked by the State, was raised to be the majority view in *P. Ramchandra Rao v. State of Karnataka,* (2002) 4 SCC 578 and other subsequent rulings on personal liberty.
- *Minerva Mills Ltd. V. UoI,* (1980) 3 SCC 625 – Justice Y. B. Chandrachud's dissent on the scope of Article 31C was partially embraced in *L. Chandra Kumar v. UoI,* (1997) 3 SCC 261, reinforcing the law relating to judicial review.

The session further went on to exemplify a few dissents from foreign wisdom which were given the status of law by the Indian Supreme Court, namely:

- *Plessy v. Ferguson,* (1896) 163 US 537 – The doctrine of "colour-blind Constitution" held by dissenting Justice John Marshall Harlan, attained the status of law subsequently in *Brown v. Board of Education,* 347 US 483 (1954), inspiring the equality jurisprudence developed by the apex court, under Article 14 of Constitution of India.
- *Olmstead v. United States,* 277 U.S. 438 (1928) - A foundational Supreme Court case concerning warrantless wiretapping and Fourth Amendment rights, famously featuring Justice Louis Brandeis's dissent, which matured as a prevailing view in *Katz v. United States,* 389 U.S. 347 (1967). The wisdom was echoed in *K.S. Puttaswamy v. UoI,* (2017) 10 SCC 1 *via* Justice D.Y. Chandrachud.

It was asserted the thus it is safe to consider that dissents signal epistemic humility, tests the ideas, and renders guidance for evolution of future law. Amongst several other landmark dissenting opinions rendered by judges of the Supreme Court of India, following were discussed: Justice A.N. Ray's dissent in *Kesavananda Bharti v. State of Kerala,* (1973) 4 SCC 225, wherein he dissented on the doctrine of "Basic Structure" upholding Parliaments unilateral power to amend fundamental rights; *Supreme Court Advocates-on-Record Assn. v. Union of India,* (2015) 5 SCC 1 (*NJAC Case*) – wherein multiple dissents on judicial appointments emphasized value of dissent in enriching and evolving the jurisprudence on the point of law; *Association for Democratic Reforms v. Union of India,* 2024 INSC 113 (*Electoral Bonds Case*) - Wherein Justice B.V. Nagarathna dissented, upholding the scheme's validity against the majority view on the transparency mandate of the Electoral Bonds.
In *Kaushal Kishor v. State of U.P.,* (2023) 4 SCC 1, at para 45 the Court held that, "Dissent is a core constitutional value... it strengthens the majority opinion by testing it against contrary views." Whereas, in the *NJAC Case*, at para 1123 Justice Kurian Joseph emphasized that, "Dissent is the safety valve of democracy" noting it prevents hasty decisions and fosters pluralistic deliberation." Moreover, in *Anoop Baranwal v. Union of India,* (2023) 4 SCC 1, at para 289, Justice Nagarathna's dissented to observe that, "Judicial dissent indicates the application of independent judicial mind and persuades future evolution of law." The Sesssion ended with interactive interventions.

Session 4: Protection and Conservation of Environment & Ecology

Panel: *(Dr.) Justice Anita Sumanth & Prof. SaiRam. Bhat*

The Session delved into the emerging issues in Environmental Jurisprudence of India. Areas such as Rights of *Sui Juris Entities*; Environmental concerns on the horizon (E-Waste, Nuclear Waste & Bio-Waste Pollution, Dumping of Toxic Waste, Pollution by Stubble Burning, Public Health Hazards, Space Debris, & Global Warming) formed part of discourse. Role of the Constitutional Courts in their journey from

"Reactive to Proactive Environment Jurisprudence" was examined. The interplay between Judicial Review under Article 226 *vis-à-vis* NGT Act.

Referring to the Indian environmental jurisprudence it was asserted that the same reflects a steady movement from a narrowly reactive model to a proactive constitutional framework, shaped significantly through judicial review under Articles 226 and 32 of the Constitution. The power of constitutional courts to scrutinise environmental decision-making was underscored to be firmly anchored in *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261, which recognised judicial review as part of the basic structure and clarified that specialised Tribunals such as the National Green Tribunal (NGT) cannot displace the supervisory jurisdiction of High Courts. This principle was reaffirmed in *Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India*, (2012) 8 SCC 326, where the Supreme Court held that although the NGT has exclusive jurisdiction over certain environmental statutes, constitutional remedies remain available where fundamental rights are implicated. High Courts have accordingly exercised restraint while intervening, as seen in *M.P. Patil v. Union of India*, 2014 SCC OnLine Bom 537, limiting interference to jurisdictional errors, violations of natural justice, or manifest illegality, a position echoed later in *M.P. Steel Corporation v. Commissioner of Central Excise*, (2015) 7 SCC 58.

Article 21 has been periodically interpreted to include the right to a clean and healthy environment, beginning with *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420. This interpretive approach enabled courts to adopt preventive principles such as sustainable development, precaution, and polluter pays, most clearly articulated in *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647. Landmark interventions in *M.C. Mehta v. Union of India*, including the *Ganga pollution* and *Taj Trapezium cases*, demonstrated the judiciary's willingness to impose affirmative obligations on the State and industries to prevent ecological harm rather than merely remedy it after the fact. The establishment of the NGT strengthened this proactive architecture, though its decisions remain subject to constitutional oversight, as clarified in *Tamil Nadu Pollution Control Board v. NGT*, (2019) 8 SCC 60, and *Sterlite Industries (India) Ltd. v. Tamil Nadu Pollution Control Board*, (2019) 13 SCC 165, which balanced environmental compliance with developmental concerns while preserving judicial review.

Recent jurisprudence shows a further normative shift from anthropocentrism to *ecocentrism*. In *Hanuman Laxman Aroskar v. Union of India*, (2019) 15 SCC 401, the Supreme Court emphasised rigorous environmental scrutiny and meaningful public participation in environmental clearances. This trajectory culminated in *State of Telangana v. Mohd. Abdul Qasim*, (2024) 6 SCC 461, where the Court applied the *public trust doctrine* to forest conservation, criticised institutional abdication, and underscored the intrinsic value of nature itself. Read alongside the long-running *T.N. Godavarman Thirumulpad*, (1997) 2 SCC 267 line of cases (Forest Conservation *continuing mandamus* series), these decisions illustrate how constitutional courts have assumed the role of guardians of environmental legality, ensuring accountability of expert bodies while remaining conscious of separation of powers. Collectively, the cases reflect an evolving, textually grounded yet flexible environmental jurisprudence that responds to contemporary ecological challenges without undermining constitutional legitimacy.

The *Ex-Post Facto* clearance jurisprudence was examined. It established the overall trajectory from categorical rejection – to - a limited exceptions, and culminating in reassertion of strict compliance regimes. The cases discussed were:

- The "Foundational Rejection Phase" saw the jurisprudence through - *Common Cause v. Union of India*, (2017) 9 SCC 499 (a categorical rejection); *Alembic Pharmaceuticals Limited v. Rohit Prajapati*, (2020) 17 SCC 157 (environmental liability established).
- Then came the "Pragmatic Exception Phase" which evolved through - *Electrosteel Steels Limited v. Union of India*, (2023) 6 SCC 615 (introduction of "Proportionality Balancing" phenomenon); whereas in *M/s Pahwa Plastics Private Limited v. Dastak NGO*, (2022) 3 SCC 362 (the apex court acknowledged the technical irregularities); in *D. Swamy v. Karnataka State Pollution Control Board*, 2022 SCC OnLine SC 1278 (Apex Court articulated the "Balancing framework").
- Then came the "Constitutional Reassertion Phase", which was laid down in the *Vanashakti v. Union of India*, 2025 SCC OnLine SC 1139 (the apex court struck down the "Systemic Regularization" model).

The session culminated by clarifying the apparent tension between precedents, clarifying that the distinction lies between episodic judicial exceptions and administrative normalization of violations.

Session 5: ICT as a Game Changer in the Judicial Sphere

Panel: *(Dr.) Justice Anita Sumanth & Mr. Kuldeep Kushwaha*

The session covered Appreciation of Digital Evidence & ICT, Determination of Liability in Digital Age ; and Impact of ICT on Litigation & Adjudication. It examined the change in the nature of disputes & cause of action due to ICT involvement. Moreover, evidentiary & factual evolutions driven by ICT that impact adjudication were discussed. The Session examined the transformative journey of the Indian judiciary through the phased e-Courts project, which commenced in 1990 to address colonial-era inefficiencies such as manual filing in leather folders and pest-damaged records, ultimately achieving data consolidation, standardization, and enhanced coordination via tools like the National Judicial Data Grid (NJDG) and Case Information System (CIS). The court efficiency through interoperable systems like ICJS/CCTNS was underscored. Artificial Intelligence (AI) emerged as a prospective courtroom technology, with discussions led by speakers referencing *Naresh Shridhar Mirajkar v. State of Maharashtra*, 1967 (1) SCR 744, which affirmed open courts under Article 145(4), alongside *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 and (2019) 1 SCC 1, establishing privacy as fundamental with decisional autonomy; other cited precedents included *Shreya Singhal v. Union of India*, (2015) 5 SCC 1 on free speech, *Swapnil Tripathi v. Supreme Court of India*, (2018) 10 SCC 639 on live-streaming, and *Commissioner of Customs v. M/s. Acer India Pvt. Ltd*., (2008) 1 SCC 382 cautioning against unreliable sources like Wikipedia.
AI's administrative applications *viz.* smart e-filing, case prioritization etc. while cautioning against biases, the "black box" opaqueness problem, and long-term risks to judicial roles, advocating task-specific narrow AI, open judicial data policies, blockchain based cybersecurity; tools like SUVAS, SUPACE, *Jugalbandi*, and JUST AI were noted alongside global examples from China and Estonia. Collective emphasis rested on responsible AI deployment as decision-support rather than replacement, ensuring transparency per *Nipun Saxena v. Union of India*, (2019) 2 SCC 703, while fostering equitable access to justice amid rapid technological evolution. The basic question(s) as to why "digitization" is necessary? What is the difference between "Digitization" vis-à-vis "Digitalization" vis-à-vis "Digital Transformation"? Whether having data in itself is sufficient for automation? etc. were discussed. "Digitization" is the first step to automation, and can be distinguished from "digitalization" as: Digitization refers to the process of converting physical objects into digital formats, which are then stored in the computer. Digitization organizes information into units of data called "bits". Analog information is encoded into zeroes and ones that computers can process, store, and transmit. The process of digitization is the backbone for data recording, making it an important aspect of digital technologies. In digitization, physical objects or information are stored in computers, but the process where this data is used may not be changed. This is the key difference between digitization and digitalization. Through digitalization, digital technologies and digitized data are utilized to enable or improve processes. While digitization focuses on converting and recording data, digitalization is all about developing processes and changing workflows to improve manual systems. An example of this would be using digitized customer data from different sources to automatically generate insights from their behaviour. "Digital transformation's" primary aim is to integrate technology to most, if not all, business operations. Therefore, to have emerging technologies to work efficiently in advancing transformation a system would necessarily need "machine readable" and "clean data".