National Conference for High Court Justices on Constitutional Remedies and Administrative Law [P-1476]

Programme Report

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The National Judicial Academy organized a two-day **National Conference for High Court Justices on Constitutional Remedies and Administrative Law** on **20-21 December, 2025.** The participants were High Court Justices nominated by the respective High Courts. The Conference focussed on contemporary issues in constitutional and administrative law and involved discussion on Judicial Reviews of Administrative Action; Judicial Reviews of Legislative Action; Emerging Trends in Judicial Review; Entitlement Rights; and Judicial Activism and Judicial Restraint in Contemporary Time.

Session-1: Judicial Review of Legislative Actions

The session focused on certain fundamental and unique jurisprudence evolved by the Constitutional courts of India (especially the apex court) relating to the power of judicial review of legislative actions. The scope of discussions included, Doctrine of "Manifest Arbitrariness" &" Doctrine of Pith and Substance"; "Legislative Competence and Repugnance viz-a-viz Article 246 & 254; Resolution of conflict between law making power of Union and States; "Delegated Legislation" and "Subordinate Legislation"; Grounds for refusing to exercise power of judicial review; Judicial interference in policy matters - scope & permissible extent, and more.

A brief overview of the genesis of power of judicial review was traced in common law jurisprudence. The doctrinal evolution of "manifest arbitrariness" as a constitutional ground for judicial review under Article 14 of the Constitution of India, was critically examined, situating it within the broader framework of constitutional remedies and administrative law. It traced the judiciary's gradual movement from a formal equality analysis to a substantive scrutiny of legislative and executive action, while simultaneously delineating the limits of judicial intervention in matters of policy. It was underscored that arbitrariness had emerged not as an abstract standard but as a structured constitutional doctrine shaped by precedent and restraint.

The early constitutional foundation of judicial review invoking Article 14 was traced citing *State of Bombay v. F.N. Balsara*, 1951 SCC 860, where legislation was tested on equality principles. The judgment *State of West Bengal v. Anwar Ali Sarkar*, (1952) 1 SCC 1, was also cited, where the absence of guiding principles in the classification for special courts rendered the statute unconstitutional was discussed. These decisions established that uncanalised discretion and vagueness were antithetical to equality before law. Thereafter it was highlighted that in *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*, (1985) 1 SCC 641, the Supreme Court authoritatively identified legislative competence and violation of constitutional provisions, as grounds for invalidating plenary legislation, while cautioning against excessive judicial overreach.

A critical doctrinal shift was examined through *State of A.P. v. McDowell & Co.*, (1996) 3 SCC 709, where the Supreme Court expressly rejected arbitrariness as an independent ground for striking down plenary legislation. However, it was demonstrated that this position did not remain static. In *Shayara Bano v. Union of India*, (2017) 9 SCC 1, a Constitution Bench recognised manifest arbitrariness as a valid third ground of invalidation of a legislation, defining it as State action that was capricious, irrational, or devoid of an adequate determining principle. This doctrinal recognition marked a decisive recalibration of Article 14 jurisprudence. It was further added that the legislation should be tested on the basis of principles related to equality, proportionality and unreasonableness based on the constitutional

framework of Articles 14, 19 and 21. The court must state what is arbitrary in the legislation as part of its reasoning in the judgment.

It was further illustrated that the consolidation of this doctrine in "rights-based adjudication" found a space in *Navtej Singh Johar v. Union of India*, (2018) 1 SCC 791, discriminatory exclusion and manifest arbitrariness were jointly applied to invalidate the criminalisation of consensual same-sex relations. Similarly, *Joseph Shine v. Union of India*, (2019) 3 SCC 39, applied Article 14's "twin test" of discrimination and arbitrariness to strike down adultery as a criminal offence. The doctrine's contemporary relevance was reaffirmed in *Gaurav Kumar v. Union of India*, 2024 SCC OnLine SC 1841, where excessive enrolment fees imposed by Bar Councils were tested against proportionality and arbitrariness, applying *Indian Express Case* and *Shayara Bano Case*.

Addressing the judicial interference in policy matters, emphasising constitutional self-restraint, reliance was paid on *Rustom Cavasjee Cooper v. Union of India*, (1970) 1 SCC 248, reiterating that courts are not appellate bodies over legislative wisdom. This principle was reaffirmed in *Anun Dhawan v. Union of India*, (2024) 12 SCC 299, where the Supreme Court clarified that judicial review extended only to the "legality of policy", not its desirability. At the same time, the discourse recognised calibrated judicial engagement through the "nudge principle". Cases including *Mohd. Abdul Kadir v. Director General of Police, Assam*, (2009) 6 SCC 611 were cited. Norm-creating interventions in "unoccupied fields", exemplified by *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241. On the issue of judicial law making the judgment *State of Punjab v Surinder Kumar* (1992) 1 SCC 489 was referred where the Supreme Court pithily pointed out that High Courts should do what the Supreme Court says under Article 141 and not what it does under Article 142.

Finally, it was analysed and argued that "grounds for refusing judicial review", particularly the rule of alternate remedies and fiscal restraint are not to be trumped for entertaining a writ under 226 or 32. Decisions such as *Assistant Collector of Central Excise v. Dunlop India Ltd.*, (1985) 1 SCC 260; *Authorized Officer, State Bank of Travancore v. Mathew K.C.*, (2018) 3 SCC 85; *United Bank of India v. Satyawati Tondon*, (2010) 8 SCC 110; and *State of Maharashtra v. Greatship (India) Ltd.*, 2022 SCC OnLine SC 1262, were cited to demonstrate the judiciary's consistent caution against interference in revenue and financial recovery matters. It was concluded that, "manifest arbitrariness" as a constitutionally grounded yet carefully confined doctrine, balanced by judicial discipline in policy review. It reflected a mature constitutional jurisprudence in which courts acted as guardians against irrational State action while respecting democratic choice, institutional competence, and separation of powers.

Session-2: **Judicial Review of Administrative Actions**

The session included in depth discussions into dedicated areas *viz.* grounds for judicial review of administrative action w.r.t. arbitrariness, illegality, irrationality, jurisdictional defects, *prima facie* errors of law and facts, and procedural impropriety, "Wednesbury Principle" and "Principles of Proportionality". Referring to Justice Felix Frankfurter it was stated that judicial

review of administrative action is concerned with the decision making process and not about decision. The judgment *Chief Constable of the North Wales Police v Evans* [1982] UKHL 10 was referred. It was stated that the scope and doctrinal tools regarding judicial review vary depending on whether the court is reviewing administrative action or executive (policy) action. While both are subject to constitutional scrutiny, the nature of the power exercised and the institutional competence of courts have historically dictated different standards of review. Administrative action, being concerned with implementation, application, or adjudication under existing law, attracts a more searching judicial scrutiny, whereas executive action, particularly in the domain of policy, commands judicial restraint, save where constitutional or statutory limits are transgressed.

The discussion then focused on grounds to review of administrative action such as illegality, procedural impropriety, irrationality, proportionality, and arbitrariness. It was opined that the Supreme Court has consistently held that where administrative authorities exercise statutory power affecting rights, courts are entitled to examine not merely the procedure but also the lawfulness of the outcome. The judgments were referred including *CCT v. Glaxo SmithKline Consumer Health Care Ltd*., (2020) 19 SCC 681, where the Court reiterated that statutory authorities cannot act beyond the contours of the statute under the guise of administrative discretion. This approach was followed in *Radha Krishan Industries v. State of Himachal Pradesh*, (2021) 6 SCC 771 and *Shubhkaran Singh v. Abhayraj Singh*, (2021) 18 SCC 601, reaffirming that administrative orders contrary to statute, limitation provisions, or jurisdictional mandates are liable to be struck down irrespective of equities. Most recently, in *Jaipur Vidyut Vitran Nigam Ltd. & Ors. v. MB Power (Madhya Pradesh) Limited & Ors,,*(2024) 8 SCC 513 reiterated that courts cannot legitimise administrative illegality by invoking notions of substantial justice or equity. Executive action, on the other hand, particularly in matters of policy formulation, is reviewed on a far narrower canvas. It was stated that judiciary has consistently maintained that it is not an appellate authority over executive wisdom. The judgment *Hongo India (P) Ltd. v. CCE*, (2009) 5 SCC 791 was referred where the Supreme Court emphasised that courts cannot extend limitation periods or rewrite statutory schemes on equitable considerations, even where hardship is demonstrated.

It was stated that the Supreme Court has repeatedly clarified that Article 142, though wide, cannot be exercised to override substantive statutory provisions or create remedies contrary to law. The principle flowing from *Hongo India* and *Glaxo SmithKline* establishes that what the Supreme Court cannot do under Article 142, the High Courts cannot do under Article 226. The High Court's writ jurisdiction, though expansive, remains subject to statutory limitations, legislative intent, and constitutional boundaries. The issues related to limitation period, delay and latches and availability of alternative statutory remedy were discussed and discussion focused on issue that whether the writ court can condone delay in filing writ petition. The judgment *Collector Land Acquisition, Anantnag vs Mst. Katiji & Ors* 1987 (2) SCC 107 was referred.

The *Wednesbury principle* originating in *Associated Provincial Picture Houses v. Wednesbury Corporation* was referred which was historically developed to control executive discretion, particularly policy-driven decisions involving broad administrative judgment. It was never designed as a standard for routine administrative adjudication governed by statute. This limitation was powerfully articulated by Lord Cooke of Thorndon in *R. v. Secretary of State for the Home Department, ex parte Daly* and more pointedly in *R. v. Dudley Metropolitan*

Borough Council, (2001) 2 WLR 1622, where at paragraph 32 he criticised Lord Greene's formulation of Wednesbury unreasonableness as "retrogressive", observing that modern public law had moved beyond extreme deference to executive judgment towards a culture of justification and proportionality. Lord Cooke's critique underscored that rigid *Wednesbury* thresholds were ill-suited to contexts where rights, statutory compliance, or individual entitlements were at stake. The judgment *Pro Knits v. The Board of Directors of Canara Bank* (Civil Appeal Nos. 8332 to 8337 of 2024) and *X v Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi* (2022) 10 SCC 292 was referred. The session also focussed on the compliance of natural justice principle by administrative bodies and judgments *Olga Tellis v. Bombay Municipal Corporation* 1985 (3) SCC 545, *Mohinder Singh Gill v. The Chief Election Commissioner* 1978 (1) SCC 405, *S.N. Mukherjee vs Union of India* 1990 (4) SCC 594 and *Managing Director ECIL, Hyderabad v. B. Karunakar*1993 (4) SCC 727 were referred.

Session-3: Emerging Trends in Judicial Review

The session initiated with discussion on the importance of separation of power and doctrine of separation of power as enunciated by Montesquieu was referred. It was stated that the Constitution of the United States where the separation of power is clearly incorporated was influenced by theory of Montesquieu. The discussion then focussed on the judgment Marbury v. Madison 5 U.S. 137 (1803) with regard to the power of judicial review. The issue what is Judicial Review and what is its purpose was deliberated upon and it was stated that judicial review is stated to be a fundamental mechanism for keeping public authorities within due bounds and for upholding the rule of law. The purpose of public law is to discipline the exercise of power; judicial review is the means of achieving that objective. The common law roots of judicial review was traced from the famous dictum by Chief Justice Coke in *Dr. Bonham's case*, (1610) 77 ER 638. It was emphasized that evolution of the doctrine of judicial review (initially confined to process of decision making) initially observed in C*hief Constable of North Wales Police v Evans*, (1982) 3 All ER 141; and *G.B. Mahajan v Jalgaon Municipal Council*, AIR 1991 SC 1153 where this proposition was first stated are purely administrative law cases, did not touch fundamental rights.

The debate surrounding due process clause in the Constituent Assembly was referred and it was stated that the separation of power should be impliedly derived. The judgment *SP Gupta v. Union of India*, 1981 Supp SCC 87 was discussed and the conflict and balance between three organs of State was deliberated upon. Then the judgment *Supreme Court Advocates-on-record Association vs. Union of India* (2016) 5 SCC 1 the validity of the Constitution (Ninety-Ninth Amendment) Act, 2014 (99th Amendment) along with the National Judicial Appointments Commission Act, 2014 (NJAC Act) was challenged was discussed and the issue related to power of judicial review were highlighted. The judgments *I. C. Golaknath v. State of Punjab* 1967 AIR 1643, *Indira Nehru Gandhi vs Raj Narain* 1975 2 SCC 159 and Shri Prithvi Cotton Mills Ltd. & Anr vs Broach Borough Municipality & 1970 SCR (1) 358 were also referred. It was opined that there should not concentration of power and court must protect the Constitution within the four corners of law. The issues related to judicial law making was discussed and the judgment *Vishaka v. State of Rajasthan* AIR 1997 SC 3011 was discussed.

The discussion then focussed on the interpretation of Article 12 of the Constitution and the judgment *Board of Control for Cricket vs Cricket Association of Bihar* 2016 (8) SCC 535 was referred. The judgments *All India Regional Rural Bank Officers Fed. v. Govt. of India* AIR 2002 SC 1398, *Ir Coelho (Dead) By Lrs v. The State of Tamil Nadu* 1999 (7) SCC 580 and *E. P. Royappa vs State of Tamil Nadu* 1974 4 SCC 3 were also referred.

The judgments *Maneka Gandhi v. Union of India* AIR 1978 SC 597, *Indian Young Lawyers Association v. State of Kerala & Ors.* [Writ Petition (Civil) No. 373 of 2006], *Yash Developers v. Harihar Krupa Coop. Housing Society Ltd*., 2022 SCC OnLine Bom 3712, *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 were discussed. Tracing the origin of the power of judicial review in England and United States the judgments *Thomas Bonham v College of Physicians*, [1610 Court of Common Pleas] and *Calder v. Bull*, 3 U.S. 386 (1798) were referred. It was underscored that while the exercise of writ jurisdiction is extraordinary and discretionary, where fundamental rights are at stake, there is no discretion, it is obligatory. The judgment *Lord Shaw in Scott v. Scott* (1913) AC 417 was referred. In India the attempt towards integration of the Fundamental Rights and Directives in the process of constitutionalising socio-economic rights through amalgamation of Part III and IV to forward the cause of socio-economic fabric of democracy has been enabled by the Constitutional Courts with the application of the tool of judicial review.

Session-4: **Contours of Entitlement Rights: Food, Shelter, Health and Education**

The session primarily focussed on the entitlement right to health, especially considering the executive point of view, wherein sensitisation of the constitutional courts on the reformative initiatives undertaken by the Government of India under the aegis of its health vertical was discussed. The presentation situated health entitlement within the evolving constitutional framework where welfare policies increasingly assume the character of enforceable obligations. It was underscored that while the Indian Constitution does not expressly enumerate a right to health, judicial interpretation of Article 21 has firmly entrenched health as an inseparable component of the right to life and dignity. The Supreme Court in *Consumer Education and Research Centre v. Union of India*, (1995) 3 SCC 42 affirmed that the right to health and medical care is a fundamental right flowing from Articles 21, 39(e), 41 and 43. This jurisprudential foundation provides the constitutional legitimacy for large-scale public health assurance schemes such as *Ayushman Bharat – Pradhan Mantri Jan Arogya Yojana* (AB PM-JAY).

From an executive perspective, the presentation demonstrated how ABPM-JAY operationalises constitutional values through administrative architecture. Anchored in the *National Health Policy 2017*, the scheme represents a transition from fragmented welfare delivery to public health assurance, targeting secondary and tertiary care for economically vulnerable populations. Judicial recognition that State policy must translate into real access was referred by citing *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, (1996) 4 SCC 37, where the Supreme Court held that failure to provide timely medical treatment violates Article 21. AB PM-JAY's design enabling cashless treatment, portability across States, and defined benefit packages was discussed which would directly addresses the systemic bottlenecks and failures in access to quality healthcare in pan India.

Data underscoring the transformative fiscal and social impact of the scheme was projected and discussed by the ministry representative as the domain expert. With healthcare allocation rising to ₹99,858.56 crore in FY 2025–26 and out-of-pocket expenditure reducing from 64.2% (2013 - 14) to 39.4% (2021- 22), AB PM-JAY demonstrated the State's movement towards progressive realisation of socio-economic rights, consistent with *State of Punjab v. Mohinder Singh Chawla*, (1997) 2 SCC 83, where the Court held that the State has a constitutional obligation to provide medical facilities. The reported cumulative household savings of ₹1.25 lakh crore further illustrated how entitlement schemes function as instruments of distributive justice rather than discretionary largesse.

It was emphasized that a significant constitutional dimension emerges from the expansion of beneficiary coverage, particularly the inclusion of "ASHA", "Anganwadi worker"s, and "senior citizens" who are above 70 years irrespective of the socio-economic status. This aligns with the equality principle under Articles 14 and 15, as interpreted in various Supreme Court judgments.*Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, was cited which emphasised substantive equality and dignity in State action. The scheme's focus on women-specific packages and SC/ST coverage reflects an equality-oriented approach to health entitlements, reinforcing the Court's observation. *Parmanand Katara v. Union of India*, (1989) 4 SCC 286, was discussed in the light of preservation of human life which is of paramount importance.

The aspects of governance and accountability, particularly through anti-fraud mechanisms, hospital de-empanelment, and penalties formed part of the discourse. This is constitutionally significant, as entitlement rights demand not only access but integrity in implementation. *Common Cause v. Union of India*, (2018) 5 SCC 1, wherein the Supreme Court cautioned that the right to health and dignity must be protected through transparent and accountable systems was discussed. The reported detection of fraudulent claims and institutional enforcement measures under PM-JAY reflected compliance with this constitutional mandate.

In conclusion, the presentation illustrates how AB PM-JAY exemplifies the judicially recognised shift from welfare policy to enforceable entitlement. By combining constitutional interpretation, fiscal commitment, administrative innovation, and accountability mechanisms, the scheme operationalises the Supreme Court's consistent position that health is intrinsic to the right to life.

Session-5: Judicial Intervention in Upholding Entitlement Rights

The Session examined the evolving contours of entitlement rights in India through the twin lenses of *digital health governance under the Ayushman Bharat Digital Mission* (ABDM) and judicial enforcement of the Right to Education (RTE). It proceeded on the premise that constitutional entitlements had gradually shifted from "aspirational policy commitments" to "enforceable obligations", shaped significantly by judicial interpretation. It was demonstrated that both health and education had been firmly embedded within the framework of Article 21 of the Constitution, as interpreted by the Supreme Court to include the right to live with dignity, autonomy, and equality.

ABDM initiative of the Government was analysed on the anvil of digital backbone of India's public health entitlement framework. It was highlighted that ABDM fostered a national digital health ecosystem by enabling interoperable digital records, patient-controlled data exchange, and longitudinal health histories through ABHA IDs. This digital infrastructure was presented as transforming healthcare delivery from a discretionary welfare service into an anticipated and

traceable right, capable of constitutional scrutiny. The jurisprudential basis for such an entitlement had earlier been laid down in *Consumer Education and Research Centre v. Union of India*, (1995) 3 SCC 42. The emphasis on continuity of care and emergency access under ABDM echoed the principle affirmed in *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, (1996) 4 SCC 37, where denial of timely medical treatment by the State was held to violate the right to life.

A central feature of the ABDM framework discussed in the presentation was its "privacy by design" architecture. The model of "consent-based", "purpose-bound", and "time-limited" data sharing was discussed which placed the patient at the centre of data governance. This approach was consistent with the constitutional doctrine articulated in *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, which recognised informational privacy and decisional autonomy as core facets of Article 21. The discourse further noted that the enactment of the *Digital Personal Data Protection Act, 2023* (DPDP) with the recent Rules, 2025, was considered to strengthen the enforceability of such rights by providing statutory remedies, accountability mechanisms, and compliance obligations, thereby enhancing the justiciability of digital health entitlements.

The session further examined the scope of enabling role of judiciary in strengthening entitlement rights through digital health platforms. Courts were viewed as critical actors in ensuring interoperability, enforcing patient access to medical records, safeguarding emergency care, and preventing exclusion arising from digital divides. Supreme Court's position in *State of Punjab v. Mohinder Singh Chawla*, (1997) 2 SCC 83, where the State's obligation to provide medical facilities was treated as a constitutional duty rather than a matter of policy discretion to reimburse full cost of medical treatment of the needy formed part of discussion.

In its analysis of the Right to Education (RTE), the presentation highlighted persistent implementation challenges, including infrastructural deficiencies, teacher shortages, and disputes relating to admissions and reimbursements. It was observed that judicial intervention had played a decisive role in operationalising RTE norms, particularly the 25% reservation mandate, non-discrimination guarantees, and the expansion of educational quality to include nutrition, safety, and inclusivity. The constitutional validity of the RTE framework had earlier been upheld in *Society for Unaided Private Schools of Rajasthan v. Union of India*, (2012) 6 SCC 1, where the Supreme Court affirmed education as a fundamental right essential to human development and democratic participation.

The session delved into aspects of entitlement rights in India had evolved through a dynamic interaction between policy innovation and constitutional adjudication. Digital health under ABDM and education under RTE were shown to exemplify this trajectory, wherein technology, statutory frameworks, and judicial oversight collectively transformed welfare schemes into enforceable rights. The judiciary's role was thus portrayed not merely as corrective but as structurally enabling, ensuring that constitutional promises of health, education, dignity, and equality were translated into lived realities.