

# 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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## Programme Report

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National Judicial Academy organized a conference for High Court Justices on the theme “Development of Constitutional Law by the Supreme Court and High Courts” to dwell on the evolving jurisprudence in constitutional law. The discussions in the conferences involved the consideration and examination of the trends in constitutional jurisprudence. Specific focus was lent to the aspects of interpretation of constitutional silences, constitutional morality, transformative constitutionalism and dissents in the constitutional architecture. Notable contributions of the constitutional courts were highlighted in the discussion and trends in constitutional jurisprudence were mapped. 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**

### **Theme: Developments in Constitutional Law**

The session traced the constitutional evolution of India from the commencement of the Constitution in 1950 to the present day, focusing on constitutional supremacy, judicial review, and the development of the Basic Structure Doctrine. It examined the historical tension between parliamentary sovereignty and constitutional supremacy, particularly the scope of Parliament’s amending power under Article 368. While Parliament possessed broad authority to amend the Constitution, judicial interpretation gradually clarified that this power was not unlimited.

The discussion began with **Shankari Prasad v. Union of India (AIR 1951 SC 458)**, where the Supreme Court held that constitutional amendments were not “law” under Article 13 and therefore could not be challenged for violating Fundamental Rights. This position was reaffirmed in **Sajjan Singh v. State of Rajasthan (1964 SCC OnLine SC 25)**, though judicial doubts began to surface. A decisive shift occurred in **I.C. Golaknath v. State of Punjab (AIR 1967 SC 1643)**, where the Court ruled that Parliament could not amend Fundamental Rights, bringing constitutional amendments within Article 13. The constitutional crisis culminated in **Kesavananda Bharati v. State of Kerala ((1973) 4 SCC 225)**, where a thirteen-judge bench propounded the Basic Structure Doctrine. The Court held that although Parliament could amend any part of the Constitution, it could not alter its basic structure, including constitutional supremacy, judicial review, secularism, federalism, and the rule of law.

The doctrine was reaffirmed during the Emergency era in **Minerva Mills v. Union of India (AIR 1980 SC 1789)**, which struck down provisions of the 42nd Constitutional Amendment that sought to grant unlimited amending power. The Court declared limited amending power and judicial review themselves part of the basic structure, restoring harmony between Fundamental Rights and Directive Principles.

The session then explored the evolution of equality under Article 14. Early cases such as **State of West Bengal v. Anwar Ali Sarkar ((1952) 1 SCC 1)** emphasized reasonable classification through the twin tests of intelligible differentia and rational nexus. A transformative shift occurred in **E.P. Royappa v. State of Tamil Nadu ((1974) 4 SCC 3)**, which equated arbitrariness with inequality. This principle matured in **Maneka Gandhi v. Union of India (AIR 1978 SC 597)**, where Articles 14, 19, and 21 were interconnected, introducing substantive due process. The

doctrine of negative equality was clarified in **Chandigarh Administration v. Jagjit Singh (1995 SCC (1) 745)**, which held that illegality could not be perpetuated under Article 14.

Attention was also given to the expanding meaning of “State” under Article 12. In **R.D. Shetty v. International Airport Authority of India ((1979) 3 SCC 489)**, the Court developed the instrumentality or agency test, later refined in **Pradeep Kumar Biswas v. Indian Institute of Chemical Biology ((2002) 5 SCC 111)**, which required proof of financial, functional, and administrative control by the government.

Judicial review under Articles 226 and 227 was described as a cornerstone of the basic structure, reaffirmed in **L. Chandra Kumar v. Union of India ([1997] 2 S.C.R. 1186)**. The distinction between writ and supervisory jurisdiction was clarified in **Shalini Shyam Shetty v. Rajendra Shankar Patil ((2010) 8 SCC 329)**, emphasizing limits in private disputes. The session underscored that judicial orders could not ordinarily be challenged under Article 32, as held in **Naresh Shridhar Mirajkar v. State of Maharashtra ((1966) 3 SCR 744)**.

The importance of judicial discipline and precedent was stressed. Judges were bound by hierarchical authority, though creative reasoning within precedent remained permissible. Instances of judicial obstinacy were criticized, and constitutional development was portrayed as institutional rather than personal. The session concluded by reflecting on the dynamic growth of Indian constitutional jurisprudence, from parliamentary supremacy to constitutional supremacy; from formal to substantive equality; and from narrow interpretation to purposive expansion. Judicial creativity, restraint, and fidelity to constitutional values were described as essential to preserving democratic governance and the identity of the Constitution.

## **SESSION 2**

### **Theme: Trends in Constitutional Interpretation**

The session examined the evolving philosophy of constitutional interpretation, focusing on constitutional silences, judicial creativity, and the tension between constitutional morality and societal morality. The subject was addressed historically, doctrinally, and comparatively, alongside responses to questions raised by participants. At the outset, it was stated that a clear distinction must be drawn between interpreting a statute and expounding a Constitution. Statutory interpretation was described as largely dependent on textual fidelity and established interpretative rules. Constitutional interpretation, by contrast, was presented as operating at a deeper normative level. A Constitution was characterized not merely as a legal document but as a living charter of governance. It was stated that if constitutional provisions were interpreted solely through grammar and semantics, they would fail to respond to the needs of a dynamic and evolving society. Courts were therefore required to recognize the organic and evolutionary character of the Constitution. A central theme was the distinction between negative and positive mandates. It was stated that where a constitutional provision is framed negatively, imposing prohibitions or restrictions, the courts should adopt a strict and cautious approach. Conversely, where the language is enabling or rights-conferring, interpretation may legitimately be expansive. However, it was emphasized that no interpretation should operate at the unjust expense of another citizen’s rights. Judicial creativity, it was observed, must remain balanced and principled.

In this context, the concepts of “door-opening” and “door-closing” silences were explained. Door-opening silences were described as those that permit courts to expand the scope of constitutional rights beyond the explicit text. Door-closing silences, in contrast, require strict adherence to what is expressly stated, without importing additional meaning. It was clarified that no rigid formula determines when either approach should apply; context and constitutional purpose were identified as decisive factors.

The development of jurisprudence relating to freedom of the press was illustrated to examine this principle. In **Romesh Thappar v. State of Madras (AIR 1950 SC 124)**, the Supreme Court held that freedom of the press was co-extensive with freedom of speech under Article 19(1)(a), even though the Constitution did not separately enumerate press freedom. This was described as a legitimate door-opening interpretation that strengthened democratic values without violating any negative mandate.

Judicial creativity was further explored through **Unni Krishnan, J.P. v. State of A.P., ((1993) 4 SCC 111)**. Building on the expansive understanding of personal liberty in **Maneka Gandhi v. Union of India (AIR 1978 SC 597)**, the Court recognized the right to free and compulsory education as implicit in Article 21. Although education had originally been placed within the Directive Principles of State Policy, the judgment transformed it into an enforceable right. The subsequent insertion of Article 21A through constitutional amendment was noted as demonstrating how judicial interpretation could influence legislative action. The decision was characterized as a milestone in India’s constitutional development.

The session also addressed the contentious issue of the right to die. Conflicting judicial positions in **P. Rathinam v. Union of India ((1994) 3 SCC 394)** and **Gian Kaur v. State of Punjab ((1996) 2 SCC 648)** were discussed to illustrate how constitutional morality may diverge from societal morality. It was observed that euthanasia, terminal illness, and cases involving individuals in vegetative states raised profound moral and legal dilemmas, particularly in light of the trauma experienced by families. While judicial oversight was considered necessary in such sensitive matters, it was stated that constitutional sanction could not lightly be extended to acts negating the sanctity of life.

A comparative perspective was offered through an analysis of Article 14 of the Indian Constitution and the Fourteenth Amendment of the United States Constitution. It was noted that although both enshrine equality, India’s framework explicitly provides for affirmative action in political representation, education, and public employment, whereas the American approach differs significantly. This comparison demonstrated how similar constitutional language can yield divergent jurisprudence depending on social context.

The Basic Structure doctrine was discussed as a safeguard against constitutional erosion, yet it was cautioned that it must not become rigid. The Constitution was described as requiring flexibility and responsiveness. Article 142 was clarified as a remedial power enabling the Supreme Court to do complete justice between parties, rather than as a tool of expansive interpretation. The session concluded emphasizing that constitutional interpretation demands a delicate balance between creativity and restraint, text and purpose, and morality and law.

## SESSION 3

### Theme: Dissents in the Constitutional Architecture

The session involved an extensive discussion on the constitutional law themes of parliamentary privilege, advisory jurisdiction, federalism, and the limits of executive discretion. The discussion began with an important clarification on the nature of precedent and that opinions delivered in advisory jurisdiction do not automatically constitute binding law. Authoritative law emerges when a matter is properly instituted before a court, fully argued, and decided with a clear *ratio decidendi*. That ratio alone binds subsequent courts where the facts are materially similar. Advisory opinions may carry persuasive weight and influence later developments, but they do not have the same binding force as judgments rendered in adversarial proceedings.

The speakers then revisited the constitutional conflict surrounding parliamentary privilege in **M.S.M. Sharma v. Sri Krishna Sinha (AIR 1959 SC 395)** wherein the central issue related to the interplay between freedom of speech, legislative privilege under Article 105(3), and personal liberty under Article 21. While the majority held that the legislature was the sole judge of its privileges, Justice Subba Rao in his dissenting opinion stated that any deprivation of liberty must comply with procedure established by law. His dissent planted the seeds for later constitutional developments. Reference was then made to **Powers, Privileges and Immunities of State Legislatures, In re, (1964 SCC OnLine SC 21)** to highlight the challenge of maintaining institutional balance between the legislature and the judiciary. It was noted that Justice Subba Rao's dissenting approach gained recognition over time. In **Raja Ram Pal v. Hon'ble Speaker, Lok Sabha ((2007) 3 SCC 184)**, the Supreme Court affirmed that legislative privileges are subject to constitutional limitations and judicial review. Thus, reasoning that began as a minority dissent evolved into accepted constitutional doctrine, demonstrating the organic growth of jurisprudence. Dissent was underscored as an element of judicial independence and rule of law thereby ensuring organic development of the law. Such dissents as discordant notes are vital considering the same bench of judges has been presented with the same set of materials and arguments and still it has resulted in difference in judicial opinion. It begets the question whether the position of law has two or more possible interpretations. In this context it is necessary to read the majority as well as dissenting opinions to get a comprehensive view on the subject. Dissents were noted to be the exception in judicial practice and judges were urged to answer to their judicial conscience while pronouncing judgments and when weighing the necessity of penning a dissenting opinion. A dissent may serve as a foundation or catalyst for future legislative actions as well as for judges in the future.

The discussion then turned to federalism and the Governor's role under Article 200 in granting assent to State legislation. It was argued that State legislatures possess autonomous authority within their constitutional domain. Where legislation falls within the State List, reserving it indefinitely for Presidential assent would undermine federal principles. In Concurrent List matters, the position is more nuanced: if a Union law occupies the field, Presidential assent may be required for a conflicting State law. However, the Constitution does not prescribe a time limit for such assent. This absence raised concerns about "constitutional silence." Could executive authorities indefinitely delay action, thereby frustrating the will of an elected legislature? The speakers contended that such inaction would weaken democratic accountability. Reference was made to the **State of Tamil Nadu v. Governor of Tamil Nadu (2025 INSC 481)** and it was stated that the

judgment did not imposing rigid timelines but reiterating the established principle that unfettered discretion is unknown to constitutional governance. Reasonableness, including action within a reasonable time, remains the governing standard of judicial review. The reference to a three-month period drew from prior commission recommendations and executive guidelines and was presented as indicative rather than mandatory. Each case would depend on its facts. An analogy was drawn with mercy petition jurisprudence, where prolonged executive delay had led courts to commute death sentences. If delay in individual cases could attract constitutional scrutiny, similar reasoning might apply to legislation representing the sovereign will of a State's electorate.

## **SESSION 4**

### **Protection and Conservation of Environment & Ecology**

The session was commenced with discussion on environmental rule of law and the need of sustainable development. It was stated that healthy environment is necessary for the realization of various other rights such as rights to life, property and health as well as various cultural and economic rights. It was further added that the rule of law has been included in the Sustainable Development Goals (SDGs) and various principles of environmental rule of law were explained including fair, clear and implementable environmental laws, access to information, public participation and access to justice, accountability and integrity of institutions and decision-makers, clear and coordinated mandates and roles, across and within Institutions, accessible, fair, impartial, timely and responsive adjudication, recognition of the relationship with constitutional, human and other right and specific criteria for interpretation of environmental law. The first World Environmental Law Congress (2016) which adopted the IUCN world declaration on the environmental rule of law was referred and its 13 principles for developing and implementing solutions for ecologically sustainable development were explained.

The discussion then focused on the planetary boundaries framework proposed in 2009 by a group of 28 internationally renowned scientists at the Stockholm Resilience Centre (SRC) and the risks from human pressure on nine critical global processes that regulate the stability and resilience of the Earth were explained. The concept of Earth Overshoot Day and Country Overshoot Days were highlighted. The public trust doctrine and its interpretation by the Apex Court were highlighted and judgments **M.C Mehta Versus Kamal Nath (1997) 1 SCC 388** and **Centre for Environmental Law v Union of India (2013) 8 SCC 234** were referred. The interpretation of the Polluter Pay Principle by the Supreme Court was discussed and the judgments **Vellore Citizens Welfare Forum Versus Union of India (1996) 5 SCC 647** and **Research Foundation for Science (18) v Union of India (2005) 13 SCC 186** were referred. It was stated that polluter pay principle implies that the producer of goods and other items should be responsible for the cost of preventing or dealing with any pollution that the process causes and this principle also does not mean that the polluter can pay and continue to pollute.

The discussion then focused on the doctrine of intergenerational equity which signifies that people of the present must leave the earth's resources in as good a condition as in which they found them, to allow future people to use these resources as well and judgments of the Supreme Court including **State of Himachal Pradesh v. Ganesh Wood Products(1995) 6 SCC 363**, **Intellectuals Forum, Tirupathi v. State of A.P.[(2006) 3 SCC 549]**, **Samaj Parivartana Samudaya & Ors. Versus State of Karanataka & Ors. (2013 INSC 265)** and **(Alembic**

**Pharmaceuticals Ltd vs Rohit Prajapati & Ors. (2020 INSC 326)** were referred. The principle of non-regression which is defined as a prohibition on state conduct that results in environmental degradation or the weakening of environmental laws was highlighted and judgments **Society for Protection of Environment & Biodiversity Versus Union of India NGT [Original Application No. 677 of 2016]**, **Confederation of Real Estate Developers of India vs. Vanashakti and Ors., (18.11.2025 - SC)** were referred. The expansion of the right to life by the Supreme Court under Article 21 of the Constitution was discussed it was stated that meaning of life under Article 21 includes clean air, water and balanced ecosystem. The Supreme Court expanded the scope of right to life under Article 21 by invoking various international environmental principles and gave them legal recognition under domestic law of the country. The recognition of the protection from adverse effects of climate change by the Supreme Court was discussed and judgment **M K Ranjitsinh v. Union of India [Writ Petition (Civil) No. 838 of 2019]** was referred. The obligation of States in respect of climate change was highlighted and the advisory opinion of the International Court of Justice in this regard was referred. The session was concluded with deliberation on the rights of sui juris entities.

## **SESSION 5**

### **ICT as a Game Changer in the Judicial Sphere**

The session was commenced by highlighting changes occurred in judiciary due to integration of technology in court processes and it was opined that ICT has expanded access to justice and created valuable facilities including e-filing, digital case records, online cause lists and virtual hearings. The impact of e-Courts Project and Case Information Systems on various indicators of the functioning of courts including pendency, adjournments and disposal rate was highlighted. It was opined that data-driven management enables better allocation of judicial resources and encourages a shift from reactive adjudication to proactive docket control.

The transformation in the adjudicatory domain due to use of technology was explained and it was stated that digital research tools, electronic briefs, and technology enabled presentation of evidence have improved the quality and speed of judicial decision-making. The improvement in the transparency and accountability within the judicial system was highlighted and it was stated that live streaming of court proceedings, online access to judgments and case information give concrete shape to the principle of open justice and enhance public confidence in the judiciary.

The impact of technology in the domain of criminal justice system was discussed and it was stated that three new legislations i.e. the Bharatiya Nyaya Sanhita 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS), and the Bharatiya Sakshya Adhiniyam 2023 (BSA) have adequately responded to the changing crime scenario and importance of electronic evidence in criminal proceedings. Various provisions of new criminal laws were referred with regard to cybercrimes and electronic evidence including Section 2(1) (d), Section 2(1)(e), Section 15, Section 57, Section 58 of the Bharatiya Sakshya Adhiniyam, 2023. The admissibility of electronic evidence was discussed and Section 61 and Section 63 of the Bharatiya Sakshya Adhiniyam were referred. Various other provisions were also discussed including Section 77 dealing with digital capture or sharing of private image, Section 78 dealing with cyber stalking, Section 294 dealing with obscene or sexually explicit electronic content, Section 303 dealing with theft of mobile

phones, data, software or computer hardware, Section 317 dealing with receiver or possessor of stolen property u/s. 303, Section 318 dealing with cyber fraud, password theft, Section 336 dealing with online forgery and email spoofing and Section 356 dealing with defamation by electronic means.

The discussion then focused on various aspects of transformation of courts through implementation of technology including taking services of technocrats to assist the e-committee and engagement of them as consultant, procurement of hardware and software, digitization of court records – both legacy and running files with metadata and integration of revenue department records, the prisons department, police, district administration and district hospital.

Then future trends of technology integration in court were highlighted including use of artificial intelligence and its selective use in court processes. The use of artificial intelligence and dark web was discussed and issues related to the impersonation of identity by the use of artificial intelligence were highlighted. The legal approaches to deal with such issues of impersonation of identities were discussed the approach of courts to address such issues were explained.

The impact of ICT on litigation and adjudication was discussed and it was stated that it has improved access of people to courts and enhanced speed and efficiency of courts. It was also stated that because of the integration of technology the court and case management have become more structured and there is greater transparency and accountability as public has seamless access to court records. It was opined that now better judicial assistance is possible as courts records are digitalized with the use of metadata and indexing systems. With the use of technology based court management systems urgent cases are prioritized by the identification of pendency patterns. The effectiveness of court management has increased through better departmental integration and this has reduced delays to a considerable extent.