

**Reports for the programme of
National Conference of High Court Judges on Role of Courts in
Protection of Social and economic Rights (P-848)**

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A total number of seventeen Judges attended this conference and it commenced at 10.00 A.M. on 11th October, 2014. Dr. Balram K. Gupta, Director, National Judicial Academy gave the introductory address. He mentioned about the importance of the social and Economic Rights and the role of High Courts in Protection of such rights. After introduction of all the participants, Mr. R. Venkataramani, Senior Advocate made a presentation on the theme "Social and Economic Rights: Constitutional underpinnings. In his address Mr. Venkataramani spoke about the proactive role of the Supreme Court in the matters related to bonded labour, poverty, shelter for the poor etc. He has drawn the analogy of the South African Constitutions and working of South African Constitutional Courts. Mr. Venkataramani dealt with the issues relating to health law and the legislations in the U.S.A. and other developed countries on health law. He said that the Supreme Court has come closer to saying on right to work is a fundamental right even through an obligation to provide the employment is not an enforceable obligation. Mr. Venkataramani asserted that it is the Supreme Court which paved the way for the recognition of the Right to Education under Article 21 A of the constitution. He referred to the Judgment in Samata Vs. State of Andhra Pradesh. Mr. Venkataramani spoke extensively on the issue relating to development. He opined that socio economic rights and their adjudication are not strange to constitutional adjudication. Hon'ble Mr. Justice V.S. Sirpurkar and Justice K.S.P. Radhakrishnan, Former Judge of the Supreme Court chaired the sessions and they initiated the open discussion on the issues pertaining to the adjudication of Socio and Economic Rights.

In the second session Hon'ble Mr. Justice K.S.P. Radhakrishnan, made a presentation on "Progressive Interpretation of Legislations dealing with Social and Economic Rights". He referred to the judgment of the Supreme Court in Kapila Hingorani, Bandhuwa Mukti Murcha, P.U.D.R. case, Unnikrishnan J.P. and Mohini Jain. He narrated various judgments which led to the development of Law in protection of Social and Economic Rights of Indians. Hon'ble Mr. Justice K.S.P. Radhakrishnan, referred to the interpretation of various provisions of the Constitution in Rajasthan unaided schools Association's case and highlighted the role of Supreme Court in protecting the legislations which are to protect social and economic rights of the people. Hon'ble Mr. Justice V.S. Sirpurkar chaired the sessions.

In the third sessions there was discussion on Response of Constitutional Courts on Ensuring Social and Economic Rights. Dr. Balram K. Gupta intervened and emphasized the importance of preamble of the constitutions of India. Dr. Gupta mentioned that the justice according to the Constitution is three dimensional – Political, Economic and Social Justice and it is the role of every judge to ensure the three dimensional justice to every citizen. All the participant High Court judges shared the views on the instances arose before the High Courts and the way in which the courts have dealt with them.

In the fourth sessions, Mr. Ramesh Chandra Sharma of Ekta Parishad has analysed the social movements in our country for Land Rights and the Role of the Courts in protection of the rights of the Land owners. He brought to the notice of the judges various social and economic issues involved in the land acquisition proceedings. He also discussed the issues relating to the development. Hon'ble Mr. Justice V. S. Sirpurkar and Hon'ble Mr. Justice K S P Radharishanan analysed the new Land Acquisition Act and Justice V.S. Sirpurkar opined that it may be difficult to implement some provisions of the new act on land acquisition and soon it may need amendments. There was open discussion on land rights and issues involved in adjudication of such rights.

On 12th October, 2014, Prof. B.T. Kaul, made presentation on developing labour jurisprudence and Role of Courts in Liberalized Economy. He spoke on regulation of commerce, competitions and issues of development. He referred to Article 32 of the Indian Constitution. He made the following important comments.

1. Trade Union Act, 1926 is a progressive early legislation which allowed following and recognition of the Trade Unions and it is important in the present day scenario because of its, replacement of individual bargaining to the collective bargaining.
2. The judgment in Harjinder Singh and Devendra Singh are important contributions. Only in three important situations the High Courts can interfere with the order of the Labour Courts/Tribunals.
3. Though in the beginning the Courts held that only collective dispute can be adjudicated by the industrial Tribunals, later the courts have recognized the importance of adjudication of the individual disputes. Prof. B.T. Kaul referred to section 2A of the Industrial Dispute Act.
4. The report of the committee on fair wages was constituted and its report was considered in the fixation of minimum wages.
5. Granting of living wage is the goal, fair wages is to be achieved and minimum wage is mandatory.

One of the High Court Judges who participated in the conference opined that on small and petty issues the High Courts have been halting the progress. He mentioned that when the dispute is relating to small issues on sanctioning of fair price shops, the license is being cancelled and the entire Public Distribution System as far as that area concerned is closed. He mentioned that because of the Judicial order people suffer a lot. Hon'ble Mr. Justice Kurian Joseph and Justice V.S. Sirpurkar, chaired the sessions. Hon'ble Mr. Justice V. S. Sirpurkar alerted that in the name of protection of Social and Economic Rights false cases are being filed and gave instance of a Public Interest Litigation in which the petitioner sought for stopping a 1000 kundiyagna which has no bearing on the rights of the people. Hon'ble Mr. Justice Kurian Joseph said that development brings peace and it ensures dignity and other constitutional rights. He however cautioned that there are people who are suffering because of the constructions of dams, building, road and infrastructure development for Economic zones and no one is worried about their problems. Hon'ble Mr. Justice Kurian Joseph also said that many times the affected parties are not before the courts.

In the last session Prof. Balram K. Gupta initiated discussion on "Limitations on Constitutional Courts in Securing Social and Economic Rights. He narrated the consequence of the Directive Principle of State Policy and Fundamental Rights. He mentioned the expansion of the jurisprudence under Article 21 of the Constitution. He referred to the present development of right to food and right to health and said that without the development of these rights, right to life is meaning tells. Dr. Gupta referred declaration of Noble prize for peace to Kailash Satyarthi and Malala. He said that the second generation rights as they are so called are gaining importance and they need to be appreciated in the proper light.

Hon'ble Mr. Justice V.S. Sirpurkar advised that there are enough vistas to be opened by the judiciary for ensuring the Social and Economic Rights of the country. He said that the Supreme Court and Higher Courts have to think of remedy oriented interpretation and they shall not be constrained by the precedents. He called for developing law, taking the inspiration from the judgments of the Supreme Courts.

Hon'ble Mr. Justice Kurian Joseph, said that over a period of time starting from Champklam Dorai, Supreme Court Contributed for development of welfare jurisprudence and the constitutional jurisprudence in that direction. At times the courts, particularly the Constitutional courts need to interpret the legislation beyond the legislation and in the light of the constitutional principles and the courts need to equip themselves with the knowledge of the developing jurisprudence in the world around. One of the High Court judges opined that in some cases the fundamental rights are coming in the way of enforcement of Directive Principles of State Policy and they are becoming bottle necks.

The discussion was on the constraints like economic policies and budgetary issues. Another judge has referred to the Idea of Justice by Amartya Sen. There was discussion on various ideologies and how they affect the governance. It is also felt that cost factor behind enforcing social and economic right is a barrier and the pro capitalist ideology not in favour of Social and Economic Rights of the people. Liberty and freedom means qualitative freedom and qualitative liberty and they can be enjoyed only when the large number of aspirations on social and economic rights is realized.

Hon'ble Mr. Justice V S Sirpurkar, Justice Kurian Joseph and Prof. Balram K. Gupta made concluding remarks.

Copies of the following documents are furnished to the participants.

1. Two articles by Mr. R. Venkataramani, Sr. Advocates.
2. The South African Constitutional Court's embrace of Socio-Economic rights: A comparative perspective. (Article)
3. Bangalore Principles.
4. The First ten years of the Bangalore principles on domestic Application of International Human right norms by Hon'ble Mr. Justice Michael Kirby.

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