

Colloquium for Superior Courts Judges of Egypt (SE-16)

23rd - 27th January, 2018

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The National Judicial Academy organized a Colloquium for Superior Court Judges of Egypt from **23 to 27 January, 2018** under the ITEC Program [Indian Technical and Economic Cooperation] with due approval from the Ministry of External Affairs. The Colloquium was attended by 25 Judges of Cassation Court and Council of the State from Egypt. The primary objective of the Colloquium was to promote exchange of ideas between the judicial systems of two countries. The Colloquium provided an opportunity to discuss challenges and issues being faced by the judiciary of two countries and ways to resolve them.

The Colloquium substantially focused on Constitutional law and interpretation including issues related to Architecture of the Indian Constitutional Arrangement, Effectiveness of Judiciary as an Institution of Justice Delivery in Evolving Socio-Economic and Technological Dynamics, Approaches to Constitutional Interpretation and Evolving a Constitutional Vision of Justice, A Judge in a Constitutional Democracy and Role of Constitutional Courts in securing the Rule of Law. The Colloquium also involved discussions on Judicial Accountability, Ethics and Independence of Judiciary, Art, Craft and Science of Judgment Writing, Information and Communications Technology (ICT) for Courts and Court and Case Management. Justice T.S. Thakur, Mr. V. Sudhish Pai, Justice D.M. Dharmadhikari, Dr. Moolchand Sharma, Dr. Faisan Mustafa, Justice A.K. Ganguly and Justice Deepak Gupta were invited as Resource Person.

Major Highlights and Suggestions from Colloquium

Session 1: Overview and Architecture of the Indian Constitutional Arrangement

The speakers initiated the discussions by highlighting the context about framing of the Constitution of India. The basic components of the Constitution and the process of formation of the Constitution were discussed. The speakers discussed the way Constitution sustains and nourish the diversity in India. The importance of fundamental rights mentioned in part III of the Constitution was emphasized and the mechanism of their enforcement was discussed. The value of Directive Principles in ensuring good governance was highlighted. The speaker also discussed the doctrine of separation of power in India and the scope of legislative powers of central government and state governments. The role of courts regarding legislative powers of central government and state governments was discussed. The framework about establishment, composition and functions of various institution such as Public Service Commission for states and Union Public Service Commission for Centre, Comptroller and Auditor General of India, Election Commission and other institutions as provided in the Constitution was highlighted by speakers. The vital growth of the Constitutional law through courts and survival of the Constitution despite various crises in Indian democracy were discussed.

Session 2: Approaches to Constitutional Interpretation and Evolving a Constitutional Vision of Justice: Issues and Challenges

The speaker initiated the discussions by emphasizing the role of courts in expanding rights and filling in legislative gaps. For instance, the Supreme Court of India has substantially expanded the right to life mentioned under the Constitution. The speaker discussed the power of the parliament to amend the Constitution and limitation of this power. The Supreme Court through basic structure doctrine held that the basic structure of the Constitution cannot be amended. The Speaker discussed elements of basic structure of the Constitution and discussed the recent Supreme Court's judgements on National Judicial Appointments Commission (NJAC) Act, 2014 where the Supreme Court declared that NJAC involves interference of autonomy of judiciary by the executive which amounts to tampering of the basic structure of the Constitution whereas parliament is not empowered to change the basic structure. The speaker highlighted the Supreme Court's power to interpret reasonable restriction. The speakers emphasized that the Constitution has devised a structure of power relationship where through checks and balances, limits are placed on the powers of every authority under the Constitution. The speaker also discussed the scope of contempt power of the Court.

Session 3: Vitalizing Democracy: Role of the Judiciary

The speakers initiated the discussions by focusing on the role of judiciary as a guardian of democratic values in India. The speakers highlighted that the Indian judiciary ensures that no authority either executive or legislature exceeds the authority provided to them under the law. The judiciary ensures that State and its instrumentality should not infringe fundamental rights of the people. The Supreme Court has made election process fairer through its judgments which led to strengthening of the democratic values in the country. The speakers opined that the Supreme Court has relaxed the rules of locus standi through many public interest litigations. This has enabled poor and marginalized people to raise their grievances at the level of the Supreme Court. Many judgements relating to public interest litigation jurisprudence were discussed.

Session 4: The Judge in a Constitutional Democracy

The speakers initiated the discussion in an interactive way and participating judges from Egypt discussed various Constitutional protections available in their country. The speakers compared various provisions of the Constitution of India and the Constitution of Egypt. The speaker discussed protection of religion and state of secularism in both the countries. The speakers highlighted that in India any law even if it comes from shariat but against the Constitution, shall be struck down by the courts. In a recent case of Tripal Talaq, the Supreme Court declared triple talaq as unconstitutional. The speakers emphasized the need of balancing of religious practices and Constitutional rights by courts. The speakers ended the session by emphasizing the role of court in nourishing plurality in society.

Session 5: Role of Constitutional Courts in Securing the Rule of Law

The speakers emphasized that courts should protect basic structure of the Constitution. In India the Supreme Court has intervened many a times to make elections fairer. The Supreme Court has ensured that the basic structure of the Constitution remains intact and this has resulted in strengthening of the constitutional democracy in the country. The speaker discussed various

judgments through which the Supreme Court has ensured rule of law in the country through mechanism of creative interpretation. The speaker also discussed the process of inclusion of concept of secularism in the Constitution of India through 42nd amendment in 1976. The speaker expressed their views on Supreme Court's rulings on parliamentary actions and emphasized that active judiciary is better than activist judiciary.

Session 6: Judicial Accountability, Ethics and Independence of Judiciary

The speaker commenced the session by discussing the quality of judgments and when judge should be retired. They advocated enhancing the age of retirement if judge is healthy and fit. The speaker emphasized that there should not be any outside intervention for ensuring discipline in the judiciary. In India judiciary has their own in-house mechanism to maintain discipline among judges. The speakers discussed various principles mentioned in Magna Carta, Beijing Statement of Principles of the Independence of the Judiciary, Bangalore Principles of Judicial Conduct and Restatement of Values of Judicial Life. The speakers highlighted the importance of contempt power of the court for effective enforcement of judgments.

Session 7: Art, Craft and Science of Judgment Writing

The speaker commenced the session by emphasizing the importance of reasoning in a judgement. The process of decision making must be objective however subjective elements may also be there in the judgment. The speaker opined that Judge has a duty not to make predispositions. She/He should ask questions to the lawyers to clarify doubts. A judge should not express his views or comment on any burning issue before the decision of the issue. The speaker said that drafting of a judgment starts from the hearing stage itself. Judgment should be given only after the conclusion of arguments. Adjournment must not be given unless it is a serious case. A judge should deliver judgments in simple and clear language. The language should not be ambiguous. It should be precise. A judge should clearly mention why a party won and other one lost. A judge should never think about the consequence of her/his judgment. The speaker concluded the session by emphasizing that a judge must follow the principle of equity, justice and good conscience. A judge should read all the international conventions and apply it in the orders to protect the rights of victims. A judge should be impartial and neutral.

Session 8: Social Context Judging

The speaker commenced the session by highlighting the basic elements of social context judging. The speaker said that on many occasions, the facts of a case do not depict the current situation of a case. It is very difficult to judge in such a situation where the court needs to choose between law and public policy. Law is an instrument of social engineering. A judge has a duty to balance unequal social situations. The speaker compared various welfare measures provided in the Constitution of India and the Constitution of Egypt. The speaker emphasized that courts should ensure implementation of the human rights conventions and instruments. The situation regarding the implementation of international human rights instruments was discussed by the participating judges.

Session 9: Information and Communications Technology (ICT) for Courts

The speaker initiated the discussion by explaining the establishment of e-Committee in the Supreme Court of India which was established in the year 2005 for improving use of Information Technology in the Indian Judiciary. The first phase of the e-court project focused on hardware provisions, establishment of judicial service centers and development of Case Information system [CIS 1]. In the second phase all districts were integrated in one system with inbuilt mechanism of daily updating of data. After that the participants were shown various features of the National Judicial Data Grid and its usefulness in monitoring delay and pendency. The speaker also discussed web based accessibility of the judgements of Indian courts from Supreme Court to District Court level. The process of video conference facility in court was explained by the speaker. It was followed by presentations by Egyptian judges about their judicial system. The Egyptian judges explained the powers and functions of their courts at different levels.

Session 10: Court and Case Management

The speaker discussed about training of judges in court and case management by judicial academies in India. Various tools of court management such as preparation of time schedule for disposal of cases, adherence to schedule hearing dates, management of human resources and implementation of case management rules in India were discussed. The speaker emphasized that for better case management, there should be better time management. Courts should fix similar cases together, follow case management rules and should give priority to cases related to women, children, under-trials and senior citizens.

During the sessions, participating Judges from Egypt asked many questions about Indian legal system focusing on issues such as accessibility of people to the Supreme Court of India and other courts, legal remedies for violations for Constitutional rights, scope of judicial discretion, judicial remedies when law is silent about a particular issue/situation, implementation of human rights provided under international human rights conventions and treaties, process of data entry under National Judicial Data Grid, security of data uploaded on National Judicial Data Grid and impact of e-Court project in reducing delay and arrears in Indian courts among others.

Visits for Participants

The local and sightseeing visits were organized for Egyptian Judges. On 24 January, 2018 participants were taken to Taj-Ul-Masjid, Lake View and Van Vihar. On 26 January, 2018 participants were taken to Bhimbetika and Bhojpur Temple.

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