

## Examrace

# The Challenges Confronted by Supreme Court in 2010, National Litigation Policy

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## The Challenges Confronted by Supreme Court in 2010

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- New Delhi: The Supreme Court faced a stiff challenge in 2010 in dealing with allegations of corruption against judges of the higher judiciary. It took a bold decision not to elevate the then Karnataka High Court Chief Justice, P.D. Dinakaran (who is at present Chief Justice of Sikkim High Court), as a judge of the Supreme Court following a controversy over alleged land grab.
- Even as Justice Dinakaran was shifted out of the Karnataka High Court, Parliament initiated removal proceedings against him in respect of certain allegations and the probe is pending before a committee headed by Justice Aftab Alam, Judge of the Supreme Court, who succeeded Justice V.S. Sirpurkar, who resigned.
- The second removal proceedings against a judge ended with a panel headed by Justice B. Sudershan Reddy, Supreme Court Judge, recommending removal of Justice Soumitra Sen, Judge of the Calcutta High Court, for proven misconduct.
- In a big relief to the Tamil Nadu government, the court granted protection for the continuance, for one more year, of the law that provides the Backward Classes, the Most Backward Classes and the Scheduled Castes/Scheduled Tribes 69 per cent reservation in jobs and education.
- It asked the State Backward Classes Commission to revisit the reservation issue on the basis of the quantifiable data in respect of the communities in question. If the Commission wanted to exceed the 50 per cent ceiling while re-fixing the quota, it could take into consideration the parameters laid down by the Supreme Court in the Mandal case judgment: compelling circumstances based on local conditions.
- To deal with the problem of foodgrains rotting in godowns, the Court asked the Centre to consider distributing them at "very low cost" or "no cost" as a short-term measure. When Union Agriculture Minister Sharad Pawar confronted the court by saying that no order was passed but only a suggestion was made, the court again reiterated that is its direction on supply of rotting foodgrains was only an order and not a suggestion. The court referred to media reports on Mr. Pawar's statement and said, "It was not a suggestion. It is there in our order."

- Efforts of the former Tamil Nadu Chief Minister, Jayalalithaa, to get the disproportionate case against her and four others pending in a Bangalore court stayed on two occasions during the year did not fructify as the court was firm that the trial must proceed. However, the Supreme Court permitted the trial court to appoint an expert translator to assist in the trial. The court agreed to reopen the Bhopal gas tragedy case by admitting a curative petition filed by the Centre for restoration of the stringent charge of culpable homicide not amounting to murder, which attracts the maximum punishment of 10-year jail term, against the accused. A trial court in Bhopal had convicted the accused to undergo two-year imprisonment.
- Subsequently, coinciding with the anniversary of the 1984 Bhopal gas tragedy, the Centre filed a curative petition seeking enhancement of the compensation of \$470 million determined by the Supreme Court in 1989 on the ground that this settlement was arrived at on the basis of assumptions of truth unrelated to realities. Both the matters are still pending.
- While determining the question as to which parent the care and control of a child should be given, the paramount consideration remains the welfare and interest of the child and not the rights of the parents under the statute, the court said.
- In a big relief to the Mayawati government in Uttar Pradesh, the Court held that the Noida park area would not come under the ambit of 'forest' and hence permitted the erection of statues and other structures in the park.
- The court decided to examine industrialist Ratan Tata's petition, which alleged that the publication of the tapes of his private conversations with corporate lobbyist Niira Radia had infringed his right to privacy. Mr. Tata has raised an important question relating to the interpretation of the Article 21 of the Constitution concerning right to life, "which also includes the right to privacy."
- The court came to the rescue of the press and whistle-blowers when it said, "If a speech or article, editorial contains something which appears to be contemptuous and this Court or the High Court is called upon to initiate proceedings under the Contempt of Court Act, the truth should ordinarily be allowed as a defence unless the court finds that it is only a camouflage to escape the consequences of deliberate or malicious attempt to scandalise the court or is an interference with the administration of justice."
- It also decided to examine, by a Constitution Bench, the conflict between the right of citizens to obtain information under the Right to Information (RTI) Act and the right to immunity enjoyed by the judiciary not to disclose information pertaining to appointment of judges.
- In the Sethusamudram case, the court ruled out giving any direction relating to the project or vacating the stay on the project till the final report of the expert committee examining the feasibility of carrying it through Dhanuskodi instead of Rama Setu, submitted its report in February 2011.

- On the whole, the Supreme Court stood up to the expectations and reaffirmed the faith people continued to have in the judiciary when other institutions fail to perform their duty satisfactorily.

## **A memorable year for Supreme Court [2010]**

### **J. Venkatesan**

- New Delhi: The year 2010 was a memorable one for the Supreme Court and Chief Justice of India S.H. Kapadia as it asserted its supremacy, particularly in protecting human rights and in exposing corruption at high levels by ordering a thorough probe into the 2G spectrum scam.
- Justice Kapadia, first Parsi to become the CJI, believes in silent action. He is reticent about meeting the media.
- Concerned at poor infrastructure in the subordinate judiciary, the CJI has taken upon himself the task of providing basic facilities to the judiciary at all levels.
- Taking a serious view of irregularities and lapses in the telecom sector over the past decade, the court has taken charge of the 2G spectrum scam probe, being conducted by the Central Bureau of Investigation, and widened its scope.
- It asked the CBI to register a first information report and investigate the grant of licence from 2001 to 2006-07, with emphasis on the loss caused to the exchequer and corresponding gain made by the licensees and service providers.
- The court asked Income Tax authorities to analyse the transcripts made from corporate lobbyist Niira Radia's phone taps and hand these over to the CBI "to facilitate further investigation into the FIR already registered or which may be registered hereinafter."
- In the area of human rights, the court declared "illegal" use of narco-analysis, brain-mapping and polygraph tests on suspects and held that these tests could not be conducted on any person, whether he or she is an accused or suspect, without his or her consent.
- Expanding the scope of Article 21 of the Constitution (right to life and liberty) the court expressed concern over lacunae in implementation of the Mahatma Gandhi National Rural Employment Guarantee Act.
- It said: "The legislative scheme of the Act clearly places the 'right to livelihood' on a higher pedestal than a mere legal right." It asked the Centre and the Orissa government to show cause why the CBI should not be directed to investigate this matter in accordance with law.
- In a rare instance, the Supreme Court proved that it was not infallible but rectified its mistake at once.
- In this case, a trial court in Madhya Pradesh awarded life imprisonment to eight persons in a murder case. On appeal, the High Court acquitted all of them.

- However, the State preferred an appeal only against the four main accused. The Supreme Court, while setting aside the High Court judgment, restored the trial court order though the remaining four respondents were not heard or made parties in the appeal.
- On a curative petition, the court, correcting its mistake, said: “We see that there is a serious violation of the principles of natural justice as the acquittal of all the accused has been set aside even though only four of them were made respondents before this court and the others were not heard. We are, therefore, constrained to recall the judgment passed by this court. Consequently, the four accused [who were not heard] if they are in custody, are directed to be released forthwith.”
- In another instance, the court admitted that its earlier judgment upholding the death sentence awarded by the trial court and confirmed by the High Court was a mistake and violation of the human rights of the accused. The court, in a second review, upheld the Assam Governor’s order commuting the punishment to life sentence.
- The court held: “Instances of this court’s judgment violating the human rights of the citizens may be extremely rare but it cannot be said that such a situation can never happen. On a review of the reasoning in the petition, we find that the finding in the judgment is vitiated by errors apparent on the face of the record.”
- Observing that great ignominy attached to the arrest of a person, the court held that it would not be proper for the trial court or the High Court to grant anticipatory bail for a limited duration and thereafter ask the accused to surrender and seek regular bail.

## Removal of Governor

- The court held that a Governor could not be removed on the ground that he/she was out of sync with the policies and ideologies of the Union government or the party in power at the Centre. Nor could he/she be removed on the ground that the Union government lost confidence in him/her.
- It held that a change in government at the Centre was not a ground for removal of Governors to make way for others favoured by the new regime.
- In the biggest corporate legal battle between the Ambani brothers, the court held that gas is a national asset and that the Centre’s pricing policy would prevail over any private agreement.
- It directed Reliance Industries Ltd (RIL) of the Mukesh group to initiate renegotiations with Reliance Natural Resources Ltd. (RNRL) of the Anil group for fixing the price of gas to be supplied to RNRL. This judgment paved the way for a fruitful settlement of the dispute between the brothers.

## National Litigation Policy

Launched in 2010 under the National Legal Mission, its aim is to reduce government litigation and transform it into an efficient and responsible litigant.

## Salient Features

- Litigation will not be resorted to for the sake of litigating
- False pleas and technical points will not be taken
- Focusing on the core issues involved in the litigation and addressing them squarely
- Government must cease to be a compulsive litigant
- The purpose is to reduce Government litigation in courts so as to achieve the goal in the National Legal Mission to reduce average pendency time from 15 years to 3 years.
- Appointment of well-trained nodal officers with adequate legal background and expertise by every department and agency for a proactive management of their cases.
- Challenges to tribunal orders would be an exception rather than a routine.

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