

A two-day International Conference on Law and Liberty



iJustice – a public interest legal advocacy initiative of the Centre for Civil Society (CCS) in collaboration with The Federalist Society for Law and Public Policy Studies, Jindal Global Law School (JGLS) and Jindal School of Government and Public Policy (JSGP) at the O.P. Jindal Global University jointly hosted the International Conference on “Law and Liberty” on 18-19 Sep at the University Campus in Sonipat.

The conference had multiple sessions addressing a host of legal and policy issues around Liberty vs Equality, License-Permit Raj to Competition Era, Separation of Powers–Judicial Activism, Individual Rights vs Minority Rights and Right to Property. Over sixteen eminent speakers, both from India and abroad presented at the two-day conference.

“It is not very often, that one gets to see the word, ‘liberty’ appear beside, ‘law’,” said, Dr. Parth J. Shah, President, Centre for Civil Society, Delhi, while deliberating on the relative importance of liberty, equality and fraternity. Delivering his opening remarks at the conference, Dr. Shah, further examined the variance in sequence of constitutional values in various world constitutions, and said, “Around the world, liberty, equality, justice and fraternity are known to be the cornerstones of any constitutional framework, with liberty taking precedence each time.”

Delivering the inaugural address at the conference Professor (Dr.) C. Raj Kumar, Vice Chancellor, O.P. Jindal Global University (JGU), spoke of the ideological challenges pertaining to law and liberty in the country, he said, “In India particularly, we are living in the 19th, 20th



and the 21st century together, and in a situation where you are living three centuries together, you simultaneously experience a form of political and constitutional discourse for which ideology alone does not suffice, and hence arises a need to develop a more nuanced understanding of issues". Stressing on the critical need for the legal system to assume a larger role in the political and social discourse of the country, he stated, "As lawyers and public policy academics, one of the big challenges for many of us today, is to look at how law can actually be relevant to the larger political and social discourse that is taking place, we need to develop a deeper understanding of issues relating to law and liberty and we must have a contemporary view of these issues, I am certain that this conference will help address some of the fundamental and underlying issues related to law and liberty."

Speaking on constitutionalism in emerging states and the challenges faced by emerging democracies, Prof. Michael Davis, Distinguished Visiting Professor, JGLS & Professor, Faculty of Law, The University of Hong Kong, said, "Constitutionalism is not just about development of institutions, constitutions are not just words on paper endowed with original intent, rather they are avenues for interaction and mutual consent of the core institutions of government". Debating if the process of constitutional judicial review actually serves the purpose of constitutionalism, he said, "Scholars have long appreciated that, constitutional judicial review, not only constraints but legitimates government undertakings, while simultaneously empowering people and in many cases functioning as a guardian of core institutions.

The International conference on 'Law and Liberty' included perspectives from several other speakers. Shruti Rajgopalan, Asst. Prof, Economics, Purchase College, State University of New York, spoke about the concept of Socialism vs. Constitutionalism in India, and Separation of Powers, where she underlined the four key aspects of judicial overreach namely, legislative, constitutional, executive and self -adjudicating.

Focusing on the Indian Supreme Court's understanding of the Right to Equality in general and state-sponsored affirmative action in particular, Prof. Satyaprteek (JGLS) raised some inconvenient questions: Does the constitutional guarantee of equality before law and equal treatment under Article 14 inevitably generate a positive, justiciable commitment for the State to provide reservations in government jobs, services and educational institutions? Should the state be bound by a principle of equality or a specific method or policy to pursue equality in all cases?

Prof. Avirup Bose elaborated the central dilemma inherent in the functioning of India's regulatory state, and how pro-market regulatory designs have not translated into conducive regulatory decisions as in-spite of independence and mandate. "*We have moved from the license/permit raj to competition era; however the question is how far?*" said Prof. Vijay Kumar Singh while sharing the disappointment with Competition Commission of India. Madhavi Divan, Advocate – Supreme Court of India traced the history of the competition regulatory regime for the media sector- the far- reaching changes from a media that was monopolized by Government to the present times when hundreds of channels crammed the airwaves and also analysed recent emerging but unresolved issues posed by spectrum allocation and internet services, media cross- holdings and the issue of common ownership control. Exploring the multijurisdictional facets of competition law, Prof Anna Lamut took the example of the automobile parts price-fixing investigation, which has seen investigations of

and even judgments against automobile parts companies in Japan, the United States, Europe, and Singapore, to name a few.

Shubho Roy, National Institute for Public Finance and Policy lambasted the executive for breach of Separation of Powers as most rules, notices and regulations limiting Article 19(1)(g) are not 'law' as per Article 13 of the Constitution of India. Citing numerous judgments and orders of National Green Tribunal, Arghya Sengupta, Vidhi Centre for Law and Policy criticised the tribunal for activist policy making and the 'ban' culture.

"A large section of the people who voted decisively in 2014 voted for a change against the consociational constitutional consensus. This has opened up the possibility of going back to individual rights and the rule of law as the basis of governance as was envisaged at the time of hearing of the Constitution." Advocate Vikramjit Banerjee said while tracing the various phases/ avatars of Indian Constitution. Advocate Gautam Bhatia analysed the conflict between Article 25(1) (the individual freedom of conscience) and Article 26 (the rights of religious denominations to manage their own affairs) with focus, in particular, on the *Dawoodi Bohras* case.

Speaking on the 'State's right to exercise eminent domain' and 'how the difference in the public opinion influences the judiciary to take discourses from its past judgments'. Prof. James Huffman, Erskine Wood Sr. Professor of Law, Lewis and Clarke Law School, said, "The main purpose or objective of the state to use eminent domain is to ensure equal generation of wealth in the society by equal distribution of natural resources to the people. But once the main objective becomes far-fetched or impossible to accomplish, there is no point of exercising such an arbitrary right."





Prof. James Kelly, President, Solidarity Center for Law and Justice, Atlanta, Georgia USA, spoke on, 'How liberty is being questioned or restricted in the education sector because of racial, caste, class based reservations in the law?'. He illustrated his statement by citing the frequent occurrences of inequality and arbitrariness in the states; in the sector of higher education where non-deserving student personals are given a chance, denying the chance of the deserved who have better academic records.

Prof. Khagesh Gautam introduced his work-in-progress an empirical study of Supreme Court Judgments involving a challenge to Article 19(1)(g) of the Indian Constitution. Citing *Manushi* judgment, Advocate Prashant Narang compared the property rights of cycle rickshaw pullers, street vendors and auto rickshaw drivers and advocated for abolishing one man-one permit policy in case of auto rickshaws and street vending.

iJustice had also organized a research paper writing competition for law students and winners were announced in the conference. The first prize winners were Vanshaj Mehta and Prakhil Mishra for their paper titled 'Competition Law: An Aperture to Economic Regulation in a Neo-Legal System'. Second prize went to Anubha Gangal for her paper titled 'Fundamental Rights and Directive Principles of State Policy: Co-existence or Conflict?'

The conference concluded with a vote of thanks by Prashant Narang.