NATIONAL JUDICIAL ACADEMY

TRAINING PROGRAM FOR BANGLADESH JUDGES AND JUDICIAL OFFICERS

[SE-12]

13TH - 17TH MARCH, 2023

PROGRAMME REPORT

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A Memorandum of Understanding (MoU) between the National Judicial Academy, India (NJA) and the Supreme Court of Bangladesh was entered into for organizing Training and Capacity Building programmes for Bangladesh Judicial Officers. In pursuance of the said MoU, a training program was organized by NJA for a delegation of Judges nominated by Bangladesh from 13th to 17th March, 2023. In compliance with the said MOU entered into between the NJA and the Supreme Court of Bangladesh for the training of about 2000 officers from 2017 through 2028, the Academy endeavours to continue the capacity building and training of judicial officers of Bangladesh.

The contours of the program traced the overview and architecture of the Indian constitutional arrangement, highlighting the constitutional values enshrined in the preamble, the basic structure of the constitution, and vision of courts. Some important contributions by the constitutional courts in the last decade including the judgments on free and fair election, privacy, adultery, transgender rights, and judicial appointments formed part of the programme. The critical elements of judicial behaviour viz. ethics, neutrality and professionalism essential to a judge's demeanour were deliberated upon. Sessions on the theme art, craft and science of drafting judgments on judging skills, including effective listening, assimilating, drafting and delivering quality judgments was included. Appreciation of evidence in civil and criminal cases alongside recent advances in the field of electronic evidence, its preservation, collection & appreciation including established and emerging jurisprudence on the subject formed part of the discourse. Further, following themes including Court and Case management wherein bottlenecks in judicial administration, best practices on effective disposal of cases & role of a judge in management of court & case was dwelt upon in light of re-engineering judicial process through ICT including E-courts project, National Judicial Data Grid (NJDG), Case Information System (CIS), and embracing of AI enabled projects viz. SUPACE, SUVAS projects, etc. The program also included sessions on Forensic Evidence in Civil and Criminal Trials: DNA Profiling, Criminal Justice Administration and Human Rights, and Human Rights: Fair and Impartial Investigation. The report includes a brief of deliberation for each session.

Session 1 – Overview of the Indian Constitutional Arrangement

Speakers: Justice A. K. Goel and Justice Indira Banerjee

The session was premised the general overview of the making of and architecture of '*a*' Constitution. Thereafter, a journey into the making of the Constitution of India was delved into. The analysis of the basis of Constitution of India was explained including the sources of its genesis. How the Constitution of India took its neutral colors of being secular, democratic, republic ensuring the nurturing various religions, cultures, societies, beliefs etc. without any prejudice to any one caste or sect, and embracing the critics by foreign scholars *viz.* Max Muller in his famous treatise "*The Sacred Books of the East*" was heralded. The longevity of a successful Constitution like that of India can be attributed to its solid bases and highly flexible fabric to embrace changes to be relevant with the ever changing society. Justice Rama Jois' book "*Legal and Constitutional History of India: Ancient, Judicial and Constitutional System*" was relied upon to explain that India was never alien to the constitutional system. The meaning of the word "*Dharma*" was underscored. It was narrated that "*Dharma*" should not be exclusively oversimplified and interpreted as

"religion" it has been interpreted by the Apex Court of India in *A.S. Narayana Deekshitulu v. State of U.P.*, (1996) 9 SCC 548 at 581. It was held:

> Though dharma is a word of wide meaning as to cover the rules concerning all matters such as spiritual, moral and personal as also civil, criminal and constitutional law, it gives the precise meaning depending upon the context in which it is used. When dharma is used in the context of duties of the individual and powers of the King (the State), it means constitutional law (*Rajadharma*). Likewise when it is said that *Dharmarajya* is necessary for the peace and prosperity of the people and for establishing an egalitarian society, the word dharma in the context of the word *Rajya* only means law, and *Dharmarajya* means rule of law and not rule of religion or a theocratic State. Dharma in the context of legal and constitutional history only means *Vyavaharadharma* and *Rajadharma* evolved by the society through the ages which is binding both on the King (the ruler) and the people (the ruled).

While discussing the Preamble to the Constitution of India, *Bhanumati v. State of U.P.*, (2010) 12 SCC 1 was cited wherein at page 13 the ideas of our famous martyrs Bhagat Singh and Batukeshwar Dutta was resounded. As Bhagat Singh explained what is meant by "revolution" on 06-06-1929, in the infamous case *Crown v. Bhagat Singh*. The Apex Court in *Bhanumati* held:

> The ideas of Bhagat Singh, even if not wholly, but substantially have been incorporated in the Preambular vision of our Constitution. But the dream for which he sacrificed his life has not been fulfilled and the relevance of what he said can hardly be ignored. The ground realities, if at all, changed only marginally. Let these momentous words of a convict in British India form part of the judicial record in the last Court of our democratic republic, the largest democracy in the world.

Further the contours of the arrangement of the Constitution of India was traced by the Indian judiciary in the world famous case of *Kesavananda Bharati v. State of Kerala,* (1973) 4 SCC 225. It was asserted that the Constitution has been parented by the people of India. The Constitutional arrangement is such that it touches and involves not only the past and the present generations, but is impregnated with provisional arrangements and judicial pervasions to embrace future generations. It is a working machine capable of accommodating the ever changing geo-political, social, and economic conditions of the nation.

While discussing the evolution and sustainable growth of the *Doctrine of Basic Structure* (now emulated by many nations), the origins were traced from the deliberation of Prof. Deiter Condroit at Banaras Hindu University (BHU), *Mitchel v. Palmer,* US SC (1919), to Justice Mudholkar's version of "*basic features*" in *Sajjan Singh v. State of Rajasthan,* (1965) 1 SCR 933, where he relied on the judgement of the Supreme Court of Pakistan *Fazlul Quader Chaudhary v. Mohd. Abdul Haque*, PLD 1963 SC 488. Wherein, Justice Fazle Akbar refered to Chief Justice Cornelis to note that the President did not have the power to alter certain Fundamental Features of the Pakistan Constitution. A comparative blend was drawn by referring to *Anwar Hossain Chowdhury v. Govt. of Peoples' Republic of Bangladesh*, 1989 B.L.D. (SPL) 1 commonly known as *8th amendment case* wherein, in 1989, the apex court of Bangladesh recognized the *Doctrine of Basic Structure* or the idea of "unconstitutional constitutional amendment".

Moreover, certain similarities and dissimilarities in the Constitutions of Bangladesh and India were discussed including the structure that while Constitution of India is (Quasi) Federal, that of Bangladesh is Unitary. Indian Constitution is secular as against the counterparts' religious

alignment "*In the name of creator*". Amendments made in the Constitution of Bangladesh including Article 7B (Basic Provisions of Constitution are not Amendable) read with Article 141A, B, & C (Emergency Provisions) was referred. Other structural pivots which were comparatively discussed included the *Doctrines of being "Secular", "Integrity"* etc. The balance struck by the judicial interpretations of the text of the Constitution of India in *"Liberty versus Equality"* was delved into.

Session 2 – Judiciary in a Constitutional Democracy

Speakers: Justice Indira Banerjee and Prof. V.K.Dixit

The session was premised on the role of judiciary in molding the Constitution of India. The session attempted to exposit the institutional relevance and independence in a democratic nation, governed by the Constitutional values. The judicial contribution in building several institutions of (inter)national repute were discussed. The proactive functioning on the judicial side by the Apex Court of India, through its landmark judgments, procreated such national institutions of repute and principle of law, cutting across various social, political, and economic domains. In the environmental jurisprudence, the constitution of the National Green Tribunal was discussed w.r.t. Supreme Court decisions including *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718; *Indian Council for Enviro-legal Action v. UoI*, (1996) 3 SCC 212. Principles *viz*, "strict liability", "absolute liability" and "polluter pays" were discussed with the help of a spate of landmark judgments by the Apex court of India including, *M.C. Mehta v. UoI*, (1987) 1 SCC 395 (*Oleum Gas Leakage Case*); *Union Carbide Corporation v. UoI*, (1991) 4 SCC 584 etc.

The advent and jurisdiction of "Tribunals" in India were discussed. *L. Chandra Kumar v. UoI*, (1997) 3 SCC 261 was relied upon to discuss the contours of tribalization in India and its implications. While discussing the formation of the new species of judicial institutions capable of dealing with techno-legal aspects, created by constitutionally under Articles 323A and 323B the Apex Court held:

> The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls.

While the discussion meandered inwards, towards the colossal institution of Indian judiciary, one of the pillars of the Constitutional Democracy, the references spanned from Article 124 to 235 and more. The conventions of collegium system, its scope, resilience and success were measured with the help of myriad landmark case law jurisprudence. The "silences of the Constitution" was discussed with the sounds of landmark judgments including *Manoj Narula v. Union of India*, (2014) 9 SCC 1. The Apex Court held that the principle is an armour to fill in the gaps left out in the constitutional text and in its interpretation in the interest of justice delivery and public interest:

> The next principle that can be thought of is constitutional silence or silence of the Constitution or constitutional abeyance. The said principle is a progressive one and is

applied as a recognised advanced constitutional practice. It has been recognised by the Court to fill up the gaps in respect of certain areas in the interest of justice and larger public interest. Liberalisation of the concept of *locus standi* for the purpose of development of public interest litigation to establish the rights of the have-nots or to prevent damages and protect environment is one such feature. Similarly, laying down guidelines as procedural safeguards in the matter of adoption of Indian children by foreigners in *Laxmi Kant Pandey* v. *Union of India* (1987) 1 SCC 66 or issuance of guidelines pertaining to arrest in *D.K. Basu* v. *State of W.B.* (1997) 1 SCC 416 or directions issued in *Vishaka* v. *State of Rajasthan* (1997) 6 SCC 241 are some of the instances.

Article 50 of the Constitution of India was elaborated. It was accentuated that "*Doctrine of Separation of Power*" essentially does not implies "separation of purpose". Chronicle of case law jurisprudence were cited and shared in support of the points *viz. Supreme Court of India v. Subhash Chandra Agarwal*, (2020) 5 SCC 481. Independence of the judiciary as an institution was refered with the help of *Supreme Court Advocates-on-Record Assn. v. Union of India*, (2016) 5 SCC 1. The appellate jurisdiction of the Supreme Court in the case of a Appeal from the High Court's decision was discussed w.r.t. Article 132. The power and faith reposed on the Indian judiciary by the Constitution of India was explained with cases. The relevance of Article 136 was explained. The importance of being a "Court of Record" in a federal system was examined with reference to Article 129 and 214 of the Constitution of India. The writ jurisdictions of the federal structure, its scope and application was discussed with examples. The scope of Article 142 was elucidated. The meaning of the phrase "complete justice" was explained w.r.t *State of Karnataka v. Umadevi*, (2006) 4 SCC1. The meaning and scope of the phrase "cause or matter" was explained citing the Apex Court decision in *Union Carbide Corporation v. UoI*,(1991) 4 SCC 584.

Session 3: Constitutional Vision of Justice

Speaker: Justice A. K. Goel and Prof. V.K.Dixit

The session initiated by deliberating upon what 'Justice' means in context to the Constitutional Vision. The nebula and myth that only the High Courts and the Supreme Court fall under the scope of the subject matter to deal with "Constitutional Vision of Justice" was busted. The role of the subordinate judiciary, as to whether they are so called "Constitutional Courts" was examined. It was further interrogated whether the subordinate judiciary have any role in the interpretation of the Constitution? And if the answer was to be in negative, then why at all would it make any sense to spend time in pondering on the topic? The scope and role of district judiciary in rendering Constitutional Vision of Justice was thus identified. It was clarified that the Constitutional Vision of Justice is not about merely interpreting the Constitutional provision(s), but lies in the spirit and goals that the Constitution envisages and propagates to establish justice (social, economic and political). Every court being a Constitutional court entrusted to forward the cause of imparting justice. In the case of India, it was asserted that being obliged under Goal 16 of the UN Sustainable Development Convention, she is rather obliged "to ensure equal access to justice for all". To ensure its allegiance and in compliances to such international affirmation India has not only internalized the idea to reach-out the last person, enabling access to justice, but has inculcated systemic changes through effective legislations (e.g. Legal Services Authorities Act, 1987) to ensure percolation of these primary ideas across the national fabric. It was asserted access to justice must be discerned from mere access to court. It is rather an idea under the constitutional vision which is much wider in scope, and much deeper in qualitative and quantitative aspects of the justice delivery system. The inclusive idea captures awareness of various rights, independence of judge, speedy

dispensation of justice, right to be effectively and satisfactorily be represented and much more. *Krishnakant Tamrakar v. State of M.P*. 2018 SCC OnLine SC 304 and other such judgments were referred to discuss the seriousness of decongesting the courts to enable faster and qualitative justice delivery.

On the point of having doctrine of "reasonable restrictions" as an important tool to ensure the constitutional vision, it was boldly prompted to critically examine the text of Article 38 of the Constitution of India. The said provision within its text was said to subsume the "test" for the doctrine. Similarly, the "test" for "arbitrariness" may be found under Article 14. It was alerted that at least in Indian context the constitutional vision could generally be traced within the text of the Constitution itself. However, where it is not, the judiciary should attempt to supply the sound to the constitutional silences. Citing an example, it was narrated that Justice H.R. Khanna attempted to address constitutional silence exposited by supremacy of Human Rights to prevail unconditionally as they were immutable by nature. He drew the inspiration from the defense that was taken in the (in)famous *Nuremburg Trials* – "is it a crime to obey law or orders" (referring to Nazi law or order by the Nazi Forces) – wherein the *a priori* idea of Immanuel Kant on "immoral law(s)" was pitched. Being human beings we are different than other animals and we inherit certain inalienable rights which can never be taken away. Take the discussion further it was asserted that the concept of "basic feature" draws its allegiance from German Constitution. After Hitler's regime the Germans brought-in two unamendable values to their Constitution namely:

1. Human worth
2. Republican form of government

Yet another feature of the Constitution of India was exemplified as a comparative. It was emboldened that unlike the US federal democratic set-up, wherein the State and the Union both have a unique operative system of two independent sets of Executive, Legislature, and Judiciary under State as well as US Constitution, the Indian system has deliberately chosen to have only one "unilateral" hierarchy of judiciary.

Elaborating the role of judiciary in achieving the visions envisaged in the Constitution of India several cases were discussed which include:

The extrapolation of Article 21 had manifested in several brilliant decisions and interventions of the Constitutional Courts of India. One such example discussed was "right to decent burial". The evolution of this right was traced in *Ramji Singh Mujeeb Bhai v. State of U.P.*,(2009) SCC OnLine All 310. Similarly, the "rights of a dead person" was envisioned in *Parmanand Katara v. UoI,* (1995) 3 SCC 248; and *Ashray Adhikar Abhiyan v. UoI*, (2002) 2 SCC 27. It was underscored that the role of subordinate judiciary in extending the constitutional vision of justice by molding relief beyond the pleadings could be done using Section 151 of the Civil Procedure Code, 1908 (CPC). *Om Prakash Gupta v. Ranbir B. Goyal*, (2002) 2 SCC 256 was referred while explaining the aforementioned role. It was heralded that the Supreme Court itself has resounded "extraordinary situations demand extraordinary remedies". The narration of Justice Lahoti CJI in *B.P. Achala Anand v. S. Appi Reddy*, (2005) 3 SCC 313; also quoted in *Prithapal Singh v. State of Punjab,* (2012) 1 SCC 10, was shared from the podium.

The democratic vision of expression of a citizen of India in exercise of his/her political right to choose the leader who would represent him/her while legislating has extended to not only choose from the alternatives but to express his/her right not to choose any if the alternatives (in his/her opinion) do not offer a worthy alternative. The "NOTA" (None Of The Above) as an option for

one to exercise his/her "right not to make a choice under compulsion" was exemplified as an evolving and organic form of constitutional vision, by citing *PUCL v. UoI*, (2013) 12 SCR 283. It was asserted that under Article 19(1)(a) "freedom of speech and expression" was extended to cover one's rights to express through casting his/her votes. But, such expression should be based on "informed expression", and therefore antecedents of candidates are necessary to be known to the voters prior to making the choice.

The session concluded with discussing such other jurisprudential innovations by the courts of India to elucidate the operation of "Constitutional Vision of Justice" organically.

Session4: Elements of Judicial Behaviour: Ethics, Neutrality, and Professionalism

Speaker: Justice Sunil Ambwani and Justice U. C. Dyani

The session commenced with a few notes of interrogation? Is judging beyond umpiring? Has honesty got anything to do with justice delivery? Can a judge remain indecisive under the garb of honesty? The idea of the session was to explore the thoughts of remaining neutral and acting impartial by a judge. To probe further, the conundrums of personal and professional behaviors of a judge needed to be explored. The session was interactive and provoked dialogue. It was told that "ethics" touches many facets of life and hence its contemplation should not be limited to narrow interpretations *viz.* "right v. wrong" or what is "just v. injustice" etc. In a judicial process for a judge to be ethical it is necessary for him/her to knowledgeable both in substantive as well as procedural law. While explaining "neutrality" it was underscored that one of the most important virtue of a judge should be, he should be a good listener. It was further insisted that a judge must distinguish "listening" from "hearing". "Listening" is an active exercise. It involves interventions where necessary, assertiveness *viz.* controlling prolixity, repetition, and sifting valuable from the unnecessary waste etc. On the aspect of "professionalism" the participants were advised to not only focus on the personal attire, demeanor, and such other overt attributes of a judge, but also how a judge manages his court. Effective time management involves multiple aspects including management of "adjournments". It was clarified that scope of "integrity" is much beyond "honesty". Yet another professional trait discussed was "aloofness". Detachment and dissociation from social circles must be an upright option for a judge since, the opposite might pose potential adversely impact the image and deliverables of a judge. It was opined that a judge can opt to mix-up but (s)he cannot afford to get mixed-up. Therefore eschewing appropriately is the norm to be considered and practiced by a judge. Quoting Justice R.C.Lahoti "I wonder why not 'Principles of Judicial Ethics' and why the 'Canons of Judicial Ethics'", it was explained that, judicial ethics are a set of practices and not mere principles which are theoretical and axiomatic. Unlike principles which embellish the value of a book, judicial ethics are practicing, evolving and universally agreed upon canons. They are perfected by the principles and put to practice or action.

The guiding documents referred during the course of discussions were:

1. Restatement of Values of Judicial Life adopted by the Chief Justices' Conference of India, 1999
2. The Bangalore Principles of Judicial Conduct, 2002
3. The Oath of a Judge as contained in the Third Schedule of the Constitution of India

While discussing the standards of judicial behavior, it was unequivocally asserted that the same should be of highest order. Since, the entire institution is the guardian and *sentinel in the qui vive*,

they are the custodian of the "public trust". The Supreme Court in *K. Veeraswami v. Union of India*, (1991) 3 SCC 655 was cited. The Court held that:

> We consider that the society's demand for honesty in a judge is exacting and absolute. The standards of judicial behaviour, both on and off the bench, are normally extremely high. For a Judge to deviate from such standards of honesty and impartiality is to betray the trust reposed in him. No excuse or no legal relativity can condone such betrayal. From the standpoint of justice the size of the bribe or scope of corruption cannot be the scale for measuring a Judge's dishonour. A single dishonest Judge not only dishonours himself and disgraces his office but jeopardizes the integrity of the entire judicial system.

While drawing parallels with executive and legislature, it was underscored that the judicial conduct of a judge may not be considered at parity, it has to be much above the other two. As had been time and again proclaimed by the apex court of India in its myriad judgments including *K. Veeraswami v. Union of India*, (1991) 3 SCC 655. The court thus held:

> A judicial scandal has always been regarded as far more deplorable than a scandal involving either the executive or a member of the legislature. The slightest hint of irregularity or impropriety in the court is a cause for great anxiety and alarm. "A legislator or an administrator may be found guilty of corruption without apparently endangering the foundation of the State. But a Judge must keep himself absolutely above suspicion" to preserve the impartiality and independence of the judiciary and to have the public confidence thereof.

An elaborate discussion on the six values of judicial ethics i.e. Judicial Independence; Impartiality; Integrity; Propriety; Equality; and Competence & Diligence, formed part of the discourse. The session culminated with an open floor discussion on the tactics of dealing with media.

Session 5: Judging Skills: Art, Craft and Science of Drafting Judgments

Speaker: Justice Sunil Ambwani and Justice U. C. Dyani

The session commenced with a famous quote "judges sit in trial but they stand on trial". The difference between "reasons" and "reasoning" was discerned. It was explained that while "reason" is explanatory in nature, "reasoning" is the instance of using the "reason" – say for arriving at a conclusion. Essentially "reasons" are material on which the conclusions of the court are based upon or linked to. Reasoning in a judgment is essential as it specifies the material in possession of the court which forms the basis of the decision. The reasoning is also necessary as it provides the aggrieved party with matter to base his appeal and also provides material to enable the appellate court to review the matter in appeal to verify the correctness of the decision of the lower court. It was cited that a judge might take inspiration from the famous poem of Rudyard Kipling "*I Keep Six Honest Serving Men*" wherein The "Six Honest Serving Men" are the open ended questions What, Why, When, How, Where and Who. These enable a judge to get a deep and reasonable understanding of the subject matter, as (s)he sits on judging. It was insisted that utility of "*Six Thinking Hats*" propounded by Edward De Bono to analytically choose an appropriate style of judicial reasoning might be an important tool in deciding a case. The scope and extent of "judicial creativity" in relation to "judicial reasoning" was delved, touching the contours of "continuous mandamus", "Court monitored investigations", and "Sealed-cover procedures". Order 20 Rule 5

of the CPC was referred which specifies how a judgment is to be written. It was suggested that judge should frame the issues himself and then stick to arguments on the same. (S)he should avoid entertaining anything beyond such issues, as the practice ensures control over the matter and lays down the ball park for the *lis.*

The guidelines issued by the Supreme Court in *Joint Commissioner of Income Tax, Surat v. Saheli Leasing and Industries, Ltd.* (2010) 6 SCC 384. The apex court held that a judgment cannot be written in a casual and cryptic manner. It went on to state that "brevity" cannot substitute "clarity". The apex court laid down an inclusive list of guiding principles for writing a judgment. It illustrated as under:

> We, therefore, before proceeding to decide the matter on merits, once again would like to reiterate few guidelines for the courts, while writing orders and judgments to follow the same. These guidelines are only illustrative in nature, not exhaustive and can further be elaborated looking to the need and requirement of a given case:
>
> a) It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; it should have a co-relation with the applicable law and facts. The *ratio decidendi* should be clearly spelt out from the judgment/order.
> b) After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion.
> c) The ultimate finished judgment/order should have sustained chronology, regard being had to the concept that it has readable, continued interest and one does not feel like parting or leaving it in the midway. To elaborate, it should have flow and perfect sequence of events, which would continue to generate interest in the reader.
> d) Appropriate care should be taken not to load it with all legal knowledge on the subject as citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgments should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments have been considered, should be mentioned. While writing a judgment, psychology of the reader has also to be borne in mind, for the perception on that score is imperative.
> e) Language should not be rhetoric and should not reflect a contrived effort on the part of the author.
> f) After arguments are concluded, an endeavour should be made to pronounce the judgment at the earliest and in any case not beyond a period of three months. Keeping it pending for a long time sends a wrong signal to the litigants and the society.
> g) It should be avoided to give instances, which are likely to cause public agitation or to a particular society. Nothing should be reflected in the same which may hurt the feelings or emotions of any individual or society.

> The aforesaid are some of the guidelines which are required to be kept in mind while writing judgments. In fact, we are only reiterating what has already been said in several judgments of this Court.

Yet another leading case by the apex court i.e. *Anil Rai v. State of Bihar*, (2001) 7 SCC 318 was referred. In this case it was stated that the hiatus between conclusion of arguments and judgment delivery severely implicates upon public trust on justice delivery system. The apex court directing expeditious delivery of judgments issued yet another set of guidelines. Subsection 1 of Section 353 of CrPC was referred wherein, judgment in every trial in any criminal court of original jurisdiction, shall be pronounced in open court immediately after the conclusion of the trial or on some subsequent time for which due notice shall be given to the parties or their pleaders. The apex Court interpreted the words "some subsequent time" to be not in any case be more than six weeks. The court held:

> The intention of the legislature regarding pronouncement of judgments can be inferred from the provisions of the Code of Criminal Procedure. Sub-section (1) of Section 353 of the Code provides that the judgment in every trial in any criminal court of original jurisdiction, shall be pronounced in open court immediately after the conclusion of the trial or on some subsequent time for which due notice shall be given to the parties or their pleaders. The words "some subsequent time" mentioned in Section 353 contemplate the passing of the judgment without undue delay, as delay in the pronouncement of judgment is opposed to the principle of law. Such subsequent time can at the most be stretched to a period of six weeks and not beyond that time in any case. The pronouncement of judgments in the civil case should not be permitted to go beyond two months.

The guideline furnished by the apex court enumerated under five basic points were discussed. Which were:

> Under the prevalent circumstances in some of the High Courts, I feel it appropriate to provide some guidelines regarding the pronouncement of judgments which, I am sure, shall be followed by all concerned, being the mandate of this Court. Such guidelines, as for the present, are as under:
>
> i. The Chief Justices of the High Courts may issue appropriate directions to the Registry that in a case where the judgment is reserved and is pronounced later, a column be added in the judgment where, on the first page, after the cause-title, date of reserving the judgment and date of pronouncing it be separately mentioned by the Court Officer concerned.
> ii. That Chief Justices of the High Courts, on their administrative side, should direct the Court Officers/Readers of the various Benches in the High Courts to furnish every month the list of cases in the matters where the judgments reserved are not pronounced within the period of that month.

iii. On noticing that after conclusion of the arguments the judgment is not pronounced within a period of two months, the Chief Justice concerned shall draw the attention of the Bench concerned to the pending matter. The Chief Justice may also see the desirability of circulating the statement of such cases in which the judgments have not been pronounced within a period of six weeks from the date of conclusion of the arguments amongst the Judges of the High Court for their information. Such communication be conveyed as confidential and in a sealed cover.

iv. Where a judgment is not pronounced within three months from the date of reserving it, any of the parties in the case is permitted to file an application in the High Court with a prayer for early judgment. Such application, as and when filed, shall be listed before the Bench concerned within two days excluding the intervening holidays.

v. If the judgment, for any reason, is not pronounced within a period of six months, any of the parties of the said lis shall be entitled to move an application before the Chief Justice of the High Court with a prayer to withdraw the said case and to make it over to any other Bench for fresh arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as he deems fit in the circumstances.

It was iterated that a judge while judging must realize to his fullest conscience that justice must flow from his/her court. It must flow reasonably and without any delay. But, the stream of justice has banks on both its sides delimiting and controlling the flow. Therefore, a judge must ensure that while judging, (s)he has to ascertain that the entire process should not be poly-directional, distorted, incoherent, unregulated, biased, not measurable or unregulated.

Session 6 –Ratio of a Precedent

Speaker: Justice Sunil Ambwani and Justice U. C. Dyani

Session was flagged-off with a brief explanation to the meanings and application of the constituent words of the captioned session. While explaining "precedent" Salmond's definition was considered. As per Salmon "a judicial decision which contains in itself a legal authoritative element which is described as *ratio decidendi*." Explaining what is a binding precedent it was explained that, the enunciation of the reason or principle upon which a question before a court has been decided is alone binding as a precedent. On the question that if the decisions of superior courts are not regarded as a source of law, but merely as optimum reference material, useful to serve as guidelines for deciding cases, then what is the need to have precedents? It was clarified that the object of following binding precedents is to ensure broad consistency and uniformity in deciding questions of law. Also, "*Ratio Decidendi*" was explained by referring to *Krishena Kumar v. Union of India*, (1990) 4 SCC 207. Elucidating, an operation of the principle in the Indian context, its application was examined under Article 141 of the Constitution of India. As the Article says that law declared by the Supreme Court to be binding on all courts subordinate to it within the territory of India. A *statute pari materia* was drawn with the Article 111 of the Bangladeshi Constitution. The Bangladesh Constitution provides that the law declared by the Appellate Division shall be binding

on the High Court Division, and the law declared by either division of the Supreme Court shall be binding on all courts subordinate to it. A general inquiry was posed as to whether "*Obiter Dicta*" is having any binding value? To which, it was asserted that though the doctrine *per se* implies observations of a court not pertaining to the issue in *lis* or generally observed by the court in the course of deciding, however, where Supreme Court considers a specific collateral issue, in detail, though not relevant and evolves a legal principle supported by reasons, in spite of being a *obiter dictum* such observation serves to be a binding precedent to the subordinate judiciary. The reference of *Afcons Infrastructure Ltd v. Cherian Varky Construction*, (2010) 8 SCC 24) was cited for an example, wherein the apex court dealt with Section 89 CPC (infact as an *obiter*) to drive settlement in the principle of procedural aspects of law. The next point examined on the scope of precedent was, what are *not* to be considered precedents in law. An inclusive list was prescribed *viz.* 1) Non-speaking orders of a Constitutional Court; 2) Orders or Appeals pertaining to dismissal of petitions (without citing reasons; owing to being barred by limitation or want of jurisdiction), 3) Judgments based on withdrawal of petitions or dismissing with liberty to file "review" in the court from which the decision arises, 4) Orders or Judgments based on compromise, condonation, settlement, etc.

On how to read a judgment of a superior court, it was cautioned that while judges must rely on the legislations primarily, they should not rely on precedents as gospel truth or Euclid's theorem. The focus of a judge should be to discern the *dictum* in a judgment ignoring the technical or grammatical errors. For a conclusive opinion on the law the judgment must be read in full and not peace-meal. It must be read and understood in context of the issues in *lis* and not otherwise. Dealing with the concept of *Per Incurium* it was elucidated that such a decision of a court means through inadvertence or due to lack of care or due regard to the law or the precedents. It is a decision which fails to notice any statutory provision or binding precedent. However, it was altered that, a lower court or a court of smaller bench may not take liberty to declare any precedent as *per incurium*. It may take a route under Section 113 of CPC in making a reference to High Court instead. Yet another concept having a potential to impact a precedence was discussed as the *Doctine of Sub Silentio*. It was examined under the pretext that judgments rendered *sub silentio* of a point of law, not presented, argued or discussed are not binding and need not be followed.

Session 7 – Principles of Evidence: Appreciation in Civil and Criminal Cases

Speakers: Justice M.L. Tahaliyani and Justice Ashwani Kumar Singh

The session focused on certain key aspects of appreciation of evidence both in civil as well as criminal cases. The law relating to the distinction between the principles of "Ones of Proof" as against "Burden of Proof " was discussed citing *Anil Rishi v. Gurbaksh Singh,* (2006) 5 SCC 558. It was asserted that "The right to begin follows *onus probandi*." The question of onus of proof has greater force, where the question is, which party is to begin? It is a shifting component. It shifts from the person who initiates to the opponent in the event (s)he is able to proof a point in context.

Whereas, in "Burden of Proof" the rules are more rigid and are guided by the Section 101 of the Indian Evidence Act, 1872 (IEA). The Court in *Anil Rishi v. Gurbaksh Singh Case* held:

> There is another aspect of the matter which should be borne in mind. A distinction exists between burden of proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of a case. The question of onus of proof has greater force, where the question is, which party is to begin. Burden of proof is used in three ways: (i) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (ii) to make that of establishing a proposition as against all counter-evidence; and (iii) an indiscriminate use in which it may mean either or both of the others. The elementary rule in Section 101 is inflexible. In terms of Section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same.

Also, *Addagada Raghavamma v. Addagada Chenchamma*, (1964) 2 SCR 933 and R.V.E. *Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple*, (2003) 8 SCC 752 were referred to establish the difference between the two propositions. There is an essential distinction between "burden of proof" and "onus of proof". Whereas the first lies upon a person who has to prove the fact and which never shifts. Onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence. It was asserted that in cases of plea of insanity, the degree of "Burden of Proof" would vary. In case of accused it would be preponderance of probability whereas for prosecution it is mandatory for them to prove beyond reasonable doubt.

The principle of "last seen together theory" in case of a criminal trial was discussed. It was examined with the help of case law as to

1. whether the theory by itself could be considered as conclusive proof
2. whether the "burden of proof" shifts to the accused?

It was explained with the help of decided cases *viz. Ashok v. State of Maharashtra*, (2015) 4 SCC 393; *Trimukh Maroti Kirkan v. State of Maharashtra*, (2006) 10 SCC 681; *Rohtash Kumar v. State of Haryana*, (2013) 14 SCC 434, that the *doctrine of last seen together* shifts the burden of proof onto the accused, requiring him to explain how the incident had occurred. Failure on the part of the accused to furnish any explanation in this regard, would give rise to a very strong presumption against him.

However, *Kanhaiya Lal v. State of Rajasthan*, (2014) 4 SCC 715, was cited to hold that the theory does not ensures conclusive proof. It only would raise at best strong presumption against the accused which if supported with other circumstantial evidences and corroborations might culminate to a conclusive proof. The apex court in *Ashok v. State of Maharashtra* held:

> [T]he rule can be summarised as that the initial burden of proof is on the prosecution to bring sufficient evidence pointing towards guilt of the accused. However, in case of last seen together, the prosecution is exempted to prove exact happening of the incident as the accused himself would have special knowledge of the incident and thus, would have burden of proof as per Section 106 of the Evidence Act. Therefore, last seen together itself is not

a conclusive proof but along with other circumstances surrounding the incident, like relations between the accused and the deceased, enmity between them, previous history of hostility, recovery of weapon from the accused, etc. non-explanation of death of the deceased, may lead to a presumption of guilt.

The concept of "Reverse Burden of Proof" was also delved into. The legislations *viz.* POCSO Act, 2012, PMLA, Customs Act etc. were discussed referring relevant provisions. It was reiterated that it necessary for the prosecution to establish the *prima facie* accusation. The reverse burden does not absolves the prosecution of its primary duty to establish the foundational facts. It was asserted that in criminal cases involving reverse burden the prosecution is required to abide by the standard of proof akin to "preponderance of probability" prior to shifting of the burden to the accused. Scope of Section 106 of IEA was discussed in detail with reference to apex court judgments.

Session 8 – Principles of Evidence: Appreciation in Civil and Criminal Cases

Speaker: Dr. Harold D Çosta

The session focussed on how technology can deceive us, specifically focusing on the challenges and authenticity of electronic evidence. The discussion covered various aspects, including the vulnerability of WhatsApp messages, ownership and governance of the internet, the collection and preservation of electronic evidence, and the admissibility of digital evidence in court. The session highlighted the need for caution and thorough analysis when dealing with electronic evidence to ensure its veracity. On the Authenticity of WhatsApp Messages, it was highlighted that one of the major concerns is whether WhatsApp messages are really end-to-end encrypted, making them susceptible to modification. This raised doubts about the reliability of WhatsApp chats as evidence due to the potential for tampering. The session threw light on the ownership and governance of the Internet wherein it was emphasized that the internet is not owned or governed by a single person or entity. This decentralized nature raises concerns regarding privacy and data protection. The discussion also touched upon the concentration of internet root servers in specific geographic regions, such as the United States, highlighting the need for global participation in governance. The session also reflected upon challenges in the governance of root servers. It was mentioned that privacy is a significant concern in the governance of root servers. Participants emphasized the importance of the right to retrieve data and raised questions about the transparency and accountability of the process. The session included deliberations on internet as a public network wherein it was reiterated that the internet is a public network accessible to anyone. This characteristic raises challenges regarding the authenticity and reliability of information obtained from the internet as evidence.

The session explored the contours of Electronic Evidence and Its Collection. The concept of electronic evidence was introduced, referring to evidence generated through mechanical or electronic processes. The session emphasized the crucial role of proper collection procedures to maintain the integrity of electronic evidence. With regard to legal recognition of Electronic Records, the IT Act 2000, specifically Chapter III on Electronic Governance, was discussed. A mention was made to Section 79A of the IT Act that establishes the role of an examiner of electronic evidence, further emphasizing the importance of expertise in handling electronic evidence. Further, the challenges in WhatsApp chats as Evidence was presented wherein the vulnerability of WhatsApp chats to modification was demonstrated, undermining the reliability of such chats as evidence. Participants expressed the need for caution when relying solely on WhatsApp chats in legal proceedings. The challenges in documenting and analyzing electronic

evidence were also pointed out. Various forms of deception, such as SMS spoofing, caller ID spoofing, and email spoofing, were discussed. The session emphasized the need to analyze electronic evidence thoroughly, especially when dealing with documents or calls produced as evidence.

The importance of pre-assessment investigations and the preservation of electronic evidence were highlighted. The need for maintaining the chain of custody, calculating hash values, and ensuring the integrity of data during seizure was stressed upon. The session touched upon the admissibility of digital evidence in court. The requirement of a Section 65B Certificate under the Information and Technology Act 2000 was mentioned, which establishes the authenticity of electronic evidence. It was underscored that the secondary evidence could be made admissible as primary evidence with the help of this certificate. The role of expert opinions in assessing electronic evidence, as outlined in Section 79A of the IT Act, was discussed. The case of the 'Pramod Mahajan Murder Trial' was cited as an example, emphasizing the significance of expert analysis in electronic evidence. With regard to ensuring authenticity of emails, the session highlighted the importance of affixing email headers in court to establish the authenticity of each email presented as evidence.

Session 9 – Forensic Evidence in Civil and Criminal Trials

Speaker: Dr. S.L. Vaya

The session explored the functioning of forensic evidence in the Indian context with a comprehensive overview. The session covered various aspects, including the evolution of forensic science, the importance of preserving crime scenes, advancements in forensic technology, and the application of behavioral sciences in forensic analysis. The discussions emphasized the significance of integrating scientific methodologies and behavioral analysis to establish a comprehensive understanding of criminal cases. The session highlighted the historical development of forensic science in India, which initially began with fundamental basic sciences. It was pointed out that over time, forensic science has evolved, encompassing fields such as toxicology, narcotics, handwriting analysis, fingerprint identification systems, DNA analysis, and forensic psychology.

The session dwelt upon the importance of preserving crime scenes wherein the crucial role of promptly quarantining crime scenes to ensure the integrity and preservation of evidence was stressed upon. It was noted that evidence collected at the crime scene must remain untampered and in its purest form to maintain its reliability and admissibility in court. The discussion focused on how technology has advanced in forensic science, leading to the creation of computer forensic labs, integrated ballistic identification systems, DNA labs, and fingerprinting techniques. These advancements have significantly enhanced the speed and accuracy of evidence collection, preservation, and analysis. The session included deliberation on application of behavioral sciences in forensic analysis. The session explored the intersection of forensic science and behavioral sciences. Topics such as forensic hypnosis, forensic psychology, narco-analysis, brain fingerprinting, and suspect detention systems were discussed. It was emphasized that understanding human behavior, social conditioning, and perception is crucial for establishing a connection between the perpetrator, victim, and the crime scene.

Locard's Forensic Science Principle was explained at length. The principle of exchange, as formulated by Locard, was presented. It states that every action leaves behind traces of evidence, which can lead to the identification of individuals through DNA analysis. The importance of collecting and analyzing these trace elements to establish connections in criminal cases was emphasized. The session also touched upon the aspect of behavioral forensic cue wherein the significance of analyzing behavioral cues in forensic investigations was highlighted. It was noted that feelings at the mental level and experiences at the physical level both play a vital role in establishing criminal intent (*actus reus*) and criminal mind (*mens rea*). Understanding psycho-social predisposing factors, victim vulnerability, sensory and motor experiences, and the impact of behavioral technologies on eyewitness testimony were also discussed.

The concept of therapeutic jurisprudence, which aims to restore justice and rehabilitate offenders, was explored. The session discussed the transition from viewing individuals as predators to understanding their actions as a result of various psychological and environmental factors. The plasticity of the brain and its potential impact on DNA were also mentioned. The session delved into the understanding of intentions and motives through the lens of behavioral science. Lastly it was mentioned that the blueprint of intentions, shaped by psychological and environmental factors, plays a crucial role in forensic analysis and establishing criminal intent.

Session 10: Criminal Justice Administration and Human rights

Speaker: Dr. Justice S.S. Phansalkar Joshi and Dr. Jyoti Dogra Sood

The key discussions held in the session focused on the attributes and importance of fair trial, as well as the various stages at which fair trial considerations come into play. Relevant provisions from international conventions and landmark judgments that emphasize the significance of fair trial in the justice system were highlighted. The definition and scope of fair trial was presented wherein it was mentioned that fair trial is defined as a trial conducted fairly, justly, and with procedural regularity by an impartial judge. It encompasses multiple aspects, including an impartial judge, fair prosecutor, and an atmosphere of judicial calm. Fair trial considerations were discussed at various stages of the legal process, including investigation, pre-trial, trial, and post-trial. It was emphasized that fairness should be maintained throughout these stages to uphold the principles of justice. The Universal Declaration of Human Rights (UDHR) and the International Convention on Civil and Political Rights (ICCPR) were referenced to highlight the fundamental human rights that underpin fair trial principles. These rights include the right to life, liberty, security, equality, and an effective remedy, as well as the right to a fair and public hearing. In this regard Articles 3, 4, 5, 6, 8, 9, 10, 11(1), 11(2) of the UDHR and Articles 6(4), 6(5), 9(2), 9(3), 9(5), 10(1) and 10(2) of the ICCPR were mentioned.

Several attributes of fair trial were identified during the discussions, including the presumption of innocence, burden of proof, principles of natural justice, right to remain silent, protection against self-incrimination, right against double jeopardy, and the right to legal assistance. The session emphasized on ensuring procedural fairness including aspects such as ensuring the accused is heard, providing the accused copies of relevant documents, conducting the trial in an open court, allowing cross-examination of prosecution witnesses, and delivering judgments with proper analysis and reasoning were emphasized as crucial elements of fair trial. An emphasis was drawn on need for speedy trial and fair trial wherein the relationship between speedy trial and fair trial

was discussed, highlighting that while speedy trial is important, it should not compromise the principles of fairness. Both aspects are essential, but fairness must be prioritized. The importance of fairness even before the formal charging of the accused was emphasized upon. Pre-charge hearings, precautions in recording confessional statements, use of police-recorded statements for contradiction, and the right to legal representation during remand and bail stages were highlighted as key considerations.

Various landmark judgments were referenced to underscore the significance of fair trial. The judgments highlighted that fair trial is a right not only for the accused but also for victims and society as a whole. The role of witnesses as the eyes and ears of justice was emphasized. Following judgments were mentioned including *Zahira Shaikh v/s State of Gujrat,* (2006) 3 SCC 374 wherein it was held that "each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as it is to the victim and to society"; *Himanshu Singh Sabharwal v. State of M.P. and others,* (2008) 4 SCR 783 [Witnesses are the eyes and ears of justice. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralyzed, and it no longer can constitute a fair trial.]; *P. Sanjeev Rao v/s State of A.P.*, (2012) 7, SCC 56 ["Grant of fairest opportunity to the accused to prove his innocence is the object of every fair trial."]; and *A.G. V/s Shiv kumar Yadav*, (2016) 2, SCC 402 ["Fairness of trial has to be seen not only from the point of view of the accused but also from the point of view of the victim and society. In the name of fair trial the system cannot be held to ransom."]

The discussions focused on two crucial components: fair and impartial investigation and witness protection. The importance of conducting a fair and impartial investigation was emphasized. A thorough and unbiased investigation is essential to gather evidence and establish the truth. The need for police reform, including the separation of investigation and law and order functions, was discussed to enhance the fairness of the investigation process. The significance of witness protection in ensuring a fair trial was highlighted wherein it was mentioned that witnesses play a crucial role in the judicial process, and their safety and security must be ensured to enable them to testify without fear. The Witness Protection Scheme of 2018, which provides different categories of protection and covers the pre, during, and post-trial phases, was opined as a crucial development in this area.

It was emphasized that fair trial is a collective responsibility involving multiple stakeholders. Judges, prosecutors, defense lawyers, law enforcement agencies, and the judiciary all play vital roles in upholding the principles of fair trial. Each stakeholder has a duty to ensure that justice is served and fairness is maintained throughout the legal process. Para 600 of the judgment in the case *Mohammed Ajmal Mohammad Amir Kasab v. State of Maharashtra*, AIR 2012 SC 3565, was highlighted. The discussions highlighted the adversarial system of justice, where the prosecution and defense present their cases before an impartial judge. The role of the judge in evaluating evidence and forming an opinion based on the presented facts was emphasized.

Session 11: Judge as the Master of the Court: Court & Case Management

Speaker: Justice R.C. Chavan

The previous session's discussion was continued in this session wherein participants discussed some judgments on compensation, restoration and rehabilitation of victims and falsely accused persom including *S. Nambi Narayanan v. Siby Mathew*, (2015) 14 SCC 664; *Madan Mohan Singh*

v. Rajni Kant, (2010) 9 SCC 209 and *Krishnalal Chawla v. State of U.P.* (2021) 5 SCC 435 [falsely accused person not only suffers monetary damages but is exposed to disrepute and stigma from society.]. Various judgments on Investigation were also mentioned including *State of Gujarat v. Kishanbhai*, (2014) 5 SCC 108 and *Adambhai Suleman bhai Ajmeri v. State of Gujarat*, (2014) 7 SCC 716.

On court and case management the discussions focused on the importance of judges being well-prepared by reading case briefs, the art of case management, the significance of analyzing evidence, and the role of judges as leaders. The session also addressed issues pertaining to addressing the rights of an accused and the right to confront a witness. It was emphasized that judges should thoroughly read case briefs before coming to court. This preparation enhances their confidence and ensures they are well-prepared to handle the proceedings effectively. Case management was described as an art that involves effectively handling a case. This includes managing the courtroom, addressing adverse situations, and ensuring smooth proceedings. It was noted that posing inconvenient or challenging questions to witnesses can significantly impact the outcome of a case. Judges and legal professionals should carefully consider the potential consequences of their questions. It was opined that judges are master of their courts and as leaders within their courtroom, they are expected to maintain impartiality and be less susceptible to corruption. It was emphasized that their role in managing the proceedings and upholding the integrity of the judicial process is crucial.

The significance of analyzing evidence was highlighted, emphasizing the need for judges to carefully examine and evaluate the evidence presented before them. It was pointed out that this ensures a fair and accurate understanding of the case.

A reference was made to judgement in *Jayendra Vishnu Thakur v. State of Maharashtra*, (2009) 7 SCC 104 highlighting paragraphs 18 and 19 which discuss the right of an accused to watch prosecution witnesses and the right to confront a witness. It was mentioned that while the United States Constitution explicitly provides for these rights, they are considered statutory rights in India, not yet recognized as fundamental rights under Article 21 of the Indian Constitution.

Session 12: Re-engineering Judicial Processes through ICT

Speaker: Justice R.C. Chavan and Justice Ram Mohan Reddy

The session commenced by highlighting the challenges faced by India's e-courts project. It was noted that the E-Courts project in India is facing challenges in delivering tangible results. The government expects measurable outcomes from the project, which necessitates addressing various implementation hurdles and ensuring effective utilization of Information and Communication Technology (ICT) solutions in the judicial system. It was emphasized that the project's success would depend on achieving these desired outcomes, such as improved case management, reduced backlog, and enhanced access to justice.

Need for maintaining consistency in procedure and process was emphasized upon wherein it was mentioned that while implementing ICT, the procedure and process of the judicial system need not

undergo significant changes. It was highlighted that it is crucial to strike a balance between incorporating technology for efficiency and maintaining the fundamental aspects of the legal process, ensuring the integrity and fairness of judicial proceedings. The discussions also highlighted the potential of utilizing court data to make the judicial process more efficient. It was underscored that by effectively harnessing data, such as case information, rulings, and precedents, courts can streamline their operations, improve decision-making, and enhance access to justice. Analyzing court data can provide valuable insights for optimizing judicial processes and addressing inefficiencies.

The session explored the potential of ICT in judicial proceedings. The session emphasized the importance of ICT in legal research and data retrieval, particularly in addressing the challenges posed by large cases and pending cases that affect the effectiveness of the judiciary. The need for re-engineering processes with inputs from the district judiciary was highlighted. The session also stressed the universal truth of the court system's existence, wherein the litigant's interest is supreme. Article 21 of the Indian Constitution, which guarantees access to justice, was considered a key factor in promoting ICT adoption. The need for uniformity of processes in India's unified judiciary system was also discussed. The session underscored the necessity of a national policy for ICT enablement in the judiciary. It mentioned the creation of the E-Committee in 2004, which proposed uniformity in the use of software, automation of workflow management, and the establishment of foundational digital infrastructure. The session highlighted the importance of providing designated services to litigants, lawyers, and the judiciary through universal computerization. Paperless courts, disaster management systems, change management, and synchronization of software across the country were also emphasized.

The session outlined the three phases of the eCourts project, highlighting their objectives and achievements as – Phase I of the eCourts project focused on integrated mission mode projects for the District and Subordinate Courts. Key features included the use of UBUNTU open software for judges, deployment of the CIS system, video conferencing facilities, judicial service centers, and the National Judicial Data Grid (NJDG). Process re-engineering committees were also set up at the High Court, district court, and subordinate court levels. Phase II aimed to enhance computer systems and infrastructure, establish judicial service centers and central filing centers, and improve legal service infrastructure such as Lok Adalats and cause lists. The installation of information kiosks at court complexes was also part of Phase II. It was highlighted that the successful implementation of Phase II brought significant changes to the administration of justice through technology adoption. Phase III of the E-Courts project envisions incorporating Artificial Intelligence (AI) in court processes, leveraging macro data for decision-making, strengthening court ICT in response to the COVID-19 pandemic, and fostering an enabling ecosystem for digital courts.

The session acknowledged several challenges faced in eCourts projects, including a lack of infrastructure at the base level, connectivity issues, the need to hire additional staff, and the underutilization of technology's full potential in the judicial system. The core values of digital courts were identified as trust, empathy, sustainability, and transparency, highlighting the importance of upholding these principles while implementing ICT in the judiciary.

Session 13: Judiciary and Media: Need for Balance

Speaker: Justice Ved Prakash Sharma and Dr. Shashikala Gurpur

The session focused on the balance between responsible media and press *versus* the sensitization of the judiciary. Participants discussed the influential power of the media and the need for judges to exercise restraint in allowing their names to be published or projected by the media. The impact of sensational news chasing, the dissemination of news and case outcomes, sting operations, sub judice matters, and the freedom of the press were also highlighted. The session recognized the conflicting constitutional values involved in the relationship between the judiciary and the media and the challenges posed by the age of information. The discussion emphasized that the judiciary and media relationship involves conflicting constitutional values. While judicial independence is a constitutional value, the right to speech and expression is also enshrined under the constitution. Striking a balance between these rights is crucial for maintaining a healthy democracy and judiciary.

It was opined that the advent of digital media, press, and social media has led to a high level of intrusion by the media into people's lives. The session highlighted the need to address this intrusion and ensure that the media acts responsibly in its coverage. It was mentioned that media intrusion can have a significant impact on the fairness of a trial. The investigating agencies can be swayed by media reports, and sensationalism for raising TRP can distort the perception of a case. It was opined that protecting the rights of the accused is essential to maintain the fairness of the trial process. The session involved discussion on the issue of gag orders by referencing the Sahara India Case wherein the Apex Court laid down certain principles against gag orders.

Further, it was mentioned that the CrPC and certain other laws lists exception to open trials in certain cases, particularly those related to crimes against women and children. The judgment in the *Romesh Thappar v. State of Madras*, 1950 SCC 436 case was highlighted on the functions of the media as a tool for providing information, surveillance on administration, platform for discussion, and entertainment. The regulation of media by big establishments and the question of objective news reporting were emphasized during the session. A concern was raised about selective information, disinformation, and misinformation spread by the media, and the need for media accountability. The session recognized that media can manipulate public opinion to protect certain establishments. The importance of media acting as a watchdog rather than a judge, and the need for clear guidelines from the courts on what can and cannot be published was stressed upon.

It was opined that there is a need to bridge the gap between media and judiciary through self-regulation by the media and clear guidelines set by the courts. The role of judges in ensuring clarity in their judgments to enhance transparency and accountability was highlighted. The potential benefits of live streaming court proceedings to ensure transparency was also mentioned. Article 19 (1) of the constitution was also highlighted and how it was debated in the Constituent Assembly was also reflected upon wherein it was argued that the rights of citizen is of utmost importance

over media rights. It was mentioned that the common aspect between judiciary and media is to operate in a democracy. A mention was made to Mr. Soli Sorabjee's quote stating that the media must play a balanced role. The session discussed the different phases of media in a democracy, emphasizing its crucial role in providing information and being a watchdog for the society. Participants deliberated on the question of whether newspapers publish objective news. The session highlighted the importance of accurate and unbiased reporting in ensuring the media's credibility.

The role of media in the judiciary, emphasizing the need for judgment impact analysis was also dwelt upon during the session. It was noted that media coverage can influence public perception of court decisions, and newspapers should not be considered conclusive proof for a judgment. The importance of media being a watchdog rather than acting as a judge was emphasized. The session highlighted the impact of media coverage on judges as individuals. It was noted that media interference in trials can negatively affect the administration of justice and compromise fair proceedings. The Uma Khurana case on sting operations and unethical journalistic practices was cited as an example. The growing influence of social media on the judiciary was also pointed out. The case of *K.M. Nanavati v. State of Maharashtra*, AIR 1962 SC 605 was mentioned, emphasizing how accused-centric coverage, particularly of influential figures, can create sympathy for the accused. The session also included deliberations on the importance of the public's right to know and their participation in judicial processes. The O.J. Simpson trial and the Harshad Mehta Scam of 1992 were cited as notable cases that captured public attention and highlighted the role of media in disseminating information.

It was suggested that there is a need for self-regulation within the media industry and to frame clear guidelines by courts on what can and cannot be published. The session also touched upon the concept of judiciary-embedded journalism and the decline of investigative journalism in current times.

Session 14: Landmark Judgments: Celebrating Decadal Masterpieces

Speaker: Justice Ved Prakash Sharma and Prof. V.K. Dixit

The session commenced with a focus on the judgment of the Apex Court in the case of *Anoop Barawal v. Union of India*, 2023 SCC Online SC 216 wherein the significance of democratic elections in ensuring fair democracy was highlighted. The discussions revolved around various constitutional aspects, including the interpretation of Article 324, the role of the Election Commission, the appointment of key positions, the principle of constitutional silence, and the concept of constitutional morality. Additionally, the session touched upon judgments related to the introduction of NOTA (None of the above) option and matters concerning the selection, appointment, and service conditions of members of the judiciary.

The discussions highlighted the void in Article 324 regarding qualifications and eligibility criteria, which creates a vacuum. The expansion of powers and functions of the Election Commission was

emphasized in the context of its role in ensuring free and fair elections, which are vital for sustaining constitutional democracy. A comparison was made between the appointment process of the Director of the Enforcement Directorate, who is appointed by the Chief Justice of India and the Council of Ministers, and the appointment of the Election Commissioners, which was referred mentioning the judgment in *T.N. Seshan, Chief Election Commissioner of India v. Union of India*. The case addressed the constitutional validity of the appointment of election commissioners and the ordinances and acts related to their appointments.

It was underscored that expressing an opinion must be based on informed judgment. The concept of constitutional morality was briefly discussed, highlighting its relevance in judicial decisions and constitutional interpretation. The significance of Article 326 of the Constitution, which guarantees universal adult franchise, was emphasized. The discussions acknowledged the importance of public participation in the electoral process for the strength of democracy. The judgment in *Anoop Barawal* case laid down certain key points which were summarized in the discussion as (a.) The future appointment of the Election Commission shall be made by a committee consisting of the Prime Minister, the leader of the opposition, and the Chief Justice of India or their nominees until a law is enacted by Parliament on the subject; and (b.) Establishment of a permanent Secretariat for the Election Commission, as recommended by the majority judgment.

The case of *PUCL v. Union of India*, (2003) 4 SCC 399 was referenced, which introduced the concept of NOTA option. It was highlighted that NOTA was seen as a means to guarantee secrecy while casting a negative or neutral vote, increasing public participation, and empowering voters to register their discontent. The apex Court opined that NOTA would empower the people, thereby accelerating effective political participation, since people could abstain and register their discontent (with the low quality of candidates) without fear of reprisal. It was believed that NOTA would compel parties to field better candidates, thereby improving the quality of candidates and the overall election process.

The discussion also reflected upon selection and appointment of District Judiciary wherein the case of *Malik Mazhar Sultan & Anr v. U.P. Public Service Commission*, (2008) 17 SCC 703 was mentioned, focusing on matters related to the selection and appointment of members of the district judiciary. The case of *Justice Deoki Nandan Agarwala v. Union of India*, (1999) 4 SCC 346 was referred which addressed the question of whether the salaries of members of the judiciary, specifically those in the High Court and Supreme Court, are taxable or not.

Lastly, the case of *All India Judges' Assn. (3) v. Union of India*, (2002) 4 SCC 247 was discussed, which dealt with the service conditions of the District Judiciary.