

National Judicial Academy



TRAINING PROGRAMME FOR JUDGES OF BANGLADESH AND FIJI

[FOR HIGH COURT JUDGES, SENIOR ASSISTANT JUDGES, ASSISTANT JUDGES, AND
MAGISTRATES]

(SE-05)

11th January – 18th January, 2019

Submitted by-

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REPORT

The National Judicial Academy, Bhopal organized an eight day training programme titled “Seminar for Foreign Judges (Bangladesh and Fiji)” starting from 11th January, 2019 to 18th January, 2019. It was the seventh seminar organized for the judges of Bangladesh and the 1st seminar organized for the judges of Fiji. The academic programme was divided into 14 sessions spread over a period of five days. The participating judges from Bangladesh and Fiji comprised a mixed group of judges including High Court Judges, Senior Judicial Magistrates, Judicial Magistrates, Members of Law Commission, etc.

The programme involved deliberations on the emerging issues in the field of Constitutional Law of India, the structure and jurisdiction of the Indian Judiciary, the Constitutional Vision of Justice, elements of judicial behavior, the art, craft and science of drafting judgments, principles of evidence, human rights etc. Efforts were made to find a common ground in the constitutional jurisprudence of different countries and to share the ‘best practices.’ The programme also involved visits of the participants to Sanchi, Taj-ul-Masajid, State Museum, Tribal Museum and AIIMS, Bhopal.

LIST OF RESOURCE PERSONS

1.	Hon’ble Justice S.G. Gokani
2.	Mr. R. Venkataramani
3.	Hon’ble Justice Joymalya Bagchi
4.	Hon’ble Justice G.S. Kulkarni
5.	Hon’ble Justice Atul Sreedharan
6.	Hon’ble Justice B.D. Ahmed
7.	Hon’ble Justice A.M. Thipsay
8.	Dr. (Ms.) Jayanthi Yadav
9.	Hon’ble Justice V.P. Sharma
10.	Hon’ble Justice Sunil Ambwani
11.	Prof. V.K. Dixit
12.	Prof. D.S. Ukey
13.	Prof. D.P. Verma

A brief overview of the Sessions scheduled for the training programme is as under:

Day 1

- Phase-I of Training -- Arrival at Bhopal

Day 2

- Session 1- Overview and Architecture of the Indian Constitutional Arrangement.
- Session 2- Indian Judiciary: Organizational Structure and Jurisdiction.
- Session 3- Goals, Role and Mission of Courts: Constitutional Vision of Justice.

Day 3

- Session 4- Elements of Judicial Behaviour: Ethics, Neutrality & Professionalism.
- Session 5- Judging Skills: Art, Craft and Science of drafting judgments
- Session 6- Judge, Master of the Court: Court & Case Management

Day 4

- Visit to Sanchi & Taj-ul-Masajid

Day 5

- Session 7- Principles of Evidence: Appreciation in Civil and Criminal Cases; Presumptions- Onus & Burden of Proof
- Session 8- Electronic Evidence: New Horizons: Collection, Preservation & Appreciation
- Session 9- Forensic Evidence: Appreciation in Civil and Criminal Trials; DNA profiling
- Visit to AIIMS, Bhopal

Day 6

- Session 10- Human Rights: Criminal Justice Administration; Fair and Impartial Investigation
- Session 11- ICT and E-Judiciary: Indian Perspective

Day 7

- Session 12- Identification of Ratio in a Precedent
- Session 13- Landmark Judgments in India
- Session 14- Landmark Judgments in India

Day 8

- Phase-II of Training -- Departure to Rajasthan State Judicial Academy, Jodhpur.

Day 2

Session 1

Overview and Architecture of the Indian Constitutional Arrangement

Speakers: Justice S.G. Gokani and Mr. R. Venkataramani

Hon'ble Additional Director NJA set the programme in motion by welcoming the Judges from Bangladesh and Fiji to India and by emphasizing that the programme schedule is the outcome of consistent deliberations between the Indian Government, the Government of Bangladesh, Government of Fiji and National Judicial Academy, Bhopal. Thereafter, the crowd was addressed by *Justice S.G. Gokani* who called NJA a 'seat of learning' which reminds the judges that they will remain students of law for life.

The session began with the discussion on the framing of the Constitution of India, wherein the first speaker, *Justice S.G. Gokani*, briefly discussed the chronological events that lead to the drafting of the Constitution and the international influence on the supreme law of the land. Quoting Dr. B.R. Ambedkar, the speaker emphasized on the significance of the Preamble of the Constitution and remarked how the objectives of *liberty, equality and fraternity* envisaged in the Preamble are mutually dependent and cannot be divorced from one another.

In order to make the session interactive, the speaker posed a simple question to the gathering, inviting their opinions on how they think this programme would benefit them. After kindling the minds of the participants and entertaining responses, the Speaker enumerated numerous Supreme Court judgments where reference has been made to the legal and justice administration system of various countries. The speaker emphatically remarked that justice cannot be limited to one country. It has to be imbibed & internalized internationally.

Further, with reference to the Preamble of Indian Constitution, the speaker discussed the following case laws:

1. *S.R. Bommai v. Union of India (1994) 3 SCC 1*
2. *Sajjan Singh v. State of Rajasthan AIR 1965 SC 845*
3. *Keshavanand Bharati v. State of Kerala (1973) 4 SCC 225*

The speaker also discussed the emergence of public interest litigation in India, its definition, causes of evolution and significance with respect to Fundamental Rights guaranteed under Part III of the Constitution. To accentuate the importance of legal aid in administration of justice, the speaker listed the following provisions and case laws that has endeavored to reduce the gulf between the haves and the have-nots:

1. Article 39A of the Constitution of India provides for free legal aid
2. The Legal Services Authority Act, 1987 enacted by the Parliament to ensure access to justice.
3. *Sheela Barse v. Union of India (1986) 3 SCC 596*
4. *Hussainara Khatoon v. State of Bihar (1980) 1 SCC 98*
5. *Khatri v. State (NCT of Delhi) (1983) 2 SCC 266*

The speaker elaborately discussed the doctrine of basic structure and the doctrine of separation of powers, and cited instances where the Supreme Court had engaged in interstitial law making. In this context, the speaker comprehensively unfolded the decision of the Supreme Court in the path breaking judgment of *Vishakha v. State of Rajasthan (1997) 6 SCC 241*

The second speaker, *Mr. R. Venkataramani*, invigorated the gathering with his analysis of why such a training programme was designed for the participants and what is its significance. Strolling through the constitutional history of Europe, the speaker remarked that for humanity generally, there are some universal principles that are unalterable by arbitrary exercise of power and are not threatened or destroyed by the rich historical evolution of different countries. These architectural principles give the idea of the Constitution that no country can escape. Some of these principles are rule of law, democracy, fundamental freedoms, justice, equality etc. that people tend to carry with themselves as they migrate. However, in order to ensure zero divergence and regulate not just government affairs but also private transactions, a codified law was required that would provide for the right to elect the government and for rights against the government. These principles are the result of collective human experiences from World Wars and the framing of the Universal Declaration of Human Rights (1948). Without these principles, the Constitution is reduced to a mere skeleton lacking vitality and therefore, each country strives to entrench these universal principles. India has adopted some of these principles as the basic structure of its Constitution in *Keshavanand Bharati v. State of Kerala (1973) 4 SCC 225*.

Though the Constituent Assembly was sanguine about the constitutional future of the nation, it was soon realized that the Constitution is an organic document that has to evolve with time to keep pace with the dynamic changes in the society. This evolution could only be achieved by a thorough reading and peaceful working of the Constitution, rather than merely having it in black and white.

Another important observation of the speaker was with regard to the process of making of the Constitution. The speaker emphasized that the process adopted for framing of the Constitution adds to its endurance and strength. Explaining this argument, the speaker stated that unlike Bangladesh, in India, there has been no attempt by any external force to overthrow the Constitution. This is because the doctrine of basic structure has been implanted in the psyche of the people and the various institutions, which commands respect to the principles underlying the Constitution. Further, countries like France and Malaysia, did not have an orderly constituent assembly where people could have deliberated peacefully and extensively. In Malaysia and other colonized countries, the British formed the Constitution Commission that drafted the Constitution. This exercise proved futile as the Constitution failed to take into consideration the needs and requirements of the communities. Thus, the exercise that was supposed to help the colonized nations, led to chaos and mayhem. However, in India, the Constituent Assembly after careful and exhaustive deliberations, taking into account the socio-economic diversity of the nation, provided for a representative form of government, free and fair elections and the process of judicial review. The Speaker emphasized that all these constitutional principles are so intimately intertwined that if one is snapped, everything goes haywire. This led the Supreme Court of India to observe in *Keshavanand Bharati v. State of Kerala (1973) 4 SCC 225* that the Parliament has the power to amend any part of the Constitution under Art. 368 but it cannot, in any way, affect/abrogate the basic structure.

The speaker accentuated that a Constitution evolves from a reading of it. Citing the example of scriptures, he stated that people are allowed to re-read the scriptures but not re-write it. But this is

not the case with the Constitution. Quoting Thomas Paine's 'never rule from a grave' principle, the speaker emphasized on the importance of dynamic interpretation of the Constitution. He remarked that reading of a Constitution is a collective exercise as per the necessities of time. It pushes the Constitution into a meaningful direction, preventing its failure. Therefore, reading of the constitution can be considered to be an important aspect of rule of law and democracy.

Traversing through the journey of the Supreme Court from A.K. Gopalan to Maneka Gandhi Cases, the speaker illuminated the participants about the dynamic role played by it in the interpretation of Art. 21 of the Constitution and the development of the principles of justness, fairness and reasonableness.

Turning to the present human rights debates, the speaker observed that all rights are interwoven and mutually interdependent. They are part of one common web of things and one right cannot be given more importance than another. In this context, the speaker cited *People's Union for Democratic Rights v. Union of India (1982) 2 SCC 494*.

Further, the speaker remarked that in pre-2000 era, the countries used to revisit the Constitutions of different nations to include the fundamental universal principles in their supreme law. However, post-2000, there has been a monumental change in the attitude of the countries as they are attempting to remake the Constitution and incorporate in them the renowned universal principles that encapsulate the idea of a Constitution.

On being questioned on the approach of the Supreme Court of India in referring to international law while deciding cases, the speaker made a comparative analysis of the Constitutions of Fiji and India. He observed that the Constitution of Fiji has direct provisions for reference to international law, perhaps leaning towards monoism. However, in India, though there is no such direct provision, Art. 51(c) and Art. 253 leaves room for the State to fulfill its international obligations and to enact laws in order to make an international convention/treaty a part of the domestic law (dualism). The speaker also cited the example of *Jolly George Verghese v. Bank of Cochin (1980) 2 SCC 360* and *Vishaka v. State of Rajasthan (1997) 6 SCC 241*, where the Supreme Court had heavily relied on international documents like ICCPR and CEDAW respectively.

Further, the speaker was questioned on whether the courts would be precluded from exercising its jurisdiction if there was a gap in the Indian Constitution. Citing Jeremy Waldren, the speaker observed that there is no principle that would prevent the Courts from reading fundamental rights in a manner to advance it.

One of the participants was curious as to how engraving the doctrine of basic structure in the psyche of the people, has prevented external forces from jeopardizing the Constitution. Referring to the diversity of India, the speaker stated that a community in a diverse nation that knows how to accommodate, tolerate and manage that diversity, knows how to live with the idea of the Constitution. Moreover, courts play an anonymous yet remarkable role in ensuring that external forces don't jeopardize the Constitution. Instead of being empty declarators of law, the courts engage in active deliberations and understand the importance of constitutional principles. By their constant endeavors and inputs, they influence the minds of the people and ensure that ideals of equality, fraternity etc. sink deep into the psyche of the people. People bestow their confidence and faith in the courts and the idea of basic structure becomes a part of their thinking. This is why no external force threatens to abrogate the Constitution.

With regard to the issue of frequent amendments in the Indian Constitution, the speaker observed that amendments can be classified into two categories: One that destroys the Constitution from the outside and another that promotes the Constitution from the inside. The Constitution might have gaps, which can be filled by way of amendments. But if amendments attempt to nullify or destroy the basic structure, then they will be deemed unconstitutional. In India, amendment is a process of refinement.

Answering the question as to what remedy is available at the lower courts to a person whose right to liberty has been violated, the speaker referred to Section 97 of the Code of Criminal Procedure, 1973 and a couple of landmark judgments where the Supreme Court has expanded the scope of Art. 21 and has laid down guidelines for its protection. This marked the end of the first session.

Session – 2

Indian Judiciary: Organizational Structure and Jurisdiction

Speakers: Justice S.G. Gokani and Mr. R. Venkataramani

The session started with discussions about the chief characteristic features of Indian Judiciary and how the decision of the Supreme Court of India, including the obiter dicta, is binding on the subordinate courts. The first speaker, *Justice S.G. Gokani*, then explored the intersection of law and religion and cited the following landmark judgements:

- *Lata Singh v. State of U.P. (2006) 5 SCC 475*
- *Shakti Vahini v. Union of India (2018) 7 SCC 192*

Quoting B.R. Ambedkar, the speaker discussed the hierarchy of courts in India and emphasized on how a single integrated judiciary is essential to maintain unity in the country. The speaker briefly touched upon Part V of the Constitution, giving the participants an overview of the composition and appointment procedure of the judges. Reiterating B.R. Ambedkar, the speaker remarked that Art. 32 is the heart and soul of the Indian Constitution and is also the fountain of power that empowers the Supreme Court to forge new remedies and fashion new strategies to enforce fundamental rights. Further, the speaker dealt with the following landmark judgements of the Supreme Court:

- *Hari Singh v. Sukhbir Singh (1988) 4 SCC 551*
- *Railway Board v. Chandrima Das (2000) 2 SCC 465*
- *Bodhisattwa Gautam v. Subhra Chakroborty (1996) 1 SCC 490*
- *Vishaka v. State of Rajasthan (1997) 6 SCC 241*
- *Pratibha Ramesh Patel v. Union of India (2016) 12 SCC 375*
- *Meera Santosh Pal v. Union of India (2017) 3 SCC 462*
- *Sunil Batra v. Delhi Administration (1980) 3 SCC 488*
- *Hussainara Khatoon v. State of Bihar (1980) 1 SCC 98*
- *Sheela Barse v. State of Maharashtra (1986) 3 SCC 596*
- *Rudul Sah v. State of Bihar (1983) 4 SCC 141*
- *Nilabati Behera v. State of Odisha (1993) 2 SCC 746*
- *Ankush Shivaji Gaikwad v. State of Maharashtra (2013) 6 SCC 770*
- *Malikarjun G. Hiremath v. Oriental Insurance Co. Ltd. (2009) 13 SCC 405*
- *Nilima Priyadarshini v. State of Bihar (1987) Supp SCC 732*
- *Joginder Kumar v. State of Uttar Pradesh (1994) 4 SCC 260*
- *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani (1989) 2 SCC 691*

The speaker also discussed the various writs that can be issued by the Supreme Court under Art. 32 and illuminated the participants on the composition, appointment, territorial jurisdiction, original jurisdiction, appellate jurisdiction and writ jurisdiction of the High Courts. Lastly, the speaker concisely discussed the Chapter on Subordinate Courts in the Constitution of India.

The second speaker, *Mr. R. Venkataramani*, set the context of the session by observing that the boundaries of civil and common law systems are slowly disappearing and in all such systems where there is rule of law, there is a hierarchy of courts.

The speaker then drew the attention of the participants to two fundamental questions: *firstly*, why a hierarchy of courts was required in any judicial system? and *secondly*, what is the role of an appeal in the mechanism of administration of justice? Clubbing the answers, the speaker remarked that in order to relook at a decision and analyze the errors of law, hierarchy of courts was necessary, and an appeal is an integral element of the hierarchy of courts. There have been circumstances in India where the Supreme Court has committed errors in the exercise of its power of appeal. The Supreme Court has admitted this in *A.R. Antulay v. R.S. Nayak (1988) 2 SCC 602*. In order to resolve such issues, the Supreme Court has devised the idea of a curative petition in *Rupa Ashok Hurra v. Ashok Hurra (2002) 4 SCC 388* where such cases could be re-heard in order to do complete justice. This is the reason why the ‘power of binding effect’ is given only to the Apex court of the land.

Further, the speaker claimed that the pattern of power of judicial review wielded by the Supreme Court and High Courts portray an interesting picture. Previously, the lower courts had to function within certain restrictions drawn by the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973. Anticipating that this would prevent the courts from imparting complete justice, the Supreme Court and High Courts began reading constitutional principles into both the Codes. By doing so, the superior courts ensured that trial is conducted in a more transparent and disciplined manner.

The speaker then brought home two pertinent yet neglected points that often fades into oblivion. Firstly, the speaker remarked that financial and economic transactions carried on in the courts have a huge social impact. This impact increases enormously when the number of appeals increases. The understanding of this issue is important for the management of appellate courts. Secondly, the speaker observed that the conduct of the lawyers and advocates in the court rooms are important facets of effective administration of justice and efficient functioning of courts.

Further, with regard to the power of Supreme Court to review its own judgement, the speaker pointed that the courts ought to realize the impact of denying or accepting a review petition. The Constitution of Fiji empowers the Supreme Court to review its own decisions and right to review is a right under the Constitution. Though, the intention of the legislature behind drafting such provisions was noble, the provision added to the court’s docket as every failed litigant started filing for review. In order to grow out of this situation, the Chief Justice of Fiji limited this right to review.

To avoid a similar problem in India, the Supreme Court refused to register second or third review petitions. Moreover, a practice of in-chamber hearing, prior to allowing a review, is followed in India to curtail the misuse of review.

On being questioned on how Indian judiciary has achieved and maintained equality of gender and ethnicity on the Bench, *Justice S.G. Gokani* mentioned that the Supreme Court of India has streamlined the procedure of appointment which encourages young lawyers to join the bench. The process is non-partisan and transparent. For recruitment to the High Courts, 33% seats are reserved for direct recruits and 67% seats are reserved for promotees. The speaker also mentioned how the position regarding appointment and recruitment of judges has changed on the basis of landmark

judgements of the Supreme Court. In her concluding remarks, the speaker spoke about the collegium system being practiced in India and how a judge is always a judge irrespective of the time, place and sequence of events.

Session – 3

Goals, Role and Mission of Courts: Constitutional Vision of Justice

Speakers: Justice S.G. Gokani & Mr. R. Venkataramani

The session commenced with an elementary question posed to the participants which was: whether their understanding of justice was restricted to the Constitution or went beyond that. After receiving a couple of answers, the speaker set forth the scenario prevalent in India. In India, due to the tireless efforts of the Supreme Court, the constitutional vision of justice is not just restricted to the Constitution. In a plethora of cases, the Supreme Court and other High Courts have emphasized that even private affairs and transactions must be in conformity with the constitutional vision of justice. A basic yet significant question that branched out of this discussion was, what constitutes the constitutional vision of justice. The speaker pointed out three pertinent observations in this regard:

1. The law making process should promote and advance justice by furthering the fundamental freedoms.
2. The implementation and enforcement of law is the bedrock of administration of justice. Even the principle of accountability is very important in this context.
3. In the event of failure to implement the law, adequate mechanism should be put to place to enable people to move the court.

Further, the speaker observed that the mission of the courts is to be in tune with the constitutional fundamentals i.e. to read every legal provision with reference to the constitutional vision of justice and the goal is to respect, regard and promote the fundamental rights. The courts are non-partisan institutions but are not constitutionally neutral. The speaker also elaborated on the vital role played by the Supreme Court to protect the fundamental rights and to ensure easy access to justice in case of its violation. The speakers also drew a comparative analysis of the essence of justice as envisaged in the Preamble of the three Constitutions, namely Constitution of India, Fiji and Bangladesh. The speakers emphasized that the difference in arrangement of the words ‘justice: social, economic and political’ in the Preamble of the three countries represent the different historical backgrounds and socio-economic realities of the nations. The speakers also stressed upon how the terms ‘justice, equality and fraternity’ are mutually interdependent and cannot be subtracted from one another.

Lastly, *Justice S.G. Gokani* shared a number of path breaking judgments of the Supreme Court that has helped alter the course of administration of justice towards the principles of equality, liberty, fairness and reasonableness. Some of the decisions are:

1. *State of Madras v. Champakam Dorairajan* AIR 1951 SC 226
2. *Golak Nath v. State of Punjab* AIR 1967 SC 1643
3. *Keshavanand Bharati v. State of Kerala* (1973) 4 SCC 225
4. *Minerva Mills v. Union of India* (1986) 4 SCC 222
5. *Indira Gandhi Nehru v. Raj Narain* (1976) 3 SCC 321
6. *ADM Jabalpur v. Shivkant Shukla* (1976) 2 SCC 521
7. *Maneka Gandhi v. Union of India* (1978) 1 SCC 248
8. *S.P. Gupta v. Union of India* AIR 1982 SC 149

9. *Supreme Court Advocates on Record v. Union of India* (1993) 4 SCC 441
10. *Mohd. Ahmed Khan v. Shah Bano Begum* (1985) 2 SCC 556
11. *Indira Sawhney v. Union of India* (1995) 5 SCC 429
12. *S.R. Bommai v. Union of India* (1994) 3 SCC 1
13. *Shayara Bano v. Union of India* (2017) 9 SCC 1
14. *Indian Young Lawyer's Association & Ors. v. State of Kerala & Ors.* (2017) 10 SCC 689
15. *Navtej Singh Johar & Ors. v. Union of India* (2018) 10 SCC 1
16. *Joseph Shine v. Union of India* (2018) 2 SCC 189
17. *Common Cause v. Union of India* (2018) 5 SCC 1
18. *Social Action Forum for Manav Adhikar & Anr. v. Union of India, Ministry of Law and Justice & Ors.* (2018) 10 SCC 443
19. *Swapnil Tripathi v. Supreme Court of India* (2018) 10 SCC 639
20. *Tehseen S. Ponawalla v. Union of India* (2018) 9 SCC 501 (Lynching Case)
21. *Roopendra Singh v. State of Tripura* (2017) 13 SCC 612
22. *Dr. Subhash Kashinath Mahajan v. State of Maharashtra & Anr.* (2018) 6 SCC 454

Quoting Dr. Rajendra Prasad, *Justice S.G. Gokani* concluded that even with the best of the Constitutions, man & woman can destroy the order in the society and even with the worst of the Constitutions, man and women can make the most use of it. So in the end, it all trickles down to 'We, the People.'

The session was called off with a vote of thanks from Bangladesh and a few remarkable words of *Mr. R. Venkataramani*.

Day 3

Session 4

Elements of Judicial Behaviour

Speakers: Justice Joymalya Bagchi, Justice G.S. Kulkarni, Justice Atul Sreedharan

The Director, NJA set the context of the session by emphasizing on the impact of judicial behavior on the smooth functioning of the courts and on fraternity in the legal community. The session dealt with the contours of ideas and principles of judicial ethics across the globe. India, Bangladesh and Fiji being young democracies, cannot compete against European democracies that have flourished since the Magna Carta. Thus, rule of law is, indeed, the founding pillar of a fair democratic system and institutional stability.

After analyzing the various definitions of judicial ethics, the speakers identified two important ingredients:

1. Standards and norms for judges, that urges inculcation of basic principles like independence, impartiality, complete absence of impropriety, and competence.
2. Adherence to those standards and norms.

Judges cannot allow their private opinions to interfere in the administration of justice. Jurisprudentially, the source of judicial power is the Constitution. But in reality, it is the public acceptance of the authority of judiciary and the integrity of judiciary that is the fountainhead of judicial power. The speakers shared two popular quotes of Francis Bacon with the participants:

1. “A popular judge is a deformed thing.”
2. “Look for nothing, neither prayers nor profits.”

These two quotations best describe the level of integrity and dedication that is expected of a judicial officer.

The speakers comprehensively spoke about the Chief Justices Conference (1999) and Bangalore Principles of Judicial Conduct (2002) and listed out seven core values of judicial ethics, which are sacrosanct to the life of a judge:

1. Independence (individual and institutional)
2. Impartiality
3. Integrity
4. Propriety
5. Ensuring equal treatment to all
6. Competence and Diligence
7. Neutrality

The speakers also discussed the following landmark judgements of the Supreme Court on judicial ethics:

1. *High Court of Judicature of Rajasthan v. Ramesh Chand Pallwai* (1993) 3 SCC 72
2. *Tarak Singh v. Jyoti Basu* (2005) 1 SCC 201
3. *Daya Shankar v. High Court of Allahabad* (1987) 3 SCC 1
4. *High Court of Judicature of Bombay v. Shashikant Patel* (1987) 3 SCC 1

5. *State of West Bengal v. Shivananda Pathak (1998) 5 SCC 513*

Further, the speakers enlisted numerous methods that would ensure adherence to the standards of judicial ethics:

1. Art. 227 and 235 of the Indian Constitution
2. Impeachment proceedings under Art. 124 (4) of the Indian Constitution.
3. In house procedure
4. Contempt of Court

Comparing the oath of judges in the Constitution of India, Fiji and Bangladesh, the speaker observed that in all these countries, judges are expected to fulfill constitutional goals and live by constitutional principles. He quoted two crucial aspects of ethics:

1. Ethics is subjective
2. Judges need to have the confidence of the public.

Moreover, the constitutional principles provides for two judicial mandates:

1. Independence of judiciary
2. Judicial objectivity

The speaker also drew a distinction between personal independence and institutional independence. Personal independence implies complete independence in making decisions and it is the characteristic of a fair, efficacious and impartial judge. Institutional independence, on the other hand, is the freedom of judiciary from executive and legislative interference.

Talking about professionalism, the speaker listed five judicial skills that ought to be inculcated by a judge:

1. Thorough knowledge of procedural laws.
2. Broad acquaintance with substantive law while sitting down to decide.
3. Giving an opportunity for proper hearing.
4. Marshalling of facts and interacting with the stakeholders.
5. Handling interim prayers and adjournments.

Further, the speaker remarked that a judge is governed by five I's:

1. Integrity
2. Independence
3. Industry (Courage, fearlessness and hard work)
4. Intelligence
5. Shake off ego (the inherent 'I')

In order to achieve a truly interactive session, the judges floored a simple question to the participants i.e. what according to them was the biggest stumbling block to the independence of judiciary. Some of the answers given by the participants, as per the socio-economic and political conditions of their nation, were:

1. Separation of powers and impact on pecuniary independence.
2. Biased appointment
3. Dearth of knowledge and skills

4. Executive interference
5. Lack of balance between personal responsibilities and professional duties.
6. Personal expectation of growth and prosperity
7. Social isolation
8. No security of tenure and terms of service and executive interference.
9. The relationship between bar and bench
10. Less facilities and lack of executive acceptance of independence of judiciary
11. Lack of logistic support.

The session was concluded by comparing the process of appointment and security of tenure in the three countries.

Session 5

Judging skills: Art, Craft and Science of drafting judgments

Speakers: Justice Joymalya Bagchi, Justice G.S. Kulkarni, Justice Atul Sreedharan

The session commenced with a discussion on the importance of delivering a judgment. The speaker laid down three reasons for delivering a judgment:

1. To decide a particular matter in dispute.
2. To lay down reasons for arriving at the judgment.
3. To lay down principles of law.

Further, the speaker listed out the advantages of a well-written judgment:

1. Clarity and conciseness in thought.
2. Easily understood.
3. Enhances transparency ensuring public confidence.
4. Helps in the development of precedents.

The speaker also elaborated on the steps to write a clearer judgment, which are as follows:

I. Beginning before the beginning:

- It is important to have a sound grasp of pleadings and important issues.
- Judges should have command over oral and documentary evidence.
- The judges should pay attention to the arguments advanced on behalf of the parties.
- Judges must identify the law applicable to the case at hand.

II. Dealing with factual history:

- After identifying the contesting issues, judges must stress on the relevant facts and suppress the remainder facts. An extensive elaboration of irrelevant facts is a lazy and laborious exercise.
- Judges should use facts in a judgment in the following ways:
 - a) As an introduction to set the context
 - b) To mention time, place and sequence of events.
 - c) To arrive at a logical conclusion while deciding mixed questions of law and facts.
- The speaker also discussed a summary of elements is a judgement, which are as follows:
 - a) Facts
 - b) Genesis
 - c) Issues under consideration
 - d) Reasoning
 - e) Consideration/disposition.

III. Setting out the law:

- The judges ought to provide summarized provisions of law.

- The exact provisions ought to be cited in the event of interpretation of a particular word of the provision.
- Instead of quoting from the relevant cases, the judges should paraphrase the relevant portions.
- Repetitions of phrases should be avoided.
- Grammatical rules are to be followed.
- Ornamental words, high flown expressions and literary illusions should be avoided unless one is the Master of the Craft.

IV. Stating the Conclusion:

- The judges ought to resolve all issues in this part of the judgment.
- No new legal or factual material should be mentioned.
- Generally, decision should be mentioned at the end to ensure a logical flow of reason in the judgment. However in open and shut cases, decisions can be mentioned at the beginning.

V. Choosing an Appropriate style:

- Jargons should be avoided
- Judgements should be understandable.
- Nothing should hamper communication, convenience and confidence.
- The speakers cited *Sri Pawan Kumar v. Sarla Sood & Anr. 2017 SCC 1673*
- The speakers also referred to the guidelines issued by the Supreme Court in
 - a) *Joint Commissioner of Income Tax, Surat v. Saheli Leasing and Industries Ltd. Civil Appeal No. 4278 of 2010.*
 - b) *Anil Rai v. State of Bihar (1980) 1 SCC 81.*

These steps form the bedrock of writing a clearer judgement. Further, the speaker listed three processes for arriving at the conclusion:

1. Syllogistic process: deductive way of reasoning.
2. Inferential process: 'state of mind' is always important.
3. Intuitive process: It is a psychological process where the judge accepts oral evidence.

The speaker then expounded that a judgment is necessary to satisfy the consumer of justice. Every judgement must have judicial clarity and acceptability in law i.e. it must satisfy the parameters of law. Every matter should be tested on the basis of fundamental constitutional principles. The judges should have broader knowledge of the substantive provisions of law. If in a case, there is not much assistance from the bar and the judge desires to apply a particular precedent based on his own personal research, it is advisable and obligatory for the judge to put it across the bar before applying it. The basic traits that a judgement must possess includes:

1. It must inform the parties as to why he lost or won the case (to reduce the feeling of being wronged).
2. It must substantiate the conclusion with reasons of law.
3. It should exclude bias or arbitrariness.

Referring to the decisions of the Courts of United States, the speaker classified three kinds of judgements:

1. Full Dressed Opinions: A comprehensive structured explanation is required.
2. Memorandum of Opinions: It is in the form of a summary that consists some explanation of the rationale behind the judgment.
3. Summary Orders.

The speaker also enumerated the problems that a judge encounters while writing a judgement:

1. Too much repetition of facts and lengthy judgements steals the soul of the judgment.
2. Careful editing, reading and re-reading is necessary.
3. Elimination of unnecessary words.
4. Brevity and clarity with simple language.
5. No complex sentences and use of plain English.

Further, the speaker urged the participating judges not to mortgage their original thinking to rely on the cruxes of precedents. Citing a statute is always better as legislative enactments are the most authoritative source of law. The speaker remarked that judgement writing is a species of creative writing and storytelling. The speaker then specified the following important points a judge ought to remember while writing a judgment:

1. Conceptualization of facts of the case.
2. Articulation of the judgment.
3. Marshalling of evidence.
4. Consideration of judgment cited by parties.

The session was concluded with *Justice Joymalya Bagchi* speaking briefly about the substitution principles and plagiarism while drafting a judgment.

Session 6

Judge, Master of the Court: Court and Case Management

Speakers: Justice Joymalya Bagchi, Justice G.S. Kulkarni, Justice Atul Sreedharan

The session began with a discussion on the judge – population ratio and the statistics from National Judicial Data Grid (Jan 11, 2019). The speaker remarked that a judge should not only be a good adjudicator but also an efficient time manager. He should try to bring the best possible result in the earliest span of time. However, the expectation of this ideal role is a challenge for the overburdened judiciary in India.

According to the statistics, 2.95 crore cases are pending in the three tiers of the judiciary. Approximately, 25% of the cases are more than 5 years old. Keeping the number of pending and backlog cases in view, a National Court Management System (hereinafter referred to as ‘NCMS’) has been constituted under the Chief Justice of India. The objectives of NCMS policy are:

1. Set measurable performance standards.
2. Set up systems for monitoring on quality, responsiveness and timeliness.
3. Enhance user-friendliness of the judicial system by way of computerization.
4. Set up a National System of Judicial Statistics (hereinafter referred to as NSJS) for recording and maintaining judicial statistics.

In this context, the speaker cited *Imtiyaz Ahmad v. State of U.P. (2017) 3 SCC 658*. Further, the speaker observed that the rate of disposal of cases is an amorphous and superficial exercise. This is not the only factor to determine the no. of judges required. Thus, other than rate of disposal, factors like nature of the cases etc. were suggested to help determine the number of judges required, by the NSJS.

The speaker then referred to the Unit system that can be used to assess the required judge strength. Every court has a unit system of disposal of cases. That unit determines the quality of performance of the court. A simplistic solution will not give an accurate result.

Moreover, every litigation has an expected longevity. When a litigation outlives its expected longevity, it becomes a backlog. Thus, a merely pending case is different from a backlog. An extreme backlog is a case pending for more than 5 years. Owing to this distinction, there are different parameters for case management systems for pendency, backlog and extreme backlogs.

The speaker also mentioned certain equations for determining the requisite number of courts and the cases that have to be disposed of every day in order to clear the backlog. In this context, a pertinent observation made by the speaker is that most of the extreme backlog cases lose their litigious relevance over the period of time. They are merely numbers on the board. Therefore, after disposing of the extreme backlog cases, priority must be given to cases based on oral evidence. Here, time and case management skills play an important role.

The speaker revered the Supreme Court of India for devising case flow management rules for subordinate courts in *Salem Bar Association v. Union of India (2006) 6 SCC 344*. In this case, the Court categorized cases into three tracks and specified the time limit for their disposal. The three tracks are:

1. Track 1: Family cases
2. Track 2: Money Suits
3. Track 3: Property and Intellectual Property Rights cases

Further, the speaker listed certain parameters that ought to be followed by the judge while deciding cases:

1. Fixation of time limit for issuing notice: Judges' duty is to encourage the process of litigation and to kill it in the expected timeframe.
2. Service of summons: It can also be done electronically.
3. Procedure for the grant of interim relief: Interlocutories should not overreach the context or requirements which renders the *lis* useless.
4. Reference to Alternative Dispute Resolution mechanisms should be encouraged, especially in public utility services.
5. Procedure to be followed on failure of alternative dispute resolution mechanism.
6. Costs involved.
7. Proceedings for perjury
8. Calling of cases.
9. Adjournments
10. Miscellaneous applications.

The speaker also illuminated the participants on how digitalization is seeping deep into judicial system, by referring to the National Policy Action Plan for implementation of ICT in Indian Judiciary. The National Judicial Data Grid has created a virtual space for the entire judiciary that helps in enhancing efficiency and transparency.

Elaborating on the steps taken by the judiciary of the United States towards management of their docket explosion, the speaker drew a dividing line between case management and court management. While case management involves timely disposal of cases, court management includes the following:

1. Professional conduct of judges.
2. Time management.
3. Board management: Cases with similar causes should be clubbed together.
4. Registry management: This involves sensitizing those who manage files.
5. Bar management: This involves cooperation from members of bar.
6. Self-management: This includes self-discipline, punctuality, commitment, positive attitude and hard work.

Further, unfolding case management, the speaker observed that case management is a judicial process that provides for effective and purposeful management of a case. There are two aspects of case management:

1. Adherence to procedures and rules with respect to timelines and with commitment and humility to the bar.
2. Use of tools of alternative dispute resolution.

The speaker also referred to the Federal Judicial System of Washington D.C. that has laid down the following role of judges with respect to case management:

1. Not to be too technical with respect to technical procedural matters.
2. Narrow down issues.
3. Fix time limits for deciding cases.

The speaker also urged the participants to review Lord Woolf's Report on case management and stressed on the importance of joint venture between judges and lawyers, litigants and administrative officers.

The last speaker indicated four important points that are necessary to be taken care of while managing the court, namely:

1. Security of the Court: Installation of CCTV cameras to deter illegal activities. This is more important in the district level courts than the higher courts.
2. Maintenance of discipline.
3. Conduct of court proceedings
4. Use of information technology for ancillary proceedings.

The session concluded with a few remarkable words from *Justice Joymalya Bagchi* and Director, NJA.

Day 5

Session 7

Principles of Evidence

Speakers: Justice B.D. Ahmed and Justice A.M. Thipsay

Justice B.D. Ahmed set the context of the session by referring to the laws of all three participating countries and how these laws of evidence are founded on the same fundamental principles. The speaker urged the judges to share their experiences, as professionals, with one another to ensure a fruitful discussion. Further, dealing with elementary aspects, the speaker remarked that the objective of evidence is to unearth the truth as per prescribed yet relevant rules. In some jurisdictions, prior conduct of a person, the number of past convictions etc. might be relevant and admissible, while in other jurisdictions, it may not be considered relevant. Therefore, judges ought to determine the relevancy of facts, while taking into consideration the admissibility aspect as well, because all that is admissible has to be relevant but all that is relevant, may not be admissible. In order to substantiate this argument, the speaker cited the example of hearsay evidence which is relevant but not admissible. The speaker also discussed the concept of dying declaration in this regard, which is governed by a fundamental belief that ‘a person taking his last breath wouldn’t lie.’ However, the speaker rebutted this belief by putting forth the argument that if the person is under some medication, he may not necessarily speak the truth.

Narrowing the concept of dying declaration to Indian jurisdiction, the speaker stated that in India, dying declaration can be the sole basis of conviction. Quoting his own judgment, *Justice B.D. Ahmed* observed that there is no dispute that a conviction can be based on dying declaration without corroboration but for that the dying declaration has to be of stellar quality, which requires satisfaction of two conditions:

1. The dying declaration must be established with the statement of the person dying and it should be ensured that such a person has not been tutored and he is in the right state of mind.
2. The Court must be satisfied that the person is speaking the truth. If there is even an iota of doubt with respect to any of the two conditions, the dying declaration would require corroboration.

Further, the speaker classified evidence into two kinds:

1. Oral evidence
2. Documentary evidence

All facts are required to be established or proved through oral evidence except the contents of the document and electronic evidence. It is a direct evidence and requires the testimony of witnesses. In this respect, the speaker also talked about opinion witnesses. Previously, courts only quoted the treatises and works of dead scholars. This was to ensure prevention of any kind of bias as the dead scholars couldn’t have written the text with the case in mind. However, this practice is slowly receding and the Courts today cite the works of living scholars as well.

As for documentary evidence, the speaker observed that the contents of a document has to be proved by primary evidence. But if such evidence is not available, it can be proved by secondary

evidence. The speaker also briefly spoke about the concept of presumptions and burden of proof and classified presumptions into rebuttable and irrebuttable presumptions.

The speaker also explained the concept of conclusive evidence and emphasized on how it is a rule of law and nothing can contradict it. Further, the speaker drew a line of difference between direct and circumstantial evidence and explained the concepts with the help of hypothetical situations. Elaborating on circumstantial evidence, the speaker remarked that it is the process of inferring results from established facts. Every piece of evidence must categorically lead a judge to the inference drawn by him.

The speaker also emphasized on the concept of standard of proof in both civil and criminal cases. As per the speaker, in civil cases, ‘standard of proof’ / ‘preponderance of probability’ is like a balancing scale in the mind of a judge. If both scales are even, then the benefit will go to the defendant. However, with regard to criminal cases, the speaker cited four ways of determining ‘standard of proof’ / ‘beyond reasonable doubt’, which are as follows:

1. When it is clear that the accused has done it or not done it.
2. He must not have done it or it is unlikely that he hasn’t done it.
3. He might or might not have done it.
4. It is unlikely that he did it.

Therefore, the accused will be convicted or acquitted, if the judge is certain that he has done it or not done it.

Further, the speaker deliberated on the aspect of ‘appreciation of evidence.’ As per the speaker, a judge hearing a case before him, must have scientific temper and he must insist, in one way or the other, that the evidence, presented before him, be based on scientific material. The speaker explained this argument with the help of a hypothetical situation and by referring to an experiment conducted in USA with the army personnel. Stressing on the importance of scientific temper, scientific material, ocular evidence and corroboration, the speaker urged the judges that while deciding a case on the basis of ocular evidence, one must be sure that the witness has not been tutored and is in the right state of mind.

The second speaker, *Justice A.M. Thipsay*, founded his deliberations primarily on legal principles and not legal provisions of the three nations, to encourage an interactive session. Starting from the fundamentals, the speaker observed that evidence is something from which proof is to be derived by the court based on standard legal principles. It is a statement made before the court or a document submitted for scrutiny of the court. Reference was also made to some pre-trial evidences which might be admissible as per the provisions of law.

Further, the speaker marked the difference between the law of evidence of Fiji, which is essentially founded on common law principles, and that of India, which has a codified law of evidence. As per the speaker, appreciation of evidence is not a legal exercise but a logical one. Sometimes, judges might be under an indirect pressure to convict the accused due to the illusion of failure of the criminal justice system. This might lead to appreciation of scanty evidence, which would be an injustice to the accused. Therefore, it is very important for a nation to have an independent judiciary. The speaker also quoted Osborn in order to demonstrate how prejudice and sympathy creep into the process of decision making.

Thereafter, the speaker pointed out the difference in UK and India with respect to admissibility of dying declaration. The speaker also elaborately spoke about the relation between presumption and burden of proof and how presumptions come into play after some facts are established beyond reasonable doubt. The speaker then categorized witnesses into three classes, namely:

1. Wholly reliable
2. Wholly unreliable
3. Neither wholly reliable nor wholly unreliable: In this case, proper appreciation of evidence is required.

Further, the speaker observed that in USA, with respect to appreciation of evidence, an illegally obtained evidence is not per se inadmissible and for personal search of a person, a search warrant is required. Laboriously searching with a microscope for the truth is wrong on the part of a judge, as this may lead to conviction of an innocent. While deciding a matter, a judge ought to keep the principle of presumption of innocence in mind. This presumption has found reference in the Universal Declaration of Human Rights as well as other international documents. However, some presumptions in the present Indian legislations was considered dangerous for the judge, who cited the example of Protection of Children from Sexual Offences Act. The speaker also observed that in criminal law, presumption of mental state on establishment of certain facts is common and this has to be disproved by the accused. Previous convictions of a person becomes relevant at the time of sentencing but it cannot be taken as evidence in the case at hand.

The speaker then made a comparison of the law relating to confessions prevalent in the three countries. In India and Bangladesh, a confession made before the police is inadmissible. The speaker urged the participants to ensure that when a confession is made, it is not made under threat/coercion, otherwise it will become inadmissible. No man should be compelled to give evidence against himself and if evidence is unreliable, it should be discarded

The speaker also extensively spoke about the principles of evidence underlying close communications and identification parade and remarked that crime control is not the role of judges. Judges are expected to interpret the law and decide cases. On being questioned about the position in India with respect to the duty of the prosecution to reveal evidence of innocence of the accused, the speaker clarified that in India, the prosecution is not duty bound to release such evidence. He is only supposed to submit and present evidence upon which he relies.

The session ended with a discussion on priming and how judges should rise above it.

Session 8

Electronic Evidence: New Horizons

Speakers: Justice B.D. Ahmed and Justice A.M. Thipsay

In order to ensure a cohesive flow in the lectures, the session began with a video clip being shown to the participants, which emphasized on three aspects:

1. Reconstructive memory and priming.
2. Scientific temper of a judge.
3. Scientific evidence ought to be encouraged.

At the end of the video clips, the speakers remarked that there is a long history of antipathy between science and law. Irrespective of this, science should not only enter courtrooms but also law schools. This is predominantly important because human memory is malleable and though an eyewitness may believe that he is speaking the truth, he may be wrong. Therefore, reliance must not be placed on a single piece of evidence.

Shifting to the theme of the session, the speaker began the discussion by dragging the attention of the gathering to the difference in the statutory versions of electronic evidence in the three participating countries. To make the foreign judges aware of the legal position of electronic evidence in India, the speaker emphasized on the definition provided in Information Technology Act and remarked that the definition provided, is comprehensive as it encompasses all data in electronic form. Moreover, electronic records are part of documentary evidence and all principles applicable to documentary evidence are applicable to electronic evidence as well.

Further, the speaker classified electronic evidence into primary and secondary evidence and exhaustively discussed provisions relating to presumption of electronic evidence. The speaker also elaborated on the different types of electronic evidence, which are as follows:

1. Emails
2. Text messages
3. Video clips
4. CCTV footage
5. Audio recording
6. Video photographs
7. Wire tapping
8. Web pages
9. Blogs
10. Chats on social media etc.

Thus, because of the advancements in technology, there is a bombardment of electronic evidence.

With regard to the admissibility and relevance in the courts, the speaker admitted that electronic evidence is susceptible to manipulation. Citing an example of a case before him where he ordered for government officials to use services of companies which had their web servers in India in order to ensure statutory compliance, *Justice B.D. Ahmed* tried to explain how important it is for the judges to be scientifically attuned.

Taking photographs as an example, the speaker attempted to portray the shift in admissibility of electronic evidence brought about by technology. Traditionally, when a photographer was brought to court as a witness, he was required to exhibit the negative and the photograph before the court. The negative was considered to be the primary evidence and the photograph was supposed to be the secondary evidence. However, due to the technological advancements and pervasiveness of digitalization, photographs can be easily manipulated and edited. This causes problems for proper appreciation of evidence.

Moreover, electronic legal records and electronic evidence might not be accessible after the propriety software reading them, becomes outdated. This raises serious concerns about preservation of electronic evidence. The only solution to this, as stated by the speaker, is meta-data i.e. data about data. This idea requires not just preservation of documents but also preservation of the software that reads the document.

Lastly, the speaker briefly spoke about the presumptions with respect to electronic evidence and the problem of deletion and cloning.

Session 9

Forensic Evidence

Speakers: Dr. (Ms.) Jayanthi Yadav and Justice A.M. Thipsay.

Chair: Justice B.D. Ahmed.

Introducing the theme of the session, the speaker, at the outset, listed the following methods of forensic science that are used to find forensic evidence:

1. Use of ballistics
2. Blood tests
3. Blood spatters
4. Chemical composition of substances
5. DNA profiling
6. Post-mortem examination
7. Forensic science laboratory reports etc.

Thereafter, the speaker, portraying the legal scenario with respect to forensic evidence in India, remarked that in most of the criminal trials, no forensic evidence is collected. Moreover, when there is a gulf of difference between evidence of the medical expert and ocular evidence, the latter is relied upon in India. The callous attitude while collecting and storing samples, and blood tests done cursorily fails science. With regard to finger print matching, in India, it is satisfactory if there is an 8 point match, however in UK, to be admissible, it has to be a 16 point match. Furthermore, blood spatter analysis is not done in India and the hastiness with which autopsies are conducted, clouds the true cause of death. Apart from these, the speaker emphasized on two problems that steals the authenticity of forensic evidence:

1. The forensic laboratories are overburdened and it takes months before finally getting the results.
2. There may be loss of samples due to environment and other lack of preservation procedures.

Further, the speaker classified forensic evidence into forensic science evidence and forensic medicine evidence and listed the following examples of criminal trials where the importance of forensic evidence increases manifold:

1. Homicides
2. Sexual assaults
3. Dowry deaths
4. Narcotic cases
5. Poisoning including alcohol etc.

The speaker also listed the following examples of civil cases where forensic evidence becomes relevant:

1. Paternity test
2. Negligence by doctor
3. Insurance
4. Age estimation etc.

To establish the significance and relevance of forensic evidence, the speaker emphasized on two scenarios where role of forensic evidence is important:

1. Where there is no eye witness.
2. To prove a case beyond reasonable doubt.

The speaker also discussed the Locard's Exchange Principle which governs forensic science and has its essence in the phrase, 'Every contact leaves a trace.' Further, the speaker elaborately discussed the following branches of forensic science:

1. Forensic Document Analysis
2. Forensic Narcotics Analysis
3. Forensic DNA Analysis
4. Forensic Toxicology analysis
5. Forensic Serology
6. Forensic Ballistics
7. Examination of clothing
8. Finger printing
9. Diatoms
10. Forensic Entomology
11. Forensic Toxicology
12. Forensic DNA
13. Touch DNA
14. Forensic Medicine
 - a) Injury Examination
 - b) Age estimation
 - c) Examination of Sexual assault
 - d) Sex determination

Further, the speaker extensively discussed the benefits of forensic evidence, its limitations and recorded the following reasons of courts' reluctance to use forensic evidence:

1. Mismanagement of forensic evidence
2. Not sending the accused for medical examination
3. Technical lacunae in scientific evidence.

Finally, the session ended with an apt remark that 'science cannot lie and so cannot be denied.'

Visit to AIIMS, Bhopal

To further enlighten the participating judges, NJA in collaboration with AIIMS, Bhopal, organized a visit to the mortuary and the medical college in AIIMS. The participants were taken to the mortuary in the Department of Forensic Medicine and Toxicology, where the following rooms were shown and their significance explained:

1. No mobile zone: The primary objective of this area was to ensure that experts function without any external pressure.
2. Room for Police reporting
3. Report writing Room: After the autopsy, experts draft the report in this room. They describe the cause of death in two to three sentences in the short report that is immediately submitted. After full examination, a detailed report is prepared that is submitted in 3 days.
4. Post-mortem examination room-1: This is where autopsies are conducted. The room was air conditioned and well-ventilated.
5. Medico-legal examination room: This room is for examination of living persons and conducting student lectures.
6. Post-mortem examination room-2
7. Cold Area-1 & 2: This room is used for preservation of dead bodies till post-mortem

In the second half of the tour, the participating judges were taken to the auditorium of the medical college, where *Dr. (Ms.) Jayanthi Yadav* gave an elaborate presentation on Autopsy Protocol and Opinion. This presentation aimed at sensitizing the judges as to the objectives of medico-legal autopsy, its pre-requisites, different causes of death, and changes after death, opinion writing etc. At the end of the session, Director of AIIMS, Bhopal addressed the gathering, elaborating on the intersection of forensic medicine and law.

Day 6

Session 10

Human Rights

Speakers: Justice Sunil Ambwani and Justice V.P. Sharma.

Justice V.P. Sharma set the context of the session by emphasizing on the soft law and hard law aspect of human rights and by listing the various international documents such as Magna Carta, Bill of Rights, French Declaration of Rights and Duties of Man etc. that laid the foundation of human rights in UK, US and France. It was only after World War-II that the Universal Declaration of Human Rights was adopted. Looking at the Constitution of Fiji, the speaker observed that human rights are embodied in the Constitution itself which gives them strong recognition and foothold in the nation.

Skipping to the scenario of ancient India, the speaker observed that the first case of human rights where principles of natural justice were invoked was *Queen Emperor v. Kofi*, where a judge of the Allahabad High Court had challenged the vires of Section 423 of the Code of Criminal Procedure, 1822. This case set the course of recognition of right to representation and legal aid in India. The speaker also cited the case of *Powell v. Alabama*.

Taking a close look at the Indian Constitution, the speaker observed that Art. 20, 21 and 22 embodies the basic principles of human rights in India. The significance of these constitutional provisions was realized only after emergency when the conscience of judiciary was shaken and people felt that a legal system can be hijacked. In this context, the speaker discussed the following cases and events in great detail to show the emerging importance of human rights in India:

1. *Maneka Gandhi v. Union of India (1978) 1 SCC 248*
2. *Sunil Batra v. Delhi Administration (1980) 3 SCC 488*
3. *Hussainara Khatoon v. State of Bihar (1980) 1 SCC 98*
4. *Report of NHRC on Polygraph, encounter deaths, extra-judicial deaths*
5. *D.K. Basu v. State of West Bengal (1997) 1 SCC 416*
6. *Miranda rules of USA*
7. *Mohd. Ajmal Kasab v. State of Maharashtra (2012) 9 SCC 1*

The second speaker, *Justice Sunil Ambwani*, lucidly put how jurisprudence of human rights developed in India around Art. 21 of the Constitution and how robust the system is as it does not allow any form of intrusion. He pointed out that the extent to which human rights are respected and protected in India is an indication of the development of a civilized country.

The speaker further remarked that the three participating nations are governed by rule of law, which has three prime indicators:

1. Peace
2. Justice
3. Freedom, which can be enjoyed only if there are human rights.

Thereafter, the speaker noted that jurisprudence of human rights has developed from the concept of natural rights. During World War I & II, the world had witnessed harrowing violations of human rights, which gave way to the Charter of 1945 and the Universal Declaration of Human Rights in

1948. Drawing a distinction between the Constitutions of the three nations, the speaker mentioned that the Preamble of Fiji and Bangladesh Constitution envisions protection and preservation of human rights, where as in Indian Constitution, though there are no express provisions, human rights are implicit in the fundamental rights. It is the approach, attitude and mentality of the people and the courts that goes a long way in enforcement of human rights. Lastly, the speaker posed a couple of propositions before the participants, asking them to choose the correct one, in order to encourage an interactive session and sensitize the participants about the critical aspects of law. The session ended with a discussion on the challenges towards human rights and the role of judiciary in ensuring compliance of municipal and international law with respect to human rights.

Session 11

ICT and E-judiciary: Indian Perspective

Speakers: Justice Sunil Ambwani and Justice V.P. Sharma.

Enquiring about the position with respect to E-judiciary in Fiji and Bangladesh, the speaker remarked that there are roughly 19,132 courts in India. India, being a world leader in software, computer sciences are very advanced. The intersection of technology and law was seen for the first time in 1992 when the cause list of Patna High Court was published online. It was then that a need for digitalization was felt in Indian Judicial system. In furtherance of this need, an E-committee was constituted, comprising of a Chairman (Retired High Court judge), Government, National Information Centre (NIC) and different organs of the judiciary. The first plan of the E-Committee i.e. Phase-I was prepared in 2008 and it provided laptops to all judicial officers in the country. Each court was provided with a server room and every district was provided with a website. Information like leaves of judges, nearest police stations etc. were displayed in this website. All these facilities were provided to 14, 436 courts.

Thereafter, a Case Information Software was prepared by NIC, which preferred using an open source software over a propriety software. A training programme was also conducted for the judicial officers and staffs. Even the idea of ‘training of trainers’ was borrowed from Europe and given effect to. However, Phase-I could not reach the districts in the remote areas.

From 2014, the E-Committee started Phase-II, during which each court room was provided with six computers. These computers were also given to court complexes, District Legal Services Authorities, collateral courts etc. In Phase-II, NIC developed Case Information Software-II, which ensured that when a case was filed in the court, the details of the case were fed into the server, then to the National server and finally to the Data Recovery Centre. This data is now available to everyone and can be utilized for online research. The E-Committee then decided that the entire data should be stored in a cloud and each Court should have a separate cloud.

Further, the speaker discussed the objectives of such data storage which are as follows:

1. To monitor the data
2. To identify, manage and reduce the pendency of courts
3. To ensure timely disposal of cases.
4. To promote transparency for all stakeholders.

The speaker then introduced the participants to a website designed for the Indian judiciary with the domain name: ecourts.gov.in. This website contains the information of all courts in India. The speaker demonstrated the ways of using the website with the help of a presentation and talked about how interoperable criminal justice system would help facilitate access to justice.

The speaker also mentioned about Big Data Analysis being conducted by the National Case Management System that helps study the patterns of pendency and the number of judges required. The speaker then discussed briefly about how service of summons is one of the causes of pendency and the development of NSTEP to serve summons.

Further, the speaker touched upon the following aspects:

1. A website with the domain name: paidecourts.gov.in, where court fees and other court charges can be paid online.
2. Privacy issues in family cases, sexual offences, security matters etc. Most times, the names of the parties are not disclosed on the websites.
3. Availability of ecourts.gov.in in 8 languages, keeping in mind the linguistic diversity in India.
4. Kiosk
5. E-Tendering
6. E-filing of cases, which would ensure easy issuance of remand but might encourage filing of fake cases, choking up the system.
7. Rules being framed to determine validity of evidence collected through video-conferencing.
8. Digital signatures
9. Artificial Intelligence
10. KOHA: integrated system of online libraries

Lastly, the speaker, citing the case of *Swapnil Tripathi v. Supreme Court of India (2018) 10 SCC 639*, observed that technology can be used for expeditious disposal of cases and to ensure transparency, access to justice etc. only if a judge wants to.

The session ended with some keen observations of Director NJA regarding the initiatives of the judiciary to prevent human rights violation and concerning how adjournments are reasons for delay in disposal of cases and how judges can offer a solution to this problem.

Day 7

Session 12

Identification of Ratio in a Precedent

Speakers: Prof. D.S. Ukey and Prof. V.K. Dixit

The session dealt with the theoretical and practical aspects of the doctrine of precedents. It was noted that Art. 141 of the Indian Constitution mandates the law declared by the Supreme Court to be binding on all courts within the territory of India. Strolling through the constitutional history of India, the speaker remarked that Constitution is not limited to the bare text but is what the judiciary interprets it to be. The law declared by the Apex Court of the land is binding on the lower courts and this constitutional status has been accorded to precedents under Art. 141. C.K. Allen in his book 'Law in Making' laid down the following principles for applicability of precedents:

1. Each court is bound by the decision of the court above it.
2. Decision of the superior court can be considered binding if it is relevant.
3. Binding-ness emanates from ratio decidendi.
4. Any decision of any other court is silent as a precedent.
5. The judgment/decision that is not used as a precedent doesn't lose its integrity.

Further, the speaker observed that even if the law declared by the superior court is unconstitutional or blatantly wrong, it cannot be overruled by the lower court. Smaller benches don't have the power to overrule the judgment of larger bench. Only ratio decidendi and not the obiter dicta are binding on lower courts.

The speaker then defined ratio decidendi in the following words of Dicey:

1. Ratio is the reason of the decision
2. It is the principle of law laid down by the judge.
3. Such principles ought to be considered binding by others.

Primarily, there are two theories of doctrine of precedent, *firstly*, as per the Material Fact Theory, law emanates from fact and it is the material facts along with reasoning that constitutes ratio decidendi. Though this theory is widely accepted, it is not immune to controversies. The second theory i.e. the Classical theory provides that the principles of law laid down by the judge are the basis of his decision.

In general parlance, it was assumed that each case had a single ratio. However, this was objected to by Julius Stone, who believed in the existence of *rationess decidendi*. In order to establish the conflict with regard to the binding effect of precedents, the speaker cited the following cases:

1. *London Street Tramways v. London City Council (1898) AC 375*; wherein it was held that the House of Lords is bound to follow its own decisions.
2. *Young v. Brystal Aeroplane Company (1944) KB 718 CA*, wherein the Court of Appeal decided that it is not bound to follow its own decisions in the under mentioned circumstances:
 - a) When its decision was contrary to the decision of the House of Lords.
 - b) When its past decisions were contrary to a latter law enacted by the Parliament.
 - c) In case of a per incuriam decision.

Further, the speaker observed that any decision delivered by the Supreme Court has a three-dimensional value because:

1. It is binding upon the parties
2. It is binding upon the courts
3. It is binding upon the administration and law enforcement agencies.

The Supreme Court in a case had observed that precedents enunciate rule of law for the administration of justice in the country. In *State of Orissa v. Ram Narayan Das (1961) 1 SCR 606*, the decision of the court was challenged as per incuriam on 3 grounds:

1. It was contrary to statutory law
2. Contrary to the Constitution
3. Contrary to the judgment of the Supreme Court in *Hussainara Khatoon v. State of Bihar (1980) 1 SCC 98*

The speaker also discussed the case of *Bengal Immunity Co. Ltd. v. State of Bihar (1955) 2 SCR 603*, where CJ. Das observed that the Supreme Court has the power and authority to overrule its own decisions when it is found that an error has been committed in the past and it can't be perpetuated in public interest. In such a scenario, in a fit and appropriate case, the Supreme Court can overrule its own decision. Further, the speaker referred to the polemical work of Prof. Goodhart where he had penned down 6 steps on how to determine the ratio.

Towards the end of his lecture, the speaker made the following observations:

1. Certain technicalities, qualifications and conditions need to be taken care of while delivering a judgement.
2. Ratio can only be found in majority decision and not in the dissenting opinion.
3. Art.145 (5) does not prevent a judge from delivering a dissenting judgement.
4. The worth of a dissenting judgement lies in the light it provides for the future cases.

The second speaker, *Prof. V.K. Dixit*, drew home the point that no demarcation can be made between theoretical and practical aspects of the doctrine of precedents. He classified his lecture under two heads; namely:

1. What is the concept of precedent?
2. How has the doctrine of precedent been applied by the Courts in India?

Strolling through the history of evolution of doctrine of precedent, the speaker emphasized on two important aspects:

1. Reporting of cases in black and white
2. Establishment of the hierarchy of courts

He also classified precedents into binding and persuasive ones; and discussed the advantages and disadvantages of precedents briefly. The speaker then remarked that as per the English theory, ratio decidendi is that part of law without which the dispute in hand cannot be decided, whereas obiter dicta is that part of the judgment that is not necessary to decide the dispute in hand. The speaker also cited the cases of *Donoghue v. Stevenson (1932) UKHL 100* and *Doctor Bentley's case* to demonstrate how courts, in the earlier times, had taken inspiration from the Holy Bible to

enunciate new principles and resolve the dispute at hand. Apart from this, the speaker also cited the following cases:

1. Riggs v. Palmer 115 N.Y. 506 (1889)
2. Ryland v. Fletcher (1868) UKHL 1
3. M.C. Mehta v. Union of India (Shriram-Oleum Gas) (1987) 1 SCC 395

In India, the decision of a larger bench will be binding on a smaller bench. Thus, it is the strength of the bench that determines the binding effect of its decision. The session ended with a distinction being drawn between the concepts of 'sub silentio' and 'per incuriam'

Sessions 13 & 14

Landmark Judgments in India

Speakers: Prof. D.S. Ukey, Prof. V.K. Dixit and Prof. D.P. Verma

The focus of this session was on discussing the path breaking judgments of the Supreme Court of India that has altered the course of administration of justice. The following cases were minutely discussed and deliberated upon:

1. ***A.K. Gopalan v. State of Madras AIR 1950 SC 27:***

In this case, the Supreme Court had observed that the 'procedure established by law' has to be in accordance with a law enacted by the Parliament. It cannot be equated with 'due process' which was deleted from the draft constitution by the framers of the Constitution. However, the dissenting voice of Justice Fazal Ali echoed as he opined that the procedure established by law is the same as due process under the 5th Amendment of the US Constitution.

2. ***Maneka Gandhi v. Union of India (1978) 1 SCC 248:***

The principle of law expounded in this case was that mere exercise of power in accordance with procedure established by law is not enough to deprive a person of his fundamental rights. The procedure has to be just, fair and reasonable. Thus, Justice Krishna Ayer and Justice P.N. Bhagwati overruled the decision in *A.K. Gopalan v. State of Madras AIR 1950 SC 27*.

In this regard, it was noted that principles of natural justice does not require express incorporation in statutes. They are implicitly present. The speaker also classified due process into substantive due process and procedural due process. Prior to the decision in *Maneka Gandhi v. Union of India (1978) 1 SCC 248*, it was believed that every fundamental right is mutually exclusive. However, after Maneka Gandhi's case, it was categorically laid down by the Supreme Court that fundamental rights are not isolated. They are mutually dependent and interwoven and cannot be divorced from one another.

The speaker also mentioned the 'doctrine of invisible right' propounded by Justice Krishna Ayer, which has been wielded as a weapon by the Supreme Court against violation of rights of the people and also as a tool for expansion of Art. 21 of the Constitution.

Thereafter, the speaker explained how the emergence of public interest litigation has paved away for easy access to justice and fulfillment of constitutional objectives of social justice. In this context, the speaker elaborately discussed the case of *People's Union for Democratic Rights v. Union of India (1982) 2 SCC 494*. The speaker also discussed the landmark cases of:

1. *Indira Nehru Gandhi v. Raj Narain (1975) 2 SCC 159*
2. *Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225*

The second speaker, *Prof. V.K. Dixit*, focused on three important aspects, namely:

1. Women Empowerment
2. Gender Discrimination
3. Homosexuality

Speaking about women empowerment, the speaker observed that women have been subjected to discrimination in the patriarchal society since time immemorial. They are yet considered inferior

in various religious discourses. In the name of tradition and religion, women have been discriminated against. It is because of this reason that the Constitution under Article 15 (3) empowers the legislature to make special provisions for women and children. The objective behind this provision was to bring women at par with men. Previously, Hindu law was one of the most barbaric laws towards women. But with amendments, in the course of time, it has become the most advance religion with respect to status of women.

In this context, it was noted that secularism is not just the duty of the State but also an attitude that has to be inculcated in the people. The speaker also drew a line of difference between the ideologies of Aquinas and Austin and argued how Austin's theory with respect to religion is more valid in the present era.

The speaker then elaborately discussed the following cases:

1. *Sharaya Bano v. Union of India and Ors.* (2017) 9 SCC 1
2. *India Young Lawyer's Association v. State of Kerala* 2016 SCC 1783
3. *Haji Ali Dargah Trust v. DR Noorjehan Safia Niaz & Ors.* (2016) 16 SCC 788.
4. *Joseph Shine v. Union of India* (2018) 2 SCC 189
5. *Suresh Kumar Koushal v. Naz Foundation* (2014) 1 SCC 1
6. *Navtej Singh v. Union of India* (2018) 10 SCC 1

Lastly, the speaker differentiated between conversion and proselytization.

The third speaker, *Prof. D.P. Verma*, extensively discussed the path breaking judgment of Supreme Court in *K.S. Puttaswamy (Retd.) & Anr. V. Union of India* (2017) 10 SCC 1. Comparing the concept of privacy in the Constitution of Bangladesh, Fiji and India, the speaker pondered upon the definition of privacy. Thereafter, the speaker anatomized the case law into the following heads to ensure better understanding:

1. Why it is a landmark judgment?
2. Conceptual Issues
3. Different Variants of Privacy
4. Past decisions of the Supreme Court on Privacy
 - *M.P. Sharma v. Satish Chandra* AIR 1954 SC 300
 - *Kharak Singh v. State of U.P.* AIR 1963 SC 1295
 - *Gobind v. State of M.P.* (1975) 2 SCC 148
 - *People's Union for Civil Liberties v. Union of India* (1997) 1 SCC 301
5. Arguments of the Petitioners
6. Arguments of the Respondents
7. Vindication of dissenting opinions in previous cases
8. Issues raised in the case
9. Human rights jurisprudence
10. International obligations

In the concluding remarks, *Prof. V.K. Dixit* expressed his opinion regarding two important aspects of right to privacy that has not yet been addressed in India but which are of paramount importance. Right to hygiene and sanitation are two fundamental branches of right to privacy that has escaped judicial consideration. However, without judicial recognition of these rights, the State cannot ensure the safety and emancipation of women in the country.

Valedictory Ceremony

The programme ended with a vote of thanks from Additional Director, NJA where he expressed his gratitude towards all the luminaries who had attended the programme and shared their knowledge and experiences with the participating judges. He also thanked the participants for their kind cooperation and the programme coordinators, *Mr. Sumit Bhattacharya and Mr. Krishna Sisodia*, for successfully organizing the conference. On behalf of National Judicial Academy, tokens of appreciation were gifted to all the participating judges of Bangladesh and Fiji. The Bangladesh and Fiji contingents, represented by their team leaders, partook in the valediction and shared mementos for NJA, which marked the end of Phase-I of the seminar.