

**Training Program for Myanmar Judges and Judicial Officers [SE-01]  
[23<sup>rd</sup> - 29<sup>th</sup> August, 2019]**

*Rajesh Suman, Assistant Professor  
Shashwat Gupta, Law Associate*

A Memorandum of Understanding (MoU) has been entered between the National Judicial Academy (NJA), India and the Office of the Union Chief Justice (OUCJ), under the Supreme Court of the Republic of the Union of Myanmar for organising Training and Capacity Building programs for Myanmar Judges and Judicial Officers. For the year 2019-20, it is proposed that two batches, each of 40 judicial officers will visit India and participate in a 07 days training program. In pursuance of the said MoU, a 7 days program for the first batch of Myanmar Judges and Judicial Officers at the District and Township Level nominated by Myanmar, has been organized by NJA at Bhopal from 23<sup>rd</sup> to 29<sup>th</sup> August, 2019. The program included sessions on judicial skills, constitutional, civil, criminal, human rights laws and correlative jurisprudence. The program also aimed to acquaint participants with elements of judicial behaviour- ethics, neutrality and professionalism, skills of judging and judgment writing. The program also facilitated discussions on court & case management and use of ICT in administration of justice.

**Major Highlights and Suggestions from the Program**

**SESSION 1**

**Overview and Architecture of the Indian Constitutional Arrangement**

The speaker initiated the discussion by highlighting the importance of subordinate courts as the face of judiciary which creates image of judiciary among people. It was emphasized that subordinate judiciary plays an important role in promoting public confidence about judiciary among people. The speakers then focused on the historical factors which leads to formation of Constitutional law and how it reflects values and beliefs of people. The speakers said that the way Constitution is implemented and inspire respect is crucial for judiciary. The importance of Constitutional in upholding democratic values was discussed. The speaker discussed some aspects of Constitutional law in India including independence of judiciary, federalism, fundamental rights and directive principles of state policy and compared them with the Myanmar situation. There was extensive discussion on the interpretation of fundamental rights and directive principles of state policy by the Supreme Court of India. The impact of such interpretation in broadening the rights of people was highlighted. The division of legislative powers among union and state was discussed by referring various aspects of union list, state list and concurrent list. The speaker discussed power of amendment of the Constitution by referring to Article 368 of the Constitution. The issues related to rule of law for democratic governance and limitations of governments were highlighted. The doctrine of separation of power was discussed and Constitutional norms for governing relations between three organs of the government was highlighted. The participants asked queries related to judicial review and access to justice in India which was answered by speakers by referring to judgment in *Marbury v. Madison* and Article 13 of the Indian Constitution.

## **SESSION 2**

### **Indian Judiciary: Organizational Structure, Jurisdiction and Approaches**

The speakers initiated the discussion by explaining the meaning of Constitution and highlighted various factors and needs which lead to formation of Constitution in a country. The issues related to scope of judicial review of amendments to the Constitution and relative positions of legislature and judiciary in Constitutional scheme were discussed. Article 13 and Article 368 of the Indian Constitution were referred and explained in detail. Various judgements of the Supreme Court of India related to right to property were discussed. The parliament's power of amendment of the Constitution was discussed by referring to the judgments in Shankari Prasad v. Union of India (1952) 1SCR 89, Sajjan Singh v. State of Rajasthan AIR 1965 SC 845 and Golaknath v. State of Punjab AIR 1967 SC 1643. There was extensive discussion on the judgment in Keshavnanda Bharati case focusing on challenge to 24<sup>th</sup>, 25<sup>th</sup>, and 29<sup>th</sup> amendments to the Constitution. Various aspects of the basic structure doctrine were discussed. The speakers also focused on the development of jurisprudence after Keshavnanda Bharati case. The speakers then discussed various injunctions available to citizens against state in the form of fundamental rights. The Part III of the Constitution was discussed in detail and various Articles of the Constitution dealing with fundamental rights were elaborated upon. The directive principles of state policy were discussed by referring to their political philosophy. The speakers responded to queries of participants related to judicial review and judicial activism and referred to corresponding position in the Myanmar's legal system.

## **SESSION 3**

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

The session was initiated by the speakers by elaborating on the major features of the Indian Constitution. Various elements of the Preamble to the Constitution were discussed in detail. It was emphasized that values mentioned in the preamble embodies the spirit of the Indian Constitution. The speakers explained the historical factors behind formation of Indian Constitution by referring to the Constituent Assembly Debates. The value of Constitution to address changing needs of the society was discussed. Part III of the Constitution dealing with fundamental rights and part IV of the Constitution dealing with directive principles of state policy were discussed and court's role in ensuring delicate balance between them was highlighted. The role of parliament in amendment of the Constitution was focused and Article 368 of the Constitution was referred. The speakers discussed various landmark judgments of the Supreme Court which focus on the constitutional vision of justice. The speaker also highlighted the development of the jurisprudence with regard to public interest litigation in India and how it enhanced access to justice for the Indian citizens.

## **SESSION 4**

### **Group Discussion**

In this session all the participants from Myanmar were divided into 5 groups. Group 1 and 2 discussed the issue "why we have become Judges" and group 3, 4 and 5 discussed the issue "the

role of Judge in a constitutional democracy as we understand from today's discussion." The groups discussed the issues for 20 minutes and then the representative of each group presented the views of respective groups.

## **SESSION 5**

### **Elements of Judicial Behaviour- Ethics, Neutrality and Professionalism**

The speakers initiated the discussion by explaining various elements of judicial behavior. The major element of judicial behavior is to protect rights and liberties of people. Right is might so far as judicial behavior is concerned. Giving opportunity of hearing to parties is a definite step for protection of right. Ethics and morality are defined as expectation from others and professionalism is part of ethics. Judicial behavior should not be under anybody's influence. The behavior of the judge should be decent, dignified and courteous. Neutrality is another major element of judicial behavior and a judge should not hear the related party case. The speakers highlighted the importance of efficiency in service. A judge should always be upright as he has to be impartial decision maker. The speakers emphasized importance of Constitutional values in guiding judicial behavior. The judicial behavior is bound by laws and the Constitution and should not be swayed by personal values. The speaker differentiated between artificial virtues and natural virtues. The use of social media by judges was discussed. The speakers referred to various sources of judicial ethics including Bangalore Principles of Judicial Conduct.

## **SESSION 6**

### **Judging Skills: Art, Craft and Science of drafting judgments**

The speakers initiated the discussion by highlighting value of judgment in judicial career. The meaning and purpose of judgment was explained to participants. The basic steps in rendering judgments and main aspects of good judgment were discussed. The impact of judgments on social norms and reforms was discussed and the leadership role of judges was emphasized. Judgment is a product of entire judicial process. Four major parts of judgments were explained to participants. The first is facts which should be mentioned with clarity from pleadings. Subjective facts should not be introduced by a judge. Clear facts help in understanding the nature of disputes. The second part of judgment is formulation of questions or issues having bearing on the judgment. The third part is decision and fourth is reasons for decision. The judgment should be capable of being understood and acted upon by parties. The reasons should flow from findings and there should be distinct finding on each question. The language of judgment should be easy and understandable. The speakers referred to the judgments of Supreme Court where the guidelines for writing judgments have been provided including *State of Gujarat v. Justice R.A. Mehta (Retd)* (2013) 3 SCC 1, *Joint Commissioner of Income Tax Surat v. Saheli Leasing and Industries Ltd.* (2010) 6 SCC 384 and *Amina Ahmed Dossa v. State of Maharashtra* (2001) 2 SCC 675.

## **SESSION 7**

### **Judge the Master of the Court: Court Management & Case Management**

The speakers initiated the session by discussing the case management rules for courts in Myanmar. It was emphasized that judges should make time schedule for the disposal of cases and should adhere to that schedule. Hearing dates of cases should be arranged accordingly. The speaker discussed importance of holding pretrial conference in cases so that parties can settle on some preliminary facts which need not to be proved during trial. It can save lot of time of court during trial. The concept of team leadership and various elements of court management was discussed. The importance of tracking of summon was highlighted and use of technology in such processes was discussed. The experience on case management in India was shared by the speakers. Various processes of use of information technology in court and case management in India were explained to participants. The Indian experience about use of statistics for monitoring court cases was shared with the participants. The speakers concluded the session by highlighting the role of judge in ensuring better court and case management.

## **SESSION 8**

### **Principles of Evidence: Appreciation in Civil and Criminal Cases**

The speaker initiated the session by discussing basic principles behind law of evidence. The speaker emphasized that appreciation of evidence is a matter of fact and highlighted the importance of rules of evidence in restricting scope of arbitrary inquiry. The speaker said that Indian Evidence Act is a combination of law and reason. The relevance facts and evidence should be direct and production of evidence must be ensured. The speaker focused on confession as a form of evidence and precautions to be taken while admitting confession. Another kind of evidence discussed was dying declaration and various conditions while admitting it were discussed. The speaker referred to judgments of the Supreme Court in this regard. The speaker emphasized that judges should not preoccupy themselves with crime control and should appreciate evidence in an impartial manner. The importance of presumption of innocence while appreciating evidence was emphasized. The speaker share experience regarding media pressure in handling complex cases. The judges must adhere to rules of evidence as they have been formulated on the basis of experience. The speaker discussed prohibition on disclosure of certain kind of communication such as made during the marriage. The importance of corroboration while appreciating evidence was emphasized. Other issues discussed in the session included evidence by accomplice accused, statutory presumption and process of examination in chief.

## **SESSION 9**

### **Electronic Evidence: New Horizons, Collection, Preservation and Appreciation**

The speaker highlighted the importance of electronic evidence and the increasing instances where electronic evidence is adduced in court. He focused on the definition of “evidence” and “electronic record” and stated that emails, digital photographs, ATM transaction logs, word documents, databases, digital files, audio files constitute electronic evidence. It was stated that electronic

evidence can be easily tampered or manipulated and therefore it is imperative that such evidence should be closely scrutinized for authenticity. Thereafter, the speaker demonstrated a method whereby spoofed messages can be sent through Whatsapp, email and SMS. He also focused upon the usage of Call Data Records (CDR) in crime investigation and stated that it can be used to trace the location from where the call was made. He stated that the mail sent through gmail can be analyzed for authenticity by checking its header. He further discussed the methods whereby the authenticity of SMS and Whatsapp messages can be verified. Lastly, he discussed Section 65B of the Indian Evidence Act and highlighted the procedure required under the provision.

## **SESSION 10**

### **Forensic Evidence in Civil and Criminal Trials; DNA profiling**

The speaker initiated the discourse in the session by stating the definition of forensic science and forensic medicine. Thereafter, she highlighted various criminal offences in which forensic medicine can be used which includes cases of homicide, sexual assault, dowry death, drug abuse, accident and poisoning. The speaker also focused upon the use of forensics in civil cases involving paternity, insurance, negligence, age determination etc. The speaker highlighted the Locard's Exchange Principle and discussed its application in forensic science. It was stated that forensic science includes forensic document analysis, forensic toxicology, forensic narcotics, forensic serology, forensic ballistics, forensic entomology and forensic DNA analysis. Thereafter she focused upon the use of DNA in solving crime and gave a brief overview of RFLP technique. She also discussed the benefits of using DNA as an evidence in justice administration. However, she cautioned that presence of DNA does not prove guilt but it only has a corroborative effect. She also discussed the limitations in use of DNA profiling due to insufficient sample; contaminated sample; lack of qualified experts etc. It was subsequently followed by discussion on forensic medicine and it was stated it includes injury examination, age estimation, clinical toxicology etc. It was discussed that injury examination helps in ascertaining the type of weapon; number of assailants and to understand the type of injury. She also discussed that approximate age can be determined through teeth, skull structure etc. Lastly, the speaker focused upon the drawbacks relating to forensic evidence in India which includes improper collection, improper preservation, non-collection of evidence, non-maintenance of chain of custody and delayed dispatch for analysis.

## **SESSION 11**

### **Criminal Justice Administration: Fair, Impartial and Competent Investigation**

The session was initiated by the speaker by highlighting a recent judgment of the Supreme Court wherein the accused were acquitted setting aside a death sentence given by the High Court almost a decade ago. It was stated that as a result of faulty investigation the accused was incarcerated for more than a decade and had to face a protracted criminal trial. The faulty investigation also affects the family of the victim since they have to face the fact that actual perpetrators were roaming free. It was stated the faulty and shoddy investigation results in faith deficit in the judiciary. It was also stated that the investigating officer sometimes arrest innocent individuals to resolve cases by falsely accusing them of crime and fabricating evidence. Thereafter, the speaker discussed the difference between adversarial and inquisitorial system and stated that in an adversarial system the judicial officers or the law officers are not involved in the investigation. The judge advised the

participants to discharge the accused in cases it is not likely to end in conviction so that he can be re-tried in situations where subsequently fresh evidence implicating him is found. The speaker stressed that judges should undertake all necessary steps within their purview to ensure that a fair investigation is undertaken. The judges were advised to pose necessary questions to the officer when remand is sought. Thereafter, the participants discussed the role of a judge in a criminal trial in Myanmar and the procedures followed by police while undertaking investigation in Myanmar.

## **SESSION 12**

### **Criminal Justice Administration: Fair and Speedy trial and Human Rights**

The speaker commenced the session by highlighting Article 20 of the Indian Constitution which confer various rights on the accused and thereafter discussed the corresponding provisions in the Constitution of Myanmar. The speaker stated that rights granted under Article 20 should not be violated by the police or investigative agencies. It was stressed that an individual does not lose his human rights during investigation, trial or even after conviction. The speaker stated that Article 21 of the Indian Constitution has been interpreted by the court to include right to speedy trial; and therefore it is imperative for the judges to complete the trial expeditiously. Furthermore, it was stated that the procedure should be just, fair and reasonable. Thereafter, the speaker discussed the cases of *Hussainara Khatoon v. Home Secretary, State of Bihar* [AIR 1979 SC 1377], *Sunil Batra v. Delhi Administration and others* [(1978) 4 SCC 494] and *D.K. Basu v. State of West Bengal* [(1997) 1 SCC 416] and their impact on criminal justice administration in India. The Universal Declaration of Human Rights [UDHR] was also discussed to highlight various basic human rights which are available to all individuals. The speaker stressed on the need to provide requisite legal aid to undertrials to enable them to defend themselves in court. It was also stated that crimes by juveniles are treated in a different manner and hence, different legislations and requisite guidelines have been laid down for them. Similarly, women also have special rights which include compulsory presence of women police at arrest, separate lock-up and separate jail to protect the dignity of women. Lastly, the speaker elaborated upon the interpretation of fair trial by the Supreme Court over the years and stated that speedy trial is one of the most integral aspect of criminal justice administration.

## **SESSION 13**

### **ICT and E-Judiciary: Indian Perspective**

The speaker enumerated the benefits of ICT enablement of Indian courts and highlighted that accessibility and accountability of courts has increased with the introduction of ICT. The speaker discussed formation of the E-Committee of the Supreme Court and elaborated upon the various actions undertaken in Phase-I and Phase –II of the eCourts project. The speaker also focused upon the development of software used in the courts i.e. C.I.S. (Case Information System) and the features of its latest version. It was stated that ICT enablement has increased access to justice as the litigants are now able to access their case details and case status easily from the internet. The speaker discussed the benefits of NJDG (National Judicial Data Grid) and gave a demonstration of the website of NJDG to familiarize the participants with the procedure for accessing case details and data relating to pendency from the website.

## **SESSION 14**

### **Civil Laws and Procedure: Recent Developments**

The speaker discussed the recently enacted legislations and amendments introduced in several legislations in consonance with the changing conditions and needs of society. The speaker discussed the features of recent legislations enacted for the protection of women and children, including Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; Juvenile Justice (Care & Protection of Children) Act, 2015 and Criminal Law (Amendment) Act, 2013. The speaker also elaborated upon the cases of *Indian Young Lawyers Association v State of Kerala* 2018 (13) SCALE 75 [Sabarimala Case] and *Shayara Bano v Union of India* (2017) 9 SCC 1 [Triple Talaq Case] and discussed their impact on women rights.

## **SESSION 15**

### **The Process of Trial in Civil Cases: Best Practices**

The speaker opined that non-service of summons is a major cause for pendency in Indian courts, and it was suggested that summons should be served through electronic mode. He highlighted the challenges in adhering to the time schedule provided in the Code of Civil Procedure, 1908 and the impact of the dilatory practices of the advocates in timely adjudication by the court. It was advised that the judge should grant adjournments only when necessary and should not allow the advocate to unnecessarily prolong the trial. Thereafter, the speaker highlighted the directions given by the Supreme Court in the case of *Ramrameshwari Devi vs Nirmala Devi* (2011) 8 SCC 249 for improving the system of civil trial. The speaker also suggested certain practices which should be followed for trial in civil cases, which include marking only admissible documents, recording the demeanour of witnesses etc. The speaker also advised that video-conferencing should be used to curtail time spent in examination of witness.

## **SESSION 16**

### **Alternative Dispute Resolution and Plea-Bargaining**

The speaker highlighted the benefits of Alternative Dispute Resolution as a method for amicable resolution of disputes, which would have otherwise remained pending in courts for a long time. It was stated that Lok Adalat has been successful in India through which a large number of cases have been disposed since it allows speedy settlement of disputes. The success of mediation in commercial disputes and family disputes in India was highlighted during the session and the participants were advised to promote mediation in cases before their courts. The speaker discussed the concept of plea bargaining and stated that plea-bargaining has not been very successful in India. The procedure of plea bargaining in India along with its advantages and disadvantages were also discussed during the course of the session. It was stated that a number of plea bargains are entered under coercion by the police, wherein sometimes innocent individuals have been forced to confess and serve jail sentence. It was opined that it is the duty of a judge to carefully scrutinize that the application for plea bargaining was filed voluntarily by the accused.

## **Local Visit & Study Tour Report**

### **Local Visit: 25 August, 2019**

#### **State Museum**

The participant judges from Myanmar were taken for a local visit to the State Museum and Tribal Museum. The participants first visited the State Museum where the curator of the museum provided brief overview about the establishment of the museum. He guided a tour of various wings of Museum and thereafter proceeded to give information about the various exhibits present in the museum. The participants visited different galleries in the Museum which enriched their knowledge regarding Indian history and culture. The participants then visited the tribal museum where they took a tour of the museum. They were apprised about various exhibits which showcased the lifestyle and traditions of the major tribes present in the state of Madhya Pradesh. They also observed housing structures/ houses of different tribes constructed from mud, bamboo, hay etc. This provided a glimpse of actual structures present in the tribal areas.

### **Study Tour: 26 August, 2019**

#### **AIIMS, Bhopal**

The participant judges visited AIIMS, Bhopal where they observed various processes of the Forensic Science Department. They observed various facilities of the mortuary and were shown the radiology room, post mortem room, cold room, report writing room etc. They were also shown various apparatus used for the examination of a dead body. They also saw the Sexual Assault Forensic Evidence (SAFE) kit which is for collecting and preserving physical evidence in cases of sexual assault. They were also apprised of procedures for receiving the dead body and the safety precautions undertaken by the doctors. Thereafter a presentation was shown by Associate Professor of AIIMS, Bhopal and he discussed the procedures followed during autopsy; precautions during conduction of autopsy; collection of sample; preservation of sample and maintenance of chain of custody. He also explained the format of post mortem report prepared by the doctors and various procedures which must be taken into account during its preparation.

### **Study Tour: 27 August, 2019**

#### **District Court, Bhopal**

The participant judges from Myanmar visited District Court, Bhopal. They observed functioning of filing counter, library, record section and computer section in the district court. The participants were taken to various court rooms where they observed trial proceedings. They asked some questions about court processes and the Registrar, District Court gave answer to them accordingly. After visiting courtrooms the participants were taken to the conference hall of the District Court. The District Judge, Bhopal greeted all participant judges and interacted with them concerning the functioning of District Court and shared information regarding the District Court establishment. During interaction the participants were served tea and all the participants were given flowers. The Myanmar judges also presented memento to the District Judge.

**Study Tour: 28 August, 2019**  
**Central Prison, Bhopal**

The participant judges from Myanmar visited Central Prison, Bhopal. The participants observed various facilities inside the prison establishment including hospital, vocational training center, kitchen and prison ward. The queries of participants regarding such facilities were answered by the prison administration. The prison administration also shared information regarding prison establishment with the participant judges.