

TRAINING PROGRAM FOR BANGLADESH JUDGES AND JUDICIAL OFFICERS

- (SE-01)

27th to 30th September, 2021

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Program Report

A Memorandum of Understanding (MoU) has been entered between the National Judicial Academy, India (NJA) and the Supreme Court of Bangladesh for organising Training and Capacity Building programmes for Bangladesh Judicial Officers. In pursuance of the said MoU, an online program for Judges nominated by Bangladesh was organized by NJA (*hereinafter* Academy) from 27th to 30th September, 2021.

Objectives of the Seminar:

In compliance to the said MOU entered into between the Academy and the Supreme Court of Bangladesh for training of about 1500 officers from 2017 through 2023, the Academy endeavours to continue the capacity building and training of judicial officers of Bangladesh. As a convention to the yester year's model, 04 batches of about 40 officers would participate in a course of 04 days training program by the Academy (modified to suit the current pandemic situation). Conventionally, the first three batches would comprise junior division judges, magistrates and subordinate judges; and the fourth batch would comprise District and Sessions and equivalent rank judicial officers. Thereafter, the identified and designated State Judicial Academies would organize part of the training program after a stint of training at the Academy within the framework of a training module and curriculum designed therein.

The contours of the program at Academy traces the overview and architecture of Indian constitutional arrangement, highlighting the constitutional vision of justice with its goals, roles and vision of Courts. The critical elements of judicial behaviour *viz.* ethics, neutrality and professionalism *sine qua non* to a judge's demeanour would be analysed. Session to hone judging skills, including effective listening, assimilating, drafting and delivering quality judgments has been factored in. Recent advances in the field of handling evidence (especially electronic evidence) including established and emerging jurisprudence jettisoning procedural failure modes features in the program menu. In the changed milieu (especially ever since the pandemic struck), portending a discomfoting uncertainty, the evolving engagement of Indian judiciary with its colossal data base in NJDG, deep and pervasive systematization with CIS, and proactive embracing of AI enabled projects *viz.* SUPACE, SUVAS projects etc. formed the edifice to discuss the power of ICT and e-judiciary initiatives with the foreign judges. The program also accommodated a session on discussing the best-practices through landmark judgments; wherein a story of a foray from a strong structural domestic judicial wisdom of case law archival to transformative constitutionalism was analysed. The novel experiments by the collaborative efforts of legislative and judicial initiatives in the form of rolling out of, and ramifications of Commercial Courts Act, 2015, Insolvency and Bankruptcy Code, 2016 *inter alia* formed part of the program.

Resource Persons

S.No.	Resource Person	Designation
1.	Dr. Justice B. S. Chauhan	Former Judge, Supreme Court of India Former Chairperson, Law Commission of India
2.	Dr. Balram K Gupta	Director (Academics), Chandigarh Judicial Academy
3.	Justice Dama Seshadri Naidu	Former Judge, High Court of Bombay & Kerala
4.	Prof. D. S. Ukey	Vice Chancellor, Maharashtra National Law University, Mumbai
5.	Justice Ram Mohan Reddy	Member Krishna Water Dispute Tribunal, Former Judge, Karnataka High Court,
6.	Prof. BT Kaul	Former Director, Delhi Judicial Academy
7.	Mr. Somasekhar Sundaresan	Sr. Advocate, independent counsel
8.	Justice G. Raghuram	Former Judge, Andhra Pradesh High Court, Former Chairperson CESTAT, Former Director, National Judicial Academy
9.	Justice Ved Prakash Sharma	Chairperson, State Law Commission, Madhya Pradesh, Former Judge Madhya Pradesh High Court
10.	Justice Deepak Gupta	Former Judge, Supreme Court of India
11.	Justice Sunil Ambwani	Former Chief Justice Rajasthan High Court
12.	Justice A.K. Sikri	Former Judge, Supreme Court of India, International Judge of the Singapore international commercial court (SICC)
13.	Mr. R. Santhana Krishnan	Advocate, Independent Counsel
14.	Mr. Brian Speers	President, Commonwealth Lawyers Association
15.	Mr. Atul Kaushik	Former Secretary Govt. of India, Independent Consultant
16.	Dr. Harold D'Costa	Independent Consultant
17.	Mr. Vakul Sharma	Advocate, Independent Counsel
18.	Mr. Debashis Nayak	Advocate, Independent Counsel
19.	Dr. Justice Shalini S. Phansalkar Joshi	Former Judge, High Court of Bombay
20.	Prof. VK Dixit	Professor Emeritus, National Law Institute University, Bhopal
21.	Justice Gita Mittal	Chairperson of Broadcasting Content Complaints Council (BCCC), Former Chief Justice, High Court of Jammu & Kashmir

S.No.	Resource Person	Designation
22.	Dr. Justice S. Vimala	Member, State Law Commission of Tamil Nadu, Former Judge, Madras High Court
23.	Justice S. Nagamuthu	Senior Advocate Former Judge, Madras High Court
24.	Justice K. C. Bhanu	Former Judge, Andhra Pradesh High Court

Day-wise brief of progression:

The four day training program was designed to cover twelve themes each in a dedicated session. A day typically was scheduled to cover three such sessions. A brief account of the same is reported hereunder:

DAY I

27th September 2021 (Monday)

Session 1

Theme: Overview and Architecture of Indian Constitutional Arrangement

The overarching values of the Constitution as enshrined in the Preamble was discussed. A comparative perspective to the Constitution of India and Bangladesh tracing the common law roots with its innate peculiarities was examined. Building on the well-established judicially procreated doctrine of “basic structure, the edifice of the evolving concepts of “justice” and “equality” was elucidated. The jurisprudence of Constitution as a “social contract” was examined with appropriate case law. Driving the roles and responsibilities of judiciary in the constitutional vision of justice formed part of the discourse generally, with intermittent contemporary illustrations of the Indian paradigm. The express constitutional supremacy under Article 7 of the Constitution of the People’s Republic of Bangladesh was compared with the well-established Indian position. The dichotomy of the proximate role of Constitutional provisions for the District and Subordinate Judiciary was critically examined, clarified and settled. The common law evolution of contours of Constitutional amenability of India was juxtaposed with Article 7B of the Constitution of Bangladesh. The scope and contours doctrines of “Rule of Law” and “Access to Justice” under the national Constitutional rubric formed part of discourse.

Session 2

Theme: Landmark Judgments: Celebrating Decadal Masterpieces

The session captured the important contributions of the constitutional courts of India in the last decade. A snapshot of the colossal and archaic jurisprudence by the apex court of India (bearing the torch of systemic jurisprudential evolution) formed part of the discussion, followed by the novel jurisprudence laid down the apex court of India in the last decade, crystalizing contemporary nuances in the fast evolving society. Establishing the essence of landmark judgments, the interpretative value of a statutory provision (predominantly and frequently dealt by the tier-one judiciary) *vis a vis* a constitutional provision (interpreted by constitutional courts) was discerned.

Delving on role of subordinate judiciary in the doctrine of “constitutional vision of justice”, the prevalent myth, as to their extremely limited role in the so called doctrine, (premised on the belief, that neither are they so called “constitutional courts”, nor do they interpret the Constitution) was dispelled. It was underscored that all Courts irrespective of hierarchy are “constitutional courts”. A firsthand avid example amongst plethora of judgments exhibiting constitutional vision of justice was cited as the *Ratlam Municipality Case*, 1981 SCR (1) 97. It was clarified that the doctrine is not about interpreting merely the Constitutional provision(s), but lies in the spirit and goals which the Constitution envisages

and propagates to establish justice (social, economic and political), and which is executed and implemented in letter and spirit by the tier-one judiciary. It is about interpretation of the statutes and the clauses by a court of first instance in a manner most suited for socio-economical justice, and in compliance to the precedence set out by the constitutional courts. Amongst many exemplifications was one *viz.* while interpreting private law of contract, when the court recognizes in a given situation the “contra authoritative rule” (i.e. interpreting a rule against the author of the contract).

The intricacies and the nuances of the anti-majoritarian, non-party specific, and temporally more stable interpretations (by the constitutional courts), and its cardinal importance was delved into. The organic nature of the Constitution of India and its malleability and ductility to respond to the fast evolving and mutating social fabric was illustrated by discussing the recent seminal judgments including:

Indian Young Lawyers Association & Ors. v. The State of Kerala, (2019) 11 SCC 1; *Joseph Shine v. Union of India*, (2018) 2 SCC 189; *Common Cause v. Union of India*, (2018) 5 SCC 1; *Justice K. S. Puttaswamy v. Union of India*, (2019) 1 SCC 1; *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1; *Shayara Bano v. Union of India*, (2017) 9 SCC 1; *Jeeja Ghosh v. Union of India*, (2016) SCC 761; *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221; *Nabam Rebia v. Deputy Speaker*, (2016) 8 SCC 1; *Supreme Court Advocates on Record Association v. Union of India*, (2016) 5 SCC 1; and more.

Session 3

Theme: Indian Judiciary and Tryst with Novelty: Aligning with Global Standards by Raising the Bar

The session covered the following areas:

- (A) Legislative innovations to address present day challenges; and
- (B) Novel approaches & best practices.

The discourse dwelt upon the idea of having a comprehensive, singular, simplified legislations *viz.* the Commercial Courts Act, 2015 & the Insolvency and Bankruptcy Code, 2016 to enable ease of doing business and reassurances to repose faith on the judicial system for easy and early resolution of *lis* arising out of commercial disputes. A SWOT (Strength, Weakness, Opportunities, Threat) analysis of such statutes was done to identify and comprehend operational bottlenecks therein. Processual simplification augmented with faster and better access to justice through the novel legislations over the complex and conventional statutory passé was advocated. The drift of the novel economic legislations from the rigid conventional constitutional and statutory clutches and bedrocks were examined with help of appropriate jurisprudence *viz.* *Clariant International v. SEBI*, AIR 2004 SC 4236. Moreover, inquisitorial approaches adopted by India both legislatively *vide* statutes (POCSO Act, 2012; Juvenile Justice (Care and Protection of Children) Act, 2015 etc.); institutions (Lok Adalats, Legal Services Authorities, Gram Nyayalayas); and judicial interpretations (*In Re Contagion of Covid 19 Virus in Children Protection Homes*, 2021 SCC OnLine SC 427; *Nipun Saxena v. Union of India*, (2019) 13 SCC 715; *Sampurna Behura v. Union of India*, (2018) 9 SCC 555; *Laxmi v. Union of India*, (2014) 4 SCC 427, etc) were discussed.

DAY II

28th September 2021 (Tuesday)

Session 4

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

The session commenced with a discussion on the role of a judge in a democracy and it was

opined that being a judge in a democratic setup is challenging as well as rewarding. It was stated that judges need to be conscious of the assigned roles and functions of the organs of the State and must ensure that the broad contours of a democratic setup are respected. In exercising judicial function, judges must be mindful of the fact that the three wings of the State are distinct in their function and role, and that concentration of powers in any one wing of the State leads to tyranny. Hence, judges must ensure that broad separation of powers is adhered to. To this end, the judiciary must refrain from entering into areas of law making and determination of policy which are the functions of the Legislature and the Executive respectively. It was emphasized that the executive and the legislature are better suited than the judiciary to assess the needs of the people as they have access to data and resources. The judicial role must be limited to the area of expertise i.e. adjudication. Furthermore, execution and administration are outside the purview of judicial function and hence, must be avoided.

Independence of the judiciary was discussed and it was stated that independence begets judicial responsibility. Neutrality and Accountability as judicial values were discussed. In this regard, it was stated that it is human nature to have preconceived notions. However, judges must always adjudicate according to law and not according to their personal notions of right and wrong. Judges must apply the law and legal policy rather than devise their own policy.

Professionalism was touted as an essential judicial virtue and the necessary elements to ensure professionalism were highlighted, viz. -

- Professionalism requires continuous updation of knowledge in order to be current and relevant.
- Judges must have a sound grasp of the core areas of law as knowledge commands the respect of the Bar and the litigants.
- Professionalism in the courtroom can be evidenced if a judge as the master of the court plays an active role in the courtroom rather than being a mute spectator of the proceedings before him/her. The judge must ensure that one party does not snub, coerce, harass or intimidate the other party in the court room. He/ She must ensure that the facts and evidence in a case come before the court
- Judges must be conversant with social realities so that the judicial outcomes are acceptable and relevant.
- A judge must foster harmonious relations with the Bar.

Emphasis was placed significance of judicial objectivity and neutrality by quoting the words of Thomas Fuller – *“When a judge puts on his robes, he puts off his relation to any; and becomes without pedigree”*

The various labels associated with judges – liberal, Tough, Convicting, Acquitting etc. were highlighted and emphasis was placed on the need to ensure objectivity in judging. It was stated that a judge in a democracy has the liberty to judge but at the same time he/she is open to scrutiny. Judicial Professionalism was emphasized as adherence to a code of conduct or to common standards to ensure quality in the administration of justice. The five elements of professionalism viz. competence, spirit and attitude of service, respect for human dignity, timeliness, judicial temperament, humility and courage, were discussed at length. Professional competence requires –

- knowledge of law and ability to carry out research,

- skill to marshal facts,
- skill to appreciate evidence,
- ability to manage the court,
- ability to comprehend new ideas, and
- ability to reason their decisions and judgments

The appropriate judicial temperament was emphasized upon as a necessary element of professionalism and it included the ability to communicate with stakeholders, art of hearing, and values such as patience, courtesy, sensitivity etc. Humility was also emphasized as a virtue that should be cultivated by all judges.

The standards of judicial conduct as laid down in the Bangalore Principles of Judicial Conduct, 2002 were discussed. The values of Independence, Impartiality, Integrity, Propriety, Equality, Competence and Diligence were explained.

In response to a query as to how both parties can be satisfied in a case, it was stated that in every case one party will lose and may or may not be dissatisfied. However, it is the satisfaction of justice and the seekers of justice that is crucial. In all cases, judges must remember that they are the administrators of law rather than the giver of law. The judge must decide the case according to law and must not be bothered by public reactions. It is the opinion of reasonable and informed persons that must be considered. Judicial recourse of appeal is available to the party who is dissatisfied. Judges must refrain from populist judging.

On a query regarding the elements of propriety, it was stated that –

- Judges must keep aloof but should be isolated.
- Judges should not rub shoulders with parties and their advocates
- Judges should keep a tab on their staff
- Judges should avoid living a life of excess and should not display a lavish lifestyle.

On a query regarding exercising patience, it was stated patience enables a judge to prevent himself/herself from getting affected by the extraneous considerations and events. A patient hearing also enables a judge to get a perspective on the case. However, a judge must strike a balance between patience and firmness. He/She shouldn't tolerate nuisance and impropriety.

Session 5

Theme: Judging Skills: Art, Craft and Science of Drafting Judgments

Judgment was emphasised as the most important outcome of the judicial process. It is the calling card of the judge and is of significance to the litigant and the appellate court. A well reasoned judgment evidences the application of mind to the facts and the law and ensures quality in adjudication. Judgment writing was held to be a science and it was advised that judges in the early stages of their career should adopt traditional methods of judgment writing and can innovate once they have acquired sufficient experience. The practices of copying, verbatim narration of facts and arguments, and excessive citation of judgments without analysis were frowned upon. Judges were encouraged to analyse the law and facts in the judgment to show application of judicial mind. It was emphasized that it is not the judicial duty to judge which party has the better lawyer, and therefore, judges must attempt to balance the inconsistencies in legal assistance. Simplicity in language was emphasized upon and it was stated that judges should not unnecessarily use high flown language in an attempt to impress. The judges were

also cautioned to avoid populist judging. The participants were advised to limit the analysis and observations to the facts and issues in the case and avoid making unnecessary comments. Brevity was emphasized as a virtue and it was stated that brief and concise judgments are easily comprehended and retained.

The audience of a judgment were stated to be litigants, advocates, students of law, appellate courts, and the civil society; and it was stated that the audience impacts the style of judgment writing. The judges were advised to address the main question i.e. who, how, where, what and why in the judgment. It was stated that every witness need not be discredited or credited. Judges were advised to adopt the skill of active listening as a tool to reduce verbosity of advocates. It was also stated that it is not necessary to note down arguments in verbatim rather a summary of the arguments which includes all the contentions is sufficient.

Emphasis was placed on reasoning in a judgments and it was stated that the judgment should not merely contain reasons rather it should contain 'reasoning' which connects the facts and issues to the outcome. Judges were cautioned against jumping to conclusions in cases as this leads to reliance on irrelevant facts to support the conclusion drawn.

The Analogical, Inductive, Inferential and Syllogistic/Deductive processes were discussed. Neutrality and impartiality were discussed. On language of judgments it was stated that -

- It must be simple.
- It should not be unnecessarily lengthy.
- It should not include over quoting of precedents.
- Short words rather than long words must be used.
- "Active Voice" should be used rather than "Passive Voice".
- Text should be broken with suitable headings.
- Avoid legalese and adopt lucidity.
- Review and revise the judgment.
- Avoid disparaging remarks.
- Avoid names in sensitive cases.

It was stated that litigants want judgments and not rhetoric because they want to get on with their lives. Hence, the judgments should be written with the reader in mind to ensure it conveys crucial information in a clear and precise manner.

Session 6

Theme: Judge as the Master of the Court: Court & Case Management

Management was stated to be a skill which is not a legal subject taught in law schools. For judges, management skills are crucial for administration of justice. However, mere knowledge is not sufficient, judges need to develop their imagination to think outside the box for solutions to administrative challenges. The objectives of good management were discussed.

Management of self was stated to be the first skill of management. Self-discipline was emphasized as a necessary skill and the same can be demonstrated by practicing punctuality. To this end, the following tools were suggested –

- Be methodical
- Plan approaches to deal with issues

- Set realistic targets
- Work for the system to improve it rather than working for oneself
- Adhere to constitutional and legal limits

Judges were encourage to be passionate about their job and to cultivate two interests outside of law.

Motivation of others as the second skill of management was discussed and the participant judges were advised to motivate their staff and the lawyers. The major stakeholders in litigation and their role was discussed and emphasis was placed on the need to consider their needs and on the need for respect and empathy. Litigants were regarded as the crucial stakeholder in the justice system and it was stated that majority of the litigants are poor. Judges must ensure that litigants are treated with respect. Witnesses are an aid to the system and are the only stakeholder who does not have an axe to grind or have any vested interests in the matter. They come to the court on the invitation of the court and hence, they must be treated with dignity and respect and adequate facilities must be made available to them. The court staff are necessary for smooth functioning of the court, but the judge must ensure that they do not control the court and the system and hence, must monitor the court and the court staff through periodical scrutiny. They must ensure that the staff is trained and the right man is assigned the job he is best suited for and that he completes the work assigned to him. Incentives and encouragement are necessary to motivate the staff. Discipline is also necessary with strictures being given where necessary. Case Management skills were discussed and the participant judges were advised to –

- Fix similar cases together
- Maintain proper dockets
- Prioritize cases
- Monitor Pendency and Disposal

The relevance of Information Technology in judicial management was discussed and the features and benefits of the National Judicial Data Grid in monitoring disposal and pendency was emphasized.

Court management, case management and case-flow management were explained to the participants and the recent initiatives in this regard were highlighted *viz.* the National Judicial Data Grid, Case Information Systems, National Court Management Systems etc . The challenges in speedy disposal of cases – issues in service of summons and outdated court rules were discussed and the measures adopted in the eCourts Project to address these challenges were highlighted. The Court Managers Initiative was discussed and the following benefits were pointed out –

- Assistance in ICT enablement
- Assistance in submission of periodic reports
- Assistance in administrative correspondence
- Assistance in management of media
- Assistance in maintenance of infrastructure
- Periodical meetings with stakeholders

- Preparation of Court Development Plan
- Budget and finance management
- Accounts supervision
- Making security arrangements

The features of the eCourts project were discussed and the following innovations were explained - the National Judicial Data Grid, Case Information Systems, SUVAAS, SUPACE etc.

DAY III

29th September 2021 (Wednesday)

Session 7

Theme: Alternative Dispute Resolution

Skepticism was highlighted as a major barrier to the successful adoption of ADR. Parties are skeptical about the process involved in ADR and whether their rights and concerns will be safeguarded in the process.

Emphasis was placed on the need to create a mediation culture as it would benefit not just the judicial system but also have immense benefits for litigants. It was stated that ADR should not be considered to a second hand justice system or a poor relation thereof, rather it should be actively promoted as viable means for settlement of disputes.

The skills involved in the ADR process are markedly different from litigation skills. The need for special ADR skills training was emphasized for judges.

Session 8

Theme: Re-engineering Judicial Processes through ICT

The benefits of the integration of technology in the judicial system were emphasized and it was stated that technology aids the justice system functionaries make better and quicker decisions, and track case outcomes. Technology empowers courts to meet core purposes and responsibilities and optimise court functioning. This improves the quality of justice, access to justice, and public trust and confidence in the court as an institution

The pre-requisite steps to harness technology were stated -

- Identify needs of judges, lawyers and litigants
- examine process re-engineering opportunities
- migrate from document to content management

The objectives of the eCourts Mission Mode Project were stated to be –

- To enhance judicial productivity both qualitatively and quantitatively, to make the justice delivery system affordable, accessible, cost-effective and transparent
- To make policy for managing case loads; for effective Court Management and Case Management System
- To provide efficient and time-bound citizen centric service delivery
- To provide interoperability and compatibility with National Court Management System, Inter-operative Criminal Justice System, National Legal Service Authority and other programmes to enhance the quantity and quality of the justice delivery system

- To develop, install and implement decision support systems in courts
- To automate the processes to provide transparency of information access to its stakeholders

The key ICT strategies that were the basis of the eCourts project were stated to be –

- transition to citizen centric systems
- enabling flexibility of systems
- Shift to an Free and Open Source System
- Developing customised systems for the Indian judiciary

The initiative and the systemic changes introduced in the eCourts Project were explained to the participants to share the eCourts project as a novel measure. The measures undertaken in the eCourts Project were highlighted i.e.

- Process re-engineering
- Transition from a court-wise data storage system to a common hub as a data repository
- Introduction of judicial knowledge management systems for analysis of judicial data for determination of further action.
- Easier authentication of data through digital signatures
- Transition to e-office systems
- Introduction of user friendly measures for stakeholders
- Transition to energy efficient infrastructure

The National Judicial Data Grid and its features were explained. It was stated that the NJDG provides case data for all courts through a web portal on almost real time basis, with a dashboard and a drill down facility to reach the case details in each case. This enables the user to ascertain the number and type of arrears in every court in the country for better judicial monitoring and management. The assistance provided to judicial officers to enable them to transition to eCourts system were emphasised; and the user friendly applications such as NSTEP, E-Pay, E-filing were highlighted.

The achievements of the eCourts project were highlighted –

- Computerization and WAN connectivity
- Software Patch for CIS to enable smooth functioning of eCourts in the Pandemic
- Creation of virtual courts
- Live streaming of court proceedings
- eFiling to promote paperless filing and to save time and cost
- Provisions of eSewa Kendras and eCourt Services such as SMS Push and Pull, Email, ECourt Mobile App, Judicial Service Centre and Information Kiosks
- Upgradation of court websites to S3WAAS platform which is secure, scalable and accessible.
- Digitization of Records
- Creation of Judgment Search Portal for convenience of stakeholders in searching judgments easily.
- Building Awareness and familiarization of e-filing

With the advent of technology driven systems in the court, the issue of confidentiality and privacy was emphasized upon. It was stated that in order to ensure confidentiality and privacy, live streaming of cases should not be done in matrimonial matters, sensitive cases like sexual assault cases and in cases involving children and juveniles. Additionally, the presiding judge

of each courtroom shall have the discretion to disallow live-streaming for specific cases where, in his/her opinion, publicity would prejudice the interests of justice. The judgments in *Swapnil Tripathi v. Supreme Court of India*, (2018) 10 SCC 639, *Pradyuman Bisht v. Union of India*, (2018) 15 SCC 433 and Justice K. S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1 were discussed in this regard.

With the transition to e-systems, the potential vulnerabilities and risks were highlighted. The risks of data loss, data theft, hacking, tampering and morphing of data, breach of systems were highlighted as concerns. Solutions highlighted in the session to address these problems included –

- Using Digital Signatures in Adobe PDF documents to ensure the document is not tampered with
- Use of Firewalls to prevent breach of systems
- Intrusion Detection Systems
- Intrusion Prevention Systems
- Use of Comodo application to safeguard computers and applications
- Use of Antivirus software

Session 9

Theme: Electronic Evidence: New Horizons, Collection, Preservation and Appreciation

The session covered the nascent and evolving settling, resettling and unsettling jurisprudence on law relating to electronic evidence globally generally and in India specifically over the recent past. The evolving nature of the evidence and the law relating to evidence was discussed through *inter alia* the lens of information and communication technology (ICT) and contemporary disruptive technological advances. Depending upon the genesis and source of creation electronic evidence can be i) created by user(s) of a digital source *viz.* photograph, web pages, audio-video, text, etc; ii) computer or machine created *viz.* activity logs, browser cache cookies, email headers, network sockets etc.

Challenges in collection and preservation of electronic evidence was also discussed. The importance of International Mobile Equipment Identity (IMEI) as an evidence was discussed with the help of Supreme Court of India's decisions including *Gajraj v. State (NCT of Delhi)*, (2011) 10 SCC 675; *Mohd. Arif v. State (NCT of Delhi)*, (2011) 13 SCC 621; *Om Prakash Verma v. State of West Bengal*, 2017 SCC OnLine Cal 13205. It was underscored that the as opined by the apex court of India in *Tukaram S.Dighole v. Manikrao Shivaji Kokate*, (2010) 4 SCC 329, "standard of proof" in the form of electronic evidence should be "more accurate and stringent" compared to other documentary evidence(s). Moreover, the Court emphasized that, "source and authenticity are the two key factors for an electronic evidence" in *Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke*, (2015) 3 SCC 123. Meticulousness and procedural accuracy in collection, preservation and production of electronic evidence was gravitated in the discourse by citing *Tomaso Bruno v. State of UP*, (2015) 7 SCC 178. The apex court held:

non-collection of CCTV footage, ..., non-inclusion of all records and sim details of mobile phones seized from the accused are instances of faulty investigation and the same would not affect the prosecution case. Non-production of CCTV footage, non-collection of call records (details) and sim details of mobile phones seized from the accused cannot be said to be mere instances of faulty investigation but amount to withholding of best evidence.

The session, elucidated the importance of Section 65B typical to the IEA (as no equivalent *statutes in pari materia* exists under the Bangladeshi law). The chronicle of unsettled, fluid and tumultuous journey of Section 65B of the IEA from *NCT of Delhi v. Navjot Sandhu*, (2005) 11 SCC 600;

Anvar PV v P.K. Basheer, (2014) 10 SCC 473; *Tomaso Bruno v. State of UP*, (2015) 7 SCC 178; *Sonu @ Amar v State of Haryana*, 2017 SCC OnLine SC 765 ; *Shafhi Mohammad v. State of HP*, (2018) 2 SCC 801; through *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantayal* (2020) 7 SCC 1, wherein the issues were finally rested formed part of the discussion.

DAY IV

30th September 2021 (Thursday)

Session 10

Theme: Transition to a Gender Just Society : Jurisprudential Developments

The discussion commenced with the observation that the role and status of women in society has evolved over time. The participants were advised to understand the prejudices and stereotypes behind gender discrimination and be aware of social realities. The recent judgment of the Supreme Court in *Ministry of Defence v. Babita Puniya*, (2020) 7 SCC 469 which paves the way for the grant of permanent commissions in the army for women was highlighted.

Articles 14 and 15 of the Constitution of India were stated to be the pathway for making law to ensure gender justice. Article 51A recognizes that society needs to change and evolve and must move towards gender equality. The major rights of the child and the relevant legislation on these rights were discussed –

Firstly, the right to be born was highlighted as the primary right to exist. All genders have an equal right to be born, In this regard, the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 (PCPNDT Act) was emphasized as a measure to recognize the right to be born. The notable challenge in recognition of this right is that the lack of implementation of the PCPNDT Act (See *Center for Enquiry into Health and Allied Themes v. Union of India*, (2001) 5 SCC 577 and *Voluntary Health Association of Punjab v. Union of India*, AIR 2013 SC 1571)

Secondly, reproductive rights of women were emphasized as an important right of women. This right involves the right to make reproductive choices and includes the right to procreate as well as to abstain from procreation. The Medical Termination of Pregnancy Act, 1971 was discussed in this regard and it was highlighted that under this Act the consent of the woman is necessary for termination of pregnancy. The judgment of the Supreme Court of India in *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1 was discussed in this regard.

Thirdly, emphasis was placed on marital rights of women as an important right. The right of women in joint family property, succession, succession right in agricultural property was discussed. The case of *Shayara Bano v. Union of India*, (2017) 9 SCC 1 was discussed with regard to women's rights in divorce.

Fourthly, the right to dignity of women was emphasized upon and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was discussed.

Fifthly, the rights of women in adjudication of sexual offences was discussed. The judgment of the Supreme Court of India in *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384 which lays down the requisite standard to be adhered to in the adjudication of sexual offences was emphasized. In this case, it was laid down that the sole testimony of the prosecutrix, if convincing, is sufficient to convict the accused. Disbelieving the victim of a sexual offence adds insult to injury. Courts must ensure that secondary victimization of the prosecutrix does not occur in the course of the judicial proceedings. Furthermore, character assassination and casting aspersions on the character of the victim is to be avoided in the court proceedings. The

case of *Sakshi v. Union of India*, (2004) 5 SCC 518 was discussed to highlight the need for sensitivity in dealing with child victims of sexual offence. The major features of the Protection of Children from Sexual Offences Act, 2012 viz. offences under the Act, standard of proof, procedure for recording evidence, and special courts were discussed. The case of *Lillu @ Rajesh v. State* (MANU/SC/ 0369/2013) wherein the two finger test was struck down was discussed. It was emphasized in this judgment that the previous sexual history does not amount to a license to rape, rather it must be ascertained whether consent was given or not in the incident in question.

Session 11

Theme: Child-centric Jurisprudence in India

The principle of Best Interests of Child was emphasized as the overarching principle in law relating to children. It requires that every action, policy and law must operate to promote the best interests of the child. The International Law pertaining to children was discussed especially the Convention on the Rights of the Child, 1989. The major features of legislations pertaining to children – The Juvenile Justice (Care and Protection of Children) Act, 2015, National Policy for Children, Children’s Act, 1960, POCSO were discussed. The rationale for special law for children was discussed.

In cases of sexual offences against children, the common assumptions and expectations about sexual offences and the victims were identified and it was emphasized that the lack of detail in the narrative of the victim does not mean a lack of credibility. In cases of sexual offences, the need is to avoid technicalities. The major challenges in such cases are –

- lack of provision for therapy,
- adoption of technical language and legal jargon in court processes
- Requirement for the victim to appear multiple times before the court
- Harsh cross examination

The impact of the court processes on the child were discussed and it was stated that going to the court can be traumatizing. On the other hand, it may also serve the purposes of catharsis and psychological closure. The judges were also advised to be conversant with the local peculiarities in language and the cultural context in order to effectively adjudicate the case. The case of *Virender v. State* was discussed in this regard.

Emphasis was placed on the need for child friendly criminal justice systems which adopt sensitivity and prevent secondary traumatization of the child victim. The major features of the model child friendly court in Delhi were highlighted as a best practice that can be emulated. Emphasis was placed on the need for judicial leadership and innovation to ensure child friendly judicial systems.

The concept of anabolism was discussed and judicial activism and pioneering in matters relating to children was likened to an anabolic response by the Indian judiciary. In this regard, the judgments of the Supreme Court of India in *Voluntary Health Association of Punjab vs. Union of India*, (2016) 10 SCC 265, *Dipika Jagatram Sahani v. Union of India*, (2021) 2 SCC 740, *St. Theresa's Tender Loving Care Home v. State of Andhra Pradesh*, (2005) 8 SCC 525, *Bachpan Bachao Andolan v. Union of India*, (2011) 5 SCC 1, *Bachpan Bachao Andolan v. Union of India*, (2017) 1 SCC 653, *Maharashtra State Board of Secondary and Higher*

Secondary Education v. K.S. Gandhi, (1991) 2 SCC 716, *M.C.Mehta v. State of Tamil Nadu*, (1996) 6 SCC 756, *Re: Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India*, (2017) 7 SCC 578, *Gaurav Jain v. Union of India*, (1997) 8 SCC 114, *Vishal Jeet v. Union of India*, (1990) 3 SCC 318, and *In Re. Contagion of Covid 19 Virus in Children Protection Homes*, 2021 SCC OnLine SC 427 were discussed. The judgments of the Supreme Court of Bangladesh in *State v. Ministry of Law, Justice and Parliamentary Affairs, Government of Bangladesh*, (Suo-Moto Rule No. 07 of 2019 Decided On: 11.03.2020), *State v. Secretary, Ministry Of Law, Justice & Parliamentary Affairs* (Suo Motu Rule No. 5621 Of 2009 Decided On: 03.09.2009) were also discussed.

Session 12

Theme: Principles of Evidence: Appreciation in Civil and Criminal Cases

The session primarily focused on the cardinal principles of law relating to evidence generally with specific focus on the procedure and substantive requirements under the Indian and Bangladeshi laws relating to appreciation of evidence. The session dealt with the well-established and the discernable standards of discernable proof *viz.* doctrine of “preponderance of probabilities” under the civil law and “proof beyond reasonable doubt” as mandated under the criminal law. The genesis of the common law principle of “proof beyond reasonable doubt” was discussed citing *Reginald Woolmington v. Director for Public Prosecutions*, [1935] UKHL 1, [1935] AC 462. *Mancini v. Director of Public Prosecutor*, [1942] AC 1 was discussed to explain the statutory exceptions to the *Woolmington Principle*. It was clarified that “proof beyond reasonable doubt” does not mean “proof beyond shadow of doubt” by citing Lord Denning in *Miller v. Minister of Pension*, [1947] 2 All ER 372 as:

Proof beyond reasonable doubt does not mean proof beyond shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice if the evidence is so strong against a man as to leave only a remote possibility in his favour ... the case is proved beyond reasonable doubt but nothing short of that will suffice.”

It was expressed that the key is not “certainty” but “a high degree of probability”. The stages of admission to appreciation of evidence(s) was elaborated. Expanding upon the provisions of the Indian Evidence Act, 1872 (IEA) [*viz.* Section 5, 6 to 55] concept of what is a relevant fact or fact in issue was discussed. It was clarified that admission of evidence is precursor to appreciation. The terminologies in the interpretation clause i.e. Section 3 of IEA was emphasized and constructed to examine the appreciation of evidence. It was explained that the constituent words used to define “proved” “disproved” or “not proved” have been precisely chosen and are of significant importance. Words such as “matter before it”, “considers”, “prudent man”, “belief” in the text of the definitions needs to be carefully considered and assimilated to appreciate evidence placed before the court. Speaker discerned the careful use of “matter” instead of “evidence”. It was clarified that “belief” speaks of the “credibility” of the admitted evidence before the court. Moreover, it is the belief of the judge (Court) which would allow appreciation of the matter as an evidence.

The session also delved into the evolving statutory requirement and the concept of “reverse burden of proof” with special focus on the newer Indian legislations *viz.* POCSO Act; NDPS Act; PML Act etc. The jurisprudence and the prevailing myths and presumptions on the

aforesaid concept was clarified with the help of case law jurisprudence on the subject matter.