

Training Program for Maldives Judicial Officers – SE-02

04th - 07th October, 2021

***Prof. S.P. Srivastava, Professor
Rajesh Suman, Asst. Professor
Dr. Sonam Jain, Research Fellow***

The National Judicial Academy organized a four day “Training Program for Maldives Judicial Officers” during 04 - 07 October, 2021. The program was organized in pursuance to the Memorandum of Understanding entered between the National Judicial Academy and the Judicial Service Commission of the Maldives for organizing training and capacity building program for Maldivian Judicial Officers in India. The program included sessions on judicial skills, constitutional law, civil law, criminal law, human rights law and correlative jurisprudence. The program aimed to acquaint participants with elements of judicial behavior- ethics, neutrality and professionalism, skills of judging and judgment writing. The program also facilitated discussions on court & case management and use of ICT in the administration of justice.

Major Highlights and Suggestions from the Program

Session 1: Indian Judiciary: Organizational Structure, Jurisdiction and Approaches

The session began with the discussion on the role of judiciary in Indian democracy. It was emphasized that courts play a crucial role by providing a forum for resolution of disputes among people and it avoid the possibility of violence. Article 39 (A) of the Indian Constitution guarantees justice to everyone in India and there is access to justice to every person in all corners of the country without any concern to caste, status and religion.

The organizational structure of the Indian judiciary was explained to the participants. India has the Supreme Court at top of the judicial hierarchy. Every state has a high court having appellate and original jurisdiction and few states have common high courts as well. The jurisdiction of the Supreme Court is not only to enforce fundamental right but it also involves judicial review of legislative action including amendment to the Constitution and all executive actions. The jurisdiction of the Supreme Court for transferring cases from one court to another court was discussed. The advisory jurisdiction of the Supreme Court was also highlighted.

In every district there is a district court and people from talukas and tehsils have access to courts. The Indian judiciary ensure the access of every one and provide free legal aid to poor and

marginalized persons who have difficulty in securing the services of lawyer because of socio-economic problems. India has the legal services authority at every level of the judicial system and at district and taluka level awareness workshops are organized to sensitize people about their rights and government welfare measures. The Supreme Court at the top decide the constitutional matters. Under Article 32 of the Indian Constitution any person can approach the apex court to seek remedy against the violation of the fundamental rights. The High Courts can issue prerogative writs against the violation of legal rights. The problem of delay in the Indian judicial system was discussed. One of the reason of delay is the misuse of procedures by advocates.

The Constitution of India provide legal framework on the powers and functions of the organs of state and fundamental rights of every person and directive principles of the state policy are also mentioned in the Constitution. The details about each organ of the State were shared with the participants. The Preamble of the Indian Constitution and it features were discussed. It was highlighted that aspirations of the people of India are reflected in the Preamble. The independent nature of the Indian judiciary was discussed and various aspects of the appointment of judges were highlighted. The process of appointment of judges of the High Court and the Supreme Court by the collegium system was discussed. The issue of budget for the courts and dependence of courts on State for finances were discussed.

Session 2: Goals, Role and Mission of Courts: Constitutional Vision of Justice

The session began with discussion on the role of courts in ensuring access to justice. Then the goals of the Constitution as mentioned in the Preamble were highlighted. The Constitution is an important tool of social change and the primary goal is to ensure justice to everyone. There are certain basic features of the Constitution which cannot be amended. The fundamental goals of the courts are harmony, peace and socially just society. The vision of the Indian judiciary is to be proactive and treating law as an instrument of social change and judgeship is not mere employment. The issues related to the independence of judiciary were highlighted and the political interference in criminal cases at trial court level was discussed. The independence of trial court was discussed and the exclusive control of high court on district judiciary was highlighted. The disciplinary action against a judge of the district judiciary can only be taken by the high court and removal of a trial court judge can only be done by the high court. It was emphasized that there should be fairness not only in the decisions but it should be in the process of decision making as well. It was emphasized that there should be equal treatment of all parties in the court.

The judicial hierarchy must be respected and precedent should be followed. The society remain peaceful by the application of law. The sovereign power lies with the people and people decide the law by which they will be governed. The issue of judicial activism and judicial overreach was discussed. The challenges relating to access to justice was explained to the participants. The

judiciary has ensured that people living in remote areas and in villages have proper access to justice. Now the lawyers with mobile can directly reach to the Supreme Court and can argue their case in virtual manner. The barrier of distance is removed through technology as people are living in far and remote villages. The initiatives of the Indian Supreme Court in the area of public interest litigation was discussed and the concern was raised regarding misuse of such kind of litigation for publicity purpose. It was emphasized that justice is not rendering judgment but it is equally important to avoid vexatious litigation. The court should not be a tool of harassment. It should be ensured that until the trial is conducted nothing is transgressed and fair trial is ensured to both the parties. The control of judges over the proceeding is very important. The limits of judicial deliberations were discussed and it was emphasized that judges should develop judicial instinct to do justice and matters should not be delayed. The judgment of Indira Gandhi vs. Raj Narain Air 1975 SC 2299 was referred to emphasize the role of judges. It was emphasize that judges should live like a hermit. The right to be forgotten was discussed. It is exercised by a person who want to remove his/her name from the digital records once the litigation concerning him/her has been settled and they do not want to have their name in public domain. These persons are usually parties to the matrimonial disputes and persons acquitted from crimes including sexual harassment. The issue of infrastructure for the judiciary and need of proper funding to the judiciary was emphasized.

Session 3: Elements of Judicial Behavior: Ethics, Neutrality and Professionalism

The session began with the discussion on the moral values a judge has to follow throughout the life. The judicial system of England was referred and the lack of promotion as a measure to ensure integrity was discussed. The history behind the formation of the Magna Carta 1215 was discussed. The importance of the value of fearlessness and independence of the judiciary was explained. It was highlighted that judges cannot have two standards and this aspects was discussed with the illustrations of judges claiming two standards. Justice and morality are not defined and these are complicated terms. Judicial ethics are also not well defined and they are based on the convention and tradition. It was emphasized that society may change but eternal values will never change.

The issues about ethics, human conduct and character were explained and what is the relationship with morality and law and the issue whether law should always have consensus with morality were discussed. It was emphasized that morality could not be mixed with law and it is never static and it varies from person to person. The judgements related to the issue on social morality was discussed in this regard. Then the issue of how to deal with corruption in judiciary was discussed. It was highlighted that the complaints questioning the integrity of judges should be dealt with utmost care as large number of complaints are found to be false and were

motivated by personal interests. It was highlighted that the Code of Criminal Procedure and Code of Civil Procedure are codification of principles of natural justice and judges should decide case according to the laws and procedures. The importance of punctuality was referred and it is cited as one of the core discipline which explains the attitude of judges towards dispensation of timely justice.

It was suggested that the judges should not carry their personal predilections in judging and they should be guided by the laws and the Constitution. The goals of the Constitution should be the goals of the judges and the judges must align their personal values with the expectations of the law makers. It was emphasized that the conduct of the judges must be aligned with the needs of the judicial system. The example of Justice Krishna Iyer was referred in this regard and it was highlighted that his previous political affiliations never affected his judgments. Some of the core judicial ethics are consistency and adherence to the precedents. It was suggested that judges should be impartial but they should be liberal in their approach in cases concerning the weaker sections of the society. Modesty and humility are other important values which judges should follow. It was also suggested that judges should use social media with proper diligence and should avoid publishing personal views in public domain.

Session 4: Judging Skills: Art, Craft and Science of Drafting Judgments

The session began with the discussion on importance of reading and writing for judges and why it is always better for judges to have good skills in writing judgment. It was highlighted that India has huge backlog of cases and it can be reduced significantly if judges are better skilled in judgment writing. Judgment uphold the intellectual integrity of system and it should be the judgment without biases and prejudices. The judgment should be impartial and should be logical and it should satisfy the conscious of the judge. It is a mark of integrity and honesty and judges must reflect upon what they have written and why they have written. It was discussed that there should be a cooling period of one or two days after reaching to the correct conclusion. The judges must read their judgments after few years also and they will notice errors and scope of improving their skills of judgment writing. It was emphasized that judges should reach to a conclusion only after proper analysis and the object should be to reach the truth. It was suggested that advocates must be heard and prejudging the issues must be avoided. The process of writing judgment started the moment a case comes before a judge.

It was highlighted that the first paragraph of the judgment is most important and the judgment should disclose about what roles the parties have played and what were the issues involved in the case. The judgment should satisfy test of five questions i.e. who, were, what, why and how. Judges should focus on giving proper explanation to the party losing the case as they will ask lot of questions regarding their defeat. It was suggested that judges should ask the lawyers to give

chronology of facts and summarize them in opening statement. The judges must never frame the issues and charges without consulting the lawyers and should ask them to give draft issues. The framing of wrong issues will take the case in the wrong direction. It was suggested that judges should not quote entire evidence in the judgment but only cogent and relevant evidence and statements should be mentioned. The judges should take notes when counsels argue the case and should confront them and stop them from repetitions. Judges should understand arguments and points of the case. The difference between reason and reasoning was explained and the use of proper reasoning in judgements was suggested. The contentions should be recorded in brief and there should not be disconnected sentences. It was suggested that judges must learn to avoid subconscious biases. The use of logic, deductive and inductive processes and major and minor premise were explained. The inferences should be drawn in orderly way and the remedy should be framed in proper direction i.e. if money has to be paid by party then how it will be paid and if custody of child has to be given then in what manner it will be done and what would be the visitation rights. The importance of maintaining brevity in judgment writing was emphasized and it was said that clarity of laws, facts and evidence is necessary for the skill of brevity. The importance of revising and editing of a judgment was highlighted. It was emphasized that judges must consider themselves as one of the stakeholder for the judgment they write. The issues concerning intuitive decision making were discussed. It was emphasized that judges must have deep understanding of the human psychology and training of judges in this regard is important. The importance of understanding the history and context of the words was emphasized. It was suggested that a judge should not be a mute spectator and should invoke the Section 165 of the Indian Evidence Act to ascertain the truth.

Session 5: Judge the Master of the Court: Court Management & Case Management

The session commenced by highlighting the importance of self-control and then taking control of the court. It was suggested that judges should have full concentration in the court. The multitasking skills should be improved as mind has the capacity on focusing on multiple things and then judges can take the command of their courts. It was highlighted that the gestures, habits and conduct of the judges are observed and discipline help a judge in gaining the control of the court. The basic elements of the case management were explained to the participants including fixing up a schedule of the case and ensuring adherence of parties to the dates of the proceedings. The case management hearing should be conducted by the judge and it helps in ensuring that everyone is available on time. The practice of hearing arguments and cross examination for days and giving frequent adjournments were discussed. It was suggested that judges should control the proceedings and should not allow repetitive and irrelevant arguments and questioning. It was emphasized that a judge can save the time and use that time to study case laws and writing better judgments. It was explained that adjournments signify the deviation

from the case management schedule. There are some indiscipline advocates and judges should press for hearing unless the circumstances are exceptional. There should be an attempt to find a middle path. Judges should avoid the wish to become popular at bar and they must say no to adjournments courteously. The judges must grant adjournment only after assessing the situation and should heard the case the next day. The use of technology in Indian courts was discussed and its advantage in improving case management was highlighted.

The discussion then focused on the role of judges in the prioritization of cases for hearing and it was suggested that cases involving child abuse, custody cases, cases of under trial prisoners and domestic violence can be prioritized for hearing. The routine cases of similar nature should be bunched together. The cases having common questions and similar facts should also be bunched together. The process of admitting complaint against judges was discussed. It was emphasized that the complaint against a judge should be accompanied by an affidavit signed by the complainant so that the responsibility can be fixed if the complaint proves to be false. It was suggested that judges should not get affected by media or any criticism and should be fearless. The protection to judges acting in good faith was discussed. The session was concluded by emphasizing that judges have to live a simple life and with minimum facility and they should avoid taking any favors and should refuse them politely.

Session 6: ICT and E-Judiciary: Indian Perspective

The session commenced by emphasizing the importance of virtual courts which are new normal after COVID pandemic. The National Judicial Data Grid (NJDG) was demonstrated and importance of data to properly address the problem of pendency was explained. The real time availability of data of each court and of each case in the NJDG has proved to be very effective for improving the efficiency of the Indian courts. The data can help in focusing on the problematic areas easily. The issue of management of cases through the NJDG was discussed and its benefits in disclosing the reasons for delay of the cases was highlighted. The benefits of improved connectivity among the courts across the country were discussed. The use of videoconferencing and the enhanced access of people to court through technology were highlighted. The videoconferencing in conducting litigation has become the norm in pandemic times. The norms of conduct, attire and appearance of advocates during videoconferencing were discussed. The benefits of reading documents in digital forms were explained to the participants. It was emphasized that for ensuring the paperless courts, judges should develop the habit of reading documents in digital form. The reduction of costs relating to printing documents with the promotion of paperless court was highlighted. It was emphasized that the tendency of printing documents should be reduced and all documents should be submitted in digital form only.

The advantages of serving summons through technical means were discussed. The use of artificial intelligence in judicial system was referred and its potential in predicting results in various areas were highlighted. The artificial intelligence will help judiciary in dealing with large volume of data in seamless manner. The impact of reduction in pendency in traffic matters through the use of technology was discussed. The strengthening of security of data regarding the Indian judicial system through e-courts project was highlighted. The benefits of the use of e-signature and digitally signed documents and how to create e-signature were highlighted. The evolution of laws relating to the electronic documents and evidence were discussed and the initiatives of the United Nations were highlighted. The subsequent growth of law relating to digital evidence in India and changes in the Indian Evidence Act were referred in this regard. The session then focused on the issues related to the admissibility of electronic evidence and the scope of judicial discretion in appreciating the electronic evidence. The acceptability of video conferencing concerning statement and cross examination in India was highlighted. The access to justice in virtual court system was referred and issues related to digital divide in India were discussed.

Session 7: Jurisprudence on Environmental Law: Contribution of the Supreme Court

It was highlighted that all living things exist in interrelated system, nothing lives in isolation. Life is known only on earth and life system on earth are threatened because of global warming. In Stockholm conference 1972, India projected the ancient approach towards Environment by articulating the concept of sustainable development and also various decisions were taken to provide appropriate statutory legal framework in every country in order to protect global warning. Several contributions of the Supreme Court like to treat Environment as a part of Right to Life under Article 21 of the constitution and the writ jurisdiction of Supreme Court and High Court under Article 32 and Article 226 respectively were debated. Further, the legislative changes were highlighted to understand the scope of Supreme Court in balancing environment. These legislative changes were 42nd amendment 1976, which added Article 48A as a fundamental obligation of the state and Article 51A (g) as fundamental duty to protect the environment. Major acts of environment like Water Act, 1974, Air Act, 1985 and Environment Protection Act, 1986 were discussed in detail. Furthermore, it was argued that quintessential value of environment should never be compromised. Apex Court has been the Designer, Developer, Hand holder and Provider of the sole strength and the substance of Environmental Jurisprudence in India was altercated during the session. It was contented that the Supreme Court is not just the interpreter of law but it has a role to play in law making, policy making and enforcement to seek secure and realize the object of Environmental Justice. The concept of Environmental Justice was explained as inequity which results from disproportionate of sharing of benefits and burden between different categories of society. It was stressed that the primary task of court of law is to secure justice. The session rolled over to the landmark Supreme Court judgments in *M.C. Mehta And Anr vs Union Of India & Ors, 1987 1 SCC 395, Vellore Citizens' Welfare Forum and State of Tamil*

Nadu (joining) v Union of India and Ors, 1996 5 SCC 647 M.C. Mehta v. Union of India, WP 860/1991 (1991.11.22) (Environmental Education Case), Rural Litigation and Entitlement. vs State of U.P. & Ors, 1985 AIR were highlighted.

Session 8: Civil Justice Administration: Alternative Dispute Redressal System in India

ADR has many facets like Arbitration, Conciliation, Mediation, Lok Adalat and Judicial Settlement marked the beginning of the session. In 2005 the then Chief Justice of India constitute a committee called Mediation & Conciliation project Committee in India as large number of cases were pending and to share their burden the concept of Arbitration Dispute Resolution (ADR) was introduced. For a smooth functioning of mediation trained mediators were required and for this Judges were trained to acts mediators. It was argued that when judges were dealing in a mediation case no additional payment were made to judges and also to develop the trust of litigants in mediation, they are entitled for refund of court fee if the matter is settled through mediation. Further, the advantage and the initial reluctance of advocates to take up a case for mediation was discussed. Cases relating to family law, divorce and custody of a child are the major cases that are sent for mediation. The significant of mediation process was the time limit attached to settle the matter through mediation. Of lately, the concept of private mediation and community mediation was at the rise was highlighted. Justice Bhagwati in 1986 introduced the concept of Lok Adalats and thereafter in 1987 The Legal Service Authority Act was introduced with an object to decide petty small cases. How to approach Lok Adalat and who all will be the members in Lok Adalat was discussed. In *Afcons Infrastures Ltd. Vs. Cherian Varkey Construction Company Pvt. Ltd & Ors (2010) 8 SCC 24*, the Supreme Court provided the procedure for referring the cases to nay one of ADRs as given under section 89 of Civil Procedure Code was touched upon. Cases which are suited for ADR and which are not suited for ADR were explained. Understanding of the ADR process, the hesitation of the court to make reference, the over confidence in adjudicatory process and lack of motivation were the some challenges of ADR that formed the part of the discussion. The session concluded with some of the landmark cases in ADR like *State of Punjab & Anr vs. Jalour Singh & Ors (2008) 2 SCC 660, Salem Advocate bar Association (ii) vs. Union of India (2005) 6 SCC 344, B.S. Joshi vs. State of Punjab & Anr (2012) 10 SCC 303 and K. Srinivas Rao vs. D.A. Deepa (2013) 5 SCC 226* were highlighted during the discourse.

Session 9: Criminal Justice Administration: Fair Trial and Human Rights

All fundamental right are human right but not vice versa marked the beginning of the session. The society made certain law and we gave ourselves to these laws by consensus was the one way on how the society formulated law for administration of criminal justice. Criminal law differs from civil law as it is not based on incentives, in criminal law punishments differs for first time offender and habitual offender. Article 14 of Universal Declaration of Human right, International Covenant

for Civil and Political Rights, Convention against torture, Articles from 45 - 60 of African and American Constitution, European Convention were discussed at stretch during the discourse including Right to Fair trial, Rule of Law, Presumption of innocence, open Justice and fair chance to victim. Different stakeholders in criminal justice administration like investigative agencies, prosecution & defense lawyer judges were formed part of the discussion. The session rolled over to the concept of open court where media plays a significant role. It was opined that judges should be free from fear and favors and they should have balanced mind while deciding a matter. Rehabilitation center, probation officers, provision of double jeopardy and protection against self – incrimination were touched upon. Denial of a fair trial is as much as injustice to accused as it is to victim as stated in *Zahira Habibullah Sheikh & Anr vs State Of Gujarat & Ors (2004) 4 SCC 158* was highlighted. There is a shift from accused centric approach to victim centric approach to achieve the object of fair trial. It was opined that the proportionality principle can be justified on three grounds as it applies to the criminal jurisprudence first the rise of the law, second the condition of minimal requirement and lastly the ideals of public justice. The dichotomy of Article 48A and 151 of the Maldivian Constitution was discussed. The session concluded by discussing the plethora of cases like *D.K.Basu vs. State of West Bengal (1997) 1 SCC 416*, *Joginder Kumar vs State Of U.P (1994) SCC (4) 260*, *Md.Ajmal Md.Amir Kasab @Abu ... vs State Of Maharashtra (2012) 9 SCC 1*.

Session 10: Principles of Evidence: Appreciation in Civil and Criminal Cases

Lawyers are one of the stakeholders who come with facts and judges had to extract evidence with their mental eyes marked the beginning of the session. It was debated under appreciation of evidence there are only two words which need to be considered first is appreciation which means assessment, valuation, magnitude and quality and the other is evidence which are oral, documentary and electronic. It was explained that for every word said in a court of law has to be supported by an affidavit yet the affidavit per se is not an evidence as per section 1 of the Indian Evidence Act. It was contended that if Evidence Act applies to both civil and criminal law that why the standard of proof is different. It was mentioned that in civil cases preponderance of probability applies and the principle of beyond reasonable doubt applies in criminal cases. Hearsay evidence is irrelevant as declared in *Rajesh Dhiman v.State of H.P. (2020) 10 SCC 740*, character of a woman is not relevant in cases relating to sexual offences and burden of proof is on the accused to prove his innocence are some the points that were highlighted during the discourse. Admission is the best evidence as per section 17 of Indian Evidence Act however, it can be withdrawn or proved erroneous as stated in *Natesan Agenecis (Plantations) v. State (2019) 15 SCC 70* and *Govindammal v. Vaidiyanathan., (2019) 17 SCC 433 as discussed*. It was opined that Decree can be passed on admissions. Secondary evidence, Electronic evidence, circumstantial evidence, omissions and contradictions and credibility of the witness were the focal point of discussion.

Related witness, injured witness, expert witness and child witness were also the part of the discourse.

It was opined that appreciation is a skill in which by scientific, systematic and methodical manner the integrity, quality, worth and reliability of a piece of evidence is evaluated. The yardstick of appreciating an evidence, approach of a judge and the factors to be kept in mind while appreciating an evidence of a witness was deliberated upon. It was opined that marshalling of an evidence is mandatory for its appreciation and quality and quantity of an evidence were touched upon. The approach of a judge to appreciate an evidence must be integrated not truncated. Furthermore, it was highlighted that in India, no qualification is attached to be a witness except, the witness understands the question and has a rational capacity to reply to a question. *Vadivelu Thevar vs The State of Madras AIR 1957 SC 614*, was discussed at stretch to make participants judges understand the status of witness when they wholly reliable, wholly unreliable partly reliable and partly unreliable.

Session 11: Forensic Evidence in Civil and Criminal Trials; DNA profiling

Forensic comes from a Latin word *forensis*, meaning in open court and forensic science is the use of science and technology for legal purpose as mentioned by the speaker. It was highlighted that the entire forensic science revolves around the Locard's principle of exchange which is whenever two objects come into contact with each other, they always leave a trace on the other. The speaker differentiated the forensic evidence into physical like forensic chemistry, forensic ballistics, forensic psychology etc. and biological evidence like fingerprint analysis, forensic toxicology, forensic DNA etc. Types of samples like seminal stains, blood stains, teeth etc., how a sample is collected and how the packaging of evidence is done were some of the major parts of the deliberations. The speaker discussed the new emerging technologies in DNA like Low Copy Number (LCN) DNA, Touch DNA and Rapid DNA. Evidentiary value of DNA profiling was explained through various real case studies during the discourse.

It was opined that forensic science is a bridge between law and science and a judge shall have a basic understanding about the forensic evidence in order to appreciate it while dealing a case. DNA profiling, handwriting, ballistic are some of the forensic evidence that usually encounters with judge in various cases and how he should proceed to deal with such forensic evidence was discussed during the discourse. It was highlighted that a proper observance of protocol of storage, collection, transmission and a chain of custody of sample is mandatory, if not the entire process will stand frustrated. Although, the report submitted by an expert is admissible but if needed, he may be summoned to and cross examined in the court of law. The procedure adopted by an expert to examine any forensic evidence must be mentioned in the report and he may also be asked to explain in the open court as discussed during the session.

Session 12: Electronic Evidence: New Horizons, Collection, Preservation and Appreciation

The session commenced by mentioning that Laws of evidence in India and Laws of evidence in Maldives are same. Its application and the principal attached to it are similar. Electronic evidence is any probative information stored or transmitted in digital form that a party may use it at trial as mentioned by the speaker. In *K.K Velusamy vs N.Palanisamy 2011 (11) SCC 575*, a compact disc can be produced as a piece of evidence. It was highlighted that evidence are created by user also while accessing any application on mobile or a laptop like images, text, videos sound files etc. and a database is created which is available at the users end. The evidence which is available at the service provider end are activity logs, email header, backup and registry files etc. as discussed during the session. It was argued that IMEI (International Mobile Equipment Identity) number is a 15 digit unique number for every mobile. The IMEI number is used for investigating a case. The Hon'ble Supreme Court gave specific directions on electronic evidence in various cases like 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, in *Sanjaysinh Ramrao Chavan v. Dattatray Gulabra Phalke (2015) 3 SCC 123*, Source and authenticity are the two key factors for an electronic evidence etc. were discussed. It was conferred that the best evidence available at the litigants end should be place before the court of law. Section 65B IEA and preservation of electronic evidence were touched upon. Lastly, the session concluded with applying technology and getting desired results is one thing, but appreciating the value of evidence is another and one may lose evidence not because of lack of technology but because of lack of appreciation of technology.