

NATIONAL JUDICIAL ACADEMY



SE-05

Training Program for Maldives Judicial Officers

24th - 25th, 27th & 29th January, 2022

Programme Report

PROGRAMME CO-ORDINATORS

Paiker Nasir & Yogesh Pratap Singh
Research Fellow, NJA

A Memorandum of Understanding (MoU) has been entered between the National Judicial Academy (NJA), India and the Judicial Service Commission of the Maldives for organising training and capacity building programs for Maldivian Judicial Officers in India. Pursuant to the said MoU, a 4 day online program for the second batch of Maldivian judicial officers was organized by NJA from 24th - 25th, 27th & 29th January, 2022. The program included sessions on judicial skills, constitutional, civil, criminal, human rights laws and correlative jurisprudence. The program acquainted 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.

DAY-1

Session 1

Indian Judiciary: Organizational Structure, Jurisdiction and Approaches

- Hierarchy of courts in India and their jurisdiction
- Epistolary jurisdiction of the Supreme Court
- Judicial Activism

Speakers: Justice B.S. Chauhan & Mr. Sudhish Pai

The session broadly highlighted the hierarchy of courts in India, appointment of the Supreme Court and High Courts judges and jurisdiction of courts. It was highlighted that the Constitution of India provides for a distinct assimilated judicial scheme common for the Union and the States. In this system the Supreme Court is at the apex level, High Court at the State level and other courts work under the respective High Court. Powers of the Supreme Court as enshrined under Article 141, 142, 143, 131, 134, and 136 in the Constitution of India were also underscored. Appointment of judges in the Supreme Court, High Courts and District judiciary under Article 124, 217, 233 and 234 was also highlighted. Independence of judiciary as affirmed under Article 124(2) and 124 (4), 124, and 221 was briefly discussed. Nuances of judicial review alongside the power of constitutional courts to examine the validity of law and correctness of administrative decisions or actions was elaborated. *Marbury v. Madison* 5 U.S. 137 (1803) was discussed. It was stressed that judicial review lies only against the decision making process and not against the decision. The

purpose of judicial review is to protect federalism. It was accentuated that judicial review is a great power in the hands of judges which needs to be exercised with utmost wisdom.

SESSION 2

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

- Role of a Judge in a Constitutional Democracy
- Fundamental rights and directive principles of state policy
- Doctrine of Basic Structure – Development of jurisprudence

Speakers: Prof. V.K. Dixit & Mr. Sudhish Pai

The session highlighted that the Indian Constitution has been framed through the idea of a liberal society with emphasis on egalitarianism. Therefore, it was stressed that the idea of cooperation among various sections of the society must not be forgotten. While discussing the role of a judge in a constitutional democracy it was emphasised that a judge should ensure that the objective of courts is to secure and impart justice. It was accentuated that constitutional democracy is one, where constitutional ethos informs working of the system. Judges are the trustees of this system who have to protect the rights and liberties of the people. While discussing the *basic structure* doctrine Article 68 and 69 of the Constitution of Maldives were referred by emphasising that the *basic structure* of the Constitution cannot be changed. The discussion further highlighted that the doctrine of *basic structure* gives consistency and robustness to a Constitution as it has a definite fundamental dynamism to it. It was stressed that the fundamental values need to be preserved there should not be any amendment to democracy. These permanent values would form the constitutional vision which needs to be accomplished. It was suggested that Maldives being a growing country may accomplish this idea in their own manner keeping in view the Constitution of Maldives.

SESSION 3

Elements of Judicial Behaviour: Ethics, Neutrality and Professionalism

- Being a Judge in a Democracy
- Oscillatory Choices Between Adversarial & Inquisitorial Dichotomy
- Ethical Conundrums in Judicial Sphere & Possible Solutions

Speakers: Justice B.S. Chauhan & Justice Kurian Joseph

The session laid emphasis on what it is to be a judge in a democracy. The discussion highlighted the basic tenets of ethics, neutrality and professionalism crucial for judges. The origin and significance of ethics was discoursed. Prominence was laid on values of neutrality, impartiality, proficiency and sensitivity towards the necessities of litigants. Several sources of ethical norms for judges were conversed that involved Constitution of India, Bangalore principles of judicial conduct and the restatement of values of judicial life. Additionally, it was indicated that judges endure on public confidence and to maintain the same objectivity, neutrality, integrity, propriety, fairness, competence and persistence should be inculcated in every judge. It was accentuated that the tenets and values required from a judge varies with vicissitudes in the social order and it is imperative that judges are aware of these variations. Judges must persistently be responsive of their role and position in the society. The session further underlined, that law encompasses several indiscretions and the perseverance of the courts is to do away with those irregularities.

DAY 2

SESSION 4

Judging Skills: Art, Craft and Science of drafting judgments

- Judgments as the Voice of the Court (as the Main Deliverable)
- Significance of Reasoning in Judgments & Orders
- Sensitivity in Judgments

Speakers: Justice Sunil Ambwani & Mr. Ramakrishnan Viraraghavan

The session typified that writing judgments is challenging across jurisdictions. Judgment writing has concomitant psychological as well as technical facets that encompasses diffidence, doubts, lack of self-confidence, procrastination. As a consequence of these aspects there is delay in

judgment delivery, shortcuts in reasoning, typological and other grammatical errors that ultimately results in an inclusive unkempt output. Judges are required to understand the importance of their judgments without underestimating its significance. The objective of the judges should be, to deliver high quality judgments on a consistent basis. To achieve this consistency a judge is required to focus on the process. This process of a writing a good judgment should have three basic features namely brevity, simplicity and clarity. Subsequently, the framework of a judgment should include technical aspects like- name of the court, case number, name of the parties, legal provisions etc., followed by brief introduction, body of the judgment starting with issues followed by detailed reasoning and analysis in addition the operative part should have clear disposition by the judge plus the final order. The discussion further stated that writing of a judgment is an art. Apart from having command over the language while delivering judgment, a judge is also required to have knowledge of law and procedure. Judgment writing is a judicial act which must be performed in a judicial way.

SESSION 5

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

- Bottlenecks in Judicial Administration
- Best Practices for Effective Disposal of Cases
- Courtroom Management – Challenges & Possible Solutions
- Role of a Judge in Streamlining Court & Case Management

Speakers: Justice R.C. Chavan & Justice Ram Mohan Reddy

The session commenced by accentuating the role of a judge in streamlining court and case management. The court and case management schemes in India were highlighted. While discussing the role of a judge in restructuring court and case management it was underscored that to effectually accomplish their duties judges ought to have dignity, objectivity, rationality and the skills to determine according to the rule of law. It was further stressed that to manage the court and cases judges should possess the right attitude, aptitude, analytical skills and competence. The discussion emphasized that the basis of accomplishment is coordination which is possible when the team integrates essentials of management that is – planning, organizing, directing, coordinating and controlling. All these fundamentals are prerequisite in court and case management as well. It

was proposed that case management is vital to enhance the efficiency of judges and their staff, reduces delay and arrears and most significantly aid in cost cutting. A judge must warrant that all the stakeholders of the court have confidence in him and must be certain that they are at the right place to seek justice. Best practices from national and international jurisdictions in effective disposal of cases were also highlighted during the discourse.

SESSION 6

ICT and E-Judiciary: Indian Perspective

- e-Judiciary – The Indian Experience
- Striking a balance between Transparency & Confidentiality- The Indian e-Judiciary Account
- e-Judiciary & Data Protection – Vulnerability Assessment of Judicial Institutions

Speakers: Justice R .C. Chavan & Mr. Atul Kaushik

The session underlined that technology offers courts a vital product called information. This information has the prospects to enable the justice delivery system in providing enhanced and speedier judgements as well as track the outcome of cases. It was accentuated that technology empowers courts to accomplish core responsibilities particularly with limited manpower, it condenses hours of operation and optimizes the court functioning. The pre-requisites to harness technology includes- identifying needs of all stakeholders, examining process re-engineering opportunities and to have an intent to migrate from document to content management. While giving the Indian e-Judiciary account it was emphasised that the objectives of the eCourts Mission Mode Project was 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 caseloads; to have effective court management and case management system; to provide efficient and time-bound citizen centric service delivery; to develop, install and implement decision support systems in courts and to automate the processes to provide transparency of information access to its stakeholders. It was further highlighted that Phase III of the eCourts Mission Mode Project intends to- interlink all courts across the country; have ICT enablement of the Indian judicial system and to make the justice delivery system accessible, cost-effective, transparent and accountable. Alongside, the significance of the National Judicial Data Grid (NJDG) was stressed. The working of NJDG was also demonstrated to the participants. It was

accentuated that the use of ICT absolutely makes the justice delivery system much more affordable, accessible and transparent.

DAY 3

SESSION 7

Jurisprudence on Environmental Law: Contribution of the Supreme Court

- Protection of Environment under the Indian Constitutional Mandate
- Public Trust Doctrine
- Judicial Role as *Parens Patriae* to Protect the Environment & Wildlife
- Significance of Judicial Activism in Protection of Environment & Wildlife
- Innovative Approaches to Meet the Global Challenges

Speakers: Justice A. K. Goel & Dr. Justice K. J. Thaker

The session commenced with deliberation on brief history of the evolution of the environmental law jurisprudence worldwide and in India. While explaining the concept of sustainable development, a reference to Indian philosophy of '*Vasudhaiva Kutumbakam*' was made to emphasise the importance of preserving environment. It was underlined that stockholm conference led to sustainable development and making of legal framework for environment protection throughout the world. Referring to latest laws and judgements, the contribution of the Supreme Court was highlighted and discussed.¹ The role of judiciary in protection of environment as constitutional mandate under Articles 21, 48A and 51(g), and the responsibility of the State under public trust doctrine to protect, maintain and improve the environment were also discussed during the session.

¹ The judgments in Municipal Council, Ratlam v. Vardhichand (1980 AIR 1622), Rylands v Fletcher ([1868] UKHL 1), Vellore Citizens' Welfare Forum v. Union of India, ((1996) 5 SCC 647) and M.C Mehta v. Kamal Nath and Others. ((1997) 1 SCC 388) M.C. Mehta v. Union of India (Oleum Gas Leak Case, (1987) 1 SCC 395); Tata Housing Development Company Ltd. v. Aalok Jagga (2019 SCC OnLine SC 1419) were discussed in the session.

SESSION 8

Civil Justice Administration: Alternative Dispute Redressal System in India

- ADR as a tool to conserve judicial resources & to ensure speedy justice
- ADR Mechanisms
- Referral of Cases for Settlement: Suitable Cases, Procedure for Referral, Appropriate Stage for Referral
- Recognition of Outcome by Court

Speakers: Justice Roshan Dalvi & Dr. Justice Shalini Phansalkar Joshi

The session commenced with deliberation on brief history of the dispute resolution mechanism as existed in state of Maharashtra, India viz. Peshwa-Nyayadhish-Mamlatdar-Panchyat. Reasons for establishing a robust ADR system was discussed and stressed upon. A comparative analysis of ADR mechanism in USA, Canada and Australia was made to emphasise the scope of ADR in resolving disputes at various level. A distinction between arbitration and mediation was also explained to participants. It was emphasised that substance of mediation lies in connecting people & negotiations. Mediation strategy viz. POS (identifying **Problem**, generating **Options** and reaching **Solution**) was explained and discussed. Stages of mediation and procedure for reference to mediation in context of India was also presented. The session concluded with Q&A and discussion.

SESSION 9

Criminal Justice Administration: Fair Trial and Human Rights

- Attributes of Fair Trial
- Procedural Safeguards
- Human Rights of the Accused vis-à-vis Rights of the Victim
- Case Law Jurisprudence

Speakers: Dr. Justice Shalini Phansalkar Joshi & Dr. M.K. Ramesh

The session began with explaining the concept of fair trial as first imperative of dispensation of justice under article 21 of the constitution of India. Referring to different provisions under Universal Declaration of Human Rights 1948 and International Convention on Civil and Political Rights 1966, the scope of fair trial was further explained. It was emphasised that right to a fair trial is recognized globally as a fundamental human right and countries are required to develop a legal regime for the same. The principles & Attributes of fair trial in context of India viz. presumption

of innocence, burden of proof, right to remain silent, right against self-incrimination, right against double jeopardy and right to legal assistance etc. was also elaborated. Deliberating on role of judges in criminal justice administration, it was emphasised that courts are empowered to prevent any miscarriage of justice & secure ends of justice to ensure fair trial. Referring a number of judgements, the scope of fair trial was further expounded.² The session concluded with Q&A and discussion.

SESSION 10

Principles of Evidence: Appreciation in Civil and Criminal Cases

- Evidentiary Standards
- Adaptation in Evidentiary Standards to meet Present Challenges
- Reverse Burden of Proof

Speakers: Justice S. Nagamuthu & Justice G. R. Swaminathan

The session commenced with deliberation on basic principles and rules of Indian Evidence. It was pointed out that the role of a judge is to adjudicate on the basis of the facts and evidences provided by the parties in both civil & criminal disputes. Basic legal term viz. evidence relating to facts, facts in issue, relevant facts, proved, disproved etc. and its application as per procedural laws was explained through illustrations. Different categories of evidences viz. oral, documentary, circumstantial, hearsay etc and its applicability along with concept of burden of proof was also explained through illustrations. While explaining the standard of proof in criminal case, the principle of proof beyond reasonable doubt was discussed in detail. Referring to *Vadivelu Thevar vs The State of Madras AIR 1957 SC 614*, various categories of witnesses viz. wholly reliable, wholly unreliable, partly reliable and partly unreliable was explained & discussed. Deliberating upon the concept of reverse burden of proof, three pertinent questions viz. whether casting of reverse burden is valid in law; whether burden on accused can be legal or persuasive & what should be the standard of proof in proving reverse burden of proof were posed for discussion. Referring a

² Zahira Habibullah Sheikh & Anr vs State Of Gujarat & Ors (2004) 4 SCC 158; P. Sanjeev Rao v State of A.P. (2012) 7 SCC 56; A.G. v Shiv Kumar Yadav (2016) 2 SCC 402.

number of judgements, the scope of reverse burden of proof was further elaborated.³ The session concluded with Q&A and discussion.

SESSION 11

Forensic Evidence in Civil and Criminal Trials; DNA profiling

- Collection, Preservation & Appreciation of Forensic Evidence
- Evidentiary value of Forensic Evidence and expert evidence
- Importance of Chain of Custody
- Evolution of Case Law Jurisprudence

Speakers : Justice G. R. Swaminathan & Dr. Arneet Arora

The session began with outlining the scope of forensic evidence in civil and criminal trials. Basic terminologies such as forensic medicine and forensic science were explained to participants. Referring to Medicolegal Autopsy Report, it was pointed out that it consists of three parts viz. preliminaries, observations and opinion & articles preserved for further investigation. Techniques of internal and external examination of a medicolegal autopsy were explained with illustration. Role of forensic evidence with respect to situation when no eye witness is available was discussed. Objectives of Medico-legal autopsy viz. to determine the identity of the deceased and to know the cause of death were also discussed. Presenting autopsy cases, the attention was drawn at standard operating procedures (SOPs), Packing, Sealing, Forwarding and precautions. The session concluded with Q&A and discussion.

SESSION 12

Electronic Evidence: New Horizons, Collection, Preservation and Appreciation

- Settling, Resettling & Unsettling: Evolutionary Process of the Law on Electronic Evidence
- Evolving Nature of Electronic Evidence
Challenges in Collection & Preservation of Electronic Evidence

Speakers: Justice A. Muhamed Mustaque & Dr. Debasis Nayak

The session commenced with brief introduction of the theme. An insight into evolution of internet & electronic evidence worldwide was shared & discussed. Three essential elements of evidence

³ Attorney General of Hong Kong v. Lee KwongKut, 1993 AC 951; R. v. Oakes (1986 1 SCR 103; Sheldrake v. Director of Prosecution (2005) 1 AC 264.

viz. admissibility, relevancy and probative value were explained through illustrations. Referring the case of *United States v. Jones* 565 US 400, the scope of admissibility of electronic evidence vis a vis constitutional protection was elaborated. Referring to latest judgements, the meaning & scope of primary and secondary evidence, requirement of certificate and its admissibility in context of electronic evidences was discussed. General concepts of evidence viz. oral evidence and documentary evidences, electronic records were explained. Deliberating upon collection of digital evidence, it was emphasised that any action during investigation should not compromise evidence and all procedures should be documented and preserved in a manner verified by an independent third party. Four steps computer forensics process viz. acquire, authenticate, analyze and document was also explained in detail with illustrations. Fundamentals of investigations viz. tracking physical location of the IP address, identifying the suspect computer and collecting corroborative evidence from suspect computer were discussed during the session. Referring a number of judgements, the scope of electronic evidence in context of Section 65B & 65(B)(4) of Indian Evidence Act was further expounded.⁴ The session concluded with Q&A and discussion.

⁴ *Tukaram S. Dighole v. Manikrao Shivaji Kokali*, AIR 2010 SC 965; *Sanjaysinh Ramrao v. Dattatray Gulabrao Phalke*, (2015) 3 SCC 123; *Tomaso Bruno v. State of Uttar Pradesh* (2015) 7 SCC 178; *Anvar P.V. v. P.K. Basheer* (2014) 10 SCC 473; *Shahfi Mohammad v. State of Himachal Pradesh* (2018) 2 SCC 801; *Arjun Panditrao Khodkar Vs. Kailash Kushanrao Gorantyal and Ors* Civil Appeal No.20825-20826 of 2017; *Virendra Khanna Vs. State of Karnataka and Ors*. W.P. No. 11759/2020.