

# NATIONAL JUDICIAL ACADEMY



## TRAINING PROGRAM FOR BANGLADESH JUDGES AND JUDICIAL OFFICERS [SE-06]

7<sup>TH</sup> - 10<sup>TH</sup> FEBRUARY, 2022

### PROGRAMME REPORT

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## **OVERVIEW OF THE PROGRAMME**

A Memorandum of Understanding (MoU) has been entered between the National Judicial Academy, India (NJA) and the Supreme Court of Bangladesh for organizing Training and Capacity Building programmes for Bangladesh Judicial Officers. In pursuance of the said MoU, an online program was organized by NJA for the Judges nominated by Bangladesh from 7<sup>th</sup> to 10<sup>th</sup> February, 2022. In compliance with the said MOU entered into between the Academy and the Supreme Court of Bangladesh for the training of about 1500 officers from 2017 through 2023, the Academy endeavours to continue the capacity building and training of judicial officers of Bangladesh.

The contours of the program traced the overview and architecture of the Indian constitutional arrangement, highlighting the constitutional values enshrined in the preamble, the basic structure of the constitution, and vision of Courts. Some important contributions by the constitutional courts in the last decade including the judgments on privacy rights, adultery, transgender rights, and judicial appointments formed part of the programme. The critical elements of judicial behaviour viz. ethics, neutrality and professionalism essential to a judge's demeanour were deliberated upon. Sessions on the theme art, craft and science of drafting judgments on judging skills, including effective listening, assimilating, drafting and delivering quality judgments was included. Appreciation of evidence in civil and criminal cases alongside recent advances in the field of electronic evidence, its preservation, collection & appreciation including established and emerging jurisprudence on the subject formed part of the discourse. Further, following themes including Court and Case management wherein bottlenecks in judicial administration, best practices on effective disposal of cases & role of a judge in management of court & case was dwelt upon in light of re-engineering judicial process through ICT including E-courts project, National Judicial Data Grid (NJDG), Case Information System (CIS), and proactive embracing of AI enabled projects viz. SUPACE, SUVAS projects, etc. The program also accommodated sessions on the themes like alternative dispute resolution, transition to a gender-just society – jurisprudential developments, child-centric jurisprudence in India and 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. The report includes a brief of deliberation for each session.

## **DAY 1**

**Session 1 - Overview and Architecture of Indian Constitutional Arrangement**

**Session 2 - Landmark Judgments: Celebrating Decadal Masterpieces**

**Session 3 - Indian Judiciary and Tryst with Novelty: Aligning with Global Standards by Raising the Bar**

## **DAY 2**

**Session 4 – Elements of Judicial Behaviour: Ethics, Neutrality and Professionalism**

**Session 5 - Judging Skills: Art, Craft and Science of Drafting Judgments**

**Session 6 - Transition to a Gender Just Society: Jurisprudential Developments**

## **DAY 3**

**Session 7 - Child-Centric Jurisprudence in India**

**Session 8 - Principles of Evidence: Appreciation in Civil and Criminal Cases**

**Session 9 - Electronic Evidence: New Horizons, Collection, Preservation, and Appreciation**

## **DAY 4**

**Session 10 - Judge as the Master of the Court: Court & Case Management**

**Session 11 - Re-engineering Judicial Processes through ICT**

**Session 12 - Alternative Dispute Resolution**

**LIST OF RESOURCE PERSONS**

<b>Sl. No.</b>	<b>Name</b>	<b>Designation</b>
1	Hon'ble Dr. Justice B.S. Chauhan	Former Judge, Supreme Court of India & Chairman, Law Commission of India
2	Hon'ble Mr. Justice Deepak Gupta	Former Judge, Supreme Court of India
3	Hon'ble Mr. Justice R.V. Raveendran	Former Judge, Supreme Court of India
4	Hon'ble Ms. Justice Indu Malhotra	Former Judge, Supreme Court of India
5	Hon'ble Mr. Justice Sunil Ambwani	Former Chief Justice, High Court of Rajasthan
6	Hon'ble Dr. Justice S. Vimala	Judge, Madras High Court
7	Hon'ble Mr. Justice G. Raghuram	Former Director, National Judicial Academy
8	Hon'ble Dr. Justice S.S. Phansalkar Joshi	Former Judge, Bombay High Court
9	Hon'ble Mr. Justice D. Seshadri Naidu	Former Judge, High Court of Bombay & Kerala
10	Hon'ble Mr. Justice K. Kannan	Former Judge, Punjab and Haryana High Court
11	Hon'ble Mr. Justice R.C. Chavan	Former Judge, Bombay High Court
12	Hon'ble Mr. Justice R.K. Gauba	Former Judge, Delhi High Court
13	Hon'ble Mr. Justice Ram Mohan Reddy	Former Judge, Karnataka High Court
14	Hon'ble Ms. Justice Roshan S. Dalvi	Former Judge, Bombay High Court
15	Dr. V.S. Elizabeth	Vice-Chancellor, TNNLU
16	Mr. Brian Speers	Council Member, The Commonwealth Lawyers Association and Member of the Executive Committee
17	Mr. Ramakrishnan Viraraghavan	Senior Advocate
18	Mr. V. Sudhish Pai	Senior Advocate
19	Dr. Pavan Duggal	Advocate, Cyber law and E-Commerce law
20	Mr. Sujit Ghosh	Advocate
21	Dr. Shashikala Gurpur	Director, Symbiosis Law School
22	Dr. Debasis Nayak	Associate Professor, IISER
23	Mr. R. Santhana Krishnan	Assistant Professor
24	Dr. Arun K. Thiruvengadam	Professor
25	Prof. V.K. Dixit	Professor

## **DAY – 1**

### **Session 1**

#### **Theme - Overview and Architecture of Indian Constitutional Arrangement**

#### **Panel – Mr. V. Sudhish Pai & Dr. Arun K. Thiruvengadam**

The session commenced by highlighting that the Indian Constitution is a comprehensive well-drafted & explained document that enshrines human values like sovereignty, the supremacy of the rule of law, political democracy, representative limited government, an embodiment of the doctrine of separation of powers, and independent judiciary. The Indian Constitution also provides for the civilian control of military power and the police is governed by law as well by judicial control. The similarities and issues common to the Constitution of India and Bangladesh were dwelt upon and the vision & functional bottlenecks of the working of an effective Constitution were discussed at length. It was highlighted that constitutional law refers to the justiciable part of the document and the rules evolved by courts in enforcing those justiciable provisions and that, conventions, customs, usages are all parts of constitutional law. It was stressed that courts while interpreting the constitution try to discover the intent behind it and thus enlarge and sometimes transform the words of a written constitution. It was pointed out that a Constitution is the very life and breathe of a nation and the vehicle in which it progresses. It was mentioned that the mere existence of a constitution document by itself does not ensure constitutional culture or constitutionalism. A politically neutral civil service, an independent police force, an independent academic and practicing legal profession, a military-controlled by the civilian government, a free press reflecting diverse views, and an independent judiciary are essential concomitants of constitutionalism. The three-fold objectives of a written constitution in a democracy were pointed out viz. to establish a framework for government, to delegate power to various organs, and to restraint the exercise of those powers to preserve individual rights. The constitution as a social contract and law is the will of the people were some areas dwelt upon. Amendments to the Indian constitution and the words sovereign, socialist, secular, democratic, republic, justice – social, economic, and political justice were explained in detail. Various articles of the Indian constitution were highlighted including Part III, IV, IV-A, the panchayat raj institutions (Art. (s) 243-243O), division of legislature & executive, Article 368, Independence of Judiciary, judicial review, etc.

Further, the session threw light upon various aspects including the role of judiciary under the Indian Constitution, evolution of practice focusing on the basic structure doctrine & PIL, and migration of Constitutional doctrine tools across South Asia. The colonial history of the courts in India including the Indian High Courts Act 1861, the Government of India Act 1935, replacement of the federal court by the Supreme Court in 1950, the structure of judiciary in the Constitution of India 1950, Chapter IV of Part V (union judiciary) and Chapter V & VI of Part VI (the states) were some areas enumerated upon. Aspects of the Indian Constitution as modern and transformative adapting to the needs of society was deliberated upon. The evolution of practice of the Supreme Court and its jurisdiction was deliberated upon. Lastly, the basic structure doctrine from Germany to India and then to Bangladesh, Pakistan and beyond and PIL across India, Pakistan, Bangladesh, Sri Lanka, Nepal were some areas pointed out during the session. Following judgments were cited on role of judiciary, especially the role of the subordinate judiciary viz. *All India Judges Assn. Case* (2002) 4 SCC 247; *RC Chandel v. High Court of MP*, (2012) 8 SCC 58 and the NJAC judgment.

## **Session 2**

### **Theme - Landmark Judgments: Celebrating Decadal Masterpieces**

#### **Panel - Prof. V.K. Dixit & Mr. Sujit Ghosh**

The session commenced with a dialogue on Art. 370 of the Indian Constitution. The speakers threw light upon the important contributions of the constitutional courts of India in the last decade including landmark judgments on the independence of judiciary, right to privacy, homosexuality, etc. Three important judgments on homosexuality were highlighted including *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 on Sec. 377 of Indian Penal Code; *Naz Foundation v. Government of NCT of Delhi*, 2009 SCC OnLine Del 1762. It was pointed out that there are two views on homosexuality viz. scientific and religious views. Sec. 377 of the IPC was highlighted and the meaning of order of nature was deliberated upon in the context of modern times and scientific advancements. The judgment in the case of *Naz Foundation* was emphasized wherein Delhi High Court decided on the basis of scientific evidence that sexual intercourse against the order of nature specifically homosexuality is not against the order of nature and therefore, Sec. 377 was decriminalized to the extent that homosexuality is not punishable. It was pointed out that the exception includes homosexuality between two consenting adults in private is not punishable.

The judgment of *Suresh Kumar Kaushal v. Naz Foundation*, Civil Appeal No. 10972 of 2013 was also mentioned followed by the judgment in *Navtej Singh Johar* case wherein the court declared Sec. 377 as inconsistent with the constitution. The rights of Transgender in light of the landmark judgment in the case *National Legal Services Authority v. Union of India*, Writ Petition (Civil) No. 604 of 2013 was analyzed.

The session then threw light upon judgments on electoral reforms and decriminalization of politics. It was emphasized that the framers of the Indian constitution have constituted an election commission to be an impartial body that provides for the political face of the nation and in view of which representation of people Act is passed. On this basis, the code of conduct is laid down by the election commission which provides for qualification and disqualification of members. It was highlighted that the Supreme Court has laid down a number of guidelines for the election commission to follow as well as for the contesting political parties to follow. Art. 19 of the Constitution of India was emphasized in this regard. Following judgments were referred *Union of India v. Association of Democratic Reforms*, (2002) 5 SCC 294; *Public Interest Foundation and Ors. v. Union of India*, Writ Petition (Civil) no. 536 of 2011; *Lily Thomas v. Union of India*, (2013) 7 SCC 653; *People's Union for Civil Liberties vs. Union of India*, (2013) 10 SCC 1; and *Subramanian Swamy v. Election commission of India*, (2013) 10 SCC 500

The session further included exposition on the right to privacy as a fundamental right through the landmark judgments in *Justice K. S. Puttaswamy (Retd.) & Another v. Union of India*, (2017) 10 SCC 1 & *Justice K. S. Puttaswamy (Retd.) v. Union of India*, (2019) 1 SCC 1 (Aadhar Judgment). It was pointed out that the Bangladesh Constitution is far more evolved than the Indian Constitution in appreciating the aspect of privacy, dignity as it was introduced in 1972, adopting the learnings over the years. The preamble, Art. 11 (Fundamental Principles of State Policy), Art. 27, Art. 43, Art. 25 of the Bangladesh Constitution were discussed in comparison to similar provisions under the Indian Constitution. The purpose of Constitutional democracy was deliberated in light of right to life with liberty & dignity.

### Session 3

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

#### **Panel - Justice K. Kannan & Justice Roshan S. Dalvi**

The session emphasized the adversarial and inquisitorial system with reference to justice, equity, and good conscience. The speaker accentuated upon the best practices and new approaches in civil and criminal jurisdictions, mainly focusing on; instant relief; arbitration; mediation; victims of sexual abuse, and trafficking. The aspect of maintenance application and child custody with reference to family court formed part of the discussion.

A reference was made to the French legal system that adopts an inquisitorial approach. The session dwelt upon the importance of Legal Service Authority, Arbitration, Mediation, Plea Bargaining, Lok Adalats, and Gram Nyayalayas as a part of state policy to enable access to justice through alternative dispute resolution mechanism. A reference was made to Gram Nyayalayas Bill which was passed by the Indian Parliament and came into force with effect from 2<sup>nd</sup> October 2009. Various matters pertaining to motor accident claims, land references, bank suits, summary suits, family disputes were also discussed with reference to Lok Nayayalay.

It was highlighted that the adversarial approach requires everything to be proved beyond a reasonable doubt in a criminal case and preponderance of probability in the case of civil matters. During the course of the discussion, the legislative guidance for inquisitorial jurisprudence through Sec. 165 of the Indian Evidence Act was highlighted. A reference was made to the case of *Jamatraj Kewalji Govani v. State of Maharashtra* (1967) 3 SCR 415 with regard to section 540 of the CrPC.

The three phases of Public Interest litigation were discussed. The first phase dealt with the directions and orders which were passed primarily to protect fundamental rights under Article 21. In this regard, a reference was made to the case of *Railway Board v. Chandrima Das* (2000) 2 SCC 465 wherein the Apex court recognized the right of a lawyer to approach the court for appropriate action for investigation and providing compensation to a rape victim. The second phase dealt with the cases relating to the protection and preservation of ecology, environment, and forest. The third phase dealt with the directions issued by the courts in maintaining the probity, transparency, and

integrity in governance. A reference was made to the case of *Vineet Narain v. Union of India*, 1 SCC 226 in this regard.

The programme further discussed the punitive action taken by courts in each of the three stages. It was emphasized that in the first category of cases the court imposed exemplary costs, in the second category of cases, the court ordered registry to initiate the prosecution proceedings against the petitioner under the contempt of court Act, and in the last category of cases the bar was directed to take appropriate actions. It was also underlined that the misuse of public interest litigation is a serious matter of concern for the judicial process. Frivolous or motivated petitions, ostensibly invoking the public interest detract from the time and attention which courts must devote to genuine cases. In this regard a reference was made to the decision in *Tehseen Poonawalla v. Union of India*, (2018) 6 SCC 72.

## **DAY – 2**

### **Session 4**

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

#### **Panel - Justice R.V. Raveendran, Justice R. K. Gauba & Justice K. Kannan**

The speakers threw light upon some essential skills for a judge for professionalism which includes case management, time management, and management of oneself. It was highlighted that managing your good stuff and all other stakeholders are a part of administrative skills and judicial skills. It was emphasised that ethical standards are very important and they're not a matter of convenience but are essential for judges. These ethical standards include integrity, judicial aloofness, independence, judicial temperament, humbleness, impartiality i.e. freedom from bias, and honesty. It was pointed out that sobriety is essential and that certain classes of litigation involve emotive content. How to attain sobriety in your dealings in the court was also deliberated upon. The speakers highlighted some personal examples and explained the importance of social coalition and public peace. How to use appropriate language to present oneself in the judgment was another area that was focused upon during the course of discussion. With regard to recusal and reservation and the kind of reservation and content a judge has to practice in the court was also emphasized. It was stressed that as a judge there should be sobriety in their conduct that includes conduct not only inside the court but outside the court as well. The session also threw light upon favorable biases and constitutional biases and highlighted the difference between the two.

Some instances of recusal were mentioned wherein when a relative appears before a judge it was suggested that they must recuse themselves from the case. In this regard the principle *Nemo debet esse iudex in propria causa* was highlighted meaning 'no one ought to be a judge in his own cause'. It was discussed that the principle applies in two types of cases including firstly, a judge is precluded from presiding over a case in which s/he directly appears as a party; and secondly, a judge is precluded from deciding a case in which s/he has an interest. It was suggested that a judge need not at all times think that they have to judge, when it is not needed they need not be judging. It was pointed out that what a judge is how s/he will exhibit him/herself in the court.

The speaker deliberated that the oath of a judge as given in the constitution explains the ethical behaviour s/he is required to practice which includes without fear or favour and without affection or ill will. It was suggested that a judge is required to maintain appropriate behaviour, follow the principles of natural justice, should not be a judge in his own cause, afford a fair hearing to lawyers and litigants, and always preside with an open mind on the bench. It was underscored that a judge will not face ethical conundrums if they are open to criticism and practice probity. Further, the Bangalore principles of judicial behaviour, media reporting, the OJ Simpson trial in the US, were some aspects discussed during the session.

The participant justices were suggested to have their own view but render judgments within the four corners of law and to practice the system of precedent. It was pointed out that it is important for a judge to have a sense of gratitude, friendship and loyalty towards justice alone.

### **Session 5**

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

#### **Panel - Justice G. Raghuram, Justice D. Seshadri Naidu & Mr. Ramakrishnan Viraraghavan**

The session was a narration of how judges may improve upon their skill not alone in writing judgments but in all spheres of life. It was put forward judging requires a high degree of neutrality and exclusion of prejudices which does not come naturally considering the human persona and therefore, human beings are essentially and culturally emotionally unsuited to being judges'. The same has to be ingrained through training on attitudes of professionalism including ethics & neutrality. It was stated that the complexities of society are dynamic and laws are static and limitations of language were aspects deliberated upon. Judges are advised by the bar which is asymmetrically positioned. A judgment is not a subjective output on which a judge has no copyright and therefore, a judgment is a public document that belongs to the court and judicial system in general. Therefore, the requirements of good judgment drafting are scholarship, approach, professionalism, narrative skills, and judicial approach of a judge which are all illustrated in a judgment. A judgment is the most significant introduction of a judge to the bar, to the public at large, and to the litigants whose case they endeavor to resolve.

Further, the session involved an erudite rendition of how to write judgments. It was emphasized that writing judgment is difficult across jurisdictions. A comparison was drawn with that of the symmetry and beauty of Taj Mahal with that of the quality of the judgment by Courts. It was stressed that the foundation of a judgment is very essential and judgments of the district judiciary are like foundations based on which the High Court and the Supreme Court judgments stand. It was underscored that the aim of a judge should be to deliver judgments of high quality on a consistent basis which is a matter of professional pride. Two aspects of judgment writing were highlighted namely psychological (diffidence, doubts, lack of self-confidence, procrastination, etc.) and technical aspects (delay in delivery of judgment, last moment effort, spelling mistakes, typos, shortcuts in reasoning etc.). It was suggested that judgment must focus on the process and forget the output to deliver a judgment of high quality. Three basic features of a good judgment were pointed including brevity, simplicity, and clarity. Further, it was accentuated that identifying the audience is important while drafting judgment and that a trial court's judgment should be for the losing party. It was deliberated that a judgment should not be written to show legal knowledge, language skills, knowledge of literature, impress the higher judiciary and/or for newspapers. Some key points on writing quality judgments before, during, and after hearing were dwelt upon. Regarding the framework of a judgment, it was pointed that the following may be included – Technical aspects (name of the court, case number, parties, provision of law); Introduction; Body of the judgment (detailed reasoning and analysis); and, the operative portion (your disposition, the final result).

The session also dwelt upon the brevity of judgments and highlighted that it is the most difficult part of drafting judgments. It was also pointed out that legal writing should not be lethal writing. The writing of Lord denning was referred to on the subject. The importance of clear thinking for clear writing and vice-versa was highlighted as an essential aspect of drafting judgment. It was stated that if a judge writes clear judgments it reduces litigation which is otherwise uncontrollable. An ambiguous, prolix and judgments including numerous quotations often tend to miss out on the point. Judges should avoid quoting numerous judgments to buttress their point in form of precedents. It was also put forward that the length of the judgment has increased in pages over the years due to the help of technology. Lastly, some habits of good writing including tools of writing in language were underlined.

## Session 6

### **Theme - Transition to a Gender Just Society: Jurisprudential Developments**

#### **Panel - Dr. Justice S.S. Phansalkar Joshi & Dr. V.S. Elizabeth**

The session involved discussion on the importance of gender justice and equal society in order to establish and recognize equality and equal treatment in society. It was accentuated that unequal power relations among genders will lead to many problems such as; injustice, violence, and abuse. During the course of discussion, various articles of the Indian Constitution such as; Article 14 (right to equality), Article 15 (prohibition on discrimination on the ground of sex), Article 39a (equal right to men & women to adequate means of livelihood) and, Article 39d (to secure equal pay for equal work) formed part of the deliberation. The speaker further highlighted seven faces of gender inequality which are still persistent and creating an obstacle to achieving a gender-just society i.e. inequality in morality, natality, basic facility, special opportunity, choice of profession, ownership of property, and in household responsibilities. A reference was made to the case of *CEHAT v. Union of India* (2003) 8 SCC 398 with reference to Pre-conception and Pre-natal Diagnostic Techniques (Regulations and Prevention of Misuse) Act 1994 wherein the court gave directions to all states for proper implementation of the Act.

The session further dwelt upon various directions issued in the case of *Voluntary Health Association of Punjab v. Union of India*, (2013) 4 SCC 1 to the central and state supervisory boards and committees to maintain all records and form in accordance with Rule 9. It was also emphasized that a special cell be established to monitor the progress of cases pending in the court and to take steps for their early disposal.

It was highlighted that woman's right to make a reproductive choice is a dimension of personal liberty under Art. 21 of the Indian Constitution and scope of reproductive choices can be exercised to procreate as well as to abstain from procreating. In this regard, a reference was made to the case of *Suchitra Srivastav v. Chandigarh Administration* AIR 2010 SC 235 with adding remarks on the Medical Termination of Pregnancy Act, 1971. It was stressed that a woman's right to privacy, dignity, and bodily integrity should be respected. A reference was also made to the case of *Shayara Bano v. Union of India* (2017) 9 SCC 1 wherein the Apex Court under Article 142, directed the

Union of India to consider passing appropriate legislation and held that until passing such legislation muslim husbands were injuncted from pronouncing talaq-e-biddat.

During the session, various landmark cases were discussed such as; *Vishaka and Ors v. State of Rajasthan*, AIR 1997 241; *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384; *Lillu @ Rajesh and Anr v. State of Haryana*, MANU/SC/0369/2013; *Patan Jamal Vali v. The state of Andhra Pradesh*, 2021 SCC OnLine 343; *Independent Thoughts v. Union of India*, (2017) 10 SCC 800; *Joseph Shine v. Union of India*, 2018 SCC OnLine SC 167; *Young Lawyer Association v. Union of India*, 2018 SCC OnLine 1690; *Laxmi v. Union of India*, (2014) 4 SCC 427; *NALSA v. Union of India*, (2014) 5 SCC 438 and *Aparna Bhat v. State of Madhya Pradesh* 2021 SCC OnLine SC 230.

## **DAY – 3**

### **Session 7**

#### **Theme - Child-Centric Jurisprudence in India**

#### **Panel - Dr. Justice S.S. Phansalkar Joshi & Dr. Shashikala Gurpur**

The session commenced with the assertion that child centric jurisprudence addresses legal or individual approaches to rights, agency and representation. It acknowledges and responds to children's development, dependency, agency, and vulnerability of children. It was stated that child friendly justice is one which is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs of the child, respecting the rights of the child including the right to due process, to participate in and to understand the proceedings, respect for private and family life and to integrity and dignity. Courts are required to apply the principle of 'best interest' by considering the child's rights and interests. The best interest of the child demands that children should be shielded from the trauma that may arise from giving evidence in criminal proceedings. The discussion further pertained to a number of statutory provisions in this regard such as, Section 23, 24, 26, 33-38 of POCSO Act, Section 165 of Indian Evidence Act and Section 164, 284 and 311 of the Criminal Procedure Code. A reference was also made to the United Nations Guidelines on Justice in matters involving Child Victims and Witnesses of Crime, 2005 which requires that the judicial process should be sensitive to the child's age, wishes, understanding, gender, sexual orientation, caste, socio-economic conditions, cultural, ethnic, religious, linguistic backgrounds as well as special needs of the child including health, ability and capacity. Judicial pronouncements on issues relating to the identity of the victim, maintaining the dignity and integrity of the victim, competency of child witness, etc. were discussed which includes *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384; *Sakshi v. Union of India and Ors.*, AIR 2004 SC 3566; *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2006) 3 SCC 374 and *Dr. Manjula Krippendorf v. State of Delhi*, (2017) 15 SCC 133.

It was emphasized that the impact of sexual abuse on children can be mitigated to some extent by victim compensation, right to legal representation, judicious use of powers bestowed upon the courts, witness protection, right to be heard during bail and support services. Section 33(8) POCSO Act gives wide discretion to special courts in providing compensation to the victim. In this regard,

it was advised that any compensation granted is independent of conviction or acquittal in the case and that compensation can be granted merely on the basis of sexual assault being established. The object is to alleviate the sufferings and challenges faced by the victim and the family. The session also explored the mental health concerns and challenges in matters involving child sexual abuse such as anxiety, depression, memory lapses, insomnia, flashbacks, etc. Healing in such cases is extremely vital but is seldom considered a part of the rehabilitation plan. Some judicial pronouncements pertinent to the theme of the session were discussed, such as *Delhi Domestic Working Women Forum v. Union of India*, (1995) 1 SCC 14; *Ankush Shivaji Gaikwad v. State of Maharashtra*, AIR 2013 SC 2454; *Bijoy v. State of West Bengal*, 2017 CriLJ 3893; and *Nipun Saxena v. Union of India*, (2019) 13 SCC 715.

The discussion explored various principles enshrined in the Convention on the Rights of the Child, 1989 such as Non-discrimination (Article 2); Best Interest of the Child (Article 3); Right to life, survival and development (Article 6); Right to be heard (Article 12) etc. The fundamental principles governing juvenile justice system and the international standards and norms relating thereto were delineated. The observations made in the Report of the Committee for Analysing Data of Mapping and Review Exercise of Child Care Institutions under the Juvenile Justice (Care & Protection of Children) Act, 2015 and Other Homes were discussed to highlight the inappropriate child care mechanisms and non-compliance of the provisions of the 2015 Act. *In re Contagion of COVID-19 Virus in Children Protection Homes*, (2020) 15 SCC 280 detailed guidelines were issued for preventive and responsive measures to be taken by governments, Juvenile Justice Boards, Child Welfare Committees, Child Care Institutions etc. for the well-being of children in need of care and protection and children in conflict with the law. The session concluded with the remark that Best Interest of the child is of paramount importance in cases of child sexual abuse. Therefore, judges must exercise their discretion to ensure the same to the maximum possible extent.

## Session 8

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

#### Panel - Dr. Justice B.S. Chauhan & Dr. Justice S. Vimala

The session commenced with the elucidation of the nature and scope of 'evidence' and 'appreciation of evidence'. It was asserted that the Indian Evidence Act does not apply to affidavits. Section 3 which defines evidence does not include affidavits, rather includes oral or documentary evidences [*Ayaubkhan Noorkhan Pathan v. State of Maharashtra*, AIR 2013 SC 58]. It was emphasized that a case is to be decided on a balance of probabilities. Thus, the court has to weigh various probabilities and exclude the impossibilities and improbable probabilities, and determine where the preponderance of probabilities lies. While striking the balance of probability, the presumption of innocence and the nature of the crime should be kept in mind. The distance between 'may be true' and 'must be true' should be covered by legal, reliable and unimpeachable evidence [*Paramjeet Singh v State of Uttarakhand*, AIR 2011 SC 200]. It was underscored that non-application of mind by the Court as a result of accepting inadmissible evidence or rejecting admissible evidence tantamounts to non-appreciation of evidence [*State of UP v. Ram Sevak*, 2003 SCC (Cri) 459].

Further, it was delineated that admission is a substantive piece of evidence and a decree can be passed on the basis of admission. However, admission can be withdrawn or proved erroneous. It has to be shown that the admission is unequivocal and clear. There has to be admission in relation to the whole dispute and not in part. The Supreme Court has consistently held that evasive denial or non-specific denial of averments in the plaint may constitute an implied admission. Thus, the opposite party must controvert the facts by specific denial [vide: *Mahendra Manilal Nanavati v. Sushila Nanavati*, AIR 1965 SC 364; *Tek Bahadur Bhujil v. Devi Singh Bhujil*, AIR 1966 SC 292; *Jahuri Sah & Ors v. Dwarika Prasad Jhunjunwala & Ors.*, AIR 1967 SC 109; *Naseem Bano v. State of UP.*, AIR 1993 SC 2592; *Sushil Kumar v. Rakesh Kumar*, AIR 2004 SC 230; *Seth Ram Dayal Jat v. Laxmi Prasad*, AIR 2009 SC 2463; and *Jagdish Prasad Patel v. Shivnath*, (2019) 6 SCC 82].

It was stressed that it is settled law that parties are governed by their pleadings and the burden to prove lies on the party making the pleading and further plaintiff has to succeed basing on the

strength of his case and cannot depend upon the weakness of the defendant's case. The power of the Courts with regard to re-opening the evidence and recalling witnesses were discussed. It was stated that while there is documentary evidence on record, the oral evidence is not entitled to any weight. It was further stated that any documentary evidence by way of an electronic record under the Evidence Act, in view of sections 59 and 65A, can be proved only in accordance with the procedure prescribed under section 65B of the Indian Evidence Act.

It was highlighted that corroboration is a rule of prudence and not of law. If the evidence of a witness is clear, cogent and convincing, corroborative evidence is not required unless it is required by the statute. Courts should not insist for corroboration except in the cases where it is not satisfied with a particular piece of evidence [*Murarilal v. State of M.P.*, AIR 1980 SC 531; *Rafiq v State of UP*, AIR 1981 SC 96; *Dinesh v State of Rajasthan*, AIR 2006 SC 1267; and *Duleshwar v. State of M.P.*, (2020) 11 SCC 440]. Further, circumstantial evidence, contradictions/discrepancies in evidence, irrelevant evidence, presumption of a document, medical and ocular evidence, expert opinion, examination of witnesses, child witness, interested witnesses, chance witness, hostile witnesses, evidence of accomplice, were also discussed.

### **Session 9**

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

#### **Panel - Dr. Pavan Duggal & Dr. Debasis Nayak**

The session commenced with the assertion that in today's "age of access" technology encompasses every aspect of modern life and digital devices are used as tool, target or both in the commission of crime. The meaning and scope of 'electronic evidence' as provided under the explanation to Section 79A of the IT Act was discussed. Further, it was pointed that the challenge in modern times is that since digital evidence has wider scope it is sensitive, mobile and requires special tools to retrieve with cautious collection and preservation to be worthy of being admissible in a court of law. It was emphasized that if identified, collected and analysed in a forensically sound manner, electronic evidence can prove crucial to the outcome of civil, criminal and corporate investigations. Volatile and non-volatile evidence and their manner of acquisition were discussed with the aid of illustrations. Also, it was stressed that post Covid era is likely to bring a new Cyber World Order

wherein large amount of electronic data is created and cybercrime and cyber security breaches will be the default normal. As electronic evidence becomes more and more significant judges will be required to adjudicate upon its veracity, authenticity and admissibility as potent evidence in various cases.

Further, it was iterated that any documentary evidence by way of an 'electronic record' can be proved only in accordance with the procedure prescribed under Section 65 of the IEA. The changes brought about to the IEA vis-à-vis 'electronic records' was discussed with reference to Sections 3(a), 5, 17, 22A, 39 65A and 65B of the Act. Section 81A and 84A was also discussed in relation to presumptions regarding digital evidence. Section 65B which deals with the admissibility of electronic record requires special procedure for presenting such material as admissible evidence in a court of law. It also provides for technical and non-technical conditions to be complied with in this regard. While dealing with the interpretation of Section 65B *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473 was referred. It was pointed that post the decision in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal & Others*, (2020) 7 SCC 1 it has been mandated that all the conditions specified under Section 65B (2) of the IEA must be fulfilled in contrast to the earlier position wherein the fulfilment of any of the conditions of sub-section (2) would suffice as per Section 65B (4) (c) of the Act. Therefore, certificate under Sections 65B (4) (a) and (b) is no longer needed. The Supreme Court reiterated that the certificate required under Section 65B (4) is a condition precedent to the admissibility of evidence by way of an electronic record and that oral evidence in place of such certificate would not suffice. It was also clarified that certificate under Section 65B (4) is unnecessary when the original document itself is produced.

While referring to some recent high profile cases featuring the headlines it was stated that as per *The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021* if in any matter electronic evidence becomes of crucial necessity the law enforcement agencies and the courts can direct any electronic evidence which is in the custody or possession of the service provider to be preserved till such time the matter is pending. Reference was made to the adoption of a Second Additional Protocol to the Budapest Convention in November, 2021 to enhance co-operation in disclosure of electronic evidence in fighting cybercrime. It was pointed that since India is not party to the Budapest Convention, 2001 reliance is heavily on the mutual legal assistance treaty route which in most cases prove ineffective primarily for want of electronic

evidence. A recent phenomenon of 'deepfake' evidence was discussed particularly in respect of family law matters. It was apprehended that as court proceedings through video conferencing have become a new norm some portion of such hearing could also become electronic evidence in courts of law. The session concluded with the remark that judges' understanding and awareness in recognising, appreciating and assimilating the complexities of digital evidence is quintessential to ensure that they are appropriately prepared to deal with new challenges in the field of computer crime, forensics and the law relating to it.

## **DAY – 4**

### **Session 10**

#### **Theme - Judge as the Master of the Court: Court & Case Management**

#### **Panel - Justice Deepak Gupta, Justice Sunil Ambwani & Justice Ram Mohan Reddy**

The session involved discussion on techniques of management that may be adopted to better administration of justice. Some aspects of human resource management were also highlighted. It was stated that the functioning of e-courts has been very useful in facilitating court and case management. The role of a judge in streamlining Court & Case management was emphasized. It was highlighted 20 years back Indian courts faced the problem of mismanagement since court rules and guidelines were not codified until 1998-1999. In 2012 the National Court Management System (NCMS) was approved and thereafter, the NCMS baseline report was prepared. It was suggested that staffing patterns, staffing rotation, and training must be regular in practice. With regard to training, it was highlighted that continuous training be imparted in managing files, court, and cases which should be undertaken every 6 months. It was further stated that the e-committee has been undertaking training of trainers for the staff operating in e-court systems including software & hardware. The session also threw light upon the ADR centers, court-annexed mediation centers, and the importance of court staff in the court management system (CMS). Some aspects regarding court managers, their role in court management, and preparing a court development plan formed part of the discussion. The session also dwelt upon inventory & stock management, legal services authority programmes, Lok Adalats, bar and bench relations. On bar & bench relations it was mentioned that there is a need for dynamic bar, proper scheduling & rostering of cases.

Further, during the course of discussion it was underscored that a judge is a master of his court and therefore, he must ensure proper cleanliness, hygiene in his court. With regard to case management participants were suggested to keep a check of how many cases they have in their court, the oldest case, to have yearly, monthly, and daily plans according to the needs of their court. It was also suggested that adjournments must be curtailed and if needed short dates must be given and cost be implicated. The session also involved discussion on effective means of communication including personal interactions amongst various stakeholders.

The session also focussed on some aspects of judicial conduct during proceedings namely dignity, objectivity, and rationality. It was highlighted that justice dispensation is a system founded on trust and faith of the litigant and that leadership is one of the most important aspects of judicial administration system. It was emphasized that personal character, knowledge, skills & wisdom are essential for a judge to be a good leader. Qualities of a good leader were listed namely credibility in actions, pragmatic approach, maintain high standards, preservation of core values, and identity. Lastly, the session also involved suggestions on best practices for effective disposal of cases that may be adopted by a judge in their respective jurisdictions including Quality, responsiveness & timeliness (QRT); finding a solution to a problem; controlling arguments; filing of affidavits; organizing documents as evidence; rendering judgment within 30 days, avoid undue delay, avoid lack of judicial control and failure to limit evidence.

### **Session 11**

#### **Theme - Re-engineering Judicial Processes through ICT**

#### **Panel - Justice R.C. Chavan & Justice Ram Mohan Reddy**

The session was dedicated towards the introduction of the use of Information and Communication Technology (ICT) in the courts and its effectiveness in bringing transparency in the system. The session commenced by underlining the enhanced use of ICT in the Indian judicial system and how the e-courts projects were phased out. This was followed by highlighting the significance of ICT in courts and how the use of technology has strengthened the court systems. The discussion further emphasized that the greater use of ICT has amplified judicial productivity both quantitatively and qualitatively. The use of National Judicial Data Grid (NJDG) and e-court services were delineated to exhibit the power and potential of effective and disciplined use of information technology by the Indian judicial system. Several allied best practices which have enhanced the court systems like- use of video conferencing techniques, display systems outside courtrooms, kiosk systems, Judicial Service Centre [JSE] from where a litigant can gather his case related information etc. were comprehensively deliberated upon.

Discussing the challenges faced by the judiciary on having a fairly robust IT infrastructure, a few points were reflected. The procrastinating and tardy approach of the subordinate courts in

uploading the information, lack of awareness and interest to upload relevant and mandatory data and more were highlighted. Access to justice was distinguished from mere access to courts. Barriers to access to justice were categorically dealt as geographical barriers; social factors (dignity, self-esteem, feeling of shamefulness etc.), premium cost of accessing proficient legal services, logistics (transport facilities etc.). The observation made in *Hussain v. Union of India*, (2017) 5 SCC 702 was cited, “Judicial service as well as legal service is not like any other services. They are missions for serving the society. The mission is not achieved if the litigant who is waiting in the queue does not get his turn for a long time.” It was underscored that the World Bank has lauded Indian Judiciary for NJDG in *Ease of Doing Business*. The development and mobile application of the novel “*Supreme Court Vidhik Anuvaad Software*” (SUVAS) loaded with artificial intelligence (AI) for translation of judicial documents in eight Indian languages was applauded. *Ramrameshwari Devi v. Nirmala Devi*, (2011) 8 SCC 249 was referred citing the steps laid down for trial courts for improving the existing system. It was asserted that the use of technology in courts has made judicial functioning more efficient and further attempts are being made to incorporate new technologies such as artificial intelligence, augmented reality, machine translation, mobile collaboration and speech recognition to ensure a more transparent and accountable judicial system. Various positive changes that have been brought about by the introduction of technology in the day to day functioning of the court system were also highlighted.

## **Session 12**

### **Theme - Alternative Dispute Resolution**

#### **Panel - Justice Indu Malhotra, Mr. Brian Speers & Mr. R. Santhana Krishnan**

The session commenced with the assertion that access to justice encompasses the right to speedy resolution of disputes. Given the huge backlog of cases burdening the Indian judiciary it takes years on end to complete the trial, appellate and revision process. It was pointed that there are various alternative dispute resolution tools evolved over the years and subsequent amendments have been made in the legal framework so as to meet the challenges in the field of arbitration and bring it in consonance with international norms and standards. It was stressed that the need of the hour is to unclog the courts at all levels; ensure that disputes are resolved in a time bound and cost effective manner; and through a medium which is flexible in its approach. Further, Section 89 of

the CPC; Arbitration Act, 1940; Arbitration and Conciliation Act, 1996; and Legal Services Authorities Act, 1987 were discussed in detail. Section 89, CPC provides for four modes of alternate dispute resolution viz. arbitration, conciliation, judicial settlement through Lok Adalat and mediation. The issue whether the court was empowered to refer parties to any of the ADR techniques without their consent was highlighted and it was clarified that the entire underpinnings of the ADR system is based on consensuality. It was asserted that decision of a tribunal or a settlement arrived at a lok adalat is enforceable and executable as a decree of the court. It also subsequently encompassed disputes between two or more Public Sector Undertakings or; two limbs of the state administration or; state administration and central administration.

It was pointed that court annexed mediation centres have been set up by most High Courts wherein at any stage of the proceeding the court may refer a matter to mediation if it thinks appropriate. These have proved extremely successful in disputes relating to matrimony, labour, negotiable instruments and the like for the reason that the settlement is agreeable to both parties and not one which is inflicted upon them. It was stated that several enactments such as the Commercial Courts Act, 2015, Hindu Marriage Act, 1955, Companies Act, 2013 etc. have inserted provisions with respect to mediation. Provision relating to pre-institution mediation was introduced in commercial matters and it was opined as a legislative expression of the doctrine of exhaustion of remedies. It was further highlighted that India being a signatory to the Singapore Convention on Mediation, is now in process of bringing about a standalone comprehensive enactment on the subject which applies to all kinds of disputes. The success of online mediation in the wake of the pandemic was accentuated. Further, the discussion emphasized that a mediator requires separate set of skills from that of a lawyer practicing in the adversarial system. It requires training to acquire attributes such as patience, listening, empathy, trust building, imagination etc.

It was opined that arbitration was conceived to be a mode of ADR which would be expeditious, cost effective, autonomous, based on consensual agreement between parties, flexible in procedure, and presided over by an impartial and neutral arbitrator. These are significant requirements of a sound arbitration system and these must be adhered to since appellate mechanisms in this regard are extremely limited and circumscribed. The issues relating to diversity in appointment of arbitrators, regulation of third party funding and impleadment of non-signatories as parties was touched upon. It was highlighted that India has followed the UNCITRAL Model Law on

International Commercial Arbitration while enacting the Arbitration and Conciliation Act, 1996. It was brought about as a consolidating Act which covers domestic arbitration, enforcement of foreign awards and the conduct of international arbitrations seated in India. The landmark amendment of 2015 was focused upon which provides statutory timelines for the conclusion of proceeding; and minimum judicial intervention particularly at the threshold on issues like arbitrability of disputes or appointment of arbitrators etc. It was opined that arbitration has become a far more effective mode of dispute resolution in India owing to the 2015 amendment and several decisions of the High Courts and Supreme Court.

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