NATIONAL JUDICIAL ACADEMY

TRAINING PROGRAM FOR BANGLADESH JUDGES AND JUDICIAL OFFICERS

(SE-07)

11TH TO 14TH APRIL 2022

PROGRAMME REPORT

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Programme Report

A Memorandum of Understanding (MoU) was entered between the National Judicial Academy, India (NJA) and the Supreme Court of Bangladesh for organizing Training and Capacity Building programs for Bangladesh Judicial Officers. Pursuant to the said MoU, this academic year the NJA organized four programmes for the Bangladesh Judicial Officer. The present programme was the fourth and last programme of this academic calendar, conducted online for Judges nominated by Bangladesh conducted from 11th to 14th April 2022.

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

Resource Persons

S. No.	Resource Person	Designation
Day- 1		
1.	Justice Ram Mohan Reddy	Former Judge, High Court of Karnataka
2.	Prof. VK Dixit	Professor Emeritus, National Law Institute University, Bhopal
3.	Mr. V. Sudish Pai	Senior Advocate
4.	Prof. BT Kaul	Former Chairperson, Delhi Judicial Academy
5.	Mr. Sujit Ghosh	Advocate Delhi High Court & Supreme Court of India
Day- 2		
6.	Justice G. Raghuram	Former Judge, Andhra Pradesh High Court, Former Chairperson CESTAT, Former Director, National Judicial Academy
7.	Justice Sunil Ambwani	Former Chief Justice Rajasthan High Court
8.	Justice Kalpesh Satyendra Jhaveri	Former Chief Justice Orrisa High Court
9.	Dr. Justice Shalini P.S. Joshi	Former Judge, High Court of Bombay
10.	Mr. Ramakrishnan Viraraghavan	Barrister at Law
11.	Dr. Balram K Gupta	Director (Academics), Chandigarh Judicial Academy
Day- 3		
12.	Justice Roshan Shamim Dalvi	Former Judge, Bombay High Court
13.	Justice S. Nagamuthu	Former Judge, Madras High Court
14.	Justice Ved Prakash Sharma	Chairperson, State Law Commission, Madhya Pradesh, Former Judge Madhya Pradesh High Court

15.	Mr. R. Santhana Krishnan	Advocate, Independent Counsel
16.	Mr. Brian Speers	President, Commonwealth Lawyers Association
17.	Dr. Harold D'Costa	CEO of organization [IQSS], Pune
18.	Mr. Pavan Duggal	Advocate, Supreme Court of India Chairman, International Commission on Cyber Security Law
Day- 4		
19.	Justice R.C. Chavan	Former Judge High Court of Bombay
20.	Dr. Justice S. Vimala	Member, State Law Commission of Tamil Nadu, Former Judge, Madras High Court
21.	Dr. Kiran Rai	Faculty, Maharashtra National Law University, Mumbai
22.	Ms. Geeta Ramaseshan	Advocate
23.	Dr. Harold D'Costa	CEO of organization "Intelligent Quotient Security Systems" [IQSS], Pune

Day-wise brief of progression:

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

Session – 1

Overview and Architecture of Indian Constitutional Arrangement

Speakers- ***Prof. V. K Dixit & Mr. V. Sudhish Pai***

The session commenced by accentuating that laws which are implemented and followed in India and Bangladesh are almost alike. The constitution of Bangladesh contains most of the democratic elements needed in contemporary times. It was emphasized that the objective of a written constitution in a democracy is broadly to establish the structure of government, to delegate or assign powers to various organs and to strain the exercise of uncontrolled power so as to preserve individual rights and liberties. While discussing the basic structure doctrine, participants were apprised on the role and responsibilities of a judicial officer in the district judiciary who are the primary foundational court which renders justice at the first instance. Further, it was also underscored that the constitutional vision of justice has to be assumed by members of the district judiciary who implement and executive justice through statutory laws and legal wisdom thereby shaping the future of those who seek justice. The exceptionality in the substances and spirt of the Indian Constitution was stressed upon. Part I and Part III of the Constitution of India were elaborately discussed. The discussion also emphasized the significance of Article 14 of the Constitution of India, which prohibits the state from repudiating any person equality before the law or equal protection of laws. Prominence was placed on the fact that judiciary is endowed with the responsibility to construe the constitution and this construal is not only restricted to writ jurisdiction of the Supreme Court and the High Courts but also to the district judiciary.

Session- 2

Landmark Judgments: Celebrating Decadal Masterpieces

Speakers- ***Prof. V. K Dixit & Mr. Sujit Ghosh***

The session focused on significant judgments contributed by the Supreme Court of India in the last decade. The discourse commenced with discussion on cases that empower women. In the same breath, the first case highlighted was *Indian Young Lawyers Association & Ors. v. The State of Kerala*, (2019) 11 SCC 1 *(Sabarimala).* In this case it was held that the temple's practice of excluding women is unconstitutional and such practice violated fundamental right to freedom of religion to female worshippers as enshrined under Article 25(1) of the Constitution of India. In *Shayara Bano v. Union of India*, (2017) 9 SCC 1 [Triple Talaq], the court held that the practice of *Triple Talaq* is unconstitutional for the reason that it is manifestly arbitrary in nature. Subsequently, the court also directed the parliament to take legislative measures against the practice of *Triple Talaq*. Successively, the judgment in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 [Section 377], was deliberated in which a five-judge Bench of the Supreme Court struck down Section 377 of the Indian Penal Code, 1860 [IPC], to the magnitude that it criminalised same-sex relationships amongst consenting adults.

Thereafter, some recent judgments of the Supreme Court were discussed including - *Suchita Srivastava v Chandigarh Administration* (2009) 9 SCC 1 here, the court recognized the right of a mentally disabled woman to endure her gravidity. The Supreme Court situated the woman's right to make reproductive choices within the right to personal liberty under Article 21 of the Constitution of India. In *Pattan Jamal Vali v. State of Andhra Pradesh,* 2021 SCC OnLine SC 343, the Supreme Court intensified the understanding of discrimination. In the said case, a man from a dominant caste was indicted of sexually assaulting a blind woman who was a member of a Scheduled Caste. The court held that the provisions for rape under IPC permitted *principles of intersectionality* to be applied while determining the sentence. The court ensued to convict the accused under IPC and sentenced him to life imprisonment.

Further, the session discussed cases on electoral reforms viz., *Union of India v. Association for*

Democratic Reforms, [2002] AIR 2112. The court while dealing with the issue of criminalization of politics held that as per the Constitution of India, electors have a fundamental right to discern the antecedents of candidates contesting elections to public office. The court delivered that 'right to be informed' is a right flowing from freedom of speech and expression. In *Lily Thomas v. Union of India & Ors* (2000) 6 SCC 224 the court ruled that Members of Parliament, Legislative Councils and Legislative Assemblies convicted of crimes where they had been awarded a minimum sentence of 2 years imprisonment would cease to be members of the house to which they were elected from the date of sentencing. In *People's Union for Civil Liberties & Anr v. Union of India & Anr (2013) 10 SCC 1*((None-of-The-Above) NOTA), the Supreme Court introduced negative voting as an option for the country's electorate. According to this judgment an individual would have the option of not voting for any candidate NOTA if they don't find any of the candidates' worthy.

Later part of the session elaborated upon *Justice K. S. Puttaswamy (Retd.) & Another v. Union of India*, (2019) 1 SCC 1 [Privacy] , in this judgment the Supreme Court unanimously declared the right to privacy as an intrinsic part of the right to life and personal liberty under Article 21 of the Indian Constitution. It was underscored that this case expanded freedom of expression by distinguishing privacy as a self-sufficiently enforceable right, as conflicting to a right that is existing merely as far as it effects constitutionally guaranteed freedoms. This offers fortification of freedom of expression by identifying rights such as the right against indiscriminate, unfettered State reconnaissance, the right to express one's sexual orientation, religious countenance and data protection.

Session- 3

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

Speakers- *Justice Ram Mohan Reddy & Prof. B. T. Kaul*

The discussion initiated by highlighting how the Indian judiciary has combatted contemporary challenges arising out of international legal developments. The initial part of the session

emphasised upon the enablement of access to justice. The meaning of 'Access to Justice' and how the meaning has expanded and evolved over the years was accentuated. It was stressed that the essential to 'Rule of Law' is 'Access to Justice' and legal aid is the contrivance to achieve access to justice. Here it is significant to understand as to what one connotes with 'Justice'. It was stressed that justice means when courts in every way provides relief and find legal techniques to provide relief to those who are deprived of what was due to them. It was highlighted that to achieve the objective of Article 39-A of the Constitution of India, the government by a resolution appointed a committee for implementing Pan India Legal Aid Scheme to monitor and implement the Legal Aid Programme. However, the same was reviewed and successively the Legal Aid Act 1987 came into existence. It was highlighted that the purpose of legal aid provision is to apprise individuals who are in contact with law to the extent of their rights and provide assurance of the existence and accessibility of services, regardless of societal and fiscal means.

While discussing adversarial and inquisitorial systems it was reiterated that the former system is prevalent in common law countries whereas the later system is more prevalent in civil law countries. The adversarial system basically came into being as a reactions to the abusive procedures adopted by the courts of high commissions of England in seventh century onwards. Subsequently, the report of Malimath Committee on Reform of Criminal Justice was referred which suggested that since the criminal justice system has not been that exultant in India therefore, there is a need to adopt a few good practices of the inquisitorial systems so as to keep pace with contemporary challenges and requirements. Successively, it was highlighted that the Malimath Committee Report wanted the preamble of Criminal Procedure Code, 1973 (CrPC) to include 'discovery of truth' as its basic objective. While accentuating the difference between adversarial and inquisitorial system it was underscored that in the inquisitorial system there is a greater integration of roles in criminal law whereas in adversarial system the roles are segregated to ensure that the principles of fairness are adhered to. Another difference between the two systems is that the function of inquisitorial system at all stages is to enquire into the truth of allegations whereas the function of the adversarial criminal trial is to test whether the prosecutor can prove the allegations which (s) he has made. Furthermore, in the inquisitorial system decision making tends to rely on information in a court file assembled without the significant limits posed by the evidentiary rules however, in contrast, the adversarial system does not decide the case based upon

the court file or investigative documents rather this system conducts open hearing, relies heavily on oral evidence, tested by the cross examination of the witnesses.

While discussing Public Interest Litigations [PILs] it was highlighted that the concept of PIL is suited to principles enshrined under Article 39A of the Constitution of India intended to protect and deliver prompt social justice with the help of law. *Piloo Mody v. State of Maharashtra*, Miscellaneous Petition No. 519 of 1974, decided on 22-10-1975 was referred. In the said case Gandhi J adopted the views of locus standi which was later laid down by Bhagwati J in *S.P. v. Union of India* 1981 Supp. (1) SCC 87. Two important facets when PILs developed in India are- to enforce the rights of the vulnerable and to have a mechanism against illegalities committed by the government. Subsequently, various reports responsible for the development of PILs in India were discussed namely- Report of the Legal Aid Committee 1971; Report of the Expert Committee on the Legal Aid Procedural Justice to the People, 1973; and Report of National Juridicare: Equal Justice - Social Justice, 1977.

Session- 4

Elements of Judicial Behaviour: Ethics, Neutrality and Professionalism

Speakers- *Justice G. Raghuram & Dr. Balram Gupta*

The session commenced with a reference to Francis Bacon's essay on judicature where he said that- *Judges ought to be more leaned than witty, more reverent than plausible, and more advised than confident. Above all things, integrity is their portion and proper virtue.* However, judges in contemporary democracies have to take care of many things. It was stressed that a judge who is good and faithful prefers what is just, legal and right. Such a judge will never prefer what is expedient. Reference was made to 'The Restatement of Values of Judicial Life' and the 'Bangalore Principles of Judicial Conduct' which lay down in detail, the standards and guidelines for ethical conduct of judges. Subsequently, emphasis was placed on Article 14 (I) of the International Covenant on Civil and Political Rights which precisely sets out the qualities of a good Judge i.e., (s) he should be- competent, independent and impartial; give fair and public hearing and; treat all persons equal. It was further highlighted that a judge requires certain judicial

skills to effectively discharge his/her functions as an adjudicator pressing over a judicial forum that includes-

- ✓ comprehensive acquaintance of procedural and substantive laws;
- ✓ skillfulness of giving a due hearing;
- ✓ marshalling facts and writing good judgments and;
- ✓ abilities of considering and disposing of interim prayers, interlocutory applications, requests for adjournments etc.

It was stressed that judges should ensure that faith of various stakeholders is intact in the justice delivery system. This faith in the judicial system consecrate the shrine of justice.

Successively, it was underlined that to maintain the essence of democracy it is indispensable for courts to uphold and respect the content of the rule of law equally at the behavioral and institutional level. The same could only be achieved when values of the constitution are internalized by judges.

Session- 5

Judging Skills: Art, Craft and Science of Drafting Judgments

Speakers- ***Justice Sunil Ambwani & Mr. Ram Krishnan Viraghavan***

The objective of the session was to explore ways by which judges can consistently deliver good quality judgments. It was underlined that it is difficult to write judgments of good quality and there is nothing natural about writing a judgment. In fact, writing a judgment is intensely artificial. Since our justice delivery system is based on adversarial jurisprudence which in itself is artificial therefore, judges ought to learn how to write judgments of good quality. Subsequently, judges have to practice what has been learnt until consistency is arrived at inevitably with good quality. Consecutively, it is also significant to identify core issues which create hindrances in the delivery of good quality judgments. Some on these issues as discussed are-

- ✓ resistance from learning;
- ✓ paucity of time;
- ✓ quantity vs. quality; and
- ✓ absence of good support system.

Three basic features of a good judgment as discussed are brevity, simplicity and clarity. Judges are required to comprehend the audience of their judgments and accordingly, contents of the judgment is to be aligned. Participants were cautioned on some of the wrong reasons to write a judgment viz, desire to show legal acquaintance and language skills; to impress higher judiciary and to get publicity. Structure of a typical judgment includes-

- ✓ summary of the complainant or petitioner's case;
- ✓ summary of the defence;
- ✓ arguments of the petitioner and of the defence;
- ✓ issues involved;
- ✓ analysis of the arguments and findings; and
- ✓ conclusion with the operative portion of the judgment.

In addition, suggested structure of a judgment may incorporate a brief background with one or two paragraphs simply containing undisputed facts, issues, analysis and conclusion with operative portion. Participants were advised that every judgment is important and no judge should underestimate the significance of their judgments.

The discussion additionally emphasised that writing of a judgment is an art. In addition to the command over the language judgment writing also demands acquaintance of law and procedure. Judgment is centered principally on three constituents: finding of fact, application of principles of law, and decision arrived at after due consideration of facts and principles of law applicable with respect to issues at hand. Accordingly, while delivering a judgment, the court must accurately state the factual matrix of the case and principles of law applicable therein and it’s finding on each issue. Moreover, participants were advised that the justice delivery system is reliant on public trust and confidence therefore, to maintain the same it is inevitable for judges to be independent, impartial, with integrity, modesty, equality, competence and diligence. It was highlighted that tenets and canons essential from a judge varies with vicissitudes in the social order and it is imperative that judges be cognizant of these variations. Judges need to be persistently conscious of their role and locus in the society.

Session – 6

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

Speakers- *Justice Kalpesh Jhaveri & Dr. Justice Shalini S. Phansalkar Joshi*

The discussion elucidated by emphasizing that judges are considered as case deciders and not as case managers. In fact judges should consider themselves as masters of the court which necessarily implies that as a master a judge should lead by examples be it, punctuality, administration etc. Every judge is a master of his/her own court and a justice delivery manager. Being so a judge is required to follow certain administrative principles as well. On the other hand, when a judge intends to manage the court in an utmost effective manner, it becomes imperious for him/her to advance confidence of all stakeholders. All this is plausible only when the judge is compassionate to participants of the justice delivery system along with the insight that, a court is an organization for the people. Such public trust in the eyes of public can only be accomplished when court and case management is done with earnestness and timely justice is delivered. It was submitted that, for effective case management a judge must substantially-

- ✓ verify the status of cases in his/her court;
- ✓ nature of cases along with the required method for trial;
- ✓ staff required to handle cases;
- ✓ ensure that cases are not delayed;
- ✓ strike a balance between various category of cases; and
- ✓ ascertain the actual stage of the case and reasons for pendency.

Since the inclusive working of a court depends profoundly on the interplay amongst judges and administrative staff, it is essential to set up an arrangement proficient in building mutual responsibility between the head of the court and the court administrator for the complete management of the office. It was underlined that communication and demeanor are indispensable parts of court management. In addition a judge needs to be acquainted with the whole enchilada in his/her court. As far as case management is concerned it was stressed that the observance with which a judge accomplishes his/her work in the court is reflected in his/her attitude towards disposal of cases. Other aspects of court management elucidated upon are:

- ✓ adherence to strict docket timeframes;
- ✓ budgeting;
- ✓ role of court managers;
- ✓ national judicial data grid;
- ✓ human resource management etc.

It was also submitted that a judge must be open to notions from stakeholders that may enrich systems in the court.

Session- 7

Alternative Dispute Resolution

Speakers- ***Justice Roshan Dalvi , Mr. Santhana Krishnan & Mr. Brian Speers***

The session commenced by clarifying the term ADR as Alternative Dispute Resolution and not only additional or appropriate dispute resolution. Post-1991, a docket explosion in the number of cases before the court increased and it was at that time the parliament had enacted the Arbitration and Conciliation Act, 1996. The purpose of the act was not only arbitration but as per section 30 of the said act, mediation as a mode of settlement was also brought in for the first time. It was highlighted that under Arbitration and Conciliation Act, 1996, Arbitration, conciliation, Lok Nayayalas, Judicial Settlement, and mediation are the modes of Settlement. Arbitration is expensive now and therefore it is affordable to a few people and mediation is by far the most preferred mode of settling disputes. Traveling to the history of mediation i.e. pre CPC amendments, the hierarchy including the Peshwa, Nyayadish, Mamlatdar, and Panchyat was highlighted. Although, this did not work well as they do not have the power to compel attendance and administer oath and it was slow too. After CPC amendments, judges play a very proactive role even at the grassroots level of Gram panchayat. Justice Malimath committee was appointed and under the recommendation of the committee section 89 was added to CPC in 1991. The primary aim was to reduce pendency, cost, and also the quick resolution of disputes. It was mentioned that section 89 gave tremendous power to judges, especially the district judiciary, to decide whether a particular matter can be settled through any mode of settlement, if yes, so the matter shall be referred.

Justice Krishna Iyer's vision of mediation was explained. He coined certain terms like People's Justcing (Lok Nyayalay), Conciliation Organs, and Settlement Bodies i.e. mediation. Mediation has different beginnings in different countries. In Austria, it began with juvenile delinquents, in Australia with labor law, and in the United States with appeals, property cases, and bankruptcy cases. The USA and India have common dispute resolution mechanisms, except for MED-ARB, which is based in the USA. A combination of Mediation and Arbitration is where the arbitrator eventually decides the issue if the dispute cannot be resolved through mediation. According to USA practice, there are certain forms to disclose facts on which the judge decides whether to refer the matter to mediation or not, and a form of ADR option is sent with the summons. Similar practices should be followed in India were mentioned. The reference was made to Order 10 Rule 1A under CPC, similar to the Canadian, UK, and Australian procedures. It is the automatic/compulsory mediation that takes place after the framing of issues the computer shows the ADR interval. Judges were advised to act as a mediator and play an active role in identifying problems, generating options, and reaching solutions. It was noted that ADR can be used after the pleadings are complete, before the issues are framed, and when the matter is taken up for the preliminary hearing. *Afcons Infrastructure Ltd. And Anr. v. Cherian Varkey Construction Co. (P) Ltd. And Ors.* (2010) 8 SCC 24, and *Salem Advocate Bar Association, Tamil Nadu v. Union of India;* (2005) 6 SCC 344 were referred.

The resistance to choosing mediation as an option is from both sides i.e. the lawyers and the Judges. It was opined that a strong case remains a strong case whether in mediation or court. The benefits of mediation include exploring client interests and knowing the strengths and weaknesses of a case discussed. Types of suits to be referred to mediation like family disputes, inheritance, partnership, administrative matters, etc. were highlighted. The difference between the facilitator and mediator was underlined. Further, it was opined that mediation is a quicker and less expensive way to solve any matter. Training is essential not only for judges but also for all the stakeholders who come under mediation. A reference was made to Lord Dyson's statement in, *A Word on Halsey v Milton Keynes,* 77(3) ARB. 337, 338 (2011) stated that the court's role is to encourage and not compel parties to mediation.

Session- 8

Principles of Evidence: Appreciation in Civil and Criminal Cases

Speakers- ***Justice Ved Prakash Sharma & Justice S. Nagamuthu***

The session commenced with the issues relating to appreciating, marshaling evidence, and developments that are taking place in this branch for the last 40 years are of perennial importance for a judge. The Evidence Act section 3, which talks about the Interpretation Clause, is the same in India and Bangladesh. The process of judicial adjudication requires decision-making on disputed factual and legal prepositions. It was highlighted that the provisions of law, the judgment of the superior courts, interpretation, and the application of law are the tools that may be referred to understand the legal prepositions. Further, the judge has to look at all the evidence adduced by the parties to understand the factual prepositions to arrive at a reasonable and just conclusion. In a criminal case, the case is prosecuted by the state whereas in a civil matter both the parties come to the court to ascertain their rights. There are a variety of facts that are admitted by the parties in a case, but some are disputed and must be proved under the evidence act was emphasized.

It was stated that a judge's decision on whether to believe or disbelieve evidence has to be based on his reason in conformity with knowledge, experience, observation, and settled principles of law as it cannot be left only to the mere intuition of an individual judge. Neither the Evidence Act nor the Criminal Procedure Code mentions an appreciation of evidence. Perhaps the rules of the Evidence have already been elaborately outlined in the Evidence Act. The concept of appreciation of evidence can be understood from several angles, including the statutory principles governing evidence, the four-fold time test concerning evidence, and conventional prepositions and their utility about evidence. Judges were made to understand the definition of the word proved under the evidence act. The term proved has two parts, first, it is up to the judge to believe the existence of a fact, and second, it speaks of the probability of the supposition, the most probable one is to be considered. Different types of evidence including, direct, hearsay, primary and second were discussed during the discourse. It was advised before accepting any evidence on which the findings may be based later, the judges must understand whether the evidence is admissible under the evidence act. Section 118 *who may testify* of the evidence act was emphasized. It was clarified that all persons are competent to provide evidence including the child. In Section 118, two tests are

provided to enable the court to evaluate the competence of a witness: first, if he can understand the questions put to him, and second, whether he can provide a rational answer to those questions. The doctrine of reverse burden of proof was touched upon. The fundamental principle of presumption is accepting one fact proved, the proof of another fact is presumed was stressed. The difference between *may presume, shall presume and the conclusive proof* was discussed during the discourse. The presumptions were given under sections 113A, and 113B 114 under the evidence act were highlighted. It was suggested that before forming an opinion and relying upon any judgments it is advisable to read the text of evidence and act in true letter and spirit.

Session- 9

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

Speakers- ***Mr. Pavan Duggal & Mr. Harold D'costa***

The session commenced with a fundamental question raising concerns regarding cyber-attacks. It was highlighted that the golden age of cyber-crime had begun, where all kinds of electronic evidence would be adjudicated upon by the courts. The importance of electronic evidence by the courts in determining the reliability, authenticity, and admissibility of evidence in legal cases was also discussed. Further, it was informed that the courts would be well aware of all kinds of electronic devices including mobile phones, smartphones, tablets, and all kinds of communication devices. The issues relating to the proper collection and preservation of the evidence were highlighted. It was brought to the light that where the evidence is being orchestrated is the internet. Internet is more of a concept than an actual tangible entity and it relies on a physical infrastructure that connects one network with the other networks. It was explained to the participants that because the internet has no owner, it is difficult to know if the evidence collected is factual and not spoofed. There are many applications in the play store where the digital evidence can be morphed very easily including WhatsApp chats, location on google maps, modification in message date and time, email ID, caller ID, etc. It was suggested that courts would be required to deal with computer outputs like printouts, data stored in CD, pen drives, hard disks, etc. Judges were advised to deal with electronic evidence generated by the companies using artificial intelligence. It was opined

that artificial intelligence is used for both committing cybercrimes and also for regulating cybercrimes. The regulations dealing with blockchain, cryptocurrencies, the internet of things, facial recognition, and darknets were also discussed during the discourse. The new challenges like anonymity, attribution, and jurisdiction in detecting, investigating, and prosecuting cybercrimes were highlighted. The procedure for the collection of cyber evidence was discussed in detail during the discourse.

It was stressed that while appreciating the evidence it is necessary to undergo a pre-investment assessment wherein the profiles of the suspect, location, and circumstances should be collected. Further, the collection should be done by in-charge cyber cell investigation and lastly, the scope of the offence and its possible outcomes should be analyzed. The speaker further mentioned the precautions to be taken while collecting and seizing the evidence. There is a Budapest convention of the council of Europe that caters to cybercrimes, but only 1/3 of the countries are signatories to it. It was stressed there is a lack of harmonized national cybercrime laws. Principles of evidence and the relevancy of section 65(B) under the evidence act were discussed with the help of *Anvar PV v. P.K. Basheer and Ors*. (2014) 10 SCC 473 and *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal & Ors*, (2020) 7 SCC 1. The session concluded by discussing the legal procedure to be followed after seizure and how further information can be obtained from various agencies like telecom, internet, mobile service providers, etc.

Session - 10

Transition to a Gender Just Society: Jurisprudential Developments

Speakers- ***Dr. Justice S. Vimala & Dr. Kiran Rai***

Historically, women were always subjected to the position of inferiority as was opined by the speaker. Gender injustice can be seen based on certain factors like female mortality is higher, adverse sex ratio, child marriages especially of the girl child, the literacy rate in females, employment of women in the organization is less as compared to men were highlighted. The power to make choices about their life, education, job, and also about their reproductive choices was very less and here the transition is required towards a gender just society. Although the Indian

Constitution and many international conventions speak about equality, the situation earlier was that a woman was to be subjected to her father in her childhood, to her husband in her youth, and to her son in her old age, they were not allowed to work independently even inside their homes. It was mentioned that the constitution must issue guidelines under directive principles of state policy for the protection of women until the parliament enacts a law. The definition of equality as defined by the Human Rights Commission is ensuring each individual has an equal opportunity to make the most of their lives and talents was elaborated upon. Further, gender equality means equality in rights, responsibilities, and opportunities of men and women. It does not mean men and women would ultimately become the same. It was opined physiologically that men and women are different, yet they are similar in terms of roles, responsibilities, and opportunities. The difference between equality and equity was highlighted. The concept of gender equity goes beyond mere equality in participation, but rather to see a transformative change. It was mentioned it is not only about providing gender-related laws, perhaps it is about breaking the stereotypes to make a gender-just society. *Air India Etc. v. Nergesh Meerza & Ors* 1981 AIR 1829, *Mohd. Ahmad Khan v. Shah Bano Begum And Ors* AIR 1985 SC 945, *Danial Latifi & Anr vs Union Of India* (2001) 7 SCC 740, were the certain cases that were discussed in the light of breaking the stereotypes and following the principle of constitutional morality. Lastly, Article 25(1) of Part III was discussed in light of balancing religious rights against gender rights. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was discussed during the discourse.

Session - 11

Child-centric Jurisprudence in India

Speakers- *Justice S. Vimla & Ms. Geeta Ramaseshan*

The child teaches us so many things including, being happy for no reason, being curious, and trying tirelessly for something new marked the beginning of the session. We must nurture him and protect him. It was opined that a child is generally not taken as someone with life, rather treated as an inanimate object or mud path in our hands, imposing our thoughts, and expecting them to grow the way we want. The session was mainly focused on Juvenile Justice (Care and Protection of Children) Act 2015 and the Protection of Children from Sexual Offences Act 2012. It was mentioned that these laws are gender-neutral laws. The Child Right Convention, 1989 (CRC)

which India has also ratified was discussed during the discourse. It was mentioned that the said convention speaks about the right to survival, right to protection, right to survival, and right to development. It was stressed the said convention is like a role model to check whether our domestic laws are sufficient enough to protect the rights of our children. Concerning the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act 1994, it was stated that the right to life is itself under threat because the provision of the Act allows for the sex of the fetus to be checked under specific conditions, and if it is discovered to be a girl child, abortion may be carried out. It was emphasized that, under child-centric law, the child should have precedence and, to the extent practicable, be included in decision-making regarding their rights. It was happily stated that presently, all the laws relating to children are not only need-based rather they are all right-based. The challenges underlined during the journey from a teenager to an adolescent were elaborated upon. Giving reference to the Juvenile Justice (Care and Protection of Children) Act 2015 it was highlighted that the best interest of the child should be considered while formulating any laws.
It was stated that under juvenile justice a child can be both a victim and a child in conflict with the law, he may have committed an offence but at the same time, he needs care and protection also. It was suggested that a balancing exercise be performed, with various elements, sufficient flexibility, and room for decision-makers to consider a wide variety of interests before concluding. The Indian constitution protects children from being exploited and a fair trial is guaranteed. The plethora of cases *Hoskot v. State of Maharashtra* AIR 1978 SC 1548, *Common Cause Laws v Union of India* AIR 1996 SC 1619, and *Pankaj Kumar v State of Maharashtra* AIR 2008 SC 3077 regarding the right to legal aid and speedy trial and also about the delay in investigation and commencement of trial respectively were discussed.

Various categories of sexual assault, penetrative sexual assault, and use of a child for pornographic purposes under the Protection of Children from Sexual Offences (POCSO) Act 2012, were discussed. Further, the statement under section 26 of POCSO, media is barred from disclosing the identity under section 23, provision for compensation for immediate relief and long term rehabilitation of child are elaborated upon. Special features like mandatory reporting, the role of doctors, and NGOs under POCSO were discussed. The concept of compensation and the factors which have to be kept in mind while awarding compensation were highlighted. The session concluded with a detailed discussion on the Right to Free and Compulsory Education Act, 2009.

Session – 12

Re-engineering Judicial Processes through ICT

Speakers- *Justice R. C. Chavan & Mr. Harold D'Costa*

The session mainly focused on all the different technologies that pertain to communication via the internet. It was opined that the background technologies that make ICT possible are convoluted as it includes networking devices, servers, mainframes, etc. The advantages of ICT and challenges of data protection in the judicial system were discussed during the discourse. E-Court data manipulation was explained. Different forms of viruses-like Malware, Ransomware attacks, and Denial of Service were also formed part of the discourse. Vulnerabilities namely, video captures of court sessions can be morphed, e-documents can be changed, digital evidence can be tampered with, etc. were highlighted. Further, countermeasures like all documents should be hashed before sending, sensitive PDFs should be locked and digitally signed, and proper malware protection standards should be implemented were advised. The session further focused on Hypertext Transfer Protocol Secure (HTTPS), which is used for secure communication over a computer network, and the secure sockets layer (SSL), which produces digitally signed certificates for all websites so that they cannot be spoofed.

Largely, the session focused on introducing the use of Information and Communication Technology (ICT) in courts as well as its effectiveness in enhancing transparency. The enhanced use of ICT in the Indian judicial system and how the e-courts projects are being phased out were touched upon. ICT was then discussed highlighting how technology has benefited the court system. Further, it was emphasized that ICT has significantly increased judicial productivity both qualitatively and quantitatively. The session concluded with Q & A.