

NATIONAL JUDICIAL ACADEMY, INDIA



TRAINING PROGRAM FOR BANGLADESH JUDGES AND JUDICIAL OFFICERS

[SE-02]

13TH - 17TH OCTOBER, 2022

PROGRAMME REPORT

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A Memorandum of Understanding (MoU) between the National Judicial Academy, India (NJA) and the Supreme Court of Bangladesh was entered into for organizing Training and Capacity Building programmes for Bangladesh Judicial Officers. In pursuance of the said MoU, a training program was organized by NJA for a delegation of Judges nominated by Bangladesh from 17th to 21th October, 2022. In compliance with the said MOU entered into between the NJA and the Supreme Court of Bangladesh for the training of about 2000 officers from 2017 through 2028, 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 free and fair election, privacy, 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 embracing of AI enabled projects viz. SUPACE, SUVAS projects, etc. The program also included sessions on Forensic Evidence in Civil and Criminal Trials: DNA Profiling, Criminal Justice Administration and Human Rights, and Human Rights: Fair and Impartial Investigation. The report includes a brief of deliberation for each session.

Session 1: Overview and Architecture of the Indian Constitutional Arrangement

The session commenced by highlighting that the Constitution is the supreme law and a source of all governmental power i.e., legislative, executive, and judicial. It was pointed out that despite being the lengthiest Constitution in the world, the makers ensured that the flexibility of the Constitution does not get affected due to its specificity. During the course of discussion, it was emphasized that the constitutional values are reflected in the entire Constitution, but its preamble embodies the fundamental values and the philosophy on which the Constitution is based. The values expressed in the Preamble such as; liberty, equality, fraternity, sovereignty, socialist, secular, and democratic were dwelt upon. It was highlighted that Preamble sets out the objectives which the constituent assembly intended to achieve. It was accentuated that the Supreme Court has observed in various judgments that Preamble is a key to unravel the minds of the makers of the Constitution. It also embodies the ideals and aspirations of the people of India. It was deliberated that the preamble cannot override the specific provisions of the Constitution, in case of any conflict between the two, the latter shall prevail. The importance of economic and political justice was discussed in reference to the values enshrined in the constitution.

It was iterated that the doctrine of Separation of Powers, separates the functions of one branch of the government from another branch and the function of the judiciary from the other two branches. It was emphasized that it is not a doctrine of separation of purpose. The interrelated and coexisting nature of work associated with purpose and functions were discussed. It was highlighted that the objective of all three branches are same as fixed by law ,however, doctrine of separation of power should not result in the separation of purpose. It was underlined that the purpose test is the ultimate analysis for interpreting any provision of law. Lastly, the session also included discussion on Articles 18A, 22, and 116A of the Bangladesh Constitution.

Session 2: Indian Judiciary: Organizational Structure and Jurisdiction

An overview of the Indian judicial structure under the Constitutional arrangement was discussed. It was highlighted that states in India enjoy a greater degree of autonomy which is a combination of unitary and federal structures. The hierarchy of courts & jurisdiction of district courts, High Courts, and Supreme Court was dwelt upon. It was underlined that High Court is the highest court of appeal in every state having the power to interpret the Constitution. In this regard, different types of jurisdiction such as; original, appellate, civil, criminal, and writ jurisdiction were

emphasized upon. It was stated that on the original side High Court can directly entertain the writ petition against the state or its instrumentality. A reference was made to Article 227 of the Indian Constitution, where it was highlighted that every High Court has power of superintendence over all courts and tribunals throughout the territories of the state under its jurisdiction. It was pointed out that High Court in exercise of power under Article 227 can correct the jurisdictional error. A comparative reference was made to Articles 235 and 227 of the Constitution to elaborate the controlling power of High Court over the district judiciary with regard to recruitment, transfer, promotion, and disciplinary action. It was underscored that the appellate jurisdiction of the Supreme Court can be invoked by a certificate granted by High Court under Article 132(1), 133(1), or 134 of the Constitution in respect of any judgment, decree, or final order in both civil and criminal cases. Subsequently, a reference was made to Articles 141 and 142 of the India Constitution. The advisory jurisdiction of the Supreme Court in matters which may specifically be referred by the President of India under Article 143 of the Constitution was also formed part of the discussion. The session further threw light upon the development of the doctrine of basic structure, essential religious practice, neighbours rule and separation of power considering the changing landscape of constitutional arrangements. The importance of justice, equity, and good conscience was highlighted and emphasized upon.

Session 3: Constitutional Vision of Justice: Goals, Role, and Mission of Courts

The session threw light upon the Constitutional Assembly Debates and attention was drawn to the length of deliberations on each article before placing it for final consideration. It was accentuated that the vital role played by the members of the Constituent Assembly for the unification of India should not be forgotten. It was mentioned that the framing of fundamental rights and protection of human rights was of paramount importance, therefore, chapter three of the Constitution of Indian was completely dedicated to fundamental rights. It was emphasized that the Constitution was left flexible to adopt the variation with the changing times. In this regard it was also mentioned that once the Constitution was framed and adopted it had to be tested and worked out. It was underlined that immediately after independence land reform was thought of as a major policy intervention for tenancy reforms and fixing ceilings on land holdings. A reference was made to the case of *Sankari Prasad Singh Deo vs. Union of India* 1951 AIR 458 and *Sajjan Singh vs. State of Rajasthan* 1965 AIR 845 where the Apex court held that parliament had exclusive power under Article 368 to

amend the Constitution including the fundamental rights. The apex court validated Article 31 (A) & (B) and also upheld the validity of the agrarian land reforms. Subsequently, a reference was made to the case of *I.C. Golaknath vs. State of Punjab*, AIR 1967 SC 1643 wherein eleven-judge bench of the Supreme Court reversed its earlier position. It was put forth that Article 368 which contains provisions relating to amendment of the Constitution, merely provides procedure for amending. It was further stated that Article 368 does not confer upon Parliament the power to amend the Constitution. The session included deliberation on the evolution of doctrine of prospective overruling and how it was adopted. The doctrine of Basic Structure was also discussed referring to the judgment in *Kesavananda Bharati Sripadagalavaru vs. State of Kerala and Another* 1973 (4) SCC 225. During the course of the discussion, the social and economic divide and role of courts in engineering the process of social restructuring was emphasized upon. The evolving nature of the Constitution of India was discussed and in this regard three landmark cases were highlighted viz. *Navtej Singh Johar vs. Union of India* [Writ Petition (Criminal) no. 76 of 2016]; *Shayara Bano vs. Union of India and Ors* (2017) 9 SCC 1; *Indian Young Lawyers' Association vs. State of Kerala* [Writ Petition (C) 373/2006]

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

It was emphasized that ethical standards are very important for judges. The importance of neutrality, objectivity, subjectivity, reasonableness, non-arbitrariness, which denotes an attitude of mind, inclination of temperament & outlook were discussed at length. 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 threw light upon favorable biases and constitutional biases and highlighted the difference between the two. It was pointed out that knowledge, skills and attitude are important aspects for a judge while discharging their duty regardless of the situation. The session also deliberated upon the importance of attached – detached, involvement – isolation and confidentiality – transparency as part of professional attributes that are vital for dispensation of justice. Further, the Govt. Servants Conduct Rules, the Bangalore Principles of Judicial Conduct (2002) and Canons of Judicial Ethics were discussed during the session. A reference was made to the case of *E.M.S. Namboodripad vs. T. Narayanan Nambiar* 1970 (2) SCC 325 wherein it was highlighted that the courts must do their duty according to their own, understanding of the laws and the obligations of the Constitution. They cannot take their cue from sentiments of politicians nor even indirectly give support to something which they consider to be wrong against the

Constitution and the laws. Any attempt to shake the people's confidence in the judiciary is to strike at the very-root of our democratic system. Therefore, it was suggested that judges may 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 judges to have a sense of gratitude, friendship and loyalty towards justice alone.

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

During the course of discussion various facet of judgment writing such as marshaling of facts coupled with application of law were emphasized upon. It was emphasized that judgment must be coherent, clear and concise without compromising the quality. A reference was made to Order 20 of the Code of Civil Procedure wherein in was highlighted that when a judgment is not pronounced at once, every endeavor shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded. Order 10 of the CPC was also elaborated upon and it was emphasized that while Rule 1 enable parties to a court proceeding to admit or deny any counter allegations that may not have been expressly or implicitly admitted or denied in the pleading itself, Rule 2 is concerned with the broader objective of elucidating any particular matter that may be controversial in the suit. Further, Order 14 and Order 39 Rules 1 & 2 of the CPC were dwelt upon. During the course of the discussion, the legislative guidance for inquisitorial jurisprudence through Sec. 165 of the Indian Evidence Act was highlighted and pointed out judge's power to put question and order production. In this regard a reference was made to the case of *Ram Chander vs. State of Haryana* AIR 1981 SC 1036 wherein, the court held that the presiding Judge must cease to be a mere spectator instead he should take active interest in the trial by putting certain question to the witness to ascertain the truth. Further, a reference was also made to the case of *Salem Advocate Bar Association, Tamil Nadu vs. Union of India* (2005) 6SCC, 344 wherein the Apex Court held that a duty is cast upon the court to refer the dispute either by way of arbitration, conciliation, judicial settlement including settlement through Lok Adalats or mediation if it appears that there are chances of the settlement through alternative mechanism.

Session 6: Judge as the Master of the Court: Court & Case Management

The session outlines various elements of management such as planning, organizing, direction, coordinating and controlling as propounded by Peter Drucker. During the course of discussion the shorter and flexible trial schemes along with Civil Procedure Rules of the United Kingdom were referred upon. It was highlighted that courts should limit discovery, oral submissions, examination, cross examination, reading of documents and judgments. Some advantages of case management such as; improving efficiency, reducing delays, and cutting costs were emphasized upon. During the discussion William Schwarzer was quoted that, “Judges who think they are too busy to manage cases are really too busy not to. Indeed, the busiest Judges with the heaviest dockets are the ones most in need of sound case management practices.” A reference was made to the Lord Woolf report and suggestions incorporated in the Civil Procedure Act 1997 were highlighted viz. length of time for litigation, fast-track and multi-track, fixed time-table, exchanging witness statements, video recording of evidence, training judges & lawyers, listing cases and pre-trial conference etc. Further, various stages of trial where case management is required such as issue of plaint, service of summons, ad-interim relief, interim applications, admissions, issues, evidence, court commissioners, rejection of plaint, oral applications, original documents, preliminary decree, compilation, arguments, judgment (oral & reserved), summary judgments, ADR, and summary suits were underlined. Lastly, it was stressed that time management, procedural simplification, decentralization are some examples of management in the judiciary which sets out the cornerstone for model and futurist court.

Session 7: Principles of Evidence: Appreciation in Civil and Criminal Cases

The session commenced by highlighting the necessary conditions for appreciation of evidence, either documentary or oral. It was stressed that where there is no documentary evidence, nor any oral evidence, and the party is not even examined in the court, mere allegation, in the absence of any statement on oath, is of no use. It was mentioned that non- application of mind by the court and accepting the inadmissible evidence or rejecting the admissible evidence tantamount to non-appreciation of evidence. In this regard following judgments were referred *Madan Mohan Singh vs. Rajnikanth*, AIR 2010 SC 2933, *State of UP vs. Ramesh Prasad Mishra* , (1996) 10 SCC 360, *Kanwar Singh Saini vs. High Court of Delhi*, (2012) 4 SCC 307. It was pointed out that hearsay

evidence is inadmissible in court and a reference was made to following cases *Rajesh Dhiman vs. State of H.P.*, (2020) 10 SCC 740, *Satyanarayana Mallick vs. State of Orissa*, (2020) 17 SCC 554, and *Union of India vs. Dalbir Singh*, AIR 2021 SC 4504. Order VIII Rule 3, 4 and 5 & Order XII Rule 6 were also discussed at length. It was highlighted that Order VIII Rule 3, requires the defendant to make denial of each allegation of which he does not admit the truth specifically. It was also pointed out that Rule 4 thereof prohibits the defendant to make evasive denial and requires to answer the point of substance and Rule 5 provides for the consequences of non-specific denial – implied admission. In relation to circumstantial evidence it was emphasized that circumstances must be complete and conclusive, to be read as a whole and not separately and must indicate the guilt of the accused with certainty. In this regard following cases were mentioned *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116; *Babu v. State of Kerala*, (2010) 9 SCC 189, *Madhu v. State of Karnataka*, JT 2013 (15) SC 58; *Mohd. Younus Ali Tarafdar v. State of W.B.*, (2020) 3 SCC 747; and *Satish Kumar v. State of H.P.*, (2020) 7SCC 637). It was highlighted that motive becomes totally irrelevant when there is cogent, reliable, and ocular testimony of the witness. Absence of motive does not disperse the prosecution case if prosecution succeeds in proving the same as motive is always in the mind of person committing an offence. In this regard various judgments were deliberated upon such as *Gurcharan Singh & Anr. v. State of Punjab*, AIR 1956 SC 460; *Rajinder Kumar & Anr. v. State of Punjab*, AIR 1966 SC 1322; *Datar Singh v. State of Punjab*, AIR 1974 SC 1193; and *Rajesh Govind Jagesha v. State of Maharashtra*, AIR 2000 SC 160.; *Babu v State of Kerala*, (2010) 9 SCC 189; *Rohtas Kumar v State of Haryana*, (2013)14 SCC 434; *R .Shaji v State of Kerala*, AIR 2013 SC 651; *Mustak v. State of Gujarat.*, AIR 2020 SC 2799; and *Stalin v. State.*, AIR 2020 SC 4195. The session also threw light upon the importance of electronic evidence and its appreciation. It was emphasized that certificate under Section 65-B(4) is not necessary if the original document itself is produced. When it becomes physically impossible to bring a system of computers or network to the court, then the only means of providing information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4). In this regard following judgments were discussed, *Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1, *Mahabir Prasad Verma vs. Dr. Surinder Kaur*, AIR 1982 SC 1043, *Sri Rama Reddy vs. V. V. V. Giri*, AIR 1971 SC 162, *S.Gopal Reddy vs. State of Andhra Pradesh*, AIR 1996 SC 2184 and *Bishwanath Rai vs. Sachhidanand Singh*, AIR 1971 SC 1949. The programme further included

discussion on circumstantial evidence, credibility of the witnesses, corroboration, injured witness, related witness, and expert witnesses.

Session 8: Evidentiary Presumptions: Onus and Burden of Proof

The session threw light upon the burden of proof which includes the burden of persuasion and the burden of production i.e. evidentiary burden; *onus probandi*. In this regard a reference was made to the case of *A. Raghavamma vs. A. Chenchamma*, AIR 1964 SC 136, where the Apex Court has explained the distinction between burden of proof and onus to prove. It was opined that there is an important distinction between the burden of proof and onus to prove that is burden of proof lies upon the person who has to prove a fact and it never shifts, such considerations, having regard to the circumstances of a particular case, may shift the onus of proof. Such shifting of onus is a continuous process in the evaluation of evidence. It was highlighted that in *Nagar Parishad Ratnagiri vs. Gangaram Narayan Ambekar*, (2020) 7 SCC 274, the Apex Court held that plaintiff has to substantiate his cause with adequate pleadings and evidence, he cannot take advantage of weakness in defence case. Assumptions and conjectures cannot be the basis of adjudication. With regard to presumption it was pointed out that there are two classes of presumptions, presumptions of fact or natural presumptions and presumptions of law or artificial presumptions. There is a third classification arising out of presumption, i.e., irrebuttable presumptions of law or conclusive presumption. In this regard the following cases were referred viz. *Syad Akbar vs. State of Karnataka*, AIR 1979 SC 1848; and *P.R. Metrani vs. Commissioner of Income Tax, Bangalore*, AIR 2007 SC 386. Sections 86 to 88A, 90, 90A, 113A and 114 of the Indian Evidence Act related to presumptions of fact were also discussed at length. It was mentioned that rebuttal of genuineness under Section 79 is permissible only if a certified copy is executed in the manner provided by the law. Section 106 of the Indian Evidence Act was reflected upon and a reference was made to the case of *Jose vs. Sub-Inspector of Police*, AIR 2016 SC 4581, where the court held that the accused has a right to rebuttal the presumption of guilt and it is only when prosecution establishes that the accused was present along with victim at the time of commission of offence, only then Section 106 could apply. Subsequently, the case of *Tomaso Bruno vs. State of U.P.*, (2015) 7 SCC 178 was referred wherein the court held that Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. It was emphasized that Section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the

knowledge of the accused. During the session, various landmark cases were discussed such as; *Gopal Narain v. State of Uttar Pradesh*, AIR 1964 SC 370, *Maharaja Pratap Singh Bahadur vs. Thakur Manmohan Dey*, AIR 1966 SC 1931, *State of Punjab vs. Satya Pal Dang*, AIR 1969 SC 903, *Union of India vs. T.R. Varma*, AIR 1957 SC 882, *Ishwarlal Girdharlal Joshi vs. State of Gujarat*, AIR 1968 SC 870, *S. Venkatappa vs. Narayanappa*, AIR 2001 SC 2148, *Madanlal Kadia vs. Union of India through the General Manager, S.E. Railway*, AIR 1968 Ori 234, *A. Raghavamma vs. Chenchamma*, AIR 1964 SC 136, *Hiralal vs. Badkulal*, AIR 1953 SC 225; *Union of India vs. Mahadeolal Prabhu Dayal*, AIR 1965 SC 1755; *Gopal Krishnaji Ketkar vs. Mohamed Haji Latif*, AIR 1968 SC 1413; *Bharat Heavy Electricals Ltd. vs. State of Uttar Pradesh*, AIR 2003 SC 3024; *Musauddin Ahmed vs. State of Assam*, AIR 2010 SC 3813; and *Khatri Hotels Pvt. Ltd. vs. Union of India*, AIR 2011 SC 3590

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

The session commenced by highlighting that internet is not owned by one, and no single person or organization controls the internet in its entirety. It was stressed that internet is more of a concept than an actual tangible entity, and it relies on a physical infrastructure that connects one network to other networks. The session included deliberation on how e-evidence can be used as a tool for speedy justice. The important factors in appreciating electronic evidence i.e. relevancy, admissibility, mode and manner of proof and authenticity were stressed upon. It was pointed out that WhatsApp chats, location on google maps, modification in message date and time, email ID, caller ID can be morphed very easily. The traces of electronic evidence found in e-mails, photographs, ATM transaction Logs, word processing documents, instant message history, files saved from accounting programs, spreadsheets, internet browser history and databases are examples of information that can be gathered from devices and used very effectively as evidence. It was accentuated that convergence of raw data to organized or sorted data is equally important than producing it in the form of evidence. In reference to Section 65B of the Indian Evidence Act, following cases including *State (NCT of Delhi) vs. Navjot Sandhu, @ Afsan Guru*, AIR 2005 SC 3820, *Shafhi Mohammad vs. State of H.P.*, (2018) 2 SCC 801 and in *Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal & Others*, (2020) 7 SCC 1 were discussed in detail.

Session 10: Forensic Evidence in Civil and Criminal Trials: DNA Profiling

The session involved discussion on LOCARD's principle of exchange and it was highlighted that whenever two objects come into contact, they always leave a trace on the other. It was stressed that forensic science plays a vital role by providing scientifically based information through the analysis of circumstantial evidence. During the session, both biological & non-biological type of evidence such as blood and faecal material and fibers, paint chips, and explosive were pointed out. The session threw light upon the importance of ballistic fingerprinting with the help of forensic ballistics by analysing firearms, bullets and bullet impacts. Various categories of fire arms such as, handguns (pistol, revolver, and derringers), long guns, and mounted guns and the kind of evidence collected from these firearms was discussed. It was highlighted that bullet can be matched to a particular weapon by comparing striation marks having their own unique characteristic and individualities. A reference was made to the case of *Kalua vs. The State of Uttar Pradesh* 1958 AIR 180, wherein the court explicitly stated that "without forensic report the circumstantial evidence in the case would be insufficient to convict the appellant for the crime of murder". Subsequently the case of *Ghurey lal vs. State of Uttar Pradesh* Criminal Appeal no.155 of 2006 was referred where the accused was acquitted solely on the basis of the ballistic expert opinion. It was pointed out that nuclear DNA is inherited from parents (half from mother and half from father) and mitochondrial DNA is inherited from the mother. It was further stated that DNA is highly precise and scientific in nature and is a part of admissible expert evidence. Various stages of DNA profiling, paternity test, M-vac technology, rapid DNA were some areas that formed part of the discussion. In connection with evidentiary value of DNA profiling the case of *Pantangi Balarama Venkata Ganesh vs. State of A.P.* Cr LJ, 2003, 4508 was mentioned where the court accepted DNA profile as conclusive evidence and observed that DNA test gives the perfect identity.

Session 11: Criminal Justice Administration and Human Rights

It was highlighted that the Constitution and laws are not about the power of the state over the people, but to limit the power of the state. The recognition of limit is essential to maintain the check and balance. A reference was made to the case of *Hussainara Khatoon & Ors. vs. Home Secretary, State of Bihar* AIR 1979 SC 1369 where the Court noted that long-term detention would be illegal and violating of fundamental rights under Article 21 as these prisoners are detained longer than what could have been awarded to them if they were tried and convicted. It was underlined that the problem of delay in disposal of cases is undermining the liberty of an

individual. The constitutional recognition of speedy trial was discussed and it was mentioned that legal aid should not become poor legal aid. The importance of procedural fairness was highlighted in context with criminal justice administration. It was stated that fast track court should not skip the procedural safeguards which are essential for fair trial. A reference was made to the innocence project with regard to death penalty which undertook thorough and objective investigations into alleged wrongful convictions of individuals who maintained their innocence and have exhausted the criminal appeals process. It was stressed that recognition of confirmation bias and tunnel vision is significant for judges while adjudicating cases. The session also threw light upon the issues of crowded prisons, long period of incarceration, pre-trial detention, right of a lawyer, and right against self-incrimination. A reference was made to the *Criminal Procedure (Identification) Act, 2022*, which allows police officers or prison officers to collect certain identifiable information (such as fingerprints, biological samples) from convicts or those who have been arrested for an offence. It was highlighted that under the Act, all convicts, arrested persons, as well as persons detained under any preventive detention law may be required to give their measurements. The issues attached with measurements, persons authorised to take measurements, storage of measurement records, sharing of records, and destruction of records were other areas that formed part of the discussion.

Session 12: Human Rights: Fair and Impartial Investigation

The session commenced by highlighting the definition of investigation. A reference was made to Section 2 (h) of the Cr.P.C which defines investigation as “all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf”. It was opined that in order to assure a fair trial, it is imperative to follow strict procedural safeguards embedded in the Constitution and the Criminal Procedure Code. A reference was made to the case of *D.K. Basu vs. State of West Bengal* 1997 (1) SCC 416, wherein the Supreme Court characterised torture as one of the worst kind of crimes in a civilised society. The Court was convinced that the increasing incidence of torture was affecting the credibility of the rule of law and the administration of the criminal justice system. Further a reference was also made to the judgment in *Nilabati Behera vs. State of Orissa* 1993 SCR (2) 581, where the Supreme Court affirmed that Article 32 empowers court to grant compensation for deprivation of a fundamental right. The Court explained that without this power to render compensation, the Court’s role as a protector of constitutional rights is merely a mirage,

and might even create an incentive to torture in certain circumstances. It was accentuated that Section 163 of the Criminal Procedure Code prohibits investigating officers from obtaining statements from witnesses through threatening conduct. During the course of discussion various international covenants such as; Article 12 of Universal Declaration of Human Rights (1948), Article 17 of International Covenant on Civil and Political Rights and Article 8 of European Convention on Human Rights were discussed. The session threw light upon the various landmark judgments on fair trial such as; *Sakiri Vasu vs. State of U.P. & Ors.*, (2008) 2 SCC 209, *Mohan Lal vs. State of Punjab*, AIR 2018 SC 3853 and *Ajay Kumar & Ors. vs. State of U.P. & Ors.*, [Criminal Miscellaneous Writ Petition No. 15692 of 2020] where it was emphasized that magistrates had all such powers which are necessary to ensure that a proper investigation is made which include “monitoring” an investigation. With regard to De novo investigation & further investigation the cases of *C D Pharma India Private Limited vs. State of NCT of Delhi & Ors.* [W.P. (CRL) 999/2020 & CrI. M.A. No. 8526/2020, and *K. V. Rajendra vs. Superintendent of Police, Chennai & Ors.* [(2013) 12 SCC 480) were reflected upon.

Session 13: Re-engineering Judicial Processes through ICT

During the course of discussion the importance of Information and Communication Technology (ICT) in judicial proceedings was highlighted. It was mentioned that large pendency of cases have a knock on effect that lowers the effectiveness of the Judiciary. It was accentuated that uniformity in the use of software at various court complexes shall render the functioning of the judicial system more coherent and synchronised. The objective of the e-courts project phase I was discussed i.e. to provide designated services to litigants, lawyers and judiciary by universal computerisation of district and subordinate courts. Various initiatives implemented under phase I were highlighted such as judicial service centre, video conference facility at courts & jails, and national judicial data grid. The Phase II of e-courts project by the e-committee was also highlighted where the focus is on revamping and customisation of CIS software post re-engineering for optimum automation, protocols for timely and regular updation of data on NJDG, discontinuation of manual registers, facilitating court and case management through MIS (Managing Information System) auto pull mechanism for state courts by cloud installations, mobile based service delivery through SMS, scanning and digitisation of case records and court record room management system. Subsequently, the vision document of phase III was highlighted which provides for following - infrastructure for judicial system and transforming processes for digital environment, rooted in

values of trust, empathy, sustainability and transparency. During the course of discussion various challenges such as; shortcoming in process re-engineering, technology integration, non-uniformity in case nomenclature across courts, lack of infrastructure, and lack of uniform & dedicated governance framework were highlighted to outline best practices to overcome these challenges. The core values of digital courts i.e. trust, empathy, sustainability, and transparency were emphasized upon.

Session 14: Ratio of a Precedent

The session commenced by highlighting the importance of judicial precedent which contains a legal authoritative element and described as ratio decidendi. A reference was made to the case of *Krishneya Kumar vs Union of India* (1990)4SCC 207 wherein it was stated that ratio decidendi is the underlying principle, namely the general reasons or the general grounds upon which a decision is based. It was pointed out that in a civil law system, the decisions of superior courts are not regarded as a source of law, but merely as optimum reference material useful to serve as guidelines for deciding cases unlike the common law system. It was strained that the objective of binding precedents is to ensure broad consistency and uniformity in deciding questions of law. A comparative reference was made to Article 141 of the Indian Constitution where the law declared by the Supreme Court is binding on all courts within the territory of India, and Article 111 of the Bangladesh Constitution which provides that the law declared by the Appellate Division shall be binding on the High Court Division, and the law declared by either division of the Supreme Court shall be binding on all courts subordinate to it. During the course of discussion it was mentioned that the ratio of the decision, which in essence is the ratio decidendi is binding precedent, and not the obiter which is a passing observation in a decision on a collateral or unconnected issue. A reference was made to the case *Afcons Infrastructure vs. Cherian Verkey Construction and Ors* (2010) 8 SCC 24 where the Apex court considers a specific collateral issue, in detail, though not relevant and evolves a legal principle supported by reasons, in spite of being a obiter dictum is binding precedent as law declared by the court. It was emphasized that a lower court or a court of smaller bench may not take liberty to declare any precedent as per incurium. It was suggested that they may take the route under Section 113 of CPC in making a reference to High Court. Subsequently it was discussed that decisions rendered *sub silentio* of a point of law, not presented, argued or discussed are not binding and need not be followed. Lastly, a reference was made to the

doctrine of *Stare decises* which protects justice dispensation from disturbing settled views and legal positions.

Session 15: Landmark Judgments: Celebrating Decadal Masterpieces

It was pointed out that the Supreme Court of India has for the past several decades rendered momentous decisions which have moulded the law, established principles or given it a new dimension. It was underlined that judiciary as a vital institution of democratic governance helped to inculcate and foster a culture of Constitutionalism. A reference was made to the case of *B.P. Singhal vs. Union of India* (2010) 6 SCC 331, where it was stated that the power under Article 156(1) cannot be exercised in an arbitrary, capricious or unreasonable manner. The power will have to be exercised in rare and exceptional circumstances for valid and compelling reasons. It was also mentioned that if the Union Government does not disclose any reason, or if the reasons disclosed are found to be irrelevant, arbitrary, whimsical, or malafide, the court will interfere. However, the court will not interfere merely on the ground that a different view is possible or that the material or reasons are insufficient. It was emphasized that the law witnessed a complete shift from a culture of authority to a culture of justification.

The session pointed out the irrationality and inadequacy of law of homicide particularly with reference to women rights. In this regard the case of *Emperor vs. Mt. Dhirajia* AIR 1940 All 486, *Gyarsibai W/O Jagannath v. The State*, 1953 CriLJ 588, and *R vs. Ahluwalia* [1992] 4 All ER 889 were highlighted. Section 300 of IPC was discussed, wherein the importance of word “sudden” was deliberated upon. It was mentioned that, if the provocation is not sudden, the impact will not be as much upon the mind as to make him lose his self-control and as the time gap after the provocation increases, the chances of regaining the power of self-control will increase. In other words, the accused will have a more significant cooling-off period. The concept of loss of control, sudden and temporary loss of control, and cumulative provocation coupled with legislative changes were areas that formed part of the discussion. Subsequently, a reference was also made to the case of *Aparna Bhat vs. State of Madhya Pradesh* 2021 SCC OnLine SC 230 where it was stated that bail conditions should not mandate, require or permit contact between the accused and the victim. Such conditions should seek to protect the complainant from any further harassment by the accused and judges should not use any words, spoken or written, that would undermine or shake the confidence of the survivor in the fairness or impartiality of the court.

During the course of discussion following judgments were discussed including, *Union of India vs. Association of Democratic Reforms*, (2002) 5 SCC 294; *Public Interest Foundation and Ors. vs. 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 v. Union of India*, (2013) 10 SCC 1; *Subramanian Swamy v. Election Commission of India*, (2013) 10 SCC 500; *Indian Young Lawyers Association & Ors. v. The State of Kerala*, (2019) 11 SCC 1; *Joseph Shine v. Union of India*, (2018) 2 SCC 189; *Common Cause v. Union of India*, (2018) 5 SCC 1; *Justice K. S. Puttaswamy v. Union of India*, (2019) 1 SCC 1; *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1; *Shayara Bano v. Union of India*, (2017) 9 SCC 1; *Jeeja Ghosh v. Union of India*, (2016) SCC 761; *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221; *Nabam Rebia v. Deputy Speaker*, (2016) 8 SCC 1; *Supreme Court Advocates on Record Association v. Union of India*, (2016) 5 SCC 1