NATIONAL JUDICIAL ACADEMY

TRAINING PROGRAM FOR BANGLADESH JUDGES AND JUDICIAL OFFICERS

[SE-04]

14TH - 18TH NOVEMBER, 2022

PROGRAMME REPORT

PROGRAMME COORDINATORS: PAIKER NASIR & NITIKA JAIN
FACULTY, NATIONAL JUDICIAL ACADEMY
BHOPAL

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, a training program was organized by NJA for the Judges nominated by Bangladesh from 14th to 18th November, 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 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 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

Speakers: Justice Indira Banerjee & Prof. (Dr.) V. Vijaykumar

The session commenced by emphasising that the constitution of India is people centric. It was emphasised that among the three pillars of the democracy it is the judiciary who is the guardian of the constitution and the one who steps-in when the executive deviates from the principles of the constitution. While discussing the constitution as a social contract it was emphasised that to understand the crux of the constitution it is important to comprehend the theory of "social contract". Social contract is an agreement amongst people and the purpose is to treat everyone equally. The sovereign power is the net result of the contract. Emergence of the social contract theory in England during the 16th and 17th century was briefly discussed. Similarities and differences in the constitution of India and Bangladesh were lucidly discussed. While discussing the evolution of the basic structure in the constitution of India the discourse referred to *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225, *Shankari Prasad Singh Deo v. Union of India,* AIR 1951 SC 458, *Sajjan Singh v. State of Rajasthan,* AIR 1965 SC 845, *I.C. Golaknath v. State of Punjab,* AIR 1967 SC 1643 and *Minerva Mills v. Union of India,* AIR 1980 SC 1789.

It was accentuated that the Supreme Court of India in *Sajjan Singh v. State of Rajasthan,* AIR 1965 SC 845 cited the decision of the Dhaka High Court in *Fazlul Qader Chowdhury v. Abdul Huq,* PLD 1963 SC 486 that was upheld in appeal by the Supreme Court. The said case recognised the concept of basic structure. However, it is the Eighth Amendment case of Bangladesh i.e., *Anwar Hossain Chowdhary v. Bangladesh,* 41 DLR 1989 App. Div. 165, 1989 BLD (Spl.) 1, that ornately dealt with the concept of basic structure. The later part of the session briefly underscored about the judiciary in the Indian constitutional arrangement.

Session 2: Indian Judiciary: Organizational Structure and Jurisdiction

Speakers: Justice Indira Banerjee & Prof. (Dr.) V. Vijaykumar

The discussion initiated by highlighting that the Indian polity is based on separation of power. The judiciary in India is independent of the legislature and the executive. It was stressed that since judiciary is the custodian of the constitution therefore, it has to adjudicate disputes between the state and individual, between individual etc. and the Supreme Court being the

highest court of the land. The hierarchy of courts in India and Bangladesh was elaborated upon. Subsequently, types of writs were discussed viz., *Habeas Corpus* which is used against unlawful detention; *Mandamus* that is used to order such public officials who have failed to perform or refused to perform their official duty to resume work; Writ of *Prohibition* which can only be used against judicial and quasi-judicial authorities, a higher court uses this writ against a lower court to prevent the latter from exceeding its jurisdiction; *Certiorari* that is issued by a higher court to its lower court or tribunal on excess or lack of jurisdiction; *Quo-Warranto,* that is issued either by the Supreme Court or the Higher Court to thwart unlawful usurpation of a public office by a person. Further, the discourse referred *Dwarka Nath vs Income-Tax Officer, Special*, AIR 1966 SC 81, in this case a three-Judge Bench while commenting on the High Court's jurisdiction under Article 226 of the Constitution opined that - this article is deliberately couched in comprehensive language so that it confers wide power on the High Court to "reach injustice wherever it is found".

While discussing inherent powers of the court Section 151 Civil Procedure Code, 1909 and Section 482 of the Criminal Procedure Code, 1973 were highlighted and it was stressed that the powers conferred in these sections are not absolute but in accordance with law. It was stressed that Section 482 and Section 151 are practically in *pari materia.* It was accentuated that inherent power of the court is not conferred by the code rather it is inherent in the court by virtue of its duty to do justice among the parties before it.

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

Speakers: Justice Indira Banerjee & Mr. V. Sudhish Pai

The session highlighted that to understand the meaning of Constitutional Vision of Justice one needs to understand the meaning of Constitution. A constitution limits power and protects liberty. Indian constitution is a charter of liberty with grant of power which is the role and responsibilities that the one in power (who is elected by the people) is supposed to perform. It was stressed that justice is the synthesis of liberty, equality and fraternity. Subsequently, Aristotle's theory of justice was discussed which talks about universal and particular justice. Universal justice refers to obedience of law whereas particular justice is of two types, viz., distributive justice and remedial justice. The former is the most powerful law to prevent any revolution and is mostly concerned with political privileges. Aristotle advocated that every political organisation must have its own distributive justice. Corrective justice on the other

hand aims to restore what an individual had lost due to the injustice of the society. This justice prevents from encroachments of one right over the other.

It was underscored that constitutional vision of justice is not only for higher courts rather every single judge/ judicial officer ought to endeavour achieving it. Consequently, understanding of the constitution and its fundamental notions is what all judicial officers must be familiar with. Then only justice delivery will augment. The discussion also emphasised that the role of the judiciary is to strike an equilibrium among the law and society. The discussion advances that to impart justice it is essential for judges to absorb essences of the constitution within. The role of the judiciary is to defend constitutional rights of the people in contradiction to the ever escalating powers of government. The lone check that the constitution has provided to this huge rise of authority is the judiciary. In other words, judiciary is custodian of the conscience of the people as well as of the law of the land.

Session 4: Elements of Judicial Behaviour

Speakers: Justice Sunil Ambwani and Justice V. Parthiban

The session commenced by highlighting the oath of a judge which provide for ethics and conduct of a judge that is, to bear true faith and allegiance to the Constitution of India and to perform duties to the best of their knowledge.

It was stated that the Supreme Court of India in 1997 formulated a Charter of values called the Restatement of Judicial Values which serves as a guide for an independent and fair judiciary. It was asserted that the Charter also provides for the conduct and behavior of members of higher judiciary who must reaffirm people's faith in impartiality. Each clause in the Restatement of Judicial values was discussed at length. The session focused upon some best practices on how a judge may recuse or restrict oneself from social gathering. It was suggested that a judge should practice some degree of aloofness or judicial detachment to maintain the dignity of the office. Judges were further suggested to recuse themselves from social media as well since the public at all times are watching their conduct and behaviour in a particular situation. Judges were also cautioned to not accept gifts and to recuse from anything that they feel is unethical. It was opined that the image of a judge is very important. It was iterated that if a judge has pecuniary, personal and/or official bias in a matter that may lead to conflict of interest then s/he must disclose the same to the party. It was highlighted that disclosure of assets by judges was

a practice started in India but not uniformly practiced in all High Courts. It was also pointed that Bangladesh Judges have similar rules relating to disclosure of assets.

On professionalism it was mentioned that for judges professionalism starts from one's own appearance, which should be soothing. The session listed standards of professionalism expected from a judge including: 1. Appearance – should be such that it suits the office of the court; 2. Body language – look, behave and act, appear to be a sober person; 3. Punctuality is an important attribute for a judge and if a judge is on time then the staff behaves in similar manner; 4. Knowledge of law, rules and being aware of what is going on, reading newspaper is also an important part; 5. Proper hearing – as a judge one has to be a good listener – a good listener will help to assimilate important ideas; 6. Time Management – arrange your affairs like scheduling of cases, time for giving orders, timely giving orders, to update knowledge on substantial and procedural laws.

The session underscored some qualities for judicial leadership and governance wherein it was quoted that judicial leaders are those who realize that judiciary is embedded in social, moral, political, economic and technological context that is dynamic and constantly changing. It was mentioned that judging requires a lot of courage and conviction. Some key points for sterling judicial performance were highlighted such as vision to do justice, passion for learning, belief in oneself, resilience, courage, pragmatism and patience. Judges were suggested to constantly update their knowledge of law both substantive and procedural, to have complete and effective control over court and case management, to plan and divide work of court fairly and transparently, to always have command of the proceedings of their Court.

It was suggested that the restatement of values must be reinforced adapting to the needs of the present times. Courage is an important aspect. It was opined that manifestation of ethics is intent. Judges must practice to learn, unlearn and re-learn to overcome the prejudices and biases they may have when accepting the office. It was pointed out that extreme enthusiasm and extreme views are harmful for a judgment or a judge. Matters like rent control, labour disputes were highlighted to give an overview of biases in such matters and how biases may be avoided. Judges were advised to not carry their personal opinions on the bench. It was opined that a judge has to be pro-active and should not be concerned about public perception or reversal of order by the higher courts. It was highlighted that procedural fairness is important, even when a client loses a case he must feel that he was given fair hearing. Integrity, Impartiality, sobriety, independence are values to be practiced by judges as proposed during the session. Judges were cautioned to be careful not only in court but outside court also i.e. on and off bench. It was

pointed out that as far as independence is concerned there is institutional independence but nevertheless, individual judge must also have independence of thoughts and should not be controlled by any person or authority. A reference was made to the judgment in *Swapnil Tripathi v. Supreme Court of India*, [(2018) 10 SCC 628] with regard to live streaming. Rules for live streaming were pointed out. It was opined that delivering judgement free from bias, prejudice personal or any other bias is what is expected of a judge.

Session 5: Judging skills: Art, Craft and Science of Drafting Judgment

Speakers: Justice Sunil Ambwani and Justice V. Parthiban

The session began by iterating that verbosity should be avoided, clarity must be expressed and judgments must be sensitive. It was highlighted that judgments are read by all stakeholders including appellate courts, lawyers, law students, and the judge themselves. Judges were advised to preserve some judgments written by them and read them often which will help them in identifying mistakes that may be corrected while drafting judgments. It was opined that writing judgments is also part of controlling arrears. Brevity, simplicity and clarity were three key watch words suggested to remember while writing judgments. It was emphasized that judges must learn and practice precis writing to write short and simple judgments, easy to understand. Dictionary, grammar book and thesaurus must be handy with judges while discharging their judicial function as an essential part of writing judgments.

On skills of writing judgments, two ways of writing judgments were highlighted, strictly in accordance with law that is formalist way of writing judgement and realist way of writing judgments. It was mentioned that writing judgment is a public act and it must be performed in the same manner as done in the office. Following key aspects of judgement writing skills were listed such as Cause title is important aspect in a judgment (complete names of parties must be included); Opening statement – who, how, where, what, why (must be there in the initial paras of the judgment); chronology of earlier events must be followed; decide preliminary issues first like jurisdiction. On appreciating evidence it was pointed out that only cogent, relevant and admissible evidence must be considered. Framing of charges was another aspect which formed part of the discussion.

It was explained that reason and reasoning in the judgement are two different aspects wherein it was mentioned that reasoning must be a logical reasoning and should connect with the

purpose/facts of the matter. Analogical reasoning, inductive, syllogistic reasoning, deductive reasoning were also discussed that can be applied for arriving at the conclusion.

On Neutrality and impartiality it was stated that these are important aspects while drafting judgments. Reasons in the judgment must be far away from the personal biases or personal reasoning. Latent and subconscious bias were also explained during the course of discussion. Different types of rationality viz. purposive, instrumental rationality, bonded rationality, super rationality were discussed with practical examples. It was emphasized that written language must be simple and understandable and some guidelines for writing judgments were suggested including – simple language, decide the case with logical reasoning, tempered language, brevity, design and revise your judgments, humility and character, to avoid using discouraging remarks and gender sensitivity.

A reference was made to following judgments *Bhupender sharma v. State of Himachal Pradesh,* (2003) 8 SCC 551 and *In Re: "K" a judicial officer* AIR 2001 SC 972. Judges were also cautioned that brevity should not lead to obscurity. It was opined that a judge should have knowledge of the literature and the law. It was mentioned that many a time's law may also become a stumbling block that is where equity must be practiced. The judgment in *Mohd. Firoz v. State of MP***,** (2022) 7 SCC 443 was cited wherein death sentence was commuted to 20 years of life imprisonment. It was stressed that judges are not infallible and when fallibility is apparent in the judgment then they must be bold enough to correct it. It was pointed out that in applying restorative justice one has to be cautious and simple writing is the expression of superiority of mind. It was mentioned that style of writing judgment creates an impact on the mind of public. Lastly, it was opined that if alternative issues are raised then charges must be clearly framed in criminal suit and in civil suit.

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

Speakers: Justice Mohit Shah and Justice U.C. Dhyani

The session reflected upon following areas equality in matters of recruitment and lack of infrastructure in courts. It was underscored that court management is the management of the institution, done by the principle district judge at the district level and case management is management of a case by an individual judge. It was explained that when a judge looks after their docket it is court management and when a judge deal with a single case from their docket as to when the hearing be done, evidence to be placed it will be case-management. It was

highlighted that justice delayed is justice denied and therefore, principles of management are very essential. The session focused upon intricacies of dealing with lawyers as an aspect of case management. Judges were suggested to avoid granting long unnecessary adjournments.

On managing human resources the unequal distribution of work amongst lawyers and judges was highlighted. It was also pointed out that 80 percent of the cases are regular matters which are not complicated and must be decided expeditiously followed by the 20 percent cases which are complicated must be dealt with thereafter. It was suggested that the docket must be managed accordingly that no matter complicated or regular is delayed, classification and division of work must be looked into carefully. It was opined that handling of staff like registrars be done by setting firm guidelines which should be made available to the bar association also. It was mentioned that listing of cases is an important part of case management. A reference was made to Order 10 Rule 1 of the CPC. It was highlighted that when plaintiff files a suit he must be provided information regarding outside court settlement options like mediation, lok adalat etc. It was opined that court annexed mediation center is a must in each court complex.

It was advised that a judge has to be firm in his conduct without being rude. It was also suggested that a judge must notify only that many number of cases on the cause list that s/he is able to deal with in a day. Judges have to balance both judicial and administrative work. It was asserted that Court Manager's services should be availed to manage courts efficiently.

The session further dwelt upon docket exclusion and docket explosion. Three levels of management were explained viz. top, middle, and bottom management. Three tiers of management were also listed as conceptual, human and technical. A reference was made to the judgement in *Imtiyaz Ahmed v. State of Uttar Pradesh* (2017) 3 SCC 658 wherein the Supreme Court took note of the huge pendency of cases and issued certain guidelines regarding the clearing of arrears, timely disposal, pretrial custody issues, trial date certainty, etc.

Some principles of management were listed to efficiently manage court including motivation, communication skills, leadership and team building, mind management, time management, and stress control. The session also included a discussion on objectivity *versus* subjectivity and reasonableness *versus* arbitrariness. It was advised that one should be faithful to his duty at all times, regardless of the situation. The judgement in *Surjit Singh v. Gurwant Kaur* (2015) 1 SCC 665 was mentioned. The session concluded by quoting Rabindranath Tagore that "it is the office which is divine and not it's incumbent"

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

Speakers: Justice U.C. Dhyani & Justice Ved Prakash Sharma

The session began with an elaborate discussion on the scheme of the Indian Evidence Act, 1872 [IEA]. It was stressed that understanding of appreciation of evidence is the backbone of a judgment. It was suggested that a judge should be clear that only relevant pieces of evidence are appreciated. Therefore, it is significant to distinguish between what is relevant and irrelevant. Thereafter, significance of proper marshalling of evidence was highlighted. the Supreme Court in Rang Bahadur Singh v. State of U.P. AIR 2000 SC 1209 and in State of U.P. v. Ram Veer Singh and Ors, 2007 (6) Supreme 164, highlighted the significance and importance of marshalling and appreciation of evidence. While discussing the principles of law in the evidence with regard to appreciation of evidence Section 3, 114, 118, 134 of IEA, were highlighted upon. With respect to Standard of Proof it was stressed that IEA does not make any distinction between a civil proceeding and a criminal proceeding as was laid down in *Ravinder Singh Gorkhi v. State of U.P.,* AIR 2006 SC 2157. Conversely, there are certain provisions in the Act which make difference like Sections 18 to 20 make the admission of a party in civil case, binding. Sections 24 and 30, with respect to confession by an accused, is not admissible if made by inducement, threat or promise though admission made by the accomplice against himself is admissible. It was further emphasised that a case should be decided on a balance of probabilities. Accordingly, the court should consider different probabilities and eliminate impossibilities and dubious probabilities, and decide whether the preponderance of probabilities lies or not. Additional a judge ought to deliberate upon the degree of probability that hinges on the subject matter and is to be deliberated on the basis of its magnitude. Therefore, in a criminal case, the standard of proof, i.e., beyond reasonable doubt is a prerequisite. In civil cases, it is preponderance of probabilities. This distinction is basically made through the judicial pronouncements.

The discourse further emphasised upon Reverse Burden of Proof. It was accentuated that the shift in legislative approach has reached its zenith in PMLA and POCSO Acts. In *Noor Aga v. State of Punjab and Another*, (2008) 16 SCC 417, the Supreme Court observed that "Reverse burden as also statutory presumption can be raised in several statutes… Provisions imposing reverse burden however, must not only be required to be strictly complied with but also may be subject to proof of some basic facts as envisaged under the statute in question." While discussing Section 24 PMLA it was highlighted how the said section has undergone a paradigm shift and how presumption of innocence has changed to presumption of guilt.

Session 8: Evidentiary Presumptions: Onus and Burden of Proof

Speakers: Justice U.C. Dhyani & Justice Ved Prakash Sharma

The session began by focusing on Section 101, IEA that talks about burden of proof. Subsequently, the significance of preponderance of probability and proof beyond reasonable doubt was elaborated with the help of leading case laws. Thereafter, Session 113-A, 113-B and 114-A of IEA which deals with presumption as to abetment of suicide by a married woman, Presumption as to dowry death, presumption as to absence of consent in certain prosecution for rape were respectively discussed. While referring to Section 35, Narcotic Drugs and Psychotropic Substances Act,1985 (NDPS) it was emphasised that culpable mental state has to be proved as a fact beyond reasonable doubt. In this context Noor *Aga v. State of Punjab and Another*, (2008) 16 SCC 417, was discussed in which it was held that - Section 35 and 54 of the Narcotics Act which imposes a reverse burden on the accused is constitutional as the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. While discussing Section 165, IEA, *Ram Chander v. State of Haryana*, AIR 1981 SC 1036 was referred. In which it was highlighted that- the presiding judge must cease to be a spectator or a mere recoding machine; instead he should take active interest in the trial by putting certain question to the witness to ascertain the truth. Practical aspects of cross examination were also highlighted.

While discussing *Ishwar Dass Jain v. Sohanlal,* AIR 2000 SC 426, it was highlighted that in case the document is registered then except in the case of a will it is not necessary to call an attesting witness, unless the execution has been specifically denied by the person by whom it purports to have been executed. It was suggested that while appreciating evidences a judge ought keep in cognizance that whether – the witness is present or not, if he/she is present it is reliable or not, demeanor of the witness at the scene of incidence, whether he/she is a interested witness or not and lastly he/she is disposed towards the offence or not. Expert opinion under Section 45 IEA was also expounded. It was accentuated that court is not bound by the evidence of the experts which is to a larger extent advisory in nature.

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

***Speaker:* Mr. Harold D'Costa**

The session emphasized that in the age of technology, electronic evidence is inevitable. The judiciary has been put at task to appreciate electronic evidences. Thereafter, the stages of

leading electronic evidence and the standards of proof with reference to section 65B of Indian Evidence Act, 1872 was elaborated. The problems in proving and appreciating the magnetically recorded confessions and their evidentiary value in criminal trials was discussed. The session highlighted the effect of digital footprints and appreciation of electronic evidence in present times. It was underlined that it is not conclusive in nature. Electronic evidences are generally found in storage device, digital files etc. Electronic evidence is classified into two types –volatile evidence and non-volatile evidence. Importance of Meta data in establishing the novelty of any electronic evidence was discussed. The discussion elaborated that authenticity and veracity are the key factors to be considered by courts while appreciating electronic evidence. It was suggested that while appreciating evidence standard of proof, source of authenticity and best evidence rule are very significant. It was advised that electronic evidences should be stored in a manner in which their veracity is not impinged upon.

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

Speakers: **Dr. Arneet Arora & Ms. Nisha Menon**

The session started by underlining the meaning of *'Forensic'* which is derived from a Latin word forensis that means "in open court". While 'Forensic Science', is the use of science and technology for legal purposes. While highlighting the Locard's Principle of Exchange it was underscored that "When ever two objects come into contact, they always leave a trace on the other." Additionally, every criminal can be connected to the crime by contact traces carried from or left at the crime scene. Forensic science plays a vital role by providing scientifically based information through the analysis of circumstantial evidence. Forensic evidence is of two types viz, Physical and biological. The former includes Non-biological types of evidence like forms of fibers, paint chips, explosives and the later includes Biological evidences include blood, semen, saliva, faecal material, urine, hair and bone. Thereafter, forensic ballistics were discussed viz, Science of analysing firearms, bullets and bullet impacts. Whereas Ballistic fingerprinting is analysing firearm evidence to determine if that particular firearm was used in the crime. Attention was also drawn to various categories of fire arms and allied components/ballistics like-

- ✓ Ammunition Component
- ✓ Firing Process
- ✓ Ballistic Fingerprint
- ✓ Comparison of Reference & Crime Scene Bullet

- ✓ Distance Determination
- ✓ Residue on Clothing & Hands
- ✓ Wound Ballistics

Subsequently, it was accentuated that ballistic experts primarily assist in investigation by identifying the specific fire arm used in the crime; matching the bullets recovered to the fire arm in question; determining the range; and by determining the direction of firing. It was stressed that the opinions of the ballistics experts are not just admissible but are also considered extremely relevant. Some of the case laws as discussed in this regard are- *Ghurey Lal v. State of U.P*, (2008) 10 SCC 450; *Kalua v. State of UttarPradesh, 1958 AIR 180.* While discussing about the biological forensic evidence it was stressed that biological material should be collected as soon as possible due to environmental conditions. In sexual assault cases, victim sample should be collected within 24 hours and maximum within 72 hours. Significance of packaging of such evidence was also highlighted. While discussing the characteristics of DNA it was highlighted that DNA is mainly of two Types: Nuclear DNA, that is inherited from parents (half from mother,half from father) and Mitochondrial DNA which is inherited from the mother. Subsequently, stages of DNA profiling, were also explained. It was stressed that Low Copy Number (LCN) DNA/Touch DNA is the next wave of DNA testing that doesn't require blood or semen samples. It analyses skin cells or sweat from fingerprints left behind when assailants touch victims, weapons or anything else at a crime scene. This technique has dramatically increased the number of items of evidence that can be used for DNA detection. LCN has been able to show results even 25 years after the commission of the crime. Some of the cases that relied on DNA test as highlighted during the discourse are- *Pantangi Balarama Venkata Ganesh v. State of A.P.* (CrLJ, 2003, 4508); *Santosh K. Singh v. CBI*, 2010) 9 SCC 747; *Mukesh v. State (NCT of Delhi),* 2017 (6) SCC 1. Thereafter, the concept of *Chain of Custody* was also discussed. It was suggested that to have DNA as an admissible evidence it must be ensured that there should not be any break in the chain of custody that includes- proper docketing, documentation etc.

It was further highlighted that some of the issues before the court in civil matters are- privacy and ethical issues, chances of misuse of DNA profile and chances of genetic discrimination in marriage, education etc. In this regard, *Goutum Kundu v. State of West Bengal* (1993) 3 SCC 418 was referred in which the Supreme Court observed that " The court must examine carefully

the consequences of ordering the blood test; whether it will have the effect of branding a child as bastard and the mother as an unchaste woman"

Session 11: Criminal Justice System and Human Rights

Speakers: Ms. Geeta Ramaseshan and Prof. Shashikala Gurpur

The session focused upon rights of the accused. It was highlighted that trial judges come across numerous cases of bail including human right issues daily. An emphasis was drawn on the elements of a fair trial at pretrial stage such as rights on arrest – production within 24 hours-information on the grounds (Article 22); role of court to ask the accused about treatment at the time of arrest; details of arrest etc.; Medical examination if the accused so desires; informing a family member; and right to a counsel in a language known to the accused.

Guidelines laid down by the Supreme Court in the case of *D.K. Basu v. State of West Bengal* (1997) 1 SCC 416 were highlighted. It was opined that if there is an effective legal aid process in the system a large part of the problem is solved. It was opined that Access to legal aid at the stage of arrest and at prison where huge number of under trials are present is very important. It was pointed out that how much effort a lawyer makes through legal aid is a challenge. It was suggested that when the accused belongs to a different nation then a translator for help should be provided.

The session also dwelt upon bail wherein the theory 'bail not jail' by Justice Krishna Iyer was elaborated upon. The judgment in *Khatri And Others v. State Of Bihar & Ors* 1981 SCC (1) 627 and *Hussainara Khatoon & Ors v. Home Secretary, State Of Bihar*, 1979 AIR 1369. Rights of the accused at the trial stage were listed viz. right to a lawyer, right of accused to know the allegations, right to be tried in the presence of the accused, right to get copies of all documents, right to cross and re-examination, etc.

Section 313 of the CrPC as similar to Sec 342 of the Bangladesh CrPC was mentioned on questioning by court. It was emphasized that in the POCSO Act law on presumption is changed wherein it will be unfair to the accused to raise statutory presumptions like the one under Section 25 or Section 35 of the NDPS Act without putting appropriate questions to the accused under Section 313 CrPC. The judgment in *Noor Agha v. State of Punjab* (2008)16 SCC 417 regarding principles on reverse burden was discussed. Further, Sec. 165 of the Indian Evidence Act was pointed out on powers of a judge to put questions. Some other judgments discussed during the session included *Babu v. State of Kerala***,** (2010) 9 SCC 189 and *Kali Ram v.*

Himachal Pradesh, (AIR 1973 SC 2773. It was also discussed that whether presumption of innocence and shifting of burden of proof gets compromised with the inherent bias amongst judges.

On Witness Protection it was outlined that provision for two vulnerable witness deposition centres under every High Court Jurisdiction must be made. It was mentioned that in POCSO cases there is a deposition centre in every High Court wherein the accused and the witness does not face each other during deposition and the questions are only asked by the judge. The accused and witness is always kept in separate rooms so that the vulnerable witness does not depose under fear. It was also highlighted that Delhi High Court guidelines on witness protection provides for prevention of secondary victimization and identification of stress factors in deposing. It was pointed out that court should consider the competence of vulnerable witness (below 18 years). The Witness Protection Scheme was also discussed and various aspects of the scheme was dwelt upon at length.

The case of *DPP v. Mollison*, (2003) UK PC 6 which arose in Jamaica was mentioned wherein accused was sentenced and sent to jail without prescription. It was highlighted that liberty is the most important aspect provided in both Indian and Bangladesh's Constitution. Judge centricity on matters of Human Rights was reflected upon. The session also focussed upon mechanism of Sentencing Guidelines wherein it was discussed that to what extent involvement of executive is justified. The proportionality in matters of setting guidelines in matter of sentencing, severity of punishment was also reflected upon. It was emphasized that denial is injustice to victim, society and accused referring to the case of *Zahira H. Sheikh and Ors. v. State of Gujarat and Ors* (2006) 3 SCC 374. It was pointed out how civil cases are brought under the garb of criminal cases.

The session also included deliberation on following areas including how forms of punishment changed as society evolved; Impartial judge, fair prosecutor, atmosphere of judicial calm; speedy trial; Extra-judicial killings, custodial violence; Bail jurisprudence; Right to privacy; International treaties including UDHR, ICCPR, ECHR; and Right to silence & right against self-incrimination.

Session 12: Human Rights: Fair and Impartial Investigation

Speakers: Ms. Geeta Ramaseshan and Prof. V.S. Elizabeth

The session on *Human Rights: Fair and Impartial Investigation* dwelt upon the importance of constitutional rights and guarantees which provides the trajectory for fair investigation. It was underlined that it is imperative to strike a balance between individual liberty and societal interest. It was highlighted that investigation has to be fair and in accordance with the procedure established by law. It was accentuated that biases pertaining to gender, sex, and caste should not affect the fairness of the trial, such gender discrimination and stereotype may lead to disrupt the fair investigation.

Various rights on arrest that ensure fair trial such as; production of arrested person within 24 hours, medical examination, right to a counsel, treatment at the time of arrest, and intimation to a family members were some of the points deliberated upon. With regard to this, a reference was also made to the Article 22 of the Constitution and Section 303 of Code of Criminal Procedure Code. It was highlighted that it will be unfair to the accused to raise statutory presumptions like Section 25 or Section 35 of the NDPS Act, without putting appropriate questions to the accused under Section 313 of CrPC. It was opined that without cautioning the accused that in view of the statutory presumption, failure to answer questions on crucial aspects may result into conviction for the offence he is being tried. A reference was made to the case *of Sujit Biswas v. State of Assam*, AIR 2013 SC 3817 where it was held that the circumstances which are not put to the accused in his examination under Sec. 313 CrPC., cannot be used against him and must be excluded from consideration. The said statement cannot be treated as evidence within the meaning of Sec. 3 of the Evidence Act, as the accused cannot be cross-examined with reference to such statement. It was also underscored that in a criminal trial, the purpose of examining the accused person under Section 313 CrPC., is to meet the requirement of the principles of natural justice, i.e. *audi alteram partem*. Further with regard to statutory presumption a reference was made to the case of *Kali Ram v. Himachal Pradesh* AIR 1973 SC 2773, where it was held that there are certain cases in which statutory presumptions arise regarding the guilt of the accused, but the burden even in those cases is upon the, prosecution to prove the existence of facts which have to be present before the presumption can be drawn.

It was highlighted that in the following cases *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141, *Sunil Batra v. Delhi Administration* (1978) 4 SCC 409, and *Olga Tellis & Ors v Bombay*

Municipal Council [1985] 2 Supp SCR 5, Supreme Court first gave guidelines and then a law was developed considering the socialistic jurisprudence.

The session included deliberation on various statutes like the Negotiable Instruments Act, 1881; the Prevention of Corruption Act, 1988; and the Terrorist and Disruptive Activities (Prevention) Act, 1987 which provides for presumption of guilt if the circumstances provided in those statutes are found to be fulfilled and shifts the burden of proof on the accused. It was highlighted that however, such a presumption can also be raised only when certain foundational facts are established by the prosecution as discussed in *Babu v. State of Kerala*, (2010) 9 SCC 189. With regard to witnesses protection it was emphasized that court has to measure the competence of vulnerable witness and witness protection order has to be passed by authority including courts. It was stated that installation of security cameras, regular patrolling, monitoring the call records, and relocation of the witness based on the threat analysis report were have to be considered.

The session also included discussion on fresh investigation, *De novo* investigation & further investigation. Following judgments were mentioned during the session *CD Pharma India Private Limited v. State of NCT of Delhi & Ors*. [W.P. (CRL) 999/2020 & Crl. M.A. No. 8526/2020, *K.V. Rajendra v. Superintendent of Police, Chennai & Ors*. [(2013) 12 SCC 480), *Sakiri Vasu v. State of U.P. & Ors.*, (2008) 2 SCC 209, and *Mohan Lal v. State of Punjab*, AIR 2018 SC 3853

Session 13: Re-Engineering Judicial Processes through ICT

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

The session on *Information Communication Technology* succinctly provided an introduction and evolution of e-courts projects by strengthening the institutional framework for adopting ICT. It was emphasized that live streaming of court proceedings is launched with an objective that it will enhance the faith and public trust in judicial system. Re-engineering Judicial Process through ICT was one of the aspect discussed during the session wherein, it was mentioned that it will be beneficial for the institution and justice delivery system if judges think of re-engineering judicial process through ICT.

It was emphasized that technology integration empowers courts, it helps in identifying needs of judges, lawyers and litigants, reduces hours of operation and optimizes court location. A reference was made to Bangladesh E-judiciary Initiative and few key features of the initiative

were underlined. Feedbacks from different stakeholders on the Bangladesh E judiciary initiative were highlighted such as feedback by officials, by lawyers/litigants and researchers. These feedbacks included implementing e-stamping to solve evidentiary issues, implement digital signatures etc. It was pointed out that integrated digital payment system ensure transparency and prevent corruption. It was stated that transformation has to be holistic for digitalization to succeed, from document management shift the mindset to content management. It was expounded that this all improves the quality of justice, access to justice, and instills confidence of people in judiciary

A reference was made to the court computerization in India which was started in early 1990s. It was pointed that National Policy by e-Committee in 2005 launched e-Court Project for the District Court. Phase I – 2002, Phase II in 2015 and e-courts phase III draft launched in 2022. The budget spent on e-courts project was also mentioned as approx. 935 cr. The website for e-courts portal was also displayed. The lessons learnt in phase I was incorporated in phase II of e-courts. The various hardware and software made available through these phases were listed. It was highlighted that INR 317.96 crore released to provide WAN connectivity; 2972 of 2992 court complexes have been provided with 10 Mbps to 100 Mbps bandwidth speed using various technologies.

An emphasis was drawn to the National Judicial Data Grid (NJDG), how it works and the information available on the NJDG portal was explained during the session. It was stressed that NJDG helps to ascertain the number and type of arrears in every court for better judicial monitoring and management. Assistance for judicial officers/ staff was also mentioned through the help of management manuals like CIS manuals, e filing, e-pay, query module and national service and tracking of electronic (NSTEP). It was pointed that there are many master trainers who also spread awareness and further dispense with their knowledge on the e-courts project. Certain limitation with regard to implementation of e-courts initiative were also mentioned including issue of communication gap and lack of staff. During the course of discussion ways to overcome these challenges were also discussed amongst participants and subject expert. Lastly, the session dwelt upon the data protection and privacy issues with regard to e-judiciary whereby maintaining the balance between transparency and privacy was highlighted and emphasized upon.

Session 14: Ratio of a Precedent

Speakers: Justice K. Kannan and Prof. B.T. Kaul

The session dwelt upon the historical overview of the law of precedent stating that it has evolved from Anglo American practice where the laws were not codified. Precedents help to inform how law has grown and in case of short comings it brings stability in law. The law of precedents are binding as incorporated in the Indian Constitution and also in the Bangladesh Constitution. Different High Courts pronounce different judgements, which judgment has a persuasive value and which judgment is binding were some areas discussed during the session. Articles 144 and 141 of the Indian constitution were highlighted similar to Art. 111 of the Bangladesh Constitution that provides for the binding nature of the decision of higher court. The difficulties judges face in identifying and applying precedent was also addressed during the session. An emphasis was drawn on various questions like what judges do when they think a judgment of the higher court is not correct, what the precedent is trying to set out, the ratio in the case, difficulty in identifying the law in a case, the ratio with regard to particular fact, whether the law is an instrument of social change, and when judges are writing a judgment how the precedent makes a change.

Theoretical background of precedent was outlined in the session. The session highlighted Art. 141 of the Indian Constitution with regard to vertical precedent which provides that all courts including High Courts are bound by law declared by the Supreme Court. Art. 144 of Indian Constitution and corresponding Art. 112 of the Bangladesh Constitution with regard to all authorities to act in aid of the Supreme Court was mentioned. Art 142 was also referred wherein it was emphasized that distinction be made between power exercised by the Supreme Court under Art. 142 and law of precedents under Art. 141. It was suggested that in the scheme of Indian Constitution Art. 141 must be read with Art. 144. Art. 227 of the Indian Constitution was also discussed with regard to High Court's power of superintendence over all courts and tribunals throughout the territory over which it exercises jurisdiction. The judgement of the High Court is binding on all subordinate courts within its jurisdiction. The session also highlighted the philosophy behind the law of precedent that is need to create predictability, uniformity and to avoid any chaotic possibility in the administration of justice, to ensure judicial integrity. It was opined that the cardinal principle of uniformity is the basic principle of jurisprudence that promotes equity and equality.

The triple talaq judgment was discussed wherein the majority and minority decision was highlighted to find out what is the ratio. It was explained that in a judgement ordinarily there are three components viz. findings of material facts whether direct or inferential, principle of law applicable to the legal issues posed by the case, and judgment containing the conclusions and directions. It was asserted that the conclusion or directions of the judgement is not the ratio, but the principle that is applicable which may not result in judgement favorable to a party.

The reverse side of the precedent was also outlined as strict application of precedent may result in no development of law. Therefore it was suggested that a balance has to be drawn while applying precedent. It was emphasized that judges must know there is judicial discipline but should also balance development of law quoting the example of right to privacy case [*K. S. Puttaswamy (Aadhaar) v. Union of India*, (2019) 1 SCC 1, *Justice K. S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1].

Various judgements were discussed to highlight the development of law in an orderly manner, following judicial discipline including *Kharak Singh v. The State of U. P. & Others*, 1963 AIR 1295; *Sankari Prasad Singh Deo v. Union of India and State*, 1951 AIR 458; *I. C. Golaknath & Ors v. State of Punjab & Anr.*, 1967 AIR 1643, *Kesavananda Bharati Case v. State of Kerala* (1973) 4 SCC 225; *Naz Foundation v Government of NCT and Ors.*, 2009 SCC OnLine Del 1762; *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1; and *Aparna Bhat v. State of M.P.* (2021) SCC OnLine SC 230. It was also pointed out that there are instances wherein there is a conflict on the question whether to follow a precedent or to ensure development of law referring to the judgment in *The Management of Safdarjung v. Kuldip Singh Sethi*, AIR 1970 SC 1407

It was highlighted that precedent preserves the institutions legitimacy and adjudicative integrity and adherence to precedence leads to a stable order but right to depart leads to development of law in an orderly manner. It was iterated that ratio refers to the principle of law on which the decision is based or the reason for the decision. The concept of equity, justice and good conscious were also explained. It was suggested that it is for a judge to see and apply their mind judiciously while applying a precedent, however, subordinate court must never state that a higher court judgment is *per incurium*. It was suggested that District Court judges may distinguish the judgment but cannot declare when a precedent is cited before them.

Session 15: Landmark Judgments: Celebrating Decadal Masterpieces

Speakers: Justice K. Kannan and Prof. B.T. Kaul

The session concentrated on major judgments contributed to legal jurisprudence in India. It was stressed that any judgment that governs and expound what the constitution says is a landmark judgement. The session emphasised upon cases involving constitutional rights with respect to the protection of human rights that have significantly affected the course of social milieu in the India. The first case that was discussed in this regard was *Shayara Bano v. Union of India*, (2017) 9 SCC 1, in the said case t*he* practice of talaq-e-biddat or instantaneous triple talaq was held as unconstitutional. While discussing *Justice K. S. Puttaswamy (Retd.) v. Union of India,* **(**2017) 10 SCC 1, it was highlighted that a nine Judge Bench in the said case unanimously reaffirmed the right to privacy as a fundamental right under the Constitution of India. The Court held that the right to privacy was integral to freedoms guaranteed across fundamental rights, and was an intrinsic aspect of dignity, autonomy and liberty**.** *In Joseph Shine v. Union of India*, (2018) 2 SCC 189 the Court decriminalised adultery, by striking down Section 497 of the Indian Penal Code, 1860 (IPC).

Thereafter, some of the other recent judgments with respect to bail and criminal matter that were discussed are- *Aparna Bhat v. State of MP*, 2021 SCC OnLine 230, in this case the Apex Court gave directions to be considered while granting bail in sexual offences. In *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221, the court uphelp the constitutionality of the criminal offence of defamation under Section 499 and 500 IPC. In *S. Nami Narayanan v. Siby Mathews*, (2018)10 SCC 804, it was held that the appellant is entitled to compensation, even if there is no allegation of physical torture.

Later part of the session briefly discussed some of the other landmark judgments like- *Shreya Singhal v. Union of India* 2015; Indlaw SC 211 , *S.R. Bommai v. Union of India*; AIR 1994 SC 1918 , *Minerva Mills Ltd. & Ors. v. Union of India & Ors*; AIR 1980 SC 1789 etc