

NATIONAL JUDICIAL ACADEMY



TRAINING PROGRAM FOR MALDIVES JUDICIAL OFFICERS (SE-06)

12th to 15th December 2022

PROGRAMME REPORT

Academic Coordinators:

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A Memorandum of Understanding (MoU) has been entered between the National Judicial Academy (NJA), India, and the Judicial Service Commission of the Maldives for organizing training and capacity-building programs for Maldivian Judicial Officers in India. In pursuance of the said MoU, a 4 days program for the Maldivian judicial officers was organized by NJA at Bhopal from 12th to 15th December 2022. The program included sessions on judicial skills, constitutional, civil, criminal, human rights laws, and correlative jurisprudence. The program also aims to acquaint participants with elements of judicial behavior- ethics, neutrality and professionalism, skills of judging, and judgment writing. The program facilitated discussions on court & case management. While giving the account of the Indian e-Judiciary the objectives of the eCourts Mission Mode Project to enhance judicial productivity both qualitatively and quantitatively were underscored. Jurisprudence on environmental law along with the contribution of the Supreme Court of India has been discoursed. Civil and criminal justice administration inclusive of the alternative dispute redressal System and fair trial was accentuated. The scope of forensic evidence in civil and criminal trials was also outlined. An insight into the evolution of the internet and electronic evidence worldwide was shared and discussed.

INDIAN JUDICIARY: ORGANIZATIONAL STRUCTURE, JURISDICTION, AND APPROACHES

The first session on the theme *Indian Judiciary: Organizational Structure, Jurisdiction, and Approaches* commenced with the assertion that every legal system is different; however certain similarities can be observed between these legal systems. Such a comparison is beneficial to learn from each system. It was stated that the Indian constitution broadly adheres to the doctrine of separation of powers with a broad distinction between the organs of the state. India has

adopted a quasi-federal system but has a unified judicial system i.e. a single judicial hierarchy. The hierarchy of courts in India was explained and the jurisdiction of the courts was delineated. The broad nature of jurisdiction – civil, criminal, revenue, administrative, and ADR was explained. The Lok Adalats in India was highlighted as a novel method of judicial settlement. The jurisdiction and powers of the Supreme Court were explained. It was stated that the Supreme Court and the High Courts are courts of record and hence, the law declared by these courts is binding on the courts below while the law declared by the Supreme Court is binding on all courts in India. Reference was made to the judgment in *Tirupati Balaji Developers Limited v. State of Bihar*, 2004 5 SCC 1 (Para 8). The jurisdiction of the Supreme Court under Articles 32, 136, and 142 was discussed at length. Article 142 was highlighted as a special jurisdiction of the Supreme Court of India wherein it can grant any remedy according to the particular case to do complete justice in the case. The original and advisory jurisdiction of the Supreme Court was also explained. ADR as a facet of the jurisdiction of the courts was also dwelt upon. Tribunals in India, their jurisdiction, and the rationale for the establishment of such specialized tribunals with domain expertise in technical matters were alluded to in the discussion. The Supreme Court's appellate jurisdiction in orders passed by tribunals was also highlighted. The jurisdiction of the High Courts was explained with reference to Articles 226 and 227. Special Leave Petition under Article 136 of the Constitution of India was explained. Epistolary jurisdiction of the Supreme Court and High Courts was highlighted and reference was made to the judgment in *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141. The major features of the epistolary jurisdiction – relaxation of locus standi, creation of investigative machinery to ascertain the truth in the matter, and subject matter involved in the cases relates to social good; were highlighted. Judicial activism by the Supreme Court and High Courts was deliberated upon. It was stated that judicial activism marks a shift from positivistic interpretation to purposive interpretation; and has a significant role in giving effect to the

Directive Principles of State Policy. The jurisdiction and powers of the Supreme Court and High Court under Articles 32 and 226 respectively were compared and contrasted. It was pointed out that Article 32 (which provides a remedy for enforcement of fundamental rights) is a fundamental right under the Constitution of India. It was stated that Article 32 constituted a direct link between the people and the court.

The right to strike under the Maldives and Indian law was examined. It was stated that the right to strike is a fundamental right under the Constitution of Maldives. However, in India, the right to strike is a common law right and not a fundamental right.

The journey of the Supreme Court from independence till the present time was critically analyzed. It was opined that in the early stage, the Supreme Court adopted a strict and limited approach to judging. The emergency and the case of *ADM Jabalpur v. Shivakant Shukla*, AIR 1976 SC 1207 proved to be a watershed moment in the history of the Supreme Court. The Supreme Court gained relevancy in the subsequent period with its emphasis on due process in judgments like *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248. The Supreme Court thereafter started reading the Directive Principles of State Policy into its judgments to harmonize the Fundamental Rights and the Directive Principles. The next phase of liberalization opened the Court's doors to the common man. This phase witnessed the evolution of the PIL jurisprudence. Notable cases include *Hussainara Khatoon. v. Home Secretary, State of Bihar*, (1980) 1 SCC 108, *Sunil Batra v. Delhi Administration*, (1980) 3 SCC 488, *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473 were discussed in the session. The right to privacy, rights of marginalized including transgender were highlighted as a new evolution in Fundamental Rights. The Supreme Court and High Courts' contribution to the development of environmental law jurisprudence was highlighted.

**GOALS, ROLE, AND MISSION OF COURTS: CONSTITUTIONAL VISION
OF JUSTICE**

The second session on *Goals, Role, and Mission of Courts: Constitutional Vision of Justice* commenced with a discussion on the role of the judge in constitutional democracy and the independence of the judiciary. It was stated that responsibility comes with accountability. It was emphasized that the role and responsibility of the court and a judge are heavier than a politician or executive. In light of the Indian judiciary, various exponents of the constitutional vision of justice were discussed. The basic difference between the Indian constitution and the Maldivian constitution was deliberated upon. It was iterated that in the Indian constitution, the preamble is the most important source of law whereas in Maldivian Constitution talks about Islam, and in case of conflict, the will of God will prevail. In Maldives, there are two systems of laws viz. one the system of law which is made by the people or representative of Maldives but superior to this system is the system of God. It was stated that as per the Indian constitution, the powers are derived from the will of the people of India. Indian constitution does not talk about religion where the powers are derived from God. It was stated that the constitutional oath can be taken with the name of God or without the name of God. It was stated that if power is derived from the people the government is accountable to the people. The basic rights of the people are enriched in the preamble of the constitution which ought to be protected by the organs of the government. It was stated that the court's primary role is to preserve and protect the rights of the people. It was emphasized that infringement of the rights either by the legislature or by the executive courts plays a very important role to protect those rights. The various aspects and importance of the right to liberty, the right to equality, and the right related to fraternity were expounded. Article 14, Article 19, and Article 21 of the constitution of India were discussed. The concept of fundamental rights was deliberated upon. It was stated that the

basic rights that cannot be surrendered to the government are fundamental rights. It was emphasized that the duty of the judiciary will come into play when there is a transgression of the fundamental right by the legislature or by the executive. It was opined that the law changes as per the changing needs of the society. It was iterated that a republican or democratic form of government is better than a dictatorship form of government and that every individual should be respected as an individual. In this light, basic or permanent values of the German Constitution were delineated that include the republic form of government. It was highlighted that the judiciary in India intervenes when the fundamental rights of the people are compromised or curtailed. In this light, the judgment of *Golak Nath v. State of Punjab, (1967) 2 SCR 762*, *Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225* was referred to and discussed. The importance of the independence of the judiciary and the judgment of *Supreme Court Advocates-on-Record Assn. v. Union of India, (2016) 5 SCC 1* was referred to and deliberated upon. The existence of the law at three levels i.e. normative level, institutional/cultural level, and Behavioral level was discussed. In this light, the *Indian Young Lawyers Assn. (Sabarimala Temple-5J.) v. State of Kerala, (2019) 11 SCC 1* was referred to. It was stated that it was very easy to make a law at the normative level but it is difficult to implement at the institutional or behavioral level. It is the duty of the judiciary to not only protect the law at the normative level but to oversee its observance at the behavioral and institutional level and this can be achieved only when the executive and legislature cooperate with the judiciary. The distinction between fundamental rights and human rights was also discussed. It was stated that fundamental rights need to be mentioned in the constitution of the country and human rights are inherent the human beings and are not derived from any document. The judgment of *ADM, Jabalpur v. Shivakant Shukla, (1976) 2 SCC 521* was referred to where the dissenting opinion of Justice HR Khanna was deliberated upon in which Justice Khanna stated that the fundamental right may be suspended but the right to life which is a basic human right cannot

be curtailed. Article 39 A of the constitution of India which speaks about equal justice and free legal aid and Article 53 (a) of the Maldives constitution which speaks the about right to assistance of legal counsel were deliberated upon. Social, economic, and political justice, access to justice, right to a speedy trial as per the Article 21 of the constitution of India, right of an accused to the release from judicial custody, the arrest procedure, and the harmonious construction between the fundamental right and directive principle of State policy in the light of the constitutional values and Supreme Court judgments of India were deliberated and discussed during the session.

ELEMENTS OF JUDICIAL BEHAVIOUR: ETHICS, NEUTRALITY, AND PROFESSIONALISM

The third session on *Elements of Judicial Behaviour: Ethics, Neutrality, and Professionalism* commenced with an emphasis on the need for constant revisits and reminders on the issue of judicial ethics. It was stated that a judge when donning the judicial robes, must shed his pedigree, notions, and prejudices. It was stated that this issue is of perennial importance for a judge, whether on or off the bench. It was stated that ethics and neutrality are elements of professionalism. It was underscored that the judicial role is a pious obligation rather than a power. Judges are entrusted with the responsibility to uphold the dignity, public trust, and confidence of the judicial system. The standards of judicial ethics laid down in the Bangalore Principles of Judicial Conduct were discussed.

Professionalism was emphasized as the adherence to a standard or a code of conduct. Professionalism among judges was stated to be necessary for the quality administration of justice. Five essential attributes of judicial professionalism were discussed –

- Professional competence (i.e. knowledge, ability to comprehend and communicate, skill to marshall facts and appreciate evidence, ability to reason their opinions, and ability to structure proceedings and effectively hold court hearings.)
- Spirit and attitude of service
- Judicial temperament (i.e. ability to communicate with parties, witnesses in court, advocates; willingness to listen and consider all points argued; patience; open-mindedness; sensitivity; courtesy; firmness; understanding; forbearance under provocation; and ability to deal with others without giving offense.)
- Respect for human dignity and timeliness
- Humility and courage (i.e. shunning judicial ego; avoiding populist approach in judging; judicial courage; and respect for the law)

The constitutional duty and function of a judge were emphasized and it was stated that judges are accountable to law, tradition, and history. Professionalism was stated to be a non-negotiable requirement for a judge. The qualities of a great judge as stated by Harold Laski i.e. greatness, respect for law and tradition, not being driven by ambition, and aloofness. Listening was emphasized as an important judicial skill. Reference was made to the judgment in *Jones v. National Coal Board*, (1957) 2 All ER 155 (CA). It was stated that impartiality does not mean that the judge must be a silent spectator in the proceeding. Impartiality requires that the judge must participate without seeming biased or indicating any leaning in favour of any party. Judges were advised against pre-judging the matter in any case before hearing the parties. Further, speaking to the media was stated to be unnecessary and undesirable.

Emphasis was placed on the cultivation of judicial temperament and dealing fairly and courteously with the Bar. It was stated that judges must be committed to the cause of justice

and rule of law. Judges must be sensitive to the weight of office and duty on them, tradition, and precedents.

JUDGING SKILLS: ART, CRAFT, AND SCIENCE OF DRAFTING

JUDGMENTS

The fourth session on the *Judging Skills: Art, Craft, and Science of drafting judgments* commenced with the observation that a judge is known by their judgments. It was stated that the communicative skill of an expression of a legal opinion by a judge after understanding the dispute is known as judgment. Judgment is the voice of the court. The art of writing and structuring judgments of different jurisdictions that include civil matters, criminal matters, service matters, commercial matters, etc. was deliberated upon. It was iterated that judgment is the voice of the court. It was emphasized that reason is logic in motion and is the heartbeat of judgment. Judgment governs society and individuals. Judgments are the collective expression of judicial thought of governance. Sensitivity in judgment writhing particularly in family court matters, domestic violence cases, and child abuse matters were deliberated upon. It was stated that judges are the authors of their judgments. It was suggested that after understanding the facts of the case and law points a judge should write a judgment in such a way that it should be understandable to everyone and like crystal clear water. The checklist that was given by Justice Peter Jackson before writing a judgment in the case of B (A Child) (Adequacy of Reasons), [2022] EWCA Civ 407 was deliberated upon. The various stages of writing the judgments as discussed. In light of the above judgment the following checklist is to be kept in mind before writing a judgment:

- (1) State the background facts
- (2) Identify the issue(s) that must be decided

- (3) Articulate the legal test(s) that must be applied
- (4) Note the key features of the written and oral evidence, bearing in mind that a judgment is not a summing-up in which every possibly relevant piece of evidence must be mentioned
- (5) Record each party's core case on the issues
- (6) Make findings of fact about any disputed matters that are significant for the decision
- (7) Evaluate the evidence as a whole, making clear why more or less weight is to be given to key features relied on by the parties
- (8) Give the court's decision, explaining why one outcome has been selected in preference to other possible outcomes.

It was emphasized that the most important thing in the content of the judgment is the findings. It was suggested that the judge should first always try to curl out the admission of the parties in order to narrow down the issues. Language and Style in the judgment writing are equally important as to the substance of the judgment but it gives a comprehensive understanding to the reader. The language used by the judge in writing the judgment should be simple and sober. Lord Denning was quoted in this context as saying that *simplicity is the best*. It was suggested that short and crystal clear sentences should be written in the judgment. It was highlighted that writing precise and clear judgments is very important. A judge while writing judgment should be concise to the point of issues. Mentioning the precedent and statute is important in the judgment but it should be written in a concise form. A very crucial and relevant part of the precedent only should be written in the judgment. It was highlighted that proofreading before signing the judgment is very vital. A paragraph from the book *A Man of Law's Tale* authored by Lord Macmillan was quoted as "*Every judge has his own way of preparing his judgments. In the House of Lords and the Privy Council very few are delivered extempore and written judgments are the rule- A wise precaution in view of the authority attaching to the decision of*

these final Courts of Appeal. I never dictated my judgments. I prepared them in two stages. When I had made up my mind on the question involved I first wrote out as a basis a rough draft in which I made sure that all the points were included and then I made a fair copy in which I arrange a sequence of arguments, cut out superfluties and tried to improve the wording”

It was stated that judgment is the culmination of the fair trial process and therefore all fairness in the trial must be reflected in the judgments. At the end of the trial, it is the judgment that is preserved by the parties sometimes for the next generation. Judgment should be clear, crisp, and to the point.

The duty of the judge in the dispensation of justice is to render qualitative judgment. If there are gaps in the evidence then there should be active neutrality and then the judges are supposed to draw a sufficient conclusion on the basis of insufficient but qualitative material. Judgment should deal with each and every issue involved in the case. It was stated that judgment writing is an art as it reflects the ability to comprehend, understand and communicate what took place during the trial. It was suggested that the reproduction of entire pleadings is not required and before writing a judgment marshaling and careful appreciation of the evidence is very important. It was also cautioned that a judge should not pass any general or personal remarks to the litigants, lawyers, witnesses, or to anyone. The relevant points covered by the lawyer should get reflected in the judgment. Judgment writing is to express justice in a very expressive and objective manner. It is the duty of the judge to find the truth and render justice. The findings in the judgment must be in consonance with facts and reasons. It was iterated that timelines in delivering judgment are very important as it enhances the confidence of the public and litigant. Timely delivery of justice is through timely delivery of judgment. It was also stated that one should criticize the judgment but not the judge. There should be a presumption that judgments are presumed to be delivered in good faith.

**JUDGE THE MASTER OF THE COURT: COURT MANAGEMENT & CASE
MANAGEMENT**

In the fifth session on the theme *Judge the Master of the Court: Court Management & Case Management* emphasis was placed on court management as a crucial skill for judges. The essential aspects of effective management i.e. teamwork, role clarity, effective delegation, established institutional systems and processes, mentoring, experiential learning, planning, strategy and execution, and work life balance were discussed. The elements of management – planning, organizing, directing, coordinating, and controlling as expounded by Peter Drucker were explained. The early initiatives in judicial and court management were highlighted. The concept, objective and areas of case management were discussed. It was stated that the judge must keep in mind that no case is inherently complex or protracted; it is made complex and protracted by inefficient practices. The case management initiatives in UK were highlighted and compared with the initiatives in India. The stages of adjudication where case management tools can be employed were dwelt upon to emphasize on the methods in which case management can be integrated into the adjudicatory procedure. The business management principles which are applicable to court management were discussed. The major aspects where court management tools would enable effective and timely adjudication were highlighted. Participants were advised to tackle non-value added items in their caseload first rather than delay it. Time management, decentralization and procedural simplification were also suggested as tools for effective court management.

It was stated that the judge needs to understand his court and should identify where and how the delay is occurring. The major causes of delay were dwelt upon -

- Lack of knowledge and/or preparation of the advocate
- Tardiness and bad work habits of advocates

- Dilatory tactics adopted by advocates
- Lengthy and Unfocussed cross examination
- Bar opposition to changes introduced
- Ignoring rules of the court
- Lack of judicial control over the court
- Failure to limit time for evidence and arguments
- Non-use of case flow management principles
- Failure to define and narrow down issues

The major bottlenecks in judicial administration and causes for delay were identified –

- Pendency of criminal cases
- Adjournments
- Delay in submitting the chargesheet
- Accused absconds- case goes on backburner
- Accused avoids – deliberate nonappearance to evade trial
- Non-execution of service and process
- Delay in investigation
- Non-appearance of accused
- Delay at a stage of prosecution evidence – shows lack of coordination between police and prosecution
- Delay in completing the investigation

Reference was made to the judgment in *Jayendra Vishnu Thakur v. State of Maharashtra* (2009) 7 SCC 104. The significance of court and case management as a tool to ensure the Right to Speedy Trial under Article 21 was underscored.

RE-ENGINEERING JUDICIAL PROCESSES THROUGH ICT

The sixth session on the **Re-engineering Judicial Processes through ICT** commenced with the assertion of the importance of technology in the judicial process. It was stated that the integration of technology has added value to the judicial system by bringing accessibility, speedy justice, and clearing of arrears. It was iterated that technology offers courts a crucial commodity or information that can help the justice agencies make better and quicker decisions, and track case outcomes.

Technology empowers courts to meet core purposes and responsibilities, particularly when they work with limited court staff, reduce hours of operation and optimize court locations

It was stated that prerequisites to harness technology are to identify the needs of judges, lawyers, and litigants, examine process re-engineering opportunities and migrate from document to content management. This improves the quality of justice, access to justice, and public trust and confidence in the court as an institution.

Court computerization in India was discussed. It was delineated that the Government of India with the help of NIC's has been computerizing courts at all levels since the early 1990s. Supreme Court and all High Courts had started using information technology to some extent by the start of the millennium. It was iterated that National Policy by eCommittee in 2005 launched eCourts Project for district courts. Policy Document on eCourts Phase I, eCourts Phase II, and Draft of eCourts Phase-III was discussed during the discourse. The budget for the e-courts project, the e-Courts portal (<http://www.ecourts.gov.in>), district court websites, and Case status information online - orders/judgments online also formed part of the discussion. An overview of the national judicial data grid (NJDG) was given. It was stated that NJDG provides case data for all courts through a web portal on an almost real-time basis, with a dashboard and drill-down facility to reach the case details in each case. It helps to ascertain the

number and type of arrears in every court in the country for better judicial monitoring and management. Management Manuals that include Case management CIS 3.0, E-filing; E-Pay; Query Module, and National Service and Tracking of Electronic Processes (NSTEP) App. for bailiffs for delivery of processes were discussed during the session. It was highlighted that the NIC team is available to help whenever judges face a problem. It was stated that in India Judgments are to be delivered in open courts as such the Justice System in India is transparent. Norms of live streaming of court proceedings with reference to the Supreme Court Judgement *Swapnil Tripathi v. Supreme Court of India*, (2018) 10 SCC 628 and the use of CCTV cameras in courts with reference to *Pradyuman Bisht v. Union of India*, 2017 SCC OnLine SC 1709 was discussed. In light of the Digital Personal Data Protection Bill, 2022 data protection and privacy formed part of the discussion.

JURISPRUDENCE ON ENVIRONMENTAL LAW: CONTRIBUTION OF THE SUPREME COURT

The seventh session on **Jurisprudence on Environmental Law: Contribution of the Supreme Court** commenced placing emphasis on the constitutional mandate for the protection of the environment. Reference was made to the judgments in *Sachidanand Pandey & Anr. v. State of West Bengal & Ors.*, (1987) 2 SCC 295; *Virender Gaur v. State of Haryana*, (1995) 2 SCC 577; and *M.C. Mehta & Anr. v. Union of India & Ors.*, (1987) 1 SCC 395. The global environmental crisis was viewed as a matter of concern. It was stated that the court is bound to bear in mind Articles 48A and 51A (g) of the Constitution, and should not shrug its shoulders when called upon to give effect to the Directive Principles of State Policy. The right to environment as a facet of the right to life under Article 21 was discussed. The judiciary is

required to play an active role in protecting this right. Article 32 confers wide powers on the Supreme Court to forge new remedies and strategies to enforce the fundamental right to clean environment. The Public Trust doctrine was explained and it was stated that all public functionaries are treated as trustees of all public assets and are duty-bound to take care of such assets. The judicial role as *parens patriae* to protect the environment and wildlife was also highlighted. Reference was made to the judgments in *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388 and *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647. The concepts of sustainable development, the precautionary principle, and the polluter pays principle were discussed. The significance of judicial activism in the protection of the environment & wildlife was dwelt upon in the discussion. The protection of wildlife as an intrinsic element of the ecology was dwelt upon and reference was made to the judgment in *Animal Welfare Board v. A Nagaraja*, (2014) 7 SCC 547. The five internationally recognised freedoms for animals referred to in the *Animal Welfare Board v. A Nagaraja* was cited. Reference was made to the judgments in *Hanuman Laxman Aroskar v. Union of India*, (2019) 15 SCC 401.

The concept of inter-generational equity was explained. The contributions of the courts through PIL jurisprudence were highlighted. Emphasis was placed on the need for accountability and responsibility on part of the government, and the industrial agencies responsible for pollution and environmental degradation. Emphasis was placed on the adoption of a curative approach rather than fault finding. Mitigation was stated to be a bad option in environmental protection as it is often used as a license to do things that should not have happened. Participants were advised to ensure that proper Environment Impact Assessment is undertaken in cases before them.

CIVIL JUSTICE ADMINISTRATION: ALTERNATIVE DISPUTE REDRESSAL
SYSTEM IN INDIA

The eight session on the **Civil Justice Administration: Alternative Dispute Redressal System in India** commenced with recognition of the (Alternative Dispute Resolution) ADR process the world over in order to ease access to justice and ensure speedy justice. It was stated that the ADR process is fast growing in other countries with the acceptance of international standards of law. It was delineated that in the ADR process litigants, themselves involves in the process and satisfy their own needs. They become their own judges. In India participation in the ADR process is simplified. The most important aspect of the ADR process is that it reduces the burden of the courts and relieves the stress of the litigant which they have to face in the adjudicating and litigating process. The alternative dispute mechanism can also be said an appropriate dispute mechanism. It was iterated that the ADR mechanism includes Arbitration, Conciliation, Mediation, or Judicial Settlement including settlement through Lok Adalat. It was emphasized that justice is the hallmark of every country. The Magna Carta states that none shall be denied, delayed, or sold justice. Article 39 A of the Constitution of India speaks about access to justice and free legal aid was discussed.

The problem of the backlog, docket explosion, and the pendency of cases in India was discussed. It was stated that there are a lot of bottlenecks in the speedy disposal of civil disputes and many times even the execution under Order 21 becomes very difficult and takes a lot of time. It was stated that people have become very conscious about their rights therefore, on infringement they approach the courts for their remedy. However, courts and judges are limited which leads to docket explosion. In such a situation ADR is a boon that helps in reducing the caseload of the courts and facilitates speedy disposal of the case. It was stated that in the ADR process, the atmosphere is informal and has a win-win situation in the process of conciliation,

mediation, and settlement through Lok Adalak. ADR process is a shift from a coercive atmosphere to problem-solving where the dispute gets solved amicably. The matters which cannot be settled through the ADR process were discussed. Section 89 of the CPC was referred. It was stated that where it appears to the Court that there exist elements of a settlement that may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for arbitration; conciliation; judicial settlement including settlement through Lok Adalat: or mediation. The judgment of Salem Advocate Bar Association, Tamil Nadu vs. Union of India (2005) 6SCC, 344 was deliberated upon in which the constitutional validity of Section 89 of the Code was upheld by the Supreme Court of India in this case. The judgment Afcon Infrastructure Ltd. And Anr. v. Cherian Varkey Construction Co. (P) Ltd. And Ors. 2010 (8) SCC 24 was referred in which the Supreme Court observed that in ordinary civil cases, having a hearing after completion of pleadings, to consider recourse to the ADR process under section 89 of the Code, is mandatory.

It was stated that for the arbitration process, there is a separate Act known as Arbitration and Conciliation Act, 1996. The importance and role of the mediator were discussed. It was stated that a mediator is like a facilitator and acts as a catalyst to solve the dispute in a peaceful and healthy atmosphere. It is the duty of the mediator to understand the issues, and interests of the parties and suggest possible solutions i.e. options. It was stated that issues are topics or problems that a party would like to discuss during mediation. Interests are general or specific needs that a party wants to satisfy the reason behind the position and positions are the options or settlement offers maintained by the party; i.e. what they are willing to do. It was iterated that the mediator must assist in negotiating positions that meet everyone's interests and should address all issues. A mediator should never give legal advice even if asked. It was stated that

the mediator helps the party to craft agreements. It was delineated that agreement must be signed after reviews and it should be specific, positive, realistic, and balanced. It was iterated that in family courts the ideal stage for mediation will be immediately after the service of the respondent and before the respondent files objections/written statements. It was emphasized that a large part of disputes in India are settled through the mediation process. Sec 265 B of the Criminal Procedure Code which refers to Plea Bargaining was also discussed in which a person accused of an offence may file an application for plea bargaining in the Court in which such offense is pending for trial.

CRIMINAL JUSTICE ADMINISTRATION: FAIR TRIAL AND HUMAN RIGHTS

In the ninth session on **Criminal Justice Administration: Fair Trial and Human Rights**, the aspect of fairness in pre-trial and trial stages were dwelt upon. The rights at the pre-trial stage i.e. rights on arrest, right to bail, and right to legal assistance were discussed. The role of the court in guaranteeing the rights at the pre-trial stage was identified. It was stated that the court should at the time of production of the arrested person, should verify whether the person has been subjected to police torture. The judge should interact with the arrested person to find out what has transpired. Further, access to legal aid and legal assistance should be ensured. Confessional statements should be checked with due caution as the same may have been coerced. With regard to bail and anticipatory bail, the court needs to check whether the detention of the person is required for the purposes of investigation or not. Further, the court must also check whether he is likely to abscond or evade the process of law. The court should ensure legal assistance at the pre-trial stage in order to empower the arrested.

At the trial stage, a fair trial mandates that the accused is presumed innocent until proven guilty. The burden of proving the guilt of the accused lies on the prosecution. Even in cases involving reverse burden of proof, the prosecution is required to prove foundational facts, and only then does the onus shift onto the accused. The role of the prosecutor in ensuring a fair trial was highlighted.

The role of the judge in the trial was emphasized. It was stated that the judge controls the process. Further, the judge ensures that the burden of proof is discharged by the prosecution and that the guilt of the accused is established beyond a reasonable doubt. The judge is also responsible to ensure that the accused is afforded a fair trial. The discussions touched upon the competency of vulnerable witnesses and the assessment of competency. Reference was made to the judgments in *State v. Allen*, (1967) 70.wn.2d 690, *Chairman, Railway Board v. Chandrima Das*, AIR 2000 SC 988.

PRINCIPLES OF EVIDENCE: APPRECIATION IN CIVIL AND CRIMINAL CASES

The theme for the tenth session was the **Principles of Evidence: Appreciation in Civil and Criminal Cases**. It was stated that evidence is a journey or voyage for the discovery of truth. It is a reconstruction of past events before the court. The party who asserts a fact need to prove the fact and the other party has an opportunity to rebut it. Evidence is defined as that which a court of justice is permitted by law to take into consideration for ascertaining the truth of the fact or point in issue.

It was iterated that rigid rules of evidence are not applicable to tribunals. The broad principle and standard of proof that is to be followed in civil cases is the preponderance of probabilities and in criminal cases, it is proof beyond a reasonable doubt. It was suggested that in criminal cases the general principle is that an innocent person should not be held guilty and therefore a judge has to be very cautious while appreciating the evidence and convicting the accused. It was stated that *Falsus in uno falsus in omnibus* is not a rule of evidence in the criminal trial and it is the duty of the Court to engage the truth from falsehood, to shift grain from the chaff. It was stated that adjudication should be in accordance with the principle of evidence and should always adhere to the rule of law that includes principles of natural justice and fair hearing. It was stated that the principle of natural justice includes examination in chief, cross-examination, and re-examination. Different types of evidence viz. oral evidence, documentary evidence, direct evidence, indirect evidence, and circumstantial evidence were discussed. It was stated that direct evidence is the best evidence and circumstantial evidence is a rule of prudence. It was iterated that deaf and dumb witnesses will be tantamount to oral evidence and no particular number of witnesses shall, in any case, be required for the proof of any fact. It was iterated that it is not the quantity but the quality of evidence that is important. It was stated that a confession before the police is not a confession unless the accuracy of such a statement is proven before a court of law.

It was emphasized that the strict rule of evidence does not apply to the arbitration. The concept of leading questions and when they can be asked was explained. An overview of the presumption and reverse burden of proof was given. It was stated that for the reverse burden of proof firstly the prosecution has to prove the foundational facts beyond reasonable doubt and then only the burden shifts to the accused. It was emphasized that every presumption is rebuttable. Injured witnesses, hostile witnesses, expert witnesses, extra-judicial confession, and plea of alibi also formed part of the discussion. It was stated that expert opinion can be taken

as evidence but it has to be proved and can be rebutted. It was explained that Section 165 of the Indian Evidence Act gives tremendous power to a judge to ask relevant or irrelevant questions; however, such power should be exercised in accordance with the law and judiciously. It was advised that the evaluation of digital evidence should be done very cautiously. The importance of hash value and the certificate under section 65 B of the Indian Evidence Act, 1872 was deliberated upon. The importance of medical evidence was discussed and it was highlighted that medical evidence has great corroborative value.

ELECTRONIC EVIDENCE: NEW HORIZONS, COLLECTION,
PRESERVATION, AND APPRECIATION

The eleventh session on **Electronic Evidence: New Horizons, Collection, Preservation, and Appreciation** provided a conceptual understanding of electronic evidence. The participants were familiarised with the evolving technologies and the new sources of electronic evidence. Furthermore, the spoofing of emails, WhatsApp messages, call records, text messages and location history was demonstrated to the participants to highlight the ease with which such records can be tampered with. The participants were cautioned to treat every electronic evidence with due care to identify the real and fake/tampered electronic evidence. The speaker explained how fake/tampered evidence can be identified. It was stated that judges while appreciating electronic evidence must not accept every piece of evidence without testing it to determine if it is tampered with or not.

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