

Training Programme for Bangladesh Judges & Judicial Officers

[SE-07]

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The National Judicial Academy organized a 7-day training programme for judicial officers nominated by Bangladesh, from **16th to 20th January, 2023** at Bhopal. The programme was in pursuance to the Memorandum of Understanding (MoU) between the National Judicial Academy, India (NJA) and the Supreme Court of Bangladesh for organising Training and Capacity Building programmes for Bangladesh Judicial Officers. The training programme was held in two Phases. First Phase was held at the National Judicial Academy and Second Phase was held at the Rajasthan State Judicial Academy within the framework of a training module and curricula designed by the National Judicial Academy.

The programme included sessions on judicial skills, constitutional law, civil law, criminal law, human rights laws and correlative jurisprudence. The training also aimed to acquaint participants with elements of judicial behaviour- ethics, neutrality and professionalism, skills of judging and judgment writing. The programme facilitated discussions on court & case management and use of ICT in the administration of justice. There was emphasis on clinical/ case law analysis and interactive format during the sessions.

Session 1: Overview and Architecture of the Indian Constitutional Arrangement

The session was commenced by explaining the objective of the session to participants and the value of independence struggle, democracy and the Constitution was highlighted. It was opined that the Constitution is chosen by the people and it acknowledges what rights already exist and it confirms and guarantee those rights through the system of governance. The speakers then discussed the history of Bangladesh and the cultural affinities between Indian and Bangladesh were acknowledged. It was stated that India is a land of diversity and the language, culture and food habits are very diverse across the country. The fundamental principles of the Constitution of Bangladesh i.e. nationalism, socialism, democracy, secularism and corresponding provisions of the Constitution of India were discussed. The main features of the preamble of the Indian Constitution were highlighted. The role of preamble in the interpretation of provisions of the Constitution was explained to participants. The scope of power of the parliament to amend the Constitution was discussed. The basic features of the Constitution including sovereignty, democracy, republican form of government, socialist ideals, secularism, liberty, equality, fraternity and judicial review were explained. The importance of the fundamental rights and the directive principles of state policy and the interpretation of the right to life and personal liberty by the Supreme Court of India were explained. The judgment *Olga Tellis v. Bombay Municipal Corporation*, 1986 AIR 180 was referred in this regard.

The formation of the Indian Constitution by the Constituent Assembly was discussed and it was stated that the vision of the society is enshrined in the Constitution. The framing of the Constitution reflects the hope and aspiration of India. The debate regarding the precise role of the president of India at the time of framing of the Constitution was discussed. The land

reforms in India after the independence, abolition of the Zamindari system and the litigation regarding first amendment of the Constitution was explained. The judgments *Shankari Prasad v. Union of India*, MANU/SC/0013/1951, *Sajjan Singh vs State of Rajasthan* 1965 AIR 845, *In Re: The Berubari Union* AIR 1960 SC 845, *I.C. Golaknath vs. State of Punjab* 1967 AIR 1643, *Kesavananda Bharati & Ors. vs. State of Kerala* (1973) 4 SCC 225 and *ADM Jabalpur vs Shivkant Shukla* AIR 1976 SC 1207 were referred in the session.

Session 2: Indian Judiciary: Organizational Structure and Jurisdiction

The importance of district courts in the hierarchy of the Indian judiciary was explained to the participants and Articles 233 to 235 of the Constitution were referred. It was opined that the district courts are the firmest foundation of the judiciary as the real troubles of the society in its social, economic and legal context are brought before it. Then the hierarchy of the appellate courts was discussed and the jurisdiction of the High Courts and the Supreme Court was explained. The importance of appellate jurisdiction was discussed. The inherent powers of the court and the *parens patriae* jurisdiction were highlighted.

The speakers then focused on the role and responsibility of a judge and factors which help judges in discharging their duties. It was emphasized that judges must understand the meaning of concepts including justice, freedom, basic structure and constitutional morality. The judges must have thorough understanding of the Constitution from beginning to end. It was emphasized that democracy is the best form of government and all institutions under it are bound by the Constitution. It was opined that the word *dharma* implies truth and reality and importance of the *dharma* was discussed. It was emphasized that the Constitution is the supreme law and all laws must be subservient to the Constitution. Articles 13(1) and 13 (2) of the Constitution were referred and importance of the Part III of the Constitution was highlighted. The powers of the judiciary provided by the Constitution were discussed and the doctrine of separation of power was explained. Articles 50, 53 (1), 121, 211 and 212 were referred and the independence of judges was discussed. The role of judges in the protection of fundamental rights was highlighted. The right to equality and fundamental rights were discussed and Articles 14 to 18 and Articles 20 to 25 of the Constitution were referred. The concept of reservation and its judicial interpretation was discussed and Articles 15 and 16 were referred. Various rights provided by the Constitution including right to freedom of speech and expression, right to organize peaceful assembly without any arms, right to form association and unions and right to freedom of trade were discussed.

The original and appellate jurisdiction of the Supreme Court, precedential value of the Supreme Court judgments, inherent powers of the Supreme and its advisory jurisdiction were discussed and Articles 131, 134, 134 A, 141, 142 and 143 of the Constitution were referred. The power of the Supreme Court to transfer a case from one court to another or taking over the case to itself from any court of the country under Section 446 of the Cr.P.C. and Section 25 of the C.P.C. was highlighted. The power of judicial review and its scope was explained to the participants. It was stated that in the judgment *State of Madras vs. V.G. Row Union of India & State Interveners of Travancore* 1952 AIR 196, Justice Patanjali Shastri held that the power of judicial review vests with the Supreme Court. The judgment *Kesavananda Bharati & Ors. v. State of Kerala* (1973) 4 SCC 225 and basic structure doctrine were discussed. The judgments *Indira Nehru Gandhi vs Shri Raj Narain & Anr* Appeal (Civil) 887 of 1975, *ADM Jabalpur vs Shivkant Shukla* AIR 1976 SC 1207, *Maneka Gandhi vs Union of India*, 1978 AIR 597 and *Indra Sawhney vs Union of India* AIR 1993 SC 477 were referred in the session.

The issues related to procedure of appointment of judges of High Court and the Supreme Court and independence of the judiciary were discussed. The session was concluded with discussion on the power of court against contempt.

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

The speakers commenced the session by referring to the value of human rights as mentioned in the Universal Declaration of Human Rights. It was stated that all humans are equal in dignity and rights and they should act towards one another in the spirit of brotherhood. The concern was expressed on human rights violations. It was emphasized that there must be ideals in life and the Constitution provides those ideals. Democracy was explained as the best form of government and it was stated that it supports constitutional idealism and values. Then the goals, role and mission of courts were explained to participants. It was emphasized that justice is the most important part of the Constitution. Justice is a virtue and a value and it transcend all boundaries. It was stated that the Constitution of India incorporates a liberal theory of justice and citizens should get the economic, social and political justice. The independence of India and consolidation of the princely states were explained and it was stated that the feudal set up of the society was transformed into the constitutional democracy with social, economic and political justice to all. It was opined that the doctrine of socio-economic justice is translated in Part III and Part IV of the Constitution and a new social order was created to raise the standard of living of all.

The jurisprudence related to social and economic justice was discussed and judgments of the Supreme Courts dealing with such issues were discussed. The contribution of the social justice bench of the Supreme Court was highlighted. The concept of the constitutional morality was referred and it was stated that morality cannot survive without ideals and values. The creative role of judges for social and economic change through justice dispensation was highlighted. It was stated that access to justice is an element of the rule of law and Article 32 and 226 were referred. The legal and institutional framework relating to free legal aid and lok adalat in India was discussed. The issues relating to delay in the dispensation of justice were discussed and it was opined that cases should be decided within a reasonable timeline. It was emphasized that adjournments should not be granted in a casual manner and technology should be used to expedite cases in courts. The judgments *Maneka Gandhi vs Union of India*, 1978 AIR 597, *ADM Jabalpur vs Shivkant Shukla* AIR 1976 SC 1207, *Kesavananda Bharati & Ors. v. State of Kerala* (1973) 4 SCC 225, *State of Madras vs. V.G. Row Union of India & State Interveners of Travancore* 1952 AIR 196 were discussed in the session.

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

The session was commenced with discussion on aspects related to judicial life and personal life of a judge while serving the institution. The issues of relationship with bench and the impact of judging on society were discussed. It was stated that judges remain in defenseless position and they cannot explain their conduct in public. The importance of transparency and accountability was explained and it was stated that media is invading the life of judiciary. It was opined that the day to day conduct of judges are continuously observed by advocates and litigants. The issues such as to what extent the sobriety should be maintained and to what extent judges' social obligations to be curtailed were discussed. It was opined that ethics is the spinal cord on which the uprightness and the integrity of a judge are measured.

The speakers then dealt with various aspects of judicial ethics, neutrality and professionalism. Various challenges in the day to day operation of courts and modulation of judicial behavior were explained. The behavior of a judge in court should be sober, reasonable and calm. The value of listening in courtroom was emphasized and it was opined that listening reduces friction with lawyers in courtroom. The value of a calm mind with a modest life was discussed. It was opined that four things improves a great judge i.e. hear courteously, answer wisely, consider soberly and decide impartially. The dispensation of justice should be done in a manner which enhances faith, trust and confidence of people. The doctrine of audi alteram partem was emphasized and it was opined that a judge should give patient hearing to everyone in the courtroom. It was stated that orders and judgments should be capable of execution and Article 261 (3) of the Constitution was referred in this regard. It was opined that there should be identification of standards of judicial excellence and judges must understand how to adhere to those standards. The judgment *All India Judges' Association v. Union of India* (2002) 4 SCC 274 was discussed.

It was emphasized that as a measure of docket management, the judge should ensure that cases are decided according to merits and this will prevent filing of frivolous cases in court. The importance of punctuality was explained and it was emphasized that judges should sit in the court at official time. The element of judicial temperament including independence, courtesy, patience, dignity, open-mindedness, impartiality, decisiveness, social conscience and compassion were discussed. The attributes of a judge including honesty, probity, sterling character, commitment to the cause of justice and integrity were highlighted and it was emphasized that judges should live like a hermit. The judge should have self confidence and should exhibit leadership qualities in courtroom. The value of professionalism was highlighted and the attributes of professionalism were discussed. It was emphasized that judges should be competent and should have comprehensive knowledge of law. The value of research skills was also explained to the participants.

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

The session was commenced by stating that judging skills can be enhanced through learning about the art, craft and science of judgment writing. The nature of jurisdiction of the district judiciary was explained and the use of different style of writing in an interim order and in a final judgment was highlighted. The need of skills regarding writing of reasoning, conclusion and moulding of relief was emphasized. It was stated that although the procedural laws provide basic guidance on how to frame issues, delivery of judgment and conducting proceedings but there are many more things in these essential skills which can be understood through this session. The issues in judgment writing were highlighted and it was emphasized that the cut and paste approach in writing judgment should be avoided.

The speaker then explained the art and science of judgment writing. It was emphasized that admission of parties should be considered because admitted facts are not required to be proved and it narrow downs the issues. The issues should be analyzed and they should be narrowed down. Then stages of findings and evidence were explained. It was stated that while appreciating the evidence, the latent evidences such as circumstantial evidence and evidence of an independent party should be considered. The planning and organization for writing judgment was explained. The drafting and editing of judgment was discussed. The importance of précis writing while drafting judgment was emphasized. The use of language should be simple and cordial in the judgment. The value of short judgment was explained and

it was stated that there should not be any repetition in the judgment. The rejected arguments of advocates should not be included in the judgment. The use of precedents in the judgment was explained. The reasoning should not be casual and it should be written in an organized manner. It was stated that there should be timeliness in writing judgment and delay in writing judgment should be avoided. The sensitivity in cases involving victims of sexual offences and heinous offences was emphasized. It was highlighted that before starting the judgment it should be structured in a planned manner and judgments should not be unnecessarily filled with paragraphs from precedents. The judges must ensure that cited judgments are relevant to the issue in the case. The use of strictures in the judgment should be avoided and opportunity of hearing should be given to the person against whom the stricture is sought to be passed. The judgment should not reflect the anger or emotion of the judge if strictures or comments are required to be passed. The emphasis was given on using proper reasoning in judgment as litigants and advocates like to know the reasons for decision. There should be proper marshalling and appreciation of evidence otherwise the reasoning of the judgment becomes very weak. The judgment should be supported by laws, evidence and witnesses' statements. It was suggested that personal opinions and views should be avoided in the judgment.

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

The session was commenced by stating that integrity and conduct of subordinate staff should not be mismatched with the integrity and conduct of judges otherwise they can mislead judges. The issue regarding how to dispose of cases by maintaining the cordial relationship with the bar and effectively supervising the court and subordinate staff was highlighted. The speakers focused on different aspects of court management and it was stated that management means getting things done in available resources. It was opined that ensuring accuracy in recording evidence and deciding case is the most important duty of the judge. The issue that whether assurance can be given to a litigant regarding time bound disposal of his case was discussed. It was emphasized that judges should uphold their dignity before bar by deciding cases with proper preparation. The witnesses should not face any inconvenience in court. The role and profile of judges were discussed and it was stated that the need of court management arose because of failure of courts to deliver justice within reasonable time. Then management of various levels in court was discussed and it was emphasized that judge should manage the court through cooperation and not through coercion. The profile of various levels of courts was explained and it was stated that circulars of high courts should be implemented by staff with utmost sincerity. The mind of the judge should not be occupied with personal matters while hearing advocates and litigants otherwise the judgment will go astray. The strength of a judge lies in writing the judgment with accuracy. It was opined that the quality time should be given to complex matters and soon after finishing the arguments the judge must deliver the judgment without delay. The judge must know their strength and should efficiently manage the court. The issue of access to justice was highlighted and it was emphasized that judges should manage their court in a way that enhances public trust and confidence in courts. The staff should be motivated so that cases are disposed in a timely manner. The communication with advocates should be effective and there should be reciprocity of respect.

The speakers then focused on case management and it was emphasized that the judge should strive to achieve the good result with fewer resources and less time. There should be attempt to cutting cost. The effective case management signifies the judge's control on the progress of proceeding and advocates should not be allowed to control the proceedings. The advocates

should not be allowed to make unnecessary and verbose arguments and they should be requested to address the issues in the case. It was emphasized that technology should be used in court processes such as service of summons. There should be decentralization of functions and judges should focus on core judicial function. It was stated that procedural law is also a form of management of case progress and procedure should be adhered in a sincere manner. The essential elements of summary judgment were explained to participants. It was emphasized that scrutiny of matters should be done periodically to ascertain pendency of cases. The cases older than 5 years or 10 years should be decided on priority basis. The other elements of case management including classification of cases according to their complexity and tracking of cases were discussed with the participants.

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

The session was commenced by highlighting the importance of evidence in trial court. It was stated that the bulk of law of evidence consists of negative rules and it states what is not included in the evidence. It was opined that the law of evidence is a procedural law and incorporates principles of natural justice. The principles of natural justice should be followed in the procedure of courts. The meaning of evidence was discussed with the participants and it was stated that the rule of prudence is writ large in the law of evidence. The evidence is assessed on the basis of material before the court and the accuracy of facts has to be determined accordingly.

The speakers described the importance of evidence and it was stated that the trial is a voyage for discovery of truth. The court is interested in finding the truth and advocates seek proof in support of their clients. The trial involves reconstruction of past events and evidence provides the basis for such reconstruction. The principles related to burden of proof were explained and it was stated that one who asserts the allegation must prove the facts. It was stated that the confession before police is not admissible. The elements of standard of proof in civil and criminal cases i.e. proof beyond reasonable doubt and preponderance of probability were discussed. The classification of evidences in trial court was explained which included direct evidence and indirect evidence or circumstantial evidence. The statement of a deaf and dumb witness is taken on a document and it amounts to oral evidence. The documentary evidence is the best form of evidence and it is predominantly used in civil trials. Regarding circumstantial evidence it was stated that links in the chain should be complete and suspicion cannot take the place of proof. It was stated that the evidence of child witness, interested witness and related witness should be carefully analyzed. The documents must be exhibited before judge takes such document into account while evaluating the evidence. It was emphasized that the judge should play an active role in the trial and should not be a mere spectator. Section 165 of the Indian Evidence Act was referred in this regard.

The process of examination-in-chief and cross examination was explained to the participants. The use of case diary during trial was discussed and various aspects of medical evidence and postmortem report were highlighted. The process of assessment of the credibility of medical evidence and other expert evidence was explained. Then the issue how to assess oral evidence and medical evidence was discussed. It was emphasized that the injured witness is the best witness. The value of correctional mechanism in the form of appellate forums was highlighted. The consideration of extra judicial confession in a trial was explained. Then important requirements for a court for adjudicating sexual offences involving a child victim were explained. The court should exhibit sensitivity towards the victim and should deal with

the victim directly. The approach should be same in the child custody matters and matters involving vulnerable witnesses and court should interact with the child with sensitivity.

Session 8: Evidentiary Presumptions: Onus and Burden of Proof

The session was commenced with the discussion on definition of the word “proved” and it was stated that court have to arrive at the truth from the material before it and it should be done within the bounds of law. The judgment *Shahjahan Ismail vs. State of Maharashtra* 2022 SCC online 883 was referred in the session. The discussion then focused on issue related to evidentiary value of inquest report and postmortem report and it was opined that the inquest report has a weak evidentiary value as compared to the postmortem report. The delay in trial of civil suit due to production of multiple documents was discussed and it was stated that documentary evidence are the best form of evidence provided they are exhibited and proved. The process of taking evidence from child witness in POCSO cases was discussed and it was emphasized that a judge should help the child if he wants to make a statement. The value of statement of accomplice was discussed and it was opined that the consideration of accomplice’s evidence will depend upon presumption based on Section 114 B of the Indian Evidence Act. Section 133 of the Indian Evidence Act which defines the competence of the person was discussed.

The issue how to find that whether the victim’s injury is self inflicted or not was discussed. It was opined that the doctor should be examined in the court to address this issue and the questions can be put to the doctor. It was stated that placement of the injury should be checked and the possibility of self infliction should be ascertained in such cases. If there is no possibility of self infliction then the case stands proved against the accused. The procedure prescribed in law should be followed in this regard. The scope of judicial interference under Section 165 of the Indian Evidence Act was discussed. The judgments *Himanshu Singh Sabharwal vs. State of M.P.*, AIR 2008 SC 1943 and *Siddharth Vashisht vs. State of NCT* 2010 (6) SCC 1 were discussed. It was opined that scandalous and indecent questions are not permitted under Section 165 of the Indian Evidence Act. There is no prohibition on asking irrelevant questions under Section 165 of the Indian Evidence Act but the judgment should be based on relevant evidence. The discussion then focused on framing of charge and admission of documents and valuable inputs were given by the speakers on these issues.

Then the issues relating to reverse burden of proof were discussed and it was stated that reverse burden of proof deals with the special nature of crimes relating to economic offences, drug trafficking, terrorism and offences against women and children. Section 106 of the Indian Evidence Act which deals with special knowledge of a person and the burden of proof on him was referred. It was emphasized that even when there is a reverse burden on the accused, the prosecution should first discharge its duty by proving certain foundational facts. The judgment *Noor Aga v. State of Punjab* (2008) 6 SCC 417 was discussed.

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

The session commenced by emphasizing that the world of electronic evidence is very complex and we are unable to keep pace with the law and purpose of judicial governance when it comes to electronic evidence. It is significant to understand that the nature of human behavior is tuned by electronic gadgets. Therefore, if electronic devise are becoming the cause of bigger crimes that we can imagine then the thematic areas of the session are bound to be closer to the hearts of the participants. Ways to know the authenticity of an email and whether it is spoofed or not was also elaborated. While

discussing about the collection of evidence in cases involving fake social media account it is significant to collect information from the profile of the suspect, location, circumstances etc. It was emphasised that any act through investigation ought not to compromise evidence and all procedures should be acknowledged and preserved in the mode substantiated by an independent third party. It was stressed that all such information has to be collected by a seasoned professional only. Subsequently, steps to lead in electronic evidence and standards of proof with reference to section 65B of Indian Evidence Act, 1872 was elaborated. The complications involved in ascertaining and appreciating the magnetically recorded confessions and their evidentiary value in criminal trials was also discussed. It was proposed that while appreciating evidence standard of proof, source of authenticity and best evidence rule are very substantial.

Session 10: Forensic Evidence in Civil and Criminal Trials

The session commenced by highlighting the forensic science jurisprudence in India. To begin with it was emphasised that Forensic evidence is based on Locard's principle which says that "every criminal activity leaves traces" and the work of a forensic expert is to identify those traces. Forensic evidences are all the more relevant in cases where there are no direct evidences or eye witnesses to the crime. It was emphasised that in contemporary time forensics are not just limited to criminal trials only rather its ambit has expanded to civil trials, regulatory trials, paternity tests etc. The Indian legal scenario with respect to forensics has provisions in the Indian Penal Code, Indian Evidence Act, 1872 [IEA] and Criminal Procedure Code, 1973 [Cr.P.C.] etc. Subsequently, it was stressed that forensic science is a blend of science and law. It was underscored that criminalistics is the baseline for scientific investigation that enhances the probity of evidence and aids in achieving justice. It was highlighted that the synthesis of science and law can be traced in the judgments of - *Kathi Kallu Oghad v. State of Maharashtra* AIR 1961 SC 1808, *Nandini Satpathi v. Union of India* 1978 AIR 1025, *Selvi v. State of Karnataka* 2010(7) SCC 263, *Ritesh Sinha v. State of UP* (2019) 8 SCC 1. Thereafter, various legal complexities with respect to the issue of admissibility and scientific certainty of forensic evidences were dwelt upon. While discussing the admissibility of expert's testimony the two primary admissibility standards in the United States found in two seminal cases- D.C. Circuit case, *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), and a U.S. Supreme Court decision, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) were discussed. The former case essentially focuses on whether expert's opinion is generally accepted by the relevant scientific community whereas the later, offers a list of factors to consider. While discussing the Indian legal framework emphasis was placed on Section 45 and 51 of IEA; Section 291, 292 and, 293 Cr.P.C. it was highlighted that probable scientific evidence can be collected via forensic footprints and deception detection techniques (DDTs). Forensic footprints may include- medico-legal report; documents like- writing, signature samples with expert opinion by Government Examiner of Questioned Documents (GEQD), fingerprints, footprints, tyre marks etc. Cyber evidence, ballistics, acoustics etc. evidences collected via DDTs may include- biological content like, serology, chemistry, dental analysis, DNA analysis, Narco-analysis, polygraph, brain mapping etc. Later part of the session discussed briefly discussed the concept of Chain of Custody. Fundamental issues with respect to forensic misconduct and frauds was discussed in the light of *Rajiv Singh v. State of Bihar* (2015 SCC OnLine 1336); *State (NCT of Delhi) v. Khurshed* (2018 SCC OnLine Del 10347); *Ankush Maruti Shinde v State of Maharashtra* (2019) 15 SCC 470.

Session 11: Criminal Justice Administration and Human Rights

The session started by emphasizing upon the core principles of criminal justice administration like- Innocent unless proven guilty, Guilt beyond reasonable doubt, burden of proof, *dejure and defacto* situation etc. Reference was made to *Babu v. State of Kerala*, (2010) 9 SCC 189, held that - every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. However, subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence. For this purpose, the nature of the offence, its seriousness and gravity thereof

has to be taken into consideration. The courts must be on guard to see that merely on the application of the presumption, the same may not lead to any injustice or mistaken conviction. Further, *Kali Ram v. Himachal Pradesh*, AIR 1973 SC 2773 was also referred. Subsequently, elements of a fair trial at the pre-trial stage were highlighted viz., Rights on arrest that ought not to be arbitrary, production within 24 hours, 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, information to a family member, right to get a counsel with language known to the accused etc. With respect to the powers of a magistrate *Sakiri Vasu v. State of U.P. and others* 2008 2 SCC 409 was elaborated. The said case highlighted that a magistrate can pass directions to ensure that a “proper investigation” is made. The magistrate has “all such powers which are necessary to ensure that a proper investigation is made “which include “monitoring” an investigation. Thereafter, stages of a trial were discussed that include- right to a lawyer - free legal aid from the stage of production before the magistrate *Khatri v. State of Bihar* 1981 2 SCC 493; right of accused to know the allegations; right to be tried in the presence of the accused; right to get copies of all documents; rights during trial- chief, cross and re-examination, to examine himself etc.; questioning of the accused by the court; right to recall witness etc. Power of the court to examine the accused under Section 313 Cr.P.C. was also elaborated upon. Reference was made to *Shri Surjit Biswas vs State of Assam* (2013) 12 SCC 406. It is an established legal proposition that in a criminal trial, the purpose of examining the accused person under Section 313 Cr.P.C., is to meet the requirement of the principles of natural justice, i.e. *audi alterum partem*. In *Kali Ram Vs Himachal Pradesh*, AIR 1973 SC 2773, the Supreme Court observed 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.*” The concluding part of the session briefly discussed the Witness protection scheme 2018 formulated by the Supreme Court.

Session 12: Human Rights: Fair and Impartial Investigation

The session commenced by emphasizing upon the meaning of fair trial. It was emphasised that right to a fair trial is universally acknowledged as a fundamental human right and nations are required to advance a legal regime for the same. The principles and features of fair trial in the Indian context viz. presumption of innocence, burden of proof, right to remain silent, right against self-incrimination, right against double jeopardy and right to legal assistance etc. was also elaborated. Emphasis was placed on *Nilabati Behera v. State of Odisha* (1993) 2 SCC 746, which highlights that the right guaranteed under Article 21 of the constitution cannot be denied to convicts, under trials, or other prisoners in custody except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. The Supreme Court affirmed that Article 32 empowers courts to grant compensation for deprivation of a fundamental right. The Court explained that without this power to render compensation, the Court’s role as a protector of constitutional rights is merely a mirage, and might even create an incentive to torture in certain circumstances. Reference was made to the Bangladesh Supreme Court judgment in *Bangladesh Legal Aid and Services Trust and others v Bangladesh [2003] 55 DLR 363(HCD)*. In the said case the higher judiciary of Bangladesh took a proactive stand in prevention of arbitrary arrest and detention and protection of people from torture. Subsequently, it was suggested that judges can ensure fair trial and fair investigation only when they practice Rule of Law.

Session 13: Re-engineering Judicial Processes through ICT

The session initiated by focusing upon the technological advancements that have been taking in the Indian judiciary through ICT. It was emphasised that technology offer courts a crucial commodity i.e., information which 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; reduces hours of operation; optimizes court locations. The pre-requisites to harness technology necessitates to identify needs of judges, lawyers and litigants; examine process re-engineering opportunities; migrate from document to content management etc. All

these factors are significantly important to improve the quality of justice, access to justice and public trust and confidence in courts as an institution. The Bangladesh e-judiciary initiatives were briefly discussed. The e-courts project was phase wise elaborated upon. The National Judicial Data Grid (NJDG) was highlighted. The NJDG provides case data for all courts through a web portal on almost real time basis, with a dashboard and drill down facility to reach the case details in each case. It also helps to ascertain the number and type of arrears in every court in the country for better judicial monitoring and management. It was accentuated that ICT has considerably augmented judicial efficiency both qualitatively and quantitatively.

Session 14: Ratio of a Precedent

The session commenced by highlighting the significance of precedents both in theory and in practice. It was underscored that India and Bangladesh both are governed by binding precedents which is the cardinal to the common law system which the aim to promote certainty and consistency. As Rousso Pound said “law must be stable but yet it cannot stand still. Judicial precedent is generally defined as a decision of a court considering an authority for an identical or similar case arising thereafter, with a similar question of law. Every decision comprises of three elements viz., finding of material facts, principles of law applicable arising to those facts and the judgment or decision containing conclusions and directions based on findings of facts and legal principles applied to those facts. The concluding part or the operative portion contains the directions and should be kept distinct from the reasoning on which the decision is arrived. The operative part binds the parties to the decision which the reasoning which is the abstract ratio is binding in future for all. For the parties of the case what is relevant is the conclusion or the final decision. It was stressed that a decision is binding not because of its conclusions but because of its reasoning which is the ratio. It was accentuated that judicial precedent is binding because of *stare decisis* which means “let the decision stand” or “to stand by things decided”. The peculiar feature of the English common law. In India Article 141 and in Bangladesh Article 111 of the respective constitution mandates that the law laid down by the Supreme Court of the will be binding on all throughout the territory of the country. Additionally, in India Article 144 and in Bangladesh Article 112 of the constitution mandates that all authorities shall act in aid of the Supreme Court. The difference between Judicial Precedents and Legislative Rules was emphasized i.e., judicial precedents gets evolved with due course of time however, legislative rules are endorsed and are specific in principle.

Session 15: Landmark Judgments: Celebrating Decadal Masterpieces

The session commenced by emphasizing that landmark is an event, discovery, change marking an important stage or a turning point. Therefore, landmark judgments are those which either set a benchmark or herald a change. It is a judicial decision that significantly changes the existing law. Lord Lindley in 1863, identified four criteria for reporting a case. He suggested that a case should only be reported if it introduced a new principle, modified an existing principle, settled a disputed or uncertain issue, or was particularly instructive. It was stressed that the Supreme Court of India in the last decade has given many landmark judgments that have molded the law, given the law new emphasis and direction and impacted on the life of the people and some have influenced juristic thoughts in other jurisdictions as well.

While discussing *BP Singhal v. Union of India*, (2010) 6 SCC 331, on the question of removal of governors was discussed. The Supreme Court in the said case held that the role of the Governor of a State is to function as a vital link or bridge between the Union Government and the State Government. He is required to discharge the functions related to his different roles harmoniously, assessing the scope and ambit of each role properly. It was stressed that this is a landmark judgment where the foundations of judicial review were strengthened and public authorities held accountable for all actions. The law saw a definite shift from a culture of authority to a culture of justification. The Court recognized and reiterated the position and role of the Governor as envisaged by the Constitution. Thereafter, the privacy judgment i.e., *K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1 was

discussed. It was stressed that said judgment has underlined the essential position of the individual as the pivotal point of the Constitution. The judgment stressed that the individual is not a cog in the wheel rather an individual has his inalienable rights and primal place in society. Subsequently, *Aadhar* judgment (2019) 1 SCC 1, *Shreya Singhal v. Union of India* (2015) 5 SCC 1, *Nabam Rebia & Bamang Felix v. Arunachal Pradesh Legislative Assembly*, (2016) 8 SCC 1, *Haryana Vidhan Sabha v. Kuldeep Bishnoi* (2015) 12 SCC 381, *Shrimanth Balasaheb Patil v. Karnataka Legislative Assembly*, (2020) 2 SCC 595, *Keisham Meghachandra Singh v. Manipur Legislative Assembly*, 2020 SCC OnLine SC 55, *Roger Mathew v. South Indian Bank Ltd.* (2020) 6 SCC 1, *Lily Thomas v. Union of India*, (2013) 7 SCC 653, *Subramaniam Balaji v. State of TN* (2013) 9 SCC 659, *PUCL v Union of India* (2013) 10 SCC 1, *Gujarat Ujra Vikas Nigam v. Amit Gupta* (2021) 7 SCC 209 were also discussed.

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