

NATIONAL JUDICIAL ACADEMY



Training Program for Maldives Judicial Officers [SE-10]

(13th - 16th February, 2023)

PROGRAMME REPORT

PROGRAMME COORDINATORS:

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Backdrop of the Training Program

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 13th to 16th February 2023. The program included sessions on constitutional, civil, criminal, human rights laws, and correlative jurisprudence. The program aimed to acquaint participants with elements of judicial behavior, judging skills and judgment writing. While giving the account of the Indian e-Judiciary the objectives of the e-Courts Mission Mode Project to enhance judicial productivity both qualitatively and quantitatively were underscored. The discourse also focused on environmental law and the contribution of the Supreme Court of India to environmental jurisprudence. An insight into the evolution of technology and contours of electronic evidence also formed part of the discussion.

Session 1 - Overview and Architecture of the Indian Constitutional Arrangement

Speakers: Prof. (Dr.) Balram Gupta and Prof. (Dr.) V. Vijayakumar

On the theme of *Overview and Architecture of the Indian Constitutional Arrangement*, the freedom struggle and the chronological events that lead to the drafting of the Constitution was accentuated. It was stated that the Indian Constitution is an organic document that has evolved with the changing needs and aspirations of the people. Emphasis was laid on the significance of the Preamble of the Constitution and the noble objectives of liberty, equality and fraternity. The similarities of the Maldivian Constitution with the Indian Constitution were pointed.

Thereafter, the powers of the Supreme Court and High Courts were explained. It was stated that the law declared by the Supreme Court is binding on all courts in India and the law declared by the High Courts are binding on all the courts within its territorial jurisdiction. The jurisdiction of the Supreme Court under Articles 32, 136, and 142 was discussed in detail. 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 in order to do 'complete justice'. It was suggested by the participants that such power is absent in their Constitution.

Session 2 - Goals, Role and Mission of Courts: Constitutional Vision of Justice

Speakers: Prof. (Dr.) Balram Gupta and Prof. V.K. Dixit

The session commenced by stating that the mission of courts shall be in tune with the constitutional principles. It was stressed that the courts are non-partisan institutions and it is the duty of courts to protect the oppression of the citizens, more so when it is inflicted by the State. Thereafter, the role played by the Supreme Court of India in protecting the fundamental rights was emphasised. While discussing the evolution of the basic structure doctrine in India the decision in *Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225* was discussed. The decisions in *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* were also referred.

Subsequently, on the interplay of Directive Principles of State Policy and Fundamental Rights the decision in *Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545* was highlighted wherein it was observed that Directive Principles of State Policy are fundamental in the governance of the country and they must be regarded as equally fundamental to understanding and interpretation of the meaning and content of fundamental rights.

Session 3 - Elements of Judicial Behaviour: Ethics, Neutrality and Professionalism

Speakers: Justice Roshan Dalvi and Justice Ajay Tewari

On the theme of *Elements of Judicial Behaviour: Ethics, Neutrality and Professionalism* it was amplified that judicial function is not a power rather it is an obligation. The standards of judicial ethics laid down in the Bangalore Principles of Judicial Conduct was discussed. They are as follows:

- Independence
- Impartiality
- Integrity
- Propriety
- Equality
- Competence and Diligence

Further, the distinction between personal independence and institutional independence was delineated. It was iterated that personal independence implies complete freedom in making decisions, on the other hand, institutional independence is the freedom of the judiciary from the executive. Further, the decisions in *High Court of Judicature of Rajasthan v. Ramesh Chand Pallwai* (1993) 3 SCC 72, *Tarak Singh v. Jyoti Basu* (2005) 1 SCC 201, *Daya Shankar v. High Court of Allahabad* (1987) 3 SCC 1, *High Court of Judicature of Bombay v. Shashikant Patel* (1987) 3 SCC 1 and *State of West Bengal v. Shivananda Pathak*, (1998) 5 SCC 513 were referred.

Session 4 - Judging Skills: Art, Craft and Science of Drafting Judgments

Speakers: Justice Roshan Dalvi and Justice Ajay Tewari

The session on *Judging Skills: Art, Craft, and Science of Drafting Judgments* commenced with the assertion that a judge is known by its judgments. Thereafter, sensitivity in judgments in the context of *Aparna Bhat v. State of Madhya Pradesh*, 2021 SCC OnLine SC 230 was deliberated. In this case the Supreme Court while setting aside the bail condition, directed the courts to desist from expressing any stereotype opinion, in words spoken during proceedings, or in the course of a judicial order.

Thereafter, the decision in *State Bank of India v. Ajay Kumar Sood*, 2022 SCC OnLine SC 1067 was discussed wherein the Supreme Court remitted the proceeding back to the High Court for consideration afresh because of incomprehensible judgment. It was observed that the reasoning in the judgment should be intelligible and logical. The findings and directions should be precise and specific. The decisions in *Sarla Sood v. Pawan Kumar Sharma*, 2017 SCC OnLine SC 1673 and *Anil Rai v. State of Bihar*, (1980) 1 SCC 81 were also referred.

Further, the steps to write a judgment were discussed. They are as follows:

- I. Beginning before the beginning:
 - Sound grasp of pleadings and important issues;
 - Attention to the arguments advanced on behalf of the parties;
 - Identification of law applicable to the case.
- II. Dealing with factual history:

- After identifying the contesting issues, judges must focus on the relevant facts. An extensive elaboration of irrelevant facts is an unnecessary exercise.
- Judges should use facts in a judgment in the following ways:
 - As an introduction to set the context
 - To mention time, place and sequence of events.
 - To arrive at a logical conclusion while deciding mixed questions of law and facts.

III. Setting out the law:

- The judges ought to provide summarized provisions of law.
- The exact provisions ought to be cited in the event of interpretation of a particular word of the provision.
- Instead of quoting from the relevant cases, the judges should paraphrase the relevant portions.
- Repetitions of phrases should be avoided.

IV. Stating the Conclusion:

- There must not be any scope of ambiguity in the Judgment.
- The Judgment must address all the issues.

Session 5 - Judge, Master of the Court: Court and Case Management

Speakers: Justice Roshan Dalvi and Justice R.C. Chavan

On the theme of *Judge, Master of the Court: Court and Case Management* emphasis was placed on the elements of management – planning, organizing, directing, coordinating, and controlling as expounded by Peter Drucker. It was suggested that Judges must bear in mind that no case is inherently complex or protracted; it is made complex and protracted by inefficient practices. The case management initiatives in the United Kingdom were highlighted in the context of Access to Justice Final Report by The Right Honourable the Lord Woolf.

Further, the stages of adjudication where case management tools can be employed were dwelt upon. The business management principles which are applicable to court management were discussed. It was stated that integrity and conduct of subordinate staff is equally important as that of a Judge. It was iterated that the relationship between the judge and the staff should be of

cooperation and not coercion. Further, it was suggested that there should be decentralization of functions to enable the Judge to devote more time on core judicial function.

Thereafter, it was underscored that the need of court management arose because of failure of courts to deliver justice within reasonable time. It was emphasized that judges should manage their court in a way that enhances public trust and confidence in courts. It was stated that case management is embedded in the procedural laws, hence it should be adhered to strictly. It was emphasized that scrutiny of matters should be done periodically to ascertain pendency of cases. The cases older than five years or ten years should be decided on priority basis.

Further, elaborating on justice system administration distinction was drawn between case management and court management. While case management involves timely disposal of cases, court management includes, professional conduct of judges, time management, board management, registry management, bar management and self-management.

Session 6 - Re-engineering Judicial Processes through ICT

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

The session commenced by focusing upon the phase-wise overview of the e-courts project. The Phase-I focused on computerization of courts. Each court was provided with a server room and every district was provided with a website. Information like leaves of judges, nearest police stations etc. were displayed in the website. All these facilities were provided to 14, 436 courts. From 2014, the E-Committee of the Supreme Court of India started Phase-II in which National Informatics Centre (NIC) developed Case Information Software 2.0 which ensured that when a case was filed in the court the details of the case were fed into the server, national server and finally to the data recovery centre. The third phase was touted to be instrumental for judicial governance since it will focus on paperless courts, digitalization of records, live streaming of court proceedings among other things.

An overview of The National Judicial Data Grid (NJDG) was provided. 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. Subsequently, the participants were introduced to a website designed for the Indian judiciary with the domain

name - ecourts.gov.in. This website contains the information of all courts in India. Further, the service of summons through NSTEP was elaborated.

Thereafter, the need of making optimum use of technological innovations was highlighted by elucidating issues like transformation of courts through digitization of old records, use of electronic devices, improving connectivity in courts and keeping abreast with the aspirations of the society. It was accentuated that ICT has considerably augmented judicial efficiency both qualitatively and quantitatively.

Session 7 - Jurisprudence on Environmental Law: Contribution of the Supreme Court

Speakers: Mr. Kunal Satyarthi and Mr. Ritwik Dutta

The session commenced by elaborating upon the *parens patriae* principle, Public Trust Doctrine, Polluter Pays principle, Precautionary principle and climate change issues through various judgments. The Polluter Pays Principle as interpreted by the Supreme Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. As regards the jurisprudence developed in *Animal Welfare Board v. A Nagaraja*, (2014) 7 SCC 547 it was noted that the Court has also a duty under the doctrine of *parens patriae* to take care of animals, since they are unable to take care of themselves as against human beings. It was highlighted that every species has an inherent right to live and shall be protected by law, subject to the exceptions provided out of necessity. Animals also have honour and dignity which cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attack. As regards the polluter pay principle the decision in *Research Foundation for Science (18) v. Union of India*, (2005) 13 SCC 186 was highlighted wherein it was clarified that the polluter pay principle means that the producer of goods and other items should be responsible for the cost of preventing or dealing with any pollution that the process causes. The principle also does not mean that the polluter can pollute and pay for it. In *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388 it was observed that our legal system is based on English Common Law and therefore, includes the Public Trust Doctrine as part of its jurisprudence. The State is the Trustee of all natural resources which are by nature meant for public use and enjoyment. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. Thus, the Public Trust doctrine is part of the law of the land. Also, in *Centre for Environmental Law v. Union of*

India, (2013) 8 SCC 234 the state was referred as a custodian of natural resources which has a duty to maintain them not merely for the benefit of the public, but for the best interest of flora and fauna and wildlife. It was pointed that the doctrine of 'public trust' has to be addressed in that perspective. Further, it was asserted that many of our principles like sustainable development, polluter pay principle, and intergenerational equity have their roots in anthropocentric principles. In *T.N Godavarman Thirumulpad v. Union of India, (2012) 3 SCC 277* it was pointed that environmental justice could be achieved if we drift away from the principle of anthropocentric to eco-centric. Ecocentrism is nature centered where humans are part of nature and non-humans has intrinsic value. In other words, human interest does not take automatic precedence and humans have obligations to non-human independently of human interest. With reference to the principle of sustainable development the observations made in *Tarun Bharat Sangh v. Union of India, 1993 Supp (3) SCC 115* was highlighted. Certain aspects of climate migrants, climate depression, ecological grief and increased violence and crime were deliberated. It was stated that issues related to climate change are yet to figure actively in judicial decisions and mostly appear as *obiter dicta*. In *Himachal Bus Stand Management Authority v. CEC, (2021) 4 SCC 309* it was emphasized that the environmental rule of law seeks to create essential tools – conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It facilitates a multi-disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection.

Session 8 - Civil Justice Administration: Alternative Dispute Redressal System in India

Speakers: Justice Kurian Joseph and Justice Sunil Ambwani

The session on the *Civil Justice Administration: Alternative Dispute Redressal System in India* commenced with the emphasis that ADR (Alternative Dispute Resolution) mechanism is aimed at providing speedy justice in a non-adversarial manner. It was stated that ADR reduces the burden on courts and saves the litigant from cumbersome litigation. It was iterated that ADR within its gamut includes Arbitration, Conciliation, Mediation, or Judicial Settlement including settlement through Lok Adalat. Further, Section 89 of the Civil Procedure Code, 1908 was discussed. 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 decision of the Apex Court in *Salem Advocate Bar Association, Tamil Nadu vs. Union of India*, (2005) 6 SCC 344 was deliberated. Further, The decision in *Afcons Infrastructure Ltd., v. Cherian Varkey Construction Co. (P) Ltd.*, 2010 (8) SCC 24 was referred in which it was observed that in ordinary civil cases, a hearing after completion of pleadings to consider recourse to the ADR process under section 89 of the Code is mandatory.

Thereafter, the role of mediator particularly in cases concerning family disputes were discussed. It was opined that a mediator is 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. It was emphasized that a large part of disputes in India are settled through the mediation process.

Session 9 - Criminal Justice Administration: Fair Trial and Human Rights

Speakers: Justice Ashwani Kumar Singh and Prof. (Dr.) Jyoti Dogra Sood

The Session on *Criminal Justice Administration: Fair Trial and Human Rights*, the aspect of fairness in pre-trial stage was emphasized. It was stated that the court should at the time of production of the accused must verify any injury or torture by the Police. Thereafter, access to legal assistance should be ensured. 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 as was held by the Apex Court in *Noor Aga v. State of Punjab*, (2008) 16 SCC 417.

Further, it was stated that the jurisprudence of human rights developed in India by expanding the definition of 'right to life and personal liberty' by the Supreme Court of India. In this context *Sunil Batra v. Delhi Administration*, (1980) 3 SCC 488, *Hussainara Khatoon v. State of Bihar* (1980) 1 SCC 98 and *D.K. Basu v. State of West Bengal* (1997) 1 SCC 416 were referred.

Session 10 - Principles of Evidence: Appreciation in Civil and Criminal Cases

Speakers: Justice Ashwani Kumar Singh and Mr. S.R. Somasekhara

On the theme of *Principles of Evidence: Appreciation in Civil and Criminal Cases*, emphasis was on elementary aspects of evidence. It was stated that evidence is a journey for the discovery of truth. The principle of 'dying declaration' was discussed. It was stated that dying declaration can be the sole basis of conviction, however, such dying declaration must not be tutored or under some medication. It was stated that dying declaration is a conclusive proof, hence corroboration is possible only in cases when there is any doubt.

Further, the principles of oral and documentary evidence were delineated. It was stated that all facts are required to be established or proved through oral evidence except the contents of the document and electronic evidence. As regards documentary evidence it was stated that the contents of a document has to be proved by primary evidence, however, if such evidence is not available, it can be proved by secondary evidence. The concept of evidentiary presumptions and burden of proof was also discussed. Further, distinction between direct and circumstantial evidence was explained with hypothetical situations. Elaborating on circumstantial evidence, it was remarked that it is the process of inferring results from established facts. The case of *Dhananjay Chatterjee v. State of West Bengal, (1994) 2 SCC 220* was amplified in this context.

Further, on the aspect of appreciation of evidence, it was emphasized that a Judge must insist on evidence based on scientific material. It was iterated that appreciation of evidence is not a purely legal exercise rather it is logical process.

Session 11 - Electronic Evidence: New Horizons, Collection, Preservation and Appreciation

Speakers: Dr. G.K. Goswami and Dr. Harold D'Costa

The session commenced with the assertion that in today's age technology encompasses every aspect of modern life and digital devices are used as tool, target or both in the commission of crime. The meaning and scope of 'electronic evidence' as provided under the explanation to Section 79A of the IT Act was discussed. Further, it was pointed that the challenge in modern times is that since digital evidence has wider scope it is sensitive, mobile and requires special tools to retrieve with cautious collection and preservation to be worthy to be admissible in a court of

law. It was emphasized that if identified, collected and analysed in a forensically sound manner, electronic evidence can prove crucial to the outcome of civil, criminal and corporate investigations.

Further, the session focused upon certain investigation techniques by providing live demonstration of WhatsApp chat modification, message date/time modification, RT-PCR certificate modification and location spoofing. The discussion further pertained to preservation/retention of electronic data as well as ascertaining its authenticity. The procedure for proper collection of cyber evidence in terms of pre investigation assessment; evaluation of scene of crime; collection of physical evidence and digital evidence; forensic duplication; seizure of digital evidence; packaging, labelling and transportation; legal procedure to be followed; and gathering information from various agencies was elaborated upon.

While dealing with the interpretation of Section 65B of the Indian Evidence Act, 1872 (IEA) *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473 was referred. It was pointed that post the decision in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal & Others*, (2020) 7 SCC 1 it has been mandated that all the conditions specified under Section 65B (2) of the IEA must be fulfilled in contrast to the earlier position wherein the fulfilment of any of the conditions of sub-section (2) would suffice as per Section 65B (4) (c) of the Act. Therefore, certificate under Sections 65B (4) (a) and (b) is no longer needed. The Supreme Court reiterated that the certificate required under Section 65B (4) is a condition precedent to the admissibility of evidence by way of an electronic record and that oral evidence in place of such certificate would not suffice. It was also clarified that certificate under Section 65B (4) is unnecessary when the original document itself is produced.

The session concluded with the remark that judges' understanding and awareness in recognising, appreciating and assimilating the complexities of digital evidence is crucial to ensure that they are appropriately prepared to deal with new challenges in the field of computer crime, forensics and the law relating to it.