

Day 1:

Session One

Director NJA Justice A.P. Sahi - greeted and welcomed all judges. Introduced the topic of the session. Explained about constitutional structure, historical formation of India, how constitution of India after formation of nation has helped in thriving of republican democracy. Concept of limitation on governance too explained. The hallmark of independent judiciary, supremacy of constitution explained. Director encouraged for dialogue between participating judges and resource persons. Thereafter he introduced resource persons.

Prof Dr. Batram Gupta: Talked about constitutional conventions. He informed participants that:

- (i) Indian Constitution is recipe for good governance, as opined by our Chief Justice of India, Hon'ble Justice D.Y. Chandrachud.
- (ii) the Supreme Court of India is most powerful court because of its contribution to development of law. And this contributor is due to variety and wide jurisdiction it has.

He explained about

- (i) jurisdiction to protect fundamental rights, to resolve federal disputes, etc.
- (ii) how the state high courts are also having parallel jurisdiction with the Supreme Court in number of matters.
- (iii) how certificate of high court is required in appeal matters when appellate jurisdiction is invoked.
- (iv) Article 142 of the Constitution and how it makes the Indian Supreme Court the most powerful Supreme Court of the world.
- (v) practical problem in achieving absolute separation between three organs of the State and why the Indian Constitution does not envisage absolute separation of power. Why therefore sharing of powers between three organs was inevitable.
- (vi) enormous growth of delegated legislations and why this delegation is of non-essential functions
- (vii) parliamentary system at central level and state political set up and division of power between them-both vertically and horizontally.

He acquainted participants with

- (i) contribution of the Supreme Court in Covid times and how under Article 142, the Court limited the application of the law of limitation which calls for filing of suits within a prescribed period from the time of rise of cause of action.
- (ii) judicial review of constitutional amendments. How this jurisdiction was meaningfully used to develop jurisprudence.
- (iii) The PIL jurisprudence and how it was the gift of the Supreme Court which relaxed locus standi rule to entertain suits on behalf of those affected.
- (iv) Curative petitions and the contempt power, how the idea of separation of power has taken shape in India in detail.
- (v) Article 50 of the Constitution and how it contributes to the idea of SOP.
- (vi) the constitutional limits imposed on Legislature with respect to judiciary.

He opined that the idea of SOP is an ideal and the requirement of the day is cooperative federalism which requires three organs must work together.

Director NJA asked the participants also to note Article 139 of the Indian Constitution. He explained about hierarchical structure of judiciary in India. The power to review its own judgments is with the SCI on philosophy to err is human and till we are correct, we are not finally. This power to correct- itself is unique with the Supreme Court of India. He referred to articles from Maldivian

Constitution that imposes limitations on judiciary in Maldives which are absent in India.

Prof. Vijaykumar informed judges from Maldives -

- (i) that Indian constitution is both lengthy and deep, drafted by taking help of GOI Act 1935.
- (ii) about parallel jurisdiction between the Supreme Court and high court and how the high courts are more powerful than the Supreme Court as they are given the power of superintendence. Such power on administrative side is not given to the Supreme Court.
- (iii) how special courts are constituted, concept of fast track courts and various other bodies established to deal with rights of citizens like consumer dispute redressal mechanism
- (iv) established the link between the fast track commercial courts and globalization

He also explained

- (i) in relation to judiciary - jurisdiction and nomenclature of trial courts, functions and purpose of tribunals and composition of some select tribunals, the concept of different benches of high courts for large states like Madhya Pradesh and Maharashtra, interrelationship between contempt power and the idea of courts being the court of record, nature of advisory jurisdiction of the supreme Court and obligation to constitute minimum 5 judges bench in order to exercise this jurisdiction. Further, how L. Chandra Kumar judgment widened the power of the high courts was also explained.
- (ii) On federal structure of Indian Republic - Articles 245-255 of Indian constitution, the VII th schedule of the constitution of India, the concept of list under them, the residuary power under Article 248 read with Entry 97 vested with the Centre alone. He asked judges to read Article 246. Praised the drafting of this provision. Informed them that though initially the Constitution did not put any tax entry in concurrent list. But recent amendment to the Constitution Article 246 A has given both state and centre discretion to tax and with this amendment the new tax regime in the shape of GST became a possibility.
- (iii) The ordinance concept and its limitation, how powers of Parliament enlarge during national emergency, how Article 252 of Constitution India allows the Parliament- to make law on subject on which the states have jurisdiction, how Articles 249-253 plays out dynamism of federalism, inbuilt dispute resolution process in Article 251 of the constitution, and the six doctrines (of pith and substance, harmonious construction, etc.) evolved by the Supreme Court of India to decide disputes on federalism.

Further, he compared the constitution of India & Maldives and pointed out that whereas the age of retirement of the Supreme Court judge in Maldives is 70, in India, it is 65 only. He also distinguished between the residuary power given by Indian Constitution from the residuary power given by the American Constitution.

Director NJA informed participants how executive has kept for itself wide adjudicatory powers under tax legislation and other number of legislations. Director informed that the tribunals are also suffering from problems of delay, pendency, arrears, etc. He asked participants to share their thoughts on the subject.

Dr. Balram Gupta explained how tribunals are blending of administrative authorities and judicial authorities and why this blending of judicial mind and executive mind is very helpful.

Participant asked what is distinction between jurisdiction of the Supreme Court and various high courts in India?

Director NJA answered though the SC should not turn down the Fundamental Rights petition on grounds of concurrent jurisdiction, but unfortunately, the SC of India has been asking applicants

to approach the lower court first. He referred to Dr.B.R. Ambedkar the Chairman of the constitution drafting committee who had informed that Article 32 is the soul of the Constitution. It gave protection to citizens to approach the court directly.

Prof Vijaykumar pointed out the difference between India & Maldives and that in Maldives the citizen can reach the federal SC only in second appeal, after exhausting remedies before the courts below the SC.

Participant asked as the executive has purse and there is no financial autonomy with judiciary, so how the Indian judiciary solves its budget- problems?

Director NJA informed that India has same problem. Judiciary is not financially independent. But now things are improving. In fact judiciary is not able to spend the funds allocated to it. The GOI gave Rs 7000 crores for court computerization. Further, in relation to status of judges, the SC has categorically pronounced that judges are not government servants. They are public servants. The position in USA was also explained. It was informed that in the US, Chief Justice of the Supreme Court has to go before the Senate to ask for the court budget.

Prof Vijaykumar asked participant judges to read article related to Consolidated Fund of India in Indian Constitution.

Participant asked "Can article 142 of Constitution of India be used by the Supreme Court of India for framing the rules to bring uniformity within all the high courts?"

Director - replied that even though the SC has no power to frame rules for the high courts, but under Article 142 it does issue different directions to the High Courts. Director thanked all before breaking up for the next session.

Session Two:

Director NJA informed that this session includes anxious provisions of the Constitution. It will be inspiring for participants. While framing narrative for discussion, he raised two questions to be focused by the resource persons: (i) As the Constitution is the Supreme document, how judge navigates his role through this document? (ii) What is higher responsibility of the courts and can this be ever abdicated? Director introduced resource persons for the session and informed about important books on the role of the Supreme Court of India that are available in the library of NJA.

Dr. Balram Gupta questioned participants whether upholding rule of law & constitutional values - is discharging constitutional obligation or whether it is judicial activism? HE referred to the letter of Harrold Laski to Justice Holmes on perception about judges. Referred to for way test for judges. which were prescription for judges which hold good even today. He acquainted judges with the consequences of upholding rule of law on Edward Coke's career. He reminded them that their duties as judges is not merely to apply the law, but polish the law, mold the law, fine tune the law and none of this amounts to hijacking the territory reserved for legislative or the executive. This role has to be viewed in context of evolving the law. Thereafter he informed participants how the Indian Supreme Court evolved the doctrine of Basic Structure even though the Constitution nowhere mentions any such term due to act of Parliament of amending the Constitution. Cases were cited on evolution of basic structure limiting the amending power of the Constitution and how these cases have saved the Constitution and helped in keeping it intact. He also expressed that had the Supreme Court not evolved the doctrine of basic structure, possibility of retaining the original constitution was very low. Further, the tussle between Judiciary and Legislature with Parliament introducing amendment to do away with this doctrine which was held unconstitutional by the courts that held the power to judicial review itself was part of basic structure was also explained.

Other information on basic structure doctrine that it has not come in the way of welfare schemes legislated by the government with the Supreme Court upholding the recent 103rd amendment, that the doctrine has been exported to other countries - also formed the part of deliberations.

On Judiciaries all over the world influencing judges across the borders, the **Director NJA** informed that the Basic Structure doctrine was first pronounced in judgment of Dhaka court and Indian SC took it board on in 1965. Director informed that judiciary is accused of not allowing evolution of Constitution even though through this doctrine of basic structure, the courts are not allowing liquidating or dissolution of the original document of the constitutions as it was framed.

PROF V K DIXIT Referred to the role of preamble in Constitution and ideals in that document. Out of those ideals, he was of the view that fraternity is concept advocated by Gandhi. Thereafter to trace the historical background of democracy, he pointed out to participants

- (i) that democracy cannot exist unless and until the power of the government is limited. This was explained with the help of situation in Middle East countries, where the Shariat law is considered as the supreme. Now Shariat being the divine law, the ruler may say, he derived his power from the divine law and that he is directly accountable to God. In response to this whole concept of the Ruler being directly answerable to God alone, emerged the social contract theories limiting the role of the ruler in relation to citizens. It first led to Declaration of Man in 17th century in France. All these theories led to role of limited government and the rights of citizens. This is history of right of citizens against the ruler.
- (ii) that the core values of governments have changed today and this has followed by a change in the core values of judiciary. This was explained by citing examples that show how the present governments are reluctant to grant economic rights and thus the basic things like food, housing, education, health are no more afforded as a matter of the rights. As due to change in priority of the governments, the rights are continuously changing, so also the attitude of the courts.
- (iii) that we find many similarities between Edward Coke (Attorney General of England and Wales) and Justice H R Khanna (Judge Supreme Court of India). Both paid the price in terms of their career but the concepts for which they sacrificed their career hold good even today. These men are no longer alive but their names are present in our memory, discussion even today.
- (iv) that when the nation was born, the Govts were responsible and moral. That time juridical activism was not required. Later when irresponsible governments took over political space, attitude of courts changed and they became juridically active. This led to enlargement of scope of FRs and DPSP were made justiciable after reading them as necessary to enforce Fundamental Rights.

Beside explaining reasons for Juridical activism in India, the historical reasons for evolution of PIL concept and its development in India were also pointed out. On how the landscape of PIL is totally altered from the time it was conceived, participants were taken through the change in nature of PIL after 1980. It was informed that while 1980s witnessed cases like Bandhua Mukti Morcha to free bonded labour from lifelong exploitation, in 1990s character of PIL changed. Instead of protecting the rights of poor, it switched to protecting the rights of middle classes. This happened because in 1991, the markets of India opened up and as the middle class were investors as well as consumers, PILs were filed to protect the interests of this middle class. For the middle class, as the environment protection assumed significance, all the PILs in this decade were filed to protect the

environment. The character of PIL further changed in 20th century and so we have PILs filed to protect the sexual orientation of LGBT +. Gender justice became another obsession of this decade and therefore we have an adultery judgment through PIL that declared the treatment of women as property of her husband as illegal. He made everyone realize that the latest development of corporates running the government has changed philosophy of both the government and judiciary. The rights of labour, poor, service class are no more protected as seen from the decision of the court in Reliance Energy ltd v. State of Maharashtra & Balco Case. Hence there is a asymmetrical level playing field. After 1990 rights of labour to strike is also taken away.

Director NJA informed speakers about Article 31 of Maldives Constitution which allows every employee in Maldives to stop the work and go for strike. He was of the view that Article 8, 269 of Maldives Constitution has given to judiciary in Maldives enough power to preserve the Constitution. Reforms can be introduced to the Constitution to keep it alive and updated with times. He also reminded judges about what Cardozo has said about physical dilemma of protecting rights of future generation. Further he took the view that the Question - can Parliament change the DNA of Constitution? This is political question that has to be answered politically. Thereafter he invited Questions from the participating judges.

Participant judge - Is there a fine line to distinguish between Basic Structure of the Constitution and other provisions of the Constitution?

Participant judge - Can people bring change to concept of Basic Structure? Do they have any say on its contours?

Prof Dixit Indian Constitution does not define what is Basic Structure (BS) and therefore it keeps on changing from case to case. But German model is different. The German Constitution defines worth of a man & Republican form of Government as two elements of Basic Structure.

Director NJA - referred to Minerva Mills case which attempted to define BS as guiding principles spelled out in the preamble of the Constitution. He referred to Articles 255 and 69 of Maldives Constitution and took the view that the Person who framed Article 69 seems to be supporter of democracy. This Article helps judges considerably, to rise to the occasion to check onslaught on human rights.

Prof V k DIXIT opined that every provision or every document is sound as long as citizens are rational.

Participant judge - whenever any provision has to be constitutionally challenged, whether courts on their own can look into it or whether someone has to approach the courts?

Director NJA informed about sue motu powers of the courts & concept of judicial notice. *Parens patriae* jurisdiction was also explained.

Participant judge - How judge will ensure that judge does not overstep judicial authority and encroach upon rights of executive /state?

Director NJA explained with the help of example of how one comes to learn to balance both wheels of cycle in order to comfortably ride upon it, similarly judge has to learn in his career the art of balancing judicial activism v. judicial restraint.

Participant judge - Who will supervise the courts?

Director NJA explained the power of judicial review vested in the Supreme Court of India.

Session Three

Director NJA introduced resource persons and the subject theme, its importance, relevance of subject in present scheme of things when social media & public scrutiny of courts has only increased.

Justice Roshan Dalvi [PPT 1] requested participants to ask her Questions which she will answer. She asked judges to keep the printed copy of the Oath of judge on their Dias table all the times as the Oath covers almost all the ethical principles. She informed participants that judges are only public servants who have been empowered to punish one masters. She also explained the concept of Ivory Tower which originate from UK where judges never mixed up, never read newspaper. She opined that it is not the bar but litigants who are there to test the judges. She explained fear & favour concepts. Thereafter she proceeded to the concept of recusals. She also informed of the change in the stature and respect that judges commanded from earlier times to the present times. She asked a hypothetical question to them - Judges A & B are friends, who have got one son each. These sons are practicing lawyers who appear in courts of not father, but in the court of his friend. Can anything be imputed to judges A & B in this situation?

Prof Dr. Balram Gupta gave example of a judge who had two sons. One party would engage one son and another party would engage another son. He asked participants, whether such practice is ethical?

Participant judge answered that judge should recuse as for litigant, justice should not only be done but seem to be done.

Justice Roshan Dalvi informed of her personal experience with clients of her husband. She put another Question for consideration -15 judges are invited to watch cricket, they are also drinking. Is this conduct right or wrong on part of judges? As no one replied, she informed that if one of them starts drinking, those who are watching him can assume that he can be bought by a bottle of liquor. She gave another incident of brother of co-judge, who refused to sign lease agreement thinking about his sister who was a judge.

Dr Balram Gupta replied that brother could have entered into a lease agreement as there was very remote possibility of case reaching to his sister's court and even if it had reached, sister judge could recuse herself from that bench.

Director NJA suggested that mixing is alright but don't get mixed up.

Justice Roshan Dalvi cited incident from Bombay High Court where in 1980s, one of the judge made ISD calls to his son settled in the US which resulted in high phone bill, This judge was boycotted. She gave another example of bar boycotting four judges. She asked opinion on this. Then she gave example from her own life. She used to take her son for extracurricular activity. Her son took part in one of the competitive activity for which she was called to judge. She told her son that she will not select him but after coming home she will give him the prize.

Prof Dr. Balram Gupta gave similar example but he did not go to judge the seminar in which his son was also participating.

Justice Roshan Dalvi referred to Justice Kapadia's guidelines on ethics given to judges in M.C. Setalvad Annual lecture.

Director NJA referred to the important take away from Justice Roshan Dalvi's deliberation that judges are the only public servant who can punish their master. Indian judiciary has done it & now it is the turn of Maldivian judiciary.

Justice Ajay Tiwari

- (i) questioned why judiciary is again and again told to follow the ethical principles? According to him, this is because the sense of injustice pricks us at very early age. Even two year old will cry if mother is giving more attention to other child. Therefore, first animal instinct is to sense injustice around us.
- (ii) talked about neutrality concept. He informed that all human beings are inherently biased due to environment, upbringing and other influences. As a judge one has to train

- oneself to accept and be aware of his/her biases. The only training to be taken by judges is to accept and be aware of our biases and prejudices. He told audience that if a judge is not ready to accept his/her biases, then on broad spectrum, such a judge will end up doing more injustice than any corrupt judge. He distinguished between individual biases, immediate biases and obvious biases.
- (iii) on relationship between judiciary and media, informed that there are judges who are very fond of media & hanker for it. There is one kind of a judge for whom everyone matters and he is not bothered about what he thinks of himself. There is another type of judge who is only bothered as to what he thinks about himself and not about others' thinking about him. Judges must accept that their predilection to commit errors is same as that of any ordinary human being.
 - (iv) took the view that judge conducting trial is himself on trial along with the litigant and therefore when uncle judges are functioning, litigants and public will learn sooner or later
 - (v) asked to be aware of the fact that as a judge you are not alone in decision making process and therefore you are not alone to be complimented for being innovative because it is lawyers who argue the cases help in judicial decision making.
 - (vi) took view different than Justice Roshan Dalvi by saying that it is the bar who actually judges the judges because litigant will judge only one judge before whom their case is pending.

Director NJA agreed with Justice Tiwari and informed about Ahron Barak's book on doctrine of proportionality wherein in the preface the author mentions that even though judges sit on trial, but judges are themselves on trial. You stand to trial everyday. Director wondered why Shakespeare said 'Cesar's wife should be above suspicion'. Why he did not say even Cesar should be above suspicion. In a system everyone should be above bias. He referred to a book outlining 73 kinds of biases from which judge may suffer. He agreed with Justice Tiwari that category of Media fondly and Media friendly judges is on rise. He questioned judges where is need to become famous? Explained the difference between aloofness and detachment. Informed that many judges have shown us pathways & it is not very difficult to follow. Ethics are matters of inherent practice. Asked participants to share their views.

Justice Ajay Tiwari questioned sometime people have a very bad case and they approach you so that you can recuse yourself. What can you do? Should you stand up to it or should you recuse for the case?

Participant - How judge should react to criticism or humor around his/her judgment?

Justice Roshan Dalvi talked about how media misrepresents the court judgments and how misreporting is rampant through her own experience.

Dr. Balram Gupta gave example of Pope.

Director Gave Tej Bahadur Sapru example.

Participant Can lawyer criticize a judge on social media?

Director and **Justice Roshan Dalvi** - Both cited example of Raju Z. Morey. His poems are available on social media. Judges have never taken any action on his humour.

Participant - Can we as judges be saved from criticism & personal attacks on bot accounts?

Justice Roshan Dalvi agreed that judges need protection. But **Justice Ajay Tiwari** -told participant that the society moves faster than the law. Criticism on Bot Account will be not easy to trace.

Director NJA explained the contempt power given to judges in India under the Contempt of Court Act 1971. Thereafter he raised a question - what if a judge delivers a judgment and it is ridiculed. Judge sets in contempt proceedings. Meanwhile the judgement which was ridiculed by social media is set aside by the appellate court. How a judge will justify his complaint against the criticism? He advised the judges to be patient and stay farther from the smart phone as the device alone is enough to disturb their peace of mind.

Day 2

Session Four

Director NJA opined that judgment should reflect divine work done by judges. It must foster faith in the system so that public revere you. He read out certain provisions of Code of Civil Procedure CPC, like section 2(9), section 33, Order XX which gave contents about judgment. He informed them though CrPC did not define judgment, but Section 19 of IPC established a relationship b/w judge and the judgment. Judge as per this section is empowered to deliver the final verdict. Thereafter, he called upon the resource faculty to give their inputs.

Justice Roshan Dalvi presented PPT and asked participants: why title of judgment is important? And how many stages are there in a civil suit? What is good practice in referring to this chain of correspondence in judgment? If on a given point of law, there are 5 good judgments, how you will deal with those 5 judgments? She answered on first question that title of judgment is also important because if title is prepared by steno /secretary and they make mistake, but as judge signs it, it will be presumed to be mistake by a judge. Thereafter she advised Judges to

- (i) mention admissions between the two parties and not to draft issues without going through admissions between the parties.
- (ii) write clear judgment in language they are more comfortable and findings on points of determination has to be answered by every judgment.
- (iii) mention in a judgment, both admitted and disputed documents, as well as chain of correspondence in chronological order
- (iv) always go through drafts, use language which is both simple and cordial, avoid unnecessary observations like describing the status of a company when the suit was only related to contract dispute.
- (v) avoid repetition, resist from format of 'plaintiff said so and so, defendant said so and so and therefore I say so and so.' Instead judge should summarize in one para plaintiff/prosecution side, another para defence side.
- (vi) If on a given point of law there are more than one judgment, then one way is to take the most recent judgment, discuss how it applies to the case in hand and how other 4 judgments are followed by the recent-judgment. The second way would be to take the landmark judgment, discuss how it applies to the case in hand and how other 4 are followed by the landmark judgment.
- (vii) in sensitive criminal cases related to crime against women and children like CSA cases judges should write down evidence carefully so that it becomes part of judgment.

Participant judge opined that letters forming part of chain of correspondence should be summarized in the judgment. They were of view that they will read all judgments on a given point of law, combine all of them, footnote them.

Director NJA also stressed on Sensitivity and Empathy in attitude and cordiality in language. He further gave example of reasoning. Two sentences: I could not eat my breakfast. I saw bird flying

one of window. Do not make sense if they are not connected or link between two are established. Therefore if connectivity is missing, judgment becomes incorrect and unreasonable. He also suggested Judge to avoid use of I in their judgment and called upon to substitute it with the word 'court'. He asked them to remember Sentipathy part is very important. It is sensitivity plus empathy. Judgment on incamera trial was also provided to participating judges. The counsel in that judgment was legendary Justice V.R. Krishna Tyer. He opined that Judgment- must reflect- that judge has in a given case, taken care of every aspect of the matter.

Justice Ajay Tiwari - informed participants about

- (i) Holy Trinity of writing Judgment- Clarity, Brevity & Simplicity. Example of two English Justices given. While one of them wrote all facts in one single sentence but it was very difficult to understand. Contrary to him Lord Dennings wrote same facts in 6 sentences, but it was very easy to understand. Therefore Brevity should now be achieved at the cost of comprehensibility.
- (ii) as a judge one can be never 100% sure as to who is lying, and who is telling the truth. Therefore, never write in a judgment that particular side is lying.
- (iii) importance of humility as an arrogant human being can never be a good judge no matter how hardworking he /she is. Humility is hallmark of every facet of judgeship, If a judge is not able to understand fact's /evidence, judge must seek further explanation and go on asking further clarification till things are absolutely clear to the judge.
- (iv) judges must encapsulate all 400 pages of plaint, written statement, documentary evidence in maximum 40 pages. Nothing should be avoided /ignored.
- (v) Through judgment writing a law can be developed, innovation can be introduced. Gave example of rent- legislation and how the rent court settled the law.

Director NJA clarified further that though everyone says that knowledge is power, I opine that clarity of knowledge is the power. Further, he brought out how obscurity prevents clarity. He told participating judges that their judgment should be clear on point as to whether the claim is decreed or dismissed.

Participant Q- How to avoid use of I when judge is disagreeing with brother judges?

Director NJA suggested to substitute I with 'in my considered opinion'.

Participant Q. If your most of the judgments are written in English language, then how does the general public will understand it?

Justice Roshan Dalvi informed that the translators in local language are also available.

Justice Ajay Tiwari informed about the Supreme Court undertaking herculean task of translating judgments in English to other regional /vernacular languages.

Director NJA made participating judges read Article 348 of Constitution of India. Informed about practical realities of India. He joked about language of money that everyone understands. Further, he opined that all the Supreme Courts of the world must speak /write in English so that we all understand each other in this Globalized world.

Participant Q_ Sometimes when you make a reference to law and thereafter you say herein after the Act. Is this proper way?

Justice Roshan Dalvi agreed that it is the proper way.

Participant Q. How do you deal with your wrong judgment?

Justice Ajay Tiwari said the correct way is to admit your fault and how you arrived at wrong conclusion.

Participant Q - What role court staff and researchers play in judgment writing?

Justice Roshan Dalvi informed about concept of interns & law clerks and how they help in Judgment Writing. However, she opined that the judge must rely on himself/ herself and not on anybody.

Director NJA asked judges to refrain from cut-copy-paste habit.

Justice Roshan Dalvi suggested Judgment should be page turner and should not turn away reader from the pages.

Session Five

Justice Roshan Dalvi referred to her PPT(2). Besides her PPT2, she -

- (1) informed that the courts have poor image due to their poor management skills and the concept of case management sprung up all over the world from the image of courts being slow in delivery of justice.
- (2) Clarified stages of court management and stressed on scrutiny to avoid pushing away of matters

Participant asked her to explain oral & reserved judgment. **Justice Roshan Dalvi** cleared the concept. She spoke of oral judgment in the sense of final & proper judgment and distinguished it from Summary judgment.

Director NJA informed about codified procedures in India in the form of CPC /CrPC/ Commercial Courts Act which Maldives does not have to that extent. Explained thereafter what summary trial under CrPC is and how judges have less to do in matters concerning summary trial. The open ended system provided under some statute was also informed to participants.

Justice R.C. Chavan- asked participating judges

- (i) whether they are masters of their court? Have you mastered your court or are you master because of your position? Can you say, as a master of my court, I will do as it pleases to me? **Participants** did not agree to this.
- (ii) whether they are rotated? **Participants** informed that the rotation is only if they are promoted, otherwise they are continuously and forever sitting in one court only.
- (iii) On the concept of prioritization of cases, he asked how Maldivian judges prioritize their cases?

Justice R.C. Chavan pointed out that

- (i) It is not only duty of lawyers to know the nature of judge, even judge is under an obligation to know what stakeholders are and how they are going to react to me. To manage the court better, judge must know the court, people in that court.
- (ii) brain mapping is an interesting concept which all of them should practice to enhance their learning and can help them in master all aspects of law to properly master the courts, etc.
- (iii) in India routinely civil dispute are turned into complaints of criminal nature as the civil disputes are not resolved in time,
- (iv) judges must appreciate human variety, human differences, different-pace of different person in order to do justice to people.
- (v) judges should not ride on high and fast speed in decision making process as it takes away time for deliberation and thinking. They must appreciate difficulty of lawyers also, at the same time weed out unethical practices also.
- (vi) judges should lay down their judicial footprints by their distinguished work. Informed about justice Vivian Bose who had magnanimity to overrule himself by saying he was wrong.

- (vii) it is wrong to say to judges that 'don't experiment with cases at the cost of litigant'. It only discourages judges from taking up cases in subject-areas that they did not know. In fact judges should read things and try all the areas. The concept of grouping of cases of similar kind of judicial decision making will not only save judicial time but also help judges in developing expertise in particular area of law.

He gave example of a judge who would ask stenographer to type all plaint, written statement & frame issues. He will only write decree. Then there was a judge who would call for synopsis of written statement & plaint in digital format so that he could prepare judgment-by borrowing relevant- points from both.

Director NJA told judges that they can write clearly only if they can think clearly. Clarified what is oral judgment and different types of judgments rendered till the final judgment is delivered. He cautioned judges not to fall in trap of lawyers who hoodwink judges by citing overruled judgments. He cited example of Justice Pradip Nandrajog of Delhi High Court also to remind them that judge should remain careful with what they write.

Participant Mohd Isa Q _how to make lawyer submit precisely?

Justice Roshan Dalvi answered that judge can ask lawyer to give one page submission.

Director NJA suggested to Judges to tackle lawyer very patiently. But for that you have to read all the documents at home before you take up the case. He informed that the Indian Evidence Act empowers judges in controlling lawyers & how they adduce evidence to your court. Any attempt to teach lawyer may not result in any fruitful result. He told judges to tackle lawyer by taking him into confidence.

Participant Q _ Is there any format for writing judgment?

Director NJA informed that due to wide and variety of jurisdictions in India, different adjudicating authorities are producing different-formats of judgments. HE also informed about contents of second appeal, revision, criminal review, etc. Asked participants to take a look of Privy Council judgments.

Participant Q asked about Benchbook. Is it available online?

Justice Roshan Dalvi informed that the best guidelines from any given court are assembled in the form of a Benchbook. It is like SOP (standard operating procedures)

Director NJA clarified these are only guidelines.

Participant Q - How your country deals with difference of opinion b/w judges of the same Bench?

Director NJA explained the formation of Benches and dissent and how chief justices constitute larger Benches etc.

Session Six

Atul kaushik presented his PPT. He informed participants

- (i) as to how technology can help the courts and broadly the justice system apart from being a mere knowledge/information provider.
- (ii) that India has more than 3000 court complexes and more than 20,000 judges manning those courts. ICT helps in optimization, easy communication, litigation-staff in access about their cases etc.
- (iii) of contribution of ICT in Access to Justice and how ICT helps in data collection which can be analytically evaluated for future course of action
- (iv) partnership between the government and Judiciary in India in area of court computerization so as to tackle delay and arrears, about E- Judiciary Plan to integrate ICT for Indian courts,

- (v) about process re- engineering being under taken to revamp the court rules & practices developed in an era when even computer was not in existence to tune it to the present digital age
- (vi) difficulties faced in overcoming the mindset which limits people to files/papers /hardcopies

Justice R.C. Chavan showed in his PPT news item about CJI sending strong message to HC chief justices on disbanding technology adopted in Covid times. He highlighted

- advantages of court computerization
- how E-court project is changing courts in a bigger way.
- how digitalization if adopted fully, will make physical court complexes obsolete
- how digitalization in future will allow judge to work from his home.
- how money saved from doing away with physical & human resources could be used to develop AI

Participant Q- asked about JUSTICE MOBILE APP. as referred in PPT of Justice R.C. Chavan/**Justice R.C. Chavan** informed that this APP is available only to Judicial Officers on their mobile. It is not available to public. It allows lot of information about cases in the court of a particular judge who is allowed to bookmark, makes notes etc. regarding cases using this APP.

Participant Q_ which is central body who is controlling this APP & Data?

Justice R.C. Chavan informed that there is no central body controlling court computerization as the high courts are independent institutions and the E- Committee of the Supreme Court is only a co-ordinating body. India being a federal country, the high courts man their own projects.

Director NJA informed that Justice App is exclusively meant for judges, to give them maximum information. There are other APPS also developed. Informed about NJDG, Justice Clock, Information Kiosk, e_ SCR judgments, ecourts.gov.in (where 5 crore judgments are available)

Participant asked about master trainers.

Justice R.C. Chavan informed about the concept in detail.

Director NJA also informed about inter operable Criminal Justice System app that is going to connect- courts-police-hospitals, together.

Participant asked about security issues related to use of internet.

Justice R.C. Chavan informed of checks and balances, how every access is checked and if anyone is found purposely slowing down the system, there is system developed of putting fence to stop such access.

Day 3

Session Seven

Director NJA informed judges from Maldives about philosopher Christopher who had written a book in 1970s, 'Law, Morality & Environment' where he had questioned if natural resources should have legal entity. This question was answered in our ancient scripture positively. Judgment Sachidanand Pandey v State of UP was also mentioned wherein it a letter was quoted asking how can you buy land and sky? This was a case where land reserved for animals was given to hotelier. Director highlighted to all that the nature takes revenge. If you exploit nature, she comes back with a bang as it happened in Joshimath, Turkey and so on. The question is now rightly raised that if a company can be given legal status, why can't things present in nature be given legal states. Director introduced resource persons.

Mr. Kunal Satyarthi presented his PPT, informed participants from Maldives about innovations of the Supreme Court of India in creating NPV, NGT etc. He referred to judgments given in the

reading materials and quoted important lines on protection of environment from those judgments. **Mr. Ritwick Dutta** suggested Mr. Kunal Satyarthi to change the name of National Disaster Management Authority to National Disaster Prevention Authority. On question - whether GDP is needed or the protection of environment, he asked participants what is the use of most expensive I-phone when you can't breathe air and drink clean water? He presented his PPT and explained

- (i) how Article 21, 14, 19 of Fundamental Rights and Articles 48(a) , 51 of Directive Principles of the State Policy are used as a tool to protect the environment.
- (ii) why Bhopal is urban city with highest number of tigers and Mumbai is urban city with highest number of leopards.
- (iii) how in India, lot of judicial innovations happened in area of noise pollution and in an area of coastal regulation.
- (iv) how Justice Swanta kumar through very innovative interpretations in Ramdev case was able to dismiss claim of religious and cultural rights and fundamental right to speech to protect the environmental right to have noise pollution free environment
- (v) concepts of climate migrants, climate depression, climate grief, coastal regulation zone (CRZ), its division into four types, number of Supreme Court judgments to protect CRZ, the day before NGT order for demolition of largest hotel in Sundarbans as it violated CRZ guidelines etc.
- (vi) how in 2021 Himachal Bus Stand case the present CJI developed new jurisprudence for establishing the environmental Rule of Law.
- (vii) CRZ laws are more strict and does not allow for diversion, but every day 2 hectares of forest land is diverted for urbanization

He also referred to a book by Amitav Ghosh on environment and cyclones, wherein author has pointed out that due to developments, we are weaponizing the environment. He also presented the case study on CRZ regulation wherein the Supreme Court of India through interpretation of word "in" and "within", by distinguishing these two conjectures, did not allow Adani Port to store edible oil in CRZ II.

Director NJA praised the picture of tiger who was not crossing the road (PPT of Mr. Kunal Satyarthi) and Mr. Kunal Satyarthi's correction of perception that it was the road that was crossing the habitat of tiger. Also highlighted what Mr. Dutta said that we are weaponizing environment. He invited participants to express /share their views.

Participant judge from Maldives expressed that they are reluctant due to very high sensitivity on issues of environment v. development. She wondered if she could apply Swatantra Kumar judgment to stop political parties from campaigning on the loud speakers during the election time.

Director NJA pointed out to articles in the constitution of Maldives and how constitution of Maldives gave far more important tools to judges of Maldives than Indian Constitution gave to Indian judiciary, and therefore suggested to participating judges that they can use their authority to protect the environment before it is too late.

Participant Maldives Judge - Though Indian Judiciary has given great & progressive decisions to protect the environment, but what has been response of the government and has enforcement yielded in results?

Ritwick Dutta the success is up to 50 to 60%. On some aspects like air pollution, lot of achievements are there. But in no area 100% results are there.

Participant Maldives Judge - what is position of compensation? How it is calculated?

Ritwick Dutta informed about NGT fund and how in Ramdas Kohli case NGT awarded rupees 100 crore compensation to fisherfolk for damage caused by the Port.

Participant Maldives Judge - How damages are calculated?

Ritwick Dutta informed about new guidelines that have been framed for calculating damages.

kunal Satyarathi explained elements to be considered for compensation calculation. Disaster Management Plan was explained.

Participant Maldives Judge asked who will be calculating damage?

Ritwick Dutta informed that the final calculation is by Pollution Control Boards. Courts usually award greater damage than the calculated by the government agencies.

Participant Maldives Judge - Are exemplary damages are also awarded?

Ritwick Dutta answered in the negative.

Session Eight

Director NJA asked participating judges whether Maldives has developed any dispute resolution (DR) mechanism or institutes apart from the courts? He informed about Indian experiment on ADR and laid down guidelines for deliberation by eminent speakers.

Justice kurian Joseph informed about practicality of doing justice. He termed ADR as additional method of DR. He outlined advantages of these methods and asked Justice Sunil Ambwani to lead the session.

Justice Sunil Ambwani gave data on pendency of cases in high courts and the Supreme Court and how high tendency causes delays and increases the cost of litigation. He informed that this scenario encouraged, motivated India to look out for ADR. To use ADR, cases were identified which were not suited for taking up through the normal litigation route which was both lengthy & costly. He presented his PPT. Besides, he informed about:

- (i) three kinds of litigants, one sitting on fence, two pondering on whether or not to go for litigation and third who are litigants in making. Therefore, litigation is never going to end.
- (ii) how arbitrations keeps retired justices very busy
- (iii) that the conciliation as one of the option of ADR has not been so successful in India
- (iv) the history of lok adalats and how it changed the legal system /courts.
- (v) Afcon case mentioned in reading material
- (vi) ADR is only to make litigant/party maker of the decision and owner of the decision they made.

Justice kurian Joseph asked participants number of years they have put in the judicial service. After knowing the composition of group, he asked, if they enjoy their position? Their judicial work?

Participants replied sometimes they enjoy other time they don't.

Justice kurian Joseph thereafter asked them why they chose to be judge? Money? Power? Position?

Participant said being in legal field is passion. They enjoy the profession.

Justice kurian Joseph asked are you happy or are people happy about you? You as a judge?

Participant Judge answered that they don't have concept of feedback form to know what people think about them. Another participant judge told she became a judge to give fair justice?

Justice kurian Joseph asked can judge also give unfair justice?

Participant judge said by being unfair or by negligence, a judge can deliver unfair judgment. For example, if law is unfair then judges are compelled to deliver unfair justice. He cited drug law which does not give any discretion to the judge and he has to punish any person found with the drug with minimum 25 years of punishment. Such punishment can many a time be unjust to young person caught with very small quantity of drugs.

Justice kurian Joseph on this very point clarified how a judge can give justice even in this case where law compelled them to give unjust sentences. He asked participant judges to not believe everything what police or prosecution brings before them but verify if person accused is actually involved in the commission of crime. In the process of this verification, they must also find out if the accused committed the crime knowingly, with free will, with intention. It is duty of judge to check these parameters before they start believing police or prosecution. He asked them to always remind themselves on what is the purpose of court? Why the accused right after being caught with the drugs was not sentenced to punishment by policeman himself? What is the purpose of the court standing between the citizen and the executive? Regarding ADR, **Justice kurian Joseph** asked participants about how many cases are pending before their courts? He informed judges -

- (i) why pendency of cases implies clogging of the system and how the hospitals manage huge inflow of cases. He asked participants to go through article from reading material which gave hospital example on how they manage huge inflow of cases
- (ii) regarding judge settling the case before them, he referred to p. 1027 of Reading Material, to make judges understand why restoration of peace is important and how ADR helps in restoration of peace between the parties.

Participant judge informed some kind of settlement being encouraged in family disputes.

Justice kurian Joseph clarified distinction between normal court- proceedings and mediation proceedings, how role of judge differs in court proceedings and mediation proceedings and why they should encourage parties to settle the dispute before the actual court proceedings begin.

Director NJA referred to Article 142 of Maldives Constitution. This article gives lot of discretion to judge. Further, Article 268 of Constitution says all laws have to be consistent with the Constitution. If law is very harsh you can step in to declare that law unconstitutional- Further, Article 7 read with Article 141 of Constitution gives scope to judge to step in.

Participant judge informed that new civil procedure code is the real reason for backlog of cases in Maldives. Further asked whether in India there is a specific division within the courts to do ADR?

Justice kurian Joseph informed of all the procedures as they prevail in India. He also informed about pre- institution mediation being made mandatory under the Commercial Courts At-2015.

Participant judge asked can a judge do mediation & and then take up that case in India?

Justice kurian Joseph answered in the negative.

Participant judge informed that in Maldives they have to first conduct mediation, and if it fails, they have to conduct the trial. How do they deal with this situation?

Justice kurian Joseph suggested that in such a situation, judge should not participate in the joint sessions or individual sessions of the parties and give the parties freedom to decide for themselves because if mediation fails, no one can accuse the judge of any bias.

Session Nine

Director NJA introduced the subject theme.

Ms. Jyoti Dogra Sood- talked about the Presumption of innocence v. presumption of guilt, why accused has been given the rights, mentioned landmark decisions of the Supreme Court of India protecting the right to fair trial of the accused. Zashera, Ajmal kasab, Akanksha Ranjan case, etc.

Director NJA - summed up the mantra as Prosecution and not the Persecution is told by the speaker because while prosecution will always hanker for conviction and the judge has to hanker only for justice. Director informed that in India the criminal law was amended to bring balance in favour of the victims. He opined that the only improvement further needed is in relation to witnesses.

Justice Ashwini kr. Singh informed that in his experience that hardly at any stage he found any stakeholder adhering to the principles of fair trial. Various facets of fair trial were informed by him. Sections from IPC, Cr PC were highlighted that ensure fair trial. Provision from Constitution were also referred to. Cases of Hussainara khatoon, Mohd. Major v. State of Bihar, were also informed. Talked about competence in relation to attitude and biases, pro-active role of judges in getting lawyer for the accused.

Director NJA appreciated 8 principles encapsulated by Justice Ashwini Kr. Singh. Thereafter opined that Constitution of Maldives contains number of articles like 42, 45, 46 that afford fair trial to the accused. Further, Articles 47-48 of Maldives too give legal aid rights to the accused. He opined that even though Maldives does not have separate criminal procedure, all rights of fair trial to the accused are afforded in Articles 42 to 60 of constitution of Maldives. He pointed out to Kerala High Court judgment [Kunnummal Mohammed AIR 1963 Ker 54] which empowers the courts to afford competent lawyer for the accused. Director also informed about provisions of CrPC that empowers courts in India to even record demeanor of witnesses, which he found absent in the context of Maldives. The Director asked participating judges that to do justice, fill in the gaps in the criminal justice system by aid of technology.

Participant judge Q - Can retrial take place before the same judge?

Justice Ashwini Singh answered that it may happen, but probability is low as in India, judges rotate. Further, if judge does not rotate, he knows he is being supervised by the High Court. Due to fear of the superior court, trial court judge most probably will not commit the same mistakes.

Director NJA informed about biases and 73 types of biases as pointed out in book by Andrew Goodman. On the doctrine of necessity, judge can try the case, but if there are more judges available, then another judge should ideally retry the case. Director also informed about concept of plea bargaining and that the constitution of Maldives, does not allow registration of criminal cases in contractual matters. Further, he also told participants about the Supreme Court judgment in Anokhey Lal case which provides guidelines for engaging lawyer for the accused. Director asked to include this case in the next Reading Material for Maldives judges.

Session Ten

Director NJA introduced the theme of principles of appreciation of evidence and how they are being developed to afford fair trial to the accused. Director informed about the codified law in India in the form of Indian Evidence Act of 1872 and minor changes brought due to digitalization and nature of changing litigation to this law. Introduction of reverse burden of proof for certain kinds of crimes was also informed. The attitude of judiciary to this reversal was also informed about.

Justice Ashwini Singh informed participants about three ways in which burden of proof (BOP) assumes significance. Referred to the Supreme Court judgment Raghavamma v. Chechmma wherein the court had distinguished b/w BOP and Onus of Proof. He then referred to case related to protest petition filed against nationalization of roads, case of Indian railways against ticketless traveler, Thakkar case related to BOP in insanity defence etc. to explain who has to discharge the BOP and how the BOP shifts on a person when some fact is within special knowledge of that person. This was explained with the help of example_ husband and wife only at home, seen healthy at night but in the morning one of them dies unnatural death. The BOP is on spouse who survived because he is having special knowledge of facts that might have occurred. He was of opinion that

- i. rule of evidence cannot solve all the difficulties faced by judges in appreciation of facts/ evidence.

- ii. judges should scrutinize evidence carefully and objectively.
- iii. small discrepancies in versions of witnesses must be ignored
- iv. section 134 of Indian Evidence Act does not prescribe number of witnesses and even a single person, who even may be interested person, can be a competent witness.

Justice Ashwini Kr. Singh explained to participants the concept of expert witness, child witness, chance witness, prosecution witness and defence witness; how their testimony is to be assessed by the courts; how to deal with the Plea of Alibi; consequences of faulty investigation; consequences of non-examination of investigation witnesses etc.

Director NJA took the view that judges vary in their appreciation of facts and events. Some judges get impatient due to nagging lawyer who is trying to deflect. He asked judges to give importance to attentive listening. He discussed Railway ticket case threadbare to explain how the BOP was shifted on prosecution (railways) in this case.

Mr. Somsekhar informed about

- (i) the perception_ how different people will view same thing differently and Roshoman effect.
- (ii) circumstantial evidence: when inference can be drawn from basic and primary facts.
- (iii) similarity and differences in Maldives Evidence Act and Indian Evidence Act.
- (iv) shifting of onus is continuous process in any trial
- (v) how BOP shifts due to presumptions like in Negotiable Instruments Act
- (vi) why it is necessary to consider evidence of both the parties to draw inference.
- (vii) prophecy of justice V.R. Krishna Iyer in Shirajarao Sabab Bobde v. State of Maharashtra way back in 1973 where he had predicted shifting of BOP, reversal of BOP

Mr. Somsekhar explained the concept of culpable mental state as it is mentioned in section 30 of the POCSO Act. He also referred to Section 137(B) of Maldives Evidence Act to explain how it is same as preponderance of probability under Indian Evidence law. Further, judges were informed that what Section 139(B) of Maldives Evidence Act provides is circumstances in which civil or criminal standards will apply - and it is same as law laid down by the Supreme Court of India in MGR case. Further, it was also informed that the concept of judicial notice in Indian Evidence Act is same as that of section 144 of Maldives Evidence Act of 2022. On differences between Indian Evidence Act and Maldives Evidence Act, when he pointed out that Section 47 of Maldives Evidence Act of 2022 defines competency of a witness. A person below 15 years is not a competent witness in Maldives, Judges from Maldives clarified that it is a general rule that does not apply in Child Sexual Abuse cases. **Mr. Somsekhar** also explained

- (i) different- kinds of presumptions under Indian Evidence Act and reasons behind such presumptions with the help of presumption wat 30 year old document.
- (ii) difference between primary and secondary evidence and presumptions that apply to both
- (iii) proprietary title, possessory title, non_ possessory title, prescriptive title
- (iv) concept of hostile witness and how much evidence of hostile witness can be relied upon

Director NJA opined that the distance that judges have to travel in appreciation of evidence will depend largely on perception.

Participant judge asked Q on virtual hearing - what if electronic record vanishes? What will be fate of the case?

Director NJA answered about Swapnil case for video-conferencing rules and other rules that operate recording of electronic evidence. Further it was informed that under the Judges Protection

Act, the appellate court most of the time does not question correctness of the proceedings before trial unless it is proved otherwise, like say fact is incorrectly recorded by the court. He also informed about Doctrine of Perversity that leads to reversal of trial proceedings.

Justice Ashwini Kr. Singh referred to section 88 of Evidence Act of Maldives which allows preservation of audio evidence and of possibilities of its use by courts even though it pertains to investigation. He also referred to section 87 of Evidence Act of Maldives which explains what it means demonstration or experiment, and suggested that in bribe taking cases, like in India, this section could be used for giving demonstration in the courts.

Director NJA talked about 65 B (4) of Indian Evidence Act to explain what certificate means in relation to electronic evidence.

Participant from Maldives asked what is difference between summons cases & warrant cases?

Justice Ashwini Kr. Singh informed that summons cases are petty ones and warrants cases are serious one. He further informed that section 216 of CrPC gives court discretion to alter charges so as to turn summon case into warrant one if the situation so demands.

Somasekhara informed that the maximum punishment for summons cases is 2 years. Anything which is punishable for more than 2 years, is to be treated as a warrant case.

Director NJA informed that in summons cases, trial court is not required to frame charges. But in warrants cases, trial court is duty bound to frame charge. But if during the trial of summons case, the magistrate comes across any evidence that points out to serious offence then u/s259 magistrate will convert it into warrant case.

Session Eleven

Director NJA introduced theme and experts and why judges should know Electronic Evidence.

Harold D'Costa explained how internet operates through 11 root servers out of country and out of these 11 root servers only one is available in Asia. Informed that he knows some problems of cyber crime from Maldives from his last session with the earlier batch of judges from Maldives. He demonstrated how a whatsapp chat can be generated from any mobile number without consent of owner of mobile, without using mobile or sim. He informed similarly SMS can be generated through internet without using mobile /sim etc. Calls can also be made from number, without using mobile handset and even the sim card because there are thousands of servers available that facilitate such communication without owner of device even knowing about it. If EE can be faked so easily, he questioned the validity of fundamental theory of evidence: MEN CAN LIE but DOCUMENTS CANNOT LIE. On Question, as to who owns internet, he informed that there is no one who owns it but the concept started due to US military internal communication method. From there it has developed to what we have today. Presented his PPT to inform participants that

- (i) difference between rooted and unrooted device.
- (ii) demonstrated to police once how chat on whatsapp was modified.
- (iii) unrooted device can be rooted in between 45 minutes to 48 hrs.
- (iv) APP from playstore called root checker takes 30 seconds to know if chat is from unrooted device or compromised one, ie., rooted one.
- (v) when without Sim/phone in custody of sender, sender can send SMS, these are rooted through VOIP. VOIP servers are used for most illegal activities. There are 100s of VOIP servers available to make calls without touching my device & my sim.

Regarding evidence on calls, the concept of CDR was explained. CDR is only available with service provider. Explained how CDR is to be read by judges. He also showed how e-mail spoofing is done. He demonstrated same to judges. Informed there are 100s of servers that allow take emails

to be generated. On how to identify whether email is genuine or not participant judges were given methods. Further, he also taught how to find # value of a pen drive. How # value will generate alphanumeric code, which person seizing the device has to note down in seizure memo. And if after seizure of device, if anyone in police station or in evidence room opens the pen drive in any computer, # value will change. Therefore forensic lab before opening digital device has to match the # value to know if data is tampered with after seizure of device. He also informed even in data is deleted in pen drive or any other digital device, it can still be recovered.

Mr. Goswami in his PPT gave Indian court's observations on appreciation of digital evidence. He informed participating judges that digital device can be itself a tool to commit crime of its contents can be also part of crime. He further informed that the present tendency is that white collar crime are on rise in India. He asked judges to be cautious of smartphone usage. He informed of rape case where it has been shown that even if the accused shuts down the phone, this point may not help him if his usage/trend showed otherwise. He informed how a smart defence lawyer will always demonstrate break in the chain of custody of electronic evidence gathered by the prosecution. He also informed challenged faced by the investigation wing post Puttuswamy judgment that protects privacy as a fundamental right. He was of opinion that a detailed research is needed to know how Puttuswamy judgments apply to collection of evidence. He also talked about Panama paper leak case of 2018 wherein though the font used on paper led to conviction of former PM of Pakistan.

Director NJA pointed out to Karnataka HC judgment given in RM on electronic evidence and how device Alexa is recording human life.

Participant judge asked Q - can other social media applications like telegram, instagram also be compromised? Second what is way of deleting data permanently?

Harold D Costa suggested that low level formatting reduces chances of recovery of data and second way is to have small magnet around the device. Even it can reduce the chances of recovery of data. He also informed that the Hotel is the place with high chances of cybercrime occurring. Most security compromises occur on hotel wifi. The security precaution measure is to record serial number of device in the router. Further he informed that all social media sites are equally vulnerable.

Mr. Goswami informed that in times to come, in future, every data can be recovered. Digital world is ever developing, volatile and fast paced.

Participant judge asked Q - what about cookies?

Harold D Costa informed that the cookies store all information.

Mr. Goswami informed that even before google, the latitude-longitude information was always available to law enforcement agencies.

Participant judge asked Q - If accidentally if we click on phishing link, what steps to take to undo this?

Harold D Costa suggested to protect device with antivirus and anti malware protection.

Participant judge asked Q - can wifi allow access to data on my devices?

Harold D Costa informed of number of apps that allow extraction of data.. Even

Participant judge asked Q - what should court do when parties don't challenge false evidence?

Director NJA informed about provisions from Indian Evidence Act that empowers the court's to do all the possible things for doing justice, for finding truth. The court can examine anything, call on record anything necessary to find the truth. How 165 of IEA gives absolute power to the court to find the truth but there is one caveat to it - what to do if the evidence has been unlawfully collected? This is very dicey area. Director informed about the shift witnessed only in terrorism

related cases. He also informed that in Maldives, the Constitution prohibits unlawful collection of evidence

Participant judge asked Q - would minor break in chain of custody will completely negate the evidence admission?

Director NJA informed that it is not so. He made participants read sections 460,461 of Cr PC to clarify to them that the irregularities which vitiate proceedings will only be considered illegal.

Participant judge asked Q regarding download of APPs -how safe are they?

Harold D Costa suggested to download apps only from the playstore. Further use APP only if it is used by more than 10,000 persons. Then only they may be considered safe. Informed that number of APPs are spyware.

Director NJA summed up whole conference of mutual learning, fruitful dialogue and thanked all for interactive responses.