

# NATIONAL JUDICIAL ACADEMY



## TRAINING PROGRAM FOR BANGLADESH JUDGES AND JUDICIAL OFFICERS

[SE-13]

3<sup>RD</sup> - 7<sup>TH</sup> APRIL, 2023

### PROGRAMME REPORT

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A Memorandum of Understanding (MoU) between the National Judicial Academy, India (NJA) and the Supreme Court of Bangladesh was entered into for organizing Training and Capacity Building programmes for Bangladesh Judicial Officers. In pursuance of the said MoU, a training program was organized by NJA for a delegation of Judges nominated by Bangladesh from 3<sup>rd</sup> to 7<sup>th</sup> April, 2023. In compliance with the said MOU entered into between the NJA and the Supreme Court of Bangladesh for the training of about 2000 officers from 2017 through 2028, the Academy endeavours to continue the capacity building and training of judicial officers of Bangladesh.

The contours of the program traced the overview and architecture of the Indian constitutional arrangement, highlighting the constitutional values enshrined in the preamble, the basic structure of the constitution, and vision of courts. Some important contributions by the constitutional courts in the last decade including the judgments on free and fair election, privacy, adultery, transgender rights, and judicial appointments formed part of the programme. The critical elements of judicial behaviour viz. ethics, neutrality and professionalism essential to a judge's demeanour were deliberated upon. Sessions on the theme art, craft and science of drafting judgments on judging skills, including effective listening, assimilating, drafting and delivering quality judgments was included. Appreciation of evidence in civil and criminal cases alongside recent advances in the field of electronic evidence, its preservation, collection & appreciation including established and emerging jurisprudence on the subject formed part of the discourse. Further, following themes including Court and Case management wherein bottlenecks in judicial administration, best practices on effective disposal of cases & role of a judge in management of court & case was dwelt upon in light of re-engineering judicial process through ICT including E-courts project, National Judicial Data Grid (NJDG), Case Information System (CIS), and embracing of AI enabled projects viz. SUPACE, SUVAS projects, etc. The program also included sessions on Forensic Evidence in Civil and Criminal Trials: DNA Profiling, Criminal Justice Administration and Human Rights, and Human Rights: Fair and Impartial Investigation. The report includes a brief of deliberation for each session.

## **SESSION 1: OVERVIEW OF THE INDIAN CONSTITUTIONAL ARRANGEMENT**

*Speakers: Justice Indira Banerjee and Mr. Ramakrishnan Viraraghavan*

The session emphasized on the historical background of Bangladesh's association with India, the cancellation of partition due to protests, and the recognition of the Bangla language as the national language. It also highlighted the people-centric nature of the Indian Constitution, the role of elected representatives in operating the Constitution, and the significance of the judiciary in upholding constitutional values.

The session provided an introduction to the Indian Polity, emphasizing the Indian Constitution as a people-centric framework. It was highlighted that the Indian Constitution begins with the words "we the people of India" in its preamble. The 42<sup>nd</sup> Amendment Act of 1976 amended the preamble, reinforcing the Constitution's promise of justice, both social and economic, to all citizens. The Constitution ensures equality for all and upholds noble ideals. The session discussed the importance of elected representatives in operating the Constitution responsibly. It was opined that in cases where the majority in power fails to do so, the judiciary acts as the

guardian and protector of the Constitution. A comparison between the Constitution of Bangladesh and the Indian Constitution highlighted the unitary nature of the former and the federal structure of the latter, which includes States and Union Territories.

The Indian Constitution's chapter on Fundamental Rights (FRs) was mentioned, underscoring that any law contradicting these rights is subject to judicial review and can be struck down. The right to freedom of religion was also highlighted, emphasizing India's status as a secular country. Articles 36-51, which pertain to Directive Principles of State Policy (DPSP), were discussed, showcasing the commitment to socio-economic welfare. The session also touched upon the right to free legal aid, alternative dispute resolution mechanisms like Lok Adalats, and settlement of disputes outside courts. The significance of Fundamental Duties under Article 51A was highlighted, and specific cases related to environmental protection were mentioned. The parliamentary system of government in India, inherited from the British system, was acknowledged, and the separation of powers among the legislature, executive, and judiciary was explained. The session emphasized the clear demarcation of lawmaking powers between the state and the Union, as outlined in Lists I, II, and III (Concurrent List). The power to declare emergencies and enforce President's rule by the Union was also discussed. The right to property under Article 300A and the amendability of the Constitution under Article 368 were emphasized upon.

The session drew parallels between the creation of the Bangladesh Constitution in 1972 by Dr. Kamal Hossain and the Indian Constitution. Key features of the Constitution were discussed, citing landmark cases such as *Keshavananda Bharti*, *Minerva Mills*, and *L Chandra Kumar*. The session also explored the concept of the Constitution as a social contract, referencing the philosophies of Rousseau, Locke, and Hobbes, which highlighted the mutual obligations between the sovereign and the people. The inclusion of the basic structure doctrine through the 15th amendment to the Bangladesh Constitution was noted, emphasizing good governance through a social contract.

The session emphasized India's status as a successful democracy. It referred to the case of *Ziyouddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra*, 1975 AIR 1778, wherein J. BEG, M., defined the term "secular." It was noted that Roman Empire and kingdoms to date lack a written Constitution. The session highlighted the significance of a constitution in distributing powers among the legislative, executive, and judicial branches and between the Union and the States. Two types of constitutions were discussed: framers' Constitutions (e.g., the United States) and detailed Constitutions (e.g., India). In this regard, it was highlighted that in the United States Constitution, residual powers rest with the States, while conferred powers belong to the Union. Emphasis was placed on Constitutional supremacy rather than parliamentary supremacy.

The session highlighted the difference in amendment processes between the United States, India, and Bangladesh. It was pointed out that the US Constitution has been amended approximately 26 times in about 235 years, while the Indian Constitution has been amended 105 times in 73 years. It was mentioned that India has had only one Constitution in 73 years, whereas Bangladesh has had one Constitution since 1972. In contrast, Pakistan has had three Constitutions, Nepal has had seven, and Sri Lanka three. The session mentioned that the extent of social change determines whether a Constitution is amended or replaced. The session included discussion on the amendment procedures specified in the US Constitution (Article V),

the Bangladesh Constitution (Article 142), and the Indian Constitution (Article 368). On the amendment processes the requirements for initiating amendments were highlighted such as, securing the necessary majority, and obtaining assent from the President or ratification by the legislatures of the states.

The session touched upon the concept of basic structure doctrine and referred to significant judgments, such as *Muhammad Abdul Haque v. Fazlul Quader*, PLD 1963 Dacca 669; Affirmed in *Fazlul Quader Chowdhry v. Muhammad Abdul Haque* (1966) 18 DLR SC 69; and *Kesavananda Bharti v. State of Kerala*, (1973) 4 SCC 225 (13 judges). It was mentioned that the Supreme Court defines the basic features of the Constitution in the absence of a specific definition. Arguments both in favor of and against the basic structure doctrine were discussed, with the latter emphasizing the lack of textual support and reliance on the *Kesavananda Bharti* Judgement.

## **SESSION 2: JUDICIARY IN A CONSTITUTIONAL DEMOCRACY**

*Speakers: Justice Indira Banerjee and Mr. Ramakrishnan Viraraghavan*

The discussions in this session continued from the previous session elaborating on the basic structure doctrine and the subject of judicial architecture. The session focused on significant judgments in Bangladesh and delved into the concept of basic structure in a Constitution. It also explored aspects of judicial architecture, including the establishment of the Supreme Court, judges' appointments, jurisdiction, and the separation of powers doctrine.

The session referred to the landmark case of *Anwar Hossain Chowdhury v. Bangladesh* (1989) [8th Amendment Case], which introduced the doctrine of basic structure in Bangladesh. It was emphasized that the unitary character of the higher judiciary is considered a basic structure of the Constitution. It was reiterated that the doctrine of basic structure was derived from the *Kesavananda Bharati v. State of Kerala* (1973) and *Fazlul Qader Chowdhury v. Abdul Huque* (1963) judgments. The session highlighted the supremacy of the Constitution and the unitary character of the Supreme Court as an element of the basic structure. The session discussed the fundamental aspects considered as basic structure of the Constitution. It highlighted that a Constitution favors certainty, stability, and a fair justice delivery system. Other basic structures mentioned include the protection of fundamental rights, prevention of dictatorship, and serving as a tool against rigidity and undemocratic practices. It acts as a safeguard against bias and ensures that undemocratic individuals do not have the final say.

A reference was made to Article 124 of the Indian Constitution, which pertains to the establishment and constitution of the Supreme Court. Article 124(2) was specifically emphasized during the discussion. The session also touched upon the appointment of judges through the collegium system and the striking down of the National Judicial Appointment Commission (NJAC) amendment. The session highlighted the jurisdiction of the Supreme Court, including its original jurisdiction in cases of disputes between the Union and State governments in India. It also mentioned the existence of tribunals, with a specific reference to the tribunal for river water disputes. Several articles, such as Article 131A (special power of the Supreme Court), Article 132 (appellate jurisdiction), Article 134 (appellate jurisdiction in criminal matters), and Article 136 (Special Leave Petition), were discussed in relation to the powers and functions of the Supreme Court.

The session covered the doctrine of separation of powers, emphasizing the separation of powers among the executive, legislative, and judiciary branches. It was noted that the separation of powers is not a separation or conflict of purpose but a system of checks and balances. The session highlighted the importance of maintaining the supremacy of the constitution and ensuring the proper functioning of each branch of government.

The session also threw light on the constitutional provisions relating to the appointment of judges and the control and discipline of subordinate courts in Bangladesh. Several provisions of the Constitution of Bangladesh were cited to shed light on the judicial architecture and jurisdiction of courts in the country. Article 95 states that the Chief Justice is appointed by the President, while other judges are appointed by the President after consultation with the Chief Justice. In the case of subordinate courts, appointments to offices in the judicial service or as magistrates exercising judicial functions are made by the President in accordance with rules established by him. This ensures that the process of judicial appointments in Bangladesh involves consultation and adherence to prescribed procedures. It was also highlighted that Article 116 of the Bangladesh Constitution addresses the control and discipline of persons employed in the judicial service and magistrates exercising judicial functions wherein the President in consultation with the Supreme Court has the control on the power of posting, promotion, and granting leave. It was opined that this arrangement ensures a system of checks and balances and allows the judiciary to have a say in matters of control and discipline.

The session also discussed the Judicial Appointments Commission (JAC) in England and Wales, which is responsible for selecting candidates for judicial positions. The composition of the JAC was highlighted to emphasize that the diverse composition ensures the inclusion of different perspectives and expertise in the selection process.

### **SESSION 3: CONSTITUTIONAL VISION OF JUSTICE**

*Speakers: Mr. Ramakrishnan Viraraghavan and Prof. (Dr.) Vijayakumar*

The discussion in the previous session continued in third session, focusing on judiciary in a Constitutional democracy, the conquest of the judiciary priced for the executive and the legislative, the concept of justice, and the vision of justice within the Constitution. The session explored various aspects, including the role of district judges, the interpretation of legislative intent, the need for judicial control, and the facets of justice. Additionally, the discussion emphasized the importance of social democracy in achieving political democracy and the principles of liberty, fraternity, and equality.

The session explored the judiciary's role in interpreting the Constitution and statutes. The district judges were urged to prioritize the principle of "bail not jail" and grant bail when circumstances permit. The judiciary's ability to give meaning to the Constitution was emphasized, making it the "price of conquest." The concept of legislative intent, that is, interpreting what the legislature intended through their words, was also discussed. It was opined that the administrative and disciplinary control of the judiciary to be vested within the judiciary itself, advocating for independence from the legislature. The issue of class and socio-economic bias within the judicial system was raised, highlighting the need to address and overcome such biases.

The discussion delved into the constitutional vision of justice, emphasizing its social, economic, and political facets. The preamble to the Constitution was referred to as the source of power, highlighting the objective of securing justice, liberty, and equality for all citizens. Different definitions of justice were presented, including doing good to friends and harm to enemies, justice being in the interest of the stronger, and justice as speaking the truth and fulfilling one's debts. Plato's rejection of these definitions and the assertion that justice pays in the worlds to come was mentioned. The session underscored the importance of transforming political democracy into social democracy. It was emphasized that political democracy must be supported by social democracy, which encompasses the principles of liberty, fraternity, and equality. These principles were seen as foundational for a just and equitable society.

#### **SESSION 4: ELEMENTS OF JUDICIAL BEHAVIOUR: ETHICS, NEUTRALITY, AND PROFESSIONALISM**

*Speakers: Justice Ram Mohan Reddy and Justice M.S. Sanklecha*

The session commenced by highlighting the words of Benjamin Cardozo on the importance of proper conduct for judges, including how they should behave in open court and maintain impartiality. Further, Albert Einstein was quoted stating that a calm and modest life brings more happiness than relentless pursuit of success combined with restlessness. Socrates four qualities that improve a judge, such as justice being a virtue that surpasses rules and procedures, with law bending before justice was pointed out. It was emphasized that a judge must embody qualities of ethics, neutrality, impartiality, and objectivity.

An emphasis was drawn on the concept of justice which extends beyond mere execution and should be visibly evident. It was mentioned that the rule of law serves as its foundation, with objectivity and rationality necessary as judges dispense justice. Public trust and confidence are vital to the judiciary, and judges are expected to fulfill these expectations. It was opined that litigants in a court of law anticipate adherence to fundamental principles, such as *audi alteram partem*, which relate to the essential objectives and fundamentals of substantive law. Notable cases like *Bidi Supply Co. v. UOI* (1956 AIR 479) and *All India Judges Association v. UOI* (1992) 1 SCC 119 were referred that have addressed the identification of standards by which judicial members should be held accountable, as well as mechanisms, formal or informal, to ensure adherence to these standards. It was put forth that judges are held to a higher standard of conduct and must maintain a restricted lifestyle where in Edmund Burke was quoted to emphasize upon the importance of such conduct. The session threw light on judicial temperament which encompasses desirable traits such as independence, courtesy, patience, dignity, open-mindedness, impartiality, thoroughness, decisiveness, compassion, and social consciousness.

It was further proposed that the inherent qualities expected of a judge include honesty, integrity, impeccable character, probity, a commitment to justice, sound judgment based on legal knowledge, the ability to reach firm conclusions and articulate reasoning, and a willingness to apply critical thinking. Requirements for judges encompass self-confidence and the observance of the highest standards of conduct, which are crucial for maintaining public confidence in the judiciary and the administration of justice. Upholding the dignity and standing of the judicial office, along with a high degree of alertness, caution, and common sense, is essential. It was

explained that impartiality is assessed by the standard of reasonableness, requiring judges to be fair-minded and well-informed. Judges must exhibit integrity and avoid impropriety, conducting themselves in a manner that upholds the standing and dignity of the judicial office while striking a balance within the constraints imposed by their role.

It was advised that diligence in the discharge of judicial duties is crucial, including punctuality and the prompt performance of duties. Judges should conduct themselves with courtesy towards all parties and expect the same courtesy in return. Judicial independence is not a privilege but a responsibility to fulfill constitutional duties. Judges should reject any attempts, direct or indirect, to influence them and remain immune to the effects of publicity, acting fearlessly regardless of popular acclaim or criticism. The session also included discussion on media reporting and misreporting wherein it was suggested that in case of media misreporting, judges should consult with the Chief Justice and address the issue accordingly. In situations involving conflicts of interest, judges should inform the parties, disclose the conflict to the registry, and recuse themselves from presiding over the case. It was further suggested that as role models, judges should refrain from engaging in professional activities outside the court that may compromise their integrity, demonstrating the way through their actions.

Lastly, the session was summarized as an enumeration of the qualities one would require both personal and professional to properly discharge the duties of a judge. Definitions of the word 'justice' was deliberated upon. Various qualities of judicial ethics including honesty, integrity, independence, judicial detachment, judicial impartiality, humility, punctuality, probity, patience, judicial order, competence and diligence were discussed at length.

## **SESSION 5: JUDGING SKILLS: ART, CRAFT AND SCIENCE OF DRAFTING JUDGMENTS**

*Speakers: Justice U.C. Dhyani and Justice Ram Mohan Reddy*

The session on judging skills focused on examining judicial decision making in civil and criminal matters. It was emphasized that the process of judicial decision-making involves a judge expressing their views and intentions through their judgments. It was opined that words hold a significant power and consideration of litigants' needs is essential in this process. It was highlighted that reasoning plays a crucial role, which involves organizing and presenting facts, applying relevant laws, conducting a thorough analysis, and arriving at a well-founded conclusion. The session covered discussion on important aspects of civil and criminal cases, the role of judges, the significance of effective communication in judgments, and the importance of gender sensitivity.

With regard to decision making in Civil matters following areas were deliberated upon including Interlocutory Orders wherein the importance of issuing clear and concise interlocutory orders to facilitate effective case management was emphasized upon. The session highlighted the relevance of complying with Order 20 of Code of Civil Procedure (CPC) while drafting judgments, emphasizing the need for coherence, clarity, and conciseness. Issues and Marshaling of Facts was deliberated upon highlighting Order 14 CPC, which deals with framing issues in civil cases, emphasizing the significance of effectively organizing facts to present a compelling argument. Judges were advised to interpret and apply relevant laws accurately and effectively when delivering judgments. The session involved discussion on the

processes of first appeal, second appeal on substantive questions of law, revision, and review, emphasizing the importance of brevity while maintaining quality. The virtue of brevity in judgments was stressed upon without compromising their quality.

The session dwelt upon decision making in criminal matters wherein the significance of judiciously handling remand and bail matters in criminal cases was emphasized. The participants discussed the importance of carefully evaluating and analyzing the evidence presented during trials to arrive at just conclusions. The session also included discussion on sentencing practices. The complexities involved in determining appropriate sentences based on the culpable mental state of the accused and the principles of compensatory jurisprudence were explored. The importance of understanding medico-legal cases, injuries, and post-mortem reports while dealing with criminal matters was also addressed during the session. The A B C D of Docket Exclusion and Docket Explosion was highlighted. The challenges faced by courts in efficiently managing their dockets were briefly discussed. An illustrative story on Cross-examination was presented to participants during the session to highlight the importance of thorough cross-examination to uncover the truth and avoid misleading conclusions.

Discussions also delved into judicial role and timely justice exploring ways to assure timely justice delivery, citing the case of *Ram Chander v. State of Haryana*, AIR 1981 SC 1036, which emphasized the active involvement of judges in the trial process. Various relevant articles and sections were referred including Articles 141, 227, and 235 of the Constitution, along with Section 165 of the Indian Evidence Act, 1872, emphasizing their significance in judicial decision making. The session introduced Section 89, which encourages amicable settlements between parties without court intervention, aiming for peaceful resolution. A reference was made to the case of *Salem Advocate Bar Association, Tamil Nadu vs. Union of India* (2005) 6 SCC, 344 wherein the Apex Court upheld the constitutional validity of Section 89 of the Code, emphasizing the court's duty to refer disputes to alternative dispute resolution methods if elements of settlement exist.

The session discussed reactive, proactive, and pre-emptive approaches to handling cases, emphasizing the importance of being proactive and taking pre-emptive measures in judicial decision making. The session addressed the intricacies of gender sensitivity in judgments, highlighting landmark judgment in case of *Aparna Bhat*, which underscored the evolving approach towards gender equality in the legal system.

Three fundamental principles of a judgment were listed as follows: first, the recording of material facts, whether directly inferred or indirect; second, the statement of the applicable legal principles relevant to the legal problem at hand; and third, the judgment itself, which is based on the combined effect of the first two principles.

It was emphasized that when dissecting a judgment, it can be divided into several parts. The first part comprises the narration of the facts, whether disputed or undisputed, as determined by the court. The second part involves presenting the controversy between the parties. The third part addresses the legal questions and issues arising from the case. The fourth part includes references to statutory or uncodified laws that guide the court's decision-making process. The fifth part consists of the reasons behind the court's decision, providing an explanation and rationale. The sixth part presents the findings based on evidence and legal analysis. Finally, the seventh part includes the conclusion and operative portion of the judgment, summarizing the



court's decision and any orders or directions. Following these seven parts can assist judges in writing judgments with ease.

It was further suggested that it is important to avoid writing elaborate and repetitive judgments, as they may be considered non-speaking orders lacking sufficient reasons. Disparaging and derogatory remarks against parties or witnesses should be avoided. Personal remarks and views should only be included when necessary, and judges are encouraged to be brief in their judgment writing. Judges are required to write judgments for several reasons. First, it ensures that parties and their counsel can understand the court's decision. Second, it establishes the authority that parties must comply with. Finally, it provides guidance to members of the legal profession. It is worth noting that different jurisdictions may have variations in the style and content of judgments. Lastly, the object and purpose of a reasoned judgment were identified as follows: informing the litigants, demonstrating the fairness and correctness of the decision, excluding arbitrariness and bias, and ensuring that justice is not only done but is also perceived to be done.

## **SESSION 6: RATIO OF A PRECEDENT**

*Speakers: Justice U.C. Dhyani and Justice Ram Mohan Reddy*

During the session, Article 141 of the Indian Constitution, which is equivalent to Article 111 of the Constitution of Bangladesh, was thoroughly discussed. Several key areas related to precedents and their importance in maintaining societal coherence were deliberated upon, including the facilitation of consistency through precedents.

The session emphasized the significance of judges maintaining discipline. Precedent was viewed as a form of judicial discipline, serving as a legal decision or proceeding that acts as an authoritative rule or pattern in similar cases. It was highlighted that in situations not covered by statutes, the law of precedent becomes applicable. The rule of adherence to precedents can only be deviated from or departed from if there is proper justification, and it should ultimately lead to uniformity, certainty, and finality.

It was highlighted that a judge must carefully balance various factors such as philosophy, logic, customs, and the sense of what is right, to make a wise decision and determine the weight that will tip the scales. The distinction between static and dynamic precedents was also discussed. It was opined that controversy often arises not on undisputed or similar facts, but on their application to dissimilar cases, requiring intelligence, patience, and discernment from judges.

It was elucidated that Article 141 of the Indian Constitution confers constitutional status and authority to the doctrine of precedent that considers the decisions of the Supreme Court as law declared. This ensures certainty and predictability, given the Supreme Court's status as a Court of Record under Article 129 of the Constitution. Decisions of State High Courts are binding within the respective states. It was stated that in the interest of judicial discipline and propriety, if a two-judge bench finds a decision of a three-judge bench to be so incorrect that it cannot be followed in any way, the proper course of action is to refer the matter to another bench of three judges. The judgment in the case of *Pradip Chandra Parija and Ors v. Pramod Chandra Patanaik*, (2002) 1 SCC 1, was highlighted in this context.

The principle of Stare Decisis, meaning "to stand by that which is decided," was discussed. It was underscored that the principle is based on the idea that following precedents provides fairness and certainty. Stare Decisis arises from two maxims: no one should be subjected to repeated harassment regarding the same dispute, and the interests of the state require finality. Limitations to the rule of Stare Decisis were also highlighted, including overruled decisions, manifestly erroneous decisions, isolated cases, obiter dicta (incidental remarks made by the court), sub-silentio (decisions made without proper discussion), and per incuriam (decisions made without considering relevant laws or precedents). The doctrine of prospective overruling was discussed, which states that a law declared by the Supreme Court will have a retrospective effect. The case of *George v. State of Kerala* (2007) 3 SCC 557 was mentioned in this regard.

The concept of *Ratio Decidendi*, which refers to the underlying principle or general grounds upon which a decision is based, was explained. The decision itself, along with the enunciation of the reason or principle upon which it is based, is binding as a precedent. Cases such as *Krishne Kumar v. Union of India* (1990) 4 SCC 207 and *Rajendra Singh v. State of UP* (2007) AIR SCW 5034 were referred to during the discussion. Lastly, the applicability of precedents was discussed and following key points were enlisted viz. law must be stable not still, Interim order has no precedent value, decision of another State High Court has a persuasive value, and parity in bail is a matter subject to individual case and not a precedent.

## **SESSION 7: PRINCIPLES OF EVIDENCE: APPRECIATION IN CIVIL AND CRIMINAL CASES**

*Speakers: Justice U.C. Dhyani and Mr. S.R. Somasekhara*

How do we understand evidentiary standards as it stands today, right against self-incrimination, reverse burden of proof were some areas dwelt upon during the session. The correct procedure of law vis-à-vis its application formed part of the discussion. The session dwelt upon the vital role of evidence and legal presumptions in the pursuit of truth and justice in legal proceedings. The participants engaged in a comprehensive analysis of various aspects related to evidence, including the reconstruction of past events, burden of proof, types of evidence, examination procedures, legal presumptions, and witness credibility. Regarding the reconstruction of past events, it was emphasized that the burden of proof lies with the party making a claim. The principle "one who asserts must prove" underlined the responsibility of the asserting party to provide evidence supporting their claim. It was emphasized that in civil cases, the "Preponderance of Probability" is commonly used, while in criminal cases, the standard is "Proof beyond reasonable doubt." During the discussions, Sir James Stephen's perspective was highlighted. It was clarified that "*Falsus in uno falsus in omnibus*" is not a rule of evidence in criminal trials. The court has the duty to carefully examine the evidence presented and distinguish between reliable and unreliable elements.

Different types of evidence were outlined distinguishing between direct and indirect evidence. It was elaborated that direct evidence includes testimony from individuals who directly observed, heard, or perceived the event, while indirect evidence relies on inference and circumstantial evidence. Oral evidence, given by witnesses who personally witnessed or experienced the event, was considered significant, and corroboration was deemed a rule of prudence. Deaf and dumb witnesses were discussed, and it was noted that they may provide

their statements in writing in court, which is treated as oral evidence. Documentary evidence, such as written documents, records, photographs, and other tangible materials, was recognized as important in establishing facts. It was emphasized that each link in the chain of circumstances for circumstantial evidence should be complete, as suspicion alone, no matter how grave, cannot replace conclusive proof. The principle of "Last Seen Evidence" was also explored, which suggests that the person last seen with the victim may be considered a suspect until proven otherwise.

The examination procedures outlined in the Indian Evidence Act were thoroughly examined. The participants noted that the Act provides guidelines for conducting examinations, including examination-in-chief, cross-examination, re-examination, and questions by the party to their own witness. The session also included discussion on leading questions, which are allowed under certain circumstances according to Section 141. Cross-examination was identified as a means to question witnesses about their previous statements in writing, as stated in Section 145. The interplay between oral evidence and medical evidence, particularly post mortem reports, was explored. Legal presumptions and their significance in legal proceedings were discussed extensively. Several specific presumptions were highlighted, such as the presumption as to abetment of suicide by a married woman (S-113-A), the presumption as to dowry death (S-113-B), the presumption as to absence of consent in certain prosecutions for rape (S-114-A), and the presumption of culpable mental state in the NDPS Act, 1985 (S-35). The participants also mentioned presumptions related to evidence in POCSO cases, specifically those related to certain offenses and culpable mental state (S-29 and S-30).

Witness credibility was identified as a crucial factor in legal proceedings. The participants discussed various types of witnesses, including eye-witnesses, child witnesses, injured witnesses, interested witnesses, and dumb witnesses. The importance of classifying witnesses as reliable, unreliable, partly reliable, wholly reliable, or wholly unreliable was stressed upon. Extra-judicial confessions made by the accused outside the court and pleas of alibi (S-11), which claim that the accused was elsewhere during the commission of the crime, were also examined. The role of expert witnesses, such as handwriting experts, ballistic experts, firearm experts, fingerprint experts, and public analysts, was acknowledged.

The deliberations concluded by highlighting the crisis of credibility in legal proceedings. The importance of credibility was underscored through an anecdote, emphasizing the significance of expertise, knowledge, and adherence to legal principles in achieving justice. A reference was also made to 'Kurosawa effect' also known as Oshinawa Effect which relates to the theory that same event may be interpreted by different people in different ways.

## **SESSION 08: FORENSIC EVIDENCE IN CIVIL AND CRIMINAL TRIALS**

*Speakers: Dr. G K Goswami Ms. Shreya Rastogi*

This session dealt with the role of forensic evidence in a trial. The participants were apprised with the various disciplines of forensic studies relevant in any trial. The relevant sections of the Bangladesh's legal framework including Section 45 & 45A of the Evidence Act 1872, Section 510 of the Code on Criminal Procedure 1898 and the DNA Act, 2014 were elaborated upon. Similarly, the relevant provisions of the Indian legal framework dealing with the issue

of forensic evidence were also highlighted. It was noted that under Section 45 of the Indian Evidence Act opinion of persons especially skilled in such areas are relevant facts. Highlighting the independence of the forensic experts as per section 45 A of the Indian Act it was stated that physical or forensic report must be addressed to the court. The report must be available to all parties before evidence of the expert is recorded to draw parity between both the sides. Similarly, under section 510 of the CrPC concerns with the mode of proof and it does not create an exception to the standards of admissibility and weight u/s Section 45 Evidence Act. Furthermore, the procedure and the methodology for the judges to examine an expert evidence in this domain was also discussed. It can be noted as:

1. Scientific studies must be checked on the touchstone of accuracy, repeatability and reproducibility of the forensic technique
2. Whether the expert is qualified in that technique to perform analysis
3. Whether the expert has provided reasons and data & materials to support their conclusions?
4. Whether the expert has reliably followed the technique as per the applicable protocols?
5. Whether the expert has obtained and interpreted the results accurately and reported them correctly?

The issue of the extent of probative value, reliability and the weightage a judge has to render to the evidence of an expert was also discussed vividly in the light of the contemporary case law jurisprudence with the take away that the final opinion is always of the judge. The session also focalized upon the impact of technology in the forensic sciences.

### **SESSION 09: ELECTRONIC EVIDENCE: NEW HORIZONS, COLLECTION, PRESERVATION AND APPRECIATION**

*Speakers: Dr. Harold D' Costa*

The session commenced with the speaker briefing the participants about the criminology of the cyberspace. The meaning and scope of 'electronic evidence' as provided under the explanation to Section 79A of the IT Act was expounded upon. The amendments and modifications brought about to the Indian Evidence Act vis-à-vis 'electronic records' was discussed with reference to Sections 3(a), 5, 17, 22A, 39 65A and 65B of the Act. Furthermore, Section 65B that deals with the admissibility of an electronic evidence and Section 81A - 84A was also discussed in relation to presumptions regarding digital evidence.

The alarming issue of increasing fake evidence tools due to adversaries like dark net and dark web was also highlighted. Similarly, a WhatsApp, Gmail and SMS chat can be easily manipulated and morphed despite the former being end to end encrypted. The world of internet has no single ownership as it is more of a concept than an actual tangible entity, and it relies on a physical infrastructure that connects networks to other networks. The vulnerability of password protection was also focalized upon.

In modern times, since digital evidence has wider scope as 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, the challenge to accuracy is ever increasing. It was emphasized that if

identified, collected and analysed in a sound manner, electronic evidence can provide path breaking outcomes in a civil, criminal and corporate investigations. Volatile and non-volatile evidence and their manner of acquisition were discussed with the aid of illustrations.

Various tools that help reinforce authenticity of a data, chat and its source was deliberated upon. These include applications like: Root Checker App, Log Sheet Data, CDR File, No-IP, etc. The issue of data localization was also deliberated upon. The session concluded with the remark that widening of the understanding and awareness of the judges 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.

### **SESSION 10: JUDGE AS THE MASTER OF THE COURT: COURT & CASE MANAGEMENT**

*Speakers: Justice Mohit Shah & Justice Asha Menon*

The session primarily focused on the art of docket management and culling out best practices through sharing of knowledge to manage the court and the caseload. The deliberations commenced with the inspirational work of **Rabindranath Thakur's-Tomar Nyayer Dando** or **Your Mace of Justice**. It was opined that there is need for an attitudinal shift from lawyers controlling the court proceedings to the judge taking charge of his courtroom. The need for case management with at least a 4 crore pendency is even more imperative. The methodology can be noted as follows:

1. Early assignment of cases to the judge.
2. Ensure that the registry has given a brochure on Alternate Dispute Resolution (hereinafter, ADR) Mechanisms available for the case to the judge as well as the parties to inform and enable them to opt for this recourse.
3. Once the pleadings are filed the judge must take the lead.
4. Whilst recording of the evidence especially during cross examination if necessary the judge may counsel the witness.
5. Post recording, if the counsels engage in long and repetitive arguments the judge must proactively nub such delay tactics.
6. The judge must not allow the practice of lawyers reading lengthy and plethora of judgements as the legal issues at hand are merely numbered.

Similarly, the best practices for a judge to be exercised when there is a very high pendency can be noted as follows:

1. Classify cases as per their duration of pendency in a descending order to facilitate the disposal of the most overdue, first.
2. The parties must not only be persuaded to opt for ADR mechanism but also ensure that a date is fixed for next hearing if such alternate mechanism fails.

3. If in an old case an adjournment is sought, the judge must evolve guidelines or parameters to ensure that any further adjournment has not been left to the court staff or any third factor that may subject it to abuse causing further delay.

It was opined that law is 9/10<sup>th</sup> of common sense and that a judge must apply broad principles and common sense whilst solving a case at hand. It was advised to notify a cause list in advance, weekly if possible and adequately inform the parties. It was concluded that for any change or reform to be brought forth a judge may have to face multiple hurdles however, if the judicial officer takes the lawyers and his/her court staff in due confidence, the implementation could be done seamlessly.

## **SESSION 11: CRIMINAL JUSTICE ADMINISTRATION AND HUMAN RIGHTS**

*Speakers: Justice S Vimala & Justice Ved Prakash Sharma*

The session dwelt upon the indispensability of human rights within a rule of law regime. The extent to which human rights are respected and protected in a Criminal Justice Administration is an important measure of society's civilization. The speaker apprised the participants with the origin of the human rights with Cyrus Cylinder now been recognized as the world's first charter of human rights. Its provisions parallel the first four Articles of the Universal Declaration of Human Rights, 1948. Whereas, the Magna Carta of 1215, accepted by King John of England, is considered by many experts as the document that marks the recognition of human rights in modern democracy.

The several nuances of a criminal justice administration namely- the components, stages, stakeholders, duty holders, the contemporary areas of concern and the way forward was discussed at length during the session.

A juxtaposition was also drawn between the Bangladesh's Constitutional Framework and the Indian Framework of the Constitution whilst comparing the various similarities and dissimilarities between the two. However, imperative to note is the uniform and identical resolve of both the nations to respect the Human Rights and dignity of all human persons and provide utmost protection for the same.

The two facets i.e., the rhetorical and the real of the practical implementation of both the regimes was brought to the notice of the participants. The rhetorical part entails: the International Instruments and Covenants that the country has ratified or is a signatory to that have an enumeration of constitutional goal & resolve having imprints of human rights, provisions in substantive and procedural laws of the land and the special acts for protection human rights and the vulnerable and the Judicial pronouncements on matters concerning jurisprudence of human rights and the infringement of human rights.

The ground reality of this regime was also elaborate at length. In this line, it was highlighted that our criminal justice system and the corresponding institutional framework is still a borrowed legacy of the ruthless colonial police state. No significant changes have been made towards police reforms, making the latter principally an instrument of coercive state power.

With regards, arbitrary arrest and detention it was noted that several sections of the penal code are prone to misuse even though the apex court in *Rudul Sah v. State of Bihar*, (1983 4 SCC 141) has ruled that the victims of unlawful or illegal arrest were entitled to compensation for violation of their fundamental rights under Part III of the Indian Constitution. Furthermore, it was stated that despite enactment of special legislation prohibiting torture by the police, the allegation is that torture continues to be practiced as a routine and accepted means of investigation.

In the same breath, the issue of surmounting cases of extra-judicial killings by law-enforcement agencies was also enunciated upon. The judgements *Bangladesh and others vs. BLAST and others*, ( Civil Appeal No 53 of 2004 (Arising out of Writ Petition 3806 of 1998 in the Supreme Court of Bangladesh- Appellate Division) and *Manoj v. State of M.P.*, (2023 2 SCC 353) were also deliberated upon. The issues of the violation of human rights of the under trials and the miserable conditions of our overcrowded prisons that lack basic minimum requirements for sustenance and hygiene were also highlighted.

It was expounded that denial of a fair trial is as much injustice to the accused as it is to the victim and the society. In the light of *Zahira Habibullah Sheikh and Ors v. State of Gujarat and ors*, (2006 3 SCC 374) it was opined that fairness to the public is also a legitimate consideration. The role of courts to scrupulously observe the constitutional and procedural safeguards of all living beings was also pinpointed. In the end, whilst drawing inspiration from the words of the late Justice *V.R. Krishna Iyer* it was rhetorically asserted that courts are the watchdog of human rights and a magistrate's 'solemn function' is to help safeguard the most vital of constitutional rights – the right to life and liberty.

## **SESSION 12: RE-ENGINEERING JUDICIAL PROCESS THROUGH ICT**

*Speakers: Justice R C Chavan & Mr. Atul Kuashik*

The session commenced with brainstorming over questions of utmost importance on the need for computerization in the era of rapidly evolving technology and artificial intelligence. They can be noted as follows:

1. Why do we need computerization?
2. What is the aim that we seek to achieve by use of machines?
3. Do we want replace a human judge by Artificial Intelligence?
4. Do we have sufficient change management to prepare us for the 'big' change?
5. With everything now available on the World Wide Web, does the stigma attached to anything go away?
6. Do we have we have defined outcomes especially for the litigant who comes to the court?

In the light of the above questions, it was answered that the change we aim to achieve must not be a mere cosmetic change as the use of Artificial Intelligence or AI is in vogue but rather it should be a holistic and stakeholder driven change in the system. AI as a tool cannot and must not be used to replace the human element in the justice system but can be used as a tool in the organization and facilitation of work. With regards, change management it was asserted that

we have a long road ahead. With the advent of the internet, once a stigma is attached to an object or a person, it becomes very difficult to completely eliminate and therefore one should be cautious whilst formulating their opinions completely based on the views circulated on the web without a thorough fact check.

It was further discussed that technology empowers courts by enabling it to meet its core purposes and responsibilities, particularly in the paucity of court staff. It reduces hours of operation and optimizes court locations. The pre-requisites to harness technology can be noted as – identification of needs of stakeholders viz., judges, lawyers and litigants, examine process re-engineering opportunities and migrate from document to content management. This improves the quality of justice, access to justice and boosts public trust and confidence in the court as an institution.

The session also entailed discussion on the initiatives taken by the Bangladesh Judiciary to make it an e-Judiciary. The challenges that the judiciary in India faces with regards e-courts were brought to the notice of the participants *inter alia* infrastructure, power shortages, low bandwidth, broadband connections, lack of computer facilities in courts, lack of digitization of court proceedings and court records, need to align e-judiciary with extant laws ( e.g., Evidence, CPC, CrPC) and emerging Cyber security issues.

The session proceeded with a detailed analysis and explanation of computerization of courts in India at all levels by the Government in coordination with the NIC. The National Judicial Data Grid 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 which will help to ascertain the number and type of arrears in every court in the country for better judicial monitoring and management.

The session also reiterated the key objectives of the e-Court Phase III viz: e-Sewa Kendras in all court complexes, paperless courts, digitization of entire court records, use of Artificial Intelligence /Machine Learning for analysis of case pendency, forecasting future litigation, doorstep judicial services and ease of justice.

It was asserted that the justice system in India is transparent in the light of Article 145(4). In the same breath it was brought to the notice of the participants that E-Committee website is accessible in 13 languages including Bengali, and is disabled friendly. Furthermore, the live streaming of cases and hearings in the Supreme Court and various other courts in India was also highlighted.

The issue of privacy and confidentiality versus transparency was also debated upon in the session. In the end, the solutions were provided to ensure data protection which are as follows:

1. The assessment of a data set must be based on: degree of potential harm; content, context and data field and not document.
2. Non-personal/anonymous data may not require application and permission from the court.
3. Personal data must require application and permission of court.



4. Sensitive personal data must require application, permission of court and consent of person concerned.

### SESSION 13: JUDICIARY AND MEDIA: NEED FOR BALANCE

*Speakers: Justice Manmohan Singh Prof. & (Dr.) Shashikala Gurpur*

At the very onset, the imperativeness and indispensability of an impartial and robust media was highlighted. Media is regarded as one of the pillars of democracy. The freedom of the press is regarded as “the mother of all liberties in a democratic society. Media is expected to deliver unbiased news and to put out facts rather than making any judgment. But at times, media has attempted to distort facts and give the judgment/ opinions even before the courts of law.

The issue of trial by media was discussed at length during the session. Media trials lead to interference with the work of the judiciary. Media should be responsible in their conduct and thus its freedom, like any other freedom, cannot be absolute.

It was noted that the Press shall not indulge in sensationalism, or in speculating upon the guilt or otherwise of any accused or other individual, or to create an opinion about the comportment or character of a person involved in the Trial as held in the case of *Indo-Asian News Channel (P) Ltd. v. T.N. Suraj*, (2022 SCC OnLine Ker 2710). Similarly, in the case of *Misreporting of Court Proceedings by Newspapers, In re*, (2012 13 SCC 580), it was held that distorted reporting of the court proceedings has the tendency of lowering the dignity of the institution and brings the entire institution of judiciary to ridicule in the eyes of the public and also shakes the people’s confidence in the independence and integrity of the institution.

It was observed that media has a right to know what is happening in courts and to communicate the information to the public which strengthens the confidence of the public in the transparency of the court proceedings. However, trial by media should be avoided particularly, at a stage when the suspect is entitled to the constitutional protection. Invasion of his rights is about to be held as impermissible.

Throwing light upon the case of *Dr. Shashi Tharoor v. Arnab Goswami*, (2018 246 DLT 279), it was noted that defendants have right to air their stories and same cannot be curbed but it has to be tempered and balanced. It was asserted that the judiciary is not independent unless the Courts of Justice are liable to administer law in the absence of pressure of popular opinion. This can possibly help to restore much needed balance amongst the most important common law laid in *R v Sussex Justices, ex parte McCarthy* (1924 1 KB 256) i.e., Justice should not only be done, it should manifestly and undoubtedly be seen to be done.

The issue of free trial versus free press was also discussed at length. It was stated that with the increasing corporatisation of media and the race to grab more eyeballs for higher numbers, the media is overstepping its boundaries. It has been witnessed that the media pronounces its own verdict before the trial begins and ends up violating the principles of a fair trial acting as self-

proclaimed judge and jury. Therefore, the media must exercise better self-regulation. It is expected of persons at the helm of the affairs in the field of media to ensure that the trial by media does not hamper fair investigation by the investigating agency, and more importantly does not prejudice the defense of accused in any manner whatsoever. It will amount to travesty of justice if either of these causes impediments in the accepted judicious and fair investigation and trial.

#### **SESSION 14: LANDMARK JUDGMENTS: CELEBRATING DECADAL MASTERPIECES**

*Speakers: Prof. (Dr.) B.T. Kaul & Prof. (Dr.) Shashikala Gurpur*

The session focalized upon the landmark judgements that have been lauded over the decades and stand as the hallmarks of the Indian Judiciary and its progressive jurisprudence. To begin with, the journey of right to privacy as a fundamental right under Part III was traced upon in the deliberations. From, *Kharak Singh v. State of UP* (1963 AIR 1295) which was the first case in India that dealt with the right to privacy whereby the Supreme Court held, although not explicitly mentioned in the Constitution but it is a part of the right to personal liberty under Article 21 to *K.S. Puttaswamy v. Union of India* (AIR 2017 SC 4161) which was a landmark case that declared the right to privacy as a fundamental right under the Constitution. The court held that privacy is an intrinsic part of personal liberty and that it is essential for the protection of human dignity and autonomy. This case laid down the foundation for the subsequent cases related to privacy.

On the independence of Judiciary in India, *S.P. Gupta vs. Union of India* (AIR 1982 SC 149) also known as the First Judges' case, as this established the principle of the primacy of the judiciary in the appointment and transfer of judges and *State of Rajasthan vs. Prakash Chand*, (1998 1 SCC 1) where the independence of the judiciary was held to be an essential feature of the Constitution and is protected by Article 50 of the Constitution to *Indira Jaising vs. Supreme Court of India* (2017 9 SCC 766) through which judiciary was held to be the watchdog of the Constitution were deliberated upon.

The last lap of the session the watershed judgements on the rights of women, children and other vulnerable sections of the society, were enunciated upon. They include - *Mary Roy v. State of Kerala* (1986 AIR 1011) that dealt with gender discrimination in inheritance laws and provided equal rights to women in ancestral property. *Vishaka v. State of Rajasthan* (AIR 1997 SC 3011) , wherein the Supreme Court laid down guidelines to prevent sexual harassment at the workplace, which came to be known as the Vishaka Guidelines. In *Indra Sawhney v. Union of India* (AIR 1993 SC 477) the Supreme Court upheld the validity of reservation to the

backward classes and laid down the principle of creamy layer. Through *National Legal Services Authority v. Union of India*, (2014 5 SCC 438) the right of transgender persons to self-identify their gender was recognized and to be identified as a third gender. *Navtej Singh Johar v. Union of India* (AIR 2018 SC 4321) case decriminalized consensual same-sex relations between adults and declared Section 377 of the Indian Penal Code, which criminalized homosexuality, as unconstitutional. In *Indian Young Lawyer's Association v Union of India* (2019 11 SCC 1) the Supreme Court held that the tradition of barring women of menstruating age from entering the temple was unconstitutional and violated the fundamental rights of women to equality and non-discrimination. The court held that the practice was based on gender stereotypes and prejudices and had no place in a modern democratic society