

NATIONAL JUDICIAL ACADEMY



SE-11

**TRAINING PROGRAM FOR JUDGES AND JUDICIAL
OFFICERS FROM
MYANMAR**

(4th to 7th December, 2023)

Programme Report

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Pursuant to the Memorandum of Understanding (MoU) entered between the National Judicial Academy (NJA), India and the Office of the Union of Chief Justice (OUCJ) under the Supreme Court of the Republic of the Union of Myanmar for organising training and capacity building programmes for Myanmar Judges and Judicial Officers in India, the NJA conducted a Training Programme for Judges and Judicial Officers from Myanmar, 04-07 December, 2023. The program offered a comprehensive curriculum on essential judicial skills, constitutional law, human rights, criminal justice, and civil procedures. Beyond legal frameworks, the sessions delved into principles of fairness and ethics in judicial practice, emphasizing professionalism and the nuanced art of crafting judgments. The participants engaged in discussions on effective court management, case handling strategies, and the modernization of justice administration through ICT integration. The program also shed light on the ongoing efforts by India to foster gender equality within its judiciary, showcasing practical examples and evolving perspectives. Moreover, the training explored the dynamic field of environmental law, highlighting landmark decisions by the Indian Supreme Court and their alignment with global legal norms. The significance of forensic evidence in both civil and criminal trials, including the evaluation of electronic evidence, was also a critical focus.

The session on *Constitutional Vision of Justice* emphasized upon the foundational principles and the role of the judiciary in upholding them. The key points deliberated upon during the session were that the Constitution serves as a social contract, embodying the collective aspirations of the people towards progress and societal well-being. It was put forth that the Constitution reflects fundamental values such as justice, liberty, equality, and fraternity, as outlined in the Preamble, Fundamental Rights, and Directive Principles. These values, along with constitutionalism and the rule of law, form the cornerstone of a harmonious society. On the overarching values of the Constitution it was highlighted that the Preamble encapsulates the overarching values of India as a sovereign, socialist, secular, and democratic republic, committed to justice, liberty, equality, and fraternity. It was opined that these values serve as guiding principles for governance and social cohesion, ensuring dignity, unity, and integrity within the nation.

It was pointed that Dr. B. R. Ambedkar emphasized the need for social democracy, integrating principles of liberty, equality, and fraternity into the fabric of society. It was opined that fraternity, particularly challenging in India's diverse landscape, is essential for fostering national unity and solidarity. On the Basic Structure of the Constitution, it was pointed out that judicial interpretations have affirmed the existence of a basic structure in the Constitution, safeguarding essential features like sovereignty, democratic governance, fundamental rights, and judicial review. The judiciary's role in

delineating and preserving this basic structure is paramount for upholding constitutional principles.

Further, it was underscored that courts serve as pillars of justice, ensuring the fair administration of law and resolution of disputes. It was also suggested that embracing technology, such as e-courts and alternative dispute resolution mechanisms, is essential for enhancing efficiency and reducing backlog. The mission of the courts encompasses infrastructure development, capacity building, and adapting to evolving legal landscapes to uphold principles of freedom and justice. It was underscored that any law that stands contrary to the Constitution stands automatically nullified, however, this nullity is also upon the judiciary to decide. It was put forth that the Constitution doesn't constitute the state, state constitutes the Constitutions to guide it accordingly to the will of the people which is called the sovereign. A reference was also made to the Government of India Act 1935.

The session on *Elements of Judicial Behaviour: Ethics, Neutrality, and Professionalism* included deliberations on the fundamental pillars of judicial integrity i.e. Ethics, Neutrality, and Professionalism. It shed light on the essence of these principles and their indispensable role in fostering a just and equitable legal system. On the aspect of Ethics, it was explained that the cornerstone of judicial conduct, emanate from the amalgamation of societal norms, upbringing, and cultural ethos. In the realm of judicial ethics, the key attributes such as incorruptible character, honesty, integrity, and impartiality were elucidated. Anecdotes from legal luminaries underscored the significance of these virtues in upholding the sanctity of justice. A reference of Sir Douglas Young's Magna Carta was made to underscore the gravity of judicial integrity, exemplifying the repercussions of deviating from ethical standards.

With regard to Neutrality it was highlighted that central to the judiciary's function is the principle of neutrality, which necessitates judges to remain impartial and unbiased in their pursuit of truth and justice. The discussion deliberated on whether judges are expected to maintain neutrality solely in adjudicating cases or in discerning factual validity. An emphasis was also made to the indispensability of judicial neutrality in safeguarding the integrity of the legal process and ensuring equitable outcomes. On professionalism, it was underscored that it is imperative for judges to transcend personal biases and preconceptions, remaining steadfast in their commitment to fairness and objectivity. It was accentuated that professionalism entails a judicious balance between sagacity, accountability, and unwavering dedication to upholding constitutional principles. Participants deliberated on the challenges posed by external influences and emphasized the need for judges to show firm commitment to their oath and constitutional duties.

It was opined that upholding these principles is paramount to fostering public trust in the judiciary and ensuring the equitable dispensation of justice. As custodians of the law, judges bear a solemn responsibility to uphold the highest ethical standards, remain impartial in their adjudicative role, and be professional in dispensation of justice. The significance in preserving the rule of law and upholding the rights and liberties of all citizens was also stressed upon.

The session on *Developing Efficient Judicial System: Court and Case Management* addressed several critical issues and provided recommendations to improve the judicial process.

Judges expressed concerns about the pressure of quotas and transfers. It was suggested that the focus should shift from the number of cases disposed to the quality of judgments delivered. This shift would help ensure that justice is thorough and fair. The session emphasized that daily boards should list only the number of cases a judge can realistically finish in a day. This practice would prevent overburdening judges and ensure they can give adequate attention to each case. The case load should be adjusted accordingly. It was noted that judges have different experiences and styles when it comes to examining witnesses. The time each advocate takes to argue a case can also vary significantly. Therefore, the advocate's style and expected time for examination must be considered when fixing the daily cause list.

Effective case management was highlighted as a practical skill gained through experience. Judges were advised to allocate time to cases based on the complexity and advocate's style, acknowledging that some cases naturally take longer than others. The session highlighted Myanmar's implementation of ICT infrastructure in courts, where documents are computerized. This technological integration can enhance time management and the organization of daily cause lists. Judges were advised to be mentally present and actively listen during court proceedings. This attentiveness is a crucial aspect of effective case management and ensures that cases are resolved efficiently and justly.

A holistic approach to case management was recommended. Judges should first assess all assigned cases, prioritize the oldest ones, and address urgent matters promptly. It was opined that this strategy may help reduce case backlog and ensure timely justice. The session underscored the importance of proportionate punishment, emphasizing that offenders should be penalized in accordance with the severity of their offenses. Judges were encouraged to utilize mediators, arbitrators, and legal aid where appropriate, especially in matrimonial and property disputes. This approach can expedite resolutions and reduce the burden on the courts. Judges were reminded to remain impartial and avoid preconceived notions about an accused's guilt. They must actively participate during evidence recording, especially in criminal cases, to ensure fair trials.

It was emphasized that judges have a solemn duty to society that often requires working beyond regular hours. This dedication is seen as giving back to society. To prevent delays, judges were advised to be strict about granting adjournments, allowing them only when absolutely necessary. The session stressed the importance of judges maintaining an image of integrity, being uninfluenced and unintimidated by external factors. Decisions should be based solely on case merits. Establishing this perception would prevent attempts to exploit the judicial system. Lastly, it was pointed out that, unlike in India where evidence is recorded in English, in Myanmar, it is recorded in the local language. At the district level in India, evidence is recorded in both English and the vernacular language, which could impact the judicial process.

The session on ***Protection of Environment and Wildlife: The Judicial Approach*** shed light on the jurisprudence surrounding environmental law and the significant role played by the judiciary in protecting the environment and wildlife. The key deliberation included contributions of the Supreme Court and emphasizing the need for judicial activism to address global challenges, particularly in the context of climate change. The session commenced by pointing out the pressing global challenge of climate change, tracing back to significant historical events such as the Stockholm Conference in 1972 and subsequent international agreements aimed at addressing environmental concerns. The presentation highlighted findings from the 2023 IPCC Report on Climate Change, underscoring the severe consequences of rising greenhouse gas emissions and the urgent need for action to mitigate climate risks.

It was emphasized that the constitutional mandate in India to protect and improve the environment has been elaborated in numerous judgments, citing relevant legal precedents such as *Sachidanand Pandey v. State of West Bengal*, (1987) 2 SCC 295 which underscored the fundamental duty of citizens and the state to safeguard the environment. Additionally, landmark cases like *Virender Gaur v. State of Haryana*, (1995) 2 SCC 577 and *M.C. Mehta v. Union of India*, (1987) 1 SCC 395 were highlighted, which reiterated the judiciary's role in enforcing environmental protection measures, holding enterprises strictly liable for environmental harm caused by hazardous activities. Several key legal principles were discussed during the session, including the Public Trust Doctrine, which recognizes the state as a trustee of natural resources meant for public use and enjoyment. It was discoursed that the Judicial activism, exemplified in cases like *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647 emphasized the importance of sustainable development and the integration of environmental concerns into policymaking and decision-making processes.

The session also threw light on the innovative approaches to address global challenges, such as the World Declaration on the Environmental Rule of Law and the adoption of the 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals (SDGs). In this regard it was pointed that SDG 13, in particular, underscores the urgent need for climate action, while SDG 16 emphasizes the importance of promoting environmental justice and strong institutions to achieve sustainable development goals. The session focused on the critical role of the judiciary in shaping environmental jurisprudence and promoting sustainable development.

The session on the theme ***Judiciary and Media – Need for Balance*** commenced by highlighting that media plays a crucial role in shaping public opinion and influencing perceptions, particularly in legal matters. However, the line between free press and interference with the administration of justice is often blurred.

On media trial vis-à-vis judicial ethics, it was outlined that media intervention in sub-judice matters poses a significant challenge to the fair administration of justice. The publication of court proceedings

before a verdict can potentially prejudice the outcome of a trial. The judiciary is tasked with ensuring fair proceedings and respecting the rights of all parties involved such as trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm as held in the case *Zahira Habibullah Sheikh vs. State of Gujarat*, (2005) 2 SCC 75. The session also included discussion on some landmark judgments including *Mirajkar v. State of Maharashtra* (AIR 1967 SC 1) wherein the court highlighted that the open court concept allows freedom to report proceedings while in-camera proceedings and temporary reporting restrictions can be imposed to prevent prejudice.; *Sahara India Real Estate v. Securities & Exch. Board Of India & Anr* (2012) 10 SCC 603 [Courts have the power to temporarily prohibit media statements that could prejudice or obstruct justice.]; and, *State of Maharashtra v. Rajendra Jawanmal Gandhi*, (1997) 8 SCC 386 [Trial by media is antithetical to the rule of law, and judges must guard against such pressure.]

It was emphasized that untimely disclosures or "leakage" to the media during investigations can jeopardize the process and allow culprits to escape the law [*Chingaravelu vs. R.K. Mishra*, (2010) 1 SCC 457]. It was also stated that overzealous investigative journalism driven by profit motives can lead to biased reporting and prejudice the case as held in the *Sahara India Real Estate*, 2012. The need to balance media trial and fair trial was elaborated upon through various legal provisions and guidelines that aim to balance media freedom with the integrity of judicial proceedings viz. Contempt of Courts Act, 1971; Press Council of India Act; and Cable Television Networks (Regulation) Act, 1995. Following cases including *Rizwan-ul-Hasan v. State of U.P.*, AIR 1953 SC 185, *Indian Express Newspapers v. Union of India*, (1985) 1 SCC 641 were also cited. The session also threw light on the case *Nilesh Navalakha v. Union of India Thru the Secretary*, AIR online 2021 BOM 14 before the Bombay High Court to highlight the challenges of media reporting in sensitive cases. It was pointed out that the court addressed questions related to media trial, the role of self-regulatory bodies, and the need to strike a balance between freedom of speech and fair trial.

It was also stressed that the duty to conduct a fair, impartial, and effective investigation is not solely the responsibility of courts but also of the investigators and their superiors. Any speech or publication, even in exercise of freedom of speech, must consider the larger goal of maintaining the purity of the administration of justice. Emphasis was drawn on the impact of media on various stakeholders' such as media portrayal of innocent individuals as accused can irreparably damage their reputation and even lead to tragic consequences like suicide, vital witnesses may be influenced, threatened, or harmed, leading to the obstruction of justice, media pressure can sway investigators, leading them away from the right track and undermining the integrity of the investigation process and publicity of certain aspects of a case by the media can hinder the investigation process and compromise its effectiveness. Other Important Cases referred during the session included *M.P. Lohia v. State of West Bengal* (2005)2 SCC 686, *R.K. Anand v. Registrar, Delhi High Court* (2009) 8 SCC 106, *Sidhartha Vashisht @ Manu Sharma v. State (Nct Of Delhi)* (2010) 6 SCC 1, and *Asharam Bapu v. Union Of India And Others* (2013) 10 SCC 37.

The session on the *Elements of Fair, Impartial, and Competent Investigation* delved into the vital aspects of legal and ethical considerations in the administration of justice. It began by emphasizing the pivotal role of judicial oversight in preventing the abuse of investigation and custodial powers, highlighting the need for checks and balances to ensure that law enforcement agencies adhere to legal procedures, respecting the rights of individuals under investigation. The discussion on judicial control over the abuse of investigation and custodial powers focused on essential components, including the issuance of warrants, admissibility of evidence, and the role of the judiciary in mitigating excesses in the investigative process. The importance of judicial scrutiny in the warrant issuance process was stressed, requiring law enforcement to provide compelling evidence. The session explored the criteria for admitting evidence in court and how to prevent the use of unlawfully obtained information. Additionally, the session underscored the proactive role of the judiciary in overseeing investigations, ensuring alignment with legal standards and constitutional principles, ultimately serving as a crucial safeguard against potential overreach and upholding the integrity of the investigative process.

A significant part of the session delved into the general principles of natural justice as a cornerstone of a fair and impartial investigation. The discourse explored principles such as *audi alteram partem* and *nemo iudex in causa sua*, emphasizing the importance of providing all parties involved an opportunity to present their case and ensuring unbiased decision-making. Furthermore, the discourse encompassed human right to a fair and speedy trial as an essential component of a just legal system, exploring the implications of undue delays in legal proceedings, the right to legal representation, and the need for effective remedies for individuals facing criminal charges. The session highlighted the need for balancing the interests of justice with the right of the accused to a timely and fair trial. The session also focused on crucial aspects of victim assistance and witness protection in upholding the administration of justice, exploring measures to shield witnesses from intimidation, coercion, and harm. It recognized the role of these protections in ensuring a transparent and accountable legal process and emphasized the importance of providing adequate support and assistance to victims, acknowledging their rights and needs within the criminal justice system.

The session on *Principles of Evidence: Appreciation in Civil and Criminal Cases* underscored the pivotal role of Indian Evidence Act, 1872 [IEA] in shaping judicial decisions. Participants were advised to differentiate between relevant and irrelevant evidence, emphasizing the systematic marshalling of evidence as a critical aspect. The importance of this process was underscored through significant cases like *Rang Bahadur Singh v. State of U.P.* AIR 2000 SC 1209 and *State of U.P. v. Ram Veer Singh and Ors*, 2007 (6) Supreme 164. Delving into the legal principles governing appreciation of evidence, focus was directed towards Sections 3, 114, 118, and 134 of IEA. The discussion elucidated that the IEA does not discriminate between civil and criminal proceedings, as elucidated in *Ravinder Singh Gorkhi v. State of U.P.*, AIR 2006 SC 2157. However, certain provisions, such as Sections 18 to 20, introduce a nuanced perspective by making admissions binding in civil cases.

The discourse also explored the standard of proof, clarifying that the IEA mandates a balance of probabilities for decision-making. Criminal cases demand proof beyond reasonable doubt, contrasting with the preponderance of probabilities in civil cases. This distinction, as emphasized through judicial pronouncements, remains fundamental to evidence evaluation. On Reverse Burden of Proof, the discussion highlighted its evolution in legislative frameworks like the Prevention of Money Laundering Act (PMLA) and the Protection of Children from Sexual Offences (POCSO) Act. Reference was made to *Noor Aga v. State of Punjab and Another*, (2008) 16 SCC 417, wherein the Supreme Court acknowledged the applicability of reverse burden and statutory presumption in various statutes. The scrutiny of Section 24 of the PMLA revealed a paradigm shift from presumption of innocence to presumption of guilt, showcasing the dynamic nature of legal frameworks.

The session on ***Forensic Evidence in Civil and Criminal Trials*** commenced by emphasizing the origin of the term 'Forensic', derived from the Latin word 'forensis' meaning "in open court". 'Forensic Science' was defined as the application of scientific methods for legal purposes. Locard's Principle of Exchange was highlighted, stating that whenever two objects come into contact, they leave traces on each other. It was emphasized that every criminal could be linked to a crime scene through contact traces. Forensic science plays a crucial role in providing scientifically derived information by analysing circumstantial evidence, categorized into physical and biological types. Physical evidence includes fibre, paint chips, and explosives, while biological evidence encompasses blood, semen, saliva, and other bodily fluids.

The discussion then shifted to forensic ballistics, which involves the analysis of firearms, bullets, and their impacts. Ballistic fingerprinting was explained as the process of analysing firearm evidence to determine if a specific firearm was used in a crime. Various aspects of firearms and ballistics were elaborated upon, including ammunition components, the firing process, ballistic fingerprinting, comparison of bullets from the crime scene and reference samples, determination of firing distance, residue analysis on clothing and hands, and wound ballistics. It was emphasized that ballistic experts play a crucial role in investigations by identifying the firearm used, matching recovered bullets to the firearm, determining the firing range, and establishing the direction of fire. Legal precedents such as *Ghurey Lal v. State of U.P.* (2008) 10 SCC 450 and *Kalua v. State of Uttar Pradesh*, 1958 AIR 180 were cited to underscore the admissibility and relevance of ballistics experts' opinions.

Regarding biological forensic evidence, the importance of timely collection due to environmental factors, especially in sexual assault cases, was stressed. Proper packaging of biological evidence was highlighted. The characteristics of DNA, including nuclear DNA inherited from both parents and mitochondrial DNA inherited maternally, were discussed. Stages of DNA profiling were explained, with an emphasis on Low Copy Number (LCN) DNA testing, which can detect DNA from skin cells or sweat left behind at a crime scene. Cases such as *Pantangi Balarama Venkata Ganesh v. State of A.P.* (CrLJ, 2003, 4508), *Santosh K. Singh v. CBI*, 2010) 9 SCC 747, and *Mukesh v. State (NCT of Delhi)*, 2017 (6) SCC 1 were cited to illustrate the reliance on DNA evidence.

The concept of Chain of Custody was elaborated, emphasizing the importance of maintaining an unbroken chain of custody for DNA evidence to be admissible in court. Issues in civil matters such as privacy, ethical concerns, potential misuse of DNA profiles, and genetic discrimination in areas like marriage and education were discussed, citing the case of *Goutum Kundu v. State of West Bengal (1993) 3 SCC 418*, where the Supreme Court deliberated on the implications of ordering a blood test and its potential social repercussions.

The session on ***Transition to a Gender Just Society: Jurisprudential Developments***, discoursed and encompassed various facets crucial to the transition, including major legislations on gender-based issues, the integration of gender sensitivity in judicial pronouncements, exploration of restorative justice measures, and analysis of significant judgments shaping gender equality jurisprudence. It was stressed that despite centuries of recognition for their wisdom and cultural embodiment, women continue to encounter discrimination, prompting a re-evaluation of societal norms and legal frameworks.

The discussion emphasized that judging transcends mere application of law; it embodies justice, fairness, and non-discrimination. The judiciary holds the power to translate human rights into reality, devoid of gender bias. Gender perspective should extend beyond sexual orientation to rectify societal power imbalances proactively. Practical steps for gender-sensitive courts were highlighted, including training judges in feminist lawyering and adopting a survivor-centric approach. Legal provisions like in-camera trials should assist victims, with state-funded mental health professionals addressing their needs to prevent re-victimization. Restorative measures, focusing on survivor welfare over perpetrator punishment, were advocated. This approach prioritizes rectifying harm and its impact rather than solely penalising offenders. Economic, social, and political equality for women were discussed through landmark judgments.

The last session on ***Alternative Dispute Resolution*** commenced by highlighting the application of Alternative Dispute Resolution (ADR) as a pivotal tool for achieving gender justice. The discussion extensively covered the provisions of Section 89 of the Civil Procedure Code, 1908 (*CPC*), exploring its impact on the referral of cases to ADR mechanisms. It was stressed that due to the overwhelming backlog of cases, the Indian judiciary turned to ADR as a practical solution to reduce the strain on the court system. ADR mechanisms, including mediation and conciliation, offered a quicker and more flexible alternative to traditional court proceedings. Specifically, in the arena of gender justice, ADR provided a platform that was both empathetic and empowering, ensuring resolutions that respected the rights and dignity of all parties involved. Moreover, Section 89 CPC, emerged as a pivotal legislative tool, incorporating ADR mechanisms into the Indian legal framework. This provision allowed courts to divert disputes to ADR methods, acknowledging the limitations of a purely adversarial approach. In matters of gender justice, this facilitated a customization of dispute resolution processes to cater to the unique needs and sensitivities of such cases, paving the way for potentially more equitable outcomes.

The discourse further highlighted that the journey towards a gender-just society saw ADR as a critical instrument, especially as outlined in Section 89 CPC. It was stressed that ADR stood out as an invaluable tool in facilitating swift, fair, and dignified dispute resolutions, particularly in cases involving gender issues. At the same time the judiciary has also played a pivotal role in this transformation, effectively utilizing ADR to uphold gender justice within the Indian legal system. Through its thoughtful application, ADR not only help conserve judicial resources but also significantly contributes to the creation of a more equitable and just society.