

NATIONAL JUDICIAL ACADEMY



Training Programme for Bangladesh Judges & Judicial Officers (SE-17)

[06th – 10th May, 2024]

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A Memorandum of Understanding (MoU) has been entered between the National Judicial Academy, India (NJA) and the Supreme Court of Bangladesh for organising Training and Capacity Building programmes for Bangladesh Judicial Officers. For the year 2023-2024, it was proposed that seven batches, each of 50 judicial officers will visit India and participate in the training programme. Training programmes will be held in two Phases. First Phase will be held at the National Judicial Academy and Second Phase will be organized by identified and designated State Judicial Academies, within the framework of a training module and curricula designed by the National Judicial Academy.

In pursuance of the said MoU, a 7-day programme for judicial officers nominated by Bangladesh, from 06th – 10th May, 2024 was organized by NJA at Bhopal. The Programme included sessions on judicial skills, constitutional, civil, criminal, human rights laws and correlative jurisprudence. The training also aimed to acquaint participants with elements of judicial behaviour- ethics, neutrality and professionalism, skills of judging and judgment writing. The programme facilitated discussions on court & case management and use of ICT in the administration of justice.

Session 1: Indian Constitution and Judiciary: Overview and Architecture

The session commenced with discussion on the freedom struggle and the chronological events that lead to the drafting of the Constitution was. It was stated that the Indian Constitution is an organic document that has evolved with the changing needs and aspirations of the people. Further, relevance of the Constitution to the district judiciary was highlighted. Emphasis was laid on the significance of the Preamble of the Constitution and the noble objectives of liberty, equality and fraternity. The powers of the Supreme Court and High Courts were explained. It was stated that the law declared by the Supreme Court is binding on all courts in India and the law declared by the High Courts are binding on all the courts within its territorial jurisdiction. The jurisdiction of the Supreme Court under Articles 32, 136, and 142 of the Constitution of India, 1950 was discussed. Article 142 was highlighted as a special jurisdiction of the Supreme Court of India wherein it can grant any remedy according to the particular case in order to do ‘complete justice’.

Thereafter, the role of district courts was explained with discussion on the Bhopal Gas Disaster case where interim compensation to the victim of gas disaster was awarded by the district court. The judgment of the Supreme Court in *Municipal Council, Ratlam v. Shri Vardhichand & Ors. 1980 SCC (4) 162* was also discussed. Further, the jurisprudential journey from ‘procedure established by law’ to the ‘due process of law’ was discussed in light of *A.K. Gopalan v. State of Madras AIR 1950 SC 27* and *Maneka Gandhi v. Union of India AIR 1978 SC 597*. Lastly, the legal systems of India and Bangladesh was compared and common features were highlighted.

Session 2: Constitutional Vision of Justice

The session commenced by stating that the mission of courts shall be in tune with the constitutional principles. It was stressed that the courts are non-partisan institutions and it is the duty of courts to protect the oppression of the citizens, more so when it is inflicted by the State. The various facets of Justice including social, economic, and political was expounded. Thereafter, the role played by the Supreme Court of India in protecting the fundamental rights

was emphasised. While discussing the evolution of the basic structure doctrine in India the decision in *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 was discussed. The decisions in *Shankari Prasad Singh Deo v. Union of India*, AIR 1951 SC 458, *Sajjan Singh v. State of Rajasthan*, AIR 1965 SC 845, *I.C. Golaknath v. State of Punjab*, AIR 1967 SC 1643 and *Minerva Mills v. Union of India*, AIR 1980 SC 1789 were also referred. Subsequently, on the interplay of Directive Principles of State Policy and Fundamental Rights the decision in *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545 was highlighted wherein it was observed that Directive Principles of State Policy are fundamental in the governance of the country and they must be regarded as equally fundamental to understanding and interpretation of the meaning and content of fundamental rights. On the issue of access to justice emphasis was laid on enhancing the quality and responsiveness of justice through the use of technology.

Subsequently, it was opined that the Courts must not be seen as the temples of justice nor judges should be considered embodiment of god. It was asserted that Judges are officers in the constitutional scheme to uphold the rule of law. The essential features of representative democracy were highlighted and the role of the Indian Constitution in enhancing representative democracy in the country was explained and various provision of the Constitution were referred.

Session 3: Electronic Evidence: New Horizons, Collection, Preservation and Appreciation

The session commenced with providing an overview of the *modus operandi* of different types of cybercrimes viz., online financial frauds, sextortion, cyber stalking, etc. Further, the session focussed upon certain investigation techniques by providing live demonstration of WhatsApp chat modification, message date/time modification and location spoofing. The discussion further pertained to preservation/retention of electronic data as well as ascertaining its authenticity. The procedure for proper collection of cyber evidence in terms of pre investigation assessment; evaluation of scene of crime; collection of physical evidence and digital evidence; forensic duplication; seizure of digital evidence; packaging, labelling and transportation; legal procedure to be followed; and gathering information from various agencies was elaborated. Further, the process of documentation of digital evidence was traced from identification/preparation; search and seizure; preservation; examination; analysis; reporting and finally presentation in court. In this regard, it was stated that since electronic evidence can be altered or damaged it is necessary for the court to ascertain that chain of custody is properly maintained without which it would be difficult to prove the integrity of the evidence. The Secure Hash Algorithm (SHA) must also accompany the chain of custody form.

Thereafter, it was iterated that any documentary evidence by way of an ‘electronic record’ under the Indian Evidence Act, 1872 (hereinafter referred as IEA), in view of Section 59 and Section 65A of IEA, can be proved only in accordance with the procedure prescribed under Section 65B. Section 59 provides that all facts except the contents of a document or ‘electronic records’, may be proved by oral evidence. Production of an ‘electronic record’ as evidence in court, can only be under Section 65A and Section 65B of the IEA. The essential ingredients, the stage and the requirement of bringing a certificate under Section 65B was also delineated.

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

The session commenced by stating that judicial function is not a power rather it is an obligation. The standards of judicial ethics laid down in the Bangalore Principles of Judicial Conduct was discussed. Further, emphasis was placed on the ability to communicate with counsel, witnesses and parties in a dignified way. The elements of judicial temperament including patience, open-mindedness, sensitivity, courtesy, firmness, understanding, forbearance under provocation were explained. Judges were advised to be empathetic towards the victim particularly where the victim belongs to a marginalised community. It was opined that calmness and tranquillity is very necessary to discharge judicial function in an objective manner. The discussion then focussed on the concept of judicial neutrality which consists of reasoning with the values that are provided by law and not the subjective opinion of a judge. It was opined that the duty of neutrality may be breached if a judge makes moral judgments as per his own beliefs leaving behind the legislative intent while interpreting the legal provisions.

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

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

The session commenced with the assertion that judgment reflects the individuality of the judge and therefore it is indispensable that it should be written in a language which is clear and concise. Emphasis was placed on brevity in writing judgments. It was asserted that the arguments of both the parties should be narrated in the judgment in a summary form. It was iterated that a judgment constitutes the considered opinion of the court on the basis of facts pleaded, points raised, evidence adduced, argument addressed and the law applicable to the facts of the case. It was opined that the judgment writing is an art because it involves application of the intellect, understanding, reasoning, comprehension and expression. The importance of judicial modesty and moderation in a judgment was highlighted. Thereafter, sensitivity in judgments in the context of *Aparna Bhat v. State of Madhya Pradesh*, 2021 SCC OnLine SC 230 was deliberated. In this case the Supreme Court while setting aside the bail condition, directed the courts to desist from expressing any stereotype opinion, in words spoken during proceedings, or in the course of a judicial order.

Further, the decision in *State Bank of India v. Ajay Kumar Sood*, 2022 SCC OnLine SC 1067 was discussed wherein the Supreme Court remitted the proceeding back to the High Court for consideration afresh because of incomprehensible judgment. It was observed that the reasoning in the judgment should be intelligible and logical. The findings and directions should be precise and specific. Similarly in *Shakuntala Shukla v. State of Uttar Pradesh*, 2021 SCC OnLine SC 672 it was observed that “*Judgment means a judicial opinion which tells the story of the case; what the case is about; how the court is resolving the case and why. It is also defined as the decision or the sentence of a court in a legal proceeding along with the reasoning of a judge which leads him to his decision. It is not adequate that a decision is accurate, it must also be*

reasonable, logical and easily comprehensible. The judicial opinion is to be written in such a way that it elucidates in a convincing manner and proves the fact that the verdict is righteous and judicious”.

Session 6: Principles of Evidence: Appreciation in Civil and Criminal Cases

The session was commenced with issues related to different evidentiary standards followed in civil trial i.e. preponderance of probability and in criminal trial i.e. proof beyond reasonable doubt. The onus and burden of proof in criminal trial was discussed and it was stated that a trial is a voyage for discovery of truth which can be ascertain from the reconstruction of past events. The doctrine *falsus in uno falsu in omnibus* was referred and it was opined that the court has to sift the chaff from the grain. The direct and indirect evidence in trial was discussed and various categories of witnesses were explained and it was emphasized that judges should ascertain as to what extent the evidence is worthy of credence. The issues regarding contradictions, inconsistencies, exaggerations and embellishments were deliberated upon and it was emphasized that the judge should use his experience to separate truth from falsehood. The issues related to testimonies and possibility of tempering them were highlighted and the difference between conjectures and certainties was explained. The documentary evidence, last seen evidence and circumstantial evidence were discussed and it was opined that the statement by a child witness require corroboration. The suppositions of a prudent man was highlighted and issues related to dying declaration were deliberated upon. Sections 137, 141, 145, 154, 159, 161 of the Cr.P.C. were referred and issues related to these provisions were discussed. Various categories of witnesses i.e. eye witness, injured witness, interested witness and dumb witness were explained and issues related to them were deliberated upon. The concept of extra judicial confession and plea of alibi explained to participants and standards relating to opinion of experts including handwriting experts, ballistic expert, firearm expert, and fingerprint experts were discussed in the session. The concept of reverse burden of proof was discussed and various judgments of the Supreme Court were discussed in this regard.

The discussion then focused on the appreciation of evidence in civil cases. Order XVIII, CPC dealing with the hearing of the suit and examination of witnesses was referred and issues related to recording of evidence was discussed. Then Order XVIII Rule 11 and Order XVIII Rule 12 were referred and questions objected and allowed by the court and remarks on demeanor of witnesses were explained. The speakers then highlighted Order XVIII Rule 17 and issues related to recalling of witnesses were discussed. Sections 137 and 138 of the Indian Evidence Act, 1872 and Section 311, Cr.P.C. were also referred and comparison was drawn with provisions in the CPC. The concept of may presume, shall presume and conclusive proof were highlighted. The session was concluded with interaction with participants and their queries were answered.

Session 7: Forensic Evidence in Civil and Criminal Trials

The session was commenced with discussion on the importance of forensic evidence in civil and criminal trials. It was stated that a person may lie but the scientific evidence can help in finding out the truth. Then the Locard's principle of exchange was focused upon and the difference between biological and non-biological evidences was explained. The value of expert evidence was discussed and it was stated that the expert testimony should be seen as a piece of corroborative evidence. The discussion then focused on matters for consideration for judges

with regard to forensic evidence and the speaker explained biological evidence and highlighted the importance of DNA evidence. The basic elements of DNA evidence were discussed and various standards to ensure the authenticity of DNA evidence were highlighted. The uses of DNA evidence in court proceedings were explained and the illustration on the use of DNA evidence in paternity test was discussed. The speaker then explained the emerging technologies in the DNA profiling and Low Copy Number (LCN) DNA and Touch DNA were explained. The M-Vac technology was explained in this regard and various types of samples in biological evidence were explained. The speaker then focused on case studies where the DNA and other biological evidence played crucial role in securing the conviction of accused persons. The Tandoor murder case, Nirbhaya rape and murder case and Shradha Walker case were discussed in this regard.

The discussion then focused on issues in forensic evidence in civil matters. The identification of forgery in a disputed handwriting and signature was explained and various standards to assess the handwriting and signatures in documents was discussed. The use of DNA evidence in paternity matters was discussed and judgments *Goutam Kundu vs State of West Bengal*, 1993 SCR (3) 917 and *Aparna Ajinkya Firodia vs Ajinkya Arun Firodia*, Civil Appeal No. 001308 of 2023 were referred in this regard. Various case studies about the use of forensic evidence in civil proceedings were discussed with the participants.

Session 8: Judiciary and Media: Need for Balance

The session was commenced with issues related to the intervention of media in sub-judice matters and what are the restrictions against the publication of court proceedings. The speakers focused on the right to freedom of speech and expression and it was opined that such right is subject to reasonable restrictions. Such reasonable restrictions are concerned with interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. It was further added that freedom of the press is subject to reasonable restrictions as contemplated by the Constitution and it cannot and does not comprise deliberately, tendentious and motivated attacks on the great institutions of republic, and their officers and functionaries. It was further added that freedom of the press does not also contemplate making reckless allegations, devoid of the truth and lacking in bone fides. In the name of exercising freedom of the press, there cannot be trial by press in which it plays the role of both the accuser and the judge. The judgment *R v. Sussex Justices..ex parte Mc Carthy* (1924) 1 KB 256 was referred and it was stated that judges are human beings and they can be subconsciously influenced by several factors.

The judgment *Gopalan v. Noordeen* AIR 1970 SC 1694 was referred wherein it was held that the publications made after arrest of a person and before filing of a charge sheet can be a starting point for the purpose of prejudicial publication. The judgment *E.M.S. Namboodripad v. T. Narayanan Nambiar* 1970 (2) SCC 325 and *Nilesh Navalakha v Union of India*, 2021 SCC Online Bom 56 were also referred. Then the Contempt of Courts Act, 1971 with regard to publication of court proceeding was discussed at length. Section 3 dealing with innocent publication and distribution of matter not amounting to contempt, Section 4 dealing with fair and accurate report of judicial proceeding and Section 5 dealing with fair criticism of judicial act were referred in this regard. The role played by the media with regard to criminal cases of victims including Jessica Lal, Priyadarshini Mattoo, Ruchika Gehrotra was explained.

Session 9: Criminal Justice Administration and Human Rights

The session was commenced with discussion on the international human rights legal declarations and conventions including the Universal Declaration of Human Rights and the International Covenant on Civil and Political rights. It was opined that human rights including right to a fair trial, freedom from torture, and protection from discrimination, are fundamental in ensuring that criminal justice systems operate justly and effectively. The constitutional rights in the context of criminal jurisprudence i.e. Articles 20, 21 and 22 of the Constitution were discussed. The importance of the due process in legal procedures was emphasized and *Maneka Gandhi v. Union of India* AIR1978 SC 597 was referred. It was opined that fundamental rights are important for the fact that they are considered inherent for every citizen and their violation gives the citizens, the right to move to the Supreme Court and the High Courts under Article 32 and Article 226 of the Indian Constitution respectively.

The advancements in human rights protection in the Indian criminal justice administration were discussed. The expansion of the right to fair trial by the Supreme Court in *Zahira Habibullah Sheikh v. State of Gujarat* (2004) 4 SCC 158, *Hussainara Khatoon v. State of Bihar, Patna* (AIR 1979 SC 1360) and *Sheela Barse v. Union of India* 1983 AIR 378 was explained. The protection against custodial violence in *D.K. Basu v. State of West Bengal* (1997) 1 SCC 416 which has set guidelines to prevent custodial torture and deaths and affirming the right to life and dignity of every individual in custody was discussed. Then judgment *Navtej Singh Johar v. Union of India* (2018) 10 SCC 1 which decriminalized consensual homosexual relations and recognized LGBTQ+ rights and equality before the law was discussed. The aspects of marital rape were explained and the judgment *Independent Thought v. Union of India* (2017) 10 SCC 800 which has acknowledged the need to criminalize marital rape and recognizing it as a violation of women's rights was discussed. The landmark decisions on death penalty i.e. *Bachan Singh v. State of Punjab* (1980) 2 SCC 684 which has set standards for the application of the death penalty and emphasizing the need for strict scrutiny and consideration of mitigating factors was referred. The judgments of the Supreme Court on right to fair investigation were also discussed.

Session 10: Judge as the Master of the Court: Court & Case Management

The session was commenced with highlighting the importance of court management and case management in judicial proceedings. It was stated that case management assists in the early identification of disputed issues of fact and law and addresses the urgent necessity to prevent unnecessary backlogs, ensuring prompt justice delivery, and tackling backlogs with enhanced determination. It was opined that identifying problem areas prompts solutions, and ongoing oversight of cases ensures attention to intricate aspects of the litigation process. It was added that the court management fosters collaboration among judges, lawyers, litigants, and administrative officers and it improves efficiency of the justice delivery system. The speaker then focused on the role of a judge in court and case management. Various proactive actions on the part of the judge for effective court and case management were emphasized including strong leadership, setting examples of efficiency, case prioritization, case assignment, monitoring case progress, case scheduling and use of technology.

The bottlenecks in judicial administration then focused upon including significant backlog of cases awaiting resolution, procedural delays stemming from lengthy legal processes, limited resources such as staffing and infrastructure, inadequate integration of technology, inefficient

case management practices, complexity of the legal system, and insufficient alternative dispute resolution mechanisms. The strategies to address such bottlenecks were discussed extensively. It was emphasized that courts should adopt uniform practices such as designating special days for older case disposal, monitoring adjournments, holding pre-trial conferences, setting speedy disposal targets, and conducting Lok Adalats. It was added that utilizing technology for case management and ensuring standardization in court procedures are also crucial aspects to consider. Finally the use of information and communication technology (ICT) in court and case management was emphasized.

Session 11: Ratio of a Precedent: An Analysis

The session was commenced with discussion on the comparison of Article 141 of the Indian Constitution with Article 111 of the Constitution of the People's Republic of Bangladesh. The doctrine of stare decisis was discussed in detail and various illustrations were discussed in this regard. The speakers explained the importance of precedents in the common law system and differentiated it with the civil law system. Then the essential features of the concept of *ratio decidendi* were highlighted. It was opined that words mentioned in the legislation should be interpreted in the relevant context only as meaning of the word changes with the change in context. It was stated that precedent is a declaration of law where a particular concrete situation is generalized and then a moral precept is added to it and then it become a legal precedent. The methodology of generalizing the concrete fact situation was explained to participants in detail.

The judgment *Bengal Immunities vs. State of Bihar Appeal (Civil) 159 of 1953* was discussed in this regard. The judgment *Trimurti Fragrance vs Govt of NCT, New Delhi Appeal (Civil) 8486 of 2011*, wherein it was held that the binding importance of a decision depends on the strength of the bench and not on the proportion of decisions was discussed. It was opined that when the society changes then standards of law and morality also change. The concept of *per incurium* and *sub silentio* were discussed and it was stated that only the Supreme Court and High Court can declare a precedent as *per incurium* or *sub silentio*. Then the speakers discussed different types of precedents including interpretative precedents, precedents creating a new law from the legal material and precedent creating a new law from the extra-legal material. The judgment *Donoghue v Stevenson [1932] AC 562* was referred in this regard. The speaker also highlighted the value of precedent in maintain judicial discipline across hierarchy of court.

Session 12: Landmark Judgments: Celebrating Decadal Masterpieces

The session commenced with discussion on the concept of independence of judiciary and various landmark judgments were discussed in this regard. The judgment *Supreme Court Advocates-On-Record v. Union of India 1993 (4) SCC 441* dealing with the appointment of judges was discussed. The Constitution 99th Amendment Act, 2014 and the National Judicial Appointment Commission Act, 2014 were referred in this regard. The issues related to judicial law making were discussed and the judgment *Vishaka v. State of Rajasthan AIR 1997 SC 3011* was discussed. It was stated that judicial law making become imperative when there is a serious gap in the legislative framework on an issue that is very crucial.

The judgment *Anoop Baranwal vs. Union of India (2023) SCC OnLine SC 216* dealing with the appointment of the election commissioner was then discussed extensively. The importance of court in ensuring fair procedures in the appointment of election commissioner was highlighted. The judgment *Shreya Singhal vs Union of India AIR 2015 SC 1523* was discussed

wherein Section 66A of the Information Technology Act 2000 was struck down as it violated Article 19(1) A rights dealing with right to freedom of speech and expression. The judgment *Association for Democratic Reforms vs Union of India* Writ Petition (C) No. 880 of 2017 dealing with electoral bonds was discussed and it was stated that the interference by the Supreme Court led to enhanced transparency in funding to political parties.

The discussion then focused on the gender justice and the Medical Termination of Pregnancy Act was discussed. The judgment *X v. The Principal Secretary Health* SLP (Civil) 12612 of 2022 dealing with the right of abortion was discussed. Then judgment *Suchita Srivastava v. Chandigarh Administration* Civil Appeal No.5845 of 2009 dealing with reproductive choice of a woman was also referred. The judgment *Shayara Bano vs Union of India* AIR 2017 SC 4609 related to triple talaq was discussed and tests to determine essential religious practices were explained. The session was concluded with discussion on other landmark judgments of the Supreme Court on gender justice.
