

TRAINING PROGRAMME FOR JUDGES FROM THE KINGDOM OF BHUTAN [SE-05]

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Pursuant to the MoU between the Bhutan National Legal Institute, Royal Court of Justice, Judiciary of the Kingdom of Bhutan, and the National Judicial Academy, Bhopal, Madhya Pradesh, Republic of India, both parties committed to fostering and advancing judicial education, including providing continued training for Bhutanese judges at the NJA. To further strengthen cooperation in the field of legal and judicial education, a five-day program was planned, featuring sessions on constitutional, civil, criminal, and media laws, along with related jurisprudence.

The training also focused on familiarizing participants with aspects of judicial behavior, the art of judging, and the craft of judgment writing. Additionally, the program facilitated discussions on court and case management and the integration of ICT in judicial processes to enhance the administration of justice. The conference provided an invaluable opportunity for participant judges to engage in meaningful deliberations on practical approaches to gender justice and the protection of the rights of persons with disabilities.

Session 1 - Vision of Justice Panel - Justice Mukta Gupta & Prof V.K. Dixit

The Indian Constitution and the 2008 Constitution of Bhutan reflect principles of justice, including natural justice and fair justice, as foundational elements of their legal systems. These principles emphasize impartiality, equity, and the right to a fair trial. While judges are human and not infallible, the judiciary as an institution holds a divine-like responsibility in upholding these values and ensuring justice is delivered with integrity and fairness. It commenced with a focus on the fundamental principles of fair trial rights, emphasizing their simplicity and basic nature. However, it was noted that these rights are frequently violated in routine practices. A judge's inability to uphold fair trial rights for both the accused and the prosecution was highlighted as a grave negligence of duty. The judiciary was described not as a source of power but as a means of empowering litigants, reinforcing its responsibility to uphold justice impartially. While errors in judgment may occur, it was stressed that judges must ensure their intentions remain beyond criticism. Any lapse in intention undermines the credibility of the judicial process. The discussion highlighted the critical responsibility of judges in safeguarding the principles of justice, ensuring that both procedural fairness and substantive integrity are maintained in every trial. Principles of Fairness, Equality and Rule of Law were discussed in detail during the discourse. The concept of the Rule of Law was developed by A.V. Dicey, who described it as the cornerstone of the English legal system. He outlined three core principles associated with this doctrine; Supremacy of Law -The law is the ultimate authority,

governing all actions and decisions,

Equality Before the Law - Every individual, regardless of status, is subject to the same legal standards and
Predominance of Legal Spirit - The legal system must be guided by a strong commitment to justice and fairness, rooted in the spirit of the law. The Indian judiciary has consistently underlined the significance of ensuring fair trials through various judicial pronouncements *viz;* *Talab Haji Hussain vs. Madhukar Purshottam Mondkar and Anr.* (AIR 1958 SC 376); *R.C. Cooper vs. Union of India* (AIR 1970 SC 564); *Govindaraju @ Govinda vs. State Sriramaparam P.S. and Anr.* (2012) 4 SCC 722; *Zahira Habibullah Sheikh and Anr. vs. State of Gujarat and Ors.* (2006) 3 SCC 374.

It was underscored that the principle that every accused is presumed innocent until proven guilty lies at the heart of criminal justice. This presumption is not merely procedural but a fundamental human right. It must guide all stages of criminal proceedings—from the moment of suspicion to investigation, trial, and the pronouncement of judgment. It was highlighted that the key aspects of this principal lies with the burden of proof rests on prosecution, the prosecution must establish guilt beyond reasonable doubt, the benefit of doubt belongs to the accused and High probability is not sufficient to convict. Further, Reverse burdens of proof, as provided in special laws and general statutes like the Indian Penal Code, must adhere to principles of reasonableness and fairness. These provisions allow the burden to shift to the accused only after the prosecution establishes foundational facts. Lastly, Role of a Judge in the Adversarial System was highlighted. There is often a tendency for the presiding judge to adopt the role of an umpire or referee, allowing the trial to become a contest between the prosecution and defense. However, such an approach may hinder the pursuit of justice.

The judge must move beyond being a passive spectator and instead actively participate in the trial. This involves showing intelligent, active interest by asking questions to witnesses and parties to uncover the truth. The judge's proactive involvement ensures that the trial remains focused on justice rather than mere rivalry between opposing sides.

Session 2 - Elements of Judicial Behavior: Ethics, Neutrality, and Professionalism

Panel - Justice Mukta Gupta; Justice Ved Prakash Sharma & Justice Poonam Bamba

The session commenced with Ethical Standards and Norms in the Conduct of Judges. The essence of judging lies in fairness, requiring judges to adhere strictly to constitutional values and remain free from prejudice. As justice forms one of the pillars of democracy, it is vital that judges uphold the principle that justice must not only be done but must also be seen to be done. Judges are entrusted with the responsibility of deciding cases with impartiality, integrity, and equality of treatment, thereby reinforcing the rule of law. Natural justice serves as a guiding principle in the administration of justice, demanding that judicial

authorities maintain high ethical standards in their conduct both inside and outside the courtroom. These standards ensure public trust and the effective delivery of justice. It was expanded that Impartiality and neutrality are fundamental requirements of judicial adjudication, ensuring that judges apply their minds objectively to the facts of each case before them. Every judge is bound by the principles of law and justice and must apply them fairly and without bias, regardless of any preconceived notions parties or counsels may hold. While judges may inevitably have preconceptions about general questions of law, policy, or discretion, it is crucial that such predispositions do not influence their reasoning or decision-making in a way that compromises fairness or rationality. Distinguishing between specific prejudgments about a party and broader legal preconceptions is vital to maintaining judicial integrity. It was stressed that Addressing Bias and Stereotypes in Adjudication helps to write a more balanced and neutral judgement. Also, Cognitive biases refer to systematic tendencies in an individual's thinking, including unconscious racial, gender, and ethnic biases, stereotypes, prejudices, discriminatory attitudes, and other preconceived notions. These biases can influence decision-making and must be actively addressed to ensure fair and impartial adjudication. Different type of bias viz; Ideology and Identity, Personal Bias and Pecuniary Bias, Preconceived Notion Bias, Judicial Obstinacy, Hindsight Bias, Confirmation Bias, Anchoring Bias were highlighted.

The session rolled over to the 5 aspects of professional competence viz; *Knowledge* of the law and ability to carry out research including the ability to use I.T. tools; skill to Marshall the facts and appreciate the evidence; the ability to perceive, comprehend, and understand new concepts and ideas; the ability to reason their opinions and decisions as per relevant law and to communicate and the ability to hold court hearings: structuring the proceedings. It was advised that the judges should have the Spirit and Attitude of Serviceability. The importance of Judicial temperament which includes patience, open-mindedness, sensitivity, courtesy, firmness, understanding, forbearance under provocation and the ability to deal with others without giving offense were highlighted. The importance of Judicial Ethics in line with The Bangalore Principles of Judicial Conduct 2002 was discussed. Lastly, the session concluded with a quote by the Austrian legal scholar, **Eugene Ehrlich**, who described the great public challenge which accompanies the life of a judge when he pointed out that: **“there is no guarantee of justice except the personality of the judge.**

Session 3 - Art, Craft and Science of Writing Judgments

Panel - Justice Ved Prakash Sharma & Justice Poonam Bamba

A judgment serves as the voice of the court, communicating its reasoning and decision to litigants, lawyers, and the public marked the beginning of the session. It is essential to strike a balance between clarity and

legal precision to ensure it is easily understood by all parties. Judgments should cater to all stakeholders: litigants, lawyers, and the public. The language must be simple to ensure comprehension by non-legal professionals. It was advised to avoid lengthy expositions, use short sentences and small paragraphs. It was mentioned that the focus should be on essential facts and avoid superfluous details. Facts must be derived directly from the pleadings and evidence presented. It was suggested to ensure that the facts are stated objectively without personal bias. While forming an opinion is often challenging, judgments must provide clear reasoning was mentioned. It was highlighted that logical reasoning helps parties understand the court's decision, particularly when the judgment is subject to appeal. It was advised to minimize the use of complex legal terminology to enhance accessibility.

When technical terms are necessary, explain them in simple terms and also, use intuitive writing to ensure a smooth flow of ideas. It was underscored to start with the facts, proceed to the legal issues, and conclude with reasoning and the decision. Furthermore, it was highlighted to adopt a conversational tone, avoiding overly formal or archaic expressions. Use plain language to articulate complex legal principles. A well-communicated judgment reflects the integrity and transparency of the judiciary. It instills confidence in the judicial process. Effective judgment writing requires intuition to identify and highlight key issues, anticipate concerns of the parties, and address potential ambiguities. Intuitive writing ensures judgments resonate with their intended audience and fulfill their purpose as instruments of justice.

A reference was made to *Balraj Taneja v. Sunil Mandan, AIR 1999 S.C. 3381*, emphasizing that a judgment should be a self-contained document. It must clearly outline the facts of the case, the controversy the Court sought to resolve, and the reasoning process that led to the ultimate conclusion. The purpose of writing a judgment is not only to communicate the basis of the decision to the members of the Bar, who argue the case, and to others who may rely on it as a precedent but also to provide clarity and meaning to citizens seeking remedies under the law. Judgment writing is described as both an art and a science. It is an art because it involves the application of intellect, intelligence, understanding, rational capacity, comprehension, expression, and communication skills of a judge. It is a science because it requires a systematic analysis of the facts arising from the conflicting pleas of the parties, as well as the application of relevant laws to the facts proven in the case. Furthermore, judgment writing is a craft as it demands a systematic and well-structured presentation. In light of *State Bank of India v. Ajay Kumar Sood, (2023) 7 SCC 282*, the 'Issue, Rule, Application, and Conclusion' (IRAC) method was discussed. The IRAC method, which is widely used for analyzing cases and structuring submissions, can also enhance judgment writing when complemented by a clear recording of facts and submissions.

It was emphasized that a judgment is a manifestation of reason. The reasoning forms the foundation of the

view adopted by the decision-maker and reflects the balance of considerations that informed the final decision. This is why reasons are critical to the legitimacy of a judge's work. They offer insight into judicial analysis, helping the reader understand why a particular decision was made. Both the reasons and the final conclusion are open to scrutiny, ensuring transparency and accountability in judicial decision-making. Key principles of judgment writing were highlighted and they were Simple and Clear Language for Accessibility; Precise Terminology to ensure accuracy; Logical Structure and Flow for coherence; Connecting Legal Arguments Clearly to the reasoning and conclusions. Finally, the distinction between objectivity and subjectivity in judgment writing was underscored. Objectivity requires the judge to base decisions on facts and law, while subjectivity reflects the judge's interpretation and reasoning, which must be justified through clear and logical explanation.

Session 4 - Criminal Justice Administration and Human Rights Panel - Justice Sonia G Gokani & Justice Asha Menon

It was mentioned that in the criminal justice system, while the accused remains central to the trial process, the importance of witnesses must not be overlooked. Witnesses often face challenges, including inadequate infrastructure in courts due to financial constraints, and biases, particularly against male witnesses, which deter their participation. Further, the role of the victim and the Legal Services Authority is equally critical, as they ensure a balanced approach to justice. The rights of the accused, including humane treatment in prison, a comfortable atmosphere, and fair rules of parole, are essential for their dignity and eventual reintegration into society was highlighted. It was stressed that discretion in bail provisions should be preserved to balance liberty and justice, while the principle of an expeditious trial must be upheld to avoid undue delays. Above all, the rule of law must remain paramount, ensuring fairness, transparency, and equality in every aspect of the judicial process. It was opined that the evolution of the soul is a profound concept intertwined with spiritual growth, highlighting the importance of empathy, love, and warmth even within the confines of a prison. These values foster reform and rehabilitation, aligning with the broader goals of reintegration into society. A critical question was raised regarding whether a judge's personal views or religious beliefs should influence their decisions; while such beliefs shape an individual, they must never override the guiding principles of the Constitution, which should remain the sole beacon in judicial decision-making. The role of a proactive judge on the dais was also discussed, emphasizing impartiality; reverse burden of proof and the presumption of innocence as foundational principles. Lastly, Witness protection schemes were explored in detail, underscoring their necessity in upholding justice. Together, these ideas reinforce the need for a humane, fair, and reformative approach within the justice system.

Further, It is a branch of public law, a formidable weapon which cannot be wielded to secure justice to citizens, rules of natural justice are basic values, which a man has cherished throughout the ages. It was highlighted that the Greeks had accepted the principle that “no man should be condemned unheard”. From the legendary days of Adam and of Kautilya’s Arthashastra, the rule of law has had the stamp of natural justice which makes it social justice. The rules were placed so high that it was declared that “no human laws are of any validity, If contrary to this” and that a court of law could disregard and declare void an act of Parliament, if it is contrary to natural law. In famous case of A K Kraipak versus union of India, (1969) 2 SCC 262, the Supreme Court propounded, “the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land, but supplement it.” The traditional English law recognizes two principles of natural justice: Nemo debet esse judex in propria causa and Audi Ultram partem which was explained in detail. Further, the concepts of fair trial and human rights were touched upon. A comparison was made between the Constitution of India and the Constitution of Cambodia, focusing on Article 20, 21, and 22 to elucidate criminal jurisprudence. The speaker highlighted about precedents with the help of various case laws viz; State of U.P. v. Naresh & Others, (2011) 4 SCC 324, Babu Bhai v. State of Gujarat, (2010) 12 SCC 254, Khatri v. State of Bihar, (1981) 2 SCC 493, D.K. Basu v. State of West Bengal, (1997) 1 SCC 416, Sunil Batra v. Delhi Administration, AIR 1980 SC 1579 etc. It was opined that there is a need to alleviate trial congestion and address the issue of food quality in prisons. The session ended with a comprehensive discussion on sentencing policy, primarily focusing on aggravating and mitigating circumstances, minimum and maximum sentences. It was also recommended to adhere to the principles of natural justice.

Session 5 – Judiciary and Media **Panel - Justice Sonia G Gokani & Justice Asha Menon**

The session commenced with a caution that media plays a pivotal role in modern society, shaping public opinion, disseminating information, and holding power structures accountable. It acts as a conduit for freedom of expression, enshrined under Article 19 of the Indian Constitution, which guarantees the right to freedom of speech and expression with reasonable restrictions. However, it was mentioned that this right comes with challenges, including balancing media freedom with public interest and ensuring its responsible use. Further, it explores the intricate relationship between media, judiciary, and public interest, while drawing a comparative analysis with Bhutan's legal landscape. In a democracy like India, free media is essential for fostering informed citizens. Without media, freedom of expression would be significantly constrained. Media serves as a watchdog, amplifying the voices of marginalized groups, exposing

corruption, and ensuring transparency in governance. However, Article 19(1)(a) is not absolute; it is subject to restrictions under Article 19(2), which allows limitations to protect sovereignty, public order, decency, morality, and national security.

During the session a question was raised: how far should these restrictions go? Striking the right balance is crucial. It was opined that overregulation suffocates press freedom, while underregulation can lead to misuse, sensationalism, and a breach of privacy.

Both media and judiciary play vital roles in serving the public interest. While the judiciary upholds justice, the media ensures transparency by reporting on judicial processes was highlighted. In India, the concept of open courts allows public access to court proceedings, reinforcing accountability. Media coverage of trials helps the public understand the flow of justice, but it also raises concerns about trial by media, where prejudicial reporting can impact the fairness of a trial. The distinction between freedom of media and freedom from media is critical was discussed. The judiciary must function independently, free from media influence. Simultaneously, it was also advised that the media must operate without undue interference to inform the public. Ensuring this balance is essential to uphold the rule of law while protecting individual rights. Comparing India's media and judicial dynamics with Bhutan highlights significant contrasts. In Bhutan, legal cases predominantly comprise 83% civil offences and 17% criminal offences, with major crimes including drug-related issues, financial fraud, and technology-related offences. These statistics reflect Bhutan's relatively low crime rates but also emphasize the growing challenge of modern crimes, especially in financial and digital sectors. In both nations, interpretations of the same offence can vary due to differences in legal frameworks, societal norms, and judicial discretion. For instance, what constitutes defamation or sedition in India may differ significantly in Bhutan. This underscores the necessity of context-specific application of laws, even as media's influence grows across borders. It was stressed that media's all-pervading effect necessitates a free yet accountable press. While Article 19 guarantees freedom of expression in India, its reasonable restrictions ensure that this freedom does not undermine public order or individual rights. The interplay between media and judiciary highlights their shared commitment to public service, but mutual respect and clear boundaries are essential to prevent overreach. Lastly, both India and Bhutan face unique challenges in aligning legal frameworks with media freedom. Learning from each other's approaches can help strike a balance where media remains a cornerstone of democracy without becoming an unchecked force. It was stressed that as the digital age evolves, the responsibility of media, judiciary, and policymakers to adapt and collaborate has never been more critical.

Session 6 – Judicial Stress and Wellness
Speaker - Dr. Harish Shetty

The session aimed to help participants recognize hidden stress and develop strategies to balance work and

life effectively. It began with the idea that every challenge, including sadness, has a solution. The discussion highlighted the importance of meditation and yoga in maintaining mental fitness, emphasizing that a healthy and balanced mind leads to wise decision-making. The session also delved into participants' perspectives on the death penalty, exploring whether it is justified and stressing the significance of giving second chances to those accused. Emotions were a central theme, with a focus on their vital role in human lives. It was clarified that while anger is a normal emotion, aggression is not, and the concept of emotional hijacking was explained. Additionally, the session addressed how anxiety can be managed through acknowledging and processing emotions like fear, tears, and anger.

Further, the speaker showcased certain images to participants and sought responses. The responses helped in gauging the biases, pre-conceived notions and mental conditioning of participant judges. It was opined by the speaker that no individual is free from biases including judges, however, the quest to render adjudications free from biases must always continue.

Session 7

Theme: Electronic Evidence: New Horizons, Collection, Preservation and Appreciation

Speaker: Dr. Harold D'Costa

The session involved a demonstration of digital space and its risks, and measures to ensure that the digital space is secure. Further, session also provided information on how investigation and adjudication of crimes in digital space can be done. The session threw light on electronic evidence and its nature. The session addressed the myth on reliability and authenticity of content on WhatsApp (which is considered secure due to the 'end-to-end encryption'). The speaker demonstrated how content on WhatsApp may be changed or may be fake. The session also addressed the issue of SMS spoofing, caller ID spoofing and email spoofing. Methods to check the authenticity of WhatsApp content and emails was demonstrated. Emphasis was placed on the need to verify the authenticity of the content as well as the device, as well as the need for corroboration of digital evidence due to high chance of alteration. The participants were advised to ensure that digital evidence is forensically proved to be authentic. The standard operating procedures for collection, analysis and preservation of electronic evidence was discussed in detail to familiarize the participants with the necessary steps and measures to adopt while handling electronic evidence in order to preserve its integrity.

Session 8

Theme: Forensic Evidence in Civil & Criminal Trials

Speaker: Ms. Nisha Menon

The session commenced with a discussion on Locard's principle of exchange. The varied types of forensic evidence before courts was discussed including examination of document, forensic chemistry, forensic

ballistics, forensic psychology, computer forensics, fingerprint analysis, forensic anthropology, forensic pathology, forensic toxicology, forensic odontology, and forensic DNA. The methods adopted for forensic analysis was explained and demonstrated. Handwriting analysis was also discussed in the course of the session and markers for identifying genuine and forged writing were pointed out. Discussion was undertaken on the evidentiary value of the handwriting analysis expert and reference was made to *Kanchan Singh v. State of Gujarat*, AIR 1979 SC 1011 and *Magan Behari Lal v. State of Punjab*, AIR 1977 SC 1091. The evidentiary reliability of fingerprint evidence was dealt with in the session. The participants were provided a detailed understanding of DNA evidence, the source of evidence in cases of biological evidence and DNA profiling. Emerging technologies in DNA profiling including touch DNA, M-Vac technology, Rapid DNA and Low Copy Number DNA were also dwelt upon. Case studies on notable cases where forensic evidence played a crucial role in the investigation and trial were discussed in the session. The evidentiary value of forensic evidence was dwelt upon and the challenges posed by improper collection, storage and preservation were noted.

Session 9

Theme: Transition to a Gender Just Society

Panel: Justice Roshan S. Dalvi & Ms. Geeta Ramaseshan

The session commenced highlighting the issue of gender inequality and discrimination and the objective and ethos of positive discrimination in addressing the same. The jurisprudence related to gender justice was traced. The provisions of the Constitution of India which seek to address the issue of gender inequality were highlighted. Discussion was also undertaken on welfare provisions in Indian law which seek to ameliorate the problem of gender discrimination. Discussion was also undertaken on the notable precedents on gender justice including *Air India v. Nergesh Meerza*, (1981) 4 SCC 335, and *Githa Hariharan v. Reserve Bank of India*, (1999) 2 SCC 228. Courtroom practices for protection of women witnesses especially victims of sexual offences (including vulnerable witness deposition centers, and measures to prevent re-victimisation and traumatization of victims in the court were discussed. Emphasis was placed on therapeutic jurisprudence to ensure gender justice.

Session 10

Theme: Protecting the Rights of Persons with Disability

Panel: Justice Roshan S. Dalvi & Ms. Geeta Ramaseshan

The session commenced by highlighting the issue of disability and the related challenges and issues. Firstly, emphasis was placed on the need to address the conservative attitudes and societal perceptions surrounding

disability. The barriers faced by disabled persons – societal, attitudinal, cultural, institutional, structural, economic, communication and legal were dwelt upon. The session discussed the concept of equality and the varied approaches to equality i.e. formal equality, protectionist equality and substantive equality. The concept of substantive equality was highlighted as an approach which recognizes inequality in position of people and the need for differential treatment of unequals. This approach recognizes historical disadvantage and seeks to address the same. This form of equality seeks to ensure equality of opportunity, access and results. Substantive equality in the context of disability rights recognizes disability as a relevant characteristic, takes into account the fact that disabled persons cannot be expected to conform to the existing societal norms and facilitates a regime of change and accommodation to the existing norms to ensure full participation of persons with disability. The provisions in the Constitution of India which address the issue of discrimination and promote equality were focused upon. Discussions were undertaken on the Rights of Persons with Disabilities (RPWD) Act, 2016 specifically the concepts on discrimination and reasonable accommodation, the responsibilities of the government to ensure access to court, judicial bodies and investigative agencies. (Section 12) Discussions also threw light on the provisions of the Legal Services Authorities Act, 1987. The issues which impede access to justice for persons with disability were discussed including –

- Need for accessible formats of public documents.
- Equipping filing departments, registry etc. to enable filing storing and accessing of documents and evidence in disabled-friendly formats
- Provision of necessary equipment and facilities to record evidence, testimonies etc.

Discussions were also undertaken on the legal capacity of persons with disability. Reference was made to the ‘Handbook Concerning Persons with Disabilities’ published by the Supreme Court of India. The judgments in Ravinder Kumar Dhariwal v. Union of India, (2023) 2 SCC 209, Smruti Tukaram Badade v. State of Maharashtra, (2022) 18 SCC 24, Vikash Kumar v. UPSC, (2021) 5 SCC 370, Patan Jamal Vali v. State of A.P., 2021 SCC OnLine SC 343, Accused ‘X’ v State of Maharashtra, 2019 (6) SCR 1 and Rajive Raturi v. Union of India, (2018) 2 SCC 413 were referred to in the discussion. Emphasis was placed on the active role to be played by a judge in ensuring effective justice to persons with disability and in fulfilling the objective of the law.

Session 11

Theme: Re-engineering Judicial Processes through ICT

Panel: Mr. Atul Kaushik & Mr. Kuldeep Kushwaha

The session provided the participants with an overview of the e-Courts Mission Mode Project which is a significant measure for the technological transformation of the Indian judiciary. Emphasis was placed on

the utility of technology as a source of information and management for the judicial system. It was stated that technology can inform regarding the administration of justice and the functioning of the courts, thereby enabling informed decision-making regarding the court processes. Technology by tackling administrative and management aspects of court functioning empowers the courts to channelize human resource for core purposes and responsibilities. Further it leads to efficiency in court functioning in terms of hours of operation and optimizes court locations. The e-judiciary initiative of the Kingdom of Bhutan was also dwelt upon in the discussion. The approach and achievements of the e-Courts project were highlighted. Key tools launched in the e-Courts Project including National Judicial Data Grid, Judge's Dashboard, CIS etc. were demonstrated in the session. The novel facilities launched under the e-Courts Project to enable access to justice were highlighted in the course of the discussion. Further, the measures to ensure data protection, confidentiality and privacy were dwelt upon. Reference was made to the judgment in *Swapnil Tripathi v. Supreme Court of India*, (2018) 10 SCC 639, *Pradyuman Bisht v. Union of India*, (2018) 15 SCC 639 and *K.S. Puttaswamy (Privacy-9J.) v. Union of India*, (2017) 10 SCC 1.

Session 12

Theme: Alternative Dispute Resolution

Speaker: Justice Subhasis Talapatra

The session commenced highlighting the Bhutanese tradition of resolving disputes i.e. nangkha nangdrik (traditional mediation undertaken by community leaders and elders) which is an integral part of Bhutanese culture. The formal ADR system in Bhutan and its development was also discussed. The rational and goal of ADR i.e. conflict resolution and timely disposal of cases. It was stated that greater emphasis is being placed on ADR in recent times due to the increasing delay and pendency in courts and ADR provides a time and cost effective mechanism for justice delivery.

The Lok Adalat system in India was highlighted as a novel dispute resolution system and its features were dwelt upon which make it a feasible method for dispute resolution. Mediation as a dispute resolution mechanism and its utility was discussed. A distinction was drawn between arbitration and mediation. Court annexed mediation was discussed as a mechanism wherein cases which are suitable for settlement are referred by the court for mediation. This is beneficial as the parties feel that the settlement is arrived at under the supervision of the court and the system has not abandoned the case. Further they are involved in the outcome and this lends acceptability to the settlement arrived at through mediation. Discussion was also undertaken on the Mediation Act, 2023 and its key features.