

Training Programme for Bangladesh Judicial Officers. [SE-4] [10th -16th November, 2017]

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The National Judicial Academy, India (NJA) and the Supreme Court of Bangladesh signed a Memorandum of Understanding (MoU) for organising Training and Capacity Building programmes for Judicial Officers of Bangladesh. In pursuance to the said MoU, a 7 days programme for District Judges/Sessions Judges, Additional & Joint Sessions Judges and Additional District Judges nominated by Bangladesh, was organized by the NJA from 10th to 16th October, 2017. The programme was divided into 17 sessions spread over five days. The programme included sessions on Constitutional law, civil justice system, criminal justice system and human rights laws. The programme aimed to acquaint participants with elements of judicial behaviour- ethics, neutrality and professionalism, skills of judging and judgment writing. The programme also facilitated discussions on court & case management and use of ICT in the administration of justice.

Major Highlights and Suggestions from the Programme

Session-1: Overview and Architecture of the Indian Constitution Arrangement

In the first session emphasis was laid on the architecture of the Constitution of India (hereinafter Constitution). After a summarized overview of the composition of Constitution of India (in terms of number of Parts; Articles; Schedules; Amendments; its nature etc.), the doctrine of “basic structure” was discussed in detail. Speakers discussed the jurisprudential evolution of concept of the Fundamental Rights as a basket of rights interlinked with one another e.g. Article 14, 19, 21; Constitution as a charter for social reforms and Article 38; the concept of relaxation of the “Rule of *Locus Standi*” and systemic growth of Public Interest Litigation (PIL). The discourse included a comparison between the Constitutional provisions of India and Bangladesh.

Session-2: Indian Judiciary: Organizational Structure and Jurisdiction

The Session covered various aspects of structure and jurisdiction of Indian judiciary. It was initiated by narrating the historic preview of court system as it evolved from the British Raj to present time. Speakers gave an overview of history and foundation of the judiciary in India and the development of the common law jurisprudence by the Indian Supreme Court; The hierarchical and the civil and criminal bifurcations of the Indian judiciary; Modes of recruitment (both public and direct) and the doctrine of *stare decisis* and precedents was explained; Writ jurisdiction of the High Courts and the Supreme Court of India was briefed; Epistolary jurisdiction of the Supreme Court and the High Courts, waving off or diluting the procedural mandates; Judicial activism and its unique success in the Indian democracy was discussed citing case law jurisprudence.

Session-3: Goals, Role and Mission of Courts: Constitutional Vision of Justice

The session was premised on the vision of justice as set out by the Constitution of India and the guiding principles that govern the Courts in achieving the same. It was deliberated that the preamble of the Constitution lays down the Constitutional vision to be achieved by judiciary which is a part of the three major pillars of a democracy. The Session covered various aspects *viz.* the essence of having Fundamental Rights and the Directive Principles of the State Policy (DPSP) and goals, role and mission of Courts to uphold the same while deciding cases; sensitivity of Courts to uphold the Constitutional vision and mandate of social justice through gender and vulnerable classes.

Session-4: Group Discussion

The session commenced with the idea of group dynamics. The participants were staggered into five groups and were given five different issues. Within allocated timeframe they represented the group advisory and solutions to handle the extant issue assigned. Elaborate discussions ensued on the following five issues: a) Methods of dealing with backlog in Bangladesh; b) Improvement in dealing with judicial problem; c) Changes which have taken place in the judiciary in last 10 years; d) Decision which have had social impact; and e) Gender sensitization.

Session-5: Principles of Evidence: Appreciation in Civil and Criminal Cases

After a brief introduction to the law of evidence, the basic architectural pivots of the Indian and the Bangladesh evidence statute was explained. Basic principles such as “What constitutes an evidence?” “What can be admissible as evidence?”; “Reliability of evidence”; “What is meant by an expert evidence and when should it be called for?” etc. were discussed and argued. The key provisions providing for the appreciation of an evidence was discussed with relevant Indian case law. It was underscored by the panel of speakers that one of the golden rule to be followed by the judges is to read the Evidence Act as a whole and never in piece meal.

Session-6: Evidentiary Presumptions; Onus and Burden of Proof

The Session commenced with recapitulating the legal concepts of ‘presumption’, ‘onus’ and ‘burden of proof’. Concepts such as who is a ‘reasonable’ and a ‘prudent man’ under law were explored. It was explained, as a standard used to judge the conduct of an ordinary person, especially in cases of negligence by a hypothetical person “prudent or reasonable man” as a legal fiction is employed to determine whether an act was negligent. Essentials of circumstantial evidence and its necessary and sufficient procedural aspects were discussed. Distinction in the “standard of proof” in the two classes of cases i.e. criminal cases and civil cases and its degree i.e. “*proof beyond reasonable doubt*” and “*preponderance of probability*” was discussed in detail.

Session-7: Electronic Evidence: New Horizons, Collection, Preservation and Appreciation

The Session initiated with exhibition of certain practical problems in deciphering the genuineness of source of origin of an electronic evidence. The importance of establishing as to whether an ‘SMS’ or a ‘WhatsApp’ message has been sent from the device of the victim was demonstrated.

A few smart procedures to investigate originality was shared with the judicial officers. It was underscored that speed and observance of standard procedures to collect and preserve the electronic evidence are cardinal. “Best practices” to preserve electronic evidence and decipher “digital foot prints” were shared. Documentary, oral and “shadow evidence” was elaborated upon. Case law jurisprudence on evolution of appreciation of electronic evidence was discussed.

Session-8: Forensic Evidence in Civil and Criminal Trials; DNA Profiling

The session commenced by highlighting that there exists two techniques which are normally followed to establish conclusive proof when it comes to a dead body viz. i) Superimposition examination, which has its own limitations and may sometimes lead to incorrect or imprecise conclusions, and ii) DNA profiling, which is more reliable and is 99.99% accurate. A few important issues discussed in the session includes, discussion on best practices of collection and preservation of DNA, true object of Section 112 of the Indian Evidence Act, to shield the children from the blame of illegitimacy and various other aspects of burden of proof.

Session-9: Elements of Judicial Behaviour- Ethics, Neutrality and Professionalism

The session focused on basic tenets of ethics, neutrality and professionalism among judges. The origin and meaning of ethics were discussed and emphasis was laid on values of neutrality, independence, professionalism and sensitivity to the needs of litigants. The cardinal objective of the preamble of the Indian Constitution were discussed including social, economic and political justice, liberty of thought, expression, belief, faith and worship, equality of status and equality of opportunity and value of fraternity. Various sources of ethical norms for judges were discussed that included Constitution of India, Magna Carta, Bangalore Principles of Judicial Conduct, Recruitment Rules Conduct Rules, Bar Council of India Rules and Restatement of the Values of Judicial Life.

Session-10: ICT and E-Judiciary: Indian Perspective

The session was initiated with a brief discussion on the establishment of e-Committee in the Supreme Court of India. The e-Committee was established in the year 2005 for monitoring use of Information Technology in the Indian Judiciary. In first phase the e-committee focused on hardware provisions, establishment of judicial service centers and development of Case Information system [CIS 1]. The second phase started in the year 2014 and all districts were integrated in one system which gets updated every day. The speakers explained various advantages of using ICT tools in court which results in expeditious justice and enhances access to justice to ordinary citizens. The speakers emphasized the need to calibrate ICT system in courts with latest changes in technology.

Session-11: Judge the Master of the Court: Court Management & Case Management

The speakers highlighted necessary steps for court management and case management which included planning, organizing, directing, coordinating and controlling. They discussed various principles related to court management. Further there was emphasis on requirements and challenges regarding effective court management. The speaker discussed about the establishment of National Court Management System (NCMS). The State Court Management System (SCMS) and in some states, District Court Management System have been established. All reports of the

subcommittees under NCMS are available on the website of the Supreme Court of India. There has been an increase in judges' strength in district court and high court due to the efforts of NCMS.

Session-12: Criminal Justice Administration and Human Rights

The speaker initiated the discussion with sources of human rights obligations at national and international level. The features of international Bill of Rights, part III of the Indian Constitution and Protection of Human Rights Act, 1993 were highlighted. The forms of human rights violations and the steps required to prevent and report such violations were discussed. The speaker focused on national system for protection of human rights and various statutes under it. There was emphasis on bringing changes in the criminal justice system for victims such as victim support centres, victim examination centres, video recording of statements and video recording of evidence. The steps for proper trial of cases involving human rights violation were discussed.

Session-13: Human Rights: Fair and Impartial Investigation

The session was initiated with discussion on factors necessary for protection of human rights which included impartial investigation, prevention from illegal arrest and detention, torture and various types of discrimination. The speaker emphasized on the role of judges to ensure that investigation happens according to legal provisions and that no deviations from legal provisions should be allowed. The judges cannot direct the mode of investigation but they can ensure that no violation of law happens during investigation. It was highlighted that the use of scientific methods of investigation should be promoted over conventional ones. The government must establish proper facilities for DNA and forensic analysis and proper training should be given to investigating officers regarding collection and handling of evidence during investigation.

Session-14: Judging Skills: Art, Craft and Science of drafting judgments

The speakers emphasized that judges must consider the expectation of common person from their judgements which included positive impact of judgement in country, impact on non-violence society and clarity. The speakers explained situation which can lead to reversal of a judgement such as when facts have not been understood properly, legal issues not considered, binding precedents not followed and the language of the order is not understandable. The speakers stated that after drafting judgment correcting, thinking and revision of judgment is important. Judgments should be precise, clear and brief. Judges must always consider admission of facts and record it and then should draft judgements. The speakers highlighted that the language of a judgement should be simple and with reason and the judge should not be bothered about the style. Rather it should be very simple and with reasons.

Session-15: Identification of Ratio in a Precedent

The speakers commenced the session by stating three principles including proof of fact, statutory provision and ratio decidendi. It was emphasized that Ratio decidendi guides a judge to arrive at right conclusion according to law. The speaker explained the method of identifying ratio from a binding precedent through discussion on Indian judgments. The difference between ratio decidendi

and obiter dicta was explained to the participants. The issues that whether high court decision is binding on all the States was discussed with the participants. The judgment of *Keshavananda Bharti v. State of Kerala* was discussed and various aspects of the ratio of this judgment were highlighted. The speaker referred to judgment of *Ankush Shivaji Gaikwad vs State Of Maharashtra* that emphasized on payment of compensation to victim. The speaker discussed various aspects of identifying ratio decidendi through this judgement.

Session-16 & 17: Landmark Judgement in India

The speakers initiated the discussion with Article 32 of the Indian Constitution which provides safeguard against violation of fundamental rights in India. Various landmark judgements pronounced by the Supreme Court of India were discussed including *Maneka Gandhi v. Union of India*, *Shyara Bano v. Union of India*, *Mohd. Ahmed Khan v. Shah Bano Begam*, *Vishakha v. State of Rajasthan*, *Air India v. Nergesh Meerza*, *Hussainara khatoon v. Home Secretary, State of Bihar* and *Justice K S Puttaswamy (Retd.) v. Union of India*. The speaker made brief reference to many other important judgments of the Supreme Court of India. The speakers also discussed judgment of District Court of Bhopal on Bhopal gas tragedy as well as *Kailas v. State of Maharashtra* dealing with atrocities against scheduled tribe woman.

The participant also visited District Court of Bhopal, Forensic Science Department, AIIMs, Bhopal and Central Prison, Bhopal as part of the program.