

# **National Judicial Academy**



## **REPORT**

### ***TRAINING PROGRAMME FOR BANGLADESH JUDICIAL OFFICERS [SE-04]***

(District Judges/Sessions Judges, Additional & Joint Sessions Judges & Additional District Judges)

**10 – 16 November, 2017**

***Sumit Bhattacharya & Rajesh Suman***

***(Faculty)***

**Academic coordinators**

**National Judicial Academy, Bhopal**

The National Judicial Academy, Bhopal organized a Training Programme for Bangladesh Judicial Officer from 10<sup>th</sup> November to 15<sup>th</sup> November 2017. The programme was divided into 17 Sessions spread over five days. The participating judges from the Bangladesh comprised of a mixed group of judges including District Judges/Sessions Judges, Additional & Joint Sessions Judges and Additional District Judges.

The programme involved deliberations on the emerging issues in the field of Constitutional Law of India, principles of law relating to evidence in civil and criminal matters, judicial skills and human rights law etc. Effort was made to explore and understand a correlative jurisprudence between countries and to share the ‘best practices’. The program also involved visits of the participants to experience the working of a District Court in India, Forensic Science Laboratory of All India Institute of Medical Science, Bhopal (AIIMS) and the Central Jail at Bhopal.

### **LIST OF RESOURCE PERSONS**

1.	Hon'ble Justice Sanjib Banerjee
2.	Hon'ble Mr. Justice K. Chandru
3.	Hon'ble Mr. Justice Roshan Dalvi
4.	Hon'ble Mr. Justice Ruma Pal
5.	Hon'ble Mr. Justice K.C. Bhanu
6.	Hon'ble Mr. Justice Joymalya Bagchi
7.	Hon'ble Mr. Justice S. Nagamuthu
8.	Dr. Mohan Gopal
9.	Mr. Harold D'Costa
10.	Hon'ble Mr. Justice Sunil Ambwani
11.	Hon'ble Mr. Justice R.C. Chavan
12.	Hon'ble Mr. Justice DharnidharJha
13.	Dr. Usha Ramanathan
14.	Prof. (Dr.) Mool Chand Sharma

## **SESSION-WISE PROGRAMME SCHEDULE**

### Day- 1

Session 1	Overview and Architecture of the Indian Constitutional Arrangement
Session 2	Indian Judiciary: Organizational Structure and Jurisdiction
Session 3	Goals, Role and Mission of Courts : Constitutional Vision of Justice
Session 4	Group Discussion

### Day- 2

Session 5	Principles of evidence : Appreciation in Civil and Criminal
Session 6	Evidentiary Presumptions; Onus and Burden of Proof
Session 7	Electronic Evidence: New Horizons, Collection, Preservation and Appreciation
Session 8	Forensic Evidence in Civil and Criminal Trials; DNA Profiling

### Day- 3

Session 9	Element of judicial behavior- Ethics, Neutrality and professionalism
Session 10	ICT and E-Judiciary: Indian Perspective
Session 11	Judge the Master of the Court : Court Management & Case Management

### Day -4

Session 12	Criminal Justice Administration and Human Rights
Session 13	Human Rights : Fair and Impartial Investigation
Session 14	Judging Skills : Art , Craft and Science of Drafting Judgments

Day- 5

Session 15	Identification of Ratio in a Precedent
Session 16	Landmark Judgments in India
Session 17	Landmark Judgments in India

## SESSION 1

### Theme: Overview and Architecture of the Indian Constitution Arrangement

Speakers: Justice Sanjib Banerjee & Justice K. Chandru

Chair: Justice Ruma Pal

- 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.
- Evolution of concept on the Fundamental Rights wherein, it was considered to be independent initially and was subsequently settled to be jurisprudentially understood as a basket of rights interlinked with one another e.g. Article 14, 19, 21.
- Constitution is a charter for social reforms and Article 38 is unique and stands out to secure social order for promotion of welfare in addition to the concepts laid down in the Preamble.
- Constitution not only differs from the Westminster model, but evolved uniquely and organically over past seven decades.
- Concepts of basic structure (not defined under Indian Constitution but defined under the Bangladesh Constitution), judicial review and separation of powers were discussed citing leading and evolving case law.
- The concept of relaxation of the “Rule of *Locus Standi*” and introduction and systemic growth of Public Interest Litigation (PIL) was discussed in detail.
- Comparative discourse of the Constitutional provisions of India and Bangladesh was done. It included as to whether there existed express provisions in the Constitutions or a jurisprudence to such effect has been developed by common law methods. A few examples included “Supremacy of the Constitution” expressly envisaged under the Constitution of Bangladesh under Section 7 as against any such express provision under the Constitution of India. “Contempt” as provided under Article 129 of Constitution and 108 of Bangladesh Constitution; “Separation of Powers” Article 50 akin to Section 22; “Judge’s independence” Section 116 A of the Bangladesh Constitution provides expressly as against absence of such expression under the Indian Constitution etc.

## SESSION 2

### Theme: Indian Judiciary: Organizational Structure and Jurisdiction

Speakers: Justice Sanjib Banerjee & Justice K. Chandru

Chair: Justice Ruma Pal

- The Session covered various inclusive 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 date. The collegium system of functioning of the Indian higher judiciary was also discussed in detail.
- 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 was briefed. Modes of recruitment (both public and direct) and the doctrine of *stare decisis* and precedents were discussed.
- Rationalizing the hierarchical positions and nomenclatures it was brought to the notice that India has 5 as compared to ~ 12 of Bangladesh.
- Writ jurisdiction of the High Courts and the Supreme Court of India was discussed. It was debated as to whether the Supreme Court of India should exclusively and purely have two wings a) Constitutional side and b) Appellate side. Amongst several questions one was, as to whether a Government can file writ petition?
- Epistolary jurisdiction of the Supreme Court and the High Courts, waving off or diluting the procedure or the “locus” was discussed as one of the unique feature of the Indian judicial system.
- Judicial activism leading to social implications affecting the national issues like human rights positively and with pace were deliberated citing cases including Vishakha, Sunil Batra cases, Husainara Kahtoon series, Asiad Games Case, D. K. Basu, Olga Telis etc. Citing Ratlam Municipality case it was explained as to what is the scope of the power of an executive magistrate at the grass root level administration.
- It was deliberated that two areas where the Supreme Court of India awaits success and is yet to create milestone were identified as a) Police Reforms (even after seven Commission Reports) and b) Abolishing Child Labour.
- The relative scope of Article 32 and 226 were discussed to satiate a query made by the Bangladesh judge.

## SESSION 3

### **Theme: Goals, Role and Mission of Courts: Constitutional Vision of Justice**

Speakers: Justice Sanjib Banerjee, Justice K. Chandru & Justice Roshan Dalvi

Chair: Justice Ruma Pal

- 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 aspirations of the people as well as the ideals before a nation are described in the preamble. It may be considered as the heart and soul of Constitution. The preamble can be referred to as the preface which highlights the entire Constitution.
- The essence of having Fundamental Rights and the Directive Principles of the State Policy (DPSP) enshrined in the PART III and IV of the Constitution of India was discussed. The goals, role and mission of Courts to uphold the same while deciding cases was emphasized.
- While explaining the fundamental duties contained in Article 51A, it was asserted that the enjoyment of fundamental rights is conditional on the satisfactory performance of fundamental duties.
- Points e.g. Gender equality, Gender justice, were highlighted as one of such Constitutional goals. It was deliberated that certain legislations are enacted to support a particular class in order strike a balance between the more vulnerable groups to the privileged one. Likewise certain provisions in a legislation drives the balance. Courts must exhibit sensitivity to consider the same in delivering justice.
- Freedom of speech, freedom of press, right to life and liberty etc. were discussed with the judgments given by the Supreme Court of India from time to time to enable the vision of justice.
- Discussions on tools enabling speedy and fair trials formed part of the discourse; wherein, Alternate Dispute Resolution (ADR) mechanisms were emphasized. Necessity, functioning and benefits of Legal Service Authorities were highlighted.
- It was underscored that there isn't a laid down principle for vision of judiciary, as in its judicial role of judicial activism, the judges must play a proactive role to uphold the philosophy of judicial decision-making; whereby judges allow their personal views about public policy, among other factors, to guide their decisions.

## SESSION 4

### Group Discussion

Panel: Justice Ruma Pal, Justice Sanjib Banerjee & Justice K. Chandru

This session commenced with the idea of group dynamics. The participants were staggered into five groups and were given an issue each. Within allocated timeframe they were required to represent the group advisory and solutions to handle the theme provided to each group.

The team-wise issues provided and the representations made are encapsulated as under:

Team Name	Topic Assigned	Analysis & Reasons	Remarks
A	Methods of dealing with backlog in Bangladesh.	<ul style="list-style-type: none"> <li>✓ Volume of cases and number of trials Pre and post-trial of case.</li> <li>✓ Inadequacy of Judges.</li> <li>✓ Frivolous litigations.</li> <li>✓ Non-cooperation by Bar/lawyers.</li> <li>✓ Parties delaying a case.</li> <li>✓ Judicial adjournments.</li> </ul>	
B	Improvement in dealing with judicial problem.	<p>a) Improvement which needs to be done:</p> <ul style="list-style-type: none"> <li>✓ Separation of judiciary.</li> <li>✓ Adaptation of ADR.</li> <li>✓ Legality of insolvent litigant.</li> <li>✓ Separate court and special Courts.</li> <li>✓ Increasing the judges emoluments to attract new and better talents to judiciary.</li> <li>✓ Regular trainings of Judicial Officers.</li> </ul> <p>b) Methods and suggestion for Implementation to effective improvement:</p> <ul style="list-style-type: none"> <li>✓ Developing infrastructure.</li> <li>✓ Introduction of “e-judicial systems”</li> <li>✓ Appointment of sufficient judges.</li> </ul>	<p>Question posed: Does Bangladesh have judge’s association? It was answered in affirmative.</p>



Team Name	Topic Assigned	Analysis & Reasons	Remarks
		<ul style="list-style-type: none"> <li>✓ Pragmatic amendments.</li> <li>✓ Continuous training programs.</li> </ul>	
C	Changes which have taken place in the judiciary in last 10 years.	<ul style="list-style-type: none"> <li>✓ Separation of judiciary.</li> <li>✓ Increase in pay scale for judicial officers.</li> <li>✓ State is duty bound to protect individuals.</li> <li>✓ International criminal tribunal case are dealt with respect to international standard.</li> <li>✓ Cyber-crime tribunal are establishing.</li> <li>✓ Adaptation of ADR system.</li> <li>✓ Legal aid movement.</li> <li>✓ Judicial activism.</li> <li>✓ Quicker disposal rate of cases.</li> <li>✓ Enactment of Children's Act.</li> <li>✓ Enactment of Domestic Violence Protection Act.</li> </ul>	Question posed: Composition of Tribunals in Bangladesh are they from judiciary alone? It was answered that a typical composition is headed generally by a High Court judge and includes domain experts.
D	Decision which have had social impact.	Some decisions of the Bangladesh Supreme Court and Court of Appeal were cited to explain the social impact a particular decision had on the society.	
E	Gender Sensitization.	<ul style="list-style-type: none"> <li>✓ measures taken for protection of women and child.</li> <li>✓ Section 19 of Bangladesh Constitution provides State Shall endeavor to ensure equality of opportunity and participation of women in all spheres of national life.</li> <li>✓ There are certain policies specifically for women in Bangladesh e.g. national women policy of 201. Moreover, in Bangladesh 50% seats are reserved in parliament for women.</li> <li>✓ 60% teachers for primary schools are reserved for women and 20% seats are reserve for women judicial officers.</li> </ul>	

Team Name	Topic Assigned	Analysis & Reasons	Remarks
		✓ There are specific laws against dowry .e.g. Dowry Prohibition Act 1980, Domestic Violation Act 2010 and Child Marriage Restrain Act.etc.	

## SESSION 5

### Theme: Principles of Evidence: Appreciation in Civil and Criminal Cases

Speakers: Justice Roshan Dalvi, Justice K.C. Bhanu, Justice Joymalya Bagchi & Justice S. Nagamuthu

Chair: Dr. G. Mohan Gopal

- After a brief introduction to the law of evidence, the basic architecture of the Indian and the Bangladesh evidence statute was explained. Basic principles such as “What constitutes an evidence?” “What can be admissible as evidence?” etc. were argued. The key provisions providing for the appreciation of an evidence was discussed with relevant Indian case law.
- Types of evidences; what is irrelevant evidence? What is presumption of document? Exclusion of Oral evidence? Burden of Proof? Various types of facts and statement; examination of witness; which are the type of questions that should not be allowed in cross-examination? etc.
- Evidence Act must be read as a whole and not piecemeal.
- Justice Dr. P. B. Gajendragadkar authored Law Commission Report of 1977 is a useful piece of reference on the subject matter.
- Appreciation of evidence in criminal cases involve weighing the credibility and reliability of the evidence presented in the case before the Court. In criminal cases, the burden of proving the guilt of an accused is upon the prosecution. In cases, where the burden of proof relating to a fact in issue is on the accused, (i.e. NDPS, POCSO, anti terror laws etc.) the standard of proof required of accused is not the same as is required from the prosecution.
- Categories of oral testimony by a witnesses as per *Lallu Manjhi and Anr. v. State of Jharkhand* (2003) 2 SCC 401; *Govindaraju @ Govinda v. State of Srirampuram P.S. & Anr.*, [Crl. Appeal No. 984 of 2007 decided on March 15, 2012]; and *Alagupandi alias Alagupandian v. State of Tamil Nadu* (2012) 10 SCC 451 were discussed. They are (a) Wholly reliable; (b) Wholly unreliable; and (c) Neither wholly reliable nor wholly unreliable. In the category (c) of witnesses, the Court has to be cautious and see

if the statement of such witness is corroborated, either by the other witnesses or by other documentary or expert evidence.

- On sole eye witness judgements from the Supreme Court of India was quoted to explain that “equally well settled is the proposition of law that where there is a sole witness to the incident, his evidence has to be accepted with caution and after testing it on the touchstone of evidence tendered by other witnesses or evidence otherwise recorded. The evidence of a sole witness should be cogent, reliable and must essentially fit into the chain of events that have been stated by the prosecution. When the prosecution relies upon the testimony of a sole eye-witness, then such evidence has to be wholly reliable and trustworthy.”
- Who are experts under law of evidence and how do they serve the end of justice was discussed w.r.t Section 45 of the Indian Evidence Act. How an expert evidence along with corroborative evidence is helpful in deciding a case.

## SESSION 6

### **Theme: Evidentiary Presumptions; Onus and Burden of Proof**

Speakers: Justice Roshan Dalvi, Justice K.C. Bhanu, Justice Joymalya Bagchi & Justice S. Nagamuthu

Chair: Dr. G. Mohan Gopal

- The Session commence 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 was 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 to determine whether an act was negligent.
- In a case based on circumstantial evidence, it is well settled in law, the prosecution is required to prove the circumstances projected by it beyond reasonable doubts and that such proved circumstances should form a complete chain, without any missing link, unerringly pointing to the guilt of the accused and that there is no other hypothesis which is inconsistent with the guilt of the accused.
- Scope of Section 27 was explained by citing the Privy Council case law *Pulukuri Kottaya v. King-Emperor*.
- On the question as to whether a witness can be compelled to answer a question during cross-examination, it was explained as to which situations and under what circumstances Court can compel. Corroborated with the case law *R.Dineshkumar@Deena vs State Rep. by Inspector of Police*; CrI.R.C.No.425 of 2014 at paragraph 61.

- Presumption of innocence under the criminal law as a “golden thread” until the guilt is proven beyond reasonable doubt. Case law cited *Woolmington v. Director of Public Prosecutions*, [1935] UKHL 1.
- Dealing with the question about the nature and scope of the onus of proof *Harbhajan Singh v. State of Punjab*, 1965 SCR (3) 235 was cited wherein the Supreme Court stated, “Where an accused person is called to prove that his case falls under an exception, law treats that onus as discharged if the accused succeeds in proving a preponderance of probability. The onus on an accused person may well be compared to the onus on a party in civil proceedings”.
- Dealing with the distinction in the “standard of proof” in the two classes of cases i.e. criminal cases and civil cases it was explained with reference to Lord Denning, J., in *Miller v. Minister of Pensions*, (1947) 2 All ER 372.

“That degree is well settled. It need not reach certainty but it must reach a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence “of course, it is possible but not in the least probable”, the case is proved beyond reasonable doubt.”

As regards the degree of cogency required to discharge a burden in a civil case, his Lordship stated:

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: “We think it more probable than not”, the burden is discharged 'but if the probabilities are equal, It is not.'”

- It was emphasized that under Section 114 of the Evidence Act, “court may presume” means “court may not presume” as well, hence it is a matter of judicial discretion.

## **SESSION 7**

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

Speakers: Justice Joymalya Bagchi, Justice S. Nagamuthu & Mr. Harold D’Costa

Chair: Justice Deepak Gupta, Justice K.C. Bhanu & Dr. G. Mohan Gopal

- This Session was initiated with exhibition of 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.

- Speed and observance of standard procedures to collect and preserve the electronic evidence are cardinal in nature.
- How to preserve digital evidence, and the best practices to decipher and preserve the “digital foot prints” were discussed in detail.
- While discussing the types of electronic evidence viz. material; documentary; oral, what is “shadow evidence” was discussed. It was discussed that with the advancements in technology the electronic evidence to be considered by the Courts generally do not have a body in material form, it is binary in existence.
- The evolution of the admissibility of electronic evidence was discussed in detail by citing the following successive decisions of the Supreme Court of India:
  - ✓ *State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600,
  - ✓ *Anvar P.V. v. P.K. Basheer*; (2014) 10 SCC 473, &
  - ✓ *Sonu @ Amar vs State of Haryana*; (2017) 8 SCC 570.

It was explained that as in *Anvar* case overruling the legal position as to electronic evidence as laid down in *Navjot Sandhu* Case, the Court, applying the principle of *generalia specialibus non derogant* (special law will always prevail over the general law), it was held that the evidence relating to electronic record being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same.<sup>1</sup> *Sonu @ Amar vs State of Haryana* to have a prospective overruling of *Anvar P.V. v. P.K. Basheer*.

It was addressed that the law relating to certification in cases of electronic evidence is traced back to have originated in England, wherein it was subsequently repealed.

## SESSION 8

### **Theme: Forensic Evidence in Civil and Criminal Trials; DNA Profiling**

Speakers: Justice K.C. Bhanu, Justice Joymalya Bagchi, Justice S. Nagamuthu & Mr. Harold D’Costa

Chair: Justice Deepak Gupta & Dr. G. Mohan Gopal

- It was underscored 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%

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<sup>1</sup>Also See, <http://blog.sconline.com/post/2014/09/20/ruling-of-navjot-sandhu-case-to-the-extent-of-admissibility-of-electronic-evidence-as-secondary-evidence-overruled/>.

accurate. It was discussed as to how long a DNA can be preserved and how it is to be preserved from getting contaminated.

- In *Gautam Kundu v. State of West Bengal*; (1993) 3 SCC 418, the Supreme Court held the object of Section 112 of the Indian Evidence Act, to shield the children from the blame of illegitimacy. The court held:
  - i. That courts in India cannot order blood test as matter of course;
  - ii. Wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.
  - iii. There must be a strong *prima facie* case in that the husband must establish non-access in order to dispel the presumption arising under section 112 of the Evidence Act.
  - iv. The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.
  - v. No one can be compelled to give sample of blood for analysis.
  
- However, in *Sharda v. Dharmpal*; (2003) 4 SCC 493, The Supreme Court addressing the question that whether a party to the divorce proceedings can be compelled to a medical examination? and whether subjecting a person to a medical test is violative of Article 21 of the Constitution of India, it was stated that the right to privacy in terms of Article 21 of the Constitution is not an absolute right. held:
  - i. A matrimonial court has the power to order a person to undergo medical test.
  - ii. Passing of such an order by the court would not be in violation of the right to personal liberty under Article 21 of the Indian Constitution.
  - iii. However, the Court should exercise such a power if the applicant has a strong *prima facie* case and there is sufficient material before the Court. If despite the order of the court, the respondent refuses to submit himself to medical examination, the court will be entitled to draw an adverse inference against him.
  
- The contradictory positions in the above two cases were settled by the Supreme court of India in *Bhabani Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Women*; (2010) 8 SCC 633 wherein the Court held:

There is no conflict in the two decisions of this Court, namely, *Goutam Kundu* and *Sharda Case*. In *Goutam Kundu*, it has been laid down that courts in India cannot order blood test as a matter of course and such prayers cannot be granted to have roving inquiry; there must be strong *prima facie* case and court must carefully examine as to what would be the consequence of ordering the blood test. In the case of *Sharda* while concluding that a matrimonial court has power to order a person to undergo a medical test, it was reiterated that the court should exercise such a power if the applicant has a strong *prima facie* case and there is sufficient material before the court. Obviously, therefore, any order for DNA can be given by the court only if a strong *prima facie* case is made out for such a course.
  
- *Shri Banarsi Dass v. Mrs. Teeku Dutta*; the question before court was whether a direction for DNA test can be given in a proceeding for issuance of succession certificate under the Indian Succession Act, 1925. The Supreme Court upheld the *Kundu Case* position and held

that, “DNA test is not to be directed as a matter of routine and only in deserving cases such a direction can be given, as was noted in *Goutam Kundu's* case.” It explained that, “A Succession Certificate is intended ... to protect the debtors, which means that where a debtor of a deceased person either voluntarily pays his debt to a person holding a Certificate under the Act, or is compelled by the decree of a Court to pay it to the person, he is lawfully discharged. The grant of a certificate does not establish a title of the grantee as the heir of the deceased, but only furnishes him with authority to collect his debts and allows the debtors to make payments to him without incurring any risk.”

- In case of burden of proving under Sections 112 and 4 of the Indian Evidence Act, *Kamtidevi v. Poshi Ram*; AIR 2001 SC 2226 was referred wherein the Supreme Court held that “[T]he party who wants to dislodge the conclusiveness had the burden to show a negative, not merely that he did not have the opportunity to approach his wife but that she too did not have the opportunity of approaching him during the relevant time. Normally, the rule of evidence in other instances is that the burden is on the party who asserts the positive, but in this instance the burden is cast on the party who pleads the negative.
- In *Dipanwita Roy v. Ronobroto Roy*; (2015) 1 SCC 365 it was held that the it was permissible for a Court to permit the holding of a DNA test, if it was eminently needed, after balancing the interests of the parties. Moreover, the wife shall be given the liberty to comply with or disregard the order of DNA test and in case, she declines to undergo the said test, the Court shall draw presumption as per Illustration (h) of Section 114 of the Evidence Act, 1872.

## SESSION-9

### **Theme: Elements of Judicial Behaviour- Ethics, Neutrality and Professionalism**

Speakers: Hon’ble Justice Sunil Ambwani, Hon’ble Justice K. Chandru and Hon’ble Justice R. C. Chavan

Chair: Dr. G. Mohan Gopal

- The term *ethics* derives from Ancient Greek (*ethikos*), from (*ethos*), meaning 'habit, custom' and highest value of human conduct. Ethics is a space between right and wrong and a branch of philosophy to define right and wrong. Oath is necessary for neutrality and professionalism and judges are expected to be neutral about result or ascertaining facts. For ascertaining facts neutrality is necessary and after finding facts then the judge should decide on which side justice prevails.
- Judges’ job is to make decisions. They carry out this function in public and they cannot decide by spinning a coin or consulting an astrologer. They must give reasons for their

decision. The primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary.

- Courts exist to promote justice, and thus to serve the public interest. Their administration should be speedy and careful. Every judge should at all times be alert in his rulings and in the conduct of the business of the court, so far as he can, to make it useful to litigants and to the community.
- *Magna Carta* is one of the most important documents in history as it established the principle that everyone is subjected to the law, even the king, and guarantees the rights of individuals, the right to justice and the right to a fair trial. Bangalore Principles of Judicial Conduct is one of the major source for norms on judicial ethics. Code of conduct for the judges (Bangladesh) and all over the world is almost same. Some of the major sources of ethics are Constitution of India, Recruitment Rules Conduct Rules, Bar Council of India Rules and Restatement of the Values of Judicial Life.
- Indian Constitution has given high importance to the independence of judiciary. The judiciary as an organ of the government should be free from influence and control of the other two organs i.e., the executive and the legislature of government and impartial and independent judicial system alone can protect the rights of the citizens against the arbitrary powers of the executive or legislature.
- The Preamble lists cardinal objectives which are to be secured by the state for all its citizens. It seeks to secure social, economic and political justice for its people. It includes liberty of thought, expression, belief, faith and worship. There is provision for equality which includes equality of status and equality of opportunity. The value of fraternity means the inculcation of a strong feeling of spiritual and psychological unity among the people. It is designed to secure dignity of the individual and unity and integrity of the nation.
- The judiciary is impartial and independent of all external pressures so that those who appear before courts and the wider public can have confidence that their cases will be decided fairly and in accordance with the law.
- Generally following complaints are found against judicial officer. They are listed below :
  - a) Delay and deliver
  - b) Manipulating records
  - c) Long dates given
  - d) Favoring particular lawyer



## SESSION-10

### Theme: ICT and E-Judiciary: Indian Perspective

Speakers: Hon'ble Justice Sunil Ambwani, Hon'ble Justice K. Chandru and Hon'ble Justice R. C. Chavan

Chair: Dr. G. Mohan Gopal

- The technology system in court can be used for following areas:
  - a) To ensure court work effectively.
  - b) To effectively put cause list
  - c) To identify relevant matters
  - d) Provide input to judges for expeditious justice.
  - e) Judges can refer judgments from Privy Council to latest cases.
- In 2005 the E-Committee for monitoring use of Information Technology in the Indian Judiciary was established. In first phase the following steps were taken:
  - a) Hardware provision and service delivery
  - b) Judicial service center established
  - c) CIS-1 Case Information System developed in every district court
  - d) Giving laptops which contain statutes, judgments and reports
- The first phase ended in the year 2014 and the second phase was launched and each district was integrated in one system and it is updated every day.
- Every judge have dashboard so he can prepare cause list and courtrooms in high courts have digital display monitors indicating which case is being heard at any given point of time. Recently more computers given to the courts and video-conferencing facility has been provide and the main object is to have paperless court. We even protect privacy of parties so we don't publish name of parties in cases like matrimonial, juvenile and rape.
- Every case have CNR no. so the parties can get status of cases online and e-Court app is there to find the cause list, details of case.
- At last technology changes rapidly these days so, there is a need to take a holistic look at the issue of court excellence. The government, therefore, needs to continue the efforts to further enhance ICT enablement of courts in future in collaboration with the judiciary.

## SESSION-11

### **Theme: Judge the Master of the Court: Court Management & Case Management**

Speakers: Hon'ble Justice Sunil Ambwani, Hon'ble Justice K. Chandru, Hon'ble Justice R. C. Chavan and Hon'ble Justice Roshan Dalvi

Chair: Dr. G. Mohan Gopal

- The resource person commenced the session with a Quote  
*“Management is doing things right;  
Leadership is doing the right things.*
- The five steps for court management and case management are listed below:
  - a) Planning
  - b) Organizing
  - c) Directing
  - d) Coordinating
  - e) Controlling
- The various principles related to court management are listed below:
  - a) Non-value added items – if no profit than no business
  - b) Core competence – specialist Judges in one subject
  - c) Time Management
  - d) Procedural simplification – codes / rules
  - e) Paradigm shift – how to do same thing differently
  - f) De-centralization – divide work in partnership
  - g) Latest first – judge for new cases
  - h) Package Deal – making money by doing good
- Reference was made to Sir Norman Macleod CJ, Bombay High Court 1919-1926. As a trial Judge, he would ask the Plaintiff if what is stated in the plaint is correct. When he would answer “Yes”, the Judge would call upon the Defendant’s counsel to cross examine the Plaintiff.
- The requirements for effective court management are listed below:
  - a) Amendment to Orders in the CPC by the High Courts (CPC)
  - b) High Court Practice Directions (HCPD)
  - c) Legal & Judicial Education & Training
  - d) Precedents
  - e) Court Administration (CA)
- Several challenges of court management and case management are listed below:
  - a) Managing lawyer

- b) Managing staff
  - c) Managing infrastructure
  - d) Managing government functions
  - e) Managing self-knowledge, expertise
  - f) Managing complex decision
  - g) Managing meeting deadlines.
- Questions were posed by participant to the speaker about how they can manage adjournment? The speaker said that judge must first deal with important cases and should treat all lawyers equally.
  - The speaker discussed about the establishment of National Court Management System (NCMS), as approved by the Hon'ble Chief Justice of India S.H. Kapadia. It was formed on 02.05.2012. 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.
  - Resource Person ended the session with a Quote:  
*"If it is to be,  
It is up to me"*

### **BHOPAL DISTRICT COURT VISIT**

After the session 11 participants visited Bhopal District court and the purpose of the visit was to understand the working of a court and the nature of duties of the judicial officers. The visit was done to help participants understand the role of court in dispensing justice and the way case proceed in a court. The participants visited court rooms and heard proceedings going on in various court rooms. At last we went to conference room where District Judge shared his experiences.

## SESSION-12

### Theme: Criminal Justice Administration and Human Rights

Speakers: Hon'ble Justice Dharnidhar Jha, Dr. Usha Ramanathan and Hon'ble Justice Roshan Dalvi

Chair: Dr. G. Mohan Gopal

- Dr. G. Mohan Gopal started the session by stating that part III of Indian Constitution is a celebrated statement of human rights. The Protection of Human Rights Act, 1993 and its objectives were referred.
- The features of international instruments on human rights including [International Bill of Human Rights] the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and its two Optional Protocols were discussed.
- The speaker explained categories of victims of human rights. They are listed below:
  - a) Trafficked child& women
  - b) Child labour
  - c) Bonded labour
  - d) Prisoners
  - e) Immigrants
- The speaker emphasized on 3 R's for victims:
  - a) Recognize
  - b) Resist
  - c) Report
- Following persons can help the victims of human rights:
  - a) Parents
  - b) Teachers
  - c) Friends
  - d) NGOs (Community Service Providers)
  - e) Medical Officers
  - f) Police Officers
  - g) Legal Officers
  - h) Judicial Officers
  - i) Criminal Justice Agencies
- The speaker further explained the international instruments for human rights such as International covenants, Universal Declaration of Human Rights, Covenant for the Rights

of the Child (CRC), Convention for Elimination of all kinds of Discrimination Against Women (CEDAW), Convention on the Elimination of all forms of Racial Discrimination (CERD), Convention Against Torture and other cruel, inhuman or degrading treatment or punishment (CAT), International Covenant on Civil & Political Rights (ICCPR) and International Covenant on Economic, Social & Cultural Rights (ICESCR).

- The national laws for protection of human rights were discussed including Constitution of India, Indian Penal Code (IPC), Immoral Traffic Prevention Act (PITA), Bonded Labour (Prohibition) Act, Domestic Violence Act (DV Act), Child Labor (Prohibition) Act, POCSO Act and Juvenile Justice Act (JJA)
- Causes for violation of human rights includes poverty, vulnerability, lack of education, lack of employment opportunities, lack of care and protection, low female ratio and poor law enforcement mechanism.
- The speaker explained the procedure for both accused and victim to deal in case of violation of human rights and what are the troubles of the judiciary to deal with such cases:
  - Number of cases not reported
  - Number of cases not pursued
  - Some child witnesses tutored
  - Some witnesses turn hostile
  - Some cases doctored
  - Collusive investigation
- There is the need of 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.
- Steps for proper trial of cases of violation of human rights are listed below:
  - a) Familiarity with victims / witnesses
  - b) Separation of victims from accused
  - c) Contact of victim with others only under supervision of NGOs / protection officers
  - d) Protect identity of victims (confidentiality)
  - e) Counselling, if required, before or during trial
  - f) Rehabilitation / compensation / protection after trial
- The speaker explained measures for prevention of violation of human rights including poverty alleviation, population control, awareness in schools, neighborhoods, identification of vulnerable people and suspected traffickers at source locations, maintenance of database of crimes and criminals and missing persons.

## **SESSION-13**

### **Theme: Human Rights: Fair and Impartial Investigation**

Speakers: Hon'ble Justice Dharnidhar Jha, Dr. Usha Ramanathan and Hon'ble Justice Roshan Dalvi

Chair: Dr. G. Mohan Gopal

- The speakers explained factors necessary for protection of human rights which included impartial investigation, prevention from illegal arrest and detention, torture and various types of discrimination. There should be humane condition for imprisonment.
- Every judge is court of justice according to section 20 of IPC. The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.
- The speakers discussed procedure for the protection of victim of human rights violation including arrest the person by giving reason, production before magistrate, to be sent for medical examination and giving legal assistance. At all stages the principle of fair trial and nature justice must be followed.
- The speaker emphasized on the role of judges to ensure that investigation happens according to legal provisions and 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.
- 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 the investigating officers regarding collection and handling of evidence during investigation.

## **SESSION-14**

### **Theme: Judging Skills: Art, Craft and Science of drafting judgments**

Speakers: Hon'ble Justice Dharnidhar Jha, Hon'ble Justice Roshan Dalvi and Hon'ble Justice K. Chandru

Chair: Dr. G. Mohan Gopal

- The speaker 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 when judgement can be reversed. Such situation arises 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 speaker stated that after drafting judgment correcting, thinking and revision of judgment is important. Judgments should be precise, clear and brief and when there is a conviction then there should precise reasons for that. Judges must always consider admission of facts and record it and then should draft judgements.
- The speaker emphasized that the language of judgement should be simple and with reasons and judge should not be bothered about style.
- The speaker also discussed following topics:
  - ✓ Can public hanging be ordered
  - ✓ Death for dowry murder
  - ✓ Death sentence to be carried out in public
  - ✓ Chopping of hand a punishment
  - ✓ Death penalty only for rarest of rarest cases

## **FORENSIC SCIENCE LABORATORY VISIT**

After the session the participants visited FSL and observed the architecture which included the following:

- ✓ Report record room
- ✓ Report writing room
- ✓ Post-mortem examination room
- ✓ Forensic radiology room
- ✓ Medicolegal examination room
- ✓ Cold area

Then participants went to conference room where presentation was made by the professor on **“Autopsy- Protocol and Opinion”**.

The speaker explained types of autopsy- protocols for clinical or academic autopsy and medico legal autopsy.

The objectives of medico- legal autopsy were explained which are listed below:

- ✓ To determine the identity of the deceased
- ✓ To know the cause of death

- ✓ To know the manner of death
- ✓ To know about the injuries
- ✓ To know the time since death
- ✓ To get a clue about place of death
- ✓ In case of new born baby – whether it was live born or dead
- ✓ To collect sample

The speaker further explained the prerequisites/rules for medico-legal autopsy which are following:

1. Request from legal authority
2. Conducted in only government hospital
3. Autopsy start from scene of crime
4. Armed with above information

### **SESSION-15**

#### **Theme: Identification of *Ratio* in a Precedent**

Speakers: Hon'ble Justice Roshan Dalvi and Prof. (Dr.) Mool Chand Sharma

Chair: Dr. G. Mohan Gopal

- The speakers commenced the session by stating three principles including proof of fact, statutory provision and ratio decidendi. Ratio decidendi guide the judge to arrive to the right conclusion according to law. Indian judiciary follow the common law principle justice, equity and good conscience.
- The speaker explained the method of identifying ratio from a binding precedent. 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 in *Keshavananda Bharti v. State of Kerala*<sup>2</sup> was discussed and various aspects of the ratio of this judgment were highlighted. The judgment propounded basic structure doctrine of the Indian constitution which is not amendable by parliament.
- The speaker referred to judgment in *Ankush Shivaji Gaikwad vs State Of Maharashtra* which was related to Section 357 of the Code of Criminal Procedure, 1973. The judgment laid emphasis on payment of compensation to victim. The speaker discussed various aspects of identifying *ratio decidendi* through this judgement.

### **SESSION-16 & 17**

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<sup>2</sup> (1973) 4 SCC 225



## Theme: Landmark Judgement in India

Speakers: Hon'ble Justice Roshan Dalvi and Prof. (Dr.) Mool Chand Sharma

Chair: Dr. G. Mohan Gopal

- The speakers initiated the session on emphasizing that independent of our Indian judiciary is protected and Article 32 of Indian constitution is one of the most important provision. Any ordinary person can directly go to Supreme Court if fundamental rights is violated.
- The speaker explained that one of the most important landmark judgement in Indian history which is *Maneka Gandhi v. Union of India*.<sup>3</sup>The judgment was about the passport of Maneka Gandhi. She was issued a passport and within a week the same was impounded. When she requested the Passport officer to furnish reasons a letter was sent by the Ministry of external affairs saying that it was decided not to give her the reasons in 'public interest'. The reason therefore never came out. She then filed a writ petition challenging the impounding of her passport. This case became a landmark case on Article 14 as well as 21 of the Constitution. In India prior to this there was 'procedure prescribed by law' which was replaced by 'due process of law' with respect to Article 21 of the Constitution.
- The speaker further explained *Shyara Bano v. Union of India and others* case. In this landmark judgement, the Constitutional Bench of the Supreme Court declared the practice of triple talaq unconstitutional. A five-judge bench of Chief Justice of India JS Khehar, Kurian Joseph, Rohinton Fali Norman, Uday Umesh Lalit and Abdul Nazeer by a majority of 3:2 struck down the practice on the grounds that it goes against the Shariat and the basic tenets of the Quran.
- A questions were posed by speaker to the participant that whether instant triple talaq is valid in Bangladesh? The participants responded that it is not valid and it takes place after expire of 90 days by giving notice to the chairperson and after uses of all ADR mechanisms.
- The speaker discussed 59 landmark judgments and explained some of the following:
  - I. *Mohd. Ahmed khan v. Shah Bano Begam*<sup>4</sup> case which is about Muslim women (Protection of Rights on Divorce) Act, 1986.
  - II. *Vishakha v. State of Rajasthan*<sup>5</sup> case which is about guidelines against sexual harassment of women at work place.

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<sup>3</sup> AIR 1978 SC 597

<sup>4</sup> AIR 1985 SC 945

<sup>5</sup> ( 1997 ) 6 SCC 241

- III. *Air India v. Nergesh Meerza*<sup>6</sup> case which is about Constitutional validity of Regulation 46(1) (c) of Air India Employees Service Regulations.
- IV. *Hussainara khatoon v. Home Secretary, State of Bihar, Patna*<sup>7</sup> which about rights of under-trial prisoners
- The speaker also explained *Justice K S Puttaswamy (Retd.) v. Union of India* case of Right to Privacy judgment. A nine-judge bench of the Supreme Court has ruled that Indians enjoy a fundamental right to privacy and that it is intrinsic to life and liberty and thus comes under Article 21 of the Indian Constitution.
  - The speaker discussed judgment of district court related to Bhopal gas tragedy. The tragedy was a result of the leak of the methyl isocyanate (MIC) gas from the Union Carbide India Ltd (UCIL) plant which manufactured pesticides. On the night of December 2-3, 1984, there was a leak of the MIC gas which is considered to be the most toxic chemical in industrial use. All around the city of Bhopal, people were exposed to this gas and the immediate effects of inhaling the gas were coughing, vomiting, severe eye irritation and a feeling of suffocation. Thousands of people died immediately and lakhs of people sustained permanent injuries. Cases were filed in the Bhopal District Court which ordered the Union Carbide Corporation to pay 350 crores as interim compensation. But the interim order could not be decreed and therefore the UCC refused to pay the amount. Later on, at the High Court level, this interim compensation amount was reduced to 250 crores.
  - The speaker discussed *Kailas & Ors vs State Of Maharashtra* case which is about a woman Nandabai 25 years of age belonging to the Bhil tribe which is a Scheduled Tribe (ST) in Maharashtra. The woman was beaten with fists and kicks and stripped naked by the accused persons and then got her paraded in naked condition on the road of a village. The four accused were convicted by the Additional Sessions Judge, Ahmednagar on 05.02.1998 under Sections 452, 354, 323, 506(2) read with Section 34 IPC and sentenced to suffer RI for six months and to pay a fine of Rs. 100/-. They were also sentenced to suffer RI for one year and to pay a fine of Rs. 100/- for the offence punishable under Sections 354/34IPC. They were also sentenced under Section 323/34 IPC and sentenced to three months RI and to pay a fine of Rs. 100/-. The appellants were further convicted under Section 3 of the Scheduled Cases and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced to suffer RI for one year and to pay a fine of Rs. 100.

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<sup>6</sup> AIR 1981 SC 1829

<sup>7</sup> ( 1980 ) 1 SCC 108

## **VISIT TO CENTRAL JAIL OF BHOPAL**

On the last day of program participants went to jail visit of Bhopal. The participants went to prison cell in the guidance of prison officers and interacted with them about their cases. The participants observed that there is work schedule for the prisoners and they have to do all the jobs which are assigned to them such as cleaning of the barracks, plantation of saplings and other similar jobs. The prisoners will be provided all the meals as per the jail menu.