

NATIONAL JUDICIAL ACADEMY, INDIA



TRAINING PROGRAMME FOR BANGLADESH JUDGES (FOR SENIOR ASSISTANT JUDGES, ASSISTANT JUDGES AND MAGISTRATES) [Level-2]

**PROGRAMME REPORT [SE-05]
(01/11/2019 - 07/11/2019)**

PROGRAMME COORDINATORS

**MS. SONAM JAIN & MS. NITIKA JAIN, FACULTY NATIONAL
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RAPPORTEUR

AKANKSHA TIWARI

List of Resource Persons

| S. No. | Name | Designation |
|--------|-------------------------------------|--|
| 1. | Hon'ble Justice Adarsh Kumar Goel | Chairperson, National Green Tribunal (NGT) Former Judge, Supreme Court of India |
| 2. | Hon'ble Justice Navin Sinha | Judge, Supreme Court of India |
| 3. | Prof. (Dr.) V. Vijayakumar | Director, NLIU Bhopal |
| 4. | Hon'ble Justice Deepak Gupta | Judge, Supreme Court of India |
| 5. | Hon'ble Justice Abhay Manohar Sapre | Former Judge, Supreme Court of India |
| 6. | Hon'ble Dr. Justice B.S. Chauhan | Former Judge, Supreme Court of India |
| 7. | Hon'ble Mr. Justice A.M. Thipsay | Former Judge, High Court of Bombay |
| 8. | Dr. Tirath Das Dogra | Former Director All India Institute of Medical Sciences, New Delhi. |
| 9. | Dr Raghvendra Kumar Vidua | Associate Professor, Forensic Medicine & Toxicology |
| 10. | Justice Manju Goel | Former Judge, Delhi High Court |
| 11. | Prof. V K Dixit | Professor, National Law Institute University, Bhopal |

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| 12. | Justice Ved Prakash Sharma | Former Judge, High Court of Madhya Pradesh |
| 13. | Mr. Atul Kaushik | Independent Consultant |

The National Judicial Academy organized a training and capacity building program for judicial officers from Bangladesh. The programme included sessions on judicial skills, constitutional, civil, criminal and correlative jurisprudence.

DAY 2

SESSION 1

THEME-OVERVIEW AND ARCHITECTURE OF THE INDIAN CONSTITUTIONAL ARRANGEMENT

SPEAKERS- Justice Adarsh Kumar Goel, Justice Navin Sinha, Prof. Vijay Kumar

The session commenced with a warm welcome of all the participant judges of Bangladesh by the Director of the NJA. The history of National Judicial Academy, Bhopal and how training is conducted at the academy along with sharing experiences were part of the introduction.

Talking about Bangladesh and India particularly, the speaker noted that India & Bangladesh are two different nations tracing their roots from a single origin. Hence, share common history in all aspects including legal facet. For the same reason, societies in both the nations face same problems, issues and conflicts. It was pointed out that though the Constitution of India was adopted in 1949 and that of Bangladesh in 1972, they both are broadly similar. Noting similarities between the Constitutions of both the countries, it was vehemently pointed out that one of basis of the judicial review is fundamental rights.

It was pointed out that though the Indian Constitution was adopted in 1949 and that of Bangladesh in 1972, they both are broadly similar. The eminent drafters of the Constitution try to adopt and insert the best provisions from across the globe.

Quoting the drafter of the Indian Constitution Dr. B.R. Ambedkar, “It is not the provisions of the Constitution, but the people who practice it.”

The similarities between the Constitutions of both the countries such as Democratic System, Universal Adult Suffrage, Procedure of formation of the Government, Power of the Legislature, and Pillars of the Governance (Legislature, Executive, and Judiciary) were pointed out.

In the same light, various judgements of the Apex Court of United States were discussed.

In the case of *Dred Scott v. Sandford*, 1857, the black citizens of United States asked for equality since every American is equal. However, this plea was rejected by United States Supreme Court saying that classification on the basis of color is reasonable.

Further, in the case of *Plessy v. Ferguson*, 1896, the 'Jim Crow Laws' that expressly barred people to mix up were challenged. The United States Supreme Court, however, upheld the laws.

In the same regard, the initiative of Abraham Lincoln to get the practice of slavery abolished which ultimately led to his assassination. Further, the world-famous speech of Jr. Martin Luther King "I have a right to dream" was also discussed.

The next case was that of *Brown v. Board of School Education*, the judgment of Dred Scott was overruled and it was held that 'equality means equality' and thus in no case, there can be any kind of discrimination.

The Constitutional principles were then discussed in the Indian perspective. In the words of Mahatma Gandhi, object of the Constitution is to wipe off every tear from every eye. The judges need to apply the Constitutional vision in all the judgments that they deliver and should be concerned with the happiness of all.

The views of Dr. Ambedkar were reiterated, i.e., Political democracy cannot last until it lies on the base of social democracy. According to him, liberty, fraternity and equality form the union of trinity.

Certain questions were then put to the participant judges such as what are the basic types of litigation that the judges deal with generally in Bangladesh; Are the Constitutional provisions relevant in subordinate judiciary, etc. This was then followed by some situation based question answers regarding general types of cases that judges in both the countries encounter.

Lastly some peculiar and key differences were pointed out between the Constitution of India and The Constitution of Bangladesh. It was concluded that the judiciary plays a crucial role in the justice system of any country by filling the gap.

SESSION 2 THEME- INDIAN JUDICIARY: ORGANIZATIONAL STRUCTURE AND

JURISDICTION

SPEAKERS: Justice Navin Sinha; Prof. Vijay Kumar; Justice A.K. Goel

It was stated that the Constitution is the mother of all other laws. The speakers stressed upon importance and independence of the lower judiciary. The speakers emphasized the participants not to undermine themselves being subordinate judges; it is their acumen upon which the appellate courts rely. Moreover, the session focused on the problems faced by judges in their respective courts in Bangladesh. It was realized that there is a dire need to be innovative and creative so as to find out solutions to the problems. The speakers stressed upon the importance and independence of the lower judiciary. The most common problems, as pointed out by the participant judges in Bangladesh was advocates, boycotting of the courts by advocates, harassing of litigants by the advocates and delay caused by seeking adjournments.

This was followed by a formal participatory discussion on following facets:

- The areas in subordinate judiciary of Bangladesh wherein improvement is needed;
- Limitation on the powers of the President; and
- Judgment that goes beyond statutory law and are in fact the basis of certain laws in the Country.

The speakers then gave an overview of the organizational structure of the Indian Judiciary to the participant judges. It was stated that there are 2 kinds of Courts- Constitutional Courts, i.e. the Supreme Court of India as well as High Courts of the respective states and Statutory Courts, i.e., the Subordinate or Lower Courts in District including the civil, criminal and revenue courts. It was also highlighted that there also exist various tribunals, *gram nyayalayas*, mobile courts and mobile lok-adalats. Some differences that exist between the Supreme Court of India and that of Bangladesh were highlighted such as separate independent existence of the Supreme Court of India and that of the High Courts of respective states, which is not the case in Bangladesh; the concept of Special Leave Petition under Article 136 of The Constitution of India, curative petitions, collegium system etc.

The session was concluded with with a suggestion to participants on developing thinking, cultivate broader perspective and to try to grow as a judge.

SESSION 3 & 4

THEME- GOALS, ROLE AND MISSION OF COURTS: **CONSTITUTIONAL VISION OF JUSTICE**

SPEAKERS: Justice A.K. Goel, Justice Navin Sinha, Prof. Vijay Kumar.

The next two sessions were based on the concept of justice in a broader sense with special emphasis on constitutional vision of justice. Theme of the sessions was ‘Goals, Role and Mission of Courts: Constitutional Vision of Justice’. The session began by a discussion on the idea of ‘justice’ in context of constitutional vision. The Constitution of India aims at bringing a social revolution, eradicating all social evils from society to ensure happiness to every person. Thus, it could be stated that an idea of a just and egalitarian society remains one of the foremost objectives of the Constitution. It was highlighted that the Constitution promotes justice (social, economic and political) and assures the same to its citizens. That an idea of a just and egalitarian society remains one of the foremost objectives of the Constitution.

The speakers pointed out that the role of the Courts should be to spread awareness, ensuring access of justice to all, dispensing justice and internalizing rigor for speedy disposal of cases. Citing the landmark cases of *Maneka Gandhi v. Union of India*, [AIR 1978 SC 597] and that of *Hussainara Khatoon & Ors v. Home Secretary, State of Bihar* [AIR 1979 SC 1369], the speaker emphasized the importance of ‘right to speedy trial’ and requested participant judges to try to dispense justice as soon as possible in their home-country. A brief discussion was on emerging concepts of plea bargaining and remand cases in India and Bangladesh.

The final part of the session concluded with an interactive session with the participants expressing their views as to what is the concept of justice according to them.

A few other points of discussion are:

- Videography during the police investigation.
- Judicial mechanism in the environmental issues.
- Significance and composition of National green tribunal.
- Media intervention in judicial functioning.

Lastly, the session concluded with discussion amongst participants expressing their views as to what is the concept of justice according to them. It was stated that the lower judiciary is responsible for the image of entire judicial system and thus, they should always act in accordance with the principles of justice.

DAY-3

SESSION 5

THEME-JUDGE THE MASTER OF THE COURT: COURT MANAGEMENT & CASE MANAGEMENT

SPEAKERS- Justice Deepak Gupta, Justice A.M. Sapre

“Imagination is more important than knowledge”, these words marked the beginning of the very first session of the day. Expressing the views on ‘Efficient Court Management’, it was said that judges should have an imaginative instinct to go beyond the law and think out of the box. Various objectives of Good Management were underlined such as:

- Optimum use of human and material resources.
- Speedy production.
- Production at minimum cost, and
- Good Judgment.

The need to learn the art of managing oneself before managing others was pressed upon. Various ways through which one can manage himself/ herself were pointed out as:

- Time Management.
- Self-disciplined approach.
- Dressing Sense.
- Be methodical.
- Set targets for yourself.
- Think about the ways through which one can work for the system.

It was observed that ‘Management is nothing more than motivating other people.’ Further, ways were laid down as to how judges can manage their court staff. A few of those ways include:

- Training of the staff.
- Ensuring that right job is given to the right person.
- Ensuring that each person does the work allocated to him.
- Incentives.
- Encouragement.

- Expressing of gratitude.
- Criticizing in private and praising in public.
- Periodical scrutiny.
- Regular monitoring.
- Ensuring discipline.
- Ensuring Punctuality.
- Time Management.
- Disciplinary Action.
- A pat on the back.

Coming to the facet of ‘Case Management’, following ‘way-outs’ were mentioned:

- Fixing of similar class of cases together.
- Maintaining Proper dockets/ case diaries.
- Following case flow rules.
- Monitoring of pendency and disposal.
- Giving priority to women, children, senior citizens and under-trials.

Highlighting the importance of both management as well as leadership, it was quoted that

“Management is doing things right; leadership is doing the right things.” In the same line, the core qualities of a leader were discussed.

Further, the importance of technical area such as I.T. and NJDG was also conveyed to the participant judges.

SESSION 6 THEME-JUDGING SKILLS: ART, CRAFT AND SCIENCE OF DRAFTING JUDGMENTS

SPEAKERS- Justice Deepak Gupta, Justice A.M. Sapre

“Good judgment comes from experience, and experience comes from bad judgments”, these words clearly express the essence of this session. The speakers explained that judgment writing is an art that is to be developed through perseverance and experience. The judgment of Lord Denning in

the case of *Croke v. Wiseman* [1982] 1 WLR 7 was quoted, stating that it is one of the best judgments one can come across in their life. This was followed by an interactive session in which participant judges were asked about problems that they face while writing judgments. The queries were attended to and accordingly resolved by the resource persons. Talking about importance of courts of 1st instance, it was conveyed that there is no ‘subordinate judiciary’ or ‘higher judiciary’ but only ‘District Judiciary’ and ‘High Court Judiciary’. It was also stated that ultimately every court is a constitutional court and the judges of lower judiciary are ambassadors of the entire judiciary as it is they who are the ‘face of the judiciary’ to the public.

Finally, the session concluded with the saying that “Beauty of a good judgment lies in original thoughts, original discussion, original reasoning and ultimately originality of the case.”

SESSION 7 THEME- ELEMENTS OF JUDICIAL BEHAVIOUR-ETHICS, NEUTRALITY AND PROFESSIONALISM

SPEAKERS- Justice Deepak Gupta, Justice A.M. Sapre

“It is easy to become a judge, difficult to become a good judge, very difficult to become a very good judge and extremely difficult to become an outstanding judge”, these words marked the beginning of this session wherein ethics, neutrality and professionalism were discussed in detail. It was stated that as a judge, one is put to test everyday by 5 stakeholders viz. ones own self our self; litigants; lawyers; colleagues and society; so judges should always try to remain ethical as well as professional in their work. The judges were asked to always choose the latter from among the two: A good judgment with bad intention and a bad judgment with good intention; because one can improve the efficiency with time and so in no case should they compromise with their ethics.

The biographies of some of the great judges in the history of Indian judiciary such as Justice Chagla and Justice Hidaytullah were discussed. The speaker stated that ‘for a judge his/her judgment is the only visiting card’, highlighting that a judge is known only by judgments that (s)he delivers. It is to be understood that one cannot understand law by reading law alone. With experience, an individual ought to develop and the same applies to judges.

It stressed that the work of a judge is not to establish peace in the society but to resolve the ever arising conflicts because many a times silence can be oppressive. While writing a judgement, initially one follows the classical style, then (s)he builds competence and creates his/her own style.

It is to be understood that one cannot understand law by reading law alone. With experience, the individual ought to develop and the same applies to judges. Judges should have a long term philosophy in life, but not a short term ideology. The session concluded with a remark that one should always be passionate about reading and music, this adds to the quality of life.

LOCAL TOUR VISIT TO TRIBAL MUSEUM/ STATE MUSEUM, Bhopal **3rd November, 2019**

There are several museums in the city of lakes which have a lot of unheard truth of bygone era in its folds and Bhopal's diversity is clearly reflected in its museums. Among those, the biggest attractions here are Tribal museum and the State Museum. Which the participant judges visited. The Tribal museum in Bhopal is very thoughtfully planned and the entire campus is theme based right from its entrance. Every art work has some meaning to it which is beautifully depicted but difficult to decipher without basic knowledge of the tribes. Best way to understand is ask for a copy of their colorful brochure which describes meaning of all the major artifact in Hindi. The well planned campus is divided into 6 galleries depicting Cultural Diversity, Tribal Life, Tribal Art, Tribal Mythology, Tribal of Chhattisgarh and Tribal Games. It also has Art Exhibition Gallery and Open Air Theatre. All the artifacts in Galleries are majorly taken from 7 major and most important tribes of state namely Gond, Bheel, Korku, Kol, Bharia, Baiga and Saharia. All these galleries were enthusiastically visited by the participant judges and the background of the same was explained to them by the tour guide over there.

The state museum of Bhopal contains outstanding art pieces & rare antiquities of Madhya Pradesh and the display over there is simply eye-catching. The traditions, arts and cultures of the state of Madhya Pradesh that are now somewhere in oblivion were marvelously exhibited over there. There are, altogether 17 galleries in this beautiful building which are comprised of various subjects include thematic gallery, pre-history & fossils, excavated materials, metal images, inscriptions, sculptures, royal collections, textiles, freedom movement, postal stamps, autographs, manuscripts,

paintings, coins, weapons, documents of medieval age and rare musical instruments. The participant judges made a visit to each and every gallery and the significance behind all of these was also explained to them.

DAY 4

SESSION 8

THEME-PRINCIPLES OF EVIDENCE: APPRECIATION IN CIVIL AND CRIMINAL CASES

SPEAKERS- Justice B.S. Chauhan; Justice A.M. Thipsay

Statutory evolution of jurisprudence in law relating to evidence in India was discussed. It was observed that the basic structure of the Indian Evidence Act and the Bangladesh Evidence Act is similar in nature. It was observed that Evidence Act must be read as a whole. The meaning of ‘appreciation of evidence’ was analyzed to mean ‘assessment and recognition of the importance, quality and nature of evidence.’ This was followed by an in-depth discussion of Section 1, Section 3, Section 17, Section 26, Section 53, Section 54, Section 60, Section 115, and Section 117 of The Indian Evidence Act, 1872. It was commented that the Indian Evidence Act, 1872 is based on examining a varying degree of probability. It was stated that the Indian Evidence Act, 1872 applies to both civil as well as criminal cases. A detailed discussion was also undertaken on the principle of ‘proof beyond reasonable doubt’ in criminal cases.

The speakers emphasized on the need to learn to appreciate law, while appreciating the evidence. The judges should always keep the principles of natural justice in their mind. It was suggested that while writing any order/ judgement, one should not merely read facts and law but also apply his/ her own mind. In fact, non-application of mind leads to it mis-appreciation of evidences rather than appreciation of evidences.

SESSION 9 THEME-EVIDENTIARY PRESUMPTION, ONUS AND BURDEN OF PROOF

SPEAKERS: Justice B.S. Chauhan, Justice A.M. Thipsay.

This session commenced with exploring terms like evidence, proof and presumption. It was made clear that evidence is a means to make the court believe in a particular thing, however proof is used to convince the court to come to a particular conclusion. The three major principles of evidence noted were relevant evidence, best evidence and exclusion of 'hear say'. It was stated that reliability and probability are the two main pillars of strong evidence. While discussing about identification evidence, it was said that it is a weak type of evidence which is used in case of unknown offenders. It was stated that hearsay evidence is a weak evidence; however 'dying declaration' under section 32 of the Indian Evidence Act, 1872 is an exception to the same.

Throwing light on the concept of confession of accused, it was pointed out that confession made by a accused to the police is not admissible. Such a practice is a type of self-incrimination and hence, is against constitutional rights of the accused. Talking about assessing value of evidence, it was highlighted that the apex court has classified witnesses into three categories: 'wholly reliable'; 'wholly unreliable' and 'neither wholly reliable nor wholly unreliable'. Revisiting concepts of presumption, onus and burden of proof, it was said that 'presumption of innocence' is the basic rule and basic attribute of fair trial. However, there are certain statutory exemptions to the said provision. In cases of heinous crimes, existence of mental state is already presumed.

The need to learn how to appreciate law while appreciating the evidence was also pointed out. In this regard, various instances and illustrations of applicability and non-applicability of mind were stated.

Commenting on Sec. 101, Indian Evidence Act, it was said that the onus lies on the party which asserted it and one cannot ask the accused to state/ confess otherwise. The accused is provided certain rights under the provisions of the Constitution, i.e., Article 20(3) (Right against self-incrimination) and Article 22 (Protection against arrest and detention in certain cases). However, there are certain statutory exemptions to the said provision. In cases of heinous crimes, the existence of mental state is already presumed. A few examples of such a case are offences under Prevention of Corruption Act, 1988; Narcotics and Drugs Act, 1985; Prevention of Children against Sexual Offences Act, 2012, etc.

Pressing upon the importance of doing justice, the speakers strongly recommended that judges should always be careful while adjudicating. A concern was expressed vis-à-vis delivering justice since there exists threats to appreciation of evidences because of various pressures on the judges.

Further, discussing about the applicability of Evidence Act, it was revealed that there are many parts of the Nation, particularly the tribal areas, where the general laws are not applicable and this is because of historical and traditional reasons of the respective areas.

Session concluded with remarkable words, i.e., ‘There is no watertight formula for the evaluation of evidences and the judges will have to apply their mind efficiently and wisely so as appreciate the evidences.’

SESSION 10 THEME-ELECTRONIC EVIDENCE: NEW HORIZONS, COLLECTION, PRESERVATION AND APPRECIATION

SPEAKERS: Mr. Yashpal Singh, Justice B.S. Chauhan, Justice A.M. Thipsay.

The new horizons in the field of electronic evidences marked the beginning of this session. The meaning and nature of electronic evidences were discussed in the light of the various provisions of I.T. Act, 2000. Pressing upon the importance of the electronic evidences, it was stated that such kind of evidences cannot be discarded on the probability of being manipulated. The law has to develop and become smarter than the offenders. It was observed that with an increase in the cyber-crimes, the concept of electronic evidence is growing at a rapid rate. “Source” and “Authenticity” of electronic evidence was discussed in detail. Various examples and illustrations were cited to explain the disciplines of cyber-crime and electronic evidences.

Further, the meaning, nature and importance of the primary and secondary evidences were discussed in detail. Citing the case of *Anvar PV v. PK Basheer [(2014) 10 SCC 473]*, it was made clear that ‘If e-record has been produced as a primary evidence u/ Sec. 62, Indian Evidence Act, then the same is admissible without the condition of Section 65B (Admissibility of erecords)’. In the same line the two provisions, i.e., Section 62 and Section 65B were discussed in detail with mentioning of cases like *Kundan Singh v. State[2015 lawsuit (Delhi) 5843]* and *K Ramajayam@ Appu v. Inspector of Police [2016 (2) CTC 135]*.

This was followed by a discussion on the ‘principle of gate-keeper’ with special emphasis on the case of *Daubert v. Merrell Dow Pharmaceuticals, [Inc., 509 U.S. 579 (1993)]*. Next, a demonstration was made so as to detect the originality of e-mails. This paved way for the saying that goes well with the notion in hand, i.e., ‘A man may lie but not the machine.’

The session concluded on the note that electronic evidences play a crucial role in investigation in this technologically advanced world.

SESSION 11 THEME-FORENSIC EVIDENCE IN CIVIL AND CRIMINAL TRIALS; DNA PROFILING

SPEAKERS: Justice B.S. Chauhan, Justice A.M. Thipsay, Dr. TD Dogra, Mr. Raghvendra Ku. Vidua.

The session started with light being shed upon the role of forensic evidence in civil and criminal trials. Forensic Science is the application of knowledge of science in aid to the administration of justice. The relation between the Constitutional Rights and application of forensic science was highlighted by stating the fact that the disclosing of privacy of an individual via DNA test results in violation of the mandate of Article 21, i.e., Right to dignified life. In the light of 2005 amendment of the Indian Evidence Act, it was mentioned that there is a limit up to which DNA testing can be allowed and generally it is for the identification of criminal. In the same regard, the extent of approach of investigating team so as to not to violate right to privacy as well as right to dignified life was questioned.

Marking the nature of humans to be justice lovers, the collaborative approach followed in forensic science was highlighted. Forensic science is a multi-disciplinary subject in which one discipline may be all-together different from the other. Here, the opinions are of three types, viz., evidences based, inferences base and truth finding.

The notion of DNA profiling was discussed. DNA becomes relevant in adjudicating matters relating to identification, disputed paternity/maternity, abduction, inheritance, adoption, rape, murder etc. DNA as an evidence is scientific and unbiased and is thus highly reliable. The chemical structure of DNA was explained through a few slides. It was pointed out that the chemical structure of everyone’s DNA is same, the only thing that makes the difference is ‘order of base pairs’.

The use of DNA in cracking down a case was demonstrated through a number of high profile cases such as the Rajiv Gandhi assassination, Sheena Bora murder, Arushi Talwar murder, etc.

Discussing about the Scene of Crime, the importance of DNA profiling, forensic sciences in solving the legal cases, the ‘2009 Shopian Rape and Murder case’ of the state of Jammu & Kashmir was explained in detail. The autopsy report, post-mortem report, DNA tests, examination of various organs of the body, etc. were discussed in detail.

In the same regard, the types of evidences that can be collected from the Scene of Crime were pointed out to be documentary and non-documentary evidences, material and non-material evidences, testimonial evidences, physical and non-physical evidences, direct and indirect evidences, conditional evidences, circumstantial evidences, real and demonstrative evidences, known and unknown evidences, individual and class evidences, etc.

A few challenges and limitations that are faced by the forensic science specialists as well as DNA Bill, 2019 were mentioned.

DAY 5

SESSION 12

THEME-CRIMINAL JUSTICE ADMINISTRATION AND HUMAN RIGHTS

SPEAKERS: Justice Manju Goel, Prof. V.K. Dixit.

The session threw light upon the importance of the Fundamental Rights as well as Human Rights from the point of view of democracy, liberty, rule of law etc.

The traditional theories of law such as the divine theory, the philosophy of John Locke and Emanuel Kant were visited. The inalienability of rights from the human life was explained through the Universal Declaration of Human Rights, 1948 and The British Constitution.

In the system of Criminal Justice Administration, there are 3 phases, i.e., pre-trial, court proceedings and the outcome of the proceedings. The concept of “Criminal Justice

Administration” during the period of colonial rule was discussed. It was observed that “Criminal Justice Administration” during the colonial period was enacted to serve the interests of the colonial government and not the society. It was observed that the methodology followed in British era is still being followed i.e. sending accused to prison. And here lies the biggest challenge in our system, i.e., the attitude of police. Though, we have been freed from the clutches of the colonial rulers, our system and minds continue to be their slaves. However, the situation is changing for good gradually so as to adopt a restitutive system based on the Gandhian ideology of ‘Hate the sin, and not the sinner.’

The role of judiciary as an authority for providing justice in criminal cases was deliberated upon. It was observed that “Criminal Justice Administration” needed to be viewed through the prism of human rights. It was pondered upon that rights of an accused does not stand terminated even when he is convicted, he is entitled to fundamental rights of an accused person and other basic human rights. Right to free legal aid, right to fair trial and right to legal representation were also discussed in the light of the Constitutional provisions while throwing light on the cases of *Md.Ajmal Md.Amir Kasab @Abu ... vs State Of Maharashtra* and *Aarushi Talwar* murder case.

Right against self-incrimination under Article 20(3) and Right to dignified life under Article 21 of the Constitution of India was discussed in detail with emphasis laid in cases such as *Maneka Gandhi vs Union of India*, *Sunil Batra vs Delhi Administration* and *Hussainara Khatoon vs State of Bihar*. All these cases involved the common element of “Criminal Justice Administration” viewed through the prism of human rights. It was observed that “Criminal Justice Administration” can also be termed as social engineering by judiciary.

SESSION 13 THEME-HUMAN RIGHTS: FAIR AND IMPARTIAL INVESTIGATION

SPEAKERS: Justice Manju Goel, Prof. V.K. Dixit.

The session started with light being shed upon the investigation process being followed in India and Bangladesh. The concept of human rights was discussed and it was observed that “fair and impartial investigation” is a facet of human rights and are necessary since laws are crucial notions of the society. “Free and impartial investigation” is a right enshrined under Article 21 of the Constitution of India, the importance of which in both civil as well as criminal matters was discussed in detail. The right of “fair and impartial investigation” was also discussed in the light of International conventions such as United Declaration for Human Rights and International Covenant on Civil and Political Rights. It was further elaborated that fair and impartial investigation requires that the judge collects all the facts and convert it into the processed reality. Correct facts and correct appreciation of law is very important for drawing human conclusions.

The basic human rights of a person in police custody, i.e., the accused were elaborately discussed. It was stated that the Criminal Procedure Code of both the nations are entirely for the benefit of the accused. Now the pendulum is shifting towards the victims which is commonly termed as victimology so as to ensure that accused have all the rights but on the same page victims and their plight is not overlooked.

It was pointed out that there are three grades of truth, i.e., apparent truth, processed reality and absolute reality. The way judges perceive things has to be changed. Talking about the extremely heinous crimes such as rape, it was stated that the lone testimony of the victim is enough to convict the criminal provided it is trustworthy. Similarly, in certain cases of custodial violence, custodial rape, dowry death, rape under false presumption/ promise, etc., where it is very difficult to prove the guilt of the accused, the burden of proving the innocence has been shifted to the accused himself/ herself. The train has now come towards the restitutive approach and in the same line, the rape victims are provided compensation, counselling, etc. The motive behind such an approach is not to compare the dignity of women with money but to stand by the victims in every possible way. The case of *R. v. Williams (1923) 1 KB 340*, wherein the accused was a choirmaster who had

sexual intercourse with his 16-year-old student making her believe that he is performing a surgical operation to improve her singing voice was held guilty of rape, was also discussed.

Commenting on the dynamism of the society, it was said that we are social doctors and have to act as per the dynamic society. Laws may be static but processes should keep changing. Bringing the shift of the session towards the economic offences, it was said that such offences are against the public at large and thus the attitude of the stakeholders of the criminal justice system cannot be lenient. Other such cases where stringent rules and processes are expected are offences under Insolvency and Bankruptcy Code, 2016; Prevention of Money Laundering Act, 2002; PreConception and Pre-Natal Diagnostic Techniques Act, 1994; Medical Termination of Pregnancy Act, 1971, etc.

Further, analyzing the changes that have come in the facet of testimonial discrepancies, it was commented that such discrepancies are to be seen only if they are material in nature. Further, the case of *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141 was discussed so as to point out the plight of innocent prisoners and the vulnerable condition of the police system.

This was followed by an interactive discussion on the procedure followed in case of foreign offenders, particularly Bangladeshi offenders.

SESSION 14 THEME- ICT ANND E-JUDICIARY

SPEAKERS: Mr. Atul Kaushik, Justice Manju Goel, Prof. V.K. Dixit.

The session was commenced by asking participant judges as to what is the status of ICT and e-judiciary in Bangladesh. With this, various digital facilities available in the judiciary of Bangladesh came into light. This was followed by an insightful discussion as to what ICT is and how it is useful in bringing transparency in the courts. The fact that ‘e-judiciary’ doesn’t exist anywhere in the world and that it is just a term coined by the academicians was highlighted. It simply means ICT enabled judiciary. The Indian perspective of e-judiciary is no different from the global perspective.

In the course of discussion, the benefits of use of technology were stated to be as follows:

- Offers courts a crucial commodity information.
- Helps in overcoming the handicap of less human and financial resources.
- Reduces hours of operation, and
- Optimizes courts location.

In furtherance of the same, the pre-requisites to harness technology were pointed out to be:

- Identify the need of judges, lawyers and litigants.
- Examine process re-engineering opportunities.
- Migrate from document to content management.

All this practiced together improves the quality of justice, access to justice, public trust and confidence in the court as an institution.

Various objectives of the e-courts in India are:

- To enhance judicial productivity-both qualitatively and quantitatively, to make the justice delivery system affordable, accessible, cost-effective and transparent.
- To make policy for managing cases for effective court and case management system.
- To provide inter-operability and compatibility with various stake-holders in the justice system.
- To develop, install and implement decision support system in courts.
- To automate the processes to provide transparency of information access to its stake holders.

The discussion went on to analyze the historical background of the Information Technology and its arrival to the courts in India with special focus on the achievements of Phase I (2004) and Phase II (2015) of the e-Courts project. The key strategies for phase II were that it was designed to be citizen centric with the core-periphery model and through Free and Open Software System. Certain other key additional components of the Phase II were discussed in detail. Discussing the way further it was stated that e-Committee has paved the way for phase-III in which technologies such as 5G application, artificial intelligence, augmented reality, machine translation, mobile collaboration, speech recognition will be implemented to ensure a more transparent and accountable judiciary.

It was further highlighted that India has a system of Universal Computerization of Courts through National Judicial Data Grid (NJDG). The NJDG works as a monitoring tool to identify, manage & reduce pendency of cases. The court data is made available through the National Judicial Data Grid at E-Courts website. The Supreme Court started this with a vision to transform the Indian Judiciary by Information and Communication Technology (ICT) enablement of Courts. Thereafter, a demo of the working of NJDG online portal was given to participants and illustrated its use.

Talking about the assistance of judicial officers/ staff, it was stated that the management manuals, master trainers and NIC Pune Team is ever ready to provide assistance.

LOCAL TOUR VISIT TO THE CENTAL JAIL, Bhopal 5th November, 2019

The participant judges today made a visit to the Central Jail of Bhopal so as to get an idea about the Indian Police System and the Indian Criminal Justice System. They were welcomed by the Assistant Jail Superintendent Mr. Sunil Baiswade and then were being guided by the staff of the jail.

The Central Jail of Bhopal witnesses marvelous natural beauty. It was well maintained. The judges were being informed that this building of Central Jail has two blocks- Block A and B. The participant judges were then taken for a jail round, wherein they observed the Jail Dispensary, the music school, kitchen, various factories established for generating employment among the inmates such as painting, fabrication, furniture, carpentry, screen painting, printing press, handmade crafts,

etc. Apart from this, the procedure and system followed in the jail was also conveyed to the participant judges and all the doubts were kindly resolved by the staff.

DAY 6

SESSION 15

THEME-IDENTIFICATION OF RATIO IN A PRECEDENT

SPEAKERS: Justice Ved Prakash, Prof. V.K. Dixit.

The session commenced with the theory of precedent. It was opined that the court delivering the judgment will never mention as to what is *ratio decidendi* and what is *obiter dicta*. It was explained that precedent is a judicial decision which in itself is a principle. Thus, the law of precedents play a very important role in the decision-making process of a judge.

It was explained that precedent is a judicial decision which in itself is a principle. The underlying principle which forms its authoritative element is often termed as the ratio decidendi in a particular case. In other words, ratio is that part of the judgment which was absolutely necessary to resolve the said dispute. The concrete decision is binding between the parties to it. Thus, the law of precedents play a very important role in the decision making process of a judge and help the courts to stand as an adequate means in the disposal of the judicial administration system. On the other hand, ‘obiter dicta’ are the things said ‘by the way’ and are not necessary to the decision. The difference between ratio decidendi and obiter dicta was then explained to the participants.

Shedding light on evolution of fault liability no-fault liability to strict liability and ultimately to absolute liability, the cases of *Union Carbide Corporation v. Union Of India (Bhopal gas Tragedy)* AIR 1988 MP 206 and *M.C. Mehta v. UOI (Oleum gas leak case)* (1987) 1 SCC 395 were discussed in detail. In the same line, the case of *Donoghue v. Stevenson (Ginger beer Case)* (1932) UKHL 100 was elaborated with special emphasis on the ‘neighbor’s rule’. The speaker then explained the method of identifying *ratio* from a binding precedent in light of landmark judgments of *S.I. Rooplal & Anr. v. Lt. Governor through Chief Secretary, Delhi & Ors.* [AIR 2000 SC 6594] and *Delhi Administration (Now NCT of Delhi) v. Manohar Lal* [2002 7 SCC 222]. It was conveyed that identifying *ratio decidendi* is not merely a mechanical process but an art which one gradually

acquires through practice. It is to be determined by applying ‘The Inversion test’ commonly known as ‘The Wambough Test’. Lastly, through the cases of *Kesavananda Bharti v. State of Kerala* (1973) 4 SCC 225, *Islamic Academy of Education & Anr. v. State of Karnataka & Ors.* (2007) 15 SCC 693, the method of finding out *ratio decidendi*, in decision given on more than one ground or by multiple judges, was elaborated.

SESSION 16 & 17

THEME- LANDMARK JUDGEMENTS IN INDIA

SPEAKERS: Justice Ved Prakash, Prof. V.K. Dixit.

The session started with light being shed upon the development of legal system in India. It was further deliberated that with the passage of time, there have been judgments which changed the landscape of political, civil, social and economic rights in India. Quoting Peter Ronald D’souza, “Great judgement is one that restores the Constitutional value”, it was stated that landmark judgments are the ones that are path-breaking.

The entire session was then focused on discussing the landmark judgements under 6 major heads.

The judgments that changed the history of Indian laws vis-à-vis *Personal liberty: Procedure established by Law under Article 21* are discussed herein.

The case of *A.K. Gopalan v. State of Madras [(1950) SCC 88]*, popularly known as preventive detention case, was discussed. A.K. Gopalan was a communist leader who was detained in the Madras Jail under Preventive Detention Act, 1950 and challenged his detention by stating that his civil liberty was being hampered as he had the right to equality of law and thus this detention is violates contravenes Articles 13, 19, 21 and 22 of The Constitution of India. However, the Hon’ble Supreme Court of India held that Article 22 is a self-contained code, hence police can arrest any person followed by a procedure, even if the procedure is arbitrary in nature. The supreme court at that point of time believed that each article was separate in the Indian constitution.

Another immensely crucial judgment is that of *Maneka Gandhi v. UOI* [AIR 1978 SC 597]. In this case, the meaning and content of the words ‘personal liberty’ came up for the consideration before the Supreme Court. In this case, the petitioner’s passport had been impounded by the Central Government u/s 10(3) (c) of the Passport Act, 1967. Here, the Supreme Court not only overruled A.K. Gopalan’s case but also widened the scope of words ‘personal liberty’ considerably. Thus a law “depriving a person of ‘personal liberty’ has not only to stand the test” of Article 21 but it must stand the test of Art. 19 and Art. 14 of the Constitution as well.

Next case is *ADM Jabalpur v. Shivakant Shukla* [(1976) 2 SCC 521]. This one case is a glaring example of how the four wise Judges of the Supreme Court tried to outdo themselves in being more loyal to the throne than the king himself. The final order goes way beyond what was demanded of them by the plea of the Union of India. All the individual judgments of Ray (C.J.), Beg, Chandrachud & Bhagwati (JJ) record in extensio the submissions of the Attorney-General on behalf of the government wherein he made the claim that the detainee had no right to approach the Court to challenge his detention. The Supreme Court, instead, preferred to throw away this key to their own self-respect. The majority judgment, literally taken, and as understood thereafter by all High Courts, clearly directed that detainees were to be stopped at the doors if not in the corridors of the halls of Justice. However, Justice Khanna, in his powerful dissent, held that Article 21 could not be considered to be the sole repository of the right to life and personal liberty, and such right could not be taken away under any circumstance without the authority of law, in a society governed by rule of law. He elaborated in detail all the points in consideration and concluded that even in the absence of article 21 in the Constitution, the State has got no power to deprive a person of his life or liberty without.

In the case of *Justice K. S. Puttaswamy (Retd.) and Anr. vs Union Of India And Ors* [(2017) 10 SCC 1], over-ruling the majority view of ADM Jabalpur Case, it was held that “Right to Privacy is a fundamental right mentioned under Article 21 of the Constitution”.

The landmark judgments under the umbrella of *Amendability of Fundamental Rights and doctrine of basic structure* are discussed below.

In the case of *Shankari Prasad vs. Union of India* [(1952) SCR 89], the First Constitution Amendment Act, 1951 was challenged. The amendment was challenged on the ground that it

violates the Part-III of the constitution and therefore, should be considered invalid. The Supreme Court held that the Parliament, under Article 368, has the power to amend any part of the constitution including fundamental rights. The Court gave the same ruling in *Sajjan Singh Vs State of Rajasthan case in 1965 [AIR 1965 SC 845]*.

In *Golak Nath vs State of Punjab [AIR 1967 BSC 1643]*, the Supreme Court overruled its earlier decision and held that the Parliament has no power to amend Part III of the constitution as the fundamental rights are transcendental and immutable. According to the Supreme Court ruling, Article 368 only lays down the procedure to amend the constitution and does not give absolute powers to the parliament to amend any part of the constitution.

The Parliament, in 1971, passed the 24th Constitution Amendment Act. The act gave the absolute power to the parliament to make any changes in the constitution including the fundamental rights. It also made it obligatory for the President to give his assent on all the Constitution Amendment bills sent to him.

In 1973, in *Kesavananda Bharti vs. State of Kerala [AIR 1973 SC 1461]*, the Supreme Court upheld the validity of the 24th Constitution Amendment Act by reviewing its decision in Golaknath case. The Supreme Court held that the Parliament has power to amend any provision of the constitution, but doing so, the basic structure of the constitution is to be maintained. But the Apex Court did not give any clear definition of the basic structure. It held that the "basic structure of the Constitution could not be abrogated even by a constitutional amendment". In the judgement, some of the basic features of the Constitution, which were listed by the judges.

In *Indira Gandhi vs.. Raj Narain [AIR 1975 SC 2299]*, the validity of 39th Constitutional Amendment Act was challenged. The Supreme Court reaffirmed its concept of basic structure and thus held the said amendment act to be invalid.

In the case of *Minerva Mills vs. Union of India [AIR 1980 SC 1789]*, the validity of 42nd Constitutional Amendment Act, 1976 was challenged and the Court struck down Art. 368(4) and Art. 368(5). Thus, the concept of basic structure was further developed by adding 'judicial review' and the 'balance between Fundamental Rights and Directive Principles' to the basic structure of the Constitution.

Further, in *IR Coelho's Case [(2007) 2 SCC 1]*, commonly known as 9th schedule case, the doctrine of basic structure was further interpreted. It was held that any law inserted in the 9th schedule on or after April 24, 1973 can be subject to judicial review and will be struck down if it violates the basic structure doctrine.

This was followed by the cases being discussed under the head of '*Constitutional Democracy: Power under Article 365*'.

In *S.R Bommai vs Union of India, [AIR 1994 SC 1918]*, SC attempted to curb the blatant issue of Article 365 of the Constitution of India. In the same regards, Federal structure, unity and integrity of India, secularism, socialism, social justice and judicial review were reiterated as basic features of the Constitution of India and it was held that majority enjoyed by the C.O.M. shall be tested on the floor of the house.

In *PUCL v. Union of India, commonly known as NOTA case* the constitutional validity of Rules 41(2), (3) and 49-O of the Conduct of Election Rules, 1961, was impugned. Both sides agreed on the fact that the combined effect of these rules was that persons who did not vote in elections were recorded (by the presiding officer) as having not voted. So the Supreme Court, in *PUCL v. Union of India*, upheld the constitutional right of citizens to cast a negative vote in elections.

In the case of *Lily Thomas v. UOI & Ors [(2013) 7 SCC 653]*, a 2 Judge bench of the Supreme Court ruled that Members of Parliament, Legislative Councils and Legislative Assemblies convicted of crimes where they had been awarded a minimum sentence of 2 years imprisonment would cease to be members of the house to which they were elected from the date of sentencing. It further struck down the provision, which allowed convicted members a 3 month time period for appeal against the conviction and sentencing and held that those convicted would suffer immediate disqualification.

This was followed by a discussion of plethora of cases on the concept of '*Independence of Judiciary*'.

In *S.P. Gupta v. UOI & Ors. [AIR 1982 SC 149]*, commonly known as *First Judges Case*, the Hon'ble Supreme Court of India held that the correspondence exchanged between the Law Minister, the Chief Justice of Delhi, and the Chief Justice of India on the appointment and transfer

of judges was not privileged and was therefore not protected from disclosure under the law. A particular document regarding the affairs of the state is only immune from disclosure when disclosure is clearly contrary to public interest.

In the case of *Supreme Court Advocates on Record Association v. Union of India* [(1993) 4 SCC 441], commonly known as second judges case, the court (7-2) overruled the First Judges Case, holding that in the event of conflict between the President and the CJI with regard to appointments of Judges, it was the Chief Justice of India whose opinion would not only have primacy, but would be determinative in the matter. In the 1993 verdict, the SC not only regained its powers from the government but also gave itself the upper hand over the other two branches. The 1993 verdict also gave birth to the Collegium System. This was the collection of the CJI and the two most senior judges of the SC or the HC, depending on the case. What this did was in effect “moderate” the CJI’s powers when it comes to the appointment of judges.

Then in *Re Special Reference Case*, commonly known as *Third Judges Case* [AIR 1999 SC 1], the SC reaffirmed its 1993 judgement and expanded the Collegium to include the CJI and the four most-senior judges of the court after the CJI.

Finally the *S.C. Advocates on Record Association v. UOI* [(2016) 5 SCC 1], commonly known as NJAC case or the fourth judges case, is the first instance in which the Court has struck down a part of the framework of the Constitution. Rather than striking down a discreet provision addressing the method by which judges are appointed through the NJAC, the Court chose to strike down the appointments regime in its entirety.

Lastly, on the social welfare legislations, the cases regarding the condition of women and homosexuals were discussed.

The *Mohd. Ahmad Khan vs. Shah Bano Begum & Ors.* or the Shah Bano maintenance case is seen as one of the legal milestones in battle for protection of rights of Muslim women. While the Supreme Court upheld the right to alimony in the case, the judgment set off a political battle as well as a controversy about the extent to which courts can interfere in Muslim personal law. The case laid the ground for Muslim women’s fight for equal rights in matters of marriage and divorce in regular courts. Shah Bano’s lawyer Danial Latifi had challenged the Constitutional validity of Muslim Women (Protection on Divorce Act), 1986. The apex court, though upholding the validity

of the new law, said the liability can't be restricted to the period of iddat. One of the key points of relevance in the verdict that set it apart from previous cases was the recognition of women's claim for treatment with equality and dignity, particularly in cases of marriage.

In the case of *Shayara Bano v. UOI & Ors. [(2017) 9 SCC 1]*, Shayara Bano, instituted a Public Interest Litigation (PIL) in Supreme Court in 2016. On 22nd August, 2017, Apex court, by a majority of 3:2 declared triple talaq illegal, unconstitutional and void.

In the case of *Indian Young Lawyer's Association v. The State of Kerala & Ors*, commonly known as Sabarimala Temple case [Writ petition (CIVIL) NO. 373 OF 2006], The Supreme Court struck down a rule that disallowed girls and women in the 10-50 age group from entering the Sabarimala temple in Kerala. Chief Justice Dipak Misra-headed Constitution bench in a 4-1 verdict said the temple rule violated their right to equality and right to worship.

Navtej Singh Johar & Ors. v. Union of India thr. Secretary Ministry of Law and Justice is a landmark decision of the Supreme Court of India in 2018 that decriminalised all consensual sex among adults in private, including homosexual sex. A five-judge constitution bench headed by Chief Justice Dipak Misra had reserved its verdict on July 17 after hearing various stakeholders for four days, including gay rights activists. Besides the CJI, the bench also comprised justices R F Nariman, A M Khanwilkar, D Y Chandrachud and Indu Malhotra. The Supreme Court thus scrapped Section 377 of the IPC, decriminalising the 158-year-old colonial law which criminalises consensual gay sex.

With these pathbreaking judgements, the session came to an end.

LOCAL TOUR VISIT TO THE ALL INDIA INSTITUTE OF MEDICAL SCIENCES, Bhopal 6th November, 2019

The participant judges today made a visit to the All India Institute of Medical Sciences, Bhopal, Madhya Pradesh. The judges were welcomed by Prof. Sarman Singh, Director, AIIMS, Dr. Jayanthi Yadav, Additional Professor, Department of Forensic Medicine, AIIMS, Dr. Sravan, J.S. and the entire forensic team of the Institute.

The participant judges visited and keenly observed the mortuary and the forensic science department of the institute that included autopsy room, sluice room, forensic radiology room, medico-legal examination room, post-mortem examination room and the cold area. The Doctors in-charge provided with all the basic information regarding the procedure followed in police cases including rape, murder, burn-cases, etc.

The participant judges were then requested to be in the auditorium of the institute wherein they were to be addressed. The Director, after giving a warm welcoming speech, told about the history and various peculiar features of the AIIMS, Bhopal. This was followed by a very insightful presentation by Dr. Jayanthi Yadav on “Autopsy-Protocol and Opinion”.

Details of the Presentation

The presentation covered all the basic medico legal aspects of an autopsy. The word autopsy is made up of two words: “auto” meaning “self” and “opsy” meaning “to see”, thus it means to see oneself. It was told that there are two kind of autopsies:

a. Clinical/ Academic Autopsy

In such an autopsy, the consent of the relatives is must and is very rarely done.

b. Medico-legal Autopsy

This is a very common kind of autopsy which is generally done by the governmental institutions on the instructions of legal authority or investigating agency.

The objective behind performing autopsies is three-fold:

- a. To determine the identity of the body.
- b. To know the cause of the death, and
- c. To know the manner of the death.

The pre-requisites/ rules for performing medico-legal autopsies are:

- a. Request from legal authority.
- b. Conducted only in government hospitals or centers/ colleges authorized by the government.

Further, Dr. Jayanthi gave information on various causes of death; types of evidences/ marks on the body; types of wounds/ injury; various ways of examination of the body; changes that occur after the death and preservations after autopsy.

The session then came to an end with a warming note of thanks by the staff member of AIIMS, Bhopal and also one of the participant judges of Bangladesh.