



## **NATIONAL JUDICIAL ACADEMY INDIA**

**SE-09**

**SEMINAR FOR FOREIGN JUDGES [BANGLADESH]**

**14<sup>th</sup> – 20<sup>th</sup> February, 2020**

**Programme Coordinator**

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The National Judicial Academy, Bhopal organized a seven day training programme titled “Seminar for Foreign Judges (Bangladesh)” from 14<sup>th</sup> to 20<sup>th</sup> February, 2020. It was the eleventh seminar organized for the judges of Bangladesh. The academic programme was divided into 17 sessions spread over a period of five days. The programme involved deliberations on the emerging issues in the field of Constitutional Law, the structure and jurisdiction of the Indian Judiciary, the Constitutional Vision of Justice, elements of judicial behavior, the art, craft and science of drafting judgments, principles of evidence, human rights etc. Efforts were made to find a common ground in the constitutional jurisprudence and share the best practices. The programme also involved local visits of the participants to Taj-ul-Masajid, State Museum, Tribal Museum, Central Jail and AIIMS.

Justice R.K. Gauba, Prof. (Dr.) V. K. Dixit, Justice G.R. Swaminathan, Justice S.B. Saraf, Justice V.P. Sharma, Mr. Gautam Kumar Choudhary, Justice Ram Mohan Reddy and Dr. Jayanthi Yadav were the resource persons of the seminar.

The theme for the first session was ***Overview and Architecture of the Indian Constitutional Arrangement.*** The speakers briefly discussed the chronological events that lead to the drafting of the Constitution and international influence on supreme law of the land. It was stated that though the Constituent Assembly was sanguine on the constitutional future of the nation, it was soon realized that the Constitution is an organic document that has to evolve with time to keep pace with the dynamic changes in the society. Quoting Dr. B.R. Ambedkar, the speaker emphasized on significance of the Preamble to the Constitution of India and remarked how the objectives of *liberty, equality and fraternity* envisaged in the Preamble are inextricably linked to one another. It was pointed out that Bangladesh Constitution has certain similarities with the Indian Constitution. Some of these architectural principles are rule of law, democracy, fundamental freedoms, justice, equality etc. Further, with reference to the Preamble to Constitution of India, the speaker discussed the case law including *S.R. Bommai v. Union of India* (1994) 3 SCC 1, *Sajjan Singh v. State of Rajasthan* AIR 1965 SC 845, *Keshavanand Bharati v. State of Kerala* (1973) 4 SCC 225.

The theme for the second session was ***Indian Judiciary: Organizational Structure and Jurisdiction.*** The session was initiated with the hierarchy of courts in India. The organizational setup of the Indian Judiciary

was elaborated with discussion on the procedure for appointment of judges in the Supreme Court, High Court and District Courts. The speaker remarked that Art. 32 is the heart and soul of the Indian Constitution which empowers the Supreme Court to enforce fundamental rights. Thereafter, Special Leave Petition (SLP), review, curative petitions and collegium system were also discussed at length. Further, the speaker discussed the case law including *Golaknath and Ors. v. State of Punjab* AIR 1967 SC 1643, *Kesavananda Bharti v. State of Kerala* (1973) 4 SCC 225, *ADM Jabalpur v. Shivkant Shukla* (1976) 2 SCC 521.

The theme for the third session was ***Goals, Role and Mission of Courts: Constitutional Vision of Justice***. The speaker initiated the discussion by stating that the mission of courts should be in consonance with the constitutional fundamentals i.e. to read every legal provision with reference to the constitutional vision of justice and the goal is to respect, regard and promote the fundamental rights. The speaker also elaborated on the vital role played by the Supreme Court to protect the fundamental rights. Traversing the journey of the Supreme Court from *A.K. Gopalan* to *Maneka Gandhi Cases*, the speaker illuminated participants about the dynamic role played by the Supreme Court of India in interpretation of Art. 21 of the Constitution and the development of the principles of justness, fairness and reasonableness. The speaker also stressed on the interplay of Directive Principles of State Policy with Fundamental Rights by citing various celebrated judgments.

The theme for the fourth session was ***Elements of Judicial Behaviour: Ethics, Neutrality and Professionalism***. The speaker initiated the discussion by stating that judges cannot allow their private opinions to interfere in the administration of justice. Jurisprudentially, the source of judicial power is the Constitution, however, pragmatically, public acceptance of the authority of judiciary, integrity of judicial officers are the fountainhead of judicial power. The inalienable elements of judicial behavior include transparency, integrity, honesty, accountability, independence and compassion. Thereafter, the speaker discussed the six core values of the judiciary enshrined in the Bangalore Principles of Judicial Conduct (2002) namely, Independence, Impartiality, Integrity, Propriety, Equality, Competence and Diligence.

The theme for the fifth session was ***Judging Skills: Art, Craft and Science of Drafting Judgments***. It was pointed out that the essential requirements of judgment writing is based on factual matrix and procedural

requirements. The speaker stated that judicial skills includes broad acquaintance with substantive law, procedural law, marshalling of facts, adherence to principle of natural justice and drafting of judgment in plain and simple language. Thereafter, the speaker urged the participating judges not to hypothecate their original thinking to rely on the cruxes of precedents. Citing a statute is always better, as legislative enactments are the most authoritative source of law. The speaker opined that judgment writing is an art which involves creative writing and storytelling.

The theme for the sixth session was *Judge the Master of the Court: Court and Case Management*. It was emphasized that since judge is a master of the court it is his/her outmost duty to be aware about all the intricacies that take place in his/her court. In reference to the case management the discussion emphasized upon the fixing of similar class of cases together, maintaining proper dockets/ case diaries, following case flow rules, monitoring of pendency and disposal, monitoring unnecessary delay and taking an early steps to curtail such delay. The speaker stressed on human resource management as part of court management and identified the judge, lawyers, litigants, prosecutors, witness and the staff as the stakeholders in the judicial system. The human resource issues that affect court management identified in the course of the discussion are – frequent boycotts by lawyers, staff management and failure to facilitate and enable accessibility of the courts to the witnesses who appear before the court as invitees of the court. The speaker emphasised on court processes and terminology as a part of court management and on the need to streamline the court processes with the aid of technology.

### **Local Tour/ Visit to Tribal Museum/ State Museum, Bhopal on 16<sup>th</sup> February 2020**

National Judicial Academy organized the tour to Tribal and State Museum for the participant judges Bangladesh located in Shyamla Hills, Bhopal. The well planned Tribal Museum 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 galleries. All these galleries were enthusiastically visited by the participant judges and the background of the same was explained to them by the tour guide. 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 is 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.

The theme for the seventh session was *Principles of Evidence: Appreciation in Civil and Criminal Cases*.

The speakers set the context of the session by referring to the laws of both the countries and how these laws of evidence are founded on the same fundamental principles. Further, dealing with elementary aspects, the speaker remarked that the objective of evidence is to unearth the truth. It was emphasized that judges ought to determine the relevancy of facts, while taking into consideration the admissibility aspect as well, because all that is admissible has to be relevant, but all that is relevant, may not be admissible. In order to substantiate this argument, the speaker cited the example of 'hearsay evidence' which is relevant but not admissible. The speaker also discussed the concept of 'dying declaration' in this regard, which is governed by a fundamental belief that 'a person taking his last breath wouldn't lie.' However, the speaker rebutted this belief by putting forth the argument that if the person is under some medication, he may not necessarily speak the truth. The meaning of appreciation of evidence was analyzed as assessing and recognizing the importance, quality and nature of the evidence. It was stated that appreciation of evidence requires skill and high degree of methodology. Marshaling of facts includes picking up the pieces of evidence on a particular point and stitching them together.

The key provisions regarding for the appreciation of evidence was discussed with illustrations. The session revolved around the basics in Evidence Act, 1872 (the Act) viz., Section 3, 17, 26, 53, 54, 60, 115, 117, 118, 133, 134 and 165 of Act were discussed in detail. It was observed that rule of evidence reposes more faith on the wisdom of judge rather than letter of law.

The session eight was *Evidentiary Presumptions: Onus and Burden of Proof*. It was stated that the Indian Evidence Act, 1872 applies to both civil as well as criminal cases. It was elaborated that the standard of proof in civil cases is based on 'preponderance of probabilities' whereas in criminal cases it is 'beyond

reasonable doubt'. Revisiting the 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. It was opined that the admissibility of evidence in Indian courts is independent and its illegality in obtaining the evidence may not affect its admissibility. The cases *Kuruma v. The Queen* (1955) AC197; *Pushpa Devi M. Jatiya v. M.L. Wadhawan* (1987) AIR 1748 and *Ramnath Mahto v. State of Bihar* (1996) SCALE (3) 441 were contextually discussed. Thereafter, it was stated that the motive of cross examination is to find out the authenticity of the evidence whereas re-examination is for clarification. The concept and types of witness was discussed. It was observed that there are three types of witness that includes wholly reliable witness, wholly unreliable witness and partially reliable witness. The cases *State of West Bengal v. Orilal Jaiswal* (1994) 1 SCC 73 and *Succha Singh v. State of Punjab* AIR 2003 SC 3617 were cited therein. It was stated that reliability and probability are the two main pillars of a strong evidence

The theme for the ninth session was ***Electronic Evidence: New Horizons, Collections, Preservation and Appreciation***. The speaker dwelt on the concept of digital footprint and the increasing relevance of electronic evidence in civil, matrimonial and criminal cases. The speaker dealt with different types of electronic evidence that includes emails, text messages, video clips, CCTV footage, audio recording, video, photographs, etc. The speaker stressed on important factors in appreciating electronic evidence i.e. relevancy, admissibility, mode and manner of proof and authenticity. It was emphasized that electronic records are part of documentary evidence and therefore all principles applicable to documentary evidence are also applicable to electronic evidence. Further, the speaker classified electronic evidence into primary and secondary evidence and exhaustively discussed provisions relating to the admissibility of electronic evidence. In reference to Section 65B of The Indian Evidence Act, 1872 the cases *State (NCT of Delhi) v. Navjot Sandhu, @ Afsan Guru*, AIR 2005 SC 3820 and *Shafhi Mohammad v. State of H.P.*, (2018) 2 SCC 801 were discussed in detail.

The theme for the tenth session was ***Forensic Evidence in Civil and Criminal Trials; DNA Profiling***. The role of forensic evidence in civil and criminal trials was discussed. It was stated that forensic science is the application of knowledge of science as an aid to the administration of justice. Various methods of forensic

science that are used to find forensic evidence were discussed that includes use of ballistics, blood tests, blood spatters, chemical composition of substances, DNA profiling, post-mortem examination and forensic science laboratory reports. The concept and scope of DNA profiling was discussed. It was stated that DNA becomes relevant in adjudicating matters relating to disputed paternity/maternity, abduction, inheritance, adoption, rape and murder. It was opined that DNA as an evidence is scientific and unbiased and is thus highly reliable. The chemical structure of DNA was explained. 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 relevancy and importance of forensic evidence in civil dispute matters were emphasized, including paternity test, negligence by doctor, insurance matters and in the cases relating to age estimation.

### **Visit to AIIMS, Bhopal on 17<sup>th</sup> February, 2020**

NJA in collaboration with AIIMS, Bhopal, organized a visit to the mortuary and the medical college in AIIMS. The participants were taken to the mortuary in the Department of Forensic Medicine and Toxicology, where the following rooms were shown and their significance explained:

1. No mobile zone: The primary objective of this area was to ensure that experts function without any external pressure.
2. Room for Police reporting
3. Report writing Room: After the autopsy, experts draft the report in this room. They describe the cause of death in two to three sentences in the short report that is immediately submitted. After full examination, a detailed report is prepared that is submitted in 3 days.
4. Post-mortem examination room-1: This is where autopsies are conducted. The room was air conditioned and well-ventilated.
5. Medico-legal examination room: This room is for examination of living persons and conducting student lectures.
6. Post-mortem examination room-2
7. Cold Area-1 & 2: This room is used for preservation of dead bodies till post-mortem

In the second half of the tour, the participating judges were taken to the auditorium of the medical college, where *Dr. Raghvendra Kumar Vidua* gave an elaborate presentation on Autopsy Protocol and Opinion. This presentation aimed at sensitizing the judges as to the objectives of medico-legal autopsy, its pre-requisites, different causes of death, and changes after death, opinion writing etc. At the end of the session, Director of AIIMS, Bhopal addressed the gathering, elaborating on the intersection of forensic medicine and law.

The theme for the eleventh session was ***Human Rights: Fair and Impartial Investigation***. The speaker set the context of the session by emphasizing on the soft law and hard law aspect of human rights and by listing the various international documents such as 'Magna Carta', 'Bill of Rights', 'French Declaration of Rights' and Duties of Man etc. that laid the foundation to human rights in UK, US and France. Fundamental principles of human rights like impartial investigation, prevention from illegal arrest and detention and torture were discussed. It was stated that judges and magistrates cannot direct mode of investigation, but it is the role of a judge to ensure that investigation is conducted adhering to statutory law, guidelines of the apex court and international customary law. The basic human rights of a person in police custody was elaborately discussed. Major issues like illegal arrest and detention, unfair treatment to accused, custodial violence and torture to extract confession from accused, lock up deaths were discussed in detail. Measures were suggested to minimize human rights violations during investigation such as videography of the investigation procedure, accountability of investigating officers and departmental/financial incentives for good investigation. The cases of *Rudul Shah v. State of Bihar*, (1983) 4 SCC 141 and *D.K. Basu v. State of West Bengal* (1997) 1 SCC 416 were also discussed.

The theme for the twelfth session was ***Criminal Justice Administration and Human Rights***. The importance of human rights and fundamental rights was discussed in the light of equality, liberty and rule of law. It was deliberated that “justice administration” and “justice dispensation” are two different facets of “Criminal Justice Administration”. It was observed that criminal justice administration should be viewed through the prism of human rights. The Universal Declaration of Human Rights, 1948 (UDHR) and International Covenant on Civil and Political Rights, 1966 (ICCPR) were discussed. It was emphasized that powers upon police to arrest a person without warrant on reasonable suspicion is one of the main provision

which is been misuse by the investigating officers. It was emphasized that all rights of an accused does not stand terminated even when he is convicted. It was opined that the rights recognized and granted by the constitution are futile if it is not enforceable. In this light the words of Justice V.R. Krishna Iyer was quoted as “Rights, however, solemnly proclaimed and entrenched in great instruments are but printed futility unless a puissant judiciary armed with legal authority, remedial process and jurisdiction, operational and pragmatic, transforms the jurisprudence of human rights into public law of enforceable justice”. Right to free legal aid, right to fair trial and right to legal representation were also discussed in the light of the Constitutional provisions read with relevant procedural provisions.

The theme for the thirteenth session was *ICT and Judiciary: Indian Perspective*. The session began by providing an overview of the National Judicial Data Grid (NJDG) to the participants It was deliberated that NJDG has virtually paved the new line thinking in Indian judicial system. A reference was made to the Delhi High Court by emphasizing that the entire record of decided cases have been digitized, 40,000 sq. ft. land has been vacated due to digitalization, certified copies of digital records with digital signature is available within 15-20 minutes of the order, installation of kiosks for information, e-cause list, e-court fee, e-summons etc. Thereafter, the significance of video-conferencing of accused, witnesses, experts, etc. were discussed.

### **Local Tour Visit to The Cental Jail, Bhopal on 18<sup>th</sup> February 2020**

Visit to the Central Jail of Bhopal was conducted for the participant judges of Bhopal on 18<sup>th</sup> February 2020.

The Central Jail of Bhopal is very well maintained and it was informed that the 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 explained to the participant judges by the jail authorities.

The theme for the fourteenth session was ***Identification of Ratio in a Precedent***. The session dealt with the theoretical and practical aspects of the doctrine of precedents. It was noted that Article 141 of the Indian Constitution mandates the law declared by the Supreme Court to be binding on all courts within the territory of India. Strolling through the constitutional history of India, the speaker remarked that Constitution is not limited to the bare text but is what the judiciary interprets it to be. Thereafter, the speaker classified precedents into binding and persuasive ones; and discussed the advantages and disadvantages of precedents briefly. The speaker then remarked that as per the English theory, *ratio decidendi* is that part of law without which the dispute in hand cannot be decided, whereas *obiter dicta* is that part of the judgment that is not necessary to decide the dispute in hand. The speaker also cited the cases of *Donoghue v. Stevenson* (1932) UKHL 100 and *Doctor Bentley's case* to demonstrate how courts, in the earlier times, had taken inspiration from the Holy Bible to enunciate new principles and resolve the dispute at hand.

The theme for the fifteenth and sixteenth session was ***Landmark Judgments in India***. The focus of this session was on discussing the path breaking judgments of the Supreme Court of India on women empowerment, gender discrimination and homosexuality which altered the course of administration of justice. Deliberating about women empowerment, the speaker observed that women have been subjected to discrimination in the patriarchal society since time immemorial. They are yet considered inferior in various religious discourses. It is because of this reason that the Constitution under Article 15 (3) empowers the legislature to make special provisions for women and children. The objective behind this provision was to bring women at par with men. It was noted that secularism is not just the duty of the State but also an attitude that has to be inculcated in the people. The speaker also drew a line of difference between the ideologies of St. Aquinas and St. Austin and argued how Austin's theory with respect to religion is more valid in the present era. The speaker then elaborately discussed the cases that includes *Sharaya Bano v. Union of India and Ors.* (2017) 9 SCC 1, *India Young Lawyer's Association v. State of Kerala* (2016) SCC 1783, *Haji Ali Dargah Trust v. DR Noorjehan Safia Niaz & Ors.* (2016) 16 SCC 788, *Joseph Shine v. Union of India* (2018) 2 SCC 189, *Suresh Kumar Koushal v. Naz Foundation* (2014) 1 SCC 1, *Navtej Singh v. Union of India* (2018) 10 SCC 1.