

Late Jatindra Mohan Chaudhuri Law Lecture Series

Organised by Studio Nilima: Collaborative Network for Research and Capacity Building

September 28, 2019

Program	Resource Person
Keynote Address	Mr. Justice (R) I.A. Ansari
Interactive Session	Moderated by Mr. Justice (R) I.A. Ansari and assisted by Mr. Ziaul Kamar, Senior Advocate Mr. Angshuman Bora, Senior Advocate

Ms. Rakhee Choudhury, Advocate, Gauhati High Court, opened the Law Lecture series with a warm welcome to all the participants and other members of the legal fraternity. The Law Lecture was conducted by *Studio Nilima Collaborative Network for Research and Capacity Building* (hereinafter referred as Studio Nilima), a non-profit research collective engaging in and initiating dialogues on contemporary public policy and concerns of North-East India. Its endeavour is to unfold new ways of learning, thinking, research and practice by bringing together lawmakers, thinkers, policy makers, academicians and practitioners from across the arts.

The Law Lecture series was in memory of Late Jatindra Mahan Chaudhuri (hereinafter referred as Mr. Chaudhuri). Born to legal luminary and freedom fighter, Late Joychand Chaudhuri, in the year 1940, Mr. Chaudhuri became a member of the Gauhati High Court Bar Association in 1967 and went on to carve his own niche in the legal profession. An eminent criminal lawyer, he was a force to be reckoned with in the legal field and had a knack for interpreting the provisions of criminal law in a unique manner with crisp, precise submissions. Considering his immense contribution to the legal profession, Mr. Chaudhuri was designated as ‘Senior Advocate’ in 1988. Built of medium height, his affable demeanour and humility was what endeared him to everyone. His conduct as an advocate is something to imbibe and worthy of emulation by every aspiring young Advocate. The law lecture series was a humble tribute to a great teacher and guide by Studio Nilima: Collaborative Network

for Research and Capacity Building. Justice (Retd.) I.A. Ansari, Chairman of the Punjab Human Rights Commission had kindly consented to deliver the keynote address of the first law lecture and moderate the interactive session.

Mr. Nilay Dutta, Senior Advocate, Gauhati High Court and President, Studio Nilima was then invited on stage to say a few words. He took over the Dias and conveyed to the members present therein that he is friends with Mr. Ansari since a long time. Their association continued throughout Mr. Ansari's journey from the court martial proceedings; to being the Sessions Judge in many places in Assam; to becoming a Judge at the Gauhati High Court, shifting to other high courts and ultimately becoming the Chief Justice of the Patna High Court before being appointed as the incumbent Chairman of the Punjab Human Rights Commission.

The law lecture was mainly for law students and young lawyers. The topic of discussion, decided in consultation with Mr. Ansari, was appreciation of evidence in a trial procedure. Mr. Dutta further informed that the second half of the day would have three panelists namely, Mr. Ansari on the legal side and also a Judge; Mr. Ziaul Kamar, Senior Advocate, Gauhati High Court (hereinafter referred as Mr. Kamar), a public prosecutor and Mr. Angshuman Bora, Senior Advocate, Gauhati High Court (hereinafter referred as Mr. Bora) mostly working on the Defense side of a case. It was notified by Mr. Dutta that Mr. Kamar is currently appointed as the most important public prosecutor in Assam, in a case in Nagaon - appointed by the Government of Assam in consultation with the Gauhati High Court. The panel consisted of a judge, a prosecutor and Defense counsel to interact with the members and take on their questions. He also informed the audience that they could share their feedback on the program and send it across to the official email id of Studio Nilima.

He further added that Studio Nilima was established in memory of his mother, Smti. Nilima Dutta. Late Nilima Dutta was a great humanist and inspired the inception of Studio Nilima, despite not having any direct association with law. When delivering justice for human beings or dealing with law, it is the human being and her/his perception of right and wrong that matters.

Thereafter, Mr. Bora briefly addressed the gathering on the topic of discussion, i.e., ‘appreciation of evidence’- which he mentioned to be very interesting and vast in its ambit. He noted that the meaning of evidence changes from time to time. In a complaint case, the proceedings start with an enquiry under Section 202, Code of Criminal Procedure, 1973 (‘CrPC’). The evidence of witnesses of the Complainant at times have to be mandatorily examined before issuance of the process. So connotation as well as application of the statement of the witness during enquiry are different and cannot be used to convict the accused during Trial. The appreciation of evidence at this stage is different and can only be taken up for cognizance. Appreciation of evidence can be done at various stages of pre-Trial and during Trial. As per a Constitutional Bench of the Supreme Court of India (hereinafter referred to as ‘SCI’), it is binding that one cannot begin trial with the evidence of the co-accused. The other evidence has to be gathered for reliance. He went on to add many other valuable inputs pertaining to ‘appreciation of evidence’. The term ‘evidence’ has a different connotation and meaning in different sections of CrPC in a criminal trial. He cited the example of one of the leading and important cases under the Negotiable Instruments Act, 1881 which he had dealt within the early years of his joining the legal practice and where the Judgment had been rendered by Mr. Ansari.

Thereafter Mr. Ansari was called onstage to address the audience with his keynote address. He began by reiterating that Mr. Chaudhuri was a lawyer to reckon with and shared his personal experiences; he noted that it was hard to come by another perfect gentleman and human being like him.

He began his speech with the case of a girl who had been left disrobed during a protest outside the Secretariat in Assam, wherein some protestors had pelted stones in the neighbourhood leading to a commotion between the local people of that place and demonstrators. He stated that individuals were more focused on taking the girl’s pictures than informing the police.

He stated that there are three modes of taking cognizance, by way of complaint, by way of Police report or on the basis of information or knowledge. So, a person with knowledge of an incident can take cognizance of the crime. He stated that before every trial is concluded, there

is a provision of Section 313, CrPC which provides for examination of the accused. In general practice, this is taken up very casually. During the first part of such examination, the Judge may ask any question to the accused but after the examination is completed and as per the guidelines of SCI), it is the bounden duty of the Court to examine, howsoever scanty and weak, the evidence which the accused might have brought in during such examination. With respect to evidence, it is also for the purpose of proof of a fact. The Indian Evidence Act, 1872 (IEA) speaks of matters; the definition of 'Proved' as given under Section 3, IEA does not speak of evidence but it talks about 'matter'. He also emphasized the importance of the statement by an accused under section 313, CrPC. He referred to the case of assassination of Gen. Vaidya. During the course of this trial, one of the accused stated that he wanted to make a statement and was allowed to do so. The statement given by the accused, in writing, admitted the fact that they had shot Gen. Vaidya. As there was no evidence to prove the guilt of the accused, the question arose about using their statements under Section 313, CrPC. It was argued before the SC by Mr. Ram Jethmalani that as there was no evidence pointing to the guilt of the accused, they ought to have not recorded the statement under Section 313, CrPC. The SC clarified that at the time of recording 313 CrPC statement of an accused, the Court does not sit on the outcome of the case. Thus the SC says that if there is evidence, whatsoever, the accused must be examined. He cited a few more examples on this aspect in the trial of a criminal case including the appeal of Nishikant Jha. He emphasized that a lawyer remains a student of law all through his life; appreciation of evidence changes with perception of lawyers.

He stated in his address, that in earlier times, in case of a conflict between ocular evidence, i.e. eye witnesses' evidence of the occurrence, and that of the medical evidence, the Medical evidence would prevail as there was no need for the doctor to lie. Over a period of time, the way how society looks upon the veracity of medical evidence has changed. Thus, SCI has said that medical evidence cannot always be treated as touchstone for testing the veracity of ocular evidence. As such the Court has to determine who is telling the truth. If Court cannot ascertain who is telling the truth then the accused has to be acquitted but the Court can say that it is the eye witness who is telling the truth. The position then is that the evidence of an eye witness has to be relied upon and if it proves the guilt of the accused, the same has to be held guilty even if it is not reconciled by the medical evidence on record. This change of position is resultant effect of the change in outlook of the society. The IEA has not been

amended. A Change in perception changes the law. When one is dealing with a subject that is so adaptable, one cannot say that (s)he is an expert in law. Being an expert in Science is easier since one cannot go wrong if calculations are Scientifically correct. However, in law, one cannot predict what may be considered wrong tomorrow. So, one can never claim to be an expert in law and consider not studying the subject further after having studied it once.

In the course of his note, he discussed at length and mentioned about a Division Bench judgment - the case of Bokul Borah wherein the accused had made a confession and there was also a co-accused who had made a confession. On the aspect of confession of an accused, he said that it is a substantive evidence and conviction can be based on this evidence alone provided it is found to be wholly trustworthy and true. Confession of a co-accused is not binding on the accused. He also spoke on exculpatory and inculpatory confession with reference to Nishikant Jha's case. He also discussed about discovery of fact with a reference to section 27, IEA and it should be borne in mind that this section speaks of discovery and not recovery. So, the weapon may not have been found and a fact has been discovered which if relevant is admissible against the accused. What the accused says not necessarily must be found and then only it can be admissible. If it leads to discovery, it will be relevant.

He mentioned about case of Damoh wherein the confessional statement was to the effect to the Police that the victim was carried on a motorcycle which was found and it's backlight was found broken although the dead body was not found. This confessional statement was admissible. It is not a question whether it will aid in the conviction of the case. It is only with regard to the relevance and admissibility. He further stated that identification of an accused by a witness for the first time in Court without having a Test Identification Parade (T.I.P.) is meaningless or valueless. Subsequently the SC has rightly pointed out that it will depend upon the facts of a case. T.I.P. is never a substantive evidence and is only a part of the evidence. Substantive evidence is the evidence given by the witness in the Court stating that this is the accused. It is clear law that it shall depend on the facts of a case whether T.I.P. will be relied upon or not. T.I.P. in effect is for corroboration of evidence and if there is reason to believe that the witness is telling the truth, that evidence can be relied upon although no T.I.P. has been conducted. Another vital point is, if the statement under section 27 is not reduced into writing by a Police Officer, will it be admissible? The Gauhati High Court has taken the view that it is admissible and there is nothing in law directing it to be reduced to writing. It is

merely a caution. The value to be attached to a statement is a matter of law. As far as Judicial confession is concerned, one must understand that anyone recording a confession should bear in mind that the accused should not be under the influence of any fear, any inducement or any threat. As a caution, he must be reassured that even if he does not make a confession, he will not be handed over to the Police. Additionally the Judicial Officer has to find out if the accused is under the fear of the Police and how has this person been treated.

Mr. Ansari stated that while relying on a judgments of different Courts, one must be acquainted with the background facts of those specific cases. He discussed about a case wherein a visually impaired girl was raped by the village headman and he asked - how would one appreciate the evidence given by a such a person. He stated that appreciation of evidence given by a person who can see and one who cannot see cannot be the same. In this case which he referred, he said that her first concern would be to get out of that place without raising any commotion and attracting anybody's attention and that she belonged to a poor family. Her concern was her freedom without damage to her reputation. He informed that every human being is different and there is no uniform yardstick which can be applied for appreciating of evidence. He said that Judiciary has to evolve some principles and cannot apply its mind based on how the Officer feels. Every case is different but this does not negate the presence of law. Law has to be justified and appreciation of evidence has to be justified by law. Gauhati High Court had held that chastity of a woman is not property and since property falls within a particular chapter of Indian Penal Code (hereinafter referred to as IPC) which includes cheating, so cheating is also not possible to be committed if a girl or women acts on the promise of marriage of a boy. In this regard, definition of cheating under Section 415, IPC was referred to. Subsequently, the Division Bench overruled this judgment. Mr. Ansari opined that Section 415, IPC which deals with cheating under the chapter of 'Offences against Property', the fact remains that it does not deal with property alone. Dishonestly or fraudulently induced to give property is the first part of this section. Second part of this section states that 'which he ought to have done or not done' and which would cause harm to his or her reputation. So anything a person ought to have done or not done but for the inducement and which causes harm to his or her reputation is also covered within Section 415, IPC. The definition of 'consent' under IPC is negative in nature. It does not say what is consent. Indian Contract Act, 1872 says what is consent but IPC states what is not a 'consent'. It is important that what is consent under the IPC needs to be correctly appreciated.

Another important aspect is the appreciation of evidence of Hostile witness. The IEA does not speak about 'hostile' witness. Cross examination of a witness is wide in ambit and much more than merely asking about a previous statement.

He emphasized that the binding decisions of Courts have to be referred and cited to in the context of the facts where they were applied and not as Statutory authority. He also referred to Section 197, CrPC and said that if a Complaint is brought in without following the prerequisites of this section, the Court cannot take cognizance. When a Complaint is brought in, the Court reads the case to understand what the case is and when he issues a process, he takes cognizance. A Magistrate can record statement unless he has taken cognizance. As per the provisions of CrPC, cognizance in his opinion is taken at multiple stages during the course of the trial. He also spoke about hearsay evidence and also cited an example of what is a 'leading question'. He cautioned that the Court while exercising power under Section 165, IEA has to be doubly sure before posing the question. He referred to an example wherein a person had been charged under Section 304B and Section 498A, IPC and the evidence on record falls short of convicting him under Section 304B, then can he be convicted under Section 498A? He mentioned the SCI judgement wherein it was said that if the evidence fails to convict the accused under Section 304B IPC then the same set of evidence cannot be referred to for convicting the accused under Section 498A IPC.

He drew the attention of the audience to another important aspect of criminal trial which is Section 149, IPC. He said it is very difficult to differentiate between Section 34, IPC and Section 149, IPC and explained the difference between the two. The Court has to decide a case according to law. While discussing about culpable homicide, Section 299, IPC and Section 300, IPC, on the aspect of grave and sudden provocation he stated that there exists a certain 'cooling off' period. So the provocation has to be grave and sudden and not where a person goes home and then returns to commit the murder. He said that series of events surrounding the crime or crimes have to be considered together to ascertain the gravity and suddenness leading to a person to lose his cool. He also discussed the aspect of T.I.P. through an example and mentioned that it is important to appreciate that if the judicial system does not work properly, it will be difficult to have an appropriate Trial. It is not necessary that if a person is a Judicial Officer, he cannot commit criminal misconduct. He stated that speedy trial is good but important to note is that 'justice hurried is justice worried'. He emphasized

that is the standard of criminal trial in our country has to improve, it is not only the Police but also the Judicial Officers have to be completely trained and should be completely honest so that they do their job properly. The Prosecutors have to bring the truth before the Court. The duty of the counsel is to lay the truth before the Court. No common standard can be laid down for witnesses and everyone's evidence is important including evidence of demeanour.

The interactive discussion began after the session reconvened by 2.10 pm and was anchored towards a question posed by Mr. Nilay Dutta to the panellists if they disagreed with Just. (R) I.A. Ansari and if any, what was the issue on which he disagreed. Mr. Angshuman Bora took the lead and answered stating that he disagreed on the point of 'consent' under Section 420, IPC and regarding whether 'women' is a property. He mentioned that rather than Section 415, IPC he thinks Section 417, IPC is more relevant because it does not say about property, the section states that simply cheating without delivery of property. When women gives her consent without giving property, i.e. gives herself in, if there is cheating and her consent is taken by fraud, then also Section 376, IPC is applicable. Mr. Ansari responded and clarified that cheating is defined under Section 415, IPC. The original question to him as posed was whether anything other than property can become also subject of cheating. Language in Section 415, IPC would show that it can become subject of cheating and thereafter move on to fall in under Section 417, IPC or Section 420, IPC which in turn is a different matter. He further agreed to Mr. Bora's point that it can be covered under Section 417, IPC. To these, Mr. Ziaul Kamar added that chastity is a right of the women and nobody has the permission to ravish another's chastity. He referred to Division Bench case law that overruled a single bench judgment and clarified that chastity is a property of women.

Thereafter the forum was opened to questions from the audience. The set of questions which were posed was very wide spread around the keynote address and some of them are stated as below:

- When a person stabs another person who is walking on the road with a Dagger and flees away. Upon hearing hue and cry, the police reached the spot and the person who was stabbed was unknown to the locality where the incident happened. So no F.I.R. was filed reporting the incident. The injured subsequently dies after telling the Police about the person who stabbed him. In such a situation whether the statement of the

deceased would be written down and recorded as F.I.R. or would it be considered as a dying declaration. Also, how would the Prosecution proceed with this case.

Mr. Ziaul Kamar replied to this that the statement of the deceased can be taken into writing and made as an F.I.R. and subsequently referred to under s 32, IEA. The same can be given weightage as a dying declaration. Oral dying declaration is given consideration if found trustworthy. As such in any manner, the statement of the deceased can be taken into account in finding whether the accused is guilty or not guilty. The opinion of the Defense was also sought and Mr. Bora stated that such if a cognizable offence is reported by such statement can obviously be treated as F.I.R. Whether it can qualify as a dying declaration or not has to be looked into from the surrounding circumstances because a dying declaration requires the cause of death to be there in it. If the cause of death of the person is connected with the person who made the statement then it has to be a dying declaration and not otherwise. At this stage Mr. Dutta sought for judgment and accordingly Mr. Ansari replied that there was no clarity in the example on how the Police arrived at the scene of crime. He went on to state that the statement can be treated as First Information Report till the time it is not a murder and subsequently as the person died, it will become a dying declaration same as section 161 CrPC because under this proviso, if any statement is made by a person who subsequently dies, such a statement becomes a dying declaration.

- The next question was that in rape cases, for most cases medical evidence is given most importance. Then what is the case of medical evidence if the doctor is bribed and which will get more gravity-the medical evidence or the version of the eye witness.

Mr. Kamar responded that ocular evidence will always prevail over medical evidence. It is mere testimony and may be relied or not relied on by the Judge. He stated that such an instance is an example of sexual assault and the doctor has to specify in medical terms about the circumstances which the victim had faced. It is after that the case will be submitted as a medico-legal case. Mr. Bora stated that the medical evidence will come at a later stage and if the victim is trustworthy and reliable, then there is no necessity of supporting medical evidence. The Court will decide on the

woman's trustworthy on the basis of the appreciation of evidence, there will be no further requirement of corroboration of medical evidence.

- Proof speaks of matter and not the evidence. What all are included within 'matter' because usually proof means evidence in laymen's language. To this Mr. Ansari clarified that this means that proof speaks of matter implies that it will not be only evidence. Evidence in itself may include statement of accused, statement of defence witness of the accused, memorandum of inspection and the person becomes a witness and as such is not subjected to cross examination, many judicial decisions state that such a person cannot use his own knowledge. Mr. Kamar added in and stated that all incriminating evidence which are brought on record has to be put to the accused Court so that it can be clarified by him vis-à-vis the circumstances brought in by the Prosecution. This can be used to acquit the accused as well but not to render him guilty. He further mentioned the case of Reena Hazarika versus State of Assam as reported in AIR 2018 SC 5361 which was moved in the Supreme Court of India under the aegis of Studio Nilima. This is the leading case law at present on Section 313, CrPC statements. He went on to say that this case has laid the law that any circumstances which have not been put to the accused cannot be used against the accused. The circumstances which have been used to bring on the guilt of the accused have to be first put to the accused so that the accused can clarify his position with respect to those circumstances.
- How can one differentiate between a visually impaired person's statement and hearsay evidence. Mr. Kamar said that a visually impaired person's statement will be considered in a different manner. He stated that there are specific provisions under Section 119, IEA for deaf and dumb person. Such person can give evidence through gesture and will be interpreted with the aid of an Interpreter. He also made a reference to section 8 of the IEA which speaks of 'res gestae'. On this note, Mr. Dutta stated that the question was slightly different as it was asked what is a blind person's witness and how would such a person report to the Court. And how does the weight of evidence that comes in has to be different from the weight adduced to that of hearsay evidence. It was also noted that hearsay evidence cannot entirely go away. So similar

is the case of the blind person's witness and as everything cannot go away, ultimately it will be based on appreciation of evidence. He further said that a blind person can be a competent witness. Hearsay evidence becomes weaker as it is spoken out of knowledge whereas the blind person has knowledge based on his feelings from what he hears and or touches. Mr. Ansari further added on to say that Privy Council has made a distinction on whether it is his statement of fact or his statement of law. The first part is hearsay evidence and the later part yes it will be admissible. Finally the Judge of the Trial Court will decide what value is to be added to this judgment. With respect to a blind person, there is no impediment under the law in believing such person. What is inspired is the belief or the truth that such a person is speaking the truth. He also cautioned that belief and faith are different. Belief is reached by a process of reasoning whereas faith is not a question. By the process of rationalisation the conclusion which is reached is proof.

- On a question of how does a Judge decide which questions he ought to ask as vide the power vested on a Judge under Section 165, IEA to pose relevant question. Mr. Ansari stated that the Judge cannot ask leading questions. Such question should not be in the nature of helping any of the parties to the case in hand. Mr. Kamar added on to say that the Court should not be a mere tape recorder of evidence. Court should ask question to clear any ambiguity which may have come on record as sometimes the witnesses state different things together and thus creating ambiguity which the Judge has a right to seek clarification on by putting relevant questions. In the journey of finding out the truth and if there is contradiction of evidence by the witness, it is still permissible to allow that witness to state the reason for such discrepancies. If the Counsels do not ask, the Court cannot be debarred to seek the explanation from the witness. The rule of the Court is to discover the truth. A lengthy discussion ensued including comparison of the criminal trial under Indian law and that of the process followed in the U.S. legal system. Mr. Kamar pointed out that Section 165, IEA has a wide definition and read out the section. Referring to the interpretation of the words 'any' Mr. Dutta pointed out that an interpretation cannot be as an interference just before the judgment is about to be delivered. It cannot be allowed after the arguments have been concluded. This was further agreed to by Mr. Ansari that this has been also

pointed out in many judgments of the Supreme Court of India that while dealing with s 165 IEA, it is not for the Judge to fill up the lacunae of the Prosecution case. Mr. Bora mentioned that it is important that question ought to be put by the Judge to clarify the ambiguity.

- The next question was with respect to the provisions under Section 463, CrPC and how does Court take evidence in instances of non-compliance vis-à-vis Section 463, CrPC and can the counsel of the person who had given statement under Section 164, CrPC take an objection that this is not curable at this stage. Mr. Kamar replied stating that firstly the Defence will point it out that there is an illegality that will vitiate the trial as all the illegalities do not vitiate the Trial process. It will have to show the violations and if those violations have really vitiating and there is gross irregularity will the question of violation will come into play. The next part of the question referred to the mandatory part of Section 281, CrPC is nullified effectively by Section 463, CrPC. Mr. Kamar stated that both the sections have to be read together because section 281 lays down the procedure how the Magistrate will record and the form is given in Gauhati High Court Rules.
- Another question put forth was when does re-examination as provided under Section 137, IEA comes into play. Mr. Kamar stated that when something is somehow left behind by the Prosecution then re-examination of such witness can be done. He also mentioned that Mr. Ansari had in a case clarified the fact that once the procedure under Section 137, IEA has been followed, that is, Examination-in-chief, Cross-examination and Re-examination have been conducted, if Defense wants to further cross examine any witness, it will be termed as further Cross-examination.
- The next question was that in recent times, there have a lot of kidnapping cases being filed in the Courts. Mostly these are instances where both the boy and the girl have ran away and the family of the victim girl files the case against the boy and his family. It was sought to understand how would such instances be dealt with by the Prosecution as well as the Defense Counsel and how would the Judge decide. Mr. Kamar stated that in this part of the country he has witnessed in most of the cases that

the victim is a consenting party. The only legal aspect is the 'age' which is the crucial part because on this basis, the consent can be rendered valueless. Courts have always pointed out that the girl had the opportunity to shout or draw the attention of any bystander. It is only after the Police comes the version of the victim changes and it is stated that the person has been drugged and brought to that place. Mr. Bora stated that only difference that if the victim is a minor, the matter will be different and if she is a major, the circumstances have to be taken into consideration which the lady is narrating. It is pertinent that the witnesses and the victim have to be cross-examined on their statements. On the basis of these circumstances it can be decided whether the case is of kidnapping or not. Mr. Dutta asked about the case of Bail in such situation because trial would begin later and as the boy is arrested and put behind bars, how would the matter of Bail for arrested boy be pursued. Mr. Bora stated in such case Section 164 CrPC as directed by the Hon'ble Supreme Court of India. So Defense has to rely on Public Prosecutor whether statement under Section 164 CrPC is brought up or not. Mr. Kamar put forth a question for the members present therein to ponder on as to since statement under section 164 CrPC cannot be sought in such cases, why should a petition be not moved to change the current law refusing to provide this statement to the accused.

- The next question which was put forth dealt with the possibility of setting up of a Court above the Supreme Court of India. It is a fact that law changes according to perceptions and developments in the Society. In his keynote address, Mr. Ansari mentioned his disagreements with some of the Judgements of the Supreme Court of India. So, Mr Ansari's view on this point was sought. To this he stated that he has high regards for the SCI and its Judges. But there is a possibility that at times they may go wrong. So he said that if such an institution is set up, there will always be a possibility that it also makes an error in judgment. Adding to this Mr. Dutta stated that the issue pertaining to organisation of the SCI is being seriously considered nowadays. A proposal was moved for restructuring the entire judicial system from High Court onwards. The proposal is that SC should remain only as a Constitutional Court and will have no Appellate power. Below this Court would be five Appellate benches with three Judges each. Initially the proposal had four Appellate benches, viz. Kolkata, Delhi, Chennai and Mumbai. Subsequently, there was a demand for North

East bench and it is now under consideration. These Benches will take over the role of Appeals from the High Court Benches. Only the matters pertaining to Constitutional question of law will be taken up by the SCI. This was not appreciated by the Advocates of the SCI. Hence, this will be further debated and only then will things change. Recently, SCI has informed a few members to look into this and the views of the State Governments are also being collected.

- There was another question relating to the evidentiary value of 'Trap witness'. Mr. Kamar said that section 12 of the Prevention of Corruption Act talks about a person being caught red-handed. He explained the reason why it is termed as 'caught red-handed'. He mentioned that such witnesses are very strong witness and to break him is a tough part. The question was further added seeking to know what will happen to the case where any person is forced to take up the bribe money. To this Mr. Kamar stated that in such case the officer has to inform that he was forced to take the money. Mr. Bora stated that on the question of reliability of the trap witness, he is the most 'interested witness' in the first place. There are set procedures laid down to be followed while dealing with such witness. There is 'pre-trap' and 'post-trap' memorandum which have to be prepared in such cases. He asked if such witness is totally reliable, then why have such procedures put in place and why is there the need of Phenolphthalein powder. It is because such witness is not 'per se' reliable that these procedure has been put in place as a safeguard. Hence, Pre-trap, post-trap, Phenolphthalein powder and independent witness are necessity. Mr. Kamar added in that the above are actually corroborative evidence. Mr. Dutta clarified that in case such corroborative evidence fails, the sole witness will survive.
- Mr. Kamar posed another question asking to know that if any witness had given an implicating statement under Section 164, CrPC and later on after one year turns around and says that he was tutored to give the implicating statement, how would Court deal with it. Mr. Bora stated that in such a case, he thinks there is no necessity to cross examine such witness. Mr. Dutta sought to know whether the Court should find out why he gave a statement when he was tutored. Mr. Bora said that such a witness is not trustworthy. A further question was posed as to whether the Court should take into consideration the reasonable grounds for which there was a delay on

the part of the witness to report the fact that he was tutored to give the implicating statement under Section 164, CrPC. And it was also stated that the witness should not be totally discarded altogether. Mr. Kamar mentioned at this point that this will come into consideration during the appreciation of evidence and will be looked into by the Court. It cannot be taken in or discarded at the threshold. It was further added on that the Trial Court can examine the Magistrate who recorded the statement. Another fact is that statement under Section 164, CrPC is also exhibited. In such case, the Magistrate will have to be believed. Mr. Ansari clarified that the Magistrate does not certify to the voluntariness of the witness's statement. So there is no question of the Magistrate proving either way. Once the witness states he was tutored, there is no point in calling the Magistrate. It is a duty of the Prosecutor to seek Court's permission and examine the witness and if he is found unreliable, this in turn will aid the Defense. With respect to an independent witness, the Court has to be alert and cautious and after it is careful and cautious, it has to be convinced that the evidence given by the trap witness inspires the confidence. That is aided responsibility of the Court. On the question of kidnapping, it has to be kept in mind that kidnapping has to be from the legal guardianship and out of India. The other is abduction. Unfortunately, today Media describes both these under the head of kidnapping. In kidnapping, it has to be taking away or induced to get away. In case the boy is taken away by the girl, there is no question of kidnapping.

- The last question was regarding 'cognizance'. Police report is followed either by a Closure report or a Charge Sheet. On Closure report, Magistrate has three options : accept the closure report or take cognizance or send the matter for further investigation and as such has the scope to apply the judicial mind. Where does a Magistrate get the scope to apply his judicial mind after receiving the Charge Sheet. Mr. Ansari replied that in both warrant procedure as well as summons procedure, the Magistrate has to decide what offence has been disclosed by the investigation of the Police and accordingly will issue the process. So when the Magistrate decided to issue a process, he has applied his mind and thus taken cognizance. If after applying his mind, he thinks there is need of further investigation, the Magistrate will send the case for further investigation. In this case, cognizance is not taken. If in course and after Charge Sheet is filed, any important witness or Prosecutrix gets left out, it is the

duty of the Judge to ensure that the record is complete. He can direct that the girl be examined.

The interactive session was concluded with a note by the Anchor stating that with fresh law graduates taking up vital judicial posts, it is in a way taking away the gravity of the role and post which they move on to occupy. It becomes important to think about how can these officials be trained better to match the expectations of the respective role they take on and how to conduct themselves in the Court and go about trying offences.

Mr. Dutta thereafter offered 'Vote of Thanks' to all the participants. He notified that the Advocates had taken extra efforts to participate in the interaction and the students ought to realise the importance of the practical realities of law and this will happen once they come into the Courts. He wished them all good for their future. He further informed the audience about the upcoming Law Lecture on September 26, 2019 which will be in continuation and as a process to institutionalize the Law Lecture Series. He further thanked the entire family of Late Jatindra Mohan Chaudhuri, represented by Mr. B. M. Chaudhuri. He also spoke highly about the eminent jurist, Late Jatindra Mohan Chaudhuri. He further thanked Mr. I.A. Ansari for his presence and delivery of keynote address. He thereafter thanked Mr. Surajit Bharali who was termed as the key person and for his contributions in conducting the show endearingly.