

**P-956**



# NATIONAL JUDICIAL ACADEMY

Conference on the functioning of the  
registrar (inspection)

**23<sup>rd</sup> -25<sup>TH</sup> NOVEMBER**

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### **INTRODUCTION:-**

National judicial academy organized the national conference of the registrar inspection on the November 23<sup>rd</sup> to 25<sup>th</sup> , 2015. 19 representatives from the various states across the country participated in the conference Each day was divided into four sessions in which different functions which the registrar has to do and how they should be discussed and debated, some of the problems faced by them were brought in front of court. Different kind of movies were shown to do the same. Each day one session was being taken by the resource person. Former Gujarat high court judge Justice R.R.Tripathi, Justice R.S.Chavan, Justice H.C. Upadhyaya, Dr. Parul Rishi are among the few who guided the session. Another exercise in the evening was introduced which was to watch movies and to discuss over the same law related movies welfare related movies the judge, and the movie officially nominated from the India to the Oscar “the court” were shown.

Prof(Dr) Geeta Oberoi, director in charge of the national judicial academy gave warm welcome and brief introduction on all the sessions and deliberated on the objective of the conference. Prof(Dr)Geeta Oberoi, deliberated on the importance of role of registrar inspection what are their functions what are the challenges they are facing and what are there experience . She introduced the distinguished speakers of the day. A brief introduction was given by the participants as well. After a warm welcome they were requested to open the first session of the conference.

Day 1

Session 1 : 9:00 AM-10:00 AM :

Topic :- OBJECTIVEE AND EXPECTATION OF THE CONFERENCE

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The session was initiated by Prof(Dr) Geeta Oberoi by asking the participants that how do they feel as a registrar while working, what are the basic problems which they are facing, what kind of the challenges they are facing and how well they themselves believe that they are doing justice with their jobs. The participants had put for worth the following points at the same time there solutions were also soughed out:-

- 1.) Registrar inspection is used as a residuary department: - all the participants unanimously concluded that this is the post which is observed by other as a post where no work is there and hence any kind of work which other department are reluctant to take are given to them, there is a need that such perception must be changed that only check over the judiciary is done by this department.

- 2.) Overburdening of the work:- due to considering the department as residuary much of the workload is shifted to them, secondly there are many committees which are made under the high court and almost every time the work is being delegate to the registrar inspection section
- 3.) No specified area to work upon:- the speaker is of the opinion that they have to inspect district courts, sessions court, they have to take departmental action, at the same time they are also the first appellate authority under the RTI act, but these are the basic areas otherwise they have not specified areas to work upon. In the different states and according to the different circumstances they are being given work there is no criteria on the basis of which work is done.
- 4.) Few of the examples were discussed below are :-
  - a.) The participants from the Kerala told that in there respective high court they are having six different type registrar and they meet on the daily basis to each other as well as chief justice and they share each other's work so as if the above two problem are not taking place there.
  - b.) The participants from the Andra Pradesh high court has told that in there state there is no specific work or the post of registrar inspection rather such work is being delegated to the district judges. He also told that
- 5.) Meaning of the work inspection :- the whole discussion was moved on the issue that what are the work of the registrar inspection and some of them as stated are as bellow:-
  - a.) Finding fault in the working of the lower judiciary
  - b.) Portfolio works
  - c.) To study the judgments of the judicial officer
  - d.) To compartmentalize the work

For all those things according to the panel the participant must develop the having of being vigilant in their work they must understand that the work they are doing is to be done by the team and at the same time it must not also get compartmentalize.

- 6.) Judicial work v inspection work :- two points discussed under this ; the participants were motivated by stating that they must not think that they will be posted back in the field with their brother judges and thus so they must not take action on them rather it is the justice they are serving not there brother judges secondly they must also work to make the judiciary there respective jurisdiction upright by taking cognizance of the cases which are taking a lot of time in the court they must insist the judicial officer to solve the case on a day-to-day basis.
- 7.) Inspection questionnaire:- the participant from the Bombay high court stated that they have prepared a questionnaire in which they have referred top all the possible points on which the registrar inspection has to look on and then they are circulating those question and accordingly they are having a quick response, the questionnaire are on the following points:-
- a.) Performance of the stenographer
  - b.) Requirement of the infrastructure like building stationary and so on
  - c.) Judicial branch
  - d.) Administrative branch
- 8.) Cut copy paste of the old reports :- the participants were told by the panel that there is a old habit of copying from the older reports of the judicial officer and then pasting it as it is, they must refrain themselves from doing so as they must understand that on their shoulder it is the accountability of the judiciary which is placed in which a grave trust is posed by the people and they must respect that trust the people has posed and must always make a fresh report on the judicial officers.
- 9.) Non utilization of the funds :- they stated that the ministry of law has asked a budget and the same was given to them by the ministry of the finance and the amount was 5000 crore rupees and they have given back to them around 4200 crore as unspent and still they are complaining of the infrastructure, it is a serious question which must be dealt by the judiciary and a s a registrar inspection it is their duty to locate in the lower judiciary the need of the infrastructure by asking to the concerned judicial officer and must

acknowledge to the judicial officer that they must utilize the fund whenever they would be coming.

- 10.) Experience of the participants when they themselves were in the field :- the participants were asked by the director that what preparations do they used to make when they were in the field for the inspection teams; they replied that when they were in the field they were given notice of their coming then they use to provide them with the documents which they asks for, the stationary, computer and sometimes their staff also but now time has changed the inspection committee has become technical and they only things which are being taken care off when they would be visiting the area is only dinning and the accommodation.
- 11.) ACR: - the participant were told by the panel that they must take the work of writing the ACR seriously.
- 12.) Briefing by the inspecting judges: - as a inspecting judge they must always have a briefing i.e. the kind of direction they would be giving in accordance with the situations, the critical documents which must be looked for and so on. At the same time they must also see that if the mistake pointed out by them is rectifiable or not if it is then it must be corrected at that very step or otherwise must be reported
- 13.) Example of the Bombay high court: - the participant told that a budget section must in the office of the inspection judge so that there conflict of interest do not get entangled.
- 14.) Encouragement by the panelist :- the panelist told to the participant that once there was an officer who was district and session judge who was very hard working, intelligent, having an outstanding work ability and dedication towards the work because of these qualities he was called up by the high court and he was requested to become the registrar inspection, he has not done that kind of job but with his strong determination he was able to get the requirement of the job and was performing accordingly and at the last he was made a high court judge. Thus the hidden agenda of this conference is that the participant must inculcate a firm determination to do work and understand that they are special that's why they are being selected to the post of the registrar inspection.

Day 1

Session 2: 10:30AM-11:30AM

Session 3: 12:00AM-1:00AM

Speaker:-Michele Mendonca

Topic: -a.) Locus of Control: Skill Building

b.) Paradigm Shift: Skill Building

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Following are the points on which the speaker has deliberated:-

- 1.) Leader: - the leader must be a person who is well managed and having a vision of the future and all the circumstances must be in his control to get the desired result. The leaders are the person who take the charge of the circumstances, they never feel helpless in any of the given circumstances. Thus a trust is posed in the leader. In the same way the trust is posed in the judiciary by the people to do justice and accordingly they must inculcate habit of the leader. In the eyes of layman the judges are their leader thus to do justice they must take charge of the circumstances they must not feel helpless they are the leader they always have to give direction and thus they must imbibe the qualities of the leader. At the same time they must also understand that at the stature of their post they must understand that higher the post the higher the qualities of the leader the person must possess and is asked for.
- 2.) Controlling of the circumstances:- the successful person may not be well managed but a well-managed person can become successful and a person can become well managed person if he is controlling the circumstances around him an instance is being discussed by the speaker that in one of the court in the Bombay at 10:55 there would be a lot of advocate, witness running towards that court as the judge there was not in habit of postponing the work he was never in the habit of waiting for the witness: he is of the opinion that if the witness or the evidence is called out it must be there otherwise he used



to dismiss the matter accordingly and thus nobody use to take risk in his court in the same way the leaders control the circumstances in the court and it is the duty of the of the participants to inculcate such habits.

- 3.) Objective of the lecture :- the speaker told that the objective of the lecture is three folded and which is :-
  - a.) Double loop- thinking
  - b.) Paradigm shift
  - c.) More control over the circumstances
- 4.) Control over certain circumstances: - the simple formula according to the speaker to control the circumstances are the urge to do a thing differently, backed by the will power, and firm determination and that's it.

After the deliberation the resource person made participants to perform following four exercises:-

- 1.) Exercise 1: are you master of your facts?

Under this exercise the participants were divided into four groups and two groups were made to watch one movie in which it was shown that in the country of Israel which is the gulf although it is not having any oil and is fully desert have find the technology to do a fish farming which is a commendable job they have found out that the saline water under the desert is very beneficial for the fish farming as it is warm and saline and at the same time they are also breeding the fishes which can become the food of the other species

The other two group were shown that in the same country through drip irrigation they have also started the agriculture and they are producing in an good amount: the writer asked the participants to select among themselves a person who will answer two

question and prior doing that they must discuss the question among themselves. The two question are as follows:-

- a.) What are the two kind of ways in which the Israeli may have reacted?
- b.) Why did they respond in the way they did?

The groups has mad the following points:-

Group no.	Observations
1.) Story of fish farming in the desert	The group told that the first option was that they would have not done anything as fish farming in the desert is not possible. The have the second option of whatever the result may be they must try to do fish farming in the area and they have opted for the second. At the last it was the need or the urge to do the thing which has made possible for them to develop fish forming in the desert
2.) Story of fish farming in the desert	The first view that the must be having was that they must be possessing the extreme determination to do that thing or rather they would have sit by seeing the adverse circumstances and it is their determination which has worked for it
3.) Story of agriculture in desert	The one option with them was to think of the negative conditions they are facing that there is the only country in the gulf not having oil how would they survive but they have surmounted the problem by application of the human mind and then doing innovation
4.) Story of agriculture in desert	They do not have circumstances in their favor, they could have given the excuse of the bad luck but they have set out the decision first that they will do agriculture in that area and then they have work accordingly and they have succeeded.

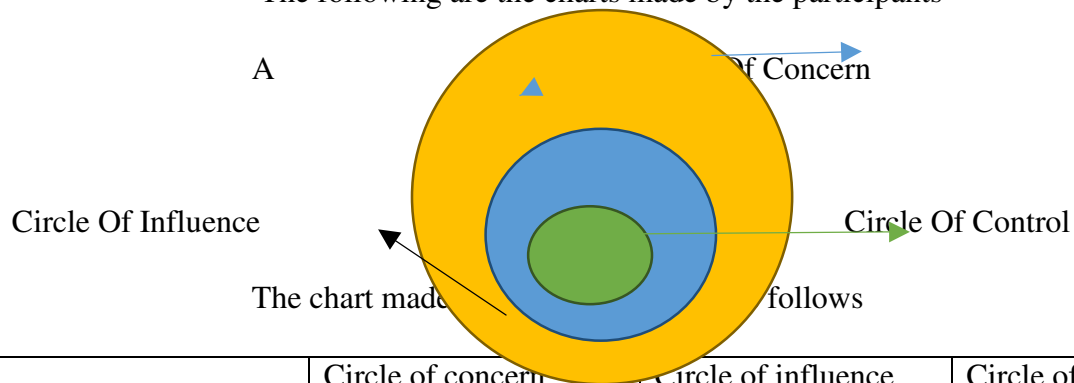
2.) Exercise 2: Location of problem:- the speaker is of the view that there are three things in our life and they are

- a.) Things or work about which we are concern
- b.) Things or work about which we can influence
- c.) Things or work about which we can control

The speaker asked the participants to take up three topics and determine the reason for the problem faced under the topic and decide whether they must take concern of it or not secondly whether they can exercise influence over them and solve them or they can control such problems and they were asked to make a chart of the same. The very essence of the exercise is to determine that we are capable of classifying our problem and we must classify them in the following respect and workout. The topics chosen by the participants are as follows:-

- a.) Backlog and number of cases.
- b.) Manpower and staff issue
- c.) Infrastructure and space

The following are the charts made by the participants



	Circle of concern	Circle of influence	Circle of control
Group 1 .) Backlog and number of cases.	<ul style="list-style-type: none"> <li>• Legacy of number of cases</li> </ul>	<ul style="list-style-type: none"> <li>• They can influence the creation of the</li> </ul>	<ul style="list-style-type: none"> <li>• Large number of cases cab be solved out</li> </ul>

	<ul style="list-style-type: none"> <li>• Vacancy in the courts</li> <li>• Creation of the courts</li> <li>• Shortage of manpower</li> <li>• Noncooperation of lawyer</li> <li>• Lack of infrastructure</li> </ul>	<p>courts by asking to the respective senior officer.</p> <ul style="list-style-type: none"> <li>• They can coordinate the problem of the noncompliance of lawyer with the bar and can sought it out</li> <li>• Filling up of the post by promotion or selection can be done to fill up the post</li> <li>• Infrastructure can be maintained</li> </ul>	<p>with the help of the technology we possess and which earlier was not there.</p> <ul style="list-style-type: none"> <li>• Selection or appointment of the officer can be made</li> </ul>
Group2 .) Manpower and staff issue	<ul style="list-style-type: none"> <li>• Sufficient budget of the sufficient courts</li> <li>• Behavior of the bar</li> </ul>	<ul style="list-style-type: none"> <li>• Bar member can be persuaded by different measure</li> </ul>	<ul style="list-style-type: none"> <li>• Assignment of work to the staff and training them</li> <li>• Training of the staff can be done</li> </ul>
Group 3 .) Infrastructure and	<ul style="list-style-type: none"> <li>• Availability of</li> </ul>	<ul style="list-style-type: none"> <li>• Budget can be</li> </ul>	<ul style="list-style-type: none"> <li>• It is totally of</li> </ul>

space	land/building <ul style="list-style-type: none"> <li>• Computers, stationary, records</li> <li>• Facilities for the litigants</li> <li>• Furniture problem and so on</li> <li>• Budget problem</li> </ul>	influenced from the collector or the local politician in the way of donation from the development fund which they receive <ul style="list-style-type: none"> <li>• Computer, stationary etc can be arranged of</li> </ul>	the will of the concern officer to look at the availability of the land and building if he wishes so he can find it <ul style="list-style-type: none"> <li>• Facilities of the litigant can be taken care</li> </ul>
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Exercise 3: Discussion on the case :- the participants are required to read an abstract from the case *Akil @ Javed vs State Of Nct Of Delhi*<sup>1</sup> and which is as following “Under Section 309 of Cr.P.C. falling under Chapter XXIV it has been specifically stipulated as under:

“309. Power to postpone or adjourn proceedings.—(1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

Provided that when the inquiry or trial relates to an offence under Sections 376 to Section 376 D of the Indian Penal Code (45 of 1860), the inquiry or trial shall, as

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<sup>1</sup> (2013)7SCC125

far as possible, be completed within a period of two months from the date of commencement of the examination of witnesses.

(2) If the court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.

Explanation 1 – If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence and it appears likely that further evidence may be obtained by a remand this is a reasonable cause for a remand.

Explanation 2 – The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.”

27. In this context it will also be worthwhile to refer to a circular issued by the High Court of Delhi in Circular No.1/87 dated 12th January 1987. Clause 24A of the said circular reads as under:

“24A disturbing trend of trial of Sessions cases being adjourned, in some cases to suit convenience of counsel and in some others because the prosecution is not fully ready, has come to the notice of the High Court. Such adjournments delay disposal of Sessions cases.

The High Court considers it necessary to draw the attention of all the Sessions Judges and Assistant Sessions Judges once again to the following provisions of the Code of Criminal Procedure, 1973, Criminal Rules of Practice, Kerala, 1982 and Circulars and instructions on the list system issued earlier, in order to ensure the speedy disposal of Sessions cases.

1.(a) In every enquiry or trial, the proceedings shall be held as expeditiously as possible, and, in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. (Section 309 (1) CrI.P.C.).

(b) After the commencement of the trial, if the court finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable. If witnesses are in attendance no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded, in writing. (Section 309 (2) Cr.P.C.).

2. Whenever more than three months have elapsed between the date of apprehension of the accused and the close of the trial in the Court of Sessions, an explanation of the cause of delay, (in whatever court it may have occurred) shall be furnished, while transmitting the copy of the judgment. (Rule 147 CrI. Rules of Practice).

3. Sessions cases should be disposed of within six weeks of their institution, the date of commitment being taken as the date of institution in Sessions Cases. Cases pending for longer periods should be regarded as old cases in respect of which explanations should be furnished in the calendar statements and in the periodical returns. (High Court Circular No. 25/61 dated 26th October 1961).

4. Sessions cases should be given precedence over all other work and no other work should be taken up on sessions days until the sessions work for the day is completed. A Sessions case once posted should not be postponed unless that is unavoidable, and once the trial has begun, it should proceed continuously from day to day till it is completed. If for any reason, a case has to be adjourned or postponed, intimation should be given forthwith to both sides and immediate steps be taken to stop the witnesses and secure their presence on the adjourned date.

On receipt of the order of commitment the case should be posted for trial to as early a date as possible, sufficient time, say three weeks, being allowed for securing the witnesses. Ordinarily it should be possible to post two sessions cases a week, the first on Monday and the second on Thursday but sufficient time should be allowed for each case so that one case does not telescope into the next. Every endeavor should be made to avoid telescoping and for this, if necessary, the court should commence sitting earlier and continue sitting later than the normal hours. Judgment in the case begun on

Monday should ordinarily be pronounced in the course of the week and that begun on Thursday the following Monday. (Instructions on the list system contained in the O.M. dated 8th March 1984).

All the Sessions Judges and the Assistant Sessions Judges are directed to adhere strictly to the above provisions and instructions while granting adjournments in Sessions Cases.

28. In this context some of the decisions which have specifically dealt with such a situation which has caused serious inroad into the criminal jurisprudence can also be referred to. In one of the earliest cases reported in Bari Prasad V. Emperor - (1912) 13 Crl. L.J. 861, a Division Bench of the Allahabad High Court has stated the legal position as under:

“...Moreover, we wish to point out that it is most inexpedient for a Sessions trial to be adjourned. The intention of the Code is that a trial before a Court of Session should proceed and be dealt with continuously from its inception to its finish. Occasions may arise when it is necessary to grant adjournments, but such adjournments should be granted only on the strongest possible ground and for the shortest possible period.....

(Emphasis added)

29. In a decision reported in Chandra Sani Jain and others V. The State -

1982 Crl. L.J. NOC 86 (ALL) a Single Judge has held as under while interpreting Section 309 of Cr.P.C.

“Merely because the prosecution is being done by C.B.I. or by any other prosecuting agency, it is not right to grant adjournment on their mere asking and the Court has to justify every adjournment if allowed, for, the right to speedy trial is part of fundamental rights envisaged under Art. 21 of the Constitution, 1979 Cri LJ 1036 (SC), Foll.”

(Emphasis added)

30. In the decision reported in The State V. Bilal Rai and others - 1985 Crl. L.J. NOC 38 (Delhi) it has been held as under:

“When witnesses of a party are present, the court should make every possible endeavor to record their evidence and they should not be called back again. The work fixation of the Court should be so arranged as not to direct the presence of witnesses whose



evidence cannot be recorded. Similarly, cross-examination of the witnesses should be completed immediately after the examination in chief and if need be within a short time thereafter. No long adjournment should be allowed. Once the examination of witnesses has begun the same should be continued from day to day.” (Emphasis added)

31. In the decision reported in Lt. Col. S.J. Chaudhary V. State (Delhi Administration) - (1984) 1 SCC 722, this Court in paragraphs 2 and 3 has held as under:

“2. We think it is an entirely wholesome practice for the trial to go on from day-to-day. It is most expedient that the trial before the Court of Session should proceed and be dealt with continuously from its inception to its finish. Not only will it result in expedition, it will also result in the elimination of man oeuvre and mischief. It will be in the interest of both the prosecution and the defense that the trial proceeds from day-to- day. It is necessary to realize that Sessions cases must not be tried piecemeal. Before commencing a trial, a Sessions Judge must satisfy himself that all necessary evidence is available. If it is not, he may postpone the case, but only on the strongest possible ground and for the shortest possible period. Once the trial commences, he should, except for a very pressing reason which makes an adjournment inevitable, proceed de die in diem until the trial is concluded.

3. We are unable to appreciate the difficulty said to be experienced by the petitioner. It is stated that his Advocate is finding it difficult to attend the court from day-to-day. It is the duty of every Advocate, who accepts the brief in a criminal case to attend the trial from day-to- day. We cannot over-stress the duty of the Advocate to attend to the trial from day-to-day. Having accepted the brief, he will be committing a breach of his professional duty, if he so fails to attend. The criminal miscellaneous petition is, therefore, dismissed.” (Emphasis added)

32. In a recent decision of the Delhi High Court reported in State V. Ravi Kant Sharma and Ores. - 120 (2005) DLT 213, a Single Judge of the High Court has held as under in paragraph 3:

“3. True the Court has discretion to defer the cross- examination. But as a matter of rule, the Court cannot orders in express terms that the examination-in-chief of the witnesses is recorded in a particular month and his cross-examination would follow in particular subsequent month. Even otherwise it is the demand of the criminal jurisprudence that criminal trial must proceed day-to-day. The fixing of dates only for examination-in-

chief of the lengthy witnesses and fixing another date i.e. 3 months later for the purposes of cross-examination is certainly against the criminal administration of justice. Examination-in- chief if commenced on a particular date, the Trial Judge has to ensure that his cross-examination must conclude either on the same date or the next day if cross-examination is lengthy or can continue on the consecutive dates. But postponing the cross- examination to a longer period of 3 month is certainly bound to create legal complications as witnesses whose examination-in- chief recorded earlier may insist on refreshing their memory and therefore such an occasion should not be allowed to arise particularly when it is the demand of the criminal law that trial once commence must take place on day-to-day basis. For these reasons, the order passed by the learned Additional Sessions Judge to that extent will not hold good in the eyes of law and therefore the same is liable to be set aside. Set aside as such. Learned Additional Sessions Judge should refix the schedule of dates of examination of prosecution witnesses and shall ensure that examination-in-chief once commences cross-examination is completed without any interruption.” (Emphasis added)

33. In a comprehensive decision of this Court reported in State of U.P. V. ShambhuNath Singh and others - (2001) 4 SCC 667 the legal position on this aspect has been dealt with in extenso. Useful reference can be made to paragraphs 10, 11 to 14 and 18:

“10. Section 309 of the Code of Criminal Procedure (for short “the Code”) is the only provision which confers power on the trial court for granting adjournments in criminal proceedings. The conditions laid down by the legislature for granting such adjournments have been clearly incorporated in the section. It reads thus:

309.

11. The first sub-section mandates on the trial courts that the proceedings shall be held expeditiously but the words “as expeditiously as possible” have provided some play at the joints and it is through such play that delay often creeps in the trials. Even so, the next limb of the sub-section sounded for a more vigorous stance to be adopted by the court at a further advanced stage of the trial. That stage is when examination of the witnesses begins. The legislature which diluted the vigor of the mandate contained in the initial limb of the sub-section by using the words “as expeditiously as possible” has chosen to make the requirement for the next stage (when examination of the witnesses has started) to be quite stern. Once the case reaches that stage the statutory command is that such examination “shall be continued from day to day until all the witnesses in

attendance have been examined”. The solitary exception to the said stringent rule is, if the court finds that adjournment “beyond the following day to be necessary” the same can be granted for which a condition is imposed on the court that reasons for the same should be recorded. Even this dilution has been taken away when witnesses are in attendance before the court. In such situation the court is not given any power to adjourn the case except in the extreme contingency for which the second proviso to sub-section (2) has imposed another condition, “provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing”.

(emphasis supplied)

12. Thus, the legal position is that once examination of witnesses started, the court has to continue the trial from day to day until all witnesses in attendance have been examined (except those whom the party has given up). The court has to record reasons for deviating from the said course. Even that is forbidden when witnesses are present in court, as the requirement then is that the court has to examine them. Only if there are “special reasons”, which reasons should find a place in the order for adjournment, that alone can confer jurisdiction on the court to adjourn the case without examination of witnesses who are present in court.

13. Now, we are distressed to note that it is almost a common practice and regular occurrence that trial courts flout the said command with impunity. Even when witnesses are present, cases are adjourned on far less serious reasons or even on flippant grounds. Adjournments are granted even in such situations on the mere asking for it. Quite often such adjournments are granted to suit the convenience of the advocate concerned. We make it clear that the legislature has frowned at granting adjournments on that ground. At any rate inconvenience of an advocate is not a “special reason” for bypassing the mandate of Section 309 of the Code.

14. If any court finds that the day-to-day examination of witnesses mandated by the legislature cannot be complied with due to the non-cooperation of the accused or his counsel the court can adopt any of the measures indicated in the sub-section i.e. remanding the accused to custody or imposing cost on the party who wants such adjournments (the cost must be commensurate with the loss suffered by the witnesses, including the expenses to attend the court). Another option is, when the accused is absent and the witness is present to be examined, the court can cancel his bail, if he is on bail (unless an application is made on his behalf seeking permission for his counsel

to proceed to examine the witnesses present even in his absence provided the accused gives an undertaking in writing that he would not dispute his identity as the particular accused in the case).

18. It is no justification to glide on any alibi by blaming the infrastructure for skirting the legislative mandates embalmed in Section 309 of the Code. A judicious judicial officer who is committed to his work could manage with the existing infrastructure for complying with such legislative mandates. The precept in the old homily that a lazy workman always blames his tools, is the only answer to those indolent judicial officers who find fault with the defects in the system and the imperfections of the existing infrastructure for their tardiness in coping with such directions.” (Emphasis added)

34. Keeping the various principles, set out in the above decisions, in mind when we examine the situation that had occurred in the case on hand where PW.20 was examined-in-chief on 18.09.2000 and was cross examined after two months i.e. on 18.11.2000 solely at the instance of the appellant’s counsel on the simple ground that the counsel was engaged in some other matter in the High Court on the day when PW.20 was examined-in-chief, the adjournment granted by the trial Court at the relevant point of time only disclose that the Court was oblivious of the specific stipulation contained in Section 309 of Cr.P.C. which mandate the requirement of sessions trial to be carried on a day to day basis. The trial Court has not given any reason much less to state any special circumstance in order to grant such a long adjournment of two months for the cross-examination of PW.20. Everyone of the caution indicated in the decision of this Court reported in *Radio Sharma V. State of Bihar - 1998 Curl. L.J. 4596* was flouted with impunity. In the said decision a request was made to all the High Courts to remind all the trial Judges of the need to comply with Section 309 of the Code in letter and spirit. In fact, the High Courts were directed to take note of the conduct of any particular trial Judge who violates the above legislative mandate and to adopt such administrative action against the delinquent judicial officer as per the law.

35. It is unfortunate that in spite of the specific directions issued by this Court and reminded once again in *ShambhuNath (supra)* such recalcitrant approach was being made by the trial Court unmindful of the adverse serious consequences affecting the society at large flowing therefrom. Therefore, even while disposing of this appeal by confirming the conviction and sentence imposed on the appellant by the learned trial Judge, as confirmed by the impugned judgment of the High Court, we direct the

Registry to forward a copy of this decision to all the High Courts to specifically follow the instructions issued by this Court in the decision reported in Rajdeo Sharma (supra) and reiterated in ShambhuNath (supra) by issuing appropriate circular, if already not issued. If such circular has already been issued, as directed, ensure that such directions are scrupulously followed by the trial Courts without providing scope for any deviation in following the procedure prescribed in the matter of a trial of sessions cases as well as other cases as provided under Section 309 of Cr.P.C. In this respect, the High Courts will also be well advised to use their machinery in the respective State Judicial Academy to achieve the desired result. We hope and trust that the respective High Courts would take serious note of the above directions issued in the decisions reported in Rajdeo Sharma (supra) which has been extensively quoted and reiterated in the subsequent decision of this Court reported in ShambhuNath (supra) and comply with the directions at least in the future years.

3.) Exercise 4:Test:-

A test was conducted to see whether there is internal locus of control in the person or the external locus of control. It was told as a judicial officer a person must have a internal locus of control otherwise he will be moved by the others and the test is as following:-

Day 1

Session 4: 02:00 PM-03:00 PM

Speaker: - Mr. Rakesh Jain (Deputy Comptroller and Auditor General)

Topic: - Financial Audit

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The speaker initially told that his presentation is divided into eight parts and in the same line of progression he conducted the session:-

- 1.) Internal control:-it includes the fulfillment of the obligation which is being put up on the shoulder by the institution it means that the person must comply law and regulation and must execute the audit orderly, in an ethical way, in an economical and effective way, he advised that they must have a reasonable assessment before going on for the adults.
- 2.) Internal audit:- it is the best way in which internal control can be examined by the senior management concerning the effectiveness of the of the control system and in the way to check the accountability of the system.
- 3.) Types of audit :-he told that there are three types of the audit
  - a.) financial audit
  - b.) operational audit
  - c.) departmental audit
- 4.) Financial audit:-according to the speaker it helps the senior officer to gave an opinion to the auditor's final opinion. They are always made with the purpose of a specific area so that the accounts of the government is prepared and presented properly. Its main components is books of accounts and the basic completeness of the account books is financial statement but one must maintain the accuracy of the book properly, there must be adequacy of disclosure compliance of the orders, appropriation or re-appropriation of the reports and at the last surrender of the unspent funds.
- 5.) Compliance :- it is basically the transaction relating to the expenditure they must be done according to the rule governing them, the work done must be complied according to the rules laid down for the drawing of money and handling of the cash which are made according to the proper establishment, it must also include the contingency expenditure, and it must possess the following points
  - a.) Receipts of the goods procured

- b.) Receipt of the creation of the asset
- c.) Safe custody of the money
- d.) Physical verification
- e.) Standard of the financial property

The speaker is of the view that no authorities should use the money for their own benefit except the TA,DA amount, it is the public money and must be given utmost care and before going for the accounts of the work the officer must take an expected expenditure according to the situation which is demanding.

- 6.) Mandate and role of CAG:-The Comptroller and Auditor General (CAG) of India is a power, built up by the Constitution/Part V .Comptroller and Auditor-General of India, reviews all receipts and use of the Government of India and the state governments, including those of bodies and powers significantly financed by the administration. The CAG is additionally the outside examiner of Government-claimed organizations and behaviors supplementary review of government organizations, i.e., any non-saving money/non-insurance agency in which union governments have a value offer of no less than 51 for each penny or backup organizations of existing government organizations. The reports of the CAG are mulled over by the Public Accounts Committees (PACs) and Committees on Public Undertakings (COPUs), which are extraordinary boards of trustees in the Parliament of India and the state lawmaking bodies. The CAG is additionally the leader of the Indian Audit and Accounts Department, the issues of which are overseen by officers of Indian Audit and Accounts Service, and has more than 58,000 workers the nation over. The CAG is specified in the Constitution of India under Article 148 – 151

7.) Important finding from the Justice V. Ramaswami case<sup>2</sup>:- he wanted to share some of the important findings in the case and told that the judges are more accountable to the society and hence the procedure for their examination must be very strict and he told that the committee formed for the investigation of the case has taken up the following points for their consideration:-

- a.) Extra and wasteful expenditure on the furniture, in furnishing of the electric appliances
- b.) Purchasing of the carpet by the favored dealer
- c.) Huge payment of the residential phones
- d.) Non payment of the rent on the excess use of the articles
- e.) Out of turn promotion in the lower staff
- f.) Non-observance of the procedure and the approval authority.

Day 2



Session 5 : 9:00AM-10:00AM

Speaker :-Justice R.R.Tripathi, Justice R.S. Chavan

Topic :- Judicial Audit

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The session was initiated by the speaker by stating that there is no right for all right and there is no wrong for all wrong, thus there is a need to have a internal check in the judiciary which is there to maintain the accountability of the institution as well as safeguard itself from the overreach of the legislative examination. Thus judicial audit is the basic point which must be understood by each judicial officer and must be taken up by them seriously, he discussed the following points in the discussion :-

- 1.) Judicial audit for smooth functioning :-to make the judicial more smooth it is very necessary that the judicial officer must be acknowledged of their work and the wrong done by them must be punished then only they will become accountable, but the first step is to find the limit of the of the term judicial audit i.e. we must locate certain limits up to which a judge may be made accountable for and the limits must be limited to the judicial work of the officer.
- 2.) Scrutiny of the judges:- earlier there was a syndrome according to the judiciary that was known as “touch me not “syndrome and the judges are always above the scrutiny but it is not so now due to the prevailing of the transparency the judicial work, judgment rendered by the judges can be made to be scrutinized.
- 3.) It is not a ritualistic part:-judicial audit is not like a ritual which must be done in whatever way the speaker recited the story of the Birbal in which he was asked by the king that how many crows are there in the capital of Delhi he immediately tells that there are 20345 crows as he was knowing that who will be going to check it in the same way the judges are also making the judicial audit that who is going to check it but this practiced must be stopped and they must get the harness of the bull in their hands and to see that the bull is going in the right direction thus they must take the job of doing the judicial audit

seriously it is not a ritualistic job rather it is a mechanism by which the essential feature of the judge that is integrity is checked upon. To see that mediocrity is not raised it is there duty to see that the discrepancy is exposed.

- 4.) Need to strengthen the judiciary internally:- the judiciary has to do twofold jobs that are to maintain its independence and to have a check over its officer and the only way to fulfill this task is to have an internal check but this check must not be done in a causal way.
- 5.) Preparation before going to the inspection:- the speaker is of the view that it is their duty to see that when they are going for the inspection then they must prepare themselves first as it will do two things that are firstly it will save the time of their inspection their physical inspection will get reduced. They would be able to devote time on the other side.
- 6.) Summon is order:- people are always in a habit to give reasons for their absence in the court but they must understand that summon is the order of the court. It must be the first priority in concern with any other work. And the judge's must also see that the reputation of the judge is being made only when it is perceived by the people that he is a judge who is not going to adjourn the matter.
- 7.) Constitutional obligation to administer the lower courts
- 8.) Example:- once, there was a person from Kerala and he was told that he'll get rid of all his sins if he takes a bath in river ganga. He started moving towards north and he first reached river knavery and took a bath there, believing it to be ganga. But when he was told the truth, he ganga continued his journey and on his way, took a bath in every river that came across his way. Finally, when he reached the banks of river ganga, he died.  
  
When he was taken to the almighty, he told that he must be punished for his sins, as he was not able to take a bath in river ganga. But the god told him that it was his determination and the path that he took, which washed away all his sins.
- 9.) Memo reading: the memo reading must not be ritualistic. It is the basic criteria, on which the integrity of the judge can be tested.

- 10.) Going to the house of the officer concerned in the judicial inspection: while preparing the judicial audit of a particular judicial officer, the concerned inspecting judge must go to that judge's house, as it will help him to know the conduct, the lifestyle, of the judge. He must not be under the impression that by having a cup of coffee, or a toast of bread, he would be bribed. Rather, going to that judge's residence, he'll be able to determine his conduct.
- 11.) Going to the bar to understand the practical situations: the inspecting judge must always go to the concerned bar, and must interact with the people so that he gets to know about the problems.
- 12.) Destination is not known to the registrar inspection as it is the administrative post: the post of an inspecting judge is an administrative one. And in this, the destination to be reached is unknown, only the procedure has to be duly followed. It would be incorrect to say that the procedural laws have not vested rights in them. And these are the procedures that would determine the integrity of a judge.

Day 2

Session 6: 10:30AM-11:30AM

Speaker :-Justice R.R.Tripathi, Justice R. S Chavan

Topic :- Administrative Audit

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The discussion is being summarized as follows :-

- 1.) Expiation of the bar from the judge :- the judges expected to be "MaryadaPurushottam", and that he has directly come from the heaven. He is supposed by the people to be knowing all the laws. But this is not so. The judge is also a human being and he can also make mistakes. There is a big difference between

a mischief and a mistake. The judge must be determined to impart justice, and this quality would help him to fulfill the expectation of the people, to an extent.

- 2.) Honest and experience must be respected :- there is a story in which a son asked his father that whether the father is always right. The father replied that he's not always right but he's having more experience of being right. In the same way, the inspecting judge is always having more experience and the honesty which is reflected from his work on the basis of which, he's made the inspecting judge. And he must not any kind of inferiority complex about it.
- 3.) Inspection is done to educate the judges :- in this regard an abstract from the reading material was read over by the speaker which is as "Another purpose of such inspection is to find out disposal of the court proceedings and the administrative files in accordance with law and procedure, punctually and efficiently. In that process, if defects and errors are detected, then they are to be corrected after taking note of the relevant provision of law or the rules prescribed by the High Court. In other words, the inspection provided in the G.R. & C.O. intends to educate Judicial Officers and the chief ministerial officers of the manner in which the judicial and administrative files are to be dealt with and to follow such law and the rules, so that both transparency and efficiency are exhibited. Power of superintendence of the High Court by regular inspection comes over and above the aforesaid rules for inspection by the Presiding Officers of each of the subordinate courts and also by the District and Sessions Judge and the Chief Judicial Magistrate, so as to find out if the subordinate courts and the tribunals were functioning within its jurisdiction are following the law and the rules and discharging their duties as per law and the rules and that too with proper responsibility. "
- 4.) Affirmative role: The inspective judges play a very affirmative role by keeping a check upon the conduct of the judges.
- 5.) Need of court staff:- in the following topic an abstract from the reading material was used:- "Court management cannot succeed without the support of the court staff and its registry. Thus, Presiding Judge must always maintain the decorum of the court and never create tension in the minds of court staffs. Tension inflicted on the staff would

not only cause them to commit repeated mistakes but the records will become unmanageable. There is a great adage. “It is nice to be important, but it is more important to be nice.” This must be your coat of arms when you are in the court or in the court office. ”

Day 2

Session 7: 12:00PM-01:00PM

Speaker :-Justice R.R.Tripathi, Justice R.S. Chavan

Topic :-Compliances of deficiencies//verification /Follow-up action

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The discussion took over the following points :-

- 1.) Bonafide mistake: The inspecting judges must take note of the bone fide mistakes of the judges and encourage them to rectify those errors. As they must understand, that the judges can also improve. The speaker shared an experience where he went for a surprise visit in a district when he was a high court judge. But by the evening, every district court in the area came to know that such a visit was going to take place any time soon. Thus, by a single act, an inspecting judge would be able to deliver a positive message to the other judges.
- 2.) example of cooking: Cooking is not an art or science. Rather, its an art of science. In the similar way, inspection is an art of science. As there are specific measures to be followed, but these specific measures, can be utilized in an artistic manner for the benefit of the judiciary.

- 3.) removing of the doubts: The inspecting judges must clear all the possible doubts popping into the minds of other judges.
- 4.) gray areas:- there are always certain area which are black and white and we are very clear in those areas to take decision whereas in every persons life there are certain grey areas in which it is difficult to take decision as there are much probabilities that the decision may turn out wrong, but it is the duty of individual to see that he is day by day reducing his grey area and only then he will be able to do his work properly in the same way it is the duty of the registrar inspection to see that they must help other people to reduce there grey areas.
- 5.) difference between false and correct statement:- the speaker told that her is a big difference between a false statement and the incorrect statement in which is that the false statement is made when the true is known to the speaker and he had deliberately told the false statement which is not the case in the incorrect statement and the duty of the inspecting judge is to help the other judges to rectify there mistakes and thus he must inculcate the habit of finding out the difference between the statements which are false and which are incorrect and if they find that if they are incorrect they must help the officer concerned to rectify it otherwise he must report the same to his superior.
- 6.) mannerism:-at the end of the discussion the speaker told that there are various ways and manner in which the inspection judges they may help the officer to rectify its mistakes and they must remember that they must always take the right manner or right approach.

Day 2

Session 8: 02:00PM-03:00PM

Speaker: - Dr. Parul. Rishi

Topic: - Time Management

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- a.) Time v. Success:- the speaker is of the view that it is not necessary that if you are successful then you will be managing yourself accurately, but it is possible that if you manage yourself properly you can achieve success. And there is a need to understand that.
- b.) 80-20 rule :- she said that in a research it has shown that people always invest their 80% time in the trivial issues and their 20% time in the critical issues, although a good time management in the field of public work will come through experience but a person can try it by investing his 20% time in the trivial issues and 80% time in the critical issues.
- c.) Explanation of the above stated point:- to do the above stated practice the person must always try to quantify the things which he is going to do that how much is the weightage of those things in his life, after this he must do a causal analysis of it and at the last he must set an accountability for the delay and must relocate to previous position by stating that which thing holds what.
- d.) Setting up of time frame: - achieve timeliness in the difficult activities and to do so one must set realistic and measurable goals which can be achieved in the given time, he must plan for it accordingly and at last must monitor it the same.

- e.) Time framing as practiced in different countries: - the speaker told the time management done in the different countries in the courts for example:- in Finland there is optimum time given to the disposal of different type of cases. In Slovenia 18 months are given to the judge to solve the case and the definition of the word “delay” is that whoever exceed the given time must give a reason for it and even after 26 months he is not able to decide on it then a penalty is imposed on it.
- f.) Management table:- the speaker told that there are different types of work and one must try to differentiate the same and work accordingly she has illustrated the types of work in the table :-

Urgent work	You must manage it like critically pressing the cases going to the meetings accessing the assembly question	At the same time you must avoid yourself from unwarranted works like going more to the media intervention
Not urgent	You must focus on the issues as some work which are not urgent can be of great significance and can become important in the near future like case list preparation, procedural issues and so on	You must limit your time so that the work which is not urgent as also it is not important you must remove it but to remove it you must be able to identify it first.

- g.) Parkinson law :-the speaker illustrated that if you will fill the glass with big stone then it is not full, as it is having certain spaces in between them, then you must fill the glass with sand, still there is room for the space, then you must fill it with water then certainly there would be no space remaining thus



in the same way you must set up your big goals like the big stones, then you can devote your time to your other works accordingly like the filling up of the sand and water, but you must understand that sand and water also very necessary in life metamorphic ally.

Day 3

Session 9 : 09:00AM-10:00AM

Speaker :-JuscticeR.R.Tripathi

Topic :-Break-out groups on hypothetical situation

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In this session a practical problem was being given to the participants on which they have to present there views three of the participants have presented

Day 3

Session 10: 10:30AM-11:30AM

Speaker: - Dr. Parul. Rishi

Topic: - Organizational Behavior

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The speaker initiated the topic by asking certain question such as what makes up an organization. How the organization behaves? What is important in the organization? How can organization can become successful?

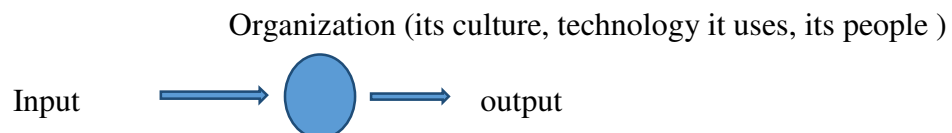
The participants were shown the picture of ants carrying a log in which they were made to observe that ants are working as an organization in the same way the organization is known by its people who are making it the behavior of the organization is the behavior of its people, the people must understand that it is their personality, it is their conduct which is considered as the face of the organization. The organization will depend upon the way it is led by its people the way of the communication, the way of the decision making, the way of the managing the conflicts. In the similar way there is need that we must understand our work in the organization and we must recognize that the organization is a block structure in which each block is very essential and one must take care of its work to its fullest otherwise the organization will collapse.

She dealt with the following points during the discussion

- 1.) She conducted an exercise of type A person or type B person:- in this exercise a questionnaire was given and according to participants were divided into two groups one which is of type A which represent the perfectly meticulous people who are always doing the work in the respected time which they are given whereas type B person who were not able to work under pressure but otherwise they are efficient in their work they are perfectionist which type B persons are not.
- 2.) Organization as a process or as a property :- the speaker told that organization as a process in the judiciary is always having judges, registrar at the top followed by the advocates and the litigant then the subordinate staff and at the bottom of the organization there is clerical staff, but the judges must understand that they (subordinate staff or the clerical staff) are very well part of the organization which is known as judiciary as it is they who are in continuous relation with the public it is they who represent the face of the courts, thus it is the duty of the judge that he must maintain the organization. According to the speaker there are various ways in which a judge can take care of the organization which are coercive or they may be non-coercive and they may be formal but in any of the way they must be ready to direct and coordinate the activities only then they will be able to maintain the organization but in the judiciary the coerciveness must not be in a force full way rather it must be in a persuasive manner. But when ones take care of the organization as a property he must be having broader perspective in his mind he must social sensitivity and must be adaptable, hence the judges must not try to take care of their organization in a property way rather in a process

way and they must ensure that the sub ordinate staff has a clear confidence in them, they must empower their staff in the sense that anything they do in discharging there duty there boss is right behind them. The judge must pose himself as leader of the staff.

- 3.) Example of the iceberg:- the speaker told that when we see the iceberg we only see the structure which is above the level of the land whereas when we will see below the land or see wherever the iceberg is located then only we will be able to understand that how much big it is beneath the surface which we are not able to see in the same way the upper management is that portion of the organization which is visible to all the people where as there are is a big base beneath the surface which is not visible but it is the attitude, perception, values of the base on which the face of the organization is depending. In the same way judges are face of the organization whereas all the lower staff are its base.
- 4.) Major fear while dealing with the people working under you:-the major threats felt by the judges while on the duty are that the advocates representing the case may not prepare the case records, they make take leave on the crucial date, the staff may not maintain the proper records but it is there duty that they must understand that they are not providing goods and services rather they are rendering the justice they must have profound influence around them they must control all the circumstances around them only then they will be able to take out the fear they are possessing and the organization will work in the full strength.
- 5.) Input –output process:- the speaker told that the organization works on the principle of input-output basis that an organization undertakes an input then it process that work and then the out put is going out of the organization



In the above diagram the input which in the case of the judiciary is the case records and the witness and the money which goes in and the it is the organization through its through put

method that is the solving the method through judges, stenographers, clerks process it and the final result is the output which is the judgement and the feed back of the work is in the sense of the review and the appeals which are there in that format.

- 6.) How to influence others:- the spear told the story of the crow, rabbit and the fox. Once the rabbit was sitting beneath the tree and asked the crow who was sitting above the branch of the tree that how can he sits so patiently the crow replied that the rabbit must also try to do the same, the rabbit sits there patiently : in a few moments a fox was there and he ate the rabbit. The moral of the story is that we must not try to copy others in the organization as one who is on the top he will definitely be having a larger view in the same sense the judge must also have a larger view and that he must have a larger view and must not guide its subordinate in the way the crow has guided the rabbit. In the same way there are other practices according to the speaker that may help the person to guide other people of the organization like if wants them to come on time he must always come on time.
- 7.) Mg Gregor's theory :- there are two theories one which believe that there are people who will work according to the directions given to them whereas there are certain people who are always doing good when they are certain kind of freedom and it is up to the upper management that they must understand the type of the person they are and must make them work accordingly.
- 8.) Ability motivation and competence:- according to the speaker there are people who are able but there is certain kind of support which they must be needing or an extra push which is required off . the judges must always take cognizance of such extra measure and they can be in form of the motivation or generating a feeling of the competence in them.

Day 3

Session 11: 12:00PM-01:00PM

FEEDBACK AND SUGGESTION

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Following are the suggestion given by the participants for the upcoming conference of the registrar inspection:-

- 1.) Noting down of the common topics:- one of the participants told that all there must be writing down of common problems faced by the registrar inspection of all the states before the conference takes place by asking from mail and then they must be sougheed out.
- 2.) Acknowledging of the facts to the apex court:- one of the participants told that the problems told by them during this conference must be put to the apex court so that when the high court will receive suggestions from the supreme court then they will be make rules and solve the problem solved out
- 3.) Subjects to be included:- the director has told that the new subjects which will be added are as follows  
:-
  - a.) Stress management
  - b.) Cognitive management
  - c.) Residuary works

And she specifically told that the subjects will not be taught as they are taught in the corporate sector as demand of the judiciary is totally different.
- 4.) Practical approach of auditing:-the participants told that in the next conference there must someone who had practical experience in the field that is one who has remain the registrar general or registrar inspection in the aid of the high court judges.
- 5.) Common court questionnaire:- a proper questionnaire must be developed by the academy which must be circulated throughout the country so that the registrar are not facing problems they face while doing inspection.
- 6.) Sharing of the information 10 page format:- the director asked the participants that if they can write down the practical experience and there problems in 8-10 pages then the next

reading material for the conference of the registrar inspection taking place in the December may be prepared accordingly.