



RAPPORTEUR FOR
CONFERENCE ON FUNCTIONS OF REGISTRAR GENERAL
FEBRUARY 8 – 10, 2016

SUBMITTED TO:

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INTRODUCTION:

National Judicial Academy organized a conference on the functions of Registrar General of the High Court on “Functions of Registrar Generals” on February 8-10, 2016. Representatives from the High Courts across the country participated in the conference. The three-day conference was split into six sessions for each day, out of which four sessions were taken by various resource persons and the last two sessions of the day was devoted to Library reading and Computer skills training. Justice Sunil Ambwani, Mr. VSR Advadhani, Justice Mohit Shah, Justice M.K. Sharma, and Justice A.K. Patnaik chaired and guided the sessions.

PROGRAMME COORDINATOR:

- ❖ Ms. Nitika Jain (Law Associate, NJA)

DAY 1

The first day was divided into 4 sessions.

SESSION 1

REGISTRAR GENERAL AS A POKESPERSON FOR THE HIGH COURT

JUSTICE SUNIL AMBWANI

MR. VSR AVADHANI

The session was commenced with a comment that though the High Court's work under the same basic document but each have a separate set of rules and time has come that the rules should be standardised. All High Courts have been given grants to re-engineer their rules and the object is to have standardised foot work where all the High Court works and need was felt when the computerization was in process. Whenever a new Chief Justice is appointed they have their own sets of thoughts to better the High Court, but the customs and traditions of all the High Courts are different. How the Full Court is held, how the functions are organized, etc. here Registrar General Plays a very important role in becoming a bridge in between the new Chief Justice and the High Court, because he is the first person as well as the last person who the Chief Justice meets.

Registrar General is just like the chief executive officer of the high court. The entire functioning and day to day care has to be done by the Registrar General. Registrar General as the chief executive officer is virtually the face of the high court, the high court is known by him as he represents the High Court. He is the keeper of entire records all notifications, orders, reports, etc. are passed under his name. He functions according to the needs of his office. The most important function of the Registrar General is holding meetings, full court meetings to subcommittee, etc.

The important factor for the registrar general is the media, media is free, and media is a question that is debated every day, and now days the media is in the hands of the politicians. Judiciary is under serious attack. Before for politicians the court use to be the last resort but now days whenever there is a problem the politicians come first to the court.

The advice which the justice gives to the registrar general is:

- 1- Have a very good secretaries who keep good eyes on the newspaper reports and bring them to your knowledge so that you can bring it to the knowledge of the Chief Justice. One of the most important function of the registrar general is to keep their Judiciary free from scandals.
- 2- When you go to the Chief Justice with a problem don't just go along with the problem you should also go along with at least 3 solutions.

The registrar generals are the eyes and ears of the Chief Justice as the Chief Justice is the institution. Registrar general is answerable to: Chief Justice, staff, union of the staff association, advocates, advocates assistants, clerks press. Why is the press last in the line because when the judiciary is having problems with all these persons, then only the press comes to the picture.

The protocol which the registrar generals should follow is:

- 1- Dependability of the information that is the information should be sure. You should maintain some distance between the press and your information sources.
- 2- Object of giving presentation should be airtight.
- 3- The press should get there information from the spokesperson only.

Second stage is the analysis of the information and the third stage is the synopsis.

One thing which the registrar generals are most troubled with is the undue level of pressure exercised upon them by the judges. The only way to get out of it is to be polite, humble and keeping the judges reminded of their powers.

SESSION 2

MEASURES TO INCREASE TRANSPARENCY, AND ACCOUNTABILITY IN JUDICIAL SYSTEM

SPEAKER: MR. VSR AVADHANI

CHAIR: JUSTICE SUNIL AMBWANI

The session got commenced by the comment that the justice believe that the transparency is the most important vaccine for any accused.

A question was raised as to whom are we accountable to? Are we accountable to the legislature, executive, public, persons to our system or to our own consensus? The judges are accountable to their own consensus and the registrar general, registrar judicial is accountable to the institution and the Chief Justice is the head of the institution.

We have different measures of transparency, declare our policies, Chief Justice speaks from the public, but it is the registrar general who maintains the accountable standards, who goes to give accountability and credibility to the whole system.

Example, suppose 300 judges in a high court 12 are facing departmental inquiries and they are pending for 3-4 years, are we accountable to the judges? In many High Courts the cases are concluded but for 1-2 years no decisions are taken. Here the duty of the registrar general is important he has to lay down a schedule.

It was discussed that the day the judiciary gives up their power or when their decisions are influenced by the government the whole system will disrupt, the whole system will collapse.

Registrar general is not concerned with one particular system, he is concerned with the entire organization environment, he has to create an environment where the users feel comfortable to use the system, and therefore he is concerned in the increase in the capacity of the system by introducing certain matters to increase the transparency and accountability.

A question was put up that, in the hierarchy of democracy of institution why should only judiciary be told to show transparency and accountability is it not necessary for the legislature or executive? It is equally important but the people look up to the judiciary for justice and not to the legislature or the executive.

Some measures to make the people comfortable to come to the court are:

1- Improve the accessibility. It was suggested that the increase in the transparency and accountability not to be seen from the eyes of the High Courts and Supreme courts but from the rural judiciary. So the registrar general have to take responsive are to increase the transparency and accountability.

2- It is the test of PMOO:

P – Permissibility of rules, public record, etc.

M- Management, vertical horizontal by distribution of administration.

O- Organization of orientation.

O- Operational efficiency.

In this way we can think of increasing the transparency and accountability.

- 1- Permissibility – permit the registrar general to do certain things and procedure should be followed. The first idea is to modify the rules so that the registrar general can gain more power for the same and given publicity.
- 2- Management- the management should be vertical and horizontal, in vertical management one has to follow the mandate given by others, chief justice will be the source of other. And in horizontal the registrar general will distribute the work through his team.
- 3- Organization of strength- registrar who is very well versed with literature, or management or judicial functioning so the registrar should be used there were his efficiency is more. This is one way the accountability can be improved.
- 4- Operational efficiency- you are the leader of the team. Accountability is not an individual's task and you are the task manager. Your team should always be ready and the members of the team should be such that the one can take up the work of another during the absence of the same. This way we can increase the accessibility.

SESSION 3

RG AS AN APPELLATE AUTHORITY FOR THE RTI QUERIES

JUSTICE SUNIL AMBWANI

CHAIR: MR. VSR AVADHANI

JUSTICE MOHIT SHAH

The session got commenced with the comment that almost all the High Court have frame the rules regarding RTI, in district court the appellant authority is the district judge, in High Court is the registrar general.

A question came up about the misuse of the Act. The persons who drafted the Act along with 40 judges came up two important questions:

- 1- Locus standi and person seeking information
- 2- Purpose for seeking such information.

It was argued that it is not the matter as the Act is for transparency. It was said that the purpose of the information should be disclosed but it was denied. It was also discussed that the matter which is confidential should not be disclosed.

The problem with the judiciary is that it has two sides, the administrative side and the justice side. In the administrative side it is a mind-set that whatever is going in their department is confidential. If any information which is draining the resources of the information giver than that type of information is not to be given. Only that information which is available that has to be given.

The persons are not allowed to refuse anyone for information but if you are directing the person in the right direction for getting the information then it is not considered as refusing to give information.

8. Exemption from disclosure of information.—

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,

(j) information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

11. Third party information.—

(1) Where a Central Public Information Officer or the State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information: Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.

Section 8(1) (j) and section 11 of the right to information Act.

Vigilance matter regarding the integrity of the judicial officer is not a public matter it is a matter between the judicial office and the person who has complained. So this type of information is not to be given. For refusing the information it should come under the prohibition otherwise you have to give the information. On the security grounds an information can be refused.

It is considered that the section 4 of the RTI act is a problem, it reads as:

4. Obligations of public authorities.—

(1) Every public authority shall—

(a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;

(b) Publish within one hundred and twenty days from the enactment of this Act,—

(i) The particulars of its organisation, functions and duties;

(ii) The powers and duties of its officers and employees;

(iii) The procedure followed in the decision making process, including channels of supervision and accountability;

(iv) The norms set by it for the discharge of its functions;

(v) The rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

(vi) A statement of the categories of documents that are held by it or under its control;

(vii) The particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;

(viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

(ix) A directory of its officers and employees;

(x) The monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

(xi) The budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;

(xii) The manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;

(xiii) Particulars of recipients of concessions, permits or authorisations granted by it;

(xiv) Details in respect of the information, available to or held by it, reduced in an electronic form;

(xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;

(xvi) The names, designations and other particulars of the Public Information Officers;

(xvii) Such other information as may be prescribed, and thereafter update these publications every year;

(c) Publish all relevant facts while formulating important policies or announcing the decisions which affect public;

(d) Provide reasons for its administrative or quasi-judicial decisions to affected persons.

(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

(3) For the purpose of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

Explanation.—For the purposes of sub-sections (3) and (4), “disseminated” means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.

A question on who is appointed as the public information officer? Was raised. Mostly it is the administrative officers, but it was realized that the judicial officers should be given this work.

It was also suggested that using RTI information for evidence was banned.

SESSION 4

RECORDING OF ACR VIS A VIS REGISTRAR GENERAL

JUSTICE MOHIT SHAH

JUSTICE SUNIL AMBWANI

CHAIR: MR. VSR AVADHANI

The session was commenced with a comment that the integrity of a judge is the most important aspect. The integrity can be divided into 3 types:

- 1- Thoughtful
- 2- Liking
- 3- Positive

Whenever there is a case regarding any judicial officer the Chief Justice first ask about the reputation of the judicial officer. Some judges have a very good reputation whereas some don't.

As the matter regarding the Annual Confidential Record is concerned it was suggested that it should take into account the aptitude of the judge into consideration along with the grading system. In some places it happens that there is no grading system but marking system prevails. The report of the judge also depends upon the factor that there is a variation in the officers who make the report.

It was also discussed that if a judge has an adverse reputation due to his work then the senior judges should help them in improving their ways. Another thing was that the ACR'S are only made once a year and that to mostly at the end of the year it is done, it was suggested that the confidential report should be filled regularly and notes on the performance of the judge should be made there.

\the matter of allegations on the judges was also considered. The question whether to take the allegations seriously or not? It was concluded that yes it should be considered seriously and a proper inquiry should also be done on the same.

Sometimes it happens that the integrity of the judges is very good but they don't do their work properly as they should, then there occurs a problem as to how to write the report of that judge whether to write a negative remark or to write a positive remark.

At the end of the session Justice asked the participants for their remarks.

Ms. Nikita Jain coordinator of the programme thanked Mr. VSR Avadhani and Justice Sunil Ambwani for their participation and suggestions. With this the sessions for the day came to an end.

Day 2

On this day there were 4 sessions to be held which were to be head by Justice Mohit Shah and Justice M.K. Sharma as the Chair person. Out of which Justice Mohit Shah would be attending only the first 3 sessions.

SESSION 5

RECRUITMENT, PROMOTION AND TRANSFER OF JUDICIAL OFFICER: ROLE AND CHALLENGES

JUSTICE MOHIT SHAH

CHAIR: JUSTICE M.K. SHARMA

Justice Shah commenced the discussion with talking about the Constitution of India about the preamble which is a 4 fold Preamble, it takes about the Justice not only the adjudication of justice but also about the idea of political, economic and social justice. Justice believes that India has achieved political justice to some extent but is still in economic and social justice it is lacking behind to some extent, even the administrative justice is been criticized.

According to the Justice Shah the District courts and the High Courts have a very responsible duty to discharge. Although the judges discharge the duties it is the administration that actually helps the judges to discharge those duties properly. District Judiciary work is at a grass root as it is the starting point of the cases and therefore there is a more need of proper administrative persons who can manage those offices and who posse's human qualities and integrity. The Registrar general and the Registrar Judicial are regarded as those persons along with the ears and eyes of the Judges as they have minimum interaction with the outside world. Registrar generals work does not end there they also help with the recruitment of the judges. Earlier it was in the hands of the Public Services Commission, but later on with the decision of the **State of West Bengal vs. Nripendranath AIR 1966 SC 447** and **Art. 235 of the Constitution of India** and even the case of Malik Mehra Sultan vs. Utter Pradesh Public Service Commission 1 SCC page 073, according to these the recruitment, promotion, posting, etc all is to be done by the High Court. There are 2 stages for recruitment:

- 1- Stage is the examination stage; on this the discussion proceeded as whether the examination should be written exam or an objective exam. Some were of the view that it should be of objective and some of the written, Justice Shah was of the opinion that it should be written as it will give perspective as to how is his writing skills as well as how is he able to expression himself.
- 2- The second stage is the interview stage.

The point of promotion was also taken up, that the promotion is guided by the rules but in some states it is also guided by the seniority come merit and merit come seniority. With this the justice concluded and introduced Justice Sharma.

Justice Sharma said that there were issues which have cropped up, they are:

- 1- Promotion on the bases of seniority come merit and merit come seniority.
- 2- Problem of recruitment and promotion.

Justice Sharma had attended the last Chief Justice conference, there most of the Chief Justice complained that they get less number of competent judges. The bar is responsible for supplying the judges and giving proper training to the lawyers who aspire to be the Judge. To improve this the coaching classes were started from the next year, it's results were very satisfying and this was possible as the bar Council took a positive stand and as it was successful, then with the help of a NGO the same was started for the SC's and ST's. And the result is that now the recruitment is done so nicely that now the vacancies which are there are less than 10%.

The question of promotion was also taken up and an amendment was suggested that if the candidate gets 60 marks in their Annual confidentiality report then they should be in the selection list and once they are in the selection list they should stay there. This criteria was adopted as in seniority come merit the threshold is very low and in merit come seniority they really go only on merit and with this amendment to put a bench mark at 60 has been successful and the Judicial officers are also happy with it.

Amendment for examination was also discussed, it was that the lawyers appearing for the exams after 7 to 10 years is basically a semi specialized person, so it was decided that the persons will answer the questions on both the topics that is the civil and criminal topics but the judgment which they have to write there they will be given an option for writing the civil judgment or the criminal judgement. This change has also been successful. The Commission had set the time duration for the exam as 2 hours but it was realized that it was not possible to write the paper in the given time so the time of the paper was increased by 1 hour.

Another issue which came up during the discussion is that the Civil Judge Senior Division (CJSD) they are asked to appear for the limited paper for exam of accelerated promotion they were asked the same question as that for the direct judges were asked. They had to write a judgement exam so it was decided that it was decided not to have the judgement exam for them and instead objective question to be asked. This was also a success.

Another issue which was addressed was that the some of the good candidates shy away from writing examination out of the fear of humiliation. The judges who deserve it they should be recruited and there has to be a direct recruitment but it should be done with great scrutiny. So a suggestion was put up that all the things like his English his law the way he expresses his General knowledge as well as his reading habits all should be tested and to do that there should be a uniform rule.

The transfer of the Judges was also taken up, transfer is done after every 3 years, that it could be a little early but after 3 years it should be done definitely as number of issues can crop up if the judges are not transferred some of them can be that the lawyers get to close with the judges and sometimes even the judges have a problem that they don't get well with some

lawyers so as to avoid this problem the transfer should be there. It was also put up that the judges can give 3 choices for their transfer and then the transfer can be done but that also have to be done in a proper manner that they should not only give choices which are nearby there should be an option of a little far of transfer as well. So mostly 80% of the judges are transferred their choices. The transfer system should also be fair. The policy must be clear and the judge should know as to why they have been transferred there. Transfer rules or policy should have rules and circulated to every judicial officer.

SESSION 6

ALLOCATION AND FORMATION OF BENCHES UNDER THE SUPERVISION OF CHIEF JUSTICE: ROLE AND CHALLENGES

JUSTICE MOHIT SHAH

CHAIR: JUSTICE M.K. SHARMA

The session was commenced by Justice Sharma commenting that by the time the high court lawyers come for the post of judiciary they had a practice of almost 20 years that's why they tend to form a kind of semi specialization, sometimes it happens that some lawyers are doing only the civil matters or the criminal matters or the tax matters, etc. So therefore at earlier when they become a judge they should be made to sit on the division bench with a good judge so that they can learn other works as well. Therefore man management should be done. Then the question arose as to how a fresh appointed judge will manage the court will he follow the method of flow management or some other way? He might be able to help in disposing of the cases but he might not be able to dispose of the case himself. These things have to be learned by the freshly appointed judges.

The issue was put up about the prioritization of matters while preparing a roster, there are some matters like the death penalty matters, habious corpus matters are urgent matters but even the matters like violation of human rights, anticipatory bail matters, etc. Even these matters are important. Then how to decide which matter is more urgent and which is not whether it should be done by the Chief Justice or by the judge of that court. So while preparing a roster many things have to be taken care. In Bombay the roster is prepared 5 times. Sometimes it happens that a judge's gets semi specialized as he is dealing with the same kind of cases almost every day so while preparing a roster the benefit of that judge should also be taken into considerations. The concept of specialized court was taken up that there can be some special courts example like the commercial courts. This has advantages as well as disadvantages as the judge in that court will get specialized and will be able to dispose of the cases quickly but at the same time he will not be exposed to other cases, so even this has to be kept in mind while roster is prepared that one Judge is not exposed to just one type of cases but also expose to other types as well.

It is suggested that the constitution of bench should be given importance, for this the compatibility of the Judges matter a lot. According to Justice Sharma when a person is appointed as a judge of a particular area he is not a judge only of that area he is a judge of other areas as well. Sometime it happens that a person is freshly appointed as a judge they are not exposed to the writ cases and they hardly get the chance of the same so it should be done that they should get a chance to sit on division benches where writ cases are taken up so that even he can learn something from it, even this should be taken into account while constituting a bench. A suggestion was given regarding the matter was that while preparing a roster sometimes other judges can be consulted, so that some of the problems can be overcome.

There were some aspects that were taken into consideration such as that the first bench which starts from 11:30 or 12:00 don't get many cases and as a result the second bench

gets almost 80 or more cases. One more problem is that the comments which are passed by the judges on an ongoing matter can become controversial and sometimes because of this the Supreme Court had to interfere. All these matters have to be taken into account.

Justice Sharma gave a reference of Madhya Pradesh High Court Rules, Roster Section 5(3), it reads as:

“An appropriate bench as the registry had erred in listing the case before the bench, the registrar shall determine the bench before which the case ought to be listed as per roster, rules or a binding precedent; otherwise he shall place the matter before the Chief Justice for order.”

Taking this as a point the Justice regarded to other participants that even they can use these guidelines or any other guidelines which they find appropriate for the benefit of their courts. Justice also suggested that a fixed date should be given to all the cases so that the cases can at least come up to the court and then a forwarding date can be given to them.

SESSION 7

ROLE IN INFRASTRUCTURE DEVELOPMENT IN HIGH COURTS AND SUBORDINATE COURTS

JUSTICE M.K. SHARMA

CHAIR: JUSTICE MOHIT SHAH

The session was commenced by Ms. Nikita Jain coordinator of the programme by introduction of the topic of the session.

Justice Sharma believes that the infrastructure is important so far the administration of Justice is concerned. One complained is always made that there is delay in the disposal of cases, and to a large extent it is due to the less availability of infrastructure, there is lack of benches in the courts even this is a part of non-availability of the infrastructure. It was suggested that when the development of infrastructure has to be considered then the development can be done among the building itself. In most of the courts there is a problem of toilet facility, no separate toilets for women, lack of sitting area for litigants etc. Are some of the problems which the courts are facing due to lack of infrastructure. It was suggested that the development can be initiated with the help of the Chief Justice as the state generally don't say no to the Chief Justice.

At some places lack of proper budgeting is also a problem, although the courts generate a lot of revenue for the state still when the time of development comes the courts have to look at the state for help, so even the courts can think about having revenue for the courts as well. Though the work of the registrars will increase.

It is considered that infrastructure is the basic need of an institution. The Government is under the impression that the judiciary, the pollution control department etc they are not revenue earning departments. So if we are able to impress upon the government that even the judiciary is important then more will we be able to generate help from the government for the development of the courts as well.

A chart was presented by Justice Shah, it is as follows:

**INFRASTRUCTURAL DEVELOPMENT (1ST JULY 2010 TO 8TH FEB
2016)**

CONSTRUCTION WORK OF COURT COMPLEXES

Particulars	Completed	Ongoing	Proposal sent to Government	Total
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Court Complexes	85	64	44	193
Court Halls	318	388	240	946

Funds (Rs. In corers)	352.95	485.58	1217.44	2055.97
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CONSTRUCTION WORK OF RESIDENTIAL COMPLEXES

Particulars	Completed	Ongoing	Proposals sent to Government	Total
Residential Complexes	96	81	41	218
Residential Quarters	225	228	132	585
Funds (Rs. In corers)	50.28	65.67	107.08	223.03

Court Complexes	Residential Complexes	Other works of Courts and Residential Complexes	A.D.R. Centres
193 (946 Court Halls)	218 (585 Resi. Quarters)	105	30

After presenting this ratio to the Government the Government is now a bit more cooperative and therefore the Registrar generals have to play a very important role.

One more issue came up was that the number of judges are less, therefore increase in the number of judges should be allowed. It was suggested to the Government of India that the strength of High Court is 35 and it should be increased by 13. The Chief Justice and the Law minister had a consultation and 12 posts were sanctioned and the state today has 49 and if the number of judges is increased then even the infrastructure has to be provided as well.

When the 13 finance commission was passed the government has sanctioned 5 corers for the judiciary but it was also said that, that money is not only to be used for infrastructure but it should be used for the morning and the evening courts. A resolution was passed in the Chief Justice conference that the money for the evening and the morning courts could be used for the purpose of infrastructure as well but the Government refused this resolution.

It was suggested that during the time of budgeting there can creativity that is there can be subtitles under the titles. The discussions also included the facility of parking space, the canteen facility as they are the part and parcel of infrastructure as well. It was suggested that

the cleaning of the washrooms and other small things can be outsourced and the peoples who are left out because of this there resources can be used elsewhere.

After all these discussions Ms. Nikita Jain coordinator of the programme thanked Justice Shah for his time and participation and suggestions.

SESSION 8

ROLE IN RESOLVING THE COMPLAINTS AGAINST JUDICIAL OFFICERS

JUSTICE M.K. SHARMA

Justice Sharma commenced the session saying that the conduct and integrity of the Judicial Officer is very high. They have to sit in the open court and both parties can make allegations on the judge. The judges have to be very careful in their public dealing, therefore the judges have to be careful not only inside the court but also outside the court as well.

Justice referred to the articles 309, 310 and 311 of the Constitution of India they read as follows:

309- Recruitment and conditions of service of persons serving the union or a state: *Subject to the provision of this constitution, Acts of appropriate legislature may regulate the recruitment and condition of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State.*

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union and for the Governor of a State or such person as he may direct in the case of services and posts in connections with the affairs of the state, to make rules regulating the recruitment and the condition of service of persons appointed , to such service and posts until provision in that behalf is made by or under an Act of the appropriate legislature under this article and any rules so made shall have effect subject to the provision of any such Act.

310. Tenure of office of persons serving the Union or a State: -

1. *"Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an All India Service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.*
2. *"Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be of the Governor of the State, any contract under which a person, not being a member of a defence service or of an All-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the*

expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate the post"

Article 311 of the Constitution is reproduced below: Article 311 of Constitution "Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.–

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where, it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply —

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

Article 309 is considered as a pleasure theory but with Article 310 and 311 there has come an exception on the pleasure theory. According Article 311(2) it is necessary to conduct an inquiry but during a criminal matter there is no requirement of holding an inquiry. The matter of anonymous complaint was considered whether it should be inquired upon or not? Justice informed that there is a Supreme Court decision that there will be no inquiry upon an anonymous complaint as those complaints are mostly false. Sometimes it happens that there is some material upon the complaint then in that case a fact finding inquiry should be set up.

If the charges are found to be relevant then a departmental inquiry should be started and the charges should be proved, it is not necessary to prove these charges beyond the doughty as it is required for the criminal charges. Sometimes it also happens that the charges are proved but the full court does not charge the judge with the charges, and if the punishment is given it should be such as the compulsory retirement and voluntary retirement where they don't get the extra benefits and during all these proceedings the Principal of Natural Justice should be applied.

Ms. Nikita Jain programme coordinator closed the session for the day and thanked Justice M.K. Sharma for sharing his time and experience with us.

DAY 3

This was the last day of the conference and commence only two sessions.

SESSION 9

IMPLEMENTATION OF RESOLUTION OF CHIEF JUSTICE'S CONFERENCES

JUSTICE A.K. PATNAIK

Justice Patnaik commenced the session by posing a question, what is a Chief Justice conference, it's not mentioned in the Constitution of India, not in any Act not even in any rules, Then why to have a Chief Justice Conference? If any improvements have to be made in the High Court it is done by the Chief Justice of the high Court or the Full Court or the State. Yet there are certain benefits of the Chief Justice Conference. Some of them are:

- 1- Benefit: we have a federal set up, Madhya Pradesh and Chhattisgarh High Court have their own way of administration, Karnataka have its own way of administration, etc. In the Chief Justice Conference we get to know the different practices which are followed by different High Courts and can even adopt some of the best practices of other high Courts in their own Courts. The Justice gave an example that in one of the Chief Justices Conference he shared the practice which is followed in the Madhya Pradesh High Court that it had the best vigilance system, the vigilance system was directly under the Chief Justice, the Chief Justice had a Registrar Vigilance directly under him he is not to report to anyone except to the Chief Justice regarding the matters of the vigilance. The High Court has one District judge vigilance at different district levels. When he gave this example, a resolution was passed in the conference that this type of vigilance system to be followed by other High Courts as well. This way in the Chief Justice Conference is beneficial.
- 2- To bring out uniformity in the system throughout the country. One resolution was passes in the conference was that all the writ petitions will be given numbers as WP. The reason for having Chief Justice Conference every year is that once a resolution is passed in one conference then the same can be reviewed in the other Chief Justice Conference. For example the evening courts were very successful in Gujrat so it was decided that the same will be started in all the High Courts but in other states it was not so successful.
- 3- Recommendations: example in Madhya Pradesh there were delay in the recruitment of Judges as it was done by the Public Service unit and they had to undertake many more recruitments as well so a recommendation was made in the Chief Justice Conference that the recruitment of Judges will be transferred to the High Court, the

same proposal was taken to the Government of India and was accepted and this way the recruitment of the judges came under the power of High Courts.

Fast track courts were started and was successful as well so in the Chief Justice Conference it was decided that it should be extended for 5 more years, but there were some problems some of them were as follows:

- 1- Implementation, while implementing there are various difficulties the most difficult task is funding, how to fund it, how to pursue the Government, Sometime it happens that if the Chief Justice wants he can call and ask for the funds but mostly the Chief Justices don't do that. One method to solve this problem is to divert the funds from one are to another.
- 2- Interests, Judges have interest the High Court have interest. Example Chief Justice Balakrishnan, was interested in having Judges appointed from the All India Judicial Services but it was not accepted by the full courts and even the State Government refused to the same. So the recommendation was rule out.

The justice discussed the Resolutions adopted in the Chief Justice Conference 2015 and opined that some of them were good some of them were having difficulties of funds, etc.

SESSION 10

AGENDA PREPARATION FOR MEETINGS

And

SESSION 11

EVALUATION AND CONCLUDING REMARKS

JUSTICE A.K. PATNAIK

Justice Patnaik commenced the session commenting that the High Court functions at the administrative side, Chief Justice is the exclusive head of the High Court. No power is with any other judges, entire power is vested in the hands of the Chief Justice and so far as the subordinate courts are concerned the entire power is vested with the High Courts.

Justice took support of the articles in the Constitution of India

214. High Courts for States. - *There shall be a High Court for each State.*

216. Constitution of High Courts. - *Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint.*

229. Officers and servants and the expenses of High Courts

(1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct: Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorized by the Chief Justice to make rules for the purpose: Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.

So far as the High Court is concerned the Chief Justice is the only power. Appointment and removal of the registrars are only in the hands of the Chief Justice.

Registrar generals prepare the agenda, they hold meetings and they have to report it all to the Chief Justice. Registrar general is the power force of the Chief Justice, so whenever Registrar general speaks he is speaking with the power of the Chief Justice.

233. *Appointment of district judges:*

(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment

234. *Recruitment of persons other than district judges to the judicial service:* *Appointment of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State*

235. *Control over subordinate courts:* *The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.*

Wherever the High Court is there it means the Full Court. Full Court may have passed some resolutions delegating their powers to the Chief Justice, to some comity or to the registrar, but so far as the article 233, 234 are concerned the power is with the High Court that is the Full Court. The Full Court may pass a resolution delegating the power to the Chief Justice or to any other judge so they will work as the delegate of the Full Court. So before preparing the agenda it should have to be considered whether it will go in front of the Chief Justice or the Full Court. If the powers are not delegated then the matter will go in front of the Full Court only.

The matter as to how to prepare the agenda of the meeting was taken up. According to the Justice it is not easy to call a full court, therefore when you prepare the agenda make sure that the matters which require most attention to be put before the court first. Some point were put up for the preparation of the agenda they are:

- 1- Make the agenda according to the priority. Some Chief Justices don't do this, and sometimes the registrar generals get influenced by the judges and because of this somethings which is of not that importance take the place of the priority matters. So before putting the list before the Full Court first it should be regarded by the Chief Justice and check.
- 2- Contents of each items, you should be fair in judging while making the notes regarding each item.
- 3- When the meeting is taken up all the records of the matter should be kept up in order. Dictations should be proper so if the next meeting is there then it could be pointed out if there is something which is against the resolution.

Lastly, Justice Patnaik asked the participants to share their own practical experiences and knowledge pertaining to this issue.

At the end of the session the participants were given an evaluation form to fill and to give any further suggestions for improving.

Ms. Nikita Jain coordinator of the programme gave a vote of thanks to the justice and the participants for their participation and suggestions.