

NATIONAL JUDICIAL ACADEMY



VERBATIM REPORT

CONFERENCE ON PUBLIC TRUST AND CONFIDENCE IN JUSTICE
SYSTEM

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Session 1: Should Judiciary be bothered about Public Trust and Confidence in the Justice System?

Justice Ruma Pal- We will start today's session but unfortunately the speaker is yet to arrive. Aaaa we can, Aaa.. In the meantime perhaps we can introduce ourselves aaaa I am Ruma Pal, retired Supreme Court judge.

Other people present-

I am Madhava Menon, retired law professor, Prabha Sridevan-retired Madras High Court judge, aaaa I am Naina Kapur – Avocate, I am Anil Gulati- Joint Secretary in the Department of Law and Justice, I am looking after Judicial Reforms, I am Justice Pushpa Sathyanarayana from Madras High Court, I am Rahul Raj Garg Punjab and Haryana High Court, Sanjay Yadav sitting judge Madhya Pradesh High Court, Justice Sarvesh Kumar Gupta from Uttarakhand, Justice Sureshwar Thakur High Court of Himachal Pradesh, I am Shaffique from Kerala High Court, I am Justice G.Chandraiah Judge from the Hyderabad, from the state of Telangana and Andhra Pradesh, I am Justice Sahidullah Munshi from Calcutta High Court, I am Suneet Kumar from Allahbad High Court, I am Goutam Bhaduri from Chattisgarh High Court, I am Prashant Kumar –Judge Jharkhand High Court from.... From Jharkhand High Court Ranchi, I am Harish Narasappa, I am a practicing lawyer from Bangalore and I run DAKSH which is an NGO that looks at judicial delay data and aaaa related aspects, I am K. Chandru once upon a time was a judge of the High Court, Madras High Court hahaha

Justice Ruma Pal- I have as my role as a moderator means that I to introduce speakers with little more details than they have introduced themselves. Aaaaaa Professor Upendra Baxi, we all know very well. He is an emeritus professor of law, has long and distinguished career, he was a professor of law in development of law in the University of Warwick, he was in the university of Delhi as its vice-chancellor, for a period of time he was also the vice-chancellor of the university of south Gujarat Surat, he is the honorary director of the Indian law institute and the president of the Indian Society of the international law for respected periods. Aaaa one of the period unfortunately he has said is 1885, who is this 1885 Professor Baxi I mean long way you lived but 1885 to 1988. Apparently, you are the honorary director of the Indian law institute over a century hahahahaha anyhow, Professor Baxi's current areas of teaching and research include comparative constitutionalism, social theory of human rights, human rights responsibilities in corporate governance and business conduct and materiality of globalization. Aaaaaa the topic is "should the judiciary be bothered about Public trust and Confidence in the Justice System?" I wonder if the professor is going to make a distinction between a judge and the judicial system. Professor Baxi.

Professor Upendra Baxi - Thank you very much aaaaa it is a privilege to share my view and I am a little bit emailed by meeting you, and aaaa sharing on this occasion and by meeting you all aaaaa to assess once upon a time possess, the sovereignty of Indian state aaaa Justice Ruma Pal was very much missed in Delhi and not only aaaaa by lawyers and brother judges but people who are aaaa like me who don't come for anything are aaaaa earlier or present dispensation..... it is lovely to be here like me who have come for it is immense pleasure to be at an institute which has taken new tides under the leadership of Dr. Geeta Oberoi and it is too nice to be here with you all this morning. Justice Ruma Pal did aaaaa this service to the Indian judiciary aaaa like we were talking yesterday where you said to state to the audience that aaaa the speaker needs no introduction and then take more than three four times the speaker introducing him or her but she has not followed the tradition which aaaa makes few points to aaaa to make it big and larger aaa I urge you to follow the tradition next time. It is very nice, if I remember long time back when Justice Khanna aaaa that's my wife troubling you, that's Prema see occasionally she accomplish me but she wants to see aaaaa that I am being heard and nothing is missed aaaaa. I don't think so aaaaa she also doesn't think so but she aaa only pretends otherwise Hahahh So aaaaa like I said aaa I remember a time when Justice Khanna and myself were given an honorary doctorate by an institute which Madhava Menon founded aa for National Law School Bangalore and aaaa I met my old friend Santosh Hedge he had come from Sydney Aaaa from London and aaaaa I embraced him and he whispered loudly in my ear he said I am now in the Supreme Court [Justice Ruma Pal- hahahah] and I said Santosh does it makes a difference I mean we are friends you are Supreme Court judge aaaa elevation I just did not know, I did not follow the Supreme Court elevation but I said Santosh aaa A little bit loudly as to whether hugging in an Indian sovereign state was an offence [Justice Ruma Pal- hahahah] and since it is an offence I was totally out of Indiaas it is now but Santosh I don't have a reply, but I do want to say that you all have the power to deny me bail to sentence me to rigorous imprisonment. So I speak as a humble citizen who has no power hopefully, hopefully hopefully hopefully some influence but I don't know I may give distinction having power and having influence Einstein was big Gandhi was Manmohan Das Gandhi no karamchand, I only refer him as Mohan Das Gandhi because Karamchand the middle name is a jasoos serial and Gandhi has a very ambiguous perigee now in India, so I say Gandhi only Gandhi, Mohan Das has big influence but no power. There are people with influence and people with power and aaaa I possess neither that makes me more vulnerable as a citizen aaaa so ones again welcome you all. Thank you Shruti and Paiker Nasir that's you for doing this marvelous reading material which I hope that you must have read, that is very well assembled and the theme, I must congratulate the director the acting director and the colleagues of her's for thinking of this theme which is on Public Trust and Confidence aaa I think this is the first time probably in my living memory that this theme is being discussed and that's already late but not too late aaaaa depending on the judgment of the honorable Supreme Court on the judges case we might change our views whether it is already too late to discuss this but aaaa it is certainly late in the day to discuss it and let be discuss it but aaaaaaa I will make three or four points and then we hopefully have a discussion Aaa as I said I have come to you as a teacher aaaa and in the company of many others like Madhava Menon and aaa many of you are teachers now, and aaaaa we all teach generations that will be lawyers and generations would be judges and the lordships of the Supreme Court. I am proud to count and often reminded by one judge or the

other of the Supreme Court or Delhi High Court that they are students of law faculty of Delhi University, where I had the privilege of teaching but we as law teachers are not Madhava Menon may agree or not agree but I should speak out myself I am not doing refluxing on our major social responsibility and is our major social responsibility. It is the task of judging the judges that's what we are paid for and that's what we work for our life. Now, I have discovered having reading a couple of book on the Supreme Court and other courts and through introduction to public interest litigations as it is called by American citizens which I call social action litigation from India it is quite different from public interest litigation in America whatever let's say judging the judges is aaaaa only job academics have, very often aaaaa I would not mention the judges of the Supreme Court presently, but very often they call us as academic terrorist [Justice Ruma Pal – hmmmmm] why do they call us academic terrorist while talking among the brothers and perhaps you also hold the same view I don't know we will discuss it, we are not terrorist in the sense that terrorists are terrorists I don't know aaa I remember Krishna Menon a week before his death. Krishna Menon was televised on Doordarshan. At that time there was only one channel... those good old days, just one channel, just one. Now you remember prespring time song it said thank I won't sing it, he said I will give the first line, aaa seventy five channels and nothing to see, that was his style of song or 85 channels very good song that is. I hope you also say it with music not just with law aaaa so aaaaa how do we judge the judges and in judging the judges do we, do we academics have any standing of their own or theory of their own of the subject that interests me and therefore I am very glad to be here and aaaa we stand aaa offensive stand between their lordships and the general public. While we write whether anybody reads us is a matter of debate aaaa whether we ride any impact on anybody we don't know aaaa but we think that we have some impact and we aaa write so as to enhance the trust aaaa confidence of the general public of India that's what we think and you have your opinion nad you are welcome to express... because I have a lot of work in this area aaaaa as I said aaaa I'll go straight to subject aaaa I began so far this way aaaa we are not sufficiently reflexive as scholar on our task and it's an open question whether we promote public trust and confidence by our writings. Aaaaa I am reminded of justice Aditya Nath Ray, Mrs. Ray always before she supersede the controversy and my distinguished aaa Hidayatullah Justice Hidayatullah aaaa he said in the super session only one sentence he said that there are judges who are forward looking and there are judges who look forward and that's the difference we talk about either about looking judges, I don't know about Madhava Menon whether he like about judges who look forward. But judges do look forward to something as well in life apart from judging what they look from you aaa I don't know now but the distinction he made aaaa and I remember that aaaaa we as academics think that we have some impact when Aditya Nath Ray tried to told me of that and aaa I visited Ray on because, primarily because, not only because occasionally a because he was the chief justice of India and most importantly because Mrs. Ray made very nice swadesha I used to love Bengali sweets, I am a sweet tooth and aaaaa she was very fond of me, why I don't know aaaa I could not say more than aaa but she always talked to me in Bengali which she thought that I understood, swadesha I liked Aditya Nath Ray took me to a room saying tomorrow I am going to Calcutta but you must come and try my house and took me by hand to his house and used to have a steel trunk and he opened it, he said you can pick this trunk I said I cannot it is large, I said what is inside, inside he said are all the writings that academics sent to me I am now retired

I am taking it to Calcutta and I'll read them and I said "chief justice I sent them as chief justice to read and so did my colleagues" he said "no I didn't like to influence my mind to be influenced in my mind by writings of academics" that was in the year 75 or 76. Even then I believed that the Had an awesome impact obviously the epics are wrong but we do not know to move on to the three points that I suppose to make, do we know, do we academics let the general public know how the judges think and how do the lawyers think. We train them to be lawyers and judges but do we know that how do they do it. And aaaa there is a very difficult question which I want to raise. For example, do judges distinguish between mass disasters and individual criminality? I give it the example of mass disasters but there are many more. First, not only because it is in Bhopal but of the Bhopal gas catastrophe. It's now the thirty first year of that catastrophe and women second generation victims are aaaa getting the catastrophic effects and of the birth effect the birth deformities, now second generation women because genetic mutations arising out of gas occurring lately and we are fighting in American courts we are fighting in India. Have been self-appointed victim lawyers, various victim groups they are heterogenic they want different things, I provide them different things as my job not to be on the top but on the tap. Whatever they want I provide with the little law, so I provide. I am council to the united states where there are councils, advocate on record we call it here for the victim groups various victim groups in the united states and now the latest case is not being heard by the court of appeals. Justice Kinan in two weeks you will have the judgment, they are counter...ration in Bhopal as you know aaaaaa enormous of MIC effected of toxic waste is being taken out of Bhopal as as I speak to some other location of the Pradesh to be inseminated and we are told that insemination is this by Supreme Court's orders well is the narration of gas is safe or not know if it is told that its safe one after the other it's still continuing. Take the Sikh genocide in 1984, now is not a single conviction as a result, I did not, I was in Delhi, I can, just like in Bhopal, I only third day in 84 Bhopal. I know how many were killed, how many Sikhs were burnt alive, I Knew Delhi, I know I can count, I count how people were put on public carriers, this early morning no use talking about it. I would talk about it one about in Bhopal to be cremated. I have count 25 public careers in one hour of aaa stay in Bhopal and lot more. And the official figure accepted by Supreme Court is two thousand deaths. It is not less than fifteen thousand people died. And not than three thousand Sikhs were butchered in Delhi alone in 1984, still not a single conviction record. Take recurrent atrocities untouchables, they occur everywhere in India. Thousands of are killed in aaa virtually aaaa a women killed aaa raped and eventually the matter goes to the court, ten years twelve years later the court nobody bothers. So Aaaa basically take the Uphaar Case, where the Supreme Court gave judgment ends of justice are met roughly. Eighty seventy years old Ansal brothers are no longer in jail. They were charged under 304 A, of IPC, part two what to be aa not amounting to murder but a rash and negligent act. [Justice Ruma Pal-somebody's mobile vibrating] I hope it is not mine. Oooh it is this aaaaa so these are atrocities that happen to large number of Hindus, very large and sometimes undetermined number of Hindus. Now aaaa is this aaaa are these atrocities are to be treated as the same level as ordinary crimes. The first question is public trust has disappointed the litigants everywhere and there in individual cases as well as the mass cases but what we mean whatever we mean by public trust and confidence of public at large depends on I think on how justice is distinguished between on case on one side of mass atrocity or atrocities and ordinary crime, though crime is ordinary but there are different types [Justice

Ruma Pal- individual types] individual types, every crime has history and geography angiography as past and future but individual trial as the case passes off. How do we classify the categories of disappointed litigants? Do as judges as lawyers as academics different states among these two categories. And I think aaaaa my friend aaaaa what it says aaaaa Arthur Miller Miller Miller discusses in the first article discuss the Americans Situations which I urge you to read of you have not read Miller in his reading he does not refer to this particular because it is not his problem but in India it is the problem. Why are the litigants disappointed is the problem with justice system of India, Okay aaa now why are they disappointed and we must distinguish between among those who are sentenced who are bound to say judges are wrong that I have not committed any crime , I am not talking about. I am talking about the differences between the mass and quote unquote ordinary or individual branch. Does public trust and confidence depend on mass disaster litigation disappointment, that's the question I am raising? Do we other sanction. I grant and obviously I have to grant this and I say loudly and clearly there aaaaa even activist judges, Justice Chandru, might agree with that, even activist judges should not invent with new heads of crime and new heads of punishment. This is for legislature whether you believe in distinguish between judging and legislating and it's the matter. But It is the matter of some importance to me , pre-sentence hearing and there are a lot of things under the criminal procedure code, than there are lot of things that come in, that stay, that you want to punish some aaaa harshly aaaa some leniently that's your affair and that's a laid down in the statute. But should activist judges go so far as to invent new heads of crime which are not posing by the legislature at all or should they invent new punishments, which are not prescribed by the legislature. I aaa I am so far has been no. but when I think in terms of public confidence and trust, I mean I think of mass disasters. My answer waivers a little bit, so I have to learn from you, I mean I have not come here to say my piece I have come here to learn from discussion. I perhaps, mass disasters, judicial remedies cannot proceed with what is prescribed by legislation. Whether judges should be guided by public sentiments totally in mass disasters I am not saying that they should be, but on order to do something called justice to mass disaster victims, should they follow state's indifferent law, a law that is indifferent to justice, that is the point. And that is the point I leave for discussion. My second point is aaa Should punish seventy eight year old people to jail under the ordinary jurisprudence, you would say end of justice have been met, by asking Ansal brother to pay corers of rupees as fine, no particular purpose is served by putting them in jail to die if you take the natural course of punishment. Can law ever be a programme of revenge or law must be something else and not the programme of revenge. If you listen to 2013, aaaaa rape and atrocity that protest, you see women groups saying to you one voice , before you , one voice that, we do not want death as a punishment in aaaa in this case. We don't want to raise the level of punishment, we want the punishment to be certain than may be higher aaaaa more, so that is right question I want to raise. I aaaa more as it ends, my second question is aaaaaa is about public opinion. When you say about public confidence and trust whose confidence and trust we mean. Although we want to. Aaaaa I think Miller raises some questions about that but let's not go far now. But I don't know what to discuss Miller because when you read them or you have read them. To come for discussion. I want to go on one of my my, my favorite thinker called Germy Manthan for in some seventeenth century Christian era. Because there are different centuries in different calendars. That I was very surprised, to all this hype of 2000, year 2000 I discovered we are already living

by as by 2027 or something, ways of measuring centuries or millennia aaaaaa it is dangerous to say this now I say that aaa there will be other people who will quickly latch out to it and I iii in-house compensation. But I say Christian centuries because in today's calendar it is one way of measuring time, that's the only way to measuring time. That there are different measure for measuring time like yugas. Bantham flourished in seventeenth century after the birth of the Christ okay and it was to get more reforms as you knowing to and I through my introduction in this theory of legislation, I say Bantham raised the question whether we should talk about the public or publics really publics again public the public. The public unifies people. Publics represent diversity or people talks about sentiments of other people. So when we talk about public confidence and trust, is there one public in the republic of India or are there many publics. That is one side of the question, the other side is, what we mean when we refer to the word opinion. Do us definitely to opinion only or what is opinion and what is judgment. They say how we distinguish between a judgment and opinion. You aaa write orders also, aaaaa also, judges also write orders, so there is like aaaa no one thinks of judgment, others think of opinion, others thinks of order, what is the difference, what is difference, my brother, my good friend aaa Dhananjay Yashvant Chandrachud wrote a judgment in Olga Tellis and I am still awaiting I told him for the judgment. Because [Justice Ruma Pal- hahahahah] because he at the last paragraph see Supreme Court of India, but see at fifteen pages before that, elaborated on the constitutional right in Article 14 and 21 to shelter and housing. But the particular case, in Olga Tellis probably tell the the particular case was the pavement dwellers wanted in Bombay Mumbai a place to stay on the pavement till they get the new building and Chandrachud being a Bombay boy Bombay person did not want [Justice Ruma Pal- pavement dwellers] hahahaha We are all confused when it comes to this kind of people, but they are Indians. We the people of Indiagave ourselves Constitutional aaa well forget that, judges forget, we forget we are all Upper middle class, so though forget a lot but they are other people out there. So the question is, is aaaaaa person followed Bentham was aaaa rule of law Wala, Dicey William Dicey, professor Dicey. And Nani, Nani Palkhivala I always call him a rule of law waala. He is always a rule of law waala dicey was a rule of law waala and aaa and nani always said that I said to him that should not be called a jurist, he said why I said look in the book titled we the people is always the people the title. There is this chapter where he says that the property qualification for franchisee, there should not be any other franchise. How can you say, how can the jurist can say when he writes the book called we the people. Although but it is said that there should always be What you want to do be the finance minister. You should have become I called him but he did not want to contest the election he thought that so he, so the question is Dicey the rule of law waala in a book called law and public opinion in 19th century England, huge book for some reasons supposed studied in Bombay university , we studies it for LLM it was a prescribed book. The book fell off my hands, then I was a young lad, I am still young but aaaa younger. It fell out of my hands, on page three hundred something, when I read that voice to legislators, what they said in one sentence was that "the legislator must never make mistake or way a butchers' meat in almonds cake. I wonder when you do judgment or when you write an opinion or order who constitute the butcher's meat for you. Some people constitute the butcher's meat, some public constitute the butcher's meat. Who constitute the butcher's meat? Is something we need to find out for the honorable Supreme Court in Bhopal? The Bhopal Bar Constituted the butcher's meat just meat. They settled the matter and they justified the

settlement at one third the amount the Indian sovereign state asked the Judge Kidden for two or three million dollars. There are certain reports that it was twenty million dollars, one third, they are lordships to the Supreme Court they said no criminal or civil liability to carbine all appellants worldwide. The lordship said, India, Indiashall defend union carbide of India, this was our Supreme Court that was by Raghunath my good friend Raghunath so who constitutes your butcher's meat, of course it is a tribal thing to say, they are banning meat stuff, so I don't know what to proceed now, Supreme Court has said something today I don't take time read now so there are as many opinions as public so if you take this view, this view then then there is no question of public trust and confidence. Judges must do the duty as they see it. Now the third question, where I can find it and then I will is aaaaa justice , firstly my friend aaaa justice was nice man and he aaa was aaa very aaaa a change smoker and he found very difficult to sit on the Supreme Court because you can't smoke and the only court where you can smoke aaa in the whole world is china [Justice Ruma Pal- oooooo] ya . In China you can smoke only time the Supreme Court judges smoke but outside people the public, the people generally do not smoke first day early I escaped trouble how to aaaa he was the fish out of potter he asked the lawyers he was not allowed by brother Chandrachud he entrusted in Chandrachud but to no effect to hold aaa the dangle is smoke, he cannot chew a pencil instead he can't do it by pot , I said you are chief justice you can make an exception anyways that's a different thing, but early sat in one of the judges cases the following. I do want your permission for five more minutes to read out what he said and if they did barring on the topic the theme of this conference and I will read bit of it and I quote Fazal Ali, the quote is "another fact of life which hub unpleasant cannot be denied and what is that fact of life, his lordship then said precious little up our masses or litigants concerned on which judge is appointed or not appointed or which one is continued or not continued. Justice Kumar of Delhi High Court was not of this case, go back to eighties and remember cases aaaaa the high sounding concept the lordship said of independence of judiciary or primacy of one other he said chief justice or another of the constitutional functionaries I call them constitutional karamcharies, they are all karamcharies and aaaaaa other people are karamcharies and we Indian are constitutional functionaries or the mode of effective constitution are matters of lordship said of academic interest. All the people here me and Madhava Menon, Geeta Oberoi and all they are not concerned to general people and he goes on I want to, he is saying a fact that the masses are interested in where the next meal comes from, how to get the daughter set job, get married , how to get a job. Then I want to elaborate what Mr. Modi land up now post development. Masses are not concerned about the independence of judiciary. Independence of judiciary is something that is in them off by people like Baxi and Menon and Geeta Oberoi and others academics now if you say this I say many things and first of all the concern is the independence of judiciary. It is not a matter that inspires public trust and confidence it it is a useless concern. This is the high bench speaking Fazal Ali said that, and he said they are not concerned with the legal necessities as to how the judges are appointed. I quote the present bench does not gives us Justice Fazal Ali on 28th of September [Justice Ruma Pal- his judgment comes on 28th or what] aaaaa therefore that every week but it is a difficult judgment as to be a five judge bench, I don't for the life of me see as to how they could interpret or negate basic structure which is by full court of thirteen judges so, it's a different subject matter altogether. I don't think justice kiar and his companion judges is aaaa we adopt Fazal Ali but aaa it is a possibility. So firstly, anticipated the new law liberal Indialong

way back in 1980's and who can say that this particular area public trust and confidence in the judiciary is of any interest to masses. Can we say that it is of interest to masses? That is Fazal Ali's challenge to aaa I do not know I aaaaa don't want to go on but if you take this view if the court takes this view or if you take this view in your daily judgments that whatever we do is of no interest to masses this is a few academic terrorists who make a noise about it and they are ways to keep them quiet and they are ways to keep them quite. Madhava Mnon really knows well about it Make you aaaa what do we do. So it's a serious matter of you go to the first early way does the idea of independence survive does the question of public trust and confidence in the public survive. Judges task is beautifully not to make policies not to make invent jurisdictions not tooooooo be activists, judge's job is mechanical to settle dispute that comes before them. If you take this view then judicial independence is a myth, it's a myth. The question of public confidence and trust is irrelevant because judges have nothing to do with public. Now I which to go bit far the question which I want to put forth is what justice is to? I want an answer, what approach is to? I don't have an answer aaaaaa I do want an answer, I do want to know what Fazal Ali said to provide you to some elements that are answer and if so why??? As to want to know soo aaa virtually now I end I don't have really enough extraordinary interest but sorry I What I should [Justice Ruma Pal- no no no] I have so I end it over here thank you.

Justice Ruma Pal-Geeta we have few minutes before the tea break

Professor Baxi- ohh my goodness

Justice Ruma Pal- aaaaaa very interesting points you have made about aaa of judging if it's on mass disaster as opposed to cases where individuals are aaaaa subject matter of defence or the victim or the perpetrator aaaaa but I think the last point that he made that really aaaa the public is not concerned with the integrity of the law right but aaaa but on the other hand the question posed was should judges be bothered about what the public thinks aaaa whether they are you know whether their trust , whether they trust you or not doesn't really matter but I think, personally speaking I just think to start the aaaa the discussion and aaaaa I think it is important because judges are not elected they are not accountable and so lot of people think that they they you know just arbitrary they just sit there and aaaa do whatever they want. I think what gives them the respect or what gives them their aaaa trust aaa unless you have aaaa that trust aaaaa they will not obey the law. It I because they respect the judges because they have trust in the judges what the judge is saying you know so often you see on television , we have full faith in the law. The law is what the judges administer so aaaa I think the public if you have as we were discussing last night, if the public have the perception that they have been let down by the judiciary aaaaa the system will collapse, there will be anarchy aaaa and I do think that there is a distinction between sometimes you don't trust the system in the sense that you trust it but you think there is no purpose in going Long time and the person who is administering the system that is the judge. The trust is in that judge. You may not have trust in the system that it will deliver timely justice but they trust the judge, if ones you distrust the judge then I think the resultant is anarchy because apart from trust there is nothing which is really giving judges the aaaa the right to speak aaaaa to a judge to be judges. There is nothing to differentiate anyhow with us from the man street. we have been given a particular office because people trust that

you will be trust worthy aaaaa of you are not trust worthy then you are no judge , just put it that way . So that's what I think but if anyone has anything to add for about fifteen minutes please do go ahead anyone.

Participant Judge : Madam

Justice Ruma Pal- Yes

Participant Judge : Even within the framework of existing law, whatever laws are there it is possible to balance of interest of the community vis a vis the individual interest. ahhhhh. Suppose there is conflict of interest, suppose any particular land of village is in the interest to be utilized for the individual for the allotment to some persons from backward community or that land should be utilized for the benefit of villager's community so balance can be struck in such cases where the judge has discretion. secondly, so far criminal cases are concerned you decide the case in accordance with law but quantum of sentence when you are sentencing part, you have to take proper care that you should give the proper sentence to the convict otherwise the society will lose faith in the judiciary that is very important . So for sentencing part and invoking this payment of compensation in every case for the victim that is also important aspect. So this can be in balancing the existing framework of the law. That is what I feel but it depends upon the in-depth study of the judge of the society, in interest of the society aaa that is what I feel.

Justice Ruma Pal- hmmmmm , you want to say something

Professor Madhava Menon- For the purpose of creating the confidence judiciary is the want of the society, one it is something different and every aspect has to be decided taking into consideration the social economic and political values which will mean setting therefore, in my view, the conduct of the judge and behavior although which and often which is most important and aaaa if the judge hears the matters in accordance with the law, the thinking the conscience without any discrimination keep in view the interest the issue that come for adjudication. If the adjudication goes in accordance with the law definitely the public will have confidence in the judiciary and really they will aaaa they will oblige the system they will respect the system. So therefore, what is important is the judiciary should function with the principles laid down already and to be followed not only by the judges but also the supporting people, who supports the judges in adjudicating the matter, taking from forth class employee who always aaaa ministers staff, to assist the judge and till then adjudicates the matter. This is my view.

Justice Ruma Pal- In fact this aaaa as you know aaaa , about 37 countries aaaaaa across the globe they had got together and they had framed what we know as the Bangalore Principles and aaa that is conduct not only in the disposition of cases , conduct for judges but also how to behave outside. Should you allow relatives to stay in your house when you are a judge, what do you do in certain circumstances? It's really like a bible. We had our own statements aaaa restatements of values which aaaaa was aaaa framed at the time of Justice aaa Chief Justice Verma and then it was circulated to all the High Courts and all of us , all the High Courts, I was there in the High Court we passed full code resolution accepting those standards. It's called the reinstatement of judicial values 1999. Every country has its own code of conduct for

judges because the importance of generating aaaaa you know justice must not only be done but should be seen to be done of generating that confidence has been seen in as primary to aaaaa the entire justice system. So aaaaa and the Bangalore Principles, and I think aaaa professor you were mention in the morning aaaa some standards of something, what was this.

Professor Upendra Baxi- that was Judicial Standards principles in 2010, that was UPA but now it is NDA is following up I believe for the Supreme Court judgment aaaaa to move the Judicial Standards bill to once a Supreme Court it assumes and it challenges the basic structure and that is the strategy now of the present regime because you might notice that Mr. Mukul Rohatgi has argued that in another case, the Aadhar case extensively in aggression the point he presents is he doesn't like the work basic structure he is allergic to it, he does not like its coming in, he doesn't like it that the parliament be interfering in it. It I stronger pretrial of judicial constraints and Mukul has argue before the lordships in the Supreme Court that plebiscite, all the articles and 21 judiciary invented rights on which the basic structure is based, which is the basic structure. 14, 21 have been reinvented by their lordships of Supreme Court. Do not, should not exist and now a five judge bench is going to consider but the, the fundamental rights or not. It will be the judiciary to take two decisions to decide in future. Whether judges have the right and power to But anyway, the standards bills are the next in line. Whatever the judiciary says, if it is favorable they will, the standards bill. The standards bill includes a category of non-impeachable offences and quoting from memory one of the section of the bill is when a judge passes a defamatory remarks or a remark while hearing a case or in the judgment. I don't know or are included but it's the same. Then it will be a non-impeachable offence.

Justice Ruma Pal- What is the aaa what is the punishment

Professor Upendra Baxi- Punishment is removal from judgeship

Justice Ruma Pal- good

Professor Upendra Baxi- And misconduct ordinary misconduct by the judges. Misconduct has been defined by the under the bill you kindly study. It is going to be a part given the present dispensation after judge, aaa the consequences outline the.

Justice Ruma Pal- So may understand the, aaaa your views in saying that if it is misconduct of a very serious nature the only way is impeachment. Which is long and long drawn and political?

Professor Upendra Baxi- I am not saying

Justice Ruma Pal- I am I mean the bill aaaaa and the lesser offences you have a quick method of removal. How very contradictory

Professor Upendra Baxi- Removal, it is but but the Supreme Court takes a view take in the case of privacy as the basic structure case. The Supreme Court takes the view that the basic structure of the constitution was is that we have mistaken in *Kesavananda Bharati*. I don't see how five judge benches can aaaa over rule a 13 judge bench. Anyways it is something different question. But supposing, they say that or 3:2 is more likely, the decision, 2 is the majority aaaaa

whichever constitute the majority I don't have to speculate on that but essentially Judicial Standards Accountability Bill is the next and therefore please study.

Justice Ruma Pal- Next

Mr. Anil Gulati- Sir I am joint secretary to the department justice. So when the bill was introduced I was there and I worked for drafting this bill. I have the copy of the bill with me now. So, aaa I would like to correct you sir, there is no punishment for any misconduct of the judge in this bill. This is basically grievance redressal mechanism which is absent today. Because it is in-house mechanism. It just makes a grievance redressal mechanisms statutory thing to come to ground, that mechanism and it only restates the values of judicial life which was there in justice Verma's judgment. Yes, there was a section earlier in 2010, which says that judges will not make unwarranted comments against the constitutional authorities if they are unwarranted from the facts of the case or the off the cuff kind of remarks. But, aaa because this was not liked by the judiciary it was removed. So the new version of 2012 bill, which I have with me because aaaa you rightly said that a meeting is going to take place with the Prime Minister in two day time. So I am preparing for that so I brought the bill

Professor Upendra Baxi- absolutely right

Justice Ruma Pal- I think we have been given copies

Professor Upendra Baxi- Study 2010 also, study 2010 also and study 2012 what Mr. Jately has reformulated now. We call the present regime is lately concerned with the judges think like cow slaughter, other things Going beyond their prep and saying influence the virtue and they don't like aaaaa they don't like judges to make policies, they like policies to be made by executive and legislature. So wait, you are right on 2010, I aaaa 2012 bill, 2010 was harsher. What Mr. Modi government will bring I don't know, I do not know, I have no crystal ball. What it will be devised to bring I know but it brings or not I don't know .It will be advised to bring a strict standard bill with because they in principle want judges only to decide disputes, they do not want judges to do anything more .

Justice Ruma Pal- So aaa I think we aaaa

Professor Upendra Baxi-There is a question here I think

Justice Ruma Pal- aaaaa come to the end of this morning discussion we have a short tea break. Aaaaa we'll be back at aaaaa you have about twenty five minutes to be back. And the next session promises to be very interesting. Justice Sridevan and Naina Kapur they will both be addressing us. And I think Mr. Gulati you will be speaking on this bill in your session.

Mr. Gulati- A little bit

Justice Ruma Pal- a little bit good . so we won't conclude the discussion on that now.

Session 2 - How do we measure Public Trust and Confidence in the Justice System

Justice Ruma Pal- We have a minute to start the session. But we will start utilize the minute with a task, there are some judges who have come today aaaa because they were attending to the judicial duties yesterday , so they have come today in the morning. So I quickly ask them to introduce themselves in the one minute very briefly please.

Participant Judge - Aaaa first and foremost my aaaa apologies, feeling very guilty having entered the room fifteen minutes late but I have come by morning flight. Couldn't make it yesterday is because for the first time I am attending a programme here which is starting on a Friday, so therefore we had to attend court in Guwahati, I am from Guwahati High Court. I am Justice Hrishikesh Roy from Guwahati High Court. Yesterday we attended court took an evening flight, then today morning. so I am late by fifteen minutes, I start with an apology and in front of me I have Justice Ruma Pal who talks about the seven sins of judges. One is always scared and she flanked by two of my law teachers Prof. Upendra Baxi and Prof. Menon. I happen to be a 1982, campus law centre graduate. It's a great pleasure and honour sir to be in the same room as you are sir. Thank you

Participant Judge - I am Nilu Agrawal from Patna High Court

Participant Judge - I am Anupendra Agarwal from Rajasthan High Court, Jaipur Bench.

Participant Judge - I am Shahikant from Allahabad High Court.

Participant Judge - Justice Shinde from Bombay High Court.

Participant Judge - My sincere apologies as well, this morning by the time we landed here in Bhopal airport it was already eight in the morning and normally on the first day in the National Judicial Academy all programmes are scheduled at 10:00 O' clock keeping that factor in mind. But this time around they have started it at 9 O clock.

Justice Ruma Pal- I hope I hope the director will take note

Participant Justice- I am Ramamohan Rao, from Hyderabad

Justice Ruma Pal- Hyderabad long way yeah yes aaaa now we have this session aaaa it's an one hour session aaaa but we have got unfortunately though short time two brilliant speakers. One is Justice Prabha Sridevan she is a former judge of the Madras High Court, for those of you who don't know her but most of you know her. She practiced law till she was made a judge. Her husband was also a very well-known lawyer aaa unfortunately died before his time of the Madras High Court and aaaa Justice Sridevan has written several, several judgments one of which I remember to my knowledge aaa was quoted by the Supreme Court because Supreme Court not only upheld her judgment but aaa quoted passages which related to the aaa valuation of women's work for the purposes of calculation of compensation under the motor vehicles act

I think it was, motor vehicles act aaaaa after her retirement she was the chairman of the intellectual aaaa IPAB Intellectual Property Appellate Board and aaa she has decided many cases while she was the chair. Aaaaa she was also heading which is not mentioned here, she headed aaa special committee which was set up to make recommendations for changes in the aaaa intellectual property law to the government and she has written books aaaaa several articles and aa she has aaa recently translated aaaa well-known author aaa called R. Churamani and aaaa from Tamilian to Bengali aaaa to English sorry hahahaha so hahahah Bengali just came up. Incidentally she is aaa graduate of literature and then aaaa law. We had to do that in those days. Aaaa aaaaa the second speaker is Ms. Naina Kapur, Naina has given a very brief introduction here but I have known her for a very long time and although she is a lawyer by profession and aaaa she aaaa she aaaa she has aaaa at one point of time run an NGO called Sakhshi, many of you might have heard of it. Sakshi was responsible for the Vishakha Judgment. Aaa and persuading the Supreme Court Vishakha guidelines which were framed by them on the basis of the CDOW Principles no sakhshi was also part of big part of the Asia Pacific Forum, which was a forum aaaaa where NGOs aaaa of all the SAARC countries and aaa judges of the superior courts of the High Court and Supreme Court were members. I was a member, Justice Sridevan was a member aaa justice A.P.Shah was a member aaa from India. Then we had a person who is now the chief justice of Nepal, he was a member and that interaction with the NGO component into gender equality opened up our minds a lot. She aaa is at present practicing, she is a consultant and aaaaa member of various committees but I must say that I still remember her as aaaa as heading Sakshi because that period that we were members of the Asia Pacific Forum, watershed in my life as a judge. And aaa it did help in enormous amount. So I am very pleased to that these very very interesting people are going to talk. I think 20 minutes for each aaaa 20 minutes, haan please. How do we measure public trust and confidence and the justice system. This is assumed that there is public trust.

Justice Prabha Sridevan- Yes!!! Thanks you mam and it's nice to be here in Bhopal. There was a time when I was here every month. Aaaaaa does the public bother about us? Is the question we are asking ourselves today? And in all the Sakhshi meetings I remember, Douglas Cambell who was a federal judge of Canada would tell all the male participants to remove their courts. That is to shed whatever we had we think we are as judges and be willing to learn openly and learn. So, I would request you all to mentally do it and aaa and relax and come other for sharing and learning. It's a two way process. Now does the public care? I think the public cares not specifically but definitely, like Himalayas we are there and they'd like to know that we are there. I remember there was a session which was, which was organized by Sakhshi and Naina, there was a women who came aaaaaa her husband has made her swallow acid and aaa so her voice was aaaa was aaaa her vocal chords were , sulphuric acid has damaged her vocal chords so she had an odd voice and when she came to the family court and when she spoke, the people laughed, not because they wanted to laugh at her but it was a kind of a instinctive reaction to that odd voice I think and not out of malice I am sure but he the judge did laugh and she said at the meeting “ *to insaaf kahan milega?*” where will I get justice? So they do expect us to be the upholders of justice. I mean it was not the fault of the family court judge I am sure but aaa

still this tells that when we become a judge and we take the oath without fear or favour or affection or ill will it is 24 * 7 there is not one moment it be can relaxed. The sternness of that oath, it has to be there all the time. And as I was coming to Bhopal , aaaa an officer was sitting next to me, he asked me are you a teacher mam I said I am not a teacher then he looked at me expectantly because he want to know what I was I said I am a retired judge then he said you are the only persons we trust today so, there is public trust and I thinks it's not the red light on the car, it's not the PSO who come with us but it's the confidence that the public places in us the justifies our existing and that's also our protection and I will give the main points that I have chosen and then I will elaborate upon it the public trust the way in judges are chosen. Transparency in selection quality of the process merit of the judges and the bench should reflect the society then they should be public trust the way judges conduct themselves and there the manner in which hear and hold court. Perception of bias or lack of it transparency regarding our assets then decorum and dignity then finally, public trust in the way we manage cases, the rate of disposal, our judgement should be reasoned and this I really a nitty gritty there should not be any favouritisms including the cause the roaster or whatever you call it, nobody gets precedents. I think that that increases confidence and when talk of public we are also talking of the litigants they are the ones who are aaa they are the ones who look at us, they are the ones who see us and therefore, it does matter to us an, an institution to inform the public that really no matter how high you were lower you were your before me. I think that should be connived to increase the public trust in us. I kind of tried to aaaa find put from myself what are the positive and negative impressions that people have on judges, the positive impression is people still think that the judges is the last resort he know the aberration scratch the medias eye and they are splashed in the first pages built till the people think we are the last resort and in IndiaI think people believe the judges have divine power yes, the negative impression, is that we far removed from the common man and the way we are chosen the pool from which we are chosen we are definitely the more blessed amongst Indians and I don't think that's going to change so we really have think out of our skin because we come from comfortable backgrounds. And that's not the Indiathat we have to deal with because I really believe judge is a mediator the judge is trying to balance the, the, the gap between the persons without power and the persons with power we are constantly mediating we are constantly equalizing and we are constantly giving justice and, for that we have to understand what it is to be weak. We are really not concerned with everyday problems. People do think the rich are more likely to get favourable orders than the poor whether it is civil or criminal and there is a bias against the weaker section. Now, there was this case before the Delhi High Court, which, which concerned an unskilled labourer from Aligarh, his name was Sajid Ali , his wife whom he had separated was Roshanara, they had three daughters by this marriage. Roshanara claimed maintenance. One way or another the maintenance case reached the division bench of the Delhi High Court. The court considering the plight of the parties asked the Parties to be present on a particular date, on that date Sajid Ali could not be present. He was unskilled labourer he did not belong to Delhi, he was poor, he had no photo identity card, he could get a gate pass to enter into the court and therefore really there was denial of access to justice, physical. You think of any other way in which this access to justice is denied.. this is an extreme case and aaaa one of the judges said that, this was issue of access of justice another judge said it was not the third judge also felt that it was not a question of access to justice and aaa as regards the access to justice issue

this is what the judge in the minority says “ any impediment on accessing the courtroom is an impediment to fundamental and human right of access to justice and did says that it denies access to persons who include migrant population, labour in the huge organized industrial sector, whole homeless, the aged, destitute, deserted women, poor people, orphan or abandoned children. Now I will think we will all agree, that they are 90 % of India and we the people India cannot ignore them if we want public trust in us. But, somehow reality works otherwise, we know whose cases are heard first and I am sure each of us in our courtrooms can change that it’s not an impossible task. And as regards, I spoke about a public trust in the way we are chosen, when we decide service cases where the question of choice of a person comes we insist on transparency in the process , we insist on so many other things which we happily ignore when it comes to us why? And it’s, it’s to me it’s, it’s a tragedy that when took to ourselves the power to choose us which is unique in the whole world, I think we should have made the choices in an impeccable manner. The fact that a controversy has arisen in this regards itself is a slur in the way we have conducted ourselves. We should be if we had go that best of people as judges this case would the Supreme Court today. Bench should reflect the society, here I want to reach something which a lady Brandga Heyle has said aaaa I am quoting from her interview in the guardian , the only woman there and she says that “while I flattered in proud to have been the first woman appointed in the aaaa lord in 2004, in do not want to be the last I am disappointed that in the ten year since I was appointed not one among the 13 subsequent appointments to this court has been a woman and she says in a democracy it is important that the right and responsibility is be decided by a Judiciary more reflective of a society as a whole, then the ordinary man there is something called the ordinary man or ordinary woman and we are constantly talking about them in our judgment. The reasonable man and aaaa the Wednesbury man and aaaa clap neighbour man. I don’t know from where the clap neighbour man comes from but anyway we do cite them in our judgments when that person looks at the bench that person should feel that hey I am part of that. If that person feels that somebody else then I think we’ve lost it, we have lost the right to be the dispensers of justice. They there should be an ownership of the system and for that I am talking of quota I am talking about a representative and inclusive of bench. And it is not happened in India and it is not happened in anywhere. I think everywhere this problem is there and there is work in progress, more advance in some other countries and probably not so here but it should be there. Then, aaaa I spoke of aaaa time up? Yes! Yes! So that’s all I had to say. I am glad I gave bullet points ahead of time. Thank you very much.

Justice Ruma Pal – aaaa aaaa Ms. Kapur will speak first and then another twenty minutes and then we can leave it for any question you’d like to ask

Ms. Naina Kapur- Okay, so prof. Oberoi gave me the task of entering this question, how do we measure, how do we measure public trust and confidence in the justice system. I think it’s really what outcome you are seeking. Are you seeking damage control or are you seeking to alter the stethoscope. I have To belong to this second school because I believe in thinking out of the box if you really want to create social change, if go first to the damage control, that adds to when the public opinion will come for they’ll wait for a spontaneous public opinion. In Nirbhaya case and at that time it was a very brutal very visible violation occurred and a

statement by a public aaa on mass may that was enough for enough. But when we do that when we wait for those occasion to arise then and may be it was global shame and meaning or political expediency and then we had natural responses. So we had protest we rushed through yet another set of legal reforms which are ill crafted and ill informed. But if what we are looking at when it comes to measuring, is to all through the stethoscope, when I think that compels to be proactive and when we are proactive you can act, we can look at the picture from a macabre place. And finally acknowledge that really what we are talking about is that the end of every justice system is a beneficiary. But at the beginning for it is an attitude and that I think is something we really need to look at in terms of measuring. In a proactive model how we measure public opinion, then take sign of quality they shape in what I would describe aaaa participatory audit, so just be patient with me. Aaaa ahhhh then I am going to share with you two examples of what is a participatory audit. But just before that I wanted to explain what is aaa participatory audit? It's basically aa quality audit of the system so in our case the justice system. What it does is to see how well both internal and the external demands are being met that of the beneficiary that of the justice system and if they are not being met then what do we had to do to improve and innovate in order to make sure those areas are improved. It's participatory because it involves a cross section of people. Who are both learning the outcomes. The goal of the participatory audit is in polices, programmes and may be structures. And the extent to which they have been implemented. Now I want to give you the elements, what are the key elements of an audit? The key orders to a participatory audit are, you have to have leadership, you have to have inclusiveness that is representative public, you have to show that is there a problem we have to judge it, like to see a proof of a problem and the last thing is what process do we choose?. I want to go to the first example, there was in 1999 something called the conference on public trust. Aaaaa and confidence in national courts in the US. At that time a year before, a conference happened there were two surveys that were conducted. They were, these were national opinion survey. One was carried down by the aaa the American Bar Council and the other by the National Sates Courts. A few outcomes in those 54% of judges were considered to be well qualified aa the justice system in some areas went ahead to public schools and aaa even their education system as well as their health sector... as well as congress. But aaaa another element of the survey showed that the minorities thought they were being treated unfairly by the system, that were excluded by it and they rated community levels court below standards. In fact, below public schools as well as state governors. The state governors' office, they felt most of their cases were handled poorly. So, proof then became source of cultivating leadership. Leadership that included federal judges, or state teams were headed by a choice of justice and then the conference itself was sponsored by the chief justices conference, the national I centre for states court, the American bar association and women, women voters. It was inclusive, 500 people attended the conference, there were 500 participants but they were from which section of the community from the public in terms of media aaa educators academics, from judges both federal and state and from opinion makers as well. So, participant themselves sets the agenda for this meeting. They had, they were given three exercises first, rank the issues in order of priority they felt impacted public confidence. I am just going to highlight some of those. Unequal treatment in the justice system, the high cost of access to justice. The last one, which I thought was the most important one from my point of view. Judicial isolation because there is a lack of contact with the public or perspective about who

that public actually is. The second, aaa exercise that they were given was to rank strategies they would adopt to improve, so this was not aaaa okay to improve public trust and confidence. Theses involved education and training, making point inclusive, implementing. we have piles of recommendations but we are never implementing any of them. And the value adding what is judicial performance. The third task was to the key task to overcome arrears. These were to disseminate, we are already have best practices model, we actually have here which was to improve education and training. What's the role of a lawyers, when it comes to the impact of their work and role on public trust how are we addressing that. And national level about the system which mean you are not prone to secrecy you are prone to transparency so that people know what you are doing. The philosophy of this exercise was that public trust and confidence building is really a shared responsibility. Okay. I want to go to the example which is home and that is really the exercise we carried on, which is what I call high science of participatory audit. Aaa what was that, aaaa genesis in 1980's aaaaa I was actually a corporate lawyer became a Supreme Court lawyer. You know and there is a point at which I began to see that aaa the system really execute against women. I was specifically looking up to gender issues. So I travelled with my colleague for all areas around the country, we being to many places and we met women with a single question at the rural level. I asked them, looking at them what does justice means to you? And really across the bore the answer was I means keeping my individuality intact. Emerging from a system where sense call for dignity equality and so aaa few years later that seeds stayed with me and I went to the chief justice of India in the year 1995, who said I think we have a problematic thing we need to look at it, I think we to look at what the undercurrents of bias within our system. Luckily for me he agreed. And I said I wanted to carry out a survey. Now a survey has to be we structured it just not be a random survey so gain he agreed and he also adores that particular survey. He was the right leader I suppose at the right time and leadership then becomes critical. So we created a crossed discipline team of a lawyer and a social worker. Across different matters. The second part was we wanted to interview stakeholders, we considered those to be 109 judges at the district and High Court level and the Supreme Court. Women lawyers, women litigants, we did courtroom watches and we conducted research. We developed what was the proof remember the second element of this exercise. That was to record what was the judges perception of women who came to their courts in situations of violence and there was extensive survey and questionnaire. From women lawyers we wanted to determine what was there experience of discrimination in the justice system and from litigants we wanted them to read what was their first experience in to going to court how did they feel? Then we did research over a period of ten years. Aaa a few of the results 51% of judges felt women who stayed back with men who abuse them were partly to blame. 90% said that they would not opt for legal redress in a case of domestic violence involving their daughter or another female relative. So it brought things home but they recognized 97% of women feared reporting case of sexual assault. Women lawyer 64% of them had said that they faced some form of sexual harassment at work. The first experience that litigants women litigants going to the courts was fear or shame. The court from experience was either enabling or disabling. I am just highlighting these. And in our research over 10 years period of sexual assault we found underlined myths and assumptions about women in situations about violence did really find a place in that decision making process. However, I want to stress what was the positive outcomes of this gender participatory audit. 70% of judges

became open to equality education for judges and community leaders okay. That audit was published in what I called the gender and justice report. What we had created was a relationship of leadership and trust. Chief justice endorsed this...with...is own profess to research. That makes a lot of difference to judges, I have that. And the greater outcome I think is been referred to already was something called aaa the Asia pacific forum there is a long form to it. I also want to say aaa that at personal level there is another outcome aaaa I actually began, aa I love talking to judges. In the beginning I can say that I had my own biases about it okay. But when I have started having conversations with them I realized they are just human functionaries, just human functionaries like all of us and we all have our own undercurrents and we just don't want to see them necessarily. So we decided that as a result of this prove as a result of these outcomes we now needed to develop a process. The process, the chief justice said, well we don't want to just to be a Indiaspecific problem so he made it a collaborative exercising for all judges from the Asia Pacific region 23 judges superior court judges and 12 from again civil society groups representatives. At that meeting it was decided we would develop a programme which was based on collaboration between the judge and the civil society NGO group. Each and every training would actually be delivered by that team okay. We had a resource full of educators. We included people from Canada from the Supreme Court of Canada Justice Tubey, Justice Cambell that aaa Justice Sridevan has referred to, Justice LB Sakhcs. I wanted to say something to what Justice Sridevan came to if you look at representation of the court on the constitutional court of South Africa is actually aaa is a model of representation I suggest you might take a look at that because of the presence of people that are on the that aaa or were at that time.

Justice Ruma Pal- Justice Zahid

Ms. Naina Kapur- Justice Zahid, yeah Justice Zahid we had a lot from Pakistan from aaa Kirby is from Australia. They all came together and honestly and today what we managed to produce honestly is what we trust them because you have civil society people and it's just that how it's done makes a lot of difference and I think you'd agree with that. But the hallmark of the programme the big hallmark of the programme and I think this is, were we can built public confidence was experiential learning. Judges went to places like the women prison, they went to domestic violence shelters, they met mothers of children who had been sexual abused, they met people with disability or hurt by people with disability, they went aaaa they met women who had been trafficked as a tax worker. Having that conversation you know a judge said to me you are trying to aaaa you are threatening my independence. But actually impartiality is how much information we have we actually have about an issue we may not have that information we are then partial. So the idea of experiential learning was to learn from the reality of people unlike us. That's consistent with the idea of equality. If our outlook is to altering the scope then what change looks like when you begin to do that can only be shared through two or three anecdotes in very short. The Supreme Court judge from Pakistan Justice Zahid, he was a tax lawyer and when he came for the programme his most memorable experience was speaking to women in the women shelter who suffered domestic violence. That became the seed with him to bring out the first human rights report on gender violence in Pakistan. The judge from Calcutta who he was the one who said to me, you threatening my independence

you are trying bring me. I mean I persona but we put him into a role play as a father of a daughter who is sexually assaulted and what he has to do to that and he suddenly recognized the challenges of it. It turned him like this. Stepping into the shoes of another person is to be critical to understanding that reality. He went on to become one of our best resource faculty. A judge from Bangkok a woman again who was playing the actual complainant in in a rape case and two judges are role playing the police and they keep asking her hoe many times were the details. What were you wearing, she was so disturbed by that she went back and she issued instructions to the police on how they frame question on women who face sexual assault. Aaa I think finally, aaa my time is over yes, yeah? Three more minutes I just I, there was a women in the village here who was one of our resource faculty aaaa she was to be in the IFS and aaa she suffered this tragic accident before that. I invited her to come and speak about disability with aaa judges at a particular academy but the academy did not have a wheelchair ramp, so in a course of a day we built it. Now that's okay aaaa in the process of the meeting with district judges , after they heard her they all committed to have going back to their courtrooms and saying and insuring that there would be disability access to their court and if they can't then be front door and as I think Justice Sridevan already said what really are we talking about. But I thought to me those messages by leadership in the judiciary become critical in terms of openness in terms of receptivity. Finally, finally me a person coming together of all this let me took the case of Bhawari Devi to the Supreme Court of Indiabefore chief Justice Verma who was also one of the founding member of this programme. And we got the Vishakha directions. aaa I also on another note when, I think this is what the justice system should really look like. When we went to the Verma Committee and appeared before that it was a two day process. Hundreds of women from across the country from all kind of issues including LGBT, sex workers, sex trafficking, domestic violence, legal academics, sexual harassment, prisons. All of them were allowed to be there and they really. We had this committee headed by this aaa eighty year old judge who sat patiently. Who was never given the facilities to do this exercise, and asked each one of us ki I'll give you five minutes, tell me what's your problem and how can we address it . I think to me that was the most enabling process I have ever been through in my life time before what. It wasn't a justice process it was sort of because you walked away feeling that you just contributed to something great and I think the justice system needs to do that. When you walk away from the system feeling enabled, feeling enabled. So how do we effectively measure public trust and confidence in the justice system and my life experience is says that through opening ourselves to something new like a participatory audit. Thank You.

Justice Ruma Pal – Thank you very much but I think the one of the most telling factor on the judicial system is that do we as judges trust the system ourselves. Do we have the trust and the survey as Naina has aaaa Ms. Kapoor has just said aaaaa109 aaaa judges aaa district, High Court and Supreme Court they were asked this particular question that if someone in your house has been sexually molested or a girl has been raped or your daughter had been raped, would you go to court? And 90% of them said no. why? Because they don't trust the system. If we as judges don't trust the system, how do you expect the public to do so? So what we really need is to think of how we can build the trust because as we said right in the beginning that it is necessary and it is the only justification for us being judges and that the public trust you and that is what Sir Good Marshall has said. We must never forget that the only real source

of power that we as judges can tap is the respect of the people. Respect means trust, if they don't trust you, you are powerless anarchy. So aaaa we have aaa about 20 minutes little less, 20 minutes to ask question.

Participant Judge- Now ahhh just 2 quick points. Justice Prabha Sridevan you had you had mentioned about the you know the gender situation in the bench experience which perhaps is relevant when I was being considered for elevation simultaneously, a batch mate of mine also a designated senior advocate she was also being considered the chief justice called her called me separately of course but she declined and I am sure she would have made a very fine addition to the bench. She happens to have been married to a practising lawyer. Husband was not designated she was designated and of course she is a friend of mine and she confined later on that if I would have accepted it would have affected my husbands practice so therefore I refused so I am just giving you an example that perhaps the best lady judge who could have been appointed at the relevant time was not appointed at the Guwahati High Court so this is one aspect now far as the perception public confidence that Naina's spoken about also you. Now who are the consumer so far as the legal system is concerned? First and foremost we have the litigants themselves now suppose a verdict goes in the litigants favour is he bothered whether it has come through a due process or it has come through a wrong process. The litigant would not be bothered provided the verdict is in his favour and we also have observers in the academic field who analyse and also write comments after judgement is delivered there perception is totally different and then again we have a public perception. In a particularly high profile cases the people would want instant justice. If a crime is committed today they would expect the trial to commence next day evidence be taken verdict be delivered and if it is a heinous crime which shocks people irrespective of the nature of evidence they don't be available due to they expect a guilty verdict and they would also expect aaa the punishment of death. So there are perceptions but a judge if he has to function by looking at how public is perceiving his functioning perhaps this is my feeling. You are entering into an arena where may be there is an element of gaining popularity. A judge can become very popular by catering to public sentiments and judges can be a less popular or not popular or may not be liked at all by delivering what in his perception should be done in accordance with law. I am just raising this point because there are various stakeholders so we can't address the issue by looking at one segment.

Justice Ruma Pal- Aaa you missed this portion this is a lot of what prof. Baxi has said in the morning in-fact. Aaaa Prabha

Prabha Sridevan- The, the one response I, I want to give is aaa the public exception is vis-a-vis a single case let's say some horrible crime happens immediate blood but public trust is something that gained over a period so, I do not think judges should, should want to be on top of the box, that's, that's not the business at all because the oath say without fear so we should not so aaa but public trust is different and the public feeling and we really can't shut our ears to the noise that we hear outside. But we hear it and we decide in a balanced way that is one thing. Regarding the other when you spoke about the more talented colleague of yours there you are commenting upon a larger problem where the height of excellence of a woman can

reach she does not reach because of various circumstances which excuses excused against her so aaaa that is a larger problem and I am glad you are sensitive to it.

Participant Judge- Justice Prabha Sridevan, has touched about two important aspects during their talk one is relating to the perception of the general public which get more favourable order. I think the statement requires a slight correction or moderation certainly the High Court judges are guilty of paying more attention to the rich client the reason is very simple. The rich engage the best of the lawyers well trained lawyers and they consume least time of impressing a judge about the importance and significance of the legal facet to the controversy and as a result of that legal facet of the controversy a lot of time and energy is spent not because it has come from a rich house. This is one area I request some slight tempering may be required. The second aspect which Justice Prabha Sridevan talked of is about the judges getting far removed from the main stream society. The advantage of the judges removing from the general or main stream society far out ways them from any possible interaction even at the grassroots level if not at the main stream society itself. Even if you were to interact at the grassroots level the possibility of people mistaking you when you perform your duties very immaculately clean on the bench is far more dangerous to the overall performance of the institutional integrity they will try to suspect the integrity of the institution itself. This factor in my opinion far outweighs the advantages of inaction with the society. So far as Naina Kapur, I have also one question for Miss Naina Kapur she was trying to touch about the valuation of judicial performance. Are we trying to look for playing to the gallery? As a judge you go about doing your job whether a newspaper or a television V channels covers your performance at all or not. The risk and danger is too heavy. If I were to play to the gallery sitting inside my court hall I might become popular but that is no end of it all my own performance as an immaculate judge who is who is maintaining absolutely equal distance between two parties who come before him will impede public perception. People will think I am more prone or biased towards a particular opinion. This area requires consideration. That is the reason why majority of the High Court judges they don't prefer their names to appear in public media, instead they would like to prefer the court's name to appear. I don't prefer my name to appear in newspaper, I don't play to the gallery I am not a politician to step foot afloat in the public opinion. Instead I would prefer my High Court name in to be mentioned saying that the High Court in so on so, so on so judgment has expressed the sensibilities or played to the sensibilities and made that the part of the judgement . This will go a long way in-fact the support from, from somewhere else I think for that. The aaaa lead must be taken by someone to prevent bar council has in-fact been mentioning that the lawyers name should not appear in aaa newspaper but nobody bothers to correct the mechanism. They are aware that day in and day out lawyer's names in and out in newspaper and I have not seen a single bare council taking action against that. And aaaa we have Justice Chandru also here he has also here since we have tried to teach each other quite some time earlier. He has also something to say about that. And the third important aspect which I thought will also need to be focused is learning from the experiences of the victims. Justice denial is one aspect of the matter denial of facts is all together a different aspect. Denial of facts has been spoken by justice Prabha, if you are talking of justice denial the perception too differ. An academic who examines my judgment in a complete isolated atmosphere is more prone to be objective in his criticism that I have missed an opportunity to correct a course the other day we

have all seen a huge debate being generated whether the Supreme Court has just allowed a great opportunity to slip through its finger for a course correction. Very recently, they have pronounced a judgment very late in the evening. There are possibilities there are 2 viewpoints but if an academic criticises my judgment I can look at the objective standard being employed there. If I were to look for criticism from general public it is more prone to be subjective and consequently, people tend to think mind you there are certain news houses which capture to the particular political philosophy and a particular political boss. So they say even if you write a judgment on a criminal side they expect that the principles of natural justice are allowed to be violated by this man. When an FIR is going to be registered then where is the principle of natural justice there. A complainant goes to a police station and complains. The contents of which disclosed. Commission of a cognizable offence does a policeman require to put that other man on notice? That is not the requirement of law but a news-house proposes that we are there to correct it. Do I enter into a debate and tell that man and tell him that you must be very stupid in writing this. There is no end to it. So there are ways and ways, so performance evaluation of performance judicial performance. Let us not put it in the hands of either public media or the public at large. It must be left to objective criticism from any academic not all sorts of academics but only those who are familiar with the functioning of the courts and the disadvantages of the judges functioning. By removing for removing themselves from the mainstream society. These are my suggestions.

Justice Prabha Sridevan – See when I said that distanced from the common man as I don't think that I meant that whether you should be mingling not that. One should understand, one see we are living in a very protected atmosphere as judges. Let us not pretend anything otherwise but that does not mean that we should not understand what the man on the road who has no legs is suffering. That is what I meant by distance. Judicial distance because this Bangalore principles value for talks about propriety that is not what I meant. I meant this, that we have to walk in the shoes of the weaker person that is what I meant by distance and therefore, there I don't think as I don't think that is what that

Participant Justice- You'll certainly consider this. The biggest threat that comes to a judicial performance evaluation or his own the perception of the general public from a point of view is. What the wild rumours which the members of the bar spreads about a judge. Half of them you can discriminate them because, they have no other work to bother about for the whole day. They have only one job come there to the court the bar and then go about listening to all sorts of things. A man who loses his cost before a judge doesn't bother even to go through the judgment when it is rendered. He merely listen to the operative portion goes to the bar room and then starts casting stigma there against. Oohhhh We all know that this judgment is slightly to come like this because of A B C D factors, even literate people like lawyers tend to do this there is no way that a judge will ever feel safe if ever he has to step into the open society reason is this man is catering to the needs of his client only to bluff him that he lost the cost because of the lack of merit but because of other factors than that. This is the biggest danger that we are facing today.

Justice Ruma Pal- She is not saying in the sense that go out and intermingle and you are absolutely correct that if you do go and mingle freely there is a possibility that they will then relay upon that intermingling to caste dispersions on your judgments and your honesty your integrity. What she is saying is that that aa that you have to mentally put yourself in the position of the person whose cause you are trying that is very different for being aware of what it would be like aaaa it's difficult for a man for example to understand what a woman would feels if she is sexually assaulted it is difficult. So therefore, you get as much information as you can from sources as we have had the benefit aaaa because we got that information and we were able to understand that yes this is the point of view. So this I think aaaa Justice Prabha Sridevan and aaaa as far as evaluation is concerned

Ms. Naina Kapur- I want to clarify this is not a random evaluation. In-fact, what I was trying to share with you is that the process has to be structured and there are elements in that process. It has to be professional, it has to be informed and it has to be skilled. It cannot be something that could be randomly done survey. But as I started with the justice system does exist for the beneficiaries which is the public, it has to it serves that public. Now that's why I think the public in a very structured way needs to be participating in what I am offering as I think as audit of the system it , it doesn't really you will see even the outcome of the gender and judges survey it really didn't lead to stray and aaaaa offensive comments about judges and all. Anything it led to the building of trust and leadership and not to what we are looking at and we are talking about in audit not a random evaluation.

Justice Ruma Pal- The aaa if the director permits we can ask her for tea to be served here so that we can go right through.

Professor. Madhava Menon- Having regard to the subject for the discussion public involvement as the key to public trust and confidence. In the process of deliberations you come across with this aspect of dealing with process of judicial education. In that aspect, one of the aspect was considered that inclusive partnership of judges and civil society. Having regard to this aspect we have a law known as Legal Services Authority Act of 1987. In connection with that the National Judicial Services Authority has an occasion to issue a circular directing the judicial authorities from the Supreme Court level to the aaa, Mandal Level in the whole country. As I am the Chairman of the High Court Committee at Hyderabad for the state of Telangana and Andhra Pradesh. My understanding that we are not constructing the legal services committees and clubs in the schools and colleges. Wherein if we constitute those colleges and clubs we educate the student in term that goes to the world of education to parents. Having regard to the nature of literacy in our country. We are not taking much action as desired in the act. In this aspect how we have to deal with this partnership of judges and civil societies. I request a comment on this.

Ms. Naina Kapur- The specific question is yayaya

Justice Prabha Sridevan- Your question is how, do we interact with the schools and educational systems to, to convey, to bring them into the aaaa legal system. That is, that is something that

we should do isn't it. see aaaa I think the legal aid programme as it originally started , was started with a certain vision but once we make an act that too becomes a structured system which we does not allow fresh air to come in. we do it I think. I mean we, if there is no escape from it we make everything a tight structure then it, it looks like another court which is not the intention. So it is for us to innovate. I think that's what we are here. I mean one is the laws and the different sections that is according to law. The other according to law is, is the constitution and we can innovate it in any way we can so that, the entire we the people comes under the umbrella of law and justice. I think you can do it if you are the chairman of the aaa. I don't think anything prevents any of the judges from doing it. Bringing aaaa creating a programme that will.....that will bring colleges so that a generation of, In-fact Justice Pal was mentioning it this morning, ethics, study of ethics is something that the schools have forgotten now. So may be court scan start it. I think all.

Justice Ruma Pal- Because all the aaa what we were discussing this morning was that ultimately you see the students who are in school they go on to higher education. I went to a college recently, where the lawyers there were thousand law school students and I aaa it was run by missionaries this particular college I went. I asked them do you have a system of teaching the student's ethics aaa behaviour in court what is expected of a lawyer because it isn't always a National Law Colleges aaa lawyers who appear before the courts it is the people who are in general go to the other government law colleges who appear before you. So he said no the, the father said no he was the priest. The Vice Chancellor of that college, Aaa in Bangalore and I, I said listen the aaa the lawyers of the future. If you don't teach them ethical standards the lawyers of the future will then become the lawyers of aaa judges of tomorrow. So must start by giving them ethical standards.... From college. So you can do something like that you know you know. Create awareness, start push there is so much that you can do there is so much power in each of you.

Ms. Naina Kapur- I think that really is the point the power that you yield. No one is aa gonna be able to do any kind of an audit or aaaa an assessment If you don't want it. So why are we here today? We are her because there is a crisis of public confidence and trust. I think first we need to acknowledge that. If we don't then we are going to be on a trajectory which will alienate us further. I think our life experiences is, is in the period of time that I being a lawyer. I have seen an increasing alienation in. The people don't want to go to the courts not because it spends so much as aaa the length of the outcome the alienating process. We have to take cognizance of that. Now what I suggested in the survey it said judges decided that they wanted to have aaa quality education, they took on the agenda. We provided the know-how and where and the structure. It's the call you have to take because you are all leaders within your sown courtroom. You are the master of your own courtroom. Of your own court. If you think not things are fine good. We can continue like this. If you feel no I think we need to innovate and think out of the box. That's try something that might make a difference. And the public will start you know aaaaa in the way it was meant to perhaps.

Justice Ruma Pal- I want to comment on this where a judge said aaa in any any aaaa institution there a few black sheep very few may be even one but if that one person they say aaaa the High Court of Karnataka aaa or the High Court at Calcutta has said or the Supreme Court might in fact be just one judge who is training every other judge with aaa same brush. So therefore, if it is idiotic a patently dishonest judgment when you High Court becomes responsible. And I think that it is very important. One of the question we will have to decide is that if you know that a brother or a sister judge is dishonest what do you do. Because that judge has the power to suffocate you with his repetition. He becomes very frustrating for a judge who is maintain the standards who is honest to be lumped with someone who is to your knowledge dishonest. What, what do you do within your system to clean up yourself. Yaaaaa

Participant Judge- Aaaaa my opinion is that , judges should be aaaa judges should be open for the aaaa fair public criticism and they should try to introspect themselves reflect over the what they did and then try to correct themselves. Even mingling in public to some limit or extent I don't think there is any problem as long as even in our conscious is very clear that though you mingle the public you go to some functions which are not controversial. I mean some institution has a organized some aaaa competition like that or the LTC programmes are aaaa LTCs are given so aaaa when you go to some other states areas aaa you try to find out actually what is the problem of the society. So aaa from our aspects, legal aaaa this system. So now so far as criminal justice aaa criminal justice system is concerned why people are afraid of approaching or they are reluctant to approach or file the cases even the educated. There are three four reasons according to me there is no protection to the, I mean aaaa protection to the witnesses or they do not feel secure when they come to the court. So in a aaaa protection should be given to the witnesses available those should be curtailed. One two three four five because if it that takes long, long time therefore speedy justice shortage is necessary provided seizer should be curtailed because there are so many. And so far sexual harassment cases are concerned or child abuse there should be in camera proceeding sin some cases where the victim will feel safe to depose and aaa come before the aaaa court. Now the witnesses are coming to the court they don't have proper place to sit, portable drinking water in our aaaa in Taluka area in Taluka places etc, they feel that is not a cognisable system we should enter into the court and we should not go there to aaaa give aaaa evidence

Justice Ruma Pal- Matter is adjourned

Participant Judge- Yes yes

Justice Ruma Pal- In Jharkhand when I went to Jharkhand or was it Tripura I think it was Tripura aaa they have aaa put a list on the web and not only that every aaaa lawyer aaa litigant every litigant now a day sis connect by mobile. So there case number whether it is going to come on the list or not automatically they are notified on their mobile.

Participant Judge- Yes yes

Justice Ruma Pal- That the case is coming up. So software might be a very good way of

Participant Judge- Yes yes

Justice Ruma Pal- Aaaa of dealing with this particular aaa but don't come from the village it is not your day

Participant Judge- But in a Mufassil area some Taluka place there is no continues supply of electricity during the court hours. That is also one of the problem. The laptops are given to the judicial officers but there is no supply. That is also problem. There are so aaa these are the basic problems which are the deficiencies which needs to be removed and now I may not say so. But even in the Supreme Court there itself that Yaqub Memon case was heard four times and then again fifth time court sat to hear that case. I mean how many times you see that what signal or what the litigants feel that the High Court should also hear ones though it heard second time third time fourth time why not. So there should be some certainty yes. One forum two forum forums thereafter whatever the application comes just to reject it or don't entertain its' itself or don't register it so that certainty should be there and that is the reason why the aaa affected aaa or the victims are not I mean aaa approaching the aaa the the court and even reluctant to aaaa file the cases aaa so far the witness is called witness is if called judicial officer should ensure that witness has come record his evidence on the very same day otherwise if you call again him he may not turn up that is the reason.

Professor Madhava Menon- With reference to the title how do we measure public trust and confidence? I'll explain the simple example. As rightly spoken to Justice Prabha Sridevan, people in collectively appears to be a mirror, mirror, mirror, they reflects the law of the land as well as our justice system. When I was a school going student in my village a farmer was there since he wants a cultivating tenant he was having so many litigations he used to bring that court records and would ask me to read and explain also he was telling he misunderstood the fan which was rolling against the judge as a stone hanging above the judge he was telling seen if a judge fails to lend correct judgment the stone will fall on his head. That was the faith that people were having in those days and you see the difference in nowadays. That is the trend.

Justice Prabha Sridevan and Justice Ruma Pal- Hahahahahah

Participant Judge- Mam, the court from where I come from Allahabad in the recent years there has been a spurt of petty nature of cases pertaining to not granting of pension, family pension, even matters like ration card, caste certificate and it's come aaa they are coming directly to the High Court and if you ask them why didn't you go there and the only thing they are asking for is ek direction, that you pass a direction then it will be done otherwise it will not be done and yes even for petty matters which is in the domain of the executive and so this has flooded the courts and in the nature of PILs and other things forget about those big PILs I am not talking about those sponsored and big PILs. These all come in the nature of that and that exhausts the courts with lot of time and energy. In one such matter of public trust which came before the court Ms. Naina was talking of a mother came up against her daughter saying that she was given an appoint a companionate appointment, now she is not maintaining me because she has got married now she is not maintaining me so I should also get a part of her salary. So this was

singlish question as to how to deal with it because at least that element of public faith and trust and that old lady mother had come so ultimately an order had to be passed it took came again to my court so I said it was not an appointment it was a compassionate appointment so she has to maintain the family which was dependent upon the erstwhile so a portion of her salary was given to her. So these small things some innovation has to be done at-least to instil public faith and confidence where will she go so that is how aaaa and such cases are aaa now a person was deprived of his pension and he was contesting and ultimately died and the lady comes up and, when asked as to why you were not given your pension she said no dues certificate was not given. When I asked the Counsel what was that amount that you did not issue the no dues certificate he said it was only for one thousand rupees. So I said that you should have deducted and give it. So the executive is also not sensitive and it is not performing his duty and that is one reason why the court are under pressure and aaa element of public trust and aaa.

Justice Ruma Pal- In-fact aaa sixty percent of litigation in any court in any court is sixty percent state government's inaction. From aaa from connections to aaa to licenses to aa pensions non-payment of pension aaa the services matters and there is a huge.

Participant Judge- And now they coming and seeking a direction that the police should come and investigate

Justice Ruma Pal- Hahahahah yes yes

Participant Judge- Ask them to lodge an FIR and investigate. So this is the pressure

Participant Judge- I don't know in other High Courts but in Calcutta we used to have something called a usual order and that usual order is that not being granted a license so that you have a format and that usual order used to be passed

Participant Judge- When the direction what in the writ petitions when the executive is lethargic they look into the court

Justice Ruma Pal- Hmmmmm

Participant Judge- Then can we say that public has not lost confidence in the court because even when the executive is lethargic they can go to the court and they can The roads are not laid go to the court

Justice Ruma Pal- Hmmmmm

Participant Judge- So mam now we have a new jurisprudence what is called in our courts it is called the representation jurisprudence disposal of representation. So this is a new kind of a jurisprudence that has been cropped up. But when they file a petition we ask them you just decide though statutory they may not be having any power but just because the person is aggrieved that is being done. That disposal of representation is considered to be a breeding ground for corruption the reason is the man who has to take the decision he doesn't take a decision he expects something more. To back his order he needs to quote in the references High

Court order so that he will find an escape route for what he has done by asking the party go to this High Court. You get a simple order representation to be dealt with in accordance with law. In accordance with law is always forgotten. He says courts High Courts what can I do? High Court told me to do it so I did it. He does it for extraneous considerations. Therefore, it is always appropriate that the court must be cautious and careful while trying to send an order to dispose of a representation better find out why that representation has not been handled so far, what was the impediment, and why it is kept pending on the office, next to superior officer to file an explanation. So that the man against whom the representation is made will be accountable to his own superior officer otherwise we will not be able to guard ourselves against possible pitfalls which are carders of the courts.

Justice Ruma Pal – Hmmmm a lot I think a lot of it is the executive worried about their ACRs. If I take a wrong decision then I may be held up so they use the order as a kind of a shield. Anyone anyone else yes yes,

Professor Upendra Baxi - I think a very important question that has arisen I think take it after a second. Is how to discipline the bar and on the one hand you need the support of the bar to maintain judicial independence. Because as I am always saying to my students the Indian legal profession is striking very striking in its age. Is striking in the normal sense of striking a process of a glory. By striking it regularly goes on strike also.

Justice Ruma Pal – Ya hahahaha

Professor Upendra Baxi - So judicial judiciary has to always worry about lawyers because they are admirals to advocates judges and lawyers to courts. They are necessary but they are necessary evil because they can be very bad. They can frustrate the honest judge in the performance of duties. How do we discipline the bar, how do we curtail the lawyer's fees for example access to justice was talked about. But what access to justice when the growing rate of SLP in Supreme Court today I need not mention it to High Court because I need not mention it my students tell me how much they charge and I, I, I disown them as my students because I say you, you, a seventy two generations of yours in one generation.

Justice Ruma Pal- Hmm

Professor Upendra Baxi - Now you must stop doing it. And then I tell my students, Lord Cornwallis, in seventeen something because it was a to the English system by the solicitors Lord Cornwallis's idea. But today we are all Lord Cornwallis, why can't we bring some order into the bar and who shall do it if not the judges then the chief justices

Justice Ruma Pal- Actually the disciplinary jurisdiction of the bar was with the judiciary but it was taken away by the parliament by the advocates act. And then the bar council was set up and they are required to have a disciplinary committee dealing with disciplinary matters but for instance in Bangalore I know that for the past three years they haven't had a disciplinary committee. So even when you say that I refer this matter to the bar council it makes no difference at all because there is no disciplinary committee so the man gets away with forgery with anything else. And I do agree with professor when he says a and I did take it one

step further that when one talks about the delay in the legal system the entire delay is put on the feet of the judiciary. In-fact I would say that ninety percent of that blame lays with the lawyers and as is being pointed out by, by, aaa learned brother there he said aaa that aaa that why do these cases gets importance because the lawyers who are up in doing will get the cases heard otherwise they consent and they come before the judge and say that no we have consented, adjourn it. Now the judge is already overworked so what he do is he adjourn the matter quit happily because he has three thousand cases in his list. So if you don't do your matter today you come three months later. Now with that the lawyer who is therefore there is an impression that the richer get justice faster that may not in-fact. It is the lawyers who are up in doing who get their cases heard. No judge says that ever a lawyer keeps insisting that my case be heard up heard for today if it is fixed for hearing aaa say that I will not hear. Aaa all these strikes boycotts and god know what else as professor Baxi says striking lawyers aaa the striking is in more ways than one. Hahahaha

Participant Judge- Now there is a new breed of lawyer's aaaa what we are facing in the district courts and even of- course very municipal even at the One of the recently one of the judge was pierced with metal or something because the lawyers were insisting that they want a particular kind of an order. So amongst the judge's aaaa amongst these lawyers a new breed of nuisance lawyers has come up

Justice Ruma Pal- Absolutely

Participant Judge- Their practice flourishes not because they have some ability but because they are into some nuisance value and they vouch into some, They have political And yes they have become a big, big menace in Utter Pradesh

Justice Ruma Pal- And perhaps I have one, one further suggestion aaa again aaa that the government may think that you are setting up judicial standards accountability bill what is that judicial accountability standards bill what I sit.

Mr. Anil Gulati- Simultaneously we have a bill, called standards and ethics in legal profession bill 2010. So that, that bill has been simultaneously made where we have got grievance redressal forum against lawyers as well.

Justice Ruma Pal- See the thing is as far as judges are concerned you know when we talk about trust in the judicial system a lot of it is to do with the lawyers. A lot of it is to do with the lawyers. So you should not make you see you have so much of election within the bar council the people who are elected or not necessarily good. So you should have an independent body as you are thinking of NJAC and independent body made up of people who are citizens, jurists or whatever who will then be in the disciplinary committee not by election.

Mr. Anil Gulati- Yes only the provisions. There will be a board for taking disciplinary action and hearing the grievances. That function has to be taken away from the bar council and given to an independent board. But there is a stiff resistance from bar. I am telling you

Justice Ruma Pal - You have about aaa in the High Court itself you have aaa in the bar council itself you have five thousand registered lawyers five thousand. So stiff resistance unfortunately,

judges are smaller in number otherwise we would have also put up a stiff resistance. Hahahahahah.....

Participant Judge- We have twenty thousand lawyers. In Allahabad we have twenty thousand lawyers.

Mr. Anil Gulati- No mam in the recent case the Supreme Court has said that the, the, aa that the lawyer was not fit enough to present the case so the evidence should be read and heard. Here the Supreme Court has given a direction that's why I told the minister now we have a baking of the Supreme Court that we should set up a system where there is a continuous assessment of the lawyer his fitness to represent the client. So we can take advantage of that direction of the Supreme Court.

Justice Ruma Pal- since Supreme Court where in a tax matter the government lawyer said I am being very fair in the matter lordship this is already covered by aaaa decision passed by this court earlier on. He conceded on behalf of the government. The lawyer appearing on behalf of the petitioner stood up and said I think my learned friend is wrong it is not covered. So in other words he was conceding on behalf of the government because he hadn't read the case and this is at the Supreme Court level.

Professor Upendra Baxi- Aaa they made a difference between type of aaa one is legisprudence. Legisprudence is the aaa of legislators and second is jurisprudence we know or do not know it namely work of judge and a jurist whoever is a jurist. Everybody is a jurist in Indiabut aaa judge and a jurist and the third is demosprudence, with the Supreme Court of India, High Court my spell check says demosprudence not demosprudence I correct my aaa it commits' contempt aaaa besides aaaa so its aaa demos prudence is where judges invent new jurisdictions , invent rights, invent remedies and makes policies not just settle disputes and act as the co governors of the nation. Now if judge has so much power to invent new jurisdiction, invent new rights, invent new remedies in SAL [social action litigation] of like public interest litigation. They surely has some power some power. I remember Justice Chakla in the High Court he, a lawyer argued eight days before him and justice by then realized the aa facial expression of justice Chakla that he had over stepped the mark so he said my lord I am sorry if I have trespassed your judicial time and apt came the reply from justice Chakla you are not trespassed on judicial time you trespassed on infinity.

Justice Ruma Pal- on?

Professor Upendra Baxi- On infinity hahahaha not on judicial time hahahah he spoke like me hahahah so aaaa point is judges have enough powers to aaa some power at-least or in their own doing to control the lawyers. I don't see in the life of me as why a case should be argued for 36 days 80 day s3 days 69 days 89 days why can't it be with all the aaa reform which Supreme Court has done. Why should not be the case be heard for only 30 minutes or only one day why should it go for indefinite period of time? When you have written submission.

Justice Ruma Pal- I think I think many judges have tried yes come to the next point, I have understood you. But then the lawyers you stop them they might boycott your court. So there

are problems I think that but this controlled I think you have raised an extremely important point. It is 12 o'clock aaaaa and we are now due for next session I think before lunch yes twelve to one pm aaaa but you had a question aaa who had a question aaaa someone over here. Can I keep it till the next session alright?

Session 3- Indicators of Public Trust and Confidence in the Justice System

Justice Ruma Pal- aaaa so the next session is again for one hour, who, we'll keep it for the next session please ya aaa thanks. Aaaaa indicators of Public Trust and Confidence it's all the same so you can ask your question at any session actually. Indicators of public trust and confidence in the justice system. To low civil filings and aaa drop in social action litigation. Aaa professor Sharma is not here aaaaa Mr. Anil Gulati aaa you are here and aaaa Mr. Harish Narasappa, that you so aaa since Mr. Sharma is not here we have one hour so if you would keep to twenty minutes please aaaa oohh I see I am so sorry ohh you gave me last night oh. We have Professor Madhava Menon Do, do, go ahead. I'll, I'll say something very, very short. Aaa professor Madhava Menon I don't think he needs introduction does anybody needs his introduction no aaa please continue.

Professor Madhava Menon- I think the last two sessions we have aaa a lot of consensus in this hall that the justice system is passing through a crisis of public trust and confidence. We may not agree that the judges are alone responsible for that situation we were discussing that as to who are the other participants to create this aa crisis. But the judges should really get bothered about it. Again the question is should judges alone be bothered about it what about the other stakeholders in the justice system, how do we generate that awareness and do something about it I sa question which hopefully in the next few sessions we will trash out. I heard the chairperson mentioning in the first session that the people may not have the trust in the system but they must necessarily have trust in the judges. Now if we were to distinguish the system and identify one of the major actors of the system to figure out what are the indicators which has led to the loss of public esteem in the system we might come out with those indicators in the system but might not necessarily be the major indicators for loss of public confidence in the system. I would therefore like to submit to you when we talk about the system we are talking about the laws if the laws are unjust if the laws are biased if the law is protect the influential and aaaa deny equal justice to others. You might get a system which will aaa recreate distress on the part of those who are adversely affected so we need to go into the law making process itself to be able to figure out as to whether how much of this loss of credibility attributed to the law making process particularly the procedural laws including the rules of courts a second important thing is institutions you know we talk about a judiciary as an institution and judges as participants in that institution. I would therefore like to submit that if you are searching for the indicators for the causes for losing this public trust we need to keep this distinction in mind about the role of the executive, the role of the lawyers the role of law makers the role of litigants themselves in contributing to the situation where we are placed today. This is not top absolve the role of the judges in any sense because I should think that two or three

judgments of the apex court of the country did really contribute to the loss of the trust to a considerable degree and I would refer to *aaa A.D.M Jabalpur* and what Baxi referred to the Bhopal gas litigation. There are many other cases in which one can identify in which one can particularly critique the role of a judge, decide to it contributing to the alienation of the public from the justice system. I am not *aaa* there is no time but that's my first submission that we need to look at the systemic indicators for the loss of credit but this group being judges of the higher courts we are focusing more on that but that does not minimize to be able to understand the problem we need to go much wider than we are at present. The second thing is *aaa* measurement because indicators are for the purpose of measurement and making a judgment in how things have gone astray. Now this measurement has not been perfect in anywhere in the world to my knowledge it is not a question of judicial performance assessment only particularly when we are talking about the system as a whole. Therefore what we are measuring is really persecution not necessarily the reality this may be kept in mind because it depends on the constituency to which you have gone. The type of questions that you have asked, the pre suppositions and hypothesis with which you all did this determination that type of outcome that you get which may not necessarily be the reality for the decline of public trust. That's about *aaa* I say this because I remember long ago in 1970's there is study by the bureau police *aaaa* research which did a survey of public persecution of *aaa* the police and it super-performance and *aaa*, the, the results of the study everybody condemned the police and they found that about 47 % of the respondents have never had an occasion to interact with the police but they have an opinion about the police which is corrupt which is this that so therefore, if we were to go into many other people may not have gone to the court with a grievance now their perception will solely be through media or other stories which are coming from lawyers or other people so therefore, this perception factor may be kept in mind in giving the weightage to the role of judges and *aaa*. My third submission is that in dispute resolution which is the function of the court unlike executive legislature you find that ether is a public dimension even in adjudicating a private dispute. This is not ordinarily appreciated in the in the situation in which lawyers and court and the adversarial setting argue on different points on a ascertainment of facts etc. you ordinarily even while writing judgments because based on the pleadings and arguments you are likely to forget the very important public dimension of every dispute that come before the court particularly the constitutional court and you are likely write a perfect judgment on the basis of arguments that go on in the laws *aaa* regulating them I wish in judicial education or in any other programme in preparing the judges this public dimension of the adjudicative process is highlighted and sufficient tools are provided to the judges to be able to exercise this dimension as a judicial responsibility whether it I seven it is a contract dispute or what Baxi call it Demo-Jurisprudence. How to bring in even at a trial court level. I remember in a conference of judges Commonwealth Judges, the issue that was discussed was fact finding processes in court it's so subjective even under the evidence act that taking into consideration the evidence produced the judge believes the fact exist the fact exist. Therefore, you find that the court finds the fact in one way the other court reviewing or appealing *aaa* sitting in appellate side find the way. This is something which the public now solely started asking as to how come this varies from court to court even when the evidence is the same but the facts are determined differently. This is concerned the commonwealth judges and they found and they decided to have a, a, commonwealth wide study on fact finding in the adversarial system. Well in the

adversarial system in fact finding they have the jury so that the public participation and decision making on questions of fact are taken care of but we have abolished it and left it to one judge to decide the facts which has all the feeling that of a human therefore, who is the villain? Is the Evidence Act, the villain, or the defence lawyer the villain or the adversarial system? The more the delay the more you stand to gain. In-fact that is my third point, the adversarial system has alienated the judicial system from the people of India for whom the adversarial process, I something totally alien. In-fact, even in America I have a study which is reproduced in this journal Professor Kadim who has done considerable research for nine to ten years has come out with a book 'condemning the adversarial system and its unfair and unjust unequal and is, is unable to deliver justice in American courts. I read out to you three four passages from his book- "adversarial legal process than by you it's a aaa as often occur sin American litigation the outcome is kept more by the delays and opportunities cost of adversarial legal processes than by authoritative legal judgments about just results. And he further says that in the American legal system it is unjust the complexity of the American legal system is often deter the assertion of meritorious legal claims and compel the compromise of the meritorious defences. Adversarial legalism inspire s legal defensiveness and contentiousness which often impede socially constructive cooperative, cooperation. There are many more damaging conclusions of this study about the way adversarial legalism leads to alienation of the public and from administering justice and equal justice at that. Don't want to go in adversarial legalism often transformed from the civil justice system into an engine of injustice compelling the litigants to abandon just claims and defences. It encourages and rewards manipulative lawyering and exhaustive demands which is what we are seeing in the justice system operated. Public cannot participate it's a procedure is highly technical, the evidence is artificial. You black aaaa you block out many aaaa evidentiary pieces which could proof a certain fact but on the ground of hearsay this and that other. With the result what I find is that adversarial system, aaaa in delays with judge, results in the cost exorbitant lawyers' fees etc. we need fundamental changes on our procedural side if we want the justice system to regain the confidence that people because today the people who are coming to the court are aaa little more informed about law and justice and the way it is being administered than in the past where the the justice was used aaa utilized by ten or fifteen person of Indian population but today it is more and more who are trying to ask questions as to how the issue is being decided because of the lawyer. It was mentioned a very competent lawyer with good arguments when he advocates what should be the court be doing. Giving the judgment in his favour. Therefore, my last submission I know that time is running out

Justice Ruma Pal – time has run up

Professor Madhava Menon- The freedom from bias is aa gender bias, class bias, which is human, how can it be removed when you occupy the position the chair of the judge. Professionalism how could it be required, his competence, his part of it these are question which are already being addressed by the system and finally the, the aaa loss of fear of the law both on part of the rulers as well as on the part of the ruled. And the opportunities for falsification and other things are in plenty. Remember one Madras High Court Judge, Chief Justice while he was chief justice he said that a function of a criminal court is to find which

side says the lesser false suit and give the judgment on that side. Well aaaa it I has experience of many aaa well I don't what to tell aaaa therefore, whether you have Bangalore principles or the reinstatement of the values and things like that adopted it is unlikely to impact the system in the ways that we desire to redeem the confidence of the people unless the systemic defects are that requires some very radical restructuring that is why *Lok Adalat* is popular that's why arbitration is getting popular, that's why *Gram Nayalaya* if aaa when they are established they will become popular. We want something which is more conciliatory what is called the restrospectory justice approach. Aaa would be more appropriate to the Indian ethos and to be provide access to justice while maintaining that aaa freedom from bias and aaaa participation of the people in aaa justice processes. Well I have many things to say but I stop here.

Justice Ruma Pal – Yes I know I know, unfortunately we are not doing justice to the speakers we have got but I will introduce Mr. Gulati with just one sentence, he is presently, joint secretary in the department of justice in the government of India.

Mr. Anil Gulati- I will discuss what the prime minster said in the conference of chief ministers and chief justices held, April this year. He said that position of a judge is next to god. He started with this his speech he said that , public, general public they have trust in god after that they have trust in judge and if their matters if they go to the court, if they are decided as per their trust the aaa so they pray to the god. So a person trust in a judge or not that is not I think relevant he has to trust in the judge because he is the last resort because the person has trust in the system that is the question here not the judge, justice system and justice system doesn't mean only judiciary as speakers prior to me said that criminal justice system you have police, you have prosecution, you have judge , you have society , you have politicians

Justice Ruma Pal – Lawyers

Mr. Anil Gulati- And the lawyers. So the whole justice system we have to whether the justice system by the way people respect or they don't respect. Now I aaaa...go back to what professor Baxi said that Fazal Ali's doctrine of who is public what is public so if you think that public is people at large we have to see that whether that public respects the system. You first come to the civil justice system because the topic given to us is whether the falling of civil cases because the data given by my office to me last years the number of civil cases is falling whereas the total number of cases instituting the court are rising but civil cases in particular are falling and secondly the disposal of civil cases both in the High Court and in the subordinate courts is falling. And the pendency the overall pendency in civil cases is rising, is stagnate but the pendency of civil cases is increasing. So let us see who goes for civil litigation in our country. I think sixty percent of the people in our country cannot afford civil litigation. The cost of civil litigation in this country is such sixty percent may be an understatement that is, is not possible for the people to have their civil rights enforced through courts. So what kind of respect we expect from the people to help for our civil justice system and now coming to the criminal justice system you find that who are the persons involved, people involved in the criminal justice system ninety percent are the poorest of the poor people who are involved in our criminal justice system and when you see that when you go to the judge you'll find two third of the prisoners are the under-trial prisoners and only one third are convicts. When at the time

of independence the data was two third of the persons in the jails used to be convicts only one third to be under trial people. So how much respect can we expect from these people to our criminal justice system. So aaa that is the question and now aaaa you see aaa if you've been aaa public mean the public representatives with the parliamentarian claims that we are the public representatives we represent the views of the public we are elected by the public. Just go through the speech which is available in the YouTube. Aaaa various members of parliament the time of Judicial Appointment Bill both in 2013 under the UPA government and 2014 under the NDA government and you if you really want to know what the parliamentarian think of our judicial system I think it's a be worth sitting through out there, it was a lesson for us that's what is the perception amongst this. May be they are biased I am not saying all perceptions are correct they may have their all external experiences in the judiciary because they are also now facing the flag for their activities and the kind of politicians we are electing to the parliament that is the question but you represent the if you see the public is represented through them then if that is the view of the public again they don't trust the system. So one of the major constitutional wing of the country that is the parliament it doesn't have faith and trust on the system then how do we proceed. So then they come up for the purpose of increasing the trust and confidence according to their view they come-up with a judicial appointments commission bill. Two bills constitutional amendment and judicial appointment commission bill. Both the things go to the judiciary. Now I have said through the three months in the Supreme Court when this case was being heard and every day we had meetings early in the morning with the attorney general and late in the evening with the attorney general. Everyday day you must have seen in the newspaper what kind of arguments were taking place in the Supreme Court on the appointment commission bill. See most of the arguments most of the arguments of the queries of the bench on the judicial appointment matter related to eminent persons. In view of the parliamentarian if you go through the speeches of the MPs and other things view of the parliamentarian is that we should involve civil society in the process of selection of judges. But the views of the bench which we saw in the hearings was what will these people do. They don't know law, you appoint say Sachin Tendulkar as an eminent person to the judicial appointment commission, he is a eminent person what will he do in that does he has any knowledge of law, does he know which people are fit, what will be his role as eminent person. This was the major question but the argument from the side of the government was eminent person has to be elected by the chief justice of India, by the prime minster of India and by the leader of opposition. Please have faith on the three top constitutional authorities to select the right person who can fit the bill to be there in the judicial appointment commission but I don't know whether we could convince the court in this regard or not. They wanted to know from us they say give us a list which are the people who could be there so I think there were aaa too much of this thing that how will an outsider will sit with us and decide that who will be judge because last thirty years I think Justice Ruma Pal her reference came again and again when we had discussions with the attorney general. One of the article she wrote with one of the persons who in the Legal research and that article was quoted to the Supreme Court that this is the view of the judge who has been the part and parcel of the collegium so please that. So we don't say that whatever the government has bought affect system it's going to work much better. It's an experiment it's a constitutional experiment and aaa if there is problem in the system always there will be reform further reform not the end of all so this was one. Second, Justice Prabha

Sridevan said that bench should reflect the society so most of the argument was, why should a second person of eminence, should be from the women, minorities or scheduled caste or scheduled tribe. This was gain a big bone of contention because in judiciary there has never been any reservations or something like that but we have not make any direct reservation in the judiciary but on the panel for selecting the judges. One of the person has to be a woman or something aaa so earlier this was a problem. And the most important RTI, all the people on the bench they will say how can you have RTI on the appointment of the judges because what we discuss what we decide it goes to the public then people will not come up for this thing. See when we were in the college Professor Baxi was my professor first year in the law college he taught us that nobody should be judge of his own cause, second every which has to be pronounced must be having a reason behind it, it should be a speaking order and nobody should be condemned unheard. But here, there is a RTI, whether that RTI is applicable to the judicial system or not. Delhi High Court has decided that RTI is applicable but the matter is now in the Supreme Court and the Supreme Court bench is sitting and deciding. And who have they engaged, attorney general of Indiaas their lawyer to defend the Supreme Court whether RTI should be there or not. And the attorney general has to now defend that why RTI should be there under the appointment process. And what should come under RTI, the appointment procedure and what will be out of RTI and how it will be decided. So when all these question of transparency, openness and everything when they are discussed they reflect on what the trust people should have on the system. Whether the system is open whether it is fair, whether it is transparent, whether it is amenable to take public, civil society's views and this thing. All these matters these were debated I think it was a very good thing and now we are waiting for the judgment. Now coming to mam this grievance handling mechanism and judicial standards accountability bill, aaa independence of judiciary was aaaa against judicial appointment commission main challenge whether it will infringe upon the judicial independence. Same thing is applicable to the grievance handling mechanism under judicial standards and accountability bill. Why this bill has been brought because there is san in-house mechanism now for the apex judiciary it is available on the website of the Supreme Court. If there is any complaint against the judge of the High Court then the chief justice of that High Court constitutes the committee, internal committee and if the committee finds that there is something wrong the matter goes to the chief justice of Indiaand he can ask that person to resign and if that person and if that person doesn't resign then he can initiate the process under the constitution for impeachment by writing to the president and prime minster under the constitution. Same thing is for the chief justice of the High Court and it is said that if the judge doesn't voluntarily resigns then till the time he resigns then the chief justice can take away the work from him. Same think apprise to the chief justice of the High Court but how can take away the work from the chief justice of the High Court. If the complaint is against the chief justice of the High Court who will do the work of the chief justice of the High Court then? He has administrative, he has judicial powers and you say you that you don't perform your duties is that aaaaa this thing. So there were certain anomalies in the system of in house mechanism. That's why the government thought may be to begin with they brought a very drastic kind of this thing because the pendulum goes from one extreme to the other. There is no middle path in our system but by debate and by democratic process ultimately we come around to the middle path. So in 2012 this bill was amended and most of the obnoxious things were taken away.

Even after that in 2013, when it was to be again to be introduced in the Rajya Sabha there were other major amendments. And the two grievances that were unwarranted commands and all I have brought the draft 2013 they were all also done away with and they have brought what the Vineet Narayan case has referred as the values of the judicial life and knowledge principles that were brought as schedule and that were the standards the judges were to maintain and the judicial inquiry commission at the inquiry commission had to be replaced by this much better system of conducting an inquiry

Justice Ruma Pal- Mr Gulati but I must assure you that will also be a subject matter of decision for the Supreme Court. I want to introduce Mr. Harish Narasappa, co-founder and president of Daksh, a NGO that is working to develop accountability measures in institutions of governance. He is also a member of the Karnataka Election Watch and National Election aaaa he, he is also the founding partner of the aaa he is involved in corporate mergers and acquisitions and so forth. But I think that marks him out to be suitable for today's discussion.

Mr. Harish Narasappa- thank you Justice Pal. Well at the first part of the introduction is that I am a lawyer so and aaa probably the only aaa apart from Naina Kapur the only practicing lawyer so aaa may be some of the thing saaa that I say aa so please bear with me like you bare the lawyers on everyday basis. Aaaa so aaa I will I will focus on three points because I, think the disadvantage after aaaa you speak after professor Menon and Professor Baxi is you know most of the point are generally mentioned so aa you aa you try to come down to specifics. So three points one and I am looking more on the system not just judges. Is the system doing the job for which it has been set up? I think that's the first question we need to ask and there the big elephant in the room is the judicial delay and aaaa judicial delay, delay of the system right and aa various phrases are used aaaa to describe this aaaa but I think we need to tackle that head on aaaa the numbers aa the Supreme Court aaa we court news mentions various numbers, the justice department mentions various numbers but I think we are talking about aaa in the in the court system across the country we have between depending upon which number between two and a half crore cases to three crore cases. It's staggering and aaa we haven't studied it and we haven't analysed it. So aaa and judicial delay is not just the judges and lawyers problems and I think that were we need to look at it from the litigants problem from aaa the litigants perspective and aaa professor Baxi wrote in his book on the crisis of the Indian legal system about thirty three years ago and we haven't really discussed the issues that he raised at that time. So a litigants perspective why does he comes to court? I mean he has to, I mean he has a grievance, he wants to aa resolve it and the only simplified option he has in a society like ours is the court and if it is going to take him fifteen years aaa assuming that aaaa it going all the way to Supreme Court and it doesn't get into execution proceedings later on aaaa the assumption is it will take fifteen years. And aaaa I think it is a big deterrence. And I think justice Said in a book and he puts it very aptly which is or what the case in winning the property case when are not going to want it to build. So I think, we have the justice system is not delivering aaaaa is not doing the basic thing that it is supposed to do which is deliver the judgments in a reasonable framework of time. Now I know the Supreme Court has aaa at various points has said that we can't actually fix a reasonable aaaaa framework. And I was discussing this with justice Venkatachaliah and aaa you know and aaa I was asking him aaa

what is the reasonable framework and aaa may be something we all need to think about he said can we take the time periods prescribed in the CPC in the first cases and he even doubled it and he said that should at least be reasonable even if you double it. I don't think we can even match that standard so if we are looking at evaluating, functioning of the judicial system we need to address this. What is the, what is the reasonable time and need to fix that. I think the current chief justice of India in the conference of the chief ministers and the chief justice conference or we should target five years and for a litigant aaaa you know I remember after the statement came out I was sitting with the civil society people and even as an ambition it's very demoralizing for five years for in the lowest court and aaaa it's too much and it means it goes back to twenty years minimum twenty years and twenty years the average life expectancy of an individual you know so I don't think we need to discuss that it it's a poly and we need to address that. The second point I think I think had been mentioned you know both by professor Baxi and aa even by many judges including all of you that there is exclusion of a huge segment of a population from litigation oaky because of various factors that is a that is an indicator for me. Why is it that after you know so many years after we became republic and we are still talking about the percent of people even approaching the courts. I think if that is not an indicator then nothing else can be an indicator for, for public trust and confidence. The aaa the third point and I think that's you know it's' come up in the recent past aaaa in the context of every celebrity cases is the first in first start principle. I think our justice system has to be this. And I think it one of the underlined principles that who are approaches. If I if I had filed a case in 2014 it has to be decided before the case that has been filed in 2017 or 2016. Yes and you know that Justice Patel from the Bombay High Court Gautam, Patel and I was discussing on a panel with him and he said why can't we follow what doctors follow you know you have first in and first out in every in every case and even the emergency track. But in the emergency track you know you can't aaaa what the difference you I know between you know you know I being a lawyer don't want to use the example of Salman Khan but what is the difference between Salman Khan applying for bail and aaa you know Salim Ali applying for bail. I don't think there is any difference from the justice system's perspective so why is there aaaa you know why is there aaa why is there no street hindrance to the first in first out principle and I think that is actually linked to aaaa the judicial delay perspective some date in the next session because in the if you look at the average number of hearing before you right, on a given day and aaa this is where the system is loaded against the judges I think aaa look at the number of hearing is think there is average time that is spent on each matter that is listed before you on a on a average day is I think somewhere between aaa six to nine minutes and because you know there is so much pressure obviously then the celebrities bring in aaa celebrity lawyers who pay you know huge amount of fees as Professor Baxi and Professor Menon pointed out and the pressure they put on judges ensure the case gets heard first. I think I think it sa huge aaaaa what shall I say I am searching for word but I think it's a huge disappointment for the ordinary litigant. and aaa we rae all to blame lawyers aaa judges aaaa the system is completely at staked against aaa on a judge you know you know during a court proceedings. You know what can you do when there are 80 80 cases put before you on the same day. You know and everybody in the courtroom knows that you're not being you are not been able to even go through the list. There are exceptions like justice Chandru, aaa you knew who went through a huge number and I aaaa we will discuss that in the next session sir. But I think that the first in first out principle we need

to go back to its roots. The second broad area is transparency and I, I don't mean you know the best kept secret about the appointment of judges but transparency in our dealings. I think aaa you know aaaa judge from the Andhra Pradesh High Court mentioned that you know that there is a lot of lots of gossip in the in the bar and absolutely true I mean aaaaa but many lawyers who just leave the court to avoid gossip but the point is not that the point is whether sis a whisper of misconduct we also hear that some punishment has taken place has been meted out to aaa judge but it is not disclosed. I think we are doing a great disservice and as as aaa I was earlier pointed out if you know that there is another brother judge or sister judge that is who is guilty of misconduct why does the system then that protect that person. I think that he disservice to the system if you protect the bad eggs. The bad eggs are bad eggs. Like I can take example of, of aaa the Karnataka High Court aaaa recently when aaa one of the additional judge was not confirmed when he came up for conformation and then we heard that during the aaa process of conformation we are told that evidence was aaaa shown that he had been aaaa taking money from aa people who have applied for bail and you knew they find money in his bank his latest bank account. They did not confirm aa which is a good thing but what about proceedings against him. Nothing had been done it was just brushed under the carpet. I think that is the transparency I am talking about. Except for the lower judiciary for in the higher judiciary there is no transparency. This is something you know aaa scholars and activists have been mentioning for such a long time but we need to address this. I think the good people in the judiciary need to address this and aaaaa judiciary and the lawyers. We like talk about other we say, there are good people in the civil service but we don't shy away from pointing out the bad people in the civil service. We need to apply that standard for ourselves. Unless we are transparent in dealing with ourselves we won't be aaa... able to you know preach the principles to the outside world. The aaa the aaa third point that I want to highlight and aaa I think we have fifteen minutes aaa to discuss is, is a point that professor Menon discussed I want to go deeper into that is there no fear of law in the ordinary aaaaa ordinary day to day affairs. I would go a step further and aaa say for resolving intra personal disputes the space is shrinking, for resolving intra personal disputes in a civilized manner and through the court system the space I shrinking because we cannot aaaa you know we cannot go we cannot go and wait for fifteen year sor twenty years. And you know Sriram Panchu who is now aaa lawyer from Chennai he has become a mediator he mediates and he was saying even take a community a small community like aa apartment complex, if there are disputes between two people they can't decide it leads to huge arguments and no you will never know for ten years who is right or wrong that is because we are our justice system is closed itself to these issues to be resolved in aaa in aaa reasonable amount of time. And I aaaa I am you know aaaa I aaa generally advise clients on aaa some on contracts and the one big thing people ask us all the time we put in indemnity we put in damages, there is a breach this will happen that will happen. One question clients keep asking that keeps coming is are we really being able to enforce this in aaa you know in five years' time, three years' time you know there is breach the answer is no. so there is no fear of breaking the law in any area of our society today. There is no fear at all. Because the thing is *Dekha jayega yaar*.... When Indians are dealing with foreign clients or foreign companies that are coming into Indiathen the Indian party wants the foreign party to go to the court because, he knows then he is safe. Because he knows that he can drag the matter on the court for X number of years but that's, that's a big issue happening across and we need to need

to aaaa we to look at it as an indicator. Where do we look in, how do we aaa how do we get this, where is it, what data do we have to measure that there is aaaaa there is a lack of fear of the law and I think we need to look at aaaaa aaaaa accounts aaa that has been written by various aaaaa by non-fictional studies, sociological studies who you know are addressing these questions and who are giving aaaa aaaaa you know narratives of life and cities and aaaaa in aaaa yes yes I am just concluding. So we are, aaa ther are there is evidence sufficient evidence for us to rely on and aaa go further to examine this. The last point, I want to give two examples from Mumbai and this is documented from a book Maximum city, nits a wonderful book about life in Mumbai author is called Suketu Mehta, it came out in 2002 or so it's an old book. So he puts two examples he examines life of police officer, life of aaaaa you know sharp shooters and contract killers and aaaa wives of movie stars and it talks about life in Mumbai, so I stop here what the book is. He is interviewing all these *hafta* collectors and who are so happily saying that sir our business is improved because it takes time such a long time for people to go to the criminal justice system and move on and I, I found it humorous but it, it aaaa it is very sad for me I mean how you know you know it's a telling tale. The second one which I am sure all of us have heard and it goes back to what Naina Kapur pointed out was a judge who reached out to a mafia don to sort out his personal problem and I think this happened in 2003 I think this was district judge in Mumbai and aaa he was terminated later. He was a sitting judge calling a mafia don to help him solve his problem because he does not have trust in the long system. I think that's enough I think we have fruitful thought. Thank you very much.

Justice Ruma Pal- yes now we can discuss.

Participant Judge- on speedy trial I would like to share my own experience. When I was posted as additional sessions and district judge Chandigarh you know there was a murder case in which husband has committed murder of his wife aaaaa by giving *danda* blow and you know he was so calling us ki that even the aaaa was also beaten up and the trial came up before me in that trial non-else but the children who were very small children they appeared as witness and you know in three hearings, in first hearing I recorded all the evidence in second hearing I recorded all the arguments and in the third hearing I announced the judgment and you know that ended up in conviction and then you know, media people they asked the public prosecutor as to what was the hurry in this case, why this case has been finished in three hearings whereas the other cases are lingering on , those are lying the court. Then the public prosecutor said aaa in case this girl the children would have met their father in the jail three four times they would not have deposed against him whereas he the culprit and he has committed the murder of his wife in front of his children. So aaaa speedy trial if we give aaaaa by that way we can built up the confidence in the people in the judicial system and secondly again, once I was working as again, aa factory in the Haryana Government at that in the meeting with the minister. The minister asked them *saab* can a case be decided in a week or so, aaa what type of case he said if suppose a case is of 326 IPC it as complicated case can it be decided. First of all I said, its' not a complicated case, it's very easy a case and can well be decided, how, I said you bring the witnesses we will record and decide and nothing else, nothing more is required. So here comes the role of lawyers, defence counsel, public prosecutors and even the FSL people who give the reports. So with the assistance of all these the cases can well be disposed-off very quickly and

very speedily. And in this regard still I have to make a suggestion that this ki life line of each category of case should be fixed at every level. Right from the civil judge court to the honourable apex court. Within that period if that type of case has not been finished then, and had not been finished and if it is felt that so is not possible then by appointing additional judges and even and even by appointing retired judges those cases should be disposed of within that period only. And lastly what I feel is this *ki* it is very simple to build public confidence and trust in judicial system. It is not at all difficult. I am telling you with my own experience in this regards and in my view if a judge conducts himself herself without any bias, fear or favour placing everybody howsoever high or low in equal equally and delivers the judgments in accordance with law, public confidence in justice system will certainly be built up and all other things would become redundant. Nobody would dare to question a judge in that regard and aaaa one thing more ki in my opinion laws do not appear to be unjust only implementation is almost negligible whereas high degree of implementation is required. Another if there is no fear, if there is no fear in breaking the law that is also not strict implementation of the law and deterrent punishments. Thank you very much.

Participant Judge- As per the three sessions aaaaa it is a general question and as Justice Ruma Pal said sixty percent of the government cases they because of the inaction of the government those case come to the court. That sixty percent because of which the public also gets affected public comes to the court so this trust of public servant is also on the judges. They say court se le lena, that is there the public is also there they are trusting but that is latent. Now because of the aaa different perspective and aaa different dangers which have been posed, various factors which have been posed. Now my question will be a general question of the two session this public trust of the judges how it can be maintained what is the parameter and what is the public participatory aaaa attitude of the judges how it can. There is a very aaa it's a very difficult question of course how much the judge has to interact with the public and how aaaa they have to restrain but there has to be continues decision or consciousness that one has to go a little further restrain and then how to aa what should be the parameters.

Justice Ruma Pal- Naina Can you

Justice Prabha Sridevan- What should be the parameters to build public trust

Justice Ruma Pal - What is the parameters within which judges should interact

Ms. Naina Kapur- Yes, for this I will go to the structured programme. I think there should be more voices in the room the more the interaction the better it is because then you have a conversation and then you can understand from where people are coming from. I do think that it has to be an inclusive process. But I think it has to be structured

Justice Ruma Pal – I think the main aaaaa word here is structured programme

Ms. Naina Kapur- yeah

Justice Ruma Pal- Say for example in a situation like this, you are in-fact, talking to the member so if public. I am no longer a part of the judicial system aaaa Naina is not well aaa she is a lawyer so I mean the, the five of us are certainly not part of the judicial system but you are in-fact interacting with us. Structured programme from where you are getting information is fine. So aaa suggestion is one structured and another thing that she said she said how many participants. If you are only going to interact with one then you know it makes suspect but if you have say a situation where you have five NGOs in aaa the setup of Asia pacific forum we had how many NGOs

Ms. Naina Kapur- Twelve

Justice Ruma Pal -We had twelve NGOs

Ms. Naina Kapur- But they were selected. There were criteria for selection. There was criteria for the selection of the participant as well amongst judges. So you know that's what I mean by structured. Everything has to be measured you don't do things randomly. Aaa I do think the more voices you hear from it doesn't bias you it informs you it's the good thing but receptivity is important.

Justice Ruma Pal -Yes I mean the idea, the idea is that when the lawyer says your lordship you know he is talking rubbish, you don't know. And so therefore you because then everything that a lawyer but unfortunately in this adversarial system we have to rely upon whatever the lawyer is telling us and you are limited to those two aaa people whatever they have to say. I have had lawyers cite cases before me which have been overruled now how many judges have the time to go home and aaa look up those cases and say that yes aaa that case has been overruled. They will not cite cases which are against them so your decision becomes per-in curium. Whereas if you participated in structured programme you know what the latest law is.

Justice Prabha Sridevan – yeah yes

Professor Baxi- in your Kolkata High Court

Justice Ruma Pal – your micro phone

Professor Baxi- Invariably will cite so called precedents which are opposed to the law. Normally cite precedents favourable to the lawyer through the client but against the client. Now I do not know what the current position is.

Justice Ruma Pal - The idea is to take the wind out from the other side

Justice Prabha Sridevan- hmmm

Professor Baxi- The idea is to give the judge aaaa the lawyer is the officer of the court therefore, advocates act define a lawyer. A lawyer has to do hi studies to client but also to do the duties to the court in administering justice. So aaa the ambivalence is built into the role and it the point is to make both happen

Justice Ruma Pal – hmmm

Professor Baxi- you must be able to defend you client so they'll but you will never abligate the occasion to assist the administration of justice. How do you do it, administration is aaa in place by an large they are taking place in favour of lawyer as a representative of client. But lawyer as officer of the court is not taken seriously.

Justice Ruma Pal – Yes that rule is forgotten.

Professor Baxi- Totally totally forgotten

Justice Ruma Pal – Any anyone else we have four more minutes three minutes

Participant Judge- If the lawyer he doesn't do that the appellate side in High Court there are other problems like even there is basic the trust of the people in aaa claim case. Someone has died, the, it has come up in the appeal. You see that there is a despite certain compensation he required to be pasid he is not paid because of the evidence that has not been bought on the record. Then how he uphold the trust of the people as aa appellate side.

Justice Ruma Pal – hmmm hmmm no no I have had lawyers who you know said you know when I was practicing so I said that you know it should be over so he said wait the poojas are coming so I have to get another money you know aa mentioning something or the other so every time the matter is delayed the client has to pay . He gathers enough money for the *Poojas* to have a good time. So aa its happen all the time, it happen all the time and I really seriously do so think that yes, Mr Gulati.

Mr. Anil Gulati- I just want to say that it's a very genuine concern that the government is the biggest litigant in our judicial system and its some way it's coming out the real public aaaa for whom this justice system was meant and the government is very concerned about it. They are taking action at three levels. Number one, most of the state governments have passed time bound delivery of services act where if the service is not delivered to the person and a time bound manner the person responsible for delaying is fined and the money is recovered by his salary. These are the provisions how they are being implemented is yet to be seen because it's a new legislation. Mainly the government has forbidden any government department to going to the court if it is a inter- departmental or PSU versus departmental thing that it has to not to go to the court it will be decided in house. Plus they are saying in all government contracts there be arbitration clauses so if there is a dispute relating to government contract or commercial matters it will be decided through arbitration so that courts time is not wasted. Thirdly, aaaa there was a very good thing in some of the judges were doing I think they should be encouraged in like aaa when the people are not disposing representation then when they find that somebody is responsible for the delay. They were posing a order that the cost of the suit shall be recovered from the person who has delayed this and this person be paid twenty thousand or fifty thousand or one lakh rupees. If such kind of orders are passed it will send a message across the bureaucracy and aaa they will be very much afraid of them, the things at their level and then making the people go to the court. The judiciary has also to play it for. And finally, the interface between the bureaucracy and common man it has to be reduced through whatever medium like digital India or whatever. So aaaa electronic means of transferring the information getting the work done getting the grievance redressed like I'll just give an example of the passport office,

earlier the thing used to go to the police stations but now in Delhi it is decided that I'll be online. Police has to reply online and ones you have got a passport second time you renew your passport, police verification will not be done. You don't have to file now affidavit before government officer but simple declaration will do something like that. So such initiatives government is concerned instead. That's it.

Justice Ruma Pal- we are above aaa over time. Next session aa thank you very much we now break for lunch we have an hour long break.

Session 4- Causes for diminishing Public Trust and Confidence in the Justice System

Justice Ruma Pal- Last session this afternoon aaa we have Mr. Narasappa again so I don't have to introduce him aaa the issuu eis causes for diminishing public trust and confidence. So it is taken as a given life cycle of a case in court, adjournment per case , time taken in execution of degree and orders of court and the next speaker is Justice Chandru he was a former judge of the Madras High Court aaaa he has aaa fifty four thousand verdicts to his, ninety six here it is given as fifty four thousand, ninety six is it, get your facts right and I am just been given a book by him. Legal profession and appointment by judges. He has made a collection of lectures, articles and interviews. So very interesting. Aaa he has dedicated this book to Justice Satyadev of Madras High Court , who is no longer there no longer with us but known for his integrity and aaa I think that Justice Chandru follows in his footpaths, footpath of aa Justice Satyadev. A true *Shishya*. Yes yes Mr. Narasappa. Now Mr. Narasappa you you are first.

Mr. Narasappa- I think Justice Chandru was speaking first.

Justice Chandru- Friends good afternoon, good afternoon everybody. Before I go to the main subject I want to mention an incident in Madras High Court there was a judge called Abdul Haddi. So on the day of his elevation the press asked him for his photograph he said I will be known by my judgements not by any photograph so he refused to give any photograph and aaaa today when you deliver a judgment the papers not only report there is a debate in the electronic media, there is a strong criticism in the social media. So we are living in a time where people take serious note of your orders not that we play for gallery but at the same time we must know that the whole world is watching you. Many of you may not go to the social media to know what exactly is the criticism but nevertheless when you deliver the orders you need to keep note of what type of criticism come. In fact an American Supreme Court judge said, I am not worried about press criticism but I am worried about criticism by academic professors. The problem in our country we don't have enough academic criticism of judgments. The days of Menon and Baxi are all over. Now most of the academic campus don't criticize else there may be something action may be taken against them. In fact I know an incident where the a paper called Why India, these are all days of top ten aaaaa people of top ten rank they give and aaa one of the magazine which is a tabloid they published top ten judges, top ten judges of Delhi High Court.

Justice Ruma Pal - Yes yes

Justice Chandru- So, how they publish that report was, they gave a questionnaire to some fifty senior lawyers. What is the rate of disposal, what is the kind of language used, how efficient they are, what is their uptake. Immediately contempt notice was issued against the newspaper saying how do you evaluate. According to them it's an obstruction to the course of justice. So the newspaper editors came and apologized. Why I am telling this incident was that it is difficult for any outsider to evaluate the work of a court whether it's a High Court or a Supreme Court else they will face a contempt and therefore, the free criticism we have today is not available in evaluating judiciary at the same time the amount of publicity you get. Every sensitive matter comes to court and there are enough electronic media to make a running commentary and the press to write editorials and there are enough jurists to comment on whether the judge is right or wrong procedurally or in his findings whether this is acceptable or not is a ground reality. In when in fact Dr. Upendra Baxi is very a correct choice to preside this meeting. He does two things not just to confine himself to the academic campus but he also promotes NGOs who may bring social action litigation to court. In fact we could say one of the pioneers of social action litigation is Dr. Baxi and he also evaluated work of the court in fact when he published two books by the Indian Law Institute on the Bhopal debate. One of them was the forum convenience debate as to which forum the Bhopal gas victims should go whether America or India and he has documented everything for public reading and in that book there were two affidavits which are enclosed. One is by Mark Galanter which was used by the government of India. Mark Galanter argued that the Indian system especially the court dealing with the charge system as a failure and Indian judges do not have much understanding as to charge He also said that the Indian judiciary is very slow and many of the civil matters may take some thirty years and therefore the best forum is the American forum. At the same time some other big companies like Palkiwala filed another affidavit saying that the Indian system is best and therefore, the case must only be heard in India and not America. Ultimately, Justice Kenan said that, he has a faith in the Indian judiciary and therefore the case must go to India. That is a different matter but the point is that forum convenient debate through the subject whether the Indian judiciary is capable of delivering justice that too in a case of mass disaster. What subsequently happened you know? Even today the problem is not solved despite entire gas victims marching to Delhi last year and we must have a serious introspection and why is that the government of India advances its cause in America saying please hear our case don't send us to India. If the government that has established this court feels that there is no justice here either in terms of time factor or in terms of quantity of damage to be given and in terms of knowledge then there is something seriously wrong with our system therefore I thank Dr. Baxi for putting this in a plea. Many of us will not be knowing what was the debate going on in Washington DC court and that debate still survives. I think all of you should read the document that was filed before the District Court Washington on the Bhopal gas. That really shows the real picture of the Indian judiciary especially the civil judiciary and in fact I had an opportunity to hear a case filed by Dow Chemicals which is a successor of Union Carbide and they said that Indian people should not demonstrate against Dow Chemicals and Delhi High Court and Bombay High Court has granted an injunction whereas Chennai we refused an injunction in that judgment I quoted the observation of Justice Kenan who said, I have immense faith in the Indian judiciary and I hope there won't be any system of adjudication and he sent the case to India. I said if Justice Kenan's words have to be proved we should deny relief to

Dow Chemicals. Indian people have got right to protest in the Indian territory and there is no law that can stop them in registering the protest and today we should think seriously why there aaaa has been downward trend in civil litigation. The earlier statistics some forty years back showed there were fifty percent of civil cases and fifty percent of the criminal cases roughly. Today you'll find in most of the north Indian High Courts these the filling of the civil litigation has come done and the filling of the criminal litigation has gone up. Now it is in some other states it is thirty- seventy and in the south India is also more or less like some forty to sixty percent. There has been a downward trend in civil litigation and an upward trend in criminal litigation and this is a very aa matter that concerns us. Why there is a downward trend in civil litigation is because of the efficacy of the civil litigation or it is because of the procedures or dialect people take their own time. We also find in the legislation making you take the case of aaaaa suits filed on negotiable instrument, chapter 37 suits. Now chapter 37 is a summery procedure. Now over the years we found even to get the suit it takes a long time. You know that defendant has to file an application for leave to sue aaaaa haan leave to defend in the and aaaa this takes his own time when aa leave is refused then there is a CRP filed and finally therefore the parliament thought that the matters concerning instrument is nor receiving the adequate aaaa swiftness adequate aaa time factor therefore, what the thought was amend the negaotiable instrument act. 138 was brought in which was largely civil has now become criminal. Now the entire criminal court are fully involved in the 138 matters. There is hardly any time for IPC matters. Now this is something like aaa legislative matter. History itself shows that it does not believe in the civil system therefore it is a criminal system. Now what they are thinking that the entire criminal system has become completely derailed they want to say bring *lok adalat* in negotiable instrument matters so seriously the parliament is thinking of a bill where as a first instance all cheque bouncing matters must compulsorily go to the *lok adalat*. So now what do they do they are unable to solve the problem. Go to the next stage and that is also unable to solve the problem. Go to the third stage that is the alternative dispute resolution. This legislative trend shows very slowly lack of faith in the aaa the civil system. Similarly you will find in the case of prohibition of domestic violence act, the question came aaaa should it be criminal or should it be cvil. Then somebody said it's a quasi-criminal, quasi-civil. Then there are more magistrate courts than the munsif judges now a days you find so many of aaa complaint sin a magistrate court. Little realizing that the magistrate will have much other work other than hearing these petitions which require aaa different kind of an approach. But the parliament doesn't do any audit on this matter. So the increasing trend of making it criminal is more on executive or arresting the respondent or executing the orders of the court. So they feel that we should have more teeth in aaaa in the legislation rather than rendering the justice in this and this matters. That I show earlier 125 Cr.P.C. maintenance was given to magistrate because they feel that there are more number of magistrate courts than the munsif court that was a choice but later we found the court system itself is completely sidelined because of the additional work that has been given that is why Madhava Menon suggested we should have a audit before we take legislative matter. How much pressure that you are bringing on the courts to deal with the matter but aaaa it is not being done in these days? Same thing happened to section 100 aaa CPC second appeal. You must frame a question of law before admission. So we now have two type of judges who doesn't aaa admit the matter, who order notice and then when other side comes they pass orders. Invariably it will be dismissal of second appeal. This

is now way of not framing a substantial question of law. The second type is in our High Court where the parties themselves never frame the question of law then the judge will say admit question number A. sometimes question numbers are so ridiculous whether the lower court is appreciating the evidence. In this fashion or not is the substantial question of law. So whenever parliament tries to make a change in law it either the judiciary defeated or the lawyers defeated. Like what happened to the amendment to CPC and CrPC there was whole lot of agitation by the bar council and bar association. Finally came the bar association case While a compromise order you see in the case of filing written statements time limit if fixed , they say it is an unreasonable time period. Now what they said in a given case you can admit inevitable time. Now in every case there is inevitable time, time is attended or assuming in our High Court where the written statements are not filed so the suits are not taken up. There is something like the undefended board which is an undefended board there are one is lack of judges and the other one is lack of inclination to hear civil matters is another. This is the time when parliament is now toying with another idea of starting a criminal, a civil division in every High Court making a crore crore suit which is of a crore value will be heard by two judges by each High Court which is a. So on the one hand we find that our increasingly our civil system is failing on other hand they try to create new divisions within the High Court saying that two judges will be much better than single judge. These all solutions we find and ultimately like you see in Maharashtra apart from the CPC giving obligation to the Munsif to decide a preble issue. Now Maharashtra passed an amendment section 9 A, where it is obligatory on the part of the Munsif to hear a Plenary issue no discretion at all. So whenever an application is filed under 9A you must hear preliminary issue and then what happens when you decide a preliminary issue than it takes to High Court Supreme Court than it completely be stalled forever. This happened in labour matters where a preliminary issue is decided the moment there will be write petition and we always have this problem of civil criminal. The second problem lawyers also find that civil matters are not very efficacious therefore they have some ingenious method of converting it into criminal matter. So the lawyer office become a alchemy lab where criminal become criminal become civil or civil become criminal. Increasingly real estate matters or rent control matters, tenancy matters all of them or the cheque bouncing case everything become criminal. We feel, the moment they become criminal the police they try to have some kind of a panchayat done unofficially and they themselves tell the client you please file it in criminal side and this out. We find slowly we are shifting from the civil system. In answer to that what we do, we talk of alternative dispute resolution mechanism and alternative dispute resolution mechanism will be valid or will be successful only when the parties are the most equal on a level plain field not on an unequal relationship and now what do we do we conduct mega adalat , lok adalat and then try to bring in new cases also. In fact in Tamil Nadu papers reported that the day of the There were also petty traffic offences caught by the police they paid fine that I also added to the statistics. Why should we think of statistics when we talk of publicity this is the kind of publicity we don't need and we needn't prove someone that we are efficacious, we are able to dispose of so many lakhs of cases. In fact in our High Court we have a very strange way of deciding matters until two years back our pendency was about 6.5 lakhs now, suddenly it has become 3.5 lakhs now. Earlier we were counting kachcha matters miscellaneous matter also as a full matter separate got it so it was one plus one. So every time one matter is disposed off one

miscellaneous matter is also disposed off. So it is 6.7lakhs. so our changes is felt that it is all unnecessary to have aaaa kachcha matter added as aaaa main matter. So now suddenly one overnight we had reduced three lakh, now we are having only 3.5 lakh so now the point is who will decide the 3.5 lakh matters their normal estimate is that 100 years will be taken to decide what is going at aaaa litigation it's a very serious issues . Somebody talked about delay as you said delay is one of the main matter people will want to know where do they stand. They say if aaaa you are not going to deliver decisions on time then people will take to alternative dispute resolutions not the one which we are suggesting under 89 these are the parallel panchayats which are going on and therefore, we should think on those rules. And aaa the third point I want to make is aaa *suo moto* litigation you may be some papers are included. We have *suo moto* anything In this book they only went through manupatra. In fact manupatra may not contain all the *suo moto* decision sthat have been made because what we do suppose a file from a High Court is aa not disposed off by the secretariat by the Karyalaya what we do we ask the registrar general to write a letter that will be treated as a *suo moto* so hundreds of matters where we give directions to the government to decide the issue raised by the High Court. So *suo moto* is used for some other reason for quicking our our files which went to the government apart from that we also have *suo moto* to enhance service of judges in fact we had a very interesting case in 1985 a judge went to a hospital the wife was taking care of the judge at that time she also had a minor surgery in the hospital so she made a claim of aaa three thousand rupees and the government said for the same operation is vialable in the government hospital for which we will only pay Rs.600 not Rs. 3000. Then aa write petition was filed by the by the retired judge all that was to be decide was whether she was entitled to get that Rs2500 or not that was the only issue. But then it was heard by a bench which said the judges must have the same conditions of a minister of a cabinet minister. What all the cabit minsters have, they have a car, they have a staff driver, they have a red light, they have a flat and then all security. Using this case the Madras High Court gave a direction that the judges must have a staff car , staff driver, petrol allowance everything was given through this judgment. Nothing wrong, now it has been implemented so everybody is happy. But the judgment also two sentences that when a judge's car cut past a yellow line or cut pass a signal line no policemen will stop them. This is three in the judgment and today judges go very fast. In fact, one day I was walking in our beach, there was road safety meeting by a rotary club so the speaker in that meeting was talking in this beach road we see a white car with a revolving light going so fast cutting a yellow line cutting all the signals I asked them who are these people somebody said they are all High Court judges. My question was if judges can go with such speed why is that our cases are coming after ten years. I have no answer at all that I told the speaker I had no answer but this how we also try to violate rules of law and when yoy talk about public acceptance and public trust , why do we need a public trust, why do we need confidence of a public. Somebody said we do our job we are not worried about public but we do worried about public we do worried about public. I know an incident late Abdul Kalam he went to Andhra Pradesh High Court for his golden jubilee, as the chief justice was showing the court he told the chief justice, chief justice I have a small desire the chief justice was very shocked because his appointing authority is who is coming so he is what do you want he said I want to sit in this chair for a five minutes, so he sat in aa chair of a judge and that was aaa his small desire that he had, he had such a great respect for the chair. Why I am giving that incident was we had an incident in Coimbatore where the

labour court, the post was not being filled up for a long time 3 months 4 months, the file will have to go to government and the government will issue a notification and everyday there were adjourning matters by the aaaaa court clerk so one day one cleint was very fed-up he sat into the chair of the judge and said please call the cases I will decide the matters. So you see Abdul Kalam's desire and what the client can do to you they can be aa they can they can aaa show their protest. A trade union leader told that I will start deciding matters please call the case it was a big shock. And the moment we deny deciding matters what will happen is I want to tell you I end up this. We are celebrating 800th year of Magna Carta. After 42nd amendment we don't have Magna Carta doesn't apply to you but then we must know the history. That 800 years before people pressurize the judge by the aaa king saying that you cant have it with your despotic way you must come to some terms that chartist movement was going there were writers there were poets. One of the chartist song said for the masses the lawyers are assesses, the judges are going to jail, the commons are legal the laws are illegal the judges are going to jail. Why years before in England people used to say all these judges must be sent to jail because they were afraid, they were aaa affected by the system. The system was so corrupt they were willing to over throw it by force and finally the king signed the charter and in the Magna Carta said to non he will delay justice, to non we will sale justice, to non we will deny justice this is the very point that we should understand what we mean by public trust. This is trust we don't want a chartist moment here. We have a written constitution well defined and we should have our own measure. Finally I will tell you that is a solution there may be a thousand solutions, structural solution. Finally Justice Kapadia said, work like a horse, live like a hermit. Thank you.

Mr. Harish Narasappa- What I do now is just share some data that we have been collecting aaa just following on what I said in the morning and what aaaa Justice Chandru said. One of the couple of aaaaa we had in the lunch break was the biggest draw back is we haven't really studied judicial delay. Who's aaa who knows the numbers and who had studied what are the reasons for the delay. We all have perceptions and we all make assumptions aaaaaa its not only the problem of the judges its aaaa the problem of the system that conclusion is very clear but what we need to grill down the detail and see what are the minute reasons for delays has been caused unless we do that unless we identify the reasons we can't come out with structured solutions. What the newspapers now one thing they just pickup aaaa judge to population ratio and say you know we need to appoint more judges, then they say we need to appoint more E-courts, you know we need to set up you know need to have better judges, we need to have better lawyers. But if you start looking at the numbers the truth is not just one and the other you know its aaa combination of factors. So what we said that we need to need to collect data in a form that is helpful for analysis and so aaa for the last six months we started this project earlier this year in January and we have been collecting data. Currently, we have collected data from 10 High Courts and aaa about 330 district courts aaa e-governance aaaa e-courts' website did ministry of justice and Supreme Court aaa are putting together that is much more vast and that has really helped us to come up with this this data. So I will just share some some aaa patterns that we have aaa derived from that and which through some light and ones we have

you know e-court data I think which we are expecting in a month or two weeks as you know Mr. Gulati was saying I think we can do a much more detailed analysis and this will really help in administering the system. I remember talking to Professor Menon about two months ago in a conference in law school and I asked the question who is responsible for judicial administration in this country and aaa who is pending time on judicial administration in this country. Okay now I know I know the reality is judges have taken over judicial administration but then who amongst the judges rae spending time and here I am on the side of the judges because you are spending from aaaa you have to be in the court from 10:30 to you know 05:30 and sometimes longer. You have to go back and write judgements, you have to prepare for next day so in between where do you have the time for looking upto admistration. Judicial admistration as aaaa as a topic area has been completely ignored. So we need to ensure that you know we need to approach this in a very professional manner unless we do that some of the issues will not be solved then. So having said that may be we should look at aaa I have five slides maybe we can discuss then and the first thing you know actually the number was that is in the Supreme Court on Supreme Court website aaa there are some variations on aaa monthly basis aaa but this is what is aaa available on the Supreme Court website so it's over 3 Crores to total of everything. Then this is something that we have gathered so out of the 10 High Courts and 330 district courts we looked at there are some case where there are 250 hearings

Justice Ruma Pal- Per case

Mr. Harish Narasappa- Per case some cases and there are numbers each of these categories we have numbers. I thought if I'll present too much it will just aaaa go on.. So have actually taken a portal which will go live anybody can excess this portal and you can you know actually analyse your particular court your particular district aaaaa and we are trying to work with the ministry too to make this available you know in a more wide manner. So aaaa and district court you know there are 157 hearings we could say these may be out of the box but aaa all these adds up to the aa pressure on the daily basis. So that's the first the first number that we have to keep in mind. The second number and this is you know this again there was an article in the mint. You know there was this journalist who came up with a chart using this data which was very interesting. How frequently are matters heard? How frequently a civil matter is heard, how frequently a criminal matter is heard, how frequently is a writ petition heard and it varies amongst the ten High Courts that we have it varies but the interesting thing is the more just because you know there are frequent hearings doesn't means that your pendency is reduced for example, if you look at this chart Karnataka has got the most so it's aaa its' longest between days and this is how this average. So between two hearings Karnataka is one of the longest but Karnataka actually has amongst the ten High Courts if we looked at it has the lowest level of pendency. So I aaa based on study we wanted to look aaa a thing for us to make aaa sort of more significant research conclusions we need to look at the order sheets also you know to know what are the reasons for the hearing, what was aaa you know as lawyer aaaa lawyers now built client on affective hearing not ineffective hearings that itself I think is aaa telling commentary on what happens in court and one of

Professor Madhava Manon- Can you comment on the frequency of hearings

Mr- Narasappa- Sir actually the frequency of hearings as if you keep calling a case everyday it doesn't mean that the case will be decided quickly. You need to have control over the roster in fact you should only call the case when you know you have the time to hear that case. So I think Karnataka seems to have managed it better than some of the other courts at least that's the inference that we can draw. That's a direct relation Karnataka seems to have in terms of frequency the average period between two hearings there it is about three months in Karnataka. But the Karnataka across all matters I think it has 903 days Kishore is that correct I think around 900 which is the lowest in terms of pendency across all ten courts ten High Courts. So, the conclusion I can draw is if you need to have effective hearings

Ruma Pal- the question of pendency

Mr- Narasappa Yes yes that is there so aaaa.... So we tried that its not just over all number but we are trying to look at the hearing so we can't look at overall number but Karnataka also has aaaa I think currently only 50% aaaa 50% post in vacant. So then, you know if the Karnataka will appoint all the judges there will be no pendency I don't know aaaa then some of the other courts have a you know better you know ratio in terms of pendency and vacant post so aaaa we need to study some of this in real minute detail. Then the aaaa next slide and this is this actually came as a surprise to me because actually my impression was that the delays are more in the lower courts and not in the High Courts but of these of the data from 350 courts and the 10 High Courts we have the average pendency and this is there is no distinction between various matters the average pendency across aaaa all matters is current. So this is only from aaaa January to September aaaa so all the matters that were listed in January to September and we have gone back to the history. So in the last nine months whatever matters were listed in the court we went and looked into the entire history of that case and we calculated this. So the average pendency in district courts in these 330 districts and this is pendency across the country there is no particular state's about 888 days whereas the 10 High Courts the average pendency is 1700 days and despite with some High Courts having so many numbers like Karnataka High Court and so there are some other High Court which are really aaaaa. Then the aaaaa

Professor Madhava Menon- You are calculating Pendency from the day of filing

Mr. Narasappa - day of filing sir court alots a number. So what happens is sometimes aaaa the websites don't give the actual number aaaa actual date of filing aaaaa so what we do is then just take we have taken the average of you know June 1st or July 1st aaaa Mr. Gulati

Mr. Gulati- I request you to do it category wise because in district courts you have traffic challan cases also filed as one so it will be decided in one day

Mr. Narasappa - Yes sir Mr. Gulati - Or in the High Court the case comes usually in the writ petition, absolutely. So if you do it category wise so aaaa I agree we need to go down in more detail but this a average for the aaaa but the biggest drawback I would say is that we can't identify reason for that we need to look at the order sheet and order sheets you know it's very aaaa its aa enormous task so aaaa actually you aaaa you know judiciary will be better equipped to look at that because they will have access to more data then we have. We only have numbers and whatever public you know publically available judgments and order sheets on manupatra

you know or on SCC online that's the only thing we have. The the last number 662 is an interesting thing I thought it will be interesting for this group to know okay after all the decisions have made what happens to execution we just took we just did a search of what we think to do with anything to do with execution in High Courts or district courts and the average is another 662 days and I think that has been written about you know in terms of various reforms why . I think there are many judges who have suggested that there are many categories of execution petition and all of that but I think its an interesting number to keep in mind. So our favorite national game although I mean its not officially the national game I said on an average and this again I have just taken simple average not mean simple average across the ten High Courts . There are about 34 cases a day, there are some judges and I will use the word unfortunately they hear about 120 on an average this is the only average is 34 in a day. Only 34 cases a day look at the working hours 5 hours a day that means they have less than 9 minutes for each hearing. So since all of us follow cricket if the opposing team has scored 500 its an enormous pressure on the batsman on those who started batting second and the bowlers with lot of pressure. So, we need to do something to ensure that this doesn't happen because it is important you you know that you have a list of cause list of about 100 matters and you only spend you know X number of time and I have had this experience myself in different High Courts they'll say yours Is not the only matter listed today okay. To this I raise a question and again I had this debate with you know with Justice Venkatachaliah you know I am quoting him without seeking his permission but I asked him this question, see Harish a decision anybody can make even a civil servant can make a decision but the the greatness about our justice system is a person should go away happy that listen I was heard fairly, whoever it was but then in 9 minutes where is the concept of fair hearing all that happens in this fair hearing is we shout at each other the lawyers and you know I am equally guilty and it just goes to another day and we shout at each other again. So why should there be a concept of this non-effective hearing and this is where I would like to link it with judicial education. Does judicial time need to be wasted on this. It need not be. So we have to figure out a mechanism under judicial control under you know matching all the requirements of judicial system. We have to figure out a mechanism where judicial time is actually spent effectively and gain one of the senior council in Delhi you know a couple of seniors also mention that every judge why do they become judges. You want to write good judgments, you want to deliver justice and your precious time is taken away by you know by administrative matters that can be decided outside judicial time but actually been taken away in court when I mean we need to do something about this. This this pressure on a judge in the day in court is enormous and I mean you tackle that. That's the huge part of tackling judicial delay and you know it goes back to you know trust and faith and all of that. So again you know we can look at Mr. Gulati said can we look at different times we can look at different type of matter. How much writ petitions, civil, criminal, miscellaneous matters we can look at all of that. Then the haan, seems to have gone the pie chart seems to have gone but I like to explain. So again we look at for we look at for only district courts just in 2014 across these 330 district courts there were about lakh cases admitted but only 1.5 lakh cases disposed. So there is a ratio of 1:3. So I don't know for 100 years but this is not going to be solved by appointing more judges. So there is more systemic problem here which is administration, judicial administration has to be tackled because even if you appoint more number of because I mean

you are looking at three times okay but then we have more number of judges leaving more matters and then this problem continue until you know you sort out judicial administration issue. So administration is key to even out this ratio and ensure efficiency. I know many number of proposals have been mooted one of the favorite ideas that you know were couple of chief justices say that why can't we have a auxiliary aaaa judicial service in the district courts were supervised by retired district judge who look at the first few hearing for notice you know aaaa service all those things and the judge actually the matter actually comes before the judge only for preceding issues and framing issues. So there are ideas that are floating around but we haven't looked at it because we have we have all said that judicial delay is a big problem we don't want to know how to tackle it. So the point I want to make is it's easy to read and media highlights it so it'll take 100years you know X number of. I don't yes the problem is huge but if we tackle it in a systematic manner we can address it and it not a big big aaa you know jump to finding solution and they aaa example id Justice Chandru and he didn't talk about it because sir I don't know the detail but the aaaa when he was sitting the madras High Court he took a particular set of matters services matter and he was able to dispose off aaaaa an enormous backlog only by you know sorting it out and dealing with the administration aaa properly. So I think if you manage the roaster and it aaa just take an example and you know I may be wrong here I think any aaa judge when he is giving a date so when I go and say sir I am unable to argue today so can you sir I want some date next week say fine next week. But at that moment you don't know how many other matters you have given for next week on that date. So you have to do we need to create and you know I was telling the you know the joint secretary also you know why can't you make the judge the master of the roaster you know technology is so advanced today you have your dashboard were you manage your cases and you know okay of you are giving next week for hearing you know you have five cases for hearing and all those five cases are important so I say can't you wait for the next date, so if you link it with first in first out principle you know it will help reduce this burden this cricket score care pressure enormously.

Justice Ruma Pal- It will reduce the corruption in the court

Mr. Narasappa - Absolutely, absolutely then I think I come to the last slide because I wanted to you know leave time to discuss some of these points. I think I raised one or many of these points in the first session aaaa but aaa earlier session but the two points I like to highlight in the middle of the thing. Problems fo judicial administration and management are more important or are equally important as judicial time and I think if we take the principle and I think this is also mentioned in the material circulated by Paiker that you cannot no longer adopt the principle I will come do my job and everything will be okay. It's not you can take the job only if you have ensured that judicial administration part is efficient and that is not happening. So unless we do that we cannot expect to improve aaaa you know the pendency issue or aa improve public trust and confidence. So aaa next point is an efficient judge performance can alone not solve the problem that is part of the aaa solution. And the last point I think that is the incentive I mean why ... I I am being extremely candid here. I hope nobody mistakes me here for this but one of the aaa many people have are very skeptical about judiciary when the judiciary will try to address this problem of judicial delay aaa lot of civil society people who

we were talking when we started the session what is the incentive to judges to even address this thing. They think judges and lawyers are in this together aa they want to continue delay in matters so lawyers cab benefit and aaa judges are happy were they are. So what is it aaa incentive and I think that is where you know aaaaa Mr. Raju Ramchandran senior advocate said you know is sort of relevant he said see a judge wants to make judgment you see jurisprudence he wants to give judgment that's why he become a judge. So we need to leave judicial time to write judgments and deliver the primary responsibility and for that we need to manage the judicial administration will be better. I think with that I stop. Thank you.

Justice Ruma Pal- Yes just one thing is that I think you are in AAA in America they separated the administration from aa judiciary. Yes

Participant Judge - So far as the judicial administration is there it has two aspects, control of the judicial time that is 300 minutes per day and 220 days minimum a year that show the calendar is worked up. So far as those 300 minutes are concerned we try to optimize our attention to dispose off cases listed per day. Maximum cases that can be handled within these 300 minutes judicial cases at High Court of which minimum of 60 to 70 of which will be miscellaneous matters because they only take 2-3 minutes time of yours because you would have made your homework the previous night or you must have had this very mind I have say it earlier one or a few clarifications which you needed from one side or the other they would take 2-3 minutes. But take a case if it is case for final disposal no case can ever be disposed off unless you spend a minimum of 10 minutes on because firstly, if you have made up your mind at home you are not fit to be a judge the next morning you only read through the brief for purpose of knowing what is the area of aa dispute and what are the legal principle governing on the area. That's how your home work is confined you don't make up your mind at home and comeback next day to the court hall. This is one aspect. Judicial time apart there is so much increase in the administration of the court that is also causing enormous time. The higher the seniority you rise in High Court ranks mind you on an average it I staking 2 hours of your time for five days in a week. Ten hours ten clean hours of your time is spared only to attend judicial time and if you are also an administrative or a judge and depending upon the size of the number of courts there the vigilance cases that come against all the salaried people working in the subordinate court is bound to take away your time. These factors are not known to the public. I can't ignore every complaint against the judicial officer that is working in the subordinate court I can't just through them into the dustbin but nor can I ask harassing the judicial officer in every case asking for their explanation I have to filter it. For me to filter I need to go thorough it for me to go through it takes a demand on my time. These are some of the aspects which have not been bothered by the public at large. Secondly, you are trying to make a comment that judicial delay is primary cause for diminishing public trust that statement is too drastic according to me. The reason is a public trust has diminished mind you hundreds and thousands of cases would not have been filed each and every day in court here in this country. Public trust in judicial system and justice delivery system is fairly very high and intact too. In fact Justice Kapadia has gone on record saying that if we analyze the list of cases and find out cases majority of the cases are pending only for two years or slightly more than 2 year period. The number of cases which are pending for more than 3 years or 5 years is relatively far less. It is

the docket management that is delaying those cases also. Now whole question is if public are loosing trust and confidence in the judicial system or justice delivery system for the kind of population which we have the number of dockets which are increasing is the replica of their confidence but not losing confidence. The third aspect which I want to bring it to the notice of the court is no one has taken the statistics of cases that are being disposed off in the past 10 years by all the courts put together. Nobody is analyzing them. How many thousands and lakhs of cases are being decided by all the courts from starting from the munsif magistrate court right up to the Supreme Court each year. How many thousand and lakhs of cases are decided and in the past ten years what is the quantum of output and what is the number of cases that are being filtered in because there is some fair fair match between the intake and disposal people are still retaining their confidence. Other if these case are pending and no judge is found to be in public opinion working vey efficiently cases would not have been filed by hundreds and thousands every day across the country. So this analysis is required.

Participant Judge - First I agree with what my brother Judge Rammohan Rao said about the responsibilities that the judge have to discharge on administrative side work which does not get aaa well aaa noticed by anyone other than people in the bench practically and aaa just to take a aaa make a comment on what brother Chandru said and the learned advocate. That is aa criminalization of litigation. I just want to give an example of of what we have done in Guwahati High Court recently. Now earlier Guwahati High Court was administered in aaaaa jurisdiction in 7 States so now in last 2 years the area of jurisdiction has got deduced to 4 States. So just to give an example earlier we are doing 7 sets of recruitment, 7 sets of question, 7 sets of question papers at every level and when the courts were separated for the 3 states of Manipur, Meghalaya and Tripura in fact the resisting people there were totally unaware of how to administer so for the initial months they were relying upon the principle seat at Guwahati anyway that's alright there is no difficulty about that so there is a reduction of administrative work you can just imagine I am just giving you the broad picture. And Justice Chandru said about criminalization of litigation and how civil litigation is getting reduced. Now here we have recently started an experiment so to say the evidence in civil cases which chief justice has directed on orders of the court are being recorded by the advocate commissioners. We have a system of advocate commissioners for recording evidence but here it is being done broadly and practically unless in those category of cases were it cannot be done broadly in all cases it has just started about 8 weeks or so it has been in operation and this we are its still too nascent to judge today. Of course there is serious resistance from the bar about this particular thing they feel that civil long pending cases will get disposed off very quickly but the net result of this exercise is a lot of the evidences in pending cases which would have perhaps taken at least 2 years before the concerned court because of the engagement of the advocate commissioners that have been recorded. Let's see how things progress in a next few months but this is something which I wanted to share with the audience because we are all concerned with the delay and how to spare the time of the judge for the actual judging work because taking up recording evidence takes up a lot of time

Justice Ruma Pal- It Is not the number game Just just aaa one minute sister let him finish and then we will come back to you

Justice Chandru- Having regard to this aaa causes for the diminishing public trust in the judicial system with regard to one of the cause stated by one of my learned brother advocate judicial delay is the primary cause I am the in charge of one of the district in Andhra Pradesh known as Krishna District as administrative judge. We have aaaa judicial conferences were we examine all the cases and also find out the reasons and another things in that process we also identify the cases that are old cases so one of the case was of 1984.... The matter went up to the Supreme Court and again came back now it I spending in the file of the lower court. If this particular issue is being noticed by the public and the public feels that it is the matter of 1984 and the public feels that it is the judiciary that is responsible for the delay and the people in that case are not being adjudicated their rights so who is responsible for that. If the public feels it is the judiciary responsible without knowing the factual case can it be said that the judiciary is responsible one. One of the case of 1995 it is a partition suit on three occasions there are about one one plaintiff and 34defendants all are family members. One of the other batch wise they started coming to the High Court questioning the orders passed by the various sections of CrPCs. On three occasion High Court directed the lower court to dispose off the matter in spite of that without cooperating with the court and IS are filed those IS are allowed. On three occasion the High Court adjudicate the matter directing them to dispose off the case within three months. In spite of that people started filing IS and inviting the orders and they want to come to the High Court and filing the writ petition. There is no direction not to file any IS that cannot be. In such a case how it is to justify that the judiciary is responsible or judicial administration responsible for delaying the matter that is not so how to create a public confidence if public itself is at fault. This is one of the reason to have loss confidence to my brother

Justice Ruma Pal- I will just answer this you know there are of course aaa Mohan Gopal aaaa Ja aaa Dr. Mohan Gopal has conducted a study on the question of delay because he said that you know people always delay delay so many pending cases lakhs of lakhs. He said if you look at aaaa analysis the cases first of all what do you mean by delay what would be a reasonable time when you will say that the case has not delayed but it has been heard in reasonable time then he said there is lot of dead wood, then he said that there are lot of cases which litigants file merely to you know hang as a democracy sword over someone's property which if you want to show a litigant for extraneous reasons . then there are cases which are defective and are lying like that so he said we must analyze when we say delay in case were people are being denied justice most of the time this deadwood which should be removed and may be after he completes this analysis he said he will take a long time aaaa to get it done and he wanted to do it through the judiciary. I said don't do it through the judiciary because they are already overburdened. For them to feel this kind of data, look into the records, find out what is wrong you should appoint independent body of researchers who can go into the question and so that the judges can decide aaaa take over. So aaaa but in such a case the 1995 case that you mentioned when these people are clearly delaying its delaying tactics they must be enjoying the portion of the property they don't want to have it partitioned. Costs you put exemplary costs they will not come up again and again. Just filing cases for the sake of filing. What we normally do nowadays because you are being kind hearted saying no order to cost. That cost must be

imposed to stop people from aaaa filling this kind of aaaa nonsensical repeated coming up my way vision and so forth. Yes you wanted to say something.

Participant Justice- The grouping of the cases what Justice Chandru is saying, they group the matters. let's for instance yes the matters are provident fund matters or even land acquisition matters were be it the original petitions or even the appeals they they are grouped and disposed off and what aaa Justice Ruma Pal pointed out as a deadwood so that is the clarification. That is the clearance but what are the effective measures that can be taken up for disposal of the appeals especially civil appeals were each of the appeals not less than at least 30 minutes have to be spent otherwise we cannot satisfy the clients. Then the so far as the for the recording of evidence what my bother from Guwahati said, even in Madras High Court there are four masters who are the retired district judges have been appointed for recording evidence and aaa after the recording of evidence the matter comes back to the court for decision. But before the master if one of the witnesses refuses to come the master is not vested with the power even to set him ex-parte even for which they have to come to the court or if wanted if one witness appear appears like PW1 appears he is he has just completed his chief examination he doesn't subject himself to cross examination even there the master Is not vested with the powers to close this evidence they have to come back to the court. In that process not less than 2 weeks is lost unless the really the advocate is chasing the matter behind and and the idea of examination for a judge is to judge the demeanor of the parties. Well we hear at least here the retired judges are examining whereas there the learned brother said it was aaa advocate commissioner who was examining the recording the evidence. I don't know how far it is so workable and aaaa [Justice Ruma Pal- why?] you know because when it is advocate commissioner is recording the evidence how can a judge write in aaaa the judgment [Justice Ruma Pal- no no the idea is if the evidence is given not in admissibility all the evidence are all recorded] yes aaa correct then it is for during the time of argument they'll say come to question number such and such this was an inadmissible, that is hearsay this is to something you know then the objections can be taken for the judge but the actual I have seen in suits judges sleeping like this and the recording of evidence is going on it is just the waste of judicial time. I think justice aaaa Dr. Menon has to say something yes anything you wanted to say] aa yes then so far as the administration is concerned each one of the High Court judge at the level were they are in charge of the particular district and those files which we do receive sometimes they are not really aaaaa to be considered a judge spending these many hours. It can disposed by the registrar himself or can there be a mechanism were a CEO can be appointed [Justice Ruma Pal- actually that is what is happened in America] but admistration can be taken care of by him so that the judges may not have to spent aaaa other than dispensing justice in all these administrative matters. This I make it as a proposal but [Justice Ruma Pal- In Supreme Court I have to sign files as to what would be the colour of the aaaa uniform of the attendents] yes that's it.

Participant Justice - Before that one more thing professor can answer for this question also professor can answer when professor Menon spoke about he spoke about adversarial system that is the basic principle in our procedural laws he has also answered the question as to whether

it is unfair, unjust or aiding to the public litigants. In the adversarial system professor see some fundamental change in our system. Here supposing as I spoke to my sister a suit is filed to the finality they have to cross various stages it is inevitable. I spoke to my Justice Chandru and just like suit particularly in money suit the defendant can file a petition to only to defend the suit therefore, if he is not able to file the judge can straight away pronounce the judgment. The similarly whether he is there can there be a mechanism to reach the finality without causing the hurdles just like recording the statements, formation of issues, recording of evidences etc etc.

Professor Madhava Menon- Not on that but I want to raise a question to the study given by Narasappa [Justice Ruma Pal- do you want to answer this question] I don't want to [Justice Ruma Pal- on adversarial hahahah] no Perhaps the way that I would like to suggest that we need the adversarial system may be little moderated for complex civil and criminal cases not throwing out lost and barrel. But the bulk of cases particularly in the trial courts do not need that sort of adversarial system that is why parliament has created special courts and try to say that it is not be adversarial whether it is family court or whether it is consumer forum or this that the other or gram nayalaya and then made it even excluded lawyers because they will bring the adversarial so therefore when systems are changed it is changing for the bulk of cases which give quick and cheap justice to the common man's who are otherwise not able to get into the court when you keep it adversarial and bring in the lawyers at high cost, delay and all that sort of thing. The I have a question and a suggestion, let me put the suggestion first now since so many High Courts represented here and you have heard about the study done by Narasappa and his colleagues you know it is good if the study is done by people who are knowledgeable about the system rather than some sociologist or somebody looking at it even I know some management experts who have come to study they have given up after looking into it. IIM Ahmedabad was invited by the Supreme Court and they ran away so therefore, it is good that practicing lawyer is with academic inputs conduct such study in each High Court jurisdiction. Now we have 20 national law universities bright student's academics relatively better who are doing research but again the conventional doctrinal research. Here is an area which is waiting to be researched responsibly by using methods which are acceptable standardized etc. so therefore, if the data could be accessed by law university or a law college which have the necessary interest and they are supported yes with the High Court of that jurisdiction [Justice Ruma Pal- and may be the statistical institute] with the statistical yes here is a statistical expert who assisted Narasappa that's why he could come up with such propositions and ask for clarity therefore, it could be done and in the university system you always get such methodology experts also so if you go back and tell your chief justice that why not we allow access to local university of which the chief justice is the chancellor so it is much easier and then on a standardize methodology look at the performance were were are the weaknesses and things like that it will take a long way and grasp for things like that in a judicial administration or otherwise. That is one appeal to you and I think that when I talk to the vice chancellors of the law universities they are prepared if only they number two [Justice Ruma Pal- I suggested that to Mohan Gopal, I said that use universities] yeah that is right absolutely right and they have the expertise and this that A law college that is established under a statute the chief justice is a chancellor, and with very bright students.

So you have a resource which can produce what you really need for making policy decisions whether at the judicial level or at the executive level. The second thing is aaaa the ten High Courts he aaaa told us that they studied and compared I wonder you have not highlighted if you were to classify those cases and the way that different High Courts have dealt with those classes of cases you will find that certain High Courts could deal with certain type of matters let us say civil or criminal appeals in reasonable time whereas in another High Court there they have taken three times that aaa that aaaa time. Now why does it happen is it because of rules of court [Justice Ruma Pal- also no may not be the rules but sometimes it's a very individual talent like we don't have a Chandru, like if you have a Chandru in all the High Courts there would have been no pendency by now, it depends I think on the individual talent] hahahah yes but have you asked this question as to why a certain pattern of cases in a given High Court is decided in X number of days whereas another High Court for the same type of case has taken three times aaa period.

Participant JUDGE- Sir, possible answer could be twenty years back lawyers were fairly very very ethical in their practice till about twenty years back. Good number of lawyers were accepting briefs where there is something to be done on the legal aspects of the matters most of the times, nearly seventy percent of the litigation in High Courts were regulated with this method. With the proliferation of lawyers and the lawyers not being very sure that they will be paid adequately at the tendering stage of opinion saying that you have no case they prefer to file it. [Justice Ruma Pal- hahahah] because if they were to get paid for their professional advise they wont be filing them because they are not very sure they file the case because they can charge the client for filing the case and they keep those cases pending because they know the result will go against them that I sthe reason why they don't cooperate they don't allow. The dockets will be locked with sometimes it's a pity that in spite of best efforts made by the judges and the registry officials some aaaa [Professor Menon- but are the lawyers practicing in different High Courts different] they are the same class [Professor Menon- because hahahah] they are the same class across the country as you know it but the proliferation of lawyers has resulted in unethical practices taking greater control over the docket ex..... And pendency rather than disposal. All professional lawyers well-read lawyers mind you they will never seek adjournment unnecessarily unless engaged in another important case. I managed my portfolio so long as was at the bar very carefully never to ask for an adjournment because it's an insult to adjournment before a court that is what the ethical ways was earlier. Now what's happening is you just manage the docket in such a way that if you can skip this roaster It will be wonderful if you can somehow manage for 2 months the chief justice will change the roaster we will see next time who comes.

Professor Madhava Menon- Narasappa have you have you anything to say.

Justice Chandru- in any sports the team work and the captain also plays some role. Judiciary also the chief justice is one among the equal and he is the captain but we have never had any discussion as to how to deal with the problem. Many judge thinks ones a portfolio is given nobody should give ant advice. We don't have meeting as to how ways we can solve and chief justice can never say chief justice can never say that please don't do it like this and like that it is considered as an interference number one. Number two when chief justice allot the portfolio

there are a lot of judges who say I don't want this portfolio I want that portfolio and even to the extent of saying that there is a caste discrimination in allotting. So today we have reached a stage after appointment there is no joint effort to deal with the problem. Therefore, when you say in this court there have been so many disposal. At the same time in other court chief has no say at all in all such matters. They have a rotational portfolio allotment. One's portfolio is allotted nobody can have a say. For example in Punjab, they said there are old matters so on Fridays only old matters any urgent motion only chief justice will move same experiment in our High Court also but it doesn't work at all people want to do only new matters and not old matters at all. Out of site out of mind.

Participant Justice- Here I would like to cite

Another Participant Justice- No no no we are we are doing on every Wednesday

Justice Chandru - Because pendency is to hear old matters and not the new matters

Participant Justice - And I agree with the learned judge there are tendency of the lawyers in fact the leading lawyers they do not appear in the old cases which have been 20 years back for different reasons. The fee which have been charged in the fresh cases is many fold as compared to what they charge under those cases were admitted for regular hearing and when that case comes up for hearing the client come he says I have waited 20 years for the hearing at least give us a patient hearing that is one of the foremost reason for delay in clearing the backlog especially the old cases which were put up for hearing. Now another point which I would like to make a lot has been said about the government being the largest litigant in the country I have an experience of nearly 2 decades representing the Punjab State in the Punjab and Haryana High Court and I can say the main reason is nobody wants to take responsibility. There is fear among the bureaucrat that if we give the relief we will be hold up. The only solution which I can see in this situation is if we have a high powered body something like the law commission called the state litigation commission which will vet the filing of new cases as well as the cases which are pending for disposal and the point of law has been settled the similar relief can be given to the those cases and those cases can be withdrawn. So this is the need of the hour something like this state litigation commission in all the states otherwise you cannot leave it to the bureaucrats they are at times very indifferent to the whole situation. I can just cite a recent example, in the Rajasthan High Court everybody knows there is a exude ratio the child sex ratio is exude in the favour of male against the female child the then chief justice in view of the problem had issued directions for setting up special courts to deal with this problem of PNDT Act the female feticide. The principle secretary law had been called and the principle secretary health was called to be present in court. When the matter came up after that the chief justice was retired. I was sitting with the acting chief justice the principle secretary health did not appear and the that very day in the morning an application was moved for exemptions citing the ground that he is going abroad the day after for a conference in Tanzania so there we were constraint despite the pleading of the Advocate General we constraint to direct his personal appearance by issuance of bailabe warrants. So this kind of situation has to be dealt with only at the high power level not at that the level of the bureaucrats. So this aaa another example if aa it will take me about a minute the interesting situation in Rajasthan I just spent 3 months in

Punjab and about 9 months in Rajasthan this lot of talk about child rights the child marriages are taking place but then there is an awareness among the girls as well. There are so many Habeas Corpus petitions by the parents that the girl has run she is minor and she is produced in court and she said she is not going to go with her father because he is going to marry her to a wealthy man who is about 40 or 50 years he has taken money and there was aa yesterday I dealt with the last caser which I took a flight at 4 O clock which was Habeas Corpus petition filed by husband he is saying my wife is not coming back she is being she has run with another person. The girl she was just about 19 years she said that I will not go with this man he has been abusing me has been torturing me come what may when another lawyer started explaining that you are a legally wedded wife he says, she says I do not care. That time another lawyer said no he is your husband, husband is a Devta, *pati devta hota hai* there I have to tell him no you cannot use this term because the equal right so that lady we have to send her with another man who was not the aaa he was the second husband without the divorce from the first husband. These kind of situations are arising so it is an interesting situation. Thank you

Justice Ruma Pal- you won't

Mr. Harish Narasappa- The question that professor Menon asked that we are able to identify different case types, different High Courts but why certain High Courts are more successful it requires research into the practices over the last few years that we haven't started yet [Justice Ruma Pal - that is what I am questioning] yeah [Justice Ruma Pal- it's a question of practice because every judge has his or her own way of dealing you know for example I always insist on legal notes of arguments being given so to cut down to the arguments in the court . now that worked out .. Used to be on my list let aaa just when I was in the High Court. So it came a matter of course. The written was the argument and I stick to those points and said that's it I have understood your case so the hearing was completed very soon. But when that was sort to be started by another judge the lawyers didn't respond. So individual personality really matters whether they aaa enforce as a idea but some systemic issues are also there. Systemic changes are also there between certain High Courts [Justice Ruma Pal- so you should also] that we have to have to highlight. And this last point just aaa I think the learned judge asked me this question how aaa I agree with what he is saying that it is not the responsibility of the individual judge that Is not the point we cannot blame one individual judge it's the entire system and entire system starts from aaa you know if it is a criminal case it starts from day one from the you know the lowest from the FIR to magistrate you know everybody else. So clearly we need to look at the entire management system and that's what we are trying to see we are trying to find out okay were is at which stage is there what are the problems there in each different stage unless we tackle that in in a specific manner aa people will just blame judges because judges are a easy target they cant really respond. These are all the arguments we are familiar with inviable face of the and the only thing unfortunately again I am tomorrow somebody is talking about media they they only highlight 3 crore cases and 300 years or 200 years and every time the number changes so nobody is studying the problem and nobody is highlighting the problem in all the true facets so we need t do that. This is just a effort and you know hopefully we will get more aaa you know in a few months' time we will be in a better position to give aaa some answers

Justice Ruma Pal- Ya my experience is also that judges don't want to hear complicated cases

Mr. Harish Narasappa That's the bar the bar experience

Mr. Anil Gulati- I just want to respond to the judge from the Jaipur. Two thing I want to share with him that bureaucrats are not taking decision. This was the first problem posed to the prime minister when he met the secretaries of the all departments after the new government came into power. So the secretary told him did CAG audit and the CBI these are the two things that people are afraid and they want that file should just go on and they don't want to take decisions because today in today the economic environment you take any decision it will benefit one party or it will the economic activity will enhance as in some area so something will get benefitted. Tomorrow the motive will be aaa on you that it's going to be public private partnership and you have parceled away the public money for private purposes or something like that. So the definition of corruption aaaa the definition of aaaa hhhhh wrong doing under the Prevention of Corruption Act is going to go a change under the UK pattern. There is a UK Act on prevention of Corruption the law commission has now submitted a report that the government has prepared a bill to amend the prevention of corruption act so that just that somebody has got benefitted by some public decision doesn't get the person in trouble so this is one. The second about litigation all states have passed their litigation policies and many High Courts are directing the government to decide the matters as per the litigation policy because again there is a question that it is a executive decision it is a executive policy can it be enforced. Say if the state litigation policy there is a need to have a empowered committee as the Hon'ble judge was saying to weed out the ineffective and such cases were policy decision in one matter and public decision of the court is available in one matter that should be uniformly applied. People should not be made to run in the court because there were not the parties in the original suit. So there this empowered committee many High Courts are issuing the directions to the government that please constitute these empowered committees at the district level even the district judges are involved in that. So that it's stale ineffective these kind of cases are weeded out [Justice Ruma Pal- what about the district judges they will be the last aaaa no no just one minute].

Participant Judge- I was suggesting kind of a commission not the body not the policy decision by the executive. It should be some high powered commission may be headed by a retired judge then only those decisions can be taken. They can I mean they can share they can burden the responsibility. Left to the officer or to the district judge won't happen

Mr. Anil Gulati-No no at the state level it is headed by the chief secretary of the state and the attorney general of the state and one person of aaaaa

Professor Madhava Menon- Actually he was referring only to litigation only ground of litigation. All litigations should be wetted by the independent commission [Justice Ruma Pal- like I said a filter, like

The chief secretary will also be scared because if the chief secretary takes a high of the financial burden is high on the government no matter has any merit or not he will recommend filing of appeal. So the chief secretary I think it has to be a high powered commission may be headed by a judge retired judge on the lines of a Law Commission

Justice Ruma Pal - You setup a commission there will be appeal on every order that it passes. Yes you were saying something.

Participant Justice- my question is to Mr. Gulati you were saying something [Justice Ruma Pal- please put your mike] ohh sorry there is a decision paralysis because the bureaucrats think there will be a CBI and other things. I was just referring to section 7 of this draft of Accountability Bill. It says any person can file a complaint. The experience that we have with our district judges and the district court is that they are today under pressure of the these frivolous complaints that is coming against them and this is at the behest of those lawyers some of the lawyers who want to pressurize the court to obtain some of the aaaa so this type of frivolous complaints will be filed and then this will lead to again great decision paralysis at the level because no judges will take all this responsibility that they have to face charges and all these things [Justice Ruma Pal- so why aaa under the reinstatement of values were the internal committee was set up there, there was a person who filed a complained who filed an affidavit and if it I sfound that the complaint was frivolous they were aaa put on costs. No anonymous complaint would be taken at all] and now we have a circular circulated by the chief justice of Indiasaying that don't accept complaints which is not supported by a affidavit. [Justice Ruma Pal- hmmm] so on practice if we find aaaa that the complaint is serious we ask that to please aaa give your give your affidavit then the reply comes in that I did not file some other person filed but this i sa dangerous proposition [Justice Ruma Pal- you want to say aaaa sorry yes]

I am not aaaa lawyer I am not a judge so pardon me from making some comments I did want to respond you aaaa [Justice Ruma Pal- yes he is a Statician] I am also a software guy aaaa sir your point about pendency and the judicial delay I think you are absolutely right. I think we are debating you know in publicity in in in public when we talk about data and we talk to news people about the data. The numbers that are thought up in every bodies mind is ooo thousand hundred and ninety days of delay like Harish also pointed out right this is a number that everybody hear unfortunately it's a it's a number that just lies because if there are one case that is you know we sort of 1956 case that is about company dissolution. That one case if there are if there is one case from 1956 and there are 100 cases that are just 1 year old your average is still 15 years absolutely I completely agree with you. You know from our perspective I am an outsider 99% has never been involved in a court case. So aaa from our perspective delay is an unfortunate number. So maybe we should change the discussion not so much about an average number but as a mean number. I know its more confusion then you know reality but if we weighted. This number I say the numbers that come from the court system there are numbers which say there are cases which are 5 years old, number of cases that are 10 years old so on and so forth. But maybe we should come out with a one number that is weighted by the number of years that says the delay is 300 days if study even considers delay or whatever that number is and we have to put that together we just need your support for that

Justice Ruma Pal- alright way passed our scheduled time. You want to say something.

Dr. Geeta Oberoi - Yes, first of all thank you very much for participating in this programme for today. You know aaa before I even say aaa start giving my gratitude to resource persons for today. I want to announce that there is a movie that we have kept Jolly BA L.L.B, you can have

aaaa tea break now 3:30 to 4 and 4 to 6 you can watch this movie. It would be shown at management hall conference block it is just here this academic block here itself and the purpose of showing this movie is that we will be discussing something about this movie in tomorrow's session 8 which is role of films. Why we have kept role of film this session is that I don't know because all of you aaaa I know don't watch movies. So if you have seen 1960's films they used to all end with the last scene used to be police officer coming last the jeep of police used to arrive when hero had done everything in all movies. Then we moved to 1980's and the scene changed that now instead of police the court's became the last resort of a movie were the movie is ended in the courts the justice came from there and now if you see the present trend it's a bit aaa different aaa if you have seen 2015 films it I show to evade yeah aa going to courts at any cost. Like if you have Drishyam the last movie I mean it is very interesting that you don't want to go to court and be taped in the system. So there is a transition in the movies. And we are also going to study about that how these transitions are responsible for public trust and confidence in courts. So aaa this movie is part of this but if you have seen this movie so aaa then you can excuse yourself there is no issues about that. So aa please go for tea break and aaa tomorrow also we have a movie but that is followed by a special dinner iut will be in auditorium and that is about false cases how people are using court system actually to take revenge against each other. So these are two movies which are actually part of our discussion also in session 8. With this need to thank aaa Ms. Naina Kapur, she left because her flight was at 2.45 aaaa because her presentation was very nice for she answered our question that how can we measure public trust and confidence in the justice system that she and Justice Prabha Sridevan gave that yes there can be this participatory audits that we can conduct. So sir aaa Mam thank you so much and aa please give my thank to Ms. Naina Kapur also. We have Mr. Harish Narasappa so we will be giving you thanks tomorrow only and Mr. Anil Gulati you are also there right [Mr. Anil Gulati - in lunch] so won't say thanks to you now tomorrow we when we aa tomorrow I'll give thanks to you. So please aaa with this give aaaa . Sir is there Professor Menon is there you are there all of you are here. So tomorrow is yeah thank you so much but please give a round of applause to Hon'ble Justice Prabha Sridevan and Naina Kapur. In her absence. And of course to Hon'ble Justice Ruma Pal who moderated it so well [Justice Ruma Pal- no no no I am going hahahah I will be here tomorrow you can thank me]

Session 5 - *Suo moto* Actions : Case Study by NJA

Justice Ruma Pal - Aaahhh Good morning ladies and aaaaaa, judges ladies, aaaa , just judges no ladies, aaa we have a very interesting and a little aaaa baffling the topic and also aaaa three moderators, so please these are just places for us to sit, so we will not moderate because there is no question of moderation, except you know perhaps you know the order of asking, immoderation is always to be avoided, aa mmmm and the speaker today is aaa Justice Raghuram, he aaa is a retired judge of Andhra Pradesh High Court, I was just telling participants here that, one of the most erudite judges that I have come across. He is aaa present president of Customs and Excise Service tax appellate tribunal [CESTAT] and aaaa he

has, was a lawyer and was made a judge from the bar and aaa so I will ask Justice Raghuram to take over. He will have it as more interactive session I think in this particular huge question

Justice G. Raghuram - Good Morning... In this compilation that NJA has brought up aaa this 3-4 session at page 37-38, there is a statistical data provided with regard to the aaa.... Broad categories of Suo Motto actions that the Supreme Courts and High Courts have been dealing with in the years mentioned aaa as Justice Ruma Pal has said aaaa it should be more interactive session as it has been pointed out that people give advice when they are no longer able to give bad examples.... Hahahhah.... I am the past of the judiciary, horse riding towards sunset, of my last canter as well ... aaaa... I just wanted to share my experiences...aaaa.... I have aa..... I have served for few years as a judge and I experimented with every sort of aaaaaaa matrix to deal with pendency. In the first year from the heady experiences from the bar and aaaa as you succeed you know you become more elitist in the type of cases that come to you aaaa so I said why should aaa these ration shops cases you know, the dispute was that some tehsildar has taken out 50 ration cards from one fellow and given it to one other fellow aaa... allegedly on some political pressure so he comes to the High Court and says that aaaa takeaway 100 ration cards from this fellow and give it to me, aaa should a High Court be doing this? And then somebody suspended, ration card, ration card litigation suddenly surge up after the elections because every by and large fare play were allocated on political patronage so when the elections throws up a new political dispensation and shifts it then two caps want to have their own guys at the local level as their own fare play shop dealers, so on some trumped up charges available charge the existing persons are suspended or removed and aaaa their own acolytes are brought in so the litigation end issues. Aaaa it is about five times in Andhra Pradesh High Court in 1999 it was about five times the election petitions....hahaa.... ration shops litigations so I, in all these cases where there is a due process failure I used to say that all these cases should not come to the High Court the High Court should be busy with the civil liberties and other substantial issues, they have an appeal before the joint collector, the collector, thereafter revision to the government, don't come here go away. The first order the primary order is trances' every known principle of law and due process but nevertheless, there is an alternative remedy, then two years later for about nine years of my tenure, out of my ten years about nine years successive chief justices posted me as admission judge. They thought I was a good gatekeeper you know, filtering system. So two years three years later the same chap landed up with another write petition saying that Aaaa The Joint Collector in the appeal said, the primary authority has taken view that you are too small to be troubling the appellate authority, dismissed. The collector took the same view the government was not deciding or something like that. So four years later after an appellate process this... the same issue pops up before me. Then I get wiser and said alright I'll interfere, I'll take up for admission, then I find out that if I take up for admission it will come up by seven years by this time next election comes and may by it is put back as a fare pressure by dealer by replacing the next guy. So, I was troubling twine with these various alternatives, ultimately by just changing the you know... the trouble with complex problems is every time you have a software problem you come up with a hardware solution so, that doesn't solve anything, aaaa so eventually I decided that I will do whatever I can and let me not bother about too much of pendency because that bother is not permitting me enough to bother about the cases before me.. so aaaaa that how I shift that equilibrium of incompetence

aaaa on *suo motto* actions aaaaa all of you are dealing with it , we have dealt with it earlier now they are on an increase so as mam said aa interactive session is more productive but I have a few thoughts given the limitations of my understanding and competence of the jurisprudence and laws and various complexities in the dynamics of law making and precedents setting a incoherence in precedents aa few thoughts I would like to share aaaa and this is what I have put it you know and I would like to read it out we are overwhelmed by the formidable and unmanageable pendency at all levels of adjudication in our regular courts in tribunals and at all departmental adjudication stations as well, the load is accelerating towards a tipping point of system collapse patch work remedies and band aid solutions either too experimented stands exposed as placebos administered to organic remedies, reflection on facts leading us to current affairs reveals to my experience the following critical contributors. One is the sub-standard legal education monitored by unequipped bar council which perceivably maintain standards of academic intellectuals and administrative vitality comparable to our high profile courts administration bodies. Major inflow to the legal profession is from such law schools. There is no academic or aptitude assessment to filter entry to the profession accelerating obsolescence of ethical and inspirational senior's inadequate measure to train and mentor young lawyers and no prescription of a period of under study preparatory to active practice. Absence of professionally evolved, an entrenched norms and standards to recruitment. To any level in the judicial branch. Wherever a practice of written examinations for sub-ordinate judicial recruitment is invoked the emphasis and often the singular criteria of assessment is to identify the rudimentary knowledge of legal principles. Written examinations are not structured to identify familiarity, with essential attributes requisite for a judicial office such as logical and analytical faculties, interpreting and drafting skills, appreciation of evidence, ability to critically evaluate precedents at least to distinguish between ratio nis and mere conclusions not amounting to ratio, narrative ability and cognate areas critical to judicial office. This is perhaps since there is general acceptance that by all policy makers and those in authority of the verity that a degree in law offers no substitute of acquaintance with law. Applicants to entry levels and often to higher positions in the judicial hierarchy consider the office as aspirational for substantially wrong reasons such as : security of tenure, a comfortable pay package with attendant benefits, higher social status and recognition, opportunity to exercise subjective discretion in broad areas inhering the potentials to extend patronage or distribute largess, an absence of negative carrier consequences for mediocrity or moderate inefficiency since seniority is overwhelming and often the singular operating criterion for sliding to the next higher level. Only a few apply conscious of the awesome demands of the office. In terms of standards of ethical conduct, long working hours, continuous study and reflection and challenges of decision making and the high degree of neutrality required for the discharge of the judicial function. The predominant reason for the aspiring judicial official coupled with the ignorance of the normative requirements of the office make for the pshyco-social uncertainability by judicial office. Post entry the habitat rarely offers incentives for a paradigmatic shift in attitudes and work ethic. Critical infrastructure and man power and faculty deficits' plague state judicial academies NJA is not much of an exception. Foundation training and continuous judicial education suffer as a consequence but are persuade as a ritual. In foundation training for fresh judicial officers the emphasis is again on teaching law presumably to bridge recognized deficit in law school education. The time and scope let for training of

officers in judicial methods and skills appropriate for discharge of judicial functions is awful. Often in several territories a large number of officers are recruited to fill a huge backlog of vacancies. Academies do not have the faculty or infrastructure in adequate measure to impart foundation training to all recruits in one go. Training is then staggered in batches. Some officers are posted to serve without any training and these are deputed to training when the academy is able to accommodate the next batch. Sometimes the shortfall of officers is so acute that new recruits are directly posted and may be sent for training much later after long stint of untrained duty. On account of huge unfilled vacancies deputation to serving officers to continuing judicial education is dependent on whether an officer can be relieved from his present duties rather than on which set of officers ought to be deputed. State academies face huge faculty shortage since even the best law schools face faculty shortage. Guest faculty is not available always from that source. The traditional faculty resolves..... Is from serving judges the desirable among this category are equally critical to adjudication. High Courts are therefore, normally hesitant to depute the most suitable among serving officers to academies. Sometimes this choice of serving judges for academy service is predicated on an officer's desire for a metropolitan posting rather than his or her suitability for this function. There is a general perception that after entry into service the seniority principle for career progression the packing order syndrome, the general perception criteria, occasional affirmative action norms and social and regional diversity concerns gently guide the career vessel to the safe post of superannuation. Circum navigating skillfully, the choppy rocks of efficiency and integrity, performance assessment, an audit of a judicial officer is another problematic. ACR are often subjective equally often the least priority of the reporting officer amongst his or her immediate function responsibilities. The critical function is too often para-functionally discharged. The default method employed is to record a satisfactory assessment. I know of instance were a few reporting officers regularly endorsed average for all parameters including integrity only on occasions is assessment on critical appraisal of judgements or orders. Very few judicial officers fall in to academic research or essay articles on law or related aspects. Despite the highest between the desired and operative reality if efficiency and quality occupies higher levels in the judicial hierarchy it is perhaps by random choice aaa random chance and default merely by design. Unfilled vacancies is a aaa and affects every level in the hierarchy this extenuates the crisis and often leads to psychological pressure on incumbent officers. One chief justice recently told me that on reopening of court after vacation several judges were seen to be actually taking a leave by the end of the week. Stressed on account of huge and unmanageable volumes in each day's cause list of cases most of which are urgent and warrant immediate attention. The incumbent position in that High Court which is the largest High Court in the country is around 47.5% of the total sanctioned posts. Traditionally, judges presumably fail in judicial methods reserve conflicts on the basis of rules and principles recognized as customary or those crafted by agencies authorized by rule making and applied to relevant legal facts arising in the list. We now too often craft rules on as many philosophical dispositions as there are judges. This leads to conflict between formally allocated rule making authority allocated rule makers and in between the two sets of rules. Which is all these conflicts as well. A few of us deeply believe that the civil society must often be safeguarded against its its collective follies reflected on policies made on majority authority that perhaps an oligarchy is preferable to a democracy based on adult franchise and that political and executive branches of government

do nor regularly or wisely serve the republic and that te wise must save the meek from the quinquennial errors endemic to judicial choice. These conflicts are the sub-state of much of *Suo moto* actions. The several elements that contribute the current state of institution repair aaa disrepair are known to policy makers at all levels. Our current agenda is however, limited. How do we manage the current reality of oppressive work load and the huge pendency consistent with our lately identified concern for centerizing government deficit wherever perceived? For regular scrutiny of almost every discretionary exertion executive or judicial. Condonations of delay, grant of bails or administrative transfers included are extra judicial fore ace into legal aid and legal education campaigns, court monitored investigations, lok adalat and our passion to police every outpost. Data reveals that *suo moto* actions have primarily impel in areas, public interest litigation areas. Inadequate physical and infrastructural support, critically low judge strength, huge unfilled vacancies in judicial positions in every level in our hierarchy, sub-standard legal education imparted in majority of our law schools , ill-conceived non-standardized recruitment norms, predominance of subjective and not whole for eroding the quality of recruitment even at higher levels. Inadequate foundation in continuous leading to incumbent discharge of critical adjudicative functions. Entrenched judicial hierarchies , extentuating the packing order but not facilitating symbiotic order or mutually enforcing intellectual or scholastic jurisprudential dialogue between tiers of our institutions. Cultural regress leading to a market society and resenting the judicial office being not aspirational to the brightest mind and to the most successful practitioners, our inability to our coherent principles and non-dynamic precedents in vast areas of law leading to obsolescence of a study state jurisprudential leadership in almost every area. Almost obliterated limits of the locus of the judicial branch in the tripartite allocation of powers, declining standards of public property and quality of administration of our polity, trust deficient amongst the great branches of government and host of such factors. Of course the fine but the inevitable limits of judicial powers at least to those like me not profoundly tutored in the political theory. The problem is compounded were critical audit of judicial office I smuted we must perhaps pause and reflect before Malthusian processes take over. Are we all adequately instructed in a complex sort of governance capable to identify suitable solutions for asserted imperfect governance in a variety of areas to assess whether solutions be identified are socially digestible and would commend majoritarian appropriation, are they uniform or of great standards on optimal and substantial procedural norms for diverse policy choices made in society's such as ours. Is our institutional persona reflective of the diversity of our social composite? Is the judicial branch authorized by a democratic constitutional arrangements to dictate policy choices for the nation are amongst questions which continue to trouble me as a judicial officer? Coming to *suo moto* actions must be considered given the reality that we are unable to manage our docket load how? We classify and prioritize hearings and disposals. If bill is considered quative of choice to man and administration we perceive it as a root of inequality and injustice and thus the dominant contributor to domestic and the docket perception to may be must prioritize bill over traditional litigation are we then in dangerous responsibility to a drawn at the vertex of political, of economic policy, geo-politics and other complex arenas that index modern society and a coalition world order and must we be prepared with inevitable social audit of our neutrality , our wisdom and capacity tolerable and finds solutions to complex issues of governance and of constantly evolving perpetually dynamic socio-cultural integers. Where the solutions we

crafted are imperfect as some are bound to be perceived and established sooner than later are we prepared to deal with the criticism of counter majoritarian policy choices paralyzing governance which bill issues are within manageable standards of judicial powers and which not so present deeper questions of political theory like democracy, separation of power, rights of civil societies to prequinal audit of governance and like issues. Would we then in the political theory be appraised as no longer the least dangerous branch? Why am I perception rarely deals with conflicts arising out of objective reality. Rules governing societies are predominantly more tailored to administer shared myths and non-objective realities. Several intricacies by which contemporaneous societies are And audited for contemplated. Parameters are predicated on assumptions founded on evolving fictions and shared non-objective realities. Social order , economic stability, prosperity , pleasure and sorrow, success and failure, good and evil, notions of equality or of hostile discrimination in a variety of context at all levels by the individual or in the social aggregate, informal or other institutional arrangements are substantially founded on shared myths of societies. Assumptions of religious denominations, racial caste community and national identity, concepts of kinship or promoted or permitted cohabited conduct, social and cultural hierarchies , architecture of governance are human contrivances evolved assumptions and constructed realities that the homo-spiances have advanced during millennium of cooperative existence by trial and error and never wholly perfected to facilitate co-existence of larger a creation of humans. Thus have been evolved from aging habitat into the nation states and increasingly globalizing and migratory society. Fictions and contra-realities also have shelve life they are not transcended. On a sociological time scale no myth or constructed reality now rules crafted to perpetuate the shared fictions are transcendent. Rules in vitality in space and in time context. Individual and shift over time and relative to motion of constructive time. These are phenomena for social economic historical and political therians malice's in comprehension and normally defines static analysis of the variety the community of law is adapt with sharing of myths and intra networking of constructive realities are dominant contributors to the tepidity of modern societies. Since aggregation of individuals in societal context is a product of sharing in a constructive realities so social bonding is proportionate to the continuity and coherence of the narrative regarding shared myths. Constructive realities are essentially dynamic and advance and mutata over the time. They are often they often defy rule. In fact rules are fashioned to cater to nurture shared myths in accuracy in particular social Given the dynamic incoherence in temporality of all rules judges would perhaps do too well to tick to traditional and established patterns and principles of adjudication and return the complex of main land rule making and policy crafting to appropriate agencies which are accountable to social audit and there are democratic institutional arrangements. Must have apatite for resolution of conflicts be structured within currently available resources. Is it wise to be nation under lawyers and not law. What does the norm that democracy is a basic feature of our constitution, mean in operative reality our urgent issues also for *suo moto* deliberation and resolution. I rest my case. Thank you.

Justice Ruma Pal- The aa topic is of course very heated one. Do you go in for aaa *suo moto* action aaa how many of you have ever taken aaa *suo moto* action. Aaa seems some wrong and then interfered. Anyone, no infact aaa[Professor Upendra Baxi- According to the study] so all of them aaa.

Professor Madhava Menon- From all of the High Courts the study has indicated several High Courts have taken almost all High Court , but some of them are numerous but others are very limited

Justice Ruma Pal- Well High Courts here certainly represented the research here. The learned judges here haven't taken *suo moto* actions. But I aa lets clarify what we are talking about. Yes because *suo moto* actions I would have thought was the initiation of proceedings. I was party once not by myself but I was aa Justice Kripal aa when I was in Supreme Court and he had on the way in to court see in aaaa small temple being built on the side of a road and he came and he passed an order saying demolish that temple before it becomes aaaa it was aaa on the road itself. Soo aaa that is the initiation of proceedings. No way *suo moto* action that is one aspect the other is that when a problem comes up the aaa formulation of a remedy which the judge has somehow aa evolved is that is that what *suo moto* actions means. So I think we should be very clear in our own minds as to what we mean by *suo moto* action. So when I ask the question I meant the initiation of proceedings by you aaaaa because fo some wrong that has been brought to your notice by way of a newspaper clipping or something that you all have seen or heard or whatever or aaa . So that is one and the other is of course if any of you have evolved ant remedies aaaa normally initiated by aaaaa by aaa public interest litigation.

Participant Justice-

Mam I am from Himachal the tabulation data which has been prayed with regard to the action taken on public interest litigations in Himachal does not reflect that very recently and it does not find updation in the suo moto action and public interest litigation which has been taken up by Himachal Pradesh high court. The fact that there is Himachal is aaa land of gods and there is a tradition to appease the gods and goddesses by sacrificing animals. In thousands and hundreds at different places during particular festivities which are held either during Narvatras or other religious occasions. So many goat and sheep even a heap buffalo they are slaughtered. There was a public interest litigation which was filed by a lawyer asking that hey should be forthwith stoppage of such slaughtering of animals to appease gods and goddesses. It was likely to have a impact upon these socio cultural and religious ethos of the people and we knew the impact and the repercussion it would have. But our bench despite the effect and repercussion it have needed to after analyzing the history of the sacrifices which did not as matter of fact prescribed that for appeasement of gods and goddesses it was mandatory to sacrifice animals whether sheep's, heap buffaloes or goats. We banned cow slaughter but surprisingly it aaa one of our accolades yet in different sections we have heard that superstitiously they are still continuing to hold despite the ban hold by us on different religious occasions to appease the gods and goddesses. Therefore, my aaa view is that, despite the fact that these aaa superstitions because we investigated upon the fact where the Vedas did prescribed or not the holding of such rituals or slaughtering of animals and after having found that just a post vedic development and hence it was unwilled entirely upon superstitious we banned cow slaughter. But still the superstitious and these aaa non-conformities ideas are not having any rootings in the Vedas and shastras. They still continued in the old ways and we are endeavoring in the future also as and when litigations comes before us we should take a bold stand aaaaa despite resistance eliminate these elements based upon superstitious.

Justice Ruma Pal- Yes Mr Roy aaaa Justice Roy

Participant Justice-

Actually mam when you posed the question perhaps many of us have not presiding over divisional bench which is taking over aaaa PIL cases so therefore, if you put it in that fashion may be that's why you are getting a negative response from all of us. But for instance, in Guwahati high court the system is aaaaaa say something comes to your knowledge maybe through newspaper this thing or the example that you gave through your own personal vision in that case you can bring it to the concerned committee and this could be a case for suo moto action. So in that fashion if you ask me aaaa we have done it aaaa I have done it in court that such and such news item has come maybe it is a case for suo moto action. so in that fashion I have done but not as a judge sitting in the bench. So I just wanted to indicate that to you.

Justice Ruma Pal- But *suo moto* in Latin of course means of your own power. So public interest litigation I don't know aaaa public interest litigation is initiated by someone else and it is in as much matter in dispute as courts have evolved the principles where it is no longer adversarial, where it is coming together reaching point where the government has negotiated settlement which is aaaa which comes out aaaaa

Professor Madhava Menon- There are PILs initiated by individual judges atleast aaaa I am aware of Justice Takker aaaa while he was the judge of the Gujarat high court having read a letter to a editor in a newspaper where a lady who has lost her husband and aaaa provident public interest litigation commissioner harassing her not paying the aaaa took it and aaaa asked the registrar general to take it on file, issue notice to provident fund commissioner and proceeded as a PIL and that was a really remarkable which resulted in immediate action and aaaa followed it up. So there is a mix up of suo moto action and PIL [Justice Ruma Pal- that's right yes yes because public interest litigation ultimately but the process of its resolution one hopes is aaaa not adversarial. The other thing is yes the other thing is that very often atleast in my point of view people have the impression that everything is done by the judges. That they are sitting there and formulating policies. Its actually data aaaa data evidences called for aaaaa the case are put forth the government is consulted. Even the Vishakha case for example that was a public interest litigation it was aaaa if you read the judgement carefully it was passed by the consent of the Union of India. So aaaa that was not something that aaaa supreme court ofcourse takes the credit for it the fact that it accepted but it was a consent order. So all this whether it is CNG, whether it is environment or whatever, Taj being protected, a great proponent of aaaaa public interest litigation here. Aaaa its its not something you take out of a hat it's the discussion government participates, the relevant government whether it's the central government or the state government normally the center and then a kind of solution is arrived at. So the question here is I think what has been posed is should we entertain this kind of aaaaa negotiated set amongst them you can call them or should we say that this is not aaaa not really litigation go somewhere else aaaaaa lets stick to landlord and tenant kind of dispute. Yes you were saying

Participant Justice- this aaaa this aaaaaa strictly it is not an original action as was pointed out when you issue suo moto action. This because I am holding the roaster of dealing with second

appeals when where majority of them are civil appeals and and majority of the matters are against the state government and in those litigations at the original level at the trial stage the government lawyers don't appear and they let cases go ex-parte and then if the litigation is for the issuance of patta or even the aaaa wastelands as we call it That is the village lands because of the inaction by the government all the government advocates all of those who don't appear to the court in view of ex-parte decree that have been made the government is at loss and the revenue department invariably because of the aaa when high court notice when in every alternative case it is a ex-parte where the government never appear the revenue department never appears so I had to issue to the collectors and how many cases are pending aaaa how many cases have been initiated against them and how many of them the lawyers did not appear the government advocates I mean because of which the private litigant had to succeed not on his own but because of the absence of the aa revenue department. So the collector, the tehsildar they came, they appeared and they in fact gave me the list and in majority of cases they never appeared. Would this be considered as a suo moto action. Because it was not in one individual case collectively because the trend is like that government advocates they just take the appointment and they never appear but the Similarly, land acquisition matters where a litigant has come after 12 years with a condonation of delay and I had to tell the government aaa who has represented the state you cannot allow this to happen when he simply got up and said no objection. I said that if there is no objection then for the 10 years the interest part of it , if the compensation paid is a huge amount and the solution on that and again the interest..... so the government aaaa in fact aaa I called the advocate general I asked him to take judicial note of this fact and aa these are all the actions which I I think also would come under the aaaa sou moto

Justice Ruma Pal-

Should we do something about the ethical standards as we were discussing yesterday as judges is there anything to do to pose ethical standards atleast in the education as aaa that was pointed out here you know. Its all very well being knowledgeable about international law and a intellectual property. But where do you get the the training in ethical standards and the students of today are the lawyers of tomorrow and the lawyers of tomorrow are the judges of day after. I mean how do you I mean how can the courts for example make ethics part of the syllabus. Would you consider that an acceptable PIL

Yeah absolutely that madam I have that experience because aaa I am sitting with the chief justice in public interest litigation. It's not something which we have initiated but there was a suo moto aaa complaint aaaa taken as a public interest litigation by the high court of Kerela. The issue was concerning a letter sent by some students of school saying that tress in public places trees in public places are being used for advertising hoardings and by advertisements are affixed by nails. This was the complaint by certain students of a school. This letter written to the chief justice was treated as a suo moto action. And notices were issued. Ultimately we had to decide the case and by the time the counter affidavit from the state government had come. Statue came with a notification barring all such advertisements in public places and public trees and also for using nails. We said that everything ahs to be stopped. So thi sis the students of that school had the you know they had written the letter we could take an action.

So some sort of an aaa you know aa education as far as what is happening in courts regarding suo moto actions or public interest litigation matters these are all matters which are to be taught at school levels so that you know people will come to know what is happening around though we may see a see a advertisement in hoarding we may not apply our mind but some students had the courage to sent a letter to the chief justice that was taken asa suo moto action. This I think is the concept of suo moto actions. [Justice Ruma Pal- Our environmental jurisprudence that has grown up has been aa through public interest litigation] absolutely and one thing that aaa as far as Kerala is concerned is even if there is some issue which is projected in the newspaper next day you are sure to get a public interest litigation is coming up. That is always there so you don't get time to tale suo moto actions. Well that is one part of it

Justice Ruma Pal- Question is now do you appoint this as forest aaa do you appoint a special committee which will go into it or sort of aaa high power committee and then you go into them. So then yoy really get into a feel with which perhaps aaa courts may not be familiar but the reason why they do it is as it was pointed out distrust of the executive. It becomes even more so when you have a really no separation of power, someone was speaking aaa there is no separation of power because the aaa majority in in legislature could control the executive so there is no real I mean every executive branch is headed by the majority party representative so it's a very lovey dovy situation there is never any confrontation between the legislature and the executive. The only one who is standing out like a sword hung is the judiciary. So it is really the judiciary which is aaaa sort to be aa which is why we work for independence so much. Which we try very hard that know atleast we stand up otherwise it becomes absolute, it becomes dictatorial. So so should we do this, should we go in their field their field because it is not the field of the executive or the field of the legislature. It is the field of the political party then in power.

Participant Justice- Mam yesterday we had aaa occasion to deal with [Justice Ruma Pal- mike] aaaa sorry yesterday we had aaa occasion to deal with aaaa bias against weaker sections. See we are going for class litigation or public interest litigation because something could not be brought to the notice of the court because something administrative lacks doing or they don't take enough care or they don't take care or they are negligent in doing that this is where the court shave to step in so public interest litigation of course is a matter which has to be dealt with very seriously especially matters which are concerned about the backward class who cant come to the court. This is the aaa bottom line [Justice Ruma Pal- because if they don't get you votes they are not going to get the attention] yes

Participant Justice- Mam can I say something

Justice Ruma Pal- yeah yes there was someone before let him and after that.

Participant Justice- So far suo moto action is concerned that is my perception considereing the literacy level here in Indiathethe court has to step in and had to take up suo moto action. What I feel when I travel in the car somehow travelling 100 km I come across 3-4 tehsils there are, courts are there but the fact is that the persons who are practicing there are not from the national school and he is not going to settle down there. They may be there are they wrongs are there

but they it may not come in the form of a PIL then the court if it something comes to the notice of the court the court has to step in. the national colleges as some point was raised there even they there are some of the colleges even they are not the faculty they are not of the standard and then suppose the students who doesn't get admission there they are in the other colleges. They practice they go then settle in the taluka level, tehsil level. PIL concept may not they may not conceive the ideas supposing some wrong is there therefore, if the courts are there and if comes to the notice of the court with We aaaa as I think personally the court has to take up that part [Justice Ruma Pal- what was the question of pendency] what [Justice Ruma Pal- pendency you got so many thousands of cases pending will you then go around looking for cases I mean that is the argument] no [Justice Ruma Pal- the argument against aaaa] they therefore PIL and suo moto are different PIL is litigation [Justice Ruma Pal- yes] suo moto when the court feels that there is something wrong, right. How can I shut down my eyes [Justice Ruma Pal- yes, you are right the the we aaaa it has been confused distinction ahs been confused but I think what is really being spoken about is public interest litigation suo moto oooo so suo moto action. Yes I don't think no aaa yes aaaa but a a before you there was someone else there. He than you and then you

Participant Justice- yes mam

Participant Justice- mam courts are the protectors of the law and the constitution. The law breaking by the executive, law breaking by the politicians to project their political Bastian that has to be that trend has to be broken and in Himachal we have done it twice there was depredation of forest well at the instance of the forest mafia as well as the horticulture mafia who erased thousands of trees just to expand their orchards for getting income from the tress the apple tress which were planted and which would give them a profiteering gain from it. That action was taken up by us in a public interest litigation. The government resisted it because a large number of people were encroached upon government land and raised orchards to gain income from. Were the voters the sympathizer parties. So all the political parties get up in their favour and tries to built up a public momentum that this should not be done therefore filed so many revisions, review applications before the court that this trends of the court's to ask them to vacant and evacuate themselves from government land encroaching upon them should be stopped. The point which I am emphasizing is that the aa there is an open front to the constitution the laws and there is anti-step anti-lot trend on the part of both the government as well as the citizens who are voters of the government and in this kind of scenario the courts have to be very bold and firm to ensure that this trend of law breaking transgression of law in connivance of the people who break the law and the politicians that has to be broken. And in another instance, the there is a core team of bureaucrats in Himachal Pradesh who in the garb of there is a vision for allotment of not hold land to landless persons. They despite the fact, that they do not have the criteria to to get allotments of land or to perturb the allotment of rules... they have grabbed government land and when we initiate action against them they are up in arms against the judiciary. Therefore these litigations they ensure and there are In the hands of the judiciary to ensure that there is no law breaking or transgression of laws either on the part of the large constituency of citizens who are the voters of a political parties or on the part of the bureaucrats who move over government policies.

Justice Ruma Pal- yes you and then her and then you and then aaa professor and then you.[Professor Upendra baxi- I will be last] and then last hahahah alright yes. Would you like to take the mike please.

Mr Anil Gulati- this public interest litigation is good for the country nobody denies that but recently when this national judicial commission case was going on one argument was advanced from the government side. I want to say that, now the courts are taking decisions under public interest litigation which affects lakhs of people rather it affects the economy of the country because they are taking on mining they are taking on economic policy, they are taking on banking and all. So the government wants that more say of the government should be there in the selection of judges that's why. Second, because of civil society is also necessary because the decisions of the court are now affected by aaa affecting large sections of the society on all issues there are social cultural issues, their economic issues, their traditional all these things are coming so they say there should be a better participation of public representative in the selection of the judges and again the question of accountability because all set and done the political and executive authorities are responsible to somebody like the executive is responsible to the parliament and the parliament the MPs are responsible to the people. so they draw their powers from one of the other resources. So there was an argument on behalf of the government that with better accountability and better criteria for selection of judges. This can I think otherwise, there are many cases were quoted where this public interest litigation have been done for some other reasons some corporate houses are also using public interest litigation to advance their corporate things. So the judicial system also is being sometimes misused to have personal gains at times. That is the point.

Justice Ruma Pal- aaaa lets just responsible response to that in public interest litigation is the government that should draw the courts' attention that listen this is not genuine. It's it's we come back to the point that the judge from Madras high court was raising that the government's point of view is never put across and as I said right in the beginning the government is is aaaa either the secretary or aaaa someone is always there. Now why don't they bring this that listen we'll have this kind of economic impact. This is what I have been instructed to say. So you really need to gear up government representation properly before the courts. The courts have no axe to grind whether a road is being built in Himachal or not what is a matter to someone who may never not go to that part of the country but its' it's the government representative who should tell us that haan this is the likely thing I forgotten your order I think Q and X.

Participant Judge- in our courts its I think aaaa without a PIL or we can take suo moto action in the writ applications also for example recently, in a division bench which I have sat there were large number of pension matters were coming of different boards and corporations they were expressing their financial crunch and some of the pensioners had to aaaaaaa knock the door of the court. Last 8 years they were not getting pension 5 years, 3yearsn even 10 years. So aaaa when these were coming we aa formulated we aa in a particular writ application we passed an order that the government the board or the corporation should formulate a scheme even if they have a financial crunch they can pay. Instead of paying everybody all his retiral dues, they can fix a certain amount which can be paid to everyone on a time basis. First payment, second payment, third payment so that he has retired 3 years back, 5 years back so

that everybody every pensioner every retired employee will get some amount as his retiral benefit. We asked the government to formulate a scheme and in addition we also formulated the scheme as such so 10% immediately to be paid, 20% thereafter, after six months so that each and every pensioner or retired employee should gets his due. [Justice Ruma Pal- you know sometimes courts do pass orders may not be even on a public interest litigation] yes [Justice Ruma Pal- which have aaaaa had very adverse economic impact aaaa on the country as a whole. One of the decisions I know of was the Air India judgment, where they said that if you have aaa contract labour and if the contract comes to an end then they become permanent employees of the concerned. This meant that Air Indiajust went down the drain. So there are aaaa you need to have an input but you need to have an efficient competent lawyer who is going to give you this input saying that look if you are going to take this decision this is likely to be the outcome. That needs to be brought to the attention of the court because I don't think we can just go hog and say we doesn't have aaa you do it in any case. We aaa although you have said so.] yes [Justice Ruma Pal- there have been decisions where the courts have said that doesn't matter you don't have the money , pay.] no but if it is what I wanted to aaa what we have formulated as a team that instead of paying 5 individuals let it be distributed among 20 individuals so that everybody survives.

Participant Justice- Suo moto actions are not only for the government and government officials to do not to do certain things but excercising the supervisory jurisdiction of the high courts or supreme court we can stretch our hands to sub-ordinate judiciary to correct its wrong. Sometimes they have committed jurisdictional error which they actually do not have. They are committing a sheer abuse of the process of law as well as the court. For excersing the powers under Article 227 of our constitution we can exercise the aaaa suo moto actions to bring them they aaa mistakes..... that's my

Justice Ruma Pal- So you should heel yourself first hmm hahaha yes.

Participant Justice- I am justice Chandraiah from Hyderabad from the state of Telangana and Andhra Pradesh. My understanding of this aaa suo moto action is that aaaa it is coupled with the power and jurisdiction. Now there are aa judicial power and the executive power under the constitution, constitutional authorities have vested this power. So, a judge who is dealing with the writ petitions happen to see a particular instance where the public interest is involved , on account of the inaction involved on prt of the authorities concerned public is going to sustain damage in such a case the authority has got the power that is called jurisdiction. Judge who is dealing with the power under 226 can should take note of the fact and issue a initiative a suo mto proceedings for taking the action. Then the second aspect is that suppose there is a contempt, contempt is an action about the violation of the order of a particular judge or otherwise also. In such a case also the authority, the authority who has got the power can also initiate the suo moto action. Suo moto action even without a there being a complaint that the order passed by the court is violated. So therefore, in my view this suo moto action is [just one minute can you turn the air conditioner off for sometime] suo moto action is coupled with the power and jurisdiction. And coming to the executive authorities are concerned even under the

statutory authorities, statutes any authority who is superior to the lower authority or the authority who have been to pass the order also have a suo moto action power to be exercised by them. So the suo moto action is coupled with the power and jurisdiction number one. Then, in what manner, in what aspect the suo moto action should be initiated. It maybe in case of an individual or it may be case where the public intricacies are involved. For instance, there are instances where it was noticed on the newspaper that in various schools in Andhra Pradesh there was no toiletries provided consequently, particularly the girls students were aaa feeling so much of difficulty it was noticed. In such a case suo moto action was initiated by the high court by the then chief justice and aaaaa necessary directions were issued. So therefore, my view is that suo moto actions should be initiated and the power should be exercised by the judicial authorities having regard to the fact the as it is stated by my lord Hon'ble justice G. Raghuram, that the justice, the preamble of the constitution provides that justice equality aaaa justice with regard to the social justice, political justice and economic justice. We are in the process fo travelling to achieve the objects. No doubt the country suffers with illiteracy, ignorance and all this things so one way we have to take this steps to educate the people by way of conducting legal letracy camps and all, make aware them about their rights either fundamental rights, the legal rights. At the same time the authority who are vested with the power should initiate the suo moto action. So, as per the public interest litigation is concerned this public interest litigation also if a ajudge also can write a letter to the the authority who has got the power. There are instances, one of the learned judge was there in the Andhra Pradesh high court he happen to observe a particular situation and he felt that something is to be done. Based on that newspaper report he addressed a letter to the registry , the registry has placed the letter to the Hon'ble chief justice an dteh chief justice had to refer the matter to the concerned judge who was dealing with the writ petition. In such a situation a writ was directed and necessary action was taken. So therefore, according to me that suo moto action by a judicial authority, suo moto action by an executive authority, suo moto action with a power and a jurisdiction. That's my view.

Participant Judge - Coming to the public interest litigation is concerned it can be initiated by a citizen, by an authority who has no jurisdiction but he can write a letter to the competent authority and by a social organization. So in an area like this aaa it is the time that has come to take note of the importance of these two fields to see that the objective of the constitution where even we are feeling today in many of the cases if the government is the aaaa mostly in litigation government is the important point. It is the duty of the government to see that public interest is served, public rights are protected so therefore, on account of this in the process of excersing the power not only the individual rights will be protected and also but public rights aa public interest is also protected. So therefore, the time has come where suo moto powers must be there and it should be affectively exercised by the judicial authority, by the executive authority and also should the aaaa as per the public interest litigation is concerned citizens and authorities and social organizations. This is my view. If I may

Justice Ruma Pal- Yes

Professor Upendra baxi- I wish to say aa three things. One I speak a lot about so I don't cannot due to time. In the last bit of justice Raghuram's statement which I think was absolutely

wonderful and it should not be allowed to be wasted he talked about something called social construction, judicial construction of social reality. How do judges think a problem to be important, why do they think to be important and what are the clarifications etc etc to be pointed out. So I think this poses a long process. Generally the judges undertake to do is to of social realities which is its implications so the point about social construction of judicial construction of social reality is far more important. Thank you for raising that in the last section of your address which I think is an anthological point but a very important point it has been shown earlier in suo moto questions have been raised What is a suo moto action and from other perspective is a social perspective. I am interested and that my second point definitely is page 32 onwards analysis is made by the very nice chapter of book of readings by person from Orissa Law School is. Now I am interested in the mention was made but I want to specify between the relationship between contempt and suo moto. There are so many courts which are very seem to me have large amount of contempt petitions. Orissa high court you can look the figures up. I am interested in if you regard can you regard contempt as a suo moto action which in some sense it is can be regarded as authorized by an Act statutory act. Now what is the difference between something authorized by an act and something authorized by yourselves. PIL, SAL or the suo moto what is the difference if any. It goes to the heart of judicial power in powers of the court or the courts of records but is there a difference we make and how to make out the difference. Very major point because if you include contempt into suo moto action then there is a large number dependent on the various courts which seem to specialize 37% are contempt petitions my goodness somewhere it is 40. Now the work load of the court could be what Justice Chandru has given me a book thank you very much for it which I read last night with immense pleasure in which he talks about the overload of courts partly. So, it is not suo moto action we generate it is contempt we generate also why orders are not obeyed I understand that but why proceed contempt power is a intercontinental missile, you use it as a 1st resort. Why contempt power used so frequently in some high courts more than other that the question that arises. There is this third one which I will not deal with now.

Justice Ruma Pal- I agree I think, in fact when I asked the question as to how many of you have initiated suo moto actions and there was dead silence. So really suo moto action for the purpose of public good and so on and so forth is almost at least among the present those present, nil. But now let's frame it in a different way, how many of you have issued suo moto contempt proceedings. How many of you have taken that. You have, yes

Participant Judge- in one matter

Professor Madhava Menon- Where a question arising from this data that is provided though there is not of an analysis provided in the NJA study I suspect because as it was observed the majority of what is called suo moto or contempt petitions. I suspect that these are PIL jurisdictions exercised by courts and orders issued which the executive refuse to implement and contempt follow

Professor Upendra Baxi- I hope so

Justice Ruma Pal- I, I don't know but you do have instances, where someone aaa judge in the Allahabad high court because he was refused a ticket from such thing on the train he, he issued contempt proceedings notice in the station. Aaa I there was a case in Calcutta high court, where a judge was going to court , down one way street. He was going down the wrong way aaa this was stopped by the policeman and the judge came to the court and issued contempt proceedings because he said that you have interfered with the administration of justice. Why, because I was going to court and you stopped me. That I was breaking the law was immaterial and how was he administering justice by breaking the law that was also immaterial. What was material was that a policeman has stopped a judge going to court. I mean the use of contempt suo moto has been resorted to but I don't know whether this distinction has as Prof. Menon has said. Whether this has been drawn in the figures that you have given

Professor Madhava Menon- yeah infact aaa the figures that are there which I understand have been done for a 13 years period from 2001 to 2014, from one source Manupatra. Aa delhi and tamil nadu High courts have the largest number it's over 22 aa during that period whereas aa Rajasthan, Punjab & Haryana high court have between 15-20 and the rest are below 10 \

Justice Ruma Pal- Infact one of the cases that I mentioned yesterday, who mentioned it you aaa . The magazine that has brought out about 10 judges of the Delhi High court that a gagging order was passed on the basis of aaa contempt aaa suo moto contempt.

Professor Madhava Menon- Yes, yes aaa yes

Justice K. Chandru- I want to make aa one is that aaaa originally this aaaaa litigation called as aaa social action litigation, when Baxi wrote letters the only exemption given was from locus standi and procedure and court fee in a representative capacity the matter was dealt with for people who never came to court. Now we have two different breeds. Judges who only deal with suo moto actions, everyday they read a newspaper then say I want to issue a suo moto. This is with one set of judges. Infact one judge in our high court which has changed his initials as SM , SM means suo moto [Justice Ruma Pal- hahahaha] his initial was different. Theer are some law firms who only dealt with PIL or use centers for PIL. In every high court there are some two three groups have come up and I know in my court, a lawyer comes goes to the library, reads a newspaper puts a circle on a news, tell the typist to type the question very half hearted question, not a seriously involved then mention to the judge the important matter. What is important, send army to Sri Lanka, file a PIL. Then our fishermen are all attacked. So send a gunman in each boat, I don't know which policeman will go along with them I don't know. Then BCCI match there are cheer girls with obscenity, file a register a case. Now what happens is PIL has become bitter PIL. In an individual case infact, the judge which I am referring to whichever jurisdiction you put him he will convert it into a suo moto whether it is motor accident or a workmen's compensation. In a workmen's compensation case where there is a private employer and a employee, he sticks down the ceiling fixed on aaa the maximum compensation any docket any order can be passed. This is something like a become a unruly horse. The other issue is like the epistorial jurisdiction like, write letters. Now each high court has framed rules. Now far from widening the idea of entertaining we now try to restrict. One of the rule framed by our high court that he must be a income tax assesse to file appeal, I don't

know from where the income tax in the PIL comes and aaa there is an increasing amount of framing of rules to curtail the number of petitions that is flowing. In my opinion is that in any meeting we go people say we have this problem, can PIL will lie. I say PIL will become bitter PIL unless judge personally interested in the matter it will never go. In fact I know a case where Justice Prabha Sridevan issued a suo moto action, she found in a habeas corpus matter where a juvenile was in the jail, which can't be done under the juvenile act so she called for from the prison department, a number of juveniles were kept lodged in jail. Her tenure was over after 3 months another judge took over, he was not interested, people are having somebody illegally detained they'll come. So one judge, some issue is there he take it to the heart the other judge doesn't feel in the same way there is no continuity at all and then the same judge who denied this relief he comes one day to the court, there was a election going on and the election commission officers were checking all vehicles for money transaction and the leader of the party he was a states man, he was from the running government. The election commission running this government, stopping every vehicle, then he comes to court and takes this view and stop all Charchas. So that during election times money transactions goes on unhindered. So each one things what is important to them. So now there is no there is no law professor or a university academician who criticize these matters because the academic court relationship are now very complex, it is not very simple, it is very complex and most of the universities we have Chief Justice as the Chancellor and some judges sitting as a syndicate members and therefore, the criticism from outside is only aa is negative or positive. Some people say it should be there, some people say it should be that. We have not we have not commissioned a study so there are number of judgments in Supreme Court though there are number of judgments in Supreme Court, how the locus should be redefined and all that but we have not done any scientific study on these matters.

Sorry I was so taken up by what was being said that I did not look at the time. Next session aaa it's 10:16 now so you just have a 15 minutes tea break. I am very sorry about this. The next session is suppose to start at 10:30. We can start at 10:35

SESSION 6 Nature of PIL Admitted in different High Courts: Recent Trends

Professor Upendran Baxi-

Well I am blessed with aaa asked to chair this session for a change to chair this session, the judge wants aaa brief break aa so I am here and I am introduce to you to of my very good friends if may call them. Two independent legal scholars. One a both doing public interest litigation or Social action litigation.... Both doing aa work with the governments previous or the present or which aa My aaa representation of activists. At least assume the regime actively disliked otherwise you are not liked. My definition is more stringent an activist is a being worthy of state repression. My judgement is nobody is an activist but state functionary will do and by measured by the that both Usha Ramanathan and Colin Gonsalvis have a that probing. Now I am aaaa directed to look at your all bio data so I have to follow the proper introduction. Mr Gonsalvis is a Supreme Court lawyer in case you do not know and the case that you do not

know that he is the founder of Human Rights Law Network. He is doing other things like he founded the Combat Law Magazine. He is a pioneer in a Thank you very much.

Justice Ruma Pal- I was wondering if could also request for the same

Professor Upendran Baxi- Ohh yes yes that is very aaaaa Mr. Gonsalvis is a pioneer of a social action litigation and aaaa that you no doubt no is he bought in number of as the printing mistake says here he bought a number of petitions before the court by lack of success is more than a success. But he is also the founder of India Human Rights Centre and Human Law as I said he is the founder of Combat Law Magazine. And this is don't know that he is a winner of 2004, International Human Rights Law Award by the Bar association but still in order and I know what surprises the former part is that Ms. Ramanathan has I was correct in aaaa recognized in the sphere of law and equality aaaa cut the waging campaign for the last ten years or more on Aadhar and many other things If I am right she told Mukul Rohtagi to attack on the right to privacy. Constitutional law in return She is a frequent adviser to non-governmental organizations and international organizations. I not did not mention that she is member of Amnesty International's Advisory Panel on Economic, Social and Cultural Rights commission aaaa Human Rights Commission and human rights council this is Displacement and is as a displaced person myself I live in Delhi, everybody lives in Delhi and this place Delhi as you know She and in particularly in cause of issue such as Bhopal Catastrophe, now the and evictions. So this Mr. Ganz is taking a session with me I am not going to introduce him now. Aaaa Dr. Ramanathan you kindly come here we all use the podium but should come here and sit here you can be seen by the judges. [Justice Ruma Pal- why don't you come here]. Okay with your permission ladies and gentlemen I put the podium to aa Colin in the first twenty minutes and then for the rest of the minutes to Dr. Ramanathan.

Mr. Gonsalvis - It will give you a little insight into aaaa why I think the way I do and why I take the stands that I take I had to advocate the kind of actions that you ought to take on public interest litigation that I will say on a few.... I graduated from IIT Bombay as civil engineer, disliked engineering intensely which I found out in my fourth and fifth year of engineering. Barely managed to pass from IIT aa Bombay. This was the period mid 70's the JP movement, railway strike, George Farnendis and so on. And Bombay was a very vibrant place to live in. I joined the trade union movement I was active in the trade union for many years. I was involved in the slum movements organizing against demolition and got arrested many times fir fighting against the Municipal Corporation in Bombay for carrying out eviction for the slums dwellers. Learnt my labour law in the aaaa during mu union work aaaa where I worked with the union from 8 O clock in the morning and earned rupees five hundred a month the happiest days of my life. Learnt law and began practice of criminal law and moved away from the High Court of Bombay which I really loved and that building that I really loved. Reluctantly moved to Delhi in 2000 and I have been practicing in Delhi now for quite some time. I have seen PILs little bit from the inside I have always maintained a very close connection with people's movements aa struggle movements aaaa not just NGOs but people engaging in active and rigorous action against the tyranny of governments. And I have come to respect and love them very much and I have come to learn from them very much and it's the connection which I keep even to this day and it informs the PILs which we do so that we don't do the kind of aa rubbish of frivolous PILs which generally Justice Chandru spoke of, we do very crafted PILs based on people knowing what they are talking about and based on people who are living in the area where deprivation, the violence and the discrimination takes place. And I must say that I don't really by way of I must say that I don't buy publicity by this public interest litigation kind of argument it is true that here a quite a few of those floating around but I suspect a rigorous study of how

many PILs are more bogus and how many are really this may give a kind of a picture of PIL litigation in this country. There are large volume that PIL litigation is quite aerolite, is very well documented. Done by people who know the inside and outside of their of their subject. And at great expense to themselves PIL litigation is done what the government instead be doing..... PIL litigation the government should do it trafficking, women rights, bounded labour whatever it is right it I something the government should do and the government advocates and the court says do what your constitution duties are to take care of the people and implement their fundamental rights. So we aa spend enormous amount of money enormous amount of money for doing PILs for what for things to do the government to do what the government should have done in the first place. So I suspect a study on public interest litigation will reveal that a large body of public interest litigation is genuine nd top of the line litigation in the sense that it's comparable to litigation anywhere in the world for the topics that are choose from the ligations. Aaa I wanted to tell you give you a little idea of the real battlefield of public interest litigation today. I also if you don't mind a second regression I don't by this idea of public interest litigation being non-adversarial that was a phrase used in the 80's and early 90's and so on and the judgments reflected that like the Vishakha judgment for example remarkable that the government should come forward and say that we accept the proposition that the international law will be read as integrated into Indian aaa constitutional law. We accept the proposition that India must march in tune with this international obligation as in Gramophone company cases and so on. So it was aa a different period where the government would say that we recognize this as a good case, we recognize the merits in the petition, technically it may be set against us but as suppose the constitution we are suppose to be at the side of the people therefore, we agree. But that's the past and if anyone want to say for today I would say it's a myth. The most heavily contested litigation in the country is public interest litigation on the simplest of topics the most well researched PIL ... you will find government council come against you tooth and nail there is not , they will not give you an inch of space, they will crowd you out in the courts , they will fill all kinds of affidavits, they will you know stigmatize the petitioner as being a Naxalite , a miosts or something like that and you have to fight numerous battles just to get a PIL served in court. PIL administration is adversarial to the court. Why it is adversarial is clear I will point it out a little later from the nature of litigation particularly today. If you look for example at the at the aaaa the Thomas case started with the Thomos CBC case. Now take a senior bureaucrat whom the government thinks is fit for job and you attack his credentials and the court intervenes sys you know you can't be aaaa the head of CBC aaa its shakes the foundation of the government that the court is telling you at the highest level at those level where the prime minster is appointed so on and so that this man is not fit to do his task. That starts the ball rolling in the latest if you like the latest period of public interest litigation. Then you have the telecom judgments incredible, you have all the telecom licenses set aside, you have government looking very closely at the corruption in the system and you have a minster landing up in jail incredible. Malfide is by the government at the highest level, misconduct by the government officials at the highest level and lack of governance, mal administration at the highest level and you expect the court to keep quite, sit quite and say no we defer to the rights of the executive to do and run the country. So the separation of powers in the sense this whole ancient theory of separation of power though right in principle has a very different way of playing out in this country. And if governance is not upto the mark then the lines between separation the lines between separation in the executive and the judiciary necessarily get blurred they must blur. The constitutional obligation of the judge is to say I don't recognize these lines any more, I will transgress this line anymore because this won't do administration for god's sake. Who will run the country who will keep the country in line if the government doesn't do it I will come in my own little way and I will transgress that line. So theory is, theory is the public interest litigation, separation of powers, national law,

international law all these theories have gone through radical transformation in this country. And India has seen and I think rightly seen in the world as country where public interest litigation jurisdiction has been somewhat revolutionary we are seen very well in the world but we have seen very poorly in this country. Poorly sometimes by judges sometimes by academics and universally by government persons they see it very poorly. But I must say that we must be proud of what the court have achieved we must really be proud because it is truly something which is outstanding in the world of law. Now the latest position is highest contempt for the judiciary on the part of the government. You cannot imagine we see it now in a Delhi we get a sense of it in Delhi. Governments always disliked public interest litigation, governments always disliked the activists judiciaries but the levels have never been so intense as you have today. And you only have to participate in the the national debate it's on the submissions on the NJAC, when you have very senior law officers addressing the court you have no business in the appointment of judges. Its not the submission you could say judges ought not to be involved in the in the appointment of the judges it's not appropriate etc etc there are ways there are decorum, there is a way of expressing disagreement with the judge and at the same time expressing you know respect for an institution which is you know that institutional respect is over. You have no business getting involved with the appointment of judges. And just the other day in a case an advocate a very senior lawyer don't want to mention names here, the other side had said that the supreme court made a mistake in getting a particular judgment. So he summed it up to the court saying my lord my friend is saying the the the supreme court is just a supreme court has said something nonsensical you know very so the casual nature of the remarks, the aggression in the arguments and the quick the quick willingness to actually treat the institution with disrespect is the new phase. Its the last one year one and a half year, I would say broadly and it's a sign of very a sign of determination of the government to take on the judiciary and to put it in its place. Without necessarily correcting what the judiciary was pointing out namely the governance is terrible. Justice Thakur was recently, lectured by the environment minister who said, why are you interfering with our all environmental decisions in a speech and thankfully Justice Thakur has to speak after him so he told him that if you continue violating your own environmental laws let me tell you Mr. Minister not only will we interfere we will interfere again and again. And you can see from that you can see the a simmering tension between the two. If we go to the social justice bench which is now, the chief justice has said okay fundamental rights matters should go to a bench which I I don't agree really because it's the core of a judge's jurisdiction to do the fundamental rights matters but anyway it now goes to a bench you only have go there and see the stone walling began on simple issue like trafficking, whatever bonded labour, you know health and safety simple simple issue, the appointment of the NHRC the State Human Rights Commissions. Lets say Rajasthan is with out a chairperson simple thing like that from two and a half years. Simple simple issues and you see stone walling of government and the justices holding their heads and saying what's going on, why cant you do what you are suppose to do. We are many you know, then he fine then the judge will fine them, then the judge will scold them then the judge will summon the labour secretary or summon the court and there is no end to the tension between the judiciary and the executive and it's the sign of the things to come. The sign of the times to come and the sign of what is going to happen. Now why this hostility like I said before you had the telecom case, you had the coal scam case but you have another interesting judgment coming from Justice Sudarshan Reddy, the Nandini Suder case in Chattisgarh where for years massacres mascaras, killings, rape the most horrendous full documentation of Human Rights a without any redressal in the legal system at all. I have been there, I have gone to areas, I have studied them closely, my colleagues had been there I have read the material and it is amazing that a democratic country like India with all the trappings like democracy can have a situation like Chattisgarh in the time that prevailed. The large scale, just the sheer scale of violations, women

in jail, women raped in jail, women tortured in jail. Massacre of massacre of innocent people I can understand the fake encounters human rights lawyers and activists never get involved in a real encounter you know that is open war the mioist fight against the security forces they fight again that's an open war we don't take sides we say whatever happens, happen but we are very concerned when village after village is In the ground when people are massacred 17 people killed, 18 people killed and so on and cases pending for years. And Nadini Sunder was an extraordinary, extraordinary breakthrough just like the telecom, the coal scam.... On the political and civil right Nandini Sunder was like an energetic breakthrough of two like aaa judges of the supreme court who ordered the sarvajulum to be closed down, quite an extraordinary intervention would you not say. If you have a parallel malaishia built up and you have have aaa young people being recruited and given guns and mines and said go ahead, go ahead and shoot and kill and so on. Ostensibly nexsalits but maliashia not necessarily shoot aaa Naxalites they go and shoot fellow men, rob banks, they go and eat chickens, they go and burn houses etc etc. and you ordered the closing down for the Salvajudun and the closing down of the anti-groups. If you want to have security forces in Chatissgarh do it but do it though a regular recruitment process, have a force, train your police force and upgrade their skills and the use of arms and their the and so on , their understanding of the constitution of India and do that and so no. so that was the extraordinary. So in the last two three years there have been very very important path breaking, hard-hitting decisions of the Supreme Court. So in a sense the supreme court has led, has led the intensification of the PII litigation in the country in a a short spurt I I don't know will it is really going to be a long term, phenomena doesn't seem to be like that it just seems to be a spurt of aaa good work in generally aaa in the atmosphere of quiescence if you like. Then ofcourse you have the phenomenon of having the former prime minster being taken as a possible suspect in the coal scam case and that is a very unusual breakthrough in the aa the legal processes India. You know the state of Iseral has prosecuted this prime minster three former prime ministers, European countries have prosecuted you know head of states for mal reasons for aa criminal activity regarding economic affairs and so on. But India is a country which is very respectful of old people and senior people and so on an d generally the judges are very very respectful even when the evidence is compelling of involving very senior people in criminal proceedings. But with the legal processes unwinding in the coal scam case and with Manmohan Singh be taken possibly in the criminal proceedings. It is a very important development as far as human rights are concerned it's a very important if you like coming to age o if the judiciary and the legal process. And you will notice that even at the district courts' level , district judges are standing up because of the signal send by the supreme court, district judges are standing up and when very senior politicians are there before them they are quite willing to handle the trial fairly and they are quite willing to convict, if the evidence calls for a conviction. So there is a different mode if the top the top of the judiciary is firm and strong and decisive that the rule of law eill prevail notwithstanding with the status of the person concerned, it triggers don very quickly with the lower judiciary and the lower judiciary is quite willing to take that signal and act and do its constitutional duty and so on. Now aaa in the present confrontation PILs, how are judges going to react, some will stand firm as usual, some will surrender, some will act to yes and aaa my own reading this is again aaaa anecdotal any my own this thing that the larger and larger number of judges are going to act to yes in the sense that they are going to say that its too big a problem to tackle, its too stronge a force to stand up to. Aaa ranks are divided that is to say that the judiciary itself is divided and perhaps I don't want to stick my neck out anymore as a judge and do my duty, I just take the low road sort of speak, quite role and let things happen as they happen. And that's a very worrying development in India for public interest litigators like myself, I would say. The future seems to be one where judges will be called upon to decide, will they stand firm or will they choose to be quite and with the government now my sense is also that the government plans to use IB reports very

much in the selection of judges. Earlier, it was more of a tentative sort of a situation, but no very good judges who have stood firm in the high court, who have given judgments against government, who have not been amenable to government off the record persuasion. The use of IB reports in judges cases may turn out to be a real threat to the independence of judiciary. My my feeling overall is that the judiciary and that the independence of judiciary today is under the most severe potential of attack then it is ever been for a long time. And we are not alone in this you know Srilanka for example impeached its chief justice completely you know false charges and impeached the chief justice and when she turned up for the hearings before the judges when she was suspended and she turned up for hearing she she was treated in a such a rotten fashion by the aa the legislators that they spoke of her in a demeaning fashion calling her woman, that woman what she think did she is so on and so for which were recorded in the in the testimonies of the lawyers who represented her. Fortunately with the change in government she was reinstated and then she was allowed to resign and the judges in Pakistan under Musharraf who were told to sign the oath of allegiance to the military and many many many fine judges refused to do that and had to leave service so, aa south Asia is not necessarily a very good example of the independence of judiciary and now I think really the independent judiciary which is the indian judiciary, you may have lots of criticism, I have criticized many many times but it has that degree of independence that judges really don't have that independence is coming under a kind of an attack [Professor Upendra Baxi- two minutes left] how many [Professor Upendra Baxi- three or four] that's 'it, I was told half an hour okay, what do I do, no no not a problem let me see what I could do. Okay. So, so what are the kind of case that will test that, test the metal of the Indian judges, what are the kind of cases that will test that metal. When in Chattisgarh I tested that metal right here you have aaa you have aaa world renowned pediatrician right involved in a criminal case of sedition etc etc, then it goes you know everybody refuses his bail the man is in jail for 2-3 year sit comes to the high court and I remember at that stage it took the high court judge sorry aaa the supreme court , it took the supreme court judge exactly 30 seconds, bail granted, 30 seconds it was such a straight forward case and Mukul Rohtagi is normally a very submissive and a com.... Lawyer was was you know subjugated exactly in 30 seconds for a case as simple as that and when he came after the appeal in the supreme court, I remember the supreme court say just point out if I accept all your submission about Binaik then tell me how it comes within the boundary of sedition, how is it sedition tell me even if I accept everything that you say and I grant you bail. Today ofcourse the real case is the Testa's case and the Bombay high court judge showed his real metal, real metal there must have been in enormous pressure on het to you know to take it like a normal criminal case. These are not normal times, these are not normal cases these are cases where the entire machinery of the state and it's law department and their police officers and all their fabrications and embellishments will come into play to keep a woman behind bars. May be a slight irregularity here a slight irregularity there but these are a kind of cases where a judge will love to say this is not a normal case, this is not simply a legal cases, this is a legal social and political case and I must try and understand the conture of this not just in the black and white kind of a situation but I must try and understand its social and political implications. I'll take I'll finish quickly I'll try and do something quick. Now, what's my sense in litigation in different high courts, mu sense is that public interest litigation is being shut out and my sense is that many high courts have actually closed down public interest litigation particularly in the conflict states. I don't know I might be totally off the mark but this is the kind of anecdotal stories that I get from lawyers and a study would perhaps reveal that in many states the filing of public interest litigation is rapidly declining. In some states it flourishes and in some states it decline and what we need to look at the conflict states where really huge human rights violation arrives. Lawyers are being told things by judges, I have a lawyer in a particular state who who, young man he has just graduated from law I have sent him to a conflict state and he

gave his card to a policeman and that policeman caught him by collar and told him do you want to defend him and took him to a forest beat him and I used my contacts telephone call to many and then he was relived and then when he came to the court he was told by the judge that young man why are you taking up cases like this it is your entire career and this I have heard from many young lawyers who are taking up cases of human rights that they have been told by judges why are you doing this kind of work, this is the kind of work you want to do this is not conducive to you developing a right kind of a career. Fines are being imposed, filing charges are being imposed. You have to file you have to you know submit 25000 to the court 30000 to the court for petitions being heard so on and so. And there are many many ways may be some are you know something may be a reflection of the judge's frustration you understand that if that is rubbish but the liberty to file a PIL is like freedom of speech which along with speech, along with the good comes the bad, along with 100% of speech comes 30% bad maybe libel, slander, defamation whatever. Similarly in PILs along with the good comes some rotten things like the judge likely said you cut of a newspaper report and you paste it but these are things a judge a seasoned judge will say this is a rubbish PIL this is .. there is no documentation, nothing its just a newspaper report , dismiss it in a second. But to impose a fine and impose things like that in a is amounting to chilling even In PILs and I have so many people with genuine PILs on right to education, right to health care , the right to food terrified for filing PIL in the high courts because they say first we are to put 25000 35000 rupees down then we have to undertake give some kind of undertaking, then we have to give a full record of our organization and so on an inquiry is conducted in two of our organizations and so on. So the poor PIL litigant who is actually doing society as a service is kind of a treated as a criminal sense. The people, I want to say something on a slightly different track, in this in this antagonism between the government and judges, the people are your only friend, the people come to you , the people need you, the people are desperate for the help only you can give because when everybody is against the poor it is only the judge who can stand against the flow of the river, they say no I'll save you from the flood. The people are your natural allies, the tribals, the Dalits, the slum dwellers, the workers. When human rights atrocities take place the people are your natural allies. They talk about judges they talk about judgments, they are every involved with the legal processes, they may not seem so you may think that they are illiterate and are far away but they are very very tuned what the courts are doing because the court is still seen as the saviour of the poor. When all else is lost the court will p[protect them. And if that so, if you close down public interest litigation then your only ally really when the crunch comes and your independence comes under threat who will come and say that no I want an independent judiciary. Will politicians say ofcourse not, will government say ofcourse not , will industrialists say ofcourse not they are not interested in an independent judiciary they are quite happy with their arbitration proceedings. So, who cares about an independent judiciary really. Who is going to stand up and go out on a streets like they did in Pakistan, chief justice Iftexhar Choudhary was reinstated as the justice by a historic movement of the Pakistani lawyers who took to the streets with the chief justice in the car can you imagine because the people of Pakistan said that we want an independent judiciary for months they took to the streets they were arrested, they were beaten, they were lathi charged, cases were filed against them but they restored the Chief Justice to power. Who is the ally of the judiciary is the people and if public interest litigation closes that down I mean if public interest litigation is closed down then your only ally is lost and I suspect that it is already lost in large measure. Dalits no longer comes to the court very rarely unless they are dragged to the courts in criminal proceedings, they don't come. Dalit women in Chattisgarh, in Jharkhand, Madhya Pradesh, Orissa will not file cases, they will not even file cases of rape because they know you know Haryana will not file cases. So Dalits are moving away from the court , tribals are moving away from the courts. Aaa one last thing, hahahah one last thing aaa I would I would aaa I am so sorry,

really overstepped my time but I'll take exactly a minute sir. Aaa I would say in a aa colloquium like this and in a place like this, aa education by judges of judges is okay but education of judges by people is a fantastic idea. I have learned always and there are civil societies very aero diet. Women organizations, child rights organizations very aero diet, aero diet on law as well as fact. So if you have if you a have a colloquium like this and you open it up to activists and activists give you PowerPoint presentations and talk to you like friends it is an education far much better than any education you can get. And I remember the right to food colloquium that we did may be ten years ago maybe with 50-60 judges of the high court and some of the supreme court, when we show them starvation deaths, interviews with people whose husbands have died of starvation and judges from different high courts said that I don't realized that my my state had this level of poverty and deprivation. I met a judge yesterday who told me about the HIV conference we did about maybe a 9-10 year sago sir on HIv but the government said we will not give Anti-detroviral like South Africa and we did a case and that case came before Justice Sabarwal and I told him sir the policy of government of India is to allow HIV positive people to die and did give them Anti-detrovirals and that was the turning point in the case and today Anti-detrovirals are given to lakhs of people in the country the power of public interest litigation. That conference again sir you remember the the NGOs participated and put up all their PowerPoint presentations. And now I must run. Thank you very much.

Professor Upendra Baxi- Thank you Colin that's a spontaneous appreciation aaa will discuss this aaa I wish to have more time of discussion I also want to have dr. Ramanathan who is to succeed I say. But I do want to say that Colin has made a aa scary scenario and he says it will real... skula is coming back for the supreme court 25 years ago and in Habeas in famous habeas corpus case is coming back that is going to aa a make disown the powers invented invented, the powers of demosprudence. I call the powers of serving the people. And that

Dr. Ramanathan- Aaa I'll aaa, since there should be time to discussion I'll try be as brief as possible. So I'll say it a kind of cryptically because I know you all know what I am talking about so I don't have to explain it too much. I want to start by saying that aaa I aaa completely endorse what professor Baxi has been saying for years now that one of the problems that we have had in this PIL jurisdiction is calling it public interest litigation I really think it should have been called social action litigation because if we look at what this jurisdiction was created for or why it was created because it was three eyes which were looking at them which were indigence, illiteracy and ignorance usually of the law and people therefore who are unable to reach the courts or who through powerlessness are unable to reach the courts are the people who could bring issues before the court or what we were discussing the last time, to me suo moto actually meant that like I think in the Delhi high court they have a practice there aa there is a judge specifically appointed aaa to look at at newspapers magazines whatever it is to see if there is any problem that has done unrecognized and is going unattended to in this case you know it is referred to the chief justice and then the court might on its own for instance they did it on aaa there was a suo moto auction on cold whether deaths where people aaa you know the night shelter had been destroyed and you know on person had died in the process and the court then issue notice suo moto because it had seen that the problem had arisen. And these are issues which are contacted with people basically taking constitutionalism to the people. If people cant come to constitutionalism and you know for people like me there are some icons and who aa who taught us how to think and one of them one of the most profound in them is Kanaviran from Andhra and he told aa he's got a book called "Wages of impunity" which I read and I think any body dealing with the constitution must read, if we have not read it we have really not understood our constitution at all like we need to. Aa just a couple of things he says in that, he says that the journey that you make by being aaa slave from becoming a subject and from being a subject to becoming a citizen it's a very hard journey it doesn't come easily. Many

people don't make it to citizenship and what PIL what social action litigation unfortunately it keeps calling PIL and I'll just explain a bit why that is a problem. What social action litigation was suppose to do was to help people realize citizenship. Its not about the power of the court alone it's the ability of the court the responsibility of the court to give citizenship to the people. So anything that becomes an obstacle for those issues to arise you know top come up before the court is a problem. And to say that there are abuses in the system that you know various kind of problems that have come. Sure there are there are abuses in every system and we try to you know we try to take out those abuses while we deal with what the core issues are which is why I must confess that I found the last session was deeply depressing, it was difficult after that to find the aaaa energy to come back and say this because aa a this is not what we were discussing in the last session not what social action litigation to my mind was made for. The problem with the idea of public interest litigation is being that the idea of the public keeps getting constituted and reconstituted to the point destroying the houses aaa persons who live in slums becomes a part of public interest because the public then is aaa like the case in Delhi for instance there was some wazirpu bartan makers who went in aaa who went in the court and said destroy the slums. Now when you I mean all of you know by now that when you destroy the slums first of all people are unable aa legality is not something that the poor can easily achieve and therefore ther are many constituents of illegality which make up the life of many among the poor, legality has to be subservient to constitutionalism and the right to life, the right to shelter, the right not to be made in urban nomads is as much part of constitutionalism as many other things are. It may not be legal because the law is constituted in the way where the government says okay we can do improvement in clearance, so we can clear out slums. We don't even have to declare or notify slums we can just do whatever we need to do. The idea that not notified slums can be pretended like they don't exist is the problem. Instead, we now say under the law the way the law has developed its like an on public lands if there are judges they can be demolished with hardly any notice at all it doesn't matter. There is no due process no procedure nothing that has to be followed because they are encroachers and they are illegal. So there is a dehumanizing and decitizenizing of people which happens all the time which the idea of public interest litigation has somewhat fostered it is actually social action and who is that part of social which we are concerned with aaa social action litigation aaaa. The third aaa you have the public interest and you'll find I mean many of us who have studied this have found that the way in which aaaa environment for instance aaa now why is it that the critics of PIL in the court say that environmentalism has become elite environmentalism because it does not account the aa very often through environmental litigation it has become possible to destroy the rights of the poor that aa that respect for both and not giving up one for the other is not something that public interest litigation has particularly fostered. There is a third element which has come in aaaa public interest litigation which Colin referred to which is about controlling the nature of state power that can be done through law, it can be done through regular cases sometimes you know PIL is used as an emergency weapon where you can't wait when a CBC is going to be appointed to the way they are appointed you can't wait for some kind of legal action to come up so then the court intervene and says that no no its really getting too bad we have to stop it at this point. So there are three separate elements in this and I think the one that I know I am concerned about I know Professor Baxi has been working on for years and aaa you know he has taught us to think aa think through this has to to with the social action litigation and aaa not so much with just the general constitution of the public which is what is allowing for all these kinds of aaaa broad uses and you know generic general kind of uses which may not really be what courts need to consult themselves with. The aaa I must say that aa you know in the aa high courts as much in the supreme court one of the things that we see through social action litigations is an aspiration for justice that's what judges will have to deal with. People are coming with their problems to the courts they are coming because they aspire

to to be able to reach justice and to get justice. So there has to be an understanding what justice means to different constituents of the society it's not the you know one persons justice may actually result in active injustice to another and you'll hve to see what is how you constitutionalize, where does the constitution take you. If the court does not exist for those who are unable to reach the courts then the courts are irrelevant for that section of the population and that's the reason that I mean we believe that public interest litigation as it started getting called but social action litigation I too think it should be called that gave legitimacy to the court system and gave the visibility of the good that the system could do. Now to take time as that aa now to convert that into power while dropping the responsibility while those constituents is really quite unacceptable. Aaaa I aaa you know the why high court become very important also because initially we know that the initial yaers all PILs use to be only in the supreme court. Then there were many of such cases which got sent back aaa sent back to the different high courts and in the beginning we know that under this PIL ... I fa case for instance went on aaaa children in observation homes or juvenile homes if it came from one state the court had this way saying that this is surely a common problem aaa across all the states so let all the states come and represent themselves here so it was like a concentration of all the problem in aaaa the country in the supreme court. In the 90's sometime in the 90's we founded that aaa it started changing where somethings were still held in the supreme court but there were things that were sent back to the high court saying tht let them deal with it maybe every high court can deal with this. I would refer one case that happened more recently which is aa a case relating to manual scavenging for instance and the aaa it's I think it's the test of the judiciary in each high court how it is reads this case because since 1993 aaa okay since 1950 untouchability has been the constitutional offence. Since 1993 manual scavenging was seen as aaa an aspect of untouchability and itr was to be eradicated. Nothing happened the community of manual scavengers persons in manual scavenging had to go to the supreme court and they had to start getting orders from the supreme court for them to not to have law any leverage. Then at one point the supreme court said because they were dispensing with many of the cases they said okay this we cannot deal with, you should go to all the high courts . now for this community of persons who are in manual scavenging to reach the supreme court is one point and to find a set of lawyers who will argue their case for them, who'll understand wht their issues are and that argue that is tough enough.... Now of we have this across the country the high courts to ask them to take the responsibility for the cases Been unfair so aa certain amount of responsibility has to be taken by the judicial institution. When the Supreme Court has sent the case to these various high courts. What we have in fact found is that in most of the high courts its just that sitting there, nothing has happened its in the registry, you go and ask the registrar, registrar says no no we don't have any instructions on what we need to do or in another high court they said no we don't I don't think we have any manual scavenging in the state. So the idea of denial and of neglect has become part of what is happening with the manual scavenging community. Now if this is not an issue with which the court need to be involved especially seeing that okay legislature, parliament passes a law nothing happens to it. In the supreme court you find that they kept denying it till they were forced by the evidence produced in the court to admit that there was manual scavenging. Then there was continuous violation of those orders and till today we know that manual scavenging continues. If that is not the issue that concern the high courts and I am not sure what is this is this is what social action litigation was created for that's why the jurisdiction was carved out for the high court and the supreme court so that is aaa one element of it but I must say that there is another side to that judges too need to you know understand who their aaaa who they are working for. In the aaaa when you were talking about suo moto I was thinking of the case connected with beggary, the beggary law in the delhi high court where, it had a complicated history as to how it landed up in the Delhi high court where one lawyer had initiated a certain kind of thing saying that this law should be activated

by is this that there are still beggars on the street and asked that the streets should be cleaned up. There are problems with the case which I won't deal with but just a suo moto thing. The case is variously referred to as New Delhi Bar association versus Commissioner of Police and court suo moto on reading The Hindustan Times newspaper so it the case there is already a case before them and they still believe that they should suo moto take action to clear the streets. Now there was no Who these people are who are supposed to be found in begging, there was no question about the constitutionality of this law. This is the one law that allows that criminalizes poverty quite directly. There is a lot of scope to change the law itself and when that happens I think it will change. But you have things like mobile courts being introduced by the high court by saying that why don't you have the mobile courts for these people. You know how we treat stray dogs that's virtually how they were treating beggars it's an awful thing and we have seen those mobile courts you know the beggars court mobile court squads going around. So the idea of Process the idea of fairness and justice for people who cannot afford it for themselves and the poverty itself cannot be criminalized in fact people need to be assisted out of it. Has to What high courts do. Which is why I completely endorse what Colin says when he says that you can't have people being penalized for coming to the court. Maybe it's an additional responsibility you have to take on but it is your's it will be your responsibility to read out those cases which are clearly and especially when lawyers are coming again and again. I think we have at least one case in the Supreme Court where a lawyer has just kept two till now kept filing cases which were like irrelevant irresponsible litigation. There was a case where the lawyers were informed the registry was informed not to take any public interest matters from this person. So you can find devices like that but it stops matters coming to you. By discouraging people to come it's a completely different thing when it comes to social action litigation. I think I will stop here and that will lead the discussion.

Justice Ruma Pal- I have just one here just want to ask a clarification. what did you say about the mobile phone. Is there justice available to the beggars what is the answer

Dr. Ramanathan – Yes, what normally happens is under the beggary law it is actually the people are not individually picked up most of the time it is what is called rounds up and raid and so people are rounded up when they see that and then are taken before a magistrate and the magistrate will see before they are taken to a magistrate, they are taken to a hospital just to make sure that they are healthy whatever and then they are taken before the magistrate and then the magistrate is supposed to hear the matter and decide on the basis of the law now the thing itself because the law usually is problematic. They say that in the first instance between one and three years they can put them inside an institution which is like a prison because it is you don't have freedom of movement and nothing. And if it is a second time a recurring offence, he is a recurring offender he can be out in for a period of ten years. There are groups which have been organized themselves to represent the persons who are picked up as beggars, many of them are not even in begging and there are it's much more complex than it is made out to be. So people go there to represent them in the homes and the legal aid in these places have been trying to mobilize the legal aid Representation available in the homes in the beggars home as in the beggars court. When the mobile courts go there are 2 magistrates in fact in the Delhi instance there were 2 retired magistrates who were put on the job. They go along with someone called the legal aid council from the legal aid and they say that now we have seen them ourselves we know that they were there. So they in a sense become victims in their own cases. And they say yeah yeah we are fine so pick them up and send them off that's it. So they dispose of it. So there is that notion of being represented, having someone come in for instance there are people who have

been picked up they are carpenters' assistance who are or you know garage assistance who are you know dirty by appearance and the problem with the beggary aw the anti-beggary law is that the ostensible poverty is punishable under the act. So you the aaa the onus is on you, demonstrate that infact you were no there. It's not like the prosecution usually is. But you have aaaa consequences that are more severe than consequences in the criminal case because I have actually under the beggar law can be put away for ever without you know ... I don't think it happened so far but you can put away forever. And the custodial rules are same as it is in the prisons. So the the idea of having lawyers, idea of having representation, idea of witnesses perhaps coming and talking to the magistrate or all those are dispensed with when you have a mobile court. It was meant to be efficient but not just.

Professor Upendra Baxi- Thank you, I think it's a wonderful beginning for discussion. Thankyou Dr. Ramanathan for saying aaaa drawing our attention to many things particularly to whjat are called by lawyers, judges as status offences. Criminalization of poverty is a activist phrase or the common law is notion of beggarance and begging and beggarance in a poor country is an offence aa can you believe it. Country where people don't know where to go , it's an offence under the penal court. It is status offence, status of being a beggar and when a beggar is defined as a person without visible means of support. That's why I am concerned, I have no means of visible support. I don't have a rupee in my pocket [Justice Ruma Pal- you got that stick] all that you know I got a stick, I got a jacket but the jacket I might have borrowed or stolen who knows. I can't prove that it is not stolen there is no outside here I can't prove that this belongs to me so, I can be hold up as a beggar... it is status offences it is essentially the poor who commit, the slum dwellers, the beggars, aaa the urban poor, the rural poor who by head that they are poor are target. Rest were the motion of citizens to subjects begins. It is the motion. Constitution says we the people of india gives to our selves to the constitution. So that's very interesting. I will now open the forum with one short remark that the so called PIL but really SAL thank you for recognizing the importance. I said just hope..... I still call it SAL but Americans call it PIL but alright. Aaa you can borrow labels but not histories. An American PIL is a different phenomenon than Indian SAL social action litigation so, aa but I will not go to that, I call it SAL but may PIL right. Aaa P SAL has under gone many phases, many moments and you must understand the history. The government don't understand don't want to understand rather don't have the time to understand but we have the time to undersantd I My reference is not to anyone particular here. Mr. Gulati will understand but the government will not understand. The reference is the first the charismatic movement. Bhagwati, Krishna..... reddy, Desai who changed the constitution of India and I call it a charismatic movement. Then the simultaneously started the early and late brutalization of SAL when the deputy Registrar, the Joint Resgistrar, Registrar General were appointed or PIL cells or high courts have similar cells. Then came the process, the movement of farming out to National Human Rights Institutions. This petition will go before the Child Rights Commission, this to Women, this to aa Human Rights Commission and so on. So aaa the charismatic professional aaa farming out. Then comes nationalization of PIL so called with brother Venkatachaliah he took over and gave it to legal aid. Petition because Barsley poor student was a co-journalist in Bombay, she came from Bombay and every And it will break the back of any middleclass person travelled from Bombay to Delhi twenty times so poor children who are aaa no fault of their's are in institutions so they protested. I said don't protest Venkatachaliah is very sensitive so aa but she did burst out thank you madam we are not concerned with you, the legal aid board will not conduct. So between the process of nationalization of social action litigation and now You may call it a phase of intensification of social action litigation in high profile cases and now as he has described comes the Shivkant Shukla which we know on 20th how it starts or whether it starts They say their lordship look

and as I know as far as I know there are certain guidelines for national Judicial Commission giving ... to two judges... subject to if that is valid and Sampat Kumar is a judgment of Supreme Court five judges which is a precedent binding on the government of India that they accepted earlier that judges may provide for changes in law as if it was a bill.... So that is actually so they are going to say so the administrative tribunal the case of Sampat Kumar where the judges said the Chief Justice said that judges should not and the government accepted it. Similarly, even though it is an act and a constitutional amendment and the court is likely to say that you add more judges make it a point or aaa do something to eminent persons one or the other way where they will have a way to say primacy should be to the Chief Justice question of who shall me primary President, Prime Mister or the Chief Justice, so we will see what they say. Now, the floor is open for elaborate discussion for the next half an hour. Fine. Anybody. Mukul Rohtagi's aggression against the Supreme Court yes please.

Participant Justice- Two areas which I need some kind of a clarification to from Mr. Gonsalvis and aa Ms. Usha. The concept of aaa while entertaining the PIL ligations courts are falling back upon a safety mechanism of asking the parties to provide for some kind of a security is ought to be criticized. Not that every public interest litigation is invariably asked or backed up by any security of either by cash deposit or some kind of any assurance. Its only when the court finds that it is either sponsored ligation or tht it is intended to secure benefits to some third parties whose interest are sough to be ... in those areas a possible misuse or an abuse when the court senses the kind o securities asked for. Where larger interest involved of the society seldom the court would have asked please come kindly make provision for security. Its not very difficult for us to imagine because the band of public interest litigation lawyers are mastering themselves for espousing the cause of some interested parties whose interest will be better served by maintain the status quo in the society. For instance, mining mafia, mining mafia would always be preferring not to come to the forefront and disclose their identity and get exposed to the possible perils of law. They will be putting up false pretenses and for that they use the public interest known public interest litigation lawyers lobby they sponsor this litigation. So therefore, that is the reason why courts wherever they smell that it is not purely public interest but there is some element of private protection there we are asking for sources to be disclosed. Information sources, financial sources to be disclosed and also security provided. Sand mafia as you must have been hearing down in south India as you know is one of the biggest menaces. Are every perineal river has been diluted of its vast Mineral sand. By indulging in public interest litigation what happens is that they will be parallel putting a kind of aaa affront state from realizing whatever estimate money which it can by putting those sources of sand to auction. Would the illegal mining be stopped, it's next to impossible. It's as good as smokers not being allowed to smoke in public places. Nobody can check it it goes on a We don't have an alternate human being as a policeman to stop the other man from indulging in lawlessness. So they can't be stopped, this goes on. This will be the private income. So wherever there is an element of suspicion genuinely arising from out of the facts narrated in such cases the security is asked for and the security will get transferred either to the account of the court or either to the opposite parties only at the end not at the beginning. So the aaa poverty being penalized in the concept which has been pushed a little too far by Ms. Usha I don't think it genuinely fits into the circumstances that are being attended to under the garb of public interest litigation in this country. Judges are fairly sensible and sensitive as well to the problems faced by the humanity and particularly who are underprivileged segments. We are not atall senseless not to recognize that the under-privilege section of the society are as well forming the part of the citizens of this country. So their right are sort to be protected. If right to food, when the go downs are opened of the corporation of India and they were made to

distribute and then the sponsored scheme so welfare measure of supplying rice at Rs 2 a KG heavily subsidized, we all know the production cost of a KG of rice is around 18 to 20 rupees depending upon the local factors but when the state comes forward to supply them at Rs. 2 a Kg not a single judge in this country has interfered and set it not the scheme. That is the sense of recognition of the courts to the problems faced by the below poverty line. If you were to give rice free of cost I am sure no judge would have also interfered in such a scheme but however, we recognize that it is more likely to end up in a wastage rather than a genuine use. So these are all various parameters that judges keep in mind and they don't go in a blind this thing and say in the very case you provide this. Anywhere when there is suspicion for us to believe then things would come. So far the other aspect what Prof. Baxi has referred to yes, judges are being put to test it is true that either a private lawyer tests you for your depth of knowledge or if you are trying to be pro-active somebody who is not very much interested in that kind of a profile of a judge will also try to test you. There is nothing unusual about it. Judges are tested tried from Justice Kania onwards there have been facing this, it is not an unusual phenomena. They are being tested for their depth of knowledge, their depth of commitment and more importantly, uniform application of the principles which they have been espousing. One of the biggest test that every judge will be put through is are you trying to apply the same uniform standards in all the cases that come before you or are you trying to selectively apply, it's a test. I get tested everywhere today in my court how? If I am being uniform in my approach to everyone whether it X or Y or Z, then I am passing through. So testing the judge is not something aa aaa phenomena which has just been aaa evolved by aaa Mukul Rohtagi, lets not credit that man with that kind of an intellect . [Justice Ruma Pal- I have a question] yeah

Professor. Upendra Baxi - And you correct the question please

Justice Ruma Pal – I wonder aaa do these aaa organizations which deal with public interest aa like Mr. Gonsalvis aa do you do a follow up as to how affective the court's orders are. Bonded labour or trafficking or whatever. Do you get a feedback or or aaa what is the system by which you aaa I know as far as bonded labour is concerned it continues unabated. So aaa how affective is these orders that you obtain in public interest litigation do you really bring relief to the people you fight for.

Professor. Upendra Baxi – Mr. Gulati

Mr. Gulati - The latest problem in Delhi where the citizens of the country. I live in a place where lot of this problem was there and some drug addict people use smack or they just loiter down or they committed a heinous crime they raped a foreign woman and with this kind of affectivity is that the livelihood of lakhs of people who depend on tourism and other such industry gets affected. So if the law is bad the court can always aaa strike down that law and make aa ask the government to make changes or do that but if the law is held to be valid and the law is being implemented in such kind of situation. See there are residents association and all. If people come and they set up houses and this kind of things in the parks this thing. So these people naturally they have spent lifetime of their saving in building small houses and then they find that this kind of thing is happening. That their public spaces are being taken away, though they are very poor people and I don't grudge that government had ... them and all. So this is I think some balancing has to be done to the right of these people and the right of

the society and other people also. Plus the resources with the government is limited means if anything is meant to spend it comes from the poorest of the poor people. The tax burden also falls on the people who hardly can afford it. So, all those things I think the court take into account when they take a decision in these matters. That's why, earlier in the government whenever a case use to go to the court irrespective of the casual labour then the order was that this person should be taken from the job. Therefore, the Air India case. Then in *Uma Devi v. The State of Karnataka*, later on the court held that it is unconstitutional to give employment to the people out of turn because these people who have been engaged as casual labor they have not come through any process. And lakhs of people who were otherwise eligible are waiting for employment in the government in the ques in the registers of the employment exchanges. So their interest has to be balanced to a person who has gatecrashed and come to the government system. So all this conflict of interest is there. So court shave a very heavy burden to discharge these matters so, its difficult to say how long and how far they can go in.

Professor. Upendra Baxi – Thank you thank you. Any other comment.

Participant Justice- The beggars eradication what aa Mrs. Usha pointed out earlier aa I aa this case must have been discussed earlier in the sessions this was delivered by Justice Prabha Sridevan and when I was a lawyer there. One of the French national who had come to deep south to visit one of the aaa one of the swami ji, he he aaa lost his all travel documents and travel papers, he didn't have, he was left penniless on the road and he also had a fall on he had broses all over his body and he couldn't even eat and he knew only French language and nothing else, he could not communicate. So when some prasadam were distributed in the temple he went to the temple and he was eating the prasadam and he was laying on the roads and on the mandaps. And when this beggars eradication scheme was there the aaa there the command of the district collector about 119 beggars were taken away from the roads and they were distributed to the different centers and this gentleman incidentally could not communicate because when they were aaa he was interrogated he in Tamil he could not he aaa neither speak English or any other language. He he could only speak French, they thought he was a mad man so they put him a they brought him field park in Chennai and put him aaa admitted him in the mental hospital in kirpal, where when his travel period was over his daughter who was panicky from France she had to travel to India, she approached the French embassy, then in turn they approached me and then aaa we were at a purpose what to do. I filed a habeas corpus petition, aa we included the police also. Incidentally, on that day morning I read a news item in Times of India, where it was stated that so many people were taken away by the aaa district authorities, then we met the dean of the mental hospital also as a party when we enquired that the person was admitted there even there also he could not communicate because non of them knew French. So immediately on the same day after known by the learned he was brought to the court. We got a French interpreter and that aa his daughter was there. We made arrangements to prepare his travel documents and send him back he didn't stop at there later. That bench was headed by Justice Prabha Sridevan and another learned judge. She took it as a public cause and that in the name of beggars eradication how this could be done. How can person who is normal be branded as a mentally aaa unstable. So the judges are certainly sensitive to the these kind of actions taken by the executive. So this is one example what I wanted to say because they should

have a right based approach on these persons on disability. And also my learned brother was pointing about the free distribution of the rights and aa or at the low price. I shall tell you because I am also there in the advisory board of the I also deal with the black marketing cases. The right what has been given issued free of cost to the aa public it doesn't reach the At all it has been purchased in a very low rate of Rs2 Rs3 a Kg it is been collectively taken black marketed either it is converted into aaa flour and sold to big industries where they make this atta noodles and rice noodles and a confectionaries factories and it is absolute misuse. This I think the judges will certainly take note of this and I am also waiting for the right opportunity for it because I am in the advisory board my hand are tied now. I can only recommend whether I can release the person or detention order can be so aa perhaps when the chance comes I have to usually take cognizance of the offence and pick up the loophole which the executive has. That's it. Thank you.

Professor Upendra Baxi- Thank you very much. Any other comment.

Participant Judge- aaa infact I listened with great interest to Colin and Usha and aa certain perspectives have come to light and aaa the sensitivity of the judges in the court, I don't think it should be branded in a black and white fashion. I am sure they are capable of rising to occasions distinguishing the different facets of social action litigations but aa only one thing I come from Assam so in that context, Kaziranga National Park some of you may be familiar with. Now Usha has mentioned about a particular aspect which or a conflict where aaa say environmental litigation can lead to positive discrimination against a group. So aa I just want to give an example. Now during the high flood seasons the animals in Kaziranga National Park, they migrate for in high areas and this process a lot of them get subjected to death either by natural clock of flooding or poaching. So, aa it was thought by activists as well as by people who are working in the field of environment and animal protection that we need to create animal corridors so that they can gp to the high areas without to aa human in habitat areas. So that kind of litigation was started and it naturally, if that is to be solved in that fashion required displacement of a good number of villagers. Ofcourse those villagers again are well you can say them illegal settlement because they are in the forest areas which are notified forest areas. So there is this decision for the conflict that, if we have protect the animals, provide them the corridor to go to the high areas you need to displace peple and naturally those people are very poor people and perhaps and they are dependent on the you know log collection you know other forest resources that could be easily collected. So these are situations which are aa which needs sensitive handling and aaa eventually the final thing I don't know because at some stage the matter came to me also when I was part of the bench. Perhaps the scheme as thought off about aaaaa relocation of this displaced people in a specified area aaa but that also has its own human you know nomadic thing where people are comfortably settled they are up rooted from there. It has its own problems. But these are things which in aaaa in a litigation of this nature this dimension would always occur and perhaps as a judge or as presiding officer you need to sort of balance the interest of both side aa when we have competent lawyers assisting the court. Perhaps it is easy when solution can be aaaa can be found but sometimes when only one sided version is projected that's where as a judge I get concerned sometime. when only one sided

version is projected without looking into the other aspects then the court is placed in some difficulty.

Professor Upendra Baxi- Thank you very much. Yes please.

Participant Judge- sir just reverting back to the remarks which Mr. Colin made just now that it is very testing time for the judiciary and that some of the judges may be quizzed and the status quizzed , remain silent and be mute spectators to what law making is doing or misdoing or doing things against the government. The history of Indian judiciary is communicative of and loudly speaks of immense judicial resilience and the capacity to stand up to face any upfront with it's independence. Therefore, even in these times if there is some per pated threat looming large over the edge of judiciary and judicial officers. I am very sure with the past experience of resilience, fortitude, judiciary now also stands up and face any threat or to its independence and that any misdoing and undoing or non-doing on the part of the government in correcting the slothfulness of the government , squalling the effect of any under privileged are deprived sections of the society not being provided the effects of or the metritis of law would be well taken care of as in the past. Aaa the high court of Himachal Pradesh has a glorious careers since Hon'ble Justice Mishra, as he was the then Chief Justice. He was the person who pioneered the social interest aaa the public interest litigation at that time there was basin failing of trees and he stopped that or the prosecution of the relative aa very close relatives of the then Chief Justice Mr. Mr. Ramlal. It was continued with even greater measure during the tenure of Hon'ble Justice P.D.Desai and aa in his times the contract labour abolition regulation act, bonded labour and equal pay for equal work, wages, regularization of all daily wagers they occurred and that was a very pristine and commendable era aa era during the judicial history of the Himachal Pradesh high court. So far beggary is concerned, beggary does not exist in Himachal Pradesh and if it is prohibited it's prohibition has to be because it's a social stigma and the more appreciative act on the part of public interest litigants would be when aaa Dr. Uma Ramanathan pointed out that it is at the instance of the Delhi high court bar Association that action has been initiated against beggars. That some in terminal application should be put in before the Hon'ble high court or the Apex Court to aaa repeal that Act because it has got socio-psychological angles and is also reflective of the fact that the government organizations, the government at it's own level is unable to rehabilitate the beggars and at times it is also attributable to the tendency of the persons who indulge in beggary to despite the fact that there are certain social action programmes on the part of the government to provide them rehabilitation, to provide them with even wages or even provide them alternative work. There to despite all these social action programmes the tendency to beg that is the tendency which has to be seen because it that tendency continues that is the stigma on society to where living as human beings.

Professor Upendra Baxi-Okay we are close to the break. 5 or 10 minutes more to end the session. Yes.

Justice Sujata Manohar- Just a very short comment because I have dealt with public interest litigations as a lawyer. As a judge and then as a member of the Human Rights Commission where I have perhaps a usual experience of having to implement the directions given by my

sitting with Justice Verma in the Vishakha case. In the Human Rights Commission we had to implement, make sure that the directions were implemented and I can tell you that although the government may have supported guidelines being framed, they were most reluctant to implement them and we have had a very difficult task getting government organizations to set up complaint committees. Forget about taking actions but even in setting committees was a big problem. Anyways I won't go into it. I think the main problem is that in the past public interest litigation started as a movement to address social wrongs and there was a fair amount of support for this. So when you come to economic wrongs as it is happening now there is tremendous opposition as Mr. Colin Gonsalvis said and if the courts have to retain public confidence in their performance and retain the image of the dispensers of justice. I think it is very important that you have independent judges who will not deter by the fact somebodies economic interest are affected and they will examine the issue and will give a right judgment. Quite often there are also conflicting human rights as many of you pointed out. As you have protection of forest for example and you have the rights of people, tribals who are residing in it. And how do we balance the two and this is a major problem and there is no easy solution and I think the courts are in my view well equipped to deal with such conflicting interests. Perhaps, more than the executive. The one should have expected that the executive with the expertise of trained civil servants to assist it would have been able to solve this problem. But unfortunately, they have been reluctant to take the decisions and that is how the matters have come to the courts. But ultimately, we have to see that in the country's interests we decide matters in a way which is fair and reasonable. So that the public can believe that if there are any serious troubles they can come to court and they can get some relief then.

Professor Upendra Baxi- well I am asked to Thank you very much for very wise observations. I think social action litigation is a very good judicial invention of new rights or social economic rights as called. But it is very difficult to enforce it on real ground. And since it is a question about trust and confidence I'll on social action litigation itself. I think Justice Sujata Manohar's point is to be taken fully on the board because the question is no longer of invention of new rights which is not guaranteed or semi-guaranteed in the constitution. The question is public popular credibility by the sub-ordinate classes. By the classes that are going to be beneficiaries of judicial actions of these new rights whether they have got it or not. I am in difficulty. I am next I am next to Madhava Menon can we allow them 4-5 minutes to speak, each of them. Or would you like to start with next session. And there is a judge who wants to speak also. I will give the chair to the

Justice Ruma Pal- See the thing is that's 12, five minutes pass 12

One question related to the previous session. [Justice Ruma Pal - I think you can]. I will put it in brief, I will make 3-4 points due to the positivity of time. [Justice Ruma Pal – the point is we must give them certain time to respond]. Alright.

Professor Upendra Baxi- you can give it in the next session.

Justice Ruma Pal - Yes. 5 minutes each. Very brief.

Mr. Colin Gonsalvis- Let me respond to 3 points. One is the question of fee, right at the beginning of filing a public interest litigation. I cannot agree with you more sir when you say that you get absolutely useless and motivated petitions.... I have been approached time and again in submarine deals in which I don't know at all and I focus on poor. I focus on the poor I don't get involved to aaaa in all these I can make out the motivation behind the case. But I would suggest that the imposition of the prior filing fee may not be the appropriate way [Justice Ruma Pal – some courts do] in some states if you try to file a case Oaky it may not be in your state sir but in some states you have to put it. You have to put a money , a substantial amount of money right across the board. I want to suggest very quickly, because I aaa Upendra is looking at me very closely and aaaa I quickly say. [it's not an obligation] in better way it's not in Himachal but in some states the better way would be one, that you really punitive cost in the case bad case, dismissal at the inception, if you feel if you smell a And if you feel it is a good cause bad lawyer, or good cause motivated petitioner appoint a micas immediately, so that the case will take the motivation thing out of it while retaining the public interest element of the case. May be sir may be , but I agree with you fully that false cases must go out because it gives a bad name to the whole lot of cases. Secondly, as far the question of follow-up is concerned, the petitioner is the party, if the petitioner is the Ngo rooted in the society, like the Right to Food case, we had units right across the country. So when the Supreme Court's orders came the supreme court enabled aa appointed commissioners. Asked us to suggest, so we suggested rooted people and social action people and so on and right across the state commissioners were appointed to give the court reports every year. So for a 10 – 15 years litigation, extensive reports were given the monitoring was done. The mid-day meal which has closed down started, right to work which was an order was actually revived and became a statue and the right to feed which was just schemes put together became a right to food act. So it was extensively monitored. Like the homeless shelter case as well. Like the beggars case sir I would invite you, please look at the Act , there has never been a legislation so obnoxious and unconstitutional as that. Having no visible means of subsistence is a criminal offence. Three years, ten years and all those dependent on your begging, your mother, your grandfather everybody can go in jail with you. The most horrific legislation having no visible means. And having a wound or a deformity, showing it to get pity and get funds is a criminal offence. Sir that must go. The only section of the act which is constitutional is the part which says, trafficking in beggars that is constitutional. The rest being poor and not able to sustain yourself patently unconstitutional. Please do Suo Moto actions in your jurisdictions. Look at the act carefully and please set it aside. It is the most horrifying legislation in any democratic society.

Ms. Usha Ramanathan- That's the only clause that is never used. Just very briefly. I have a slightly different position from Colin on this punishing petitioners because in the social action litigation cases when people come to court and you know there are especially in displacement related cases the question of development also comes in and it can be very easily seen that these are the people who are obstructing development. It's a very easy construction. There are judges who don't do it. See the only reason we are here talking is because there are courts and judges who have seen the value oof social action litigation. What we are concerned about is the changing idea what's constitute public interest and in that the poor the very poor often tend to get either left out or they tend to get penalized. Probono people who come to the court if they

are, if they have to come under the potential threat that someone might come and see them as obstructed development project and therefore, they can be penalized. You will find less level of people coming in and we need them to come and instruct the court. The court in the social action litigations cases through the aaa especially in the 80's has devised a method and lot of ways in which they could deal with it because they don't want to put the whole onus on someone who recognizes a case and brings it to them but use their services to. But they found things like appointing commissioners who would go in or committees which would go in and investigate it. And this is the devise that are available. There are many people who are very happy to do it Pro-bono again and it there is any suspicion that in these cases there can be aaa somebody someone who is motivating them then, you need not do that case but to need to do an inquiry. But if it is going to be done aaa because what we have found is that it is very difficult for people who are far away from situations of extreme poverty or who have not experienced or seen the consequences and context of displacement, it's very difficult for them to understand what it actually means. So if, we are going to depend on a class of people who don't quite understand it. I mean if you aaa I tell you that briefing lawyers even in civil liberty cases is so difficult because it is so difficult to get lawyers to understand what is that civil liberty violation. There is a selective lawyers who understand many don't, it takes a multiple times to aaa before we can get across to them, what it means and after that when we expect that one set of people are going to be able to identify whether this is genuine cause for them or not to the extent that you can penalize them you are going to kill the idea of Pro-bono petitioner and that I think would be a disaster for social action litigation. It may not be for multiple other kinds of things but it will be disaster for this. And I want to give just one example of this how these things also be construed in judicial minds. The Aadhar case that Professor Baxi was talking about somebody you know has filed a petition and he had a cost of Rs.25,000 imposed on him saying that how can you bring frivolous petitions like this. It's a aaa it's a project that doesn't have a law, have surveillance potentials that have all kind of implications that contacts are you know not being revealed where aaa implications are multiple. Well I mean it constitutes aaa there are some 12 cases are that now pending. But that one person that one court had Rs. 25,000 fine imposed on him because they said you know this is just a frivolous and vexatious litigation. Which to many of our minds it is not. So when we start thinking in terms of imposing costs the logic of that can't be why did you come to court. That's my only problem.

Participant Judge- Just one point from the previous aa Suo Moto action. In one of the cases a learned judge of the Rajasthan High Court while hearing a service matter came to know that the relevant provisions of the rules was not there, the relevant copies of the rules were not there, try to get it from the court library, it was not there and nowhere in the state it was available. The lawyer said she took suo moto action then we filed the aa we get the directions the Advocate General said you have to give directions only we will be able to do it. And we did it like, we gave a direction for four months they had to publish and the chief secretary has to give a compliance report and not only publish it on the website but also make it available at the district, at all the district headquarters at nominal cost to the public. Now regarding this point about aaaa PILs and the cost being imposed, I just want to bring out a 2-3 instances, the kind of PILs which we are facing one, aaa there is no fact aaa instead of relying on the newspaper reports and bring it out in the petition. There is this trend few cases in which earlier action was

taken, just a lawyer comes out and gets a newspaper in the court and says take suo moto action, crime has taken place even though FIR has been registered. They say no the police won't investigate it properly. So in those kind of cases they cannot be entertained. And one PIL was filed by an NGO which is unheard of in Delhi challenging the tender process of electrical equipment's in Rajasthan. Intricate process of the tendering was mentioned they wanted to scuttle it. So those kind of cases are also very rampant and in one case the litigant has lost in all the civil courts, he says I am filing a PIL if I can't come in PIL what will I do, nobody listens to me. So those kind of cases are also coming, so some kind of filtering or filtration is necessary and may not be kind of sensible to hold an inquiry in every case before discussing these cases with cost because occasionally it is required also. There is rampant misuse also. I can cite several other instances as well. Because of the paucity of time I am refraining from it.

Professor Madhava Menon- well it is [Justice Ruma Pal- it is half a minute] haann shall I move to the next session. Okay haan [with regard to the aaaa].

SESSION 7- Role of Electronic Media in measuring Public Trust and Confidence in the Justice System

Professor Madhava Menon- The next session is really interesting because we are moving to media and how it relates to the trust and confidence of the court to the public and we are focusing in this session on the electronic media and whether it could help measure the public trust and confidence in the justice system. This is a new development, after all the electronic media is only 20-30 years old in India and it has started very aggressively looking at the court's decisions and the work of the courts particularly the English media and therefore, it would be interesting for us to focus on as to how they are competent to really measure public trust and confidence in the justice system. To speak on this we have Baxi and a gentleman from lawyer turned journalist from England, as I understand that you are from Germany but are practicing in England but now who has initiated what is known as legal media in India. Some of you must have come across that which has been trying to analyse the legal profession and the way legal services delivery happens in the Indian legal scenario. He is Mr. Kian Gainz. Baxi will speak first and then will take over Mr. Gainz.

Professor Upendra Baxi- first of all I want to brief you that I am not a specialist in electronic media. Well I have something to say like, all of you about electronic media and I will come to you in a second. Now before that, I would suggest you to take two articles that are in this booklet supplied to you. One is by my friend Jamie Cassels on what he calls PIL and his main thesis is that PIL is different from many other places because the courts no more but to enforce the statutes that the legislature has passed. Now it might be true as 80% I mean this so called PIL and therefore, the objection by my friend the Attorney General that is now, Mukul Rohtagi, I am His place.. because the courts are doing no more but drawing attention of the executive to enforce the acts that the parliament has passed or the state list. The court should do more is made that so you must read that in your spare time. The second is article *taking suffering seriously*, before the social action litigation before the Supreme Court but the author

makes so interesting points about the charismatic phase of SAL and in particular the author insists that you cannot take the suffering human rights seriously, if you don't take people's suffering seriously. There is a linkage between human rights and sufferings that the author expounds and he particularly expounds in this booklet the aaaa a great observation of Justice Goswami, if the Supreme Court has become the last refugee of the bewildered and the depressed. The article starts with him and say, the supreme court of india had at long last has started becoming the supreme court for Indians. And there is great difference between India and Indians. So I suggest you to look at these two articles very carefully and make them your companions as you journey , as you commence, a perform your judicial journeys and wonders as you go along. And I wish you the very best. It's a very nice compendium it's a full of appraises and very well aaa I again congratulate the academy and Paiker Nasir for assembling this particular volume. As to electronic media I first of all want to go to aaaa I will make 3 or 4 points and then sit down. Aaa my mind goes back to aaa 1974, before many of you were born ofcourse, and I got address the law teachers association, I just come to india as a law teacher I was invited by Delhi University and this was my first ever visit to the campus and become the dean in one year. Now the dean of the law school. So I was invited to the law teacher's association. 31st time is the last time I went to the association why, because the association was really interesting in TA and DA of law teachers. Coming hahahah to the various conferences. And they to me the obsession which I could not understand the TA DA culture even now. I remember my students in South University, in my office when Prime Minister Chandra Shekhar, was the prime minister then, before he became a prime minister Chandra Shekhar came to my house, he was doing a Padyatra, people call it Padyatra or Rathyatra or whatever And I put the matter , he asked my students to join him, so my students they asked the Kalyan Samiti, Gujrat, so asked the Kalyan Samiti , council, so they said they will march with Chandra Shekhar whoever you say , so I did get the TA and DA for that [Justice Ruma Pal-hahahahah] DA they gave but Ta they said you are walking , you through energy , so it Is not free, it is body not for free. You join the politicians but they will charge TA and DA. Which I told Chandra Shekhar Ji and I incurred a permanent enmity, lost his friendship, that's why couldn't stop me what can I say. So this association, I can spoke gave an inaugural which is good thing. Nobody listens to me is a good thing might be. I say I keep on writing and saying things which I must say and therefore give us to. There is a very nice poem in Gujarati of Narsim Mehta aaaa its Tagore he has also translated *Aklo Jaana Re* , you go alone in your own way , you you perform your wonders are tragedy aaa nobody notice you. You do what you should do. So I aaa my aaaa I at that time the jail breaking Andhra Pradesh in Rajya Mantri Praang, jail breaking was called. So I said what can be learn from jail breaking, the convicts of I have lost a paper, a very good paper by I have lost it so I don't know where it is But one things about those convicts of RajBundi and I say that there are 2 kinds of consciousness's , legal consciousness and legal alienation and legal alienation, alienation from the law and consciousness of the law go together, like uncle Marx. Marx said that you can't think of rule of law [Justice Ruma Pal- of ???] rule of law, unless you also think of reign of terror, they together, they go together. The one is not separable from the other it is lawyers' myth and his Capital Volume 1, Chapter 7, he studied the enclosure moment in England in 17th century and that's very aaa the 17th century foundation aaa the beginnings of the rule of law doctrine. And he compares the rule of law doctrine with enclosure movement in England and he says there is

no rule of law outside the reign of terror it's a now a days called Apulia, the undecidable issue so of law, literature or science this is therefore, they go hand in hand and I contrasted the 2 legal consciousness and 2 modes of legal alienation. I say that there is a AIR consciousness of law. AIR aaa my friend Yashwant Chandrachud was very fond of cricket and we started this SAL before him and Bhagwati , Justice Bhagwati and he was aaaa Constantly no discourse but then the Chief Justice of India he could not put it on radio aaa listen. So I listened what it is about , I was not interesting in arguing it was aaa early stage of it aa SAL and I said my lord as you said in AIR 1976 and I flapped and sent it to the court master and there was a advocate's court [Justice Ruma Pal- hahahaha] and Justice Chandrachud said yes lordship correct , he always used a blasting expression, correct , which puts in like a bullet but the AIR consciousness by the way is one and the second one is alienated legal consciousness. They are subordinate they are low as of the experience not as a grow as it Makes it two different things. AIR is no as the Word of law . Interpretation of The real world of law, the imaginary world of law which is and a lot of things were said about falling down of aaaa PIL in Supreme Court and so on. But there are 2 facts, infact the world, the imaginary world of law talks about people going to courts. The real world talks about people being taken to courts. And there is immense difference, they are very few statistics how people are taken to court. So I will not elaborate it, this is not the time. On the AIR consciousness and alienation from law , of law and from law and the everyday consciousness, that was 73. Today I can only talk about the Barkha Dutt and Arnab Goswami consciousness of law [Justice Ruma Pal- hahahaa] given the subject. But the judicial consciousness of the law, that you people have. Now wonders aaaa what does Barkha Dutt and Arnab Goswami consciousness of law is, what it is ? and what is your consciousness of alienation from law is. That is a big question. Before I go to that, I must say a word about aaa my frind will say Because Lord Has but aaaa from mu intelligence I can say this much. The first thing I want to say is that the print media is the backbone of the SAL , I know it is a one privilege to initiate social action litigation with Kapila Hingorani and with Lalita Sarkar, don't forget they are 2 women , its women who give the world. Whenever the tim ei read, I own limited time now, aaaa but always I limit that. I read women thinkers, I read women judges not aa sorry to say the men, if I have the choice because I think the women are aaa lot more to offer to the world then men have. Like it's my firm believe, I am practicing feminist . so when we initiated this litigation, educated the supreme court about how to proceed in this , how to invent this new head which I later on call as epistorial jurisdiction and Chandrachud said correct because they have been scholarly jurisdictions , new word yes ofcourse If aa you have read the bible by Saint Paul to aaaa Is a great aaaa epistorally so media has a lot to do, the print media had lot to do with the formation of SAL. Infact journalists have filed cases in the 80s in SAL jurisdiction and we should never forget it. What happens when electronic media mainly, television comes, its not there swallowing their hands and before the courts but how many things as experts, almost cases. There is a complete difference or turnabout in Arnab Goswami Barkha Dutt consciousness as is the thing from the consciousness of the print media. Vineet Narayan too the logbook of the CBI director what was his name Ranjeet Sinha. All the work of a new twist in journalism which the electronic media also accepts now, which is called stink journalism. And Vineet naryana KalaCharkra , brother Verma, Justice Verma called by many of the judges as brother bakshi , I always call them brother in return. But brother Verma laid that long time ago with Vineet Narayan he accepted

the validity of print journals to some extent and so has the Supreme Court now, recently, this year accepted in the case of CBI, former CBI director long continuity between the law . The aaaa second point I wish to make and then I'll end. Third point I'll aaa if required time I will take it. The second point is where do we place the world of films. Its coming as a next session. The films are the electronic no? so films are older than television in India atleast , so we will discuss that in the second aaa next session aaa I would like to say that films have created an image of law and justice in popular culture and they need to be solid and we have contributed. There was an open letter in Mathura's case of which I am the only survivor now. Mr. Kalker is dead Mr. Vikas Sarkar is no more aaa Vasudha Imandar died last year so I am also aa my friend Ram Jethmalani says I am in the waiting lounge, his call has not yet come at 96 but my call might come early. God knows. This is not the time to know all this thing and in my case the god is the sheep and it's black. One of the pope has said that my god is black and he died of heart failure aaa nevertheless, aaa I don't go into films. We started Mathura open letter, a new generation of films in India. Mathura open letter was more converted by films, Hema Malini acted in one of those aaaa Andha Kanoon was the name and there are sveral romantic Hollywood, Bollywood films and there are new way of filming like- Akrosh, like Ankur aaa about rape and woman and Mathura type situation . so we will discuss it in the next session. Forgetting the aaa leaving aside the films my second point is generally, excuse me, yes this the new technology. Electronic film media is a new technology, pose the following problem, the problem is how do we govern the ungovernable. Media, electronic media is distinguished by the fact that it is ungovernable. This is particularly true of social media which is twitter and aaa [Justice Ruma Pal- facebook] facebook, mu grand daughter Praipurna Baxi, aa she is now sixteen , when she was 12 when she told me she said, daddy you don't exist, I said my darling we are close we are close why don't I exist , she said you don't exist, I said I am here, I am alive and I think you don't exist and then it turned out that her definition of existence was merely the facebook and I have never enrolled in facebook. The account I have got is of gmail. But I hav never come out on the facebook. So how do you govern this new technology is the main problem. And the judgment by Rohingtonn Nariman, Jusitce Rohingtonn Nariman, my student, very nice judgment and Shreya , Shreya Pillai case. Ghosal ghosal [[Justice Ruma Pal- Shreya Ghoshal is a singer] Goldie grand daughter, that's why I remember Shreya Ghoshal. [Justice Ruma Pal- ooohhhhh] Shreya aa is his granddaughter All these, grand daughters are wonderful things, I don't know wonderful things, they do more wonderful things then we have dreamt of with, very nice grand daughters. So, doesn't matter we don't exist for them we aaaa , we think we exist anyways. So the question is Rohington in that judgment in Shreya's case said the following – he declared article 66A of the technology act as unconstitutional, only ground that it is over broad , that it did not pacify aaa cover Article 14 , and it's a landmark judgment on Article 14 and that it brings back the doctrine of Object and Nexis test technically. Law is technical, all is technical, which was forgotten by SAL , he bring back the classification doctrine, where It's in the heart of V.K. tripathi my collogue. Professor wrote extensively on triple classification but it was outdated by the laetr rise of SAL. Aaa which completely threw board that Article 14, discipline of Article 14 and if aaa my question is only this. If 66A of IT Act is over broad infact the whole of IT Act is over broad. If you look at IT Act 67, 68 So the over broadened has how is the government of india going aaa proposing to legislate these restrictions on freedom of speech. Because it is not bound to accept it's

Supreme court cannot direct it for re-legislating. So I am thinking of how the government The government, how would I read draft, this section and I am trying a ten re-drafts of this section, I tell you , I fail. May be my own aaa. I failed the test of junior but supreme court may not if it is redrafted, redrafted The case may not go again to Rohinton Nariman , another judge might hold that it is valid but the point is about the ding dong was that you cannot govern the new technologies. You take nano technology, digitalization you cannot govern them and when the electronic industries one, is also falling a new , new technology , whether it is governable by law of jurisprudence. It's a big big problem. My aaa I specialize when I am tired of reading big books I go to low grade and I pist the low grade, low grade Bollywood movies. And there is a very nice film by Kangana Raunawat, who is my favorite star, although I don't know her and kangana has in a movie called bandit Queen or something Ohh this is not free speech which Deepak Mishra refer to so I aaa doesn't mind aaa anyway she say aaa the governability of the new media and that is she sings the title song in in aaa English and Kangana Raunawat sings or some playback singer sings for her. She define globalization contemporary globalization development. She says, aaaa *I am not only evil but I am brutal, if you doubt me, search me on the google and if you don't I'll eat you like a noodle*, [Justice Ruma Pal- hahahahah] now if you say brutal, google and noodle, you arrive at globalization. [Justice Ruma Pal- hahahahah] and you don't identify, you aaa don't identify, brutal, I am not able but brutal, if you asks me to search in the google I don't I eat you as Noodle. These three parameters, somebody asked me the parameters these are the parameters., brutal, google and noodle, this is globalization, this is new technology and the government they try to govern it but they cannot govern it. This is what is social media and what happened in Pune , northeast people. I don't know whether you are discussing social media so aaaa.... So esstentially the question now is how do we govern or try to govern this new technologies including electronic. How do we govern Barkha Dutt and Arnab Goswami as paradigms aaa in Gujarati we call it paradigms . in fact here in Bhopal I met somebody I met him in I made some lectures there and aa somebody sent me a card. He was editor of a newspaper *DumDum DigaDiga* and I called him I said *aap editor, mahasampadak hain*. He was sampadak of small newspapers with comrade Arjun Singh as the great man of Bhopal, who caused the Bhopal catastrophe and who then became the minister for education, my minister as a vice- chancellor, it's is different story but aaaa that's a different matter. He aa Arjun Singh had given all the journalists a residential house aaa advertise and they appease ones in a forth night and 98% was advertised by the government. That was the definition that prevailed on the Madhya Pradesh I don't kknow what it is now. Director will tell me what is now *DumDum DigaDiga* or not I don't know. But I got my paradigm from there [Justice Ruma Pal- hahahahah]. Paradigm of governance aaa has aaaa it's difficult to apply in relation to electronic technology. How we apply? We criticize Barkha Dutt and Arnab Goswami and so when they try to convict a people, they force their judgments on the judges and that is why electronic media is very strong. But they have a defense of an old style, they fall back upon freedom of speech. Now if what I say is correct about aaa new technology, electronic medium and Barkha Dutt and Arnab Goswami they cannot rely upon, if technology is a new they cannot rely upon the old doctrines of law like, freedom of speech. So there is a tension in the invocation of freedom of speech and the media and they are offering a new technology and I doesn't able to understand . I talk to Arnab occasionally, I don't know Barkha very well. But they are representative, that they stood up to coronet Tapper and many

number of people. Finally therefore, and I end I will say nothing aaa but I end my function was to enter seminar and make it little lighter for you. I end by asking a serious question to you and that is the question that has haunted the discussion on public trust and confidence namely, how do we fashion a socially responsible, I emphasis the word socially responsible critique of judges not what executive approach I s, it's not necessary but there is something called social responsibility. And I want to end with how to fashion this. I want to end with a French philosopher Jack Taredder , who inaugurated post modernism in law and literature and Terreda used to say that I don't want to be that white knight of social responsibility. Now white knight is a very interesting term. I would rather say is that instead of the responsibility we should use the from the and what is the place of birth? He says response ability. Response ability, so social response criticism be a critique of judges doing the magnificent work in terms of response ability, to whom do they respond ofcourse everybody knows but are they responsive, are they response-able to the disabled to the aaa, it's the same criticism to the same standard to the disabled, to women , to to the disadvantaged peoples. The same standards should be applied across the board to the. to the electronic media, to the retired justices, to scholars, to everybody. This is being I am in search and this academy I think is in search or parameters of what is socially responsible criticism of anything and ones we arrive at some parameters of fact.... I know Mohan Gopal was aaa working on it but he never published it so I don't know what it meant.... We explored variables. I think ones we do that, we can talk about public trust and confidence much superior way than we are talking aaa now. I take too long sorry.

Mr. Kian Gainz- Thank you professor Baxi it was aaa amazing as always. Got some slides coming up. But before that, I'll say hello and I'll also apologies in advance. I intend to be quite honest and I aaa since this is off the record meeting and I promised Dr. Oberoi that I will not be writing about th session or anything about it and all of this event. I would also kindly request you not to take suo moto action of contempt or any other action against me for what I will say. But whatever I do is made of honesty and communication in friendship of trying to bridge the gap that exist often time between the bench and the media as a whole. Now aaa I want to start with aaaa, it is not quite up to date but yeah I will start anyway. I am aaa I think it's some what fallacious with all due respect to say that electronic media is very different from media as a whole because I think what is happening is that. I think what happened is that all traditional media is turning into electronic media anyways now a days. There is no such distinction between. Every single newspaper that exists has a digital arm. They have aaa so here we go so aaa everything aaa every single newspaper has a website. Whether it s the old school guys or the newer ones. Traditional media groups they are all starting out theirs online arms and that is something called the quaint which I think is the India Today group or something. Basically every single media house is seeing now online as its big commercial opportunity because in 10 years time in 20 years time TV might be dead and print media may be not be dead in India but around the world it is declining and electronic media is taking over . so I think to isolate both of them it is to simply both of them sometime. And these days TV channels are all online on their own website you can watch them live, you can see youtube videos and they hope they get virul and bring advertisement revenue aaa you tube channels which are third party platforms

are hosting a lot of content from the traditional old media channels on television. Aaa likewise all media journalists are on twitter. I am trying to make it some more interactive. It will interesting to see your responses on how many of you are on twitter ? I assume the number is very less, wao its very impressive what's your Excellent so you have been on twitter before you become a judge or aaaa okay [Justice Ruma Pal- aaaa no judge is on twitter] I assume not. [Justice Ruma Pal- nobody] it's a undersatnable in the sense that it is delicate since you are in the judiciary and it can perhaps be done later , you know why. Aaa but in any case all the new channels on twitter, if you look at that most of the news even the court related news are being broken on twitter, it's a just thing now a days so to say aaa we'll wait for tomorrows print addition, we'll wait for it to be flashed it on the headlines , television, doesn't happen now. They push it out on twitter first. In india where there is a lot of co-reporting , they put the news on twitter before disclosing to the feed that all the news channels get. I also want to expand the definition of media a little bit and want to say that now a days anyone as media aa it's not just limited to newspapers, blogs or Whatever you want to call it. The Wikipedia is a form of media it report, it condenses things, biographies of judges, so there are summaries of cases , everything can be found on this. Likewise, facebook as aaa Professor baxi has mentioned it become aa it is social media actually media in it's own right. Things can get post on ffacebook, things can get seen by thousands, tens of thousands and then get picked up by the traditional media or oline media. So I think to draw that distinction between all these thing smeans to say that aaa digital media is a new thing, aa electronic mediais a new thing and the all of things are sort of left behind is not true because all the old media is catching up. So new media is more faster and more diverse from patented media because it is competing with also the social media and other channels. And I think it is also becoming increasing courageous and important in holding government power to account and aa writing about things and maybe then used to be written about. And it is not just media in judiciary and legal things but I think the wider political sphere and social issues. So looking at the wider relations and coming up to the title of this session aaaa measuring aaa how media and electronic media in particular is useful in measuring the confidence in the judiciary. I think the generally as Colin has also said earlier the judiciary has a huge amount of respect from the population as a whole , particularly from as compared to the other democratic institutions which suffer huge lack of trust and I think in the light of the recent scams that have come up all these aaaa people hopes so that the judiciary fix things. That is especially true when the sort of rural areas where there is a lot of government institutions that are not performing. Some research has been conducted by University of Indiana Professor J. Krishnan and aa he has done a lot of interviews with tribal areas and other things and generally the court is seen as a last hope that can cure their problems and often that cannot and it is not possible to hear everything . Take suo moto actions everywhere I prefer this morning. But aaa nevertheless, it's very important to them. That it is not that no one ever criticize the judiciary and think you all we aware of this as well. It aaa people say I don't think that judges have a interest in mind or I believe that they are being paid by someone and 99% of the time it is untrue but we are aware also that traditional corruption does exists and that is something not easy to talk about. I wont be going in that too much. But I think criticism does exist and I think that's when social media is slightly helpful perhaps trying to analyze this criticism and try to deal with it rather than just suppressing it. on twitter, on website comments, aaa I mean the times of india section of comments is online, which you should see

and should count as contempt of court. There just trough their statements about conspiracy theories and all sorts of things. These thing sare on twitter because very easily you can do it. Like, you feel like having conversation with a friend, you just bash something on the mobile phone and you can aaa couple of minutes later a couple o f people seeing that. Aaa and the judiciary is not the unique target for that , there is a lot o fnoise online, there is a lot of noise online, there is a lot of aaa things are being said statements are thrown away. Statements that don't have any significance, no one really don't takes them very seriously. And I think aaa the media can act a gatekeeper to that to traditional media. I will get to that a bit later. Colonel article in the Argues that aaa the news media has a very important role in creating the perception of the population in the judiciary. And there is some interesting example of films, of television coverage and other things. It can be read. But I think at the fundamental where the media stands, one is that it's the interface between the judiciary and the civil aaa civilians as you call them. I think you cannot measure public trust and confidence in the judiciary without people knowing what the judiciary does. And with all due respect the court can accommodate more lets say a 100 people or so. Aa a judgment will almost be read by a several 100 lawyers who take the interest in that dialogue in reading that for whatever reason. The average person does not care about the legal arguments and all the sophisticated events that are happening. The media acts as an interface, whether it is electronic or otherwise. It is the translator to what's happening in the court and aa we can cut of that a little bit and aaa acts as translate as to what is happening in the court and aa how this affects everyone. Aaaa now people are operating as translation of aa journalists. I think it is fair to say that journalists have a huge credibility problem. How many of you think that journalist are very credible or amazing profession. May be a short hand of audience may we trust journalists. Hahaha not all of them yeah a hand full. But as a profession when you say it is a trust worthy profession something aaa I am seeking a lot of head shaking.

Participant Judge- we need free independent press for the purpose of knowing public opinion also dissemination of information we squarely depend upon the journalism. As a profession we have great respect but not as individual. Not all individuals have the credibility

Mr. Kian Gainz- I hope that maybe make some arguments that might convince some of you , may be not go on the twitter but to be reconsider some of these issues which I think is aaa I will get to down a bit but aaaa there is a one way street right now. Journalists are doing all the communicating for you and you don't have really the chance to say why you want them to say other than your judgment and there is aaa through difficulty in its own light. So perception is that many journalists is that they sensationalize, if you agree with any of these statements please do raise your hand aaa

Participant Judge- definitely, its wondering the freedom of press and the lack of legal amiability and that appreciate judgments]

Mr. Kian Gainz- Agreed that's aa big problem. I mean it's there job to sensationalize because newspapers wont exist if newspapers wont sell copies and frankly again with all due respect 90% of the judgments and judicial output you put it into headline, people will through away the newspaper because they wont understand then they were bored. People want a little bit of

excitement in there in the news and they want it to be translated into a something that makes sense to them. And sometimes they need masala and headline that makes things more exciting and that is unfortunate. Aaa perception is also that many journalists they lie or are politically biased, they are corrupt. Aa paid nes is a problem that has come again and again and again if any of you disagree and think that it is defamation of journalism please feel free to aaa raise your voice. Or the journalists are stupid they don't understand they don't have the education or the background necessary for aaa to understand what is happening in courts.

Participant Judge- As a profession we are not worried about the journalism but we are only scared of individual journalists who are training the guns for unjust reasons towards the judges instead oof training their guns against the judgment. Judgment can be criticized that is no problem but not the judge and his private life.

I think a few rotten apples though have a tendency to spoil the whole batch. So you need aaa two or three journalists who do sensationalize or you see a couple of headlines that are sensational or that may be paid news or you start thing that I cant trust the journalist anymore even if it's the profession that requires. If it is important in aa democracy. I think that is the risk it plead over from an individual to a judge. But I agree that there a obviously good journalists out there too.

Participant Judge- a decade ago Columbia University aaa sponsored a study involving about 100 of top electronic and print media bosses because they found that the interest was banning from the non-entertainment aaa internal front media and they came up with a wonderful aa study called the Elements of Journalism as to what is there aa essential role of journalism and what it does and aa what they found aaa what journalism does to as a professionals aa as the professional involved therein is not what journalism was intended for and that is the reason why interest is varying.

Professor Madhava Menon- it is already one O clock, if you want to

Mr. Kian Gainz- I will excel orate quickly

Professor Madhava Menon- Keep it interactive but of you want to aaaaa

Justice Chandru- I think you should be seen in a different light example in Tamil Nadu.

Mr. Kian Gainz- Aaa I am sorry can we do it in the end , just please lets go through the slides and then we can have a open discussion

Justice Chandru- the electronic media is mostly owned by political aaa parties and the press is owned by industries many industries the journalists play a very limited role. It is the control of the news flow by the management that is most important

Mr. Kian Gainz- haan agreed and I think aaa and on the honest side the biggest problem with the traditional media the electronic all these kind of power basis that are built from ideally both. Haan they have all there professional news channels TV channels and slo these kind of things and media has new websites and all these sorts of things. Sure aaa I want to get to the reality

of journalism they are not as aaaa as bad a a professional or individuals necessarily as repetition. I think there is a lot of respect for the judiciary and the judiciary interact with lot of editors and journalists they are very scared of you, they are very scared that you will call them up for contempt or defamation and aa that's not just judges but defamation by people whom they write about. As soon as the legal notice comes in most editors come up and say what can we do to get rid of this , what have we done wrong can we apologies can we issue correction. That is sort of typical approach because no one wants to be stuck in a legal for 10 years fighting a defamation case. Possibly in district court, 100 miles from where you are based right now . aa the reality of the editorial process is very manic and this online aaa very strict deadlines, there are hours to file a story to write it, to ghet all the facts accurately, to get quote some people, to get a picture , to lay it out on a page or to put it on the website and all of this happens so quickly it is amazing that newspapers and online magazines and stuff has more arisen in them. It is something you cant take experience of aaa how the editorial process how it works aaaa sometimes journalist do make errors because they are also humans, sometimes they are stupid, sometime they don't know what is going on, sometimes they are paid etc. but there is a huge pressure to be first in the news and aaa to be accurate and aa also to be interesting . that's kind of what journalism is about. Headlines I think how many of you have been particularly upset by a headline that you have read in the newspaper. I think that goes for everyone that newspaper just looks aaa this is nothing to do with aaaa story or reality what happened. Headlines often don't necessarily get written by reporters themselves. They kind aaa done by a copydesk and often the constraint on headline is that they are petty unusual and excited to fit within a certain space and intense to the story which is why sometimes they conflict facts and this something that upsets a lot of judges and a lot of non- judges as well when they read the newspapers. Even though if things are being interested something it's very common that a judge slams something . they love saying that right. I mean how often have you really slammed something . it is something like aaa it's a it's a some ready phrase and afterwards they become fictitious but the media uses them because ther is a kind of war and they have to make it existing and you know can I get a trouble for contempt because you know that the judge look kind of a good and all these kind of things. So journalists like using it. Another thing that they love using is Clean Chit , which is 3.8 lakhs, which is slightly aa this 3.8 lakhs on google with Clean Chit related to india. I mean how often do you give clean chit . sometimes saying that we don't have evidence to prosecute this or dismissals appeal but definitely it is not clean chit. But nevertheless, media has to condense it into something very simple. These kind of language is used quite a lot. This is aaaa google search on the aaaa. You can do your own search that are aaaa [Justice Ruma pal-they slams] precisely that is their favorite they shield it to showing it to the government because aaaa every journalist loves th stories that are negative by the government. It is just that as a journalist your job is also to show the truth to power or report them when someone slams them. Now Legal Journalism, I will take a one step back. It's Split between Court reporting and General legal reporting and the later is lot of what we do, we do court reporting as well, directly or indirectly. But General legal reporting is a big picture, reporting about judges, profession reporting about courts, pendency and all these kind of things. Now Court reporting is relatively straight forward and aaa getting to what Justice pal said about aaa judges speaking to the press. I think , generally, a lot of you will agree that 'Judges speak only through their judgments', this is so a maximum that is often cited that in court let the

judgment stand on its own and don't add several other elements to it. Now what is the role of a legal journalist / court reporter. Is the legal journalist be a Stenographer, take notes of what the judge said, what the lawyer said and then puts it out is it suppose to be a Translator, who puts all these things into context and tell the reader this is what the judgment is , going into its academic analyses or just be a silent witness. Aa there is also the risk of trial by media but we don't have jury trial system here. Nevertheless, there are some very sensational media coverage that is not going to weigh on the judge's mind atleast a little. You must have read wall to wall judgment. Last night Arnab Goswami shouting about a judgment while sitting on a one of the case. As a judge to divorce yourself complete and say that there is no pressure on them. This is like look at them completely on its merits and ignore all the media pressure that people are shouting about. Now I want to move in about Reporting about judiciary. This some which is much more sensitive, how many of you would be happy if you find an article written about you in a newspaper. Even if it is praising you saying it's a great judge. I assume that hater wont be much takers and excitement about the headline. Now that happened arguably with the rise of electronic media because the traditional print media has been very scared about about judges because contempt is then over them and there a lot of online outlets and magazines that are purely about the legal space or they are for some main stream audience but they also do some legal coverage and some of them are funding from some media organizations. Some rae independent like legally india. But to ask you it is required I mean does transparency improve an organisation or is it dangerous, if done properly, if it is sensationalise or digging on masala on judges or family relationships. Any this kind aaa thing. I can understand why something like that can be very negative and bring down the judiciary standing but at the same time you have to ask yourselves are something's actually valid for the organization or the judicial body as a whole to be reported on. For instance, Pendency of cases I have heard yesterday in informal chats that this is something that judges are unhappy to hear that constantly the media banging upon how slow judicial process is, how long it takes for and how it will never solve these mountain of cases. Now aaa but there is a very strong writing being done about it because the problem is not going to change. The government needs aaaa to get involved, other stakeholders need to get involved for pendency of cases to get solved. the number of you that are there are not enough to clear that mountain and there need to be more investment, more funding, all these kind of aaa things. Likewise, Judicial corruption, it's a very difficult issue to talk about I think. It is true that here are a few rotten apples who give other =judges a bad name. government has been happily jumping on that and aaa passing of the NJAC and the supreme court petitions are a kind of examples that they are trying to role us out and aaa that the kind of stories that have been told about by judges, also retired supreme court judges like Justice Katju on his blog for instance, some of these things are not nice to discuss about judicial corruption either. Likewise, Nepotism is uncalled sort of judges syndrome which also said to happen in some district courts, high courts whatever, cannot be written about. Can judiciary's competence be written about and say if there is a very bad judge who doesn't know what they are doing , can the media address this or not. And aa what will help the judiciary as a whole is if these kind of judges were written about so that the system as a whole can improve. So they can target education programme to find gaps in knowledge and these kind of things. Aa Sexual harassment is also very controversial but should this be written about or discussed or should be swept under the carpet and I think some of you will have a very strong opinion on some of

these issues or the other. But what I want to point out is that there is no clear cut answer on any of those, we just apply blanket and writing on any of these issues. It good for the profession as a whole for the judge profession and as well as the legal profession as a whole. Now aaa as Justice Pal was saying that he judiciary can never really tell it's side of the story and it's kind of stories. If we write about pendency what we will do, we will try calling registrar o fthe court saying no comment, we will call the Chief Justice who say no comment, we can call the law ministry who is likely, these days say no comment. Aa that means that there is no counter narrative. All that you have for instance, in a story of judicial corruption or pendency or anything like that is what journalists and lawyers are saying that this is the situation. The court can never provide a counter view to that to say, for instance, yes corruption is a problem but we have instituted these systems to deal with it. Now the, The elephant in the room in the system : contempt and I think contempt is a very blunt instrument, aa it can be used against traffic cops when you are going down on a road aaa Journalists and editors are very afraid of contempt (and the law in general). Now contempt as you all know is a civil contempt as has been used on Sahara's Subrata Roy. civil contempt is what he is put in jail for . which is because it is such a blunt instrument that can be used ofr anything in aaaa in plead and others. Just like Criminal contempt , it is about “interfering” with the administration of justice, or “scandalising” the court or “lowering its authority”. This is as professor Baxi was mentioning earlier section 66A is just as vague , sorry aaa the criminal contempt section., it is basically aaa judge need to protect themselves, beyond just defamation laws but that to mean that judges don't know half the time whether that is contempt or not that even most journalists and editors wouldn't know what contempt is. So how can they be expected to be on the right side of the law aaa.

Professor Upendra Baxi- If I may just one second , there is a role of media attorneys especially very crucial and they develop something which is quite different from what is in the mind of judges. They develop the flock law of contempt whereas the law of contempt is developed by judiciary is quite different from flock law. The flock law in the media is something to explore. The role of media lawyers in sanctioning a any news item by judges on the ground aaa I speak as aaa victim of the flock law in Matura open Letter not a single newspaper published our letter, till Dawn in Karachi published it and when Dawn in Karachi published it, the editors came running to get a copy of open letter which I declined I said no I don't have it. So the flock law created by the Soli Sorabji's of the world is become reality for the journalists. And because they are journalists they are not the owners of the medium , they are stopped from reporting.

Mr. Kian Gainz- I am almost done up. Just a couple of slides. So aa I will go in really quickly, I was hoping that I will make it more interactive and these are more real cases. Aa there is Marx and Engels contempt for judiciary an instrument of oppression, that was in which former Chief Minister was files for contempt. This is that Arundhati Rai said that aa ai running, aa will skip a lot of these but aaa there are different facets of contempt, there is a lot of boarder line like, sex scandal which people were saying is it contempt or not. There are dozens of examples which says, a traffic cop stops a judge from going to the court. All these kind of a things. So if that is the case how a journalist aa just skipping through that aaa how a journalist suppose to know what contempt is or not . so we can say that imagine a new world which I think where

all court reporting is always accurate, Court reporting goes beyond just stenography, analysis things and put it in perspective for readers and newspapers and also for people as journalists and as judges. Aaa the Fundamental problems are that there are lack of information, court reporting is difficult because courts are noisy, busy, and cases are complex, then finally there is a lack of communication from the bench because all that you have to go on is what the judge said plus eventually when the judge may come up you can kind of pass that and try to find what is there as a journalist. Now aaaa most legal journalists are not legal academics, with 50 years of experience to put all of this into context and tell you what it is . now happens elsewhere in the world is quite important the US supreme court for example is on twitter. For example the latest judgment the twitted out immediately and quickly as soon as they happen. They have official court reports in the US who sit in courts they make transcripts available nearly instantly online. Disputes in court reporting usually arises out of misquoting a judge or a lawyer, or taking judges' remarks out of context. The solution is that everything is transcribed and documented, the court can easily prove if the media is doing a bad job (and media has rapid access to what actually happened, authoritative). Now what happens a court is very valuable. I mean there is a session tomorrow aaa video recordings or so in courts. I think video recordings will also go a very long way with making court reporting much more professional and safe for everyone on board. Aaa the UK Supreme Court is also on twitter and they do really fun things such as open day sin the supreme court and such trying of the library and things like that . the judge will built a relationship in the public trust and the institution. Right now th supreme court partly for security reasons is difficult to access for an average person. Now that is some sort of institution that is supposed to be not open and a justice seems to be done and aa all these kind of principles. The UK Supreme Court is on Youtube for example. Summaries of judgment put up there , there are histories put up on youtube, this is something that anyone can visits. They can learn about the highest court of the land. European Court of Justice tweets and issues press releases and that does the UK courts as well. And it is in 10-20 languages and they summarise what the judgment is about. I think that is something that can be done in india but can be done. There are at least 26 US courts in Europe that tweet like Canadian courts and any many more than. So what can we do here I think the relationship between media and the judiciary does not have to be one of enemies there connection can be better understanding of both sides both for judges to understand how journalism works by looking at the challenges the journalists face rather than thinking that there is bad faith regarding reporting. Sometime there is bad faith not depending on defending terrible reporting but that can be understanding from both side depending. One big thing that will help a lot that if Judiciary to become 'media' in its own right. Aaa you wil now have the power to tweet, you will now have the power to do youtube channels, you have the power to have much better website than 97% of the high courts were you can find the judgments. That's not that enables trust and understanding of the average person in the judiciary . aaa every court can have a Registrar (communication) to be accessible to journalists and could issue press releases about the functioning of the court, etc. But a Big judgments send out press releases. But it basically summarises I think aaa , whole workshop aa there is this final slide for journalist as well as newspapers like electronic or otherwise. Have a session with them and telling them that it is contempt. This is not the stuff you can write about us because it makes us look really bad and it is not true. This is the kind of things that if you wanna talk about aaa speak to us about it we will let you know how you can deal with it and that is not

happening right now. There is a Chinese wall between judiciary and media. Nothing for the growth and standing of the judiciary as well as the media actually and the cooperation between the two and it is essential that they work together much more. And it need not to be hand in hand but at least be an understanding across that wall. At that point having run ridiculously over time I will end but aa a thank you for your time .

Professor Madhava Menon - You are going to be with us in the afternoon.

Mr. Kian Gainz- Yes

Professor Madhava Menon - Perhaps you know luckily in the afternoon, we have the same media and a judiciary discussion for a session . maybe we will have th discussion on problems , issues arising out of these 2 presentations , discuss along with the aaa afternoon session on films that I is the only way we can even otherwise my comments aaa we will take you in another 5-10 minutes. Which perhaps is not advisable, I may be opening myself for contempt. So therefore let us break for lunch. In the afternoon when we meet we will have the discussion on this session also.

Dr. Geeta Oberoi- one minute there are some announcements that now aaa you will aa before going for lunch assemble at porch for aaa group photograph. The second announcement is that , first of all I think today is a time we should give big round of applause to Hon'ble Justice Ruma Pal who is going back by today's flight. Mam thank you so much for helping us with all this programme. Yeah she is really great and also aa we aaa after aa a this session on the films that is 8th session aaa sir you can have this aa your observations then, on the 8th session. When the 8th session finishes after that we will have tea break for 15 minutes and there is a presentation on aa aby google on how internet works , how in digital age we operate, what are aaa what kind of crimes are committed. It's a part of our commitment to aaa parliament that aaa that we will be popularizing these ITC skills and after that you go aa it's a 45 minutes session, you go back to your room and then you assemble at 7 O clock for a movie followed by a dinner at Auditorium. So this how whole day we have spread out. Thank you so much .

Session 8 - Role of films in enhancing/diminishing trust and confidence of the litigants in the court system

Professor Madhava Menon- We will have some more minutes for discussion there and then we will proceed. Aaa can we aaa start I think Baxi will come little later aaa welcome back. We will have may be 15minutes for discussion from the two presentations we had prior to lunch. 2:30 sharp we will hand over to the next session. I suppose that few significant issue have been raised by Baxi and Kian, in the last session on the relationship between media and the judiciary aaa they are not necessarily adversarial because both the institutions are Liberal democracy to have full independence as much independence that the judiciary should enjoy, perhaps equally so the freedom of expression will have to be given its full scope for the democracy to function. Therefore, as to how can we find aaaa the media to be able to discharge its social responsibility as Baxi put it. And he has told us given the nature of technology that is developing according

to him it is ungovernable. And taking the judgment of the Supreme Court is striking down section 66A of the Information Technology Act. Is that the only way by eliminating it given the fact that the social media cannot be totally eliminated and according to Mr. Kian Gainz, he thinks that the social media can be responsible because they do analyze also and is not only to sensationalize therefore according to him if I heard him right, the social media could be a useful measure of the performance of the judiciary because they are opinions of all types of people across the society all sections some of who are fairly well educated and may be practicing lawyers, nor judges or law teachers who all have their twitter and face book and all like that and therefore, it need not be the Arnab Gosawmi and Barkha Dutt but it could be more responsible comments which would measure the confidence and trust that the electronic media can project. If you agree with that assessment then you would be encouraging that electronic media to give a measure of public trust where it is being correctly projected or not through this, this section of the electronic media, social media. Now in order to make the other section of the electronic media equally responsible there is, there are some suggestion which are given Mr. Kian Gainz in his last two slides. He has quoted the method by which the supreme court of the united states have their own court reporters properly trained competent because the ability and the disability of the reporters that were being discussed and if that is taken care of and the registrar general of the supreme court himself give a brief to the reporters and answers their questions you would perhaps get a better reporting more factual and more a sort of how the people are receiving or what impact the court's decisions are making. So therefore is it that governable as baxi has told us given the nature of technology? One doesn't know how with technology will become different 5 years hence on or 2 years hence and one observation made by Mr. Kian Gainz is that the elephant in the room is the contempt jurisdiction and if judges were able to interact with the reporters or editors, probably they would realize the importance of keeping certain limits the *Lakshman Rekha* in order to protect both the institutions the media and the judiciary. Therefore, what I want to emphasize is that this the area in which we have to live both of them given as much freedom as much independence as possible. Therefore, and it gives a good feedback if it is fruitful, if it is factual for the judiciary to understand as to how they are relating themselves to the society to the people who are their best friends but today again taking a cue from Mr. Gainz I understand there is a credibility problem with respect to journalists particularly, in India for a variety of reasons paid news people who are floating this media or vested interest groups and if they are to control their own reporters and journalist do not give them the freedom that they deserve, you will get a distorted version projected about the courts. I take that into account the comment made by on the floor that, it is alright to criticize the judgments but the problem arises when they criticize the judges. And try to report on judges and their background, their personality in a bias manner. So therefore, there is a problem that is in hand that we cannot stop technology. The technology will become highly individualize and totally digitalized you will the print media is also getting digitalized and every individual given the social media every individual is the media. Therefore, the opportunity is for the court. The court itself to convert into a media while doing its judicial responsibilities. Can you make thing public, can you make to televise it so that people get to know from the media. so therefore there are important matters which the judges as well the society, the government, everybody including the journalists are to worry about given the nature of the media and the freedom of the media that the constitution

guarantees . How important it is to find some voice for the media as to how you would be able to create a rapport between the court and the electronic media to achieve the what is public good involved in both these segments. Contempt jurisdiction well this is an area in which I don't know how many of you have come across that restatement law published at the behest of the supreme court itself on contempt of court which had projected you know what journalist should read and understand what are the limits. Those limits are spelt out in that publication publishes under the Supreme Court itself in the reinstatement. I would therefore, I mean disagree that it is an ungovernable area of law. This technology and the way it has been practiced. But the people in I mean Arnab Goswami and Barkha Dutt have been particularly pointed out as to how you can make them socially responsible in what they are doing it's not reporting like any other event either in government or in private sector or in society. Here is an institution which you have to study and understand and know why it should be reported. Not even just factually but with certain reservations. Public is eager to know but how do you report it, how do you reach it because the, the headlines what the caption that you give, what damage it can do Gainz has pointed out. But that is their freedom they want to attract attention by giving catchy that's what they teach in the journalism school. So therefore, they are doing their profession, their work in what they consider as responsible. But doing it vis-à-vis the court problem arise because the public credibility is the strength of the judiciary. How can we make the journalist particularly in the electronic media realize which responsibility is the big challenge. I wanted to highlight these all questions. But I don't think that the solutions that were suggested is the solution. I take I don't know if I may stop at that.

Justice Sujata Manohar- if I can add a little bit to what was discussed in the previous session basically Mr Gainz has given a present analysis of the possible interaction between the judiciary and the media. I don't know how many of you watched on TV when the house of lords pronounced the Penosia judgement , when lord brown Wilkinson got up and explained the public what the judgment was about while in the west court has tried to reach out and explain their own performance to the public I think aspect slowly creeping our judiciary also for example some of the high have started a museum a permanent museum which record for the public the history of the high court, its well known judgments what the judges have done..aaa... I believe that a Madhya Pradesh high court is also invited our legal expert from Bombay to set a museum here ..in..on..aa.. Madhya Pradesh high court so this is one way the court has tried to reach out to the public (Prof.Madhava Menon- other judges felt that it is a acting.) basically there is limit one individual can do so correct thing is have some kind of repo in media, what the judiciary dose is properly projected before the public..aaa.. about the freedom of speech we have many section in the penal code which impeach upon freedom of speech and in my views required serious reconsideration among them we have criminal defamations, contempt you have discuss sedition, various kind of offences which have been in our penal code since the Victorian time thanks to lord Mack Olay we have to really now to rethink the extent and possibility of removing some of the penal code this might be allay of fear some of the journalist but anyway the topic is open for discussion you want to ask any question you are free to do.

Participant Judge - I have (Justice Sujata Manohar -..yes) three point I want to raise , legal reporting you have so many law journal now but do we aware exercise any editorial power of criticizing the judgments or saying that this not correct or saying that in conflict with some judgments the editorial notes are missing now it is became each one take one suppose there are forty judges they put every judgments in one like that, because legal journal are now run by the lawyers who can afford to alienate any judges so the reporting skill has became very bad in terms of law journal . Second is in earlier point of time there are some law journal who write about the judges and no judges willing to take action because he may write more about in madras court this happen the journal have only five hundred copies three hundreds copies will be sold in high court campus only and there are some lawyers who finance also, finally when he wrote something about chief justice one senior lawyer went to supreme court because madras high court nobody willing to take action, supreme court issued contempt and jail six months after few month he died a law journal stop but the other forum of law journal like social media now the blocks are created, recently we are a case a block particular criticizing a judge , the judge issue a contempt and nothing could happen then he directed the ministry to stop that particular block and they said we can't do that then they try to arrest that fellow that they could not do because police was supporting that man then what happen he put a fake id and running the same show, that just not possible that aa...you can use a social media whatever you want to do that this another form of law journal now started its totally your responsibility whatever you want you write now you have WhatsApp and lawyers having their own block immediately stared criticism whether they like it or not whether they go through the judgment or not there is no responsible criticism anything and everything can be written. The third point I want to say that the last forty years legal reporting in course as you said it started from stenographer at that time there is no photo copy machine no order copy issues, the stenographer take a notes largely they were stenographer English newspaper and they used to give some piece of information to local language slowly this process started demission now youngster started coming they stared writing with little critical remark there is no criticism earlier, now the critical remark started the other third phase started high court started giving facilities room ,television everything then you will find little compromise if criticize the judge he will cancel the room, that happen in madras the day they made a adverse criticism about the building committee judge, he said vacate the room then the chief justice intervene and allot some other room so today the facilities has increase therefore the dependency also increase therefore the objective reporting became less and less and what happens is issue try to be very critical then the judge can deny you many scope today write like punch line reporting in the judgment for English newspaper for a electronic newspaper now if you try to act funny they may deny this it is mere not contempt there are other issue also involved where facilities increase your dependency increases and therefore the press knows where to stand if you see the forty years reporting in our high court there is increase facility and there is a decreased criticism, no need to have contempt. Beyond this suppose some adverse news comes then there are editors sub-editors who take care of it. They will kill the story they will not come at all.

Mr. Kian Gainz- I very much agree with you it's generally the CBI matters.

Justice Chandru- Though the matters are that though they may not know all the legal advances but somebody is it here, the legal editor knows.

Mr. Kian Gainz- The system as a whole works quite aaaa

Justice Chandru- They even call their house lawyer to find out the real aaa therefore it is not a matter of knowing the mere knowing of logics it's a question of survival. If for the publishing of the inner course news , they will be hold up for sometime which no English press want to afford to pay for. So these are the issues which we need to look not just those which are projected but also beyond that

Mr. Kian Gainz- I think there is a lot that can be written on that. There is a lot of balancing that is happening, balancing that is influenced by things like PR professionals, if you look at for example in the US white house reporting aa reporting of what the president says. It's incredibly covered by the fact of access . if you are journalist and you cover nothing but the White House in US , you get invited to meetings, you get invited to parties, you get invited to press conference. You get scoops you can publish till your career is on.

Justice Chandru- When the press was doing reporting some judges do not like that so a public interest litigation was filed , how theses newspapers can be allowed to publish whatever they want to do, so notice was issues to all the papers but the matter was not despised off, everybody knows the debacles for they are still hanging

Mr. Kian Gainz- And for a newspaper it is a massive risk, I mean a 100 crores for defamation, for contempt action by someone in public pressure, the proprietor can go to jail, this is something which no editor wants because they might get fired for that if the publishers are going to the jail the job will be on the editor as you have a very strong function that is standing behind the story saying that is was in public interest and this contempt action is motivated. And very briefly on aaa

Participant Judge- Traditionally when the judges were deciding on the bases of customs okay long established customs, constituting law then, statute law interpreting then there could be X number of situations in which language can be interpreted given that English could be chronically plural in nature . Still there are infinite number of ways in which words can be distorted even by a judicial mind. But when it comes to policy formulation where you don't have existing load starts on which to frame , you know linguistics load starts which to frame policy. You draw it out from the ether of your jurisprudence and the limitations or otherwise understanding of politics, history, geography and the economics whatever. Then does society not have a right , just a they criticize the legislature, how do you get rid of a government by critique, how do you get rid of a bad judgment which is philosophical. A bad judgment which is constitutive and aaa did not discover the law but constitutes the law. When policy is made by judges , is the public not entitled to get rid of that judge who they consider to be making wrong policy. Can there not be a section of the public who thinks in hosanna in favour of that judgment , others will criticize it. Ones you enter into the arena of policy making , people have the right to social audit of your policies.

Professor Upendra Baxi- Sorry for being late. One thing is all law is law making and law is based on social communication. So judges are communicators they should be communicators. The communicators are par excellence as a matter of opinion but outside social communication no two exist that is clear. When judges make law I believe they have a special responsibility to communicate as widely as possible. So our professors communication and aa media is nothing special and everybody is in the business of communication. And it is communication which keeps us going , dialogue is possible only because of communication. So making a special media cell in the high court is not an answer it's part of an answer. Really every judge should be a professional communicator and I believe every judge should attend a mass media education seminar. I suggested a long ago in 77, but nobody listens to what I say. I remember suddenly in my book on Justice Mathew and my introduction to Justice Mathew I say a judge of communication constituencies. This is my concept. Whether it is police, jail, the lawyers the resident all a wider number of publics I didn't have the time to count them now. So judge has to be a communicator to create law. My second point therefore is judges are the worst censors of their own judgments and please stop acting as censors no don't go to media. For example, you are in habit of classifying judgments in reportable and non-reportable. How do you decide what is non-reportable, we don't know. So they are secret judgments which are not allowed to be published on the paper in the event of contempt. Now mostly, judges write tick mark, reportable. But some judgments they mark unreportable. There is a company that has bring out the book called unreportable judgments and I said I will defend your case for contempt charge, no contempt followed but his business is prevailed, later on he did not and no publisher went into the publishing of unreportable judgments marked by the lordships . can I stop how.

Justice Sujata Manohar- everything is reported.

Participant Judge- one point I want to make. Now the unreportable judgments are immediately available on the website , so there wont be any judgment that will be secret. They rae avialble on internet.

Professor Upendra Baxi- Then I withdraw, but the judges also know the second point I aaa take your point . judges also know how to kill a petition, simply by not taking for example, Keshvananda, it is still not heard. His loneliness filed a write petition on land reform and they 6 petitioners . Kesavananda said to dispose off these petitions on the high court by the law laid down by us. What the lordship laid down as law fought alone, if it exist , he knows. I don't know what Kesavananda was decided. Nobody has the time to read , I am the only person in india to read Kesavananda Bharti 21 times, it is 1000 odd pages. Mohammad Rafi has a nice song *Ek dil ka tukkda hazar huwa koi yahan gira koi wahan gira* , so it is like that, I am sorry I cant translate it just now. So aa there is a problem, aa judges which one I don't know the high court shave followed the supreme court . I asked Yashwant Chandrachud to introduce a system of mikes. And when the brothers talks in mikes certainly there is press sound and the next morning we say there was this dialogue by the chief justice and Yashwant aa brother Chandrachud was very angry with me and he said what have you done but he could not withdraw his order and I think the supreme court eventually decided to turn off the mike when they were communicating with their colleagues. Aaa but the point is that the only source today of the legal argument is the newspapers and the media. Mukul Rohtagi for example, on the

judges case, they are bale to on day to day bases argues, the privacy case. And think that it is a great service because there is no official record of what the lawyers are arguing before the lordships. Even if you compare the press clippings with what the judges say and the lawyers argue there is a world of difference occasionally. Very often it is all judicial construction of what the lawyers argue because by the time judges decide, write and opinion, circulate it, share it with their brother everybody has forgotten what the lawyers have argued and I have consulted the lawyers who have argued this thing and they say I have never argued this thing but we have to appear daily before our lordship so we cant. So very often the press is the only source of contemporary news about the court

Participant Judge-There is no development where the law journals are publishing return briefs of each lawyer in a judgment

Professor Upendra Baxi - okay some do some do

Participant Judge-Most of the aaaa important matters they do

Professor Upendra Baxi - Those lawyers who have written briefs, they want to publish it, they give it to the publisher. But I think there was aaa mainly that there should be a media reporting by the court itself of the arguments that have taken place. You may differ but that will be the accurate transcript of the what was argued that day. We do not wish to rely what the newspaper says. My great teacher in the US he said to me in first year classes he said look at not what the judges say but what they don't with what they are saying and what they do what they say is what we are after when we need a judgment. We are not after what you said ofcourse we know what you said but what you do is important. What you say in Keshvananda Bharti, what did you do with Keshvananda, now and later is the real story. So in a sense I think judges are journalists in the first task person in the judicial history. So the journalist is the first task person of the contemporary history and both have to meet somewhere .

Mr. Kian Gainz- Very briefly just one more thing worth underlining aa what Prof. Baxi was saying is that we really have to embrace technology. What is happening for example in the US is all these transcripts are on the website where you have to pay nominal subscription which is much much better. So you can see judgments simultaneously. All the transcripts that people have said filings, pleading, everything affidavits everything that is filed before court is instantly available to any other lawyer, public, journalist and that as a whole increases the transparency and efficiency of the court because lot of a time misreporting occurs a lot of time. Judgment has been uploaded yet and aaa the news headline is coming and write something on this case and all that you have is some vaguely remember thing that the judge said in the court. If all this stuff is instantly available on the net then it will solve a lot of problem. And I think it is something easy to implement but that needs the support from the government and register and the chief and all of you to get that because it's not an easy project.

Justice Sujata V. Manohar - aaa we are already running shot of time let's move on the next topic which is somewhat connected which is not quit the same, which is role of film in enhancing or demi enhancing the confident of the litigant confident in the court system, and we have two speakers here and I request both of them take five minutes of their talk so we can

have little time to afterword discussion...aa... Justice Chandru .. I don't think he need any introduction, we introduce to you earlier, please Justice Chandru.

Justice Chandru - aa this topic is little daisy „role of film in enhancing and diminishing the trust and confidence to the litigant and court system now we influence film or we film influence our decision making process aa Something which have..aa.. we have to analyze deeply, in fact..aa.. Last week we have a santé nary celebration of retired supreme court judge.. Justice Kayalasham..in which our chief justice is one of our guest and he was releasing a stamp of Kayalasham, stamp was given to..a..a. leading actor Rajnikant and while receiving the stamp, Rajnikant said that a politician can be bad, the government can be bad but the court should not be in a bad situation, because people have faith , only three sentence he said. Next day all the paper carried the headline and said that Rajnikant says court is the last resort and he should not become bad. We have a very symbiotic relationship with movie world and it is something like..a..aaa. we always like compliment in fact there was a time judges of the court had multiplier role not only judging but also their decisions, writing novels, and they were stage artist and there were also vice chancellor of university so we have different role and it was never taught and it'll effect the role of judge, but later there was something like wall brought in most of the film that we are talking about there is always a question come that film will influence the real life situations? Or real life give or influence to the film..aa..there is a debate which goes on ..recently one accused was caught by the police then they ask him to recreate the scene, he said I saw the film Drishyam that only I tried to cover up the evidence he said , so most of the news come from I got inspirational from the movie. That are also judges who gone on record like one judge is written a biography recently I wanted act in a film when I was a lawyer so he asked the matinee idol MGR subsequently he became the chief minister of Tamil Nadu I want have a film role and he said better concentrate in your profession, so he writes in his biography I felt like committing suicide that I was denied the cinema role ann....aa.. this is how, today specially in Tamil and distinction in real life and cinema is very thin and you find the fans of various actors performing milk for the cutout of matinee idol and there will be puja and so many things, now we find I our court like..aa.. there is ..a... story called ...aa.. Actually I tell you it's a reported judgment. a.. Ranga Rajan was Jagjeevan Rao very important decision on the question of write of expression and the role of cinematography act. now that film shows the reservation issue when a women of upper caste takes false certificate of a community services of a schedule cast then she writes civil service examination and became a district collector and she show many good things to the villagers and the villagers adore him then the vested of the village somehow unable bear her good deeds and try to find out her background and find that she has given false community certificate, to file a case and criminal trial is conducted against the collector and judges finally releases her and saying that you doing good things you can't be punish now that film was given by censorship certificate by the censor board but there are some groups in Tamil naad who believe that this film is a challenge to upper front to social justice so file the writ petition and saying how can anybody say that reservation can be misuse and the person who misuses being celebrity despite the court convicted her she has been release by the people, so bench of the madras high court cancel the censorship certificate then matter goes to supreme court and supreme court said that there must be creative right in favor of..aa..a. film producer nobody .aa.a.if you..a..aa. Contrary view that's a different

issue but you can't cancel the censorship certificate and therefore the certificate was restored and movie was also given some award some president award but it never shown in any cinema in Tamil Nadu because what happens even if you get censor ultimately you must come to the ground reality, there are groups which are supposed to be the conclusion of the film and finally a film producer made a compromise with the opposite group he said I will not be shown being released by the people I will be shown being convicted and taken into jail even then the movie runs at all now what increasingly that is happening today in Tamil Nadu every movie that is to be released so how does it come to the court either in copyright violation or in a money transaction or the story being original copy or a..aa. many issues like you have a jondo suit we have Ashok Kumar suits now I think she may be talking about. a...particular URL will be blocked by court injunction order so movies and court have started living together on many issues an every movie if you bring .a..a.... pre-released publicity is good for the movies some cases are filed that the title offends our religion or story line goes against our caste or religious sentiments so somehow every film that's come to court on one issue or other for various reasons I don't want to go on details of that finally I want to mention one last issue that how much movies have influenced us in fact I have a case where..uhhhmmm.. a particular community asks the corporation of the city that for performing funeral rights we need separate place near the river bank so each community is being given separate place within the cremation ground there was caste wise compartment and then some of the members of the corporation raise objection how can you give caste wise allocation near the river bank we should be canceled so the commissioner canceled the permission which was given and then community file the case so even in cremation people want have caste compartment so when the matter came to me I remember the cinema song which I saw in my school days where it says whether it is joga or whether it is a king all of them are equal at one place that is called the cremation ground that the only place apparently where socialism is maintained so I quoted the cinema song in my judgment first time high court judgment contains cinema song in justification I wrote that today people are not very much educated and cinema has part of life any song which is very popular in people immediately it gives a message and there is nothing wrong in quoting song then I quoted the song matter goes in appeal admission bench has said that the sing bench gave a very beautiful song we are in full agreement dismiss but it was all reported but even still today we have separate cremation ground caste based schedule caste separately even in Christian faction there are separate recently another judge wrote a judgment division bench judgment saying that already Justice Chandru quoted some cinema song that judgment is a correct judgment even in the Christianity there are divisions to some extent we also get influenced by certain messages which come in the movie in fact there is story in Tamil Nadu every sixty years there is a famine in a hundred and twenty years back women killed her all her children and also tried to kill herself but she was safe and that story is called a "nana ta kal" story whenever there is famine and fear comes the brothers of any women will present green sare to the women showing some fertility, some prosperity, so this goes in Tamil Nadu so similar incident come in court that a woman killed her all children but unable to kill herself she was accused of murder and the judge quoted the "nana ta kal" story which is also became a film anybody in Tamil Nadu knows what is "nana ta kal" so there are many..many incidents are in storyline which can also be used for solution, in that finally the lady was acquitted. And the third area is in Tamil Nadu you now last five chief ministers all from film world and even four five political parties having heads of film actors, there is some kind of close link

between .aa..a.. ordinary people on the political life and suppose if a men and a women makes a controversial statement or a movie shows something very controversial like one film shows lawyers in a poor light, so lawyers all over Tamil Naidu file case against the film saying that you can defame lawyer I don't know how it was an defamation but finally the producer invested lots of money came to the court then the high court why do your confrontation with lawyer why don't you remove the scene, so those scene were removed so.. Now the lawyer act like a censor, small groups act like a censor and any view which are tried to controversial or not acceptable to the last majority this also bring retribution like we have one actress name kushboo she says in a interview anybody about per martial sex I would advise parents to take care of his children to have safe sex and use safety method then everywhere cases were filed, lawyers associations filed case, again the actress went to supreme court, because there is hundred and fifty cases why I am tell was finally supreme court come to rescue in one district court .aa.a. one magistrate court she file an application for a dispensing for her personal appearance then the lawyers oppose because lawyers were the petitioners the judge dismiss the personal appearance application and told the lawyer of the actress that we can't come to Chennai to see her let her come one day so we all see her..haahhha.. this is our..the appearance is dismiss therefore we have a very vital influence either this way or that way and cinema place a very, very important role in life of the Tamilian. Thank you (45;15)

Justice Sujata Manohar- ..aa.. can I now call upon Shoma Chatterji to give her views about what the film should say about the judiciary she is very well known freelance journalist, film critic and a film scholar and she author of twenty two books, she won two national film awards for best writing in cinema , she is very well known as film critic and one award for best book on cinema in year 2002, and she is jury member at many film festival in India and abroad, so she have the right person to tell about what film to do depict the judicial court scene in the film and how they convey a message about the functioning of the court to ordinary people..shoma..yeahh..aa.

Dr. Shoma Chatterji: thank you Justice Sujata Manohar...aa..I feeling really, really horned and humble in this audience and I don't belong to the legal fraternity nor do I belong to judicial fraternity nor am I strictly academic and call upon for academia for call upon lecture, so kindly pardon if they are any in accuracy though I have consultant to a lawyer in doing this thing and whatever may lap as a lay person, my reaction is mainly as a lay person as a journalist who has been writing and watching films for last 35 years writing thirty five years and watching films when I was 5 or 6 years old from Disney cartoons. Now my interest in cinema is entertaining, academic and educative , so when I got this the role of film enhancing or diminishing trust and confidant of the litigant in the court system, I decided to find out the aaa little bit different ..a. from the normal kind of presentation that I am required to may but that is why I went back into research and I was amazed to find out how much work has been done in America and U.K in this..or..aa. on this very subject but not so much India , in fact there is no book in India there are some scholars article I will not denied that but no book on real or real justice now what I am trying to find out, I thought I should do it.(Justice Sujata Manohar. which one I should press to go next one..yeah, yeah...okay okay)I know it sometime ..okay,,okay..aaa.hhha..my slightly different my whole thing I divided my presentation into interaction, films name, court

justice legal machinery is going to be quite an entertaining thing visual misrepresentation of court room and the legal and the police fraternity violation of censorship laws over this there is many books written I just skin through it where the violation are really I mean contempt of court or all in openly shown when a judge...a...a.. lawyers .aa..a..a arguing shout so loudly like in daamani sunny deol shout so loudly I will show you that its self amount to contempt of court but everybody clapping at the end of it you know the judge says nothing...aaa...a.few case study of fiction films just two of I have given film is based on real life story as Justice Chandru said which have been made on real life stories and how authentic they are and how glamorized the main problem is in main stream cinema or Indian cinema is that or amount of glamorization because it is a commercial product , I mean filmmaker shoot me down if I say cinema is called a product after all it is a product because it is sold in the market and you getting it and they can make money on this particular film self.aaa.... real life stories and conclusion ...now....uhhhmmm.. the two question are concern as I whether cinema practice impetrative real world or whether they are, some film replicate the real world of the court system into the cinema , main thing is how close are the cello lied representation of court law and order and all these things and how close shown in film to real life situations or how different are they in real life situations now its very difficult to demark the two water tight compartment you know some time its required the combinations of two , yes they are very close and yet they are glamorized larger than life therefore some of the reality diluted on the other hand they are some films based on real life, most off seen jolly LLB yesterday it was an entertaining film some masala some romance ,songs and all but I think it was really according to me quite an authentic film of what happen in a small court because usually courts are also shown huge sting whether the prosecution attorney or defense attorney he himself a great actor performing, so when I was a child watching this film I used to think o my god the lawyer has to be a very good actor he is performing all theatrics, he quoting from this author that author and what not and then when I went to real life situation for something else I found it is something very different , absolutely deglamourized, unattractive and you would want to go away from that as soon as you can from that particular situation. In other words the question is to try and discover how close or distinct are the celluloid representation of the litigants in the court system to the real world litigants in the court as observed in the reality. Now this is something I will not go into details but this is a paper by Martha who says how cinema can educate the people on law and courts. This is aaa I liked it very much this particular angel how cinema can be used , why can cinema be used because it is an art and it a craft . it is appealing to the emotions of the audience and it is also appealing to the intellects of the audience. You know two things it doing in time and a very powerful language of communication. In a country like india where more than 50% are illiterate people. oaky so that is one way of teaching infact I have learned for example if I am seeing something where something bizarre is happening , I will go and see if this thing happens in reality because I write a lot on human rights violation as a lay person ofcourse. Then I find out that there is a lot of disparity in what is shown in a masala film and in reality. In a paper legal ethics the writer argues what cinema becomes a very good medium to teach about the law and judiciary because stories speak about emotions as well as intellects. They can provide the deeper sharper and more intense understanding when traditional law school approaches. Now everybody is not going to law school. I have never been law school so for me it had been a very good educative experience. There are people who learn. For example,

Damini was a very good movie that tried to show how a third party can also go and file a case when a person has witnessed a rape and the victim is not in a position to protest. It was a totally commercial film. There are films that have been named after court I will quickly flip through my paper as the full de tails. Adalat, aapki aadalat, janta ki aadalat, meri aadalat, akhri adalat, kanoon etc etc. it goes on again and agin. Now this is a poster of kanoon a very very famous film supposedly the first song less film in hindi cinema after talkies was introduced in 1931 Alamara, first song less film. And if you notice the poster the word kanoon has been graphically demonstrated , the 2 Os are converted into handcuffs and a though Ashok Kumar plays a judge , he is standing in the yeah aaa box so I don't know whether it was meant to be a satire or suppose to be the truth, whatever it is. It was an okay film, everybody wnet gaga about it saying it was great aaa but it was a totally a masala film because it aaaa would be son in law accuses him of murder and he is only the judge now can the son the would be son in law files against him , he is the judge and aaa ultimately, it is found that he has not committed the murder , it's the look alike person whose dead body is brought in the court, which is all very funny actually. So I don't know how it became a very big hit because aaa. It was the first film in which Ashok Kumar played a double role and so on and so forth and then a thief is caught first and then Rajender Kumar proves that the thief the the if is not the murderer Ashok Kumar is the murderer because they have seen him that is another Ashok Kumar, people still comment on it it was black and white, it is still supposed to be milestone film, I don't know how but if you talk about it as teaching law then it is the worst way , one could learn from that film. Aa visual misrepresentation of the courtroom, legal and the police fraternity and for this I am very deeply indebted to Satyajeet Bhatkal, who was the executive producer of this Aamir Khan' s show called the Satyamev Vijayate and he said he was a lawyer fro ten years and he has written a very good paper, so whether it is inaccurate aaa some of it I have taken from his paper . the statue of goddess of justice blind folded and holding scales. Now coming back to kanoon, if you see the title song then you will find that it is focused on all the aa the camera angels are focused on the goddess of justice blind folded and on the scales and there is a very bombastice title song going on judges should do this , judges should not do that, insaaf aaisa hona chahiye and when the song is ending what you find is the church , the masjid and mandir and a Buddhist stupa showing it to a larger canvas has played a role in it , I do not know but is what has happened . the gaggle is no longer used. Satyamev Vijayate you hardly see. The police uniform, now that is something very funny. The women police uniform is always tailored to fit in to a very shaply body and 3 – 4 critics have commented on it specifically for the film Drishyam, where tabu plays a IGP, though the real life police can also wear a saree as well depending on the cadre they occupy. Now this one picture of Tabu in police uniform from Drishyam. Violation of censorship laws it is tremendous now in the courtroom how the prosecution people behave or sometimes even the accused jumps over the pulp aa over the thing and goes to fight somebody or goes to the witness to slap or through, how that is allowed I don't know. The violation of censor aaaa the rules of censorship clearly states that the board must ensure that the visuals and words do not involve the contempt of the court Rule (x) of The Central Board of Film Certification's guidelines clearly states, "*The Board must ensure that visuals or words involving defamation or contempt of court are not presented.*" This represents a direct attack on the judicial system and disrupts the honour of the judiciary.

Films like *Andha Kanoon*, *Meri Awaaz Suno*, *Meri Adalat*, *Shahenshah*, *Akhri Adalat* and *Andha Kanoon* have brazenly violated this guideline and have gone away with it unscathed; In *one* film, the hero (Amitabh Bachchan) traps the villain with a piece of rope in a way that, even by a minute error in judgement, will hang him by the neck from the scaffolding of the ceiling of the courtroom where the hero is being tried for murder. This is shown in the presence of the judge. The defense lawyer intimidates the judge at the point of a gun, to prove the innocence of the villain. Right through the film, the hero keeps announcing to the world that he is a law unto himself. The film thus violates rules (vi) the sovereignty and integrity of India is not called to question, (vii) the security of the state is not jeopardized or endangered, (xi) public order is not endangered and (x) mentioned above. Now A Few Case Studies of Fiction films, This film offers alternate readings of the rape incident/s within the filmic text that justify rape as a legitimate tool that a man can use to punish a woman; The professional model in *Insaf ka Tarazu* (Zeent Aman) is 'punished' for trying to define her own sexuality through her way of dressing which is sensual for purely professional reasons: she is a model; She is 'punished' by the rapist for having rejected his advances; Later, she is punished vicariously when the rapist rapes her younger sister (Padmini Kolhapure) because she had the courage to take him to court which, however, let him free with a clean chit. Zeenat Aman's murder of Raj Babbar in *Insaf ka Tarazu* was overshadowed by two lengthy rapes and one long and silly courtroom scene that preceded the killing. I am sorry it was not kanoon it was the song of this movie. The credit titles of this film are shot against a song track that talks about how a judge needs to respect the scales of justice. The camera captures a beautiful white blind-folded statuette of the Goddess of Justice, sometimes moving to close in on the scales and later enlarging the canvas to include God in all his manifestations. The camera also pans across a temple, a church, a mosque, and a Buddhist *stupa* to demonstrate that above everyone else, God is the supreme judge!. Now this is the poster of *Insaf ka Tarazu*. DAMINI, now the this was aaa in second running it became a very big hit. Raj Kumar Santoshi's *Damini* offers a unique perspective on rape. This slightly derived from a Tagore's short story which is very important which is somewhat where the mistress of the house takes the stand on on behalf of the victim, now she was not raped she committed a suicide because she was married to an insane man. The rape victim, a housemaid is economically and socially so weak and vulnerable, that she is forced to accept the violation of her body by a gang of young boys led by her employer's son. Help comes from a totally unexpected quarter: a daughter-in-law of the family, who is of lower-middle-class upbringing, rises to her cause, even while the girl is dying on a hospital bed. Damini leaves home and hearth to fight for the Truth; She wins, establishing a precedent that is converted into a legal statute. This is one scene from *Damini* and she is chased and hunted and everybody wants to kill her off because her in laws are very influential, her brother in law is the kind pin of the rape. What matters is that the victim's humiliation has been avenged and that the statute offers women in similar circumstances, a protection they did not earlier have; Though the film was mainstream, it got a tax exemption, offering scope for wider viewing; In its later running, it drew packed houses wherever it was released; Comparisons drawn between the woman lawyer in *The Accused* and *Damini* in *Damini* are not tenable. The main difference lies in aaa the was an English film called *The Accused*, you know this is not from that film but there are similarities, some have drawn comparisons but they are not tenable because the socio-economic and cultural contexts the two films belong to. Can we have the clip now please or we running out

of time. Okay fine can I show the clip. The movie clips followed. See what he is talking about is right but the way he is talking about is actual contempt of court. But the question arises is to drill it in the audience, because the audience doesn't know what is happening in the court. And it became a very very box office hit. I just wanted to round up my thing because Justice Manohar says there is no time anymore . aaaa real life cases one you have seen *Jolly LLB* the other one was *Shahid*, excellent movie on *Shahid* who use to do pro-bono cases on the Bombay bomb blast , where innocent people were targeted and put into jail, so he aaa won seventeen acquittals but ultimately, he was murdered by right wing people . how ethical it is aaa, I just heard that Meghna Gulzar is making a film on the Arushi Talwar case, now ethical it is even if it is fiction and it is giving the verdicts of the parents because Arushi's aunt has given her all the papers and documents and everything bayayiye film. Now I know we are a free country we have the freedom of expression but the question is at the back of our mind is it ethical to put such a sensitive case where parents are accused, this is the question. There is another film which I wanted to mention *Court*, it is a multi language film , I don't know how many of you know and Chetanya tamaney , he is only 27 years old. *Court* is the protagonist of the film, the central character that sucks the viewer into a real life portrayal of what goes on inside a courtroom, how and why. *Court* is extremely distanced from the metaphorical meanings that attach itself to any film presenting any 'court' on celluloid. Even more so, the visual images are far removed from what we recall from our traditional cinematic experience of a 'court.' The film repeatedly draws attention to protracted legal proceedings that adversely affect ordinary citizens both mentally and financially. *Court* does not point accusing fingers at corrupt practices that delay judgement or try to raise slogans against wrong judgements and unfair practices. Tamhane lets the film speak for itself and underscores the lacunae in the legal, the police and the judicial systems as they stand today and have stood for decades. *Court* is an extraordinary socio-political statement on how the police, the legal and the judicial systems are structured to work against the best interests of the litigants and others. Thank you very much, thank you for listening to me and thank you for being a good audience and I am really delighted and honored to be here.

Justice Sujata P. Manohar- thank you very much. If I may add to the optimistic note. I don't know if any of you have seen the film called *Baghban* , where a old couple gives all their money to the young sons and then suffers. I believe hundred of people have changed their wills after seeing that film and I think that has done a lot of public service. The other film which is not exactly a film but it aaa a TV serial which was made called *Satyamev Jayate* , which has a tremendous impact and people started rethinking , there customs and their traditions. So films can have a very aa lot of influence on the aa how people think . especially we Indian are very fond of watching films. There is always rush to see new films as early as possible. So if we really have films that depict court in the better way in what we have seen I think it will go a long way in creating a public image of the courts as a place where they can get justice. There was another film that comes to my mind called *O My God*, I don't know whether you have seen it , aaa where it is aaa there is a court scene because the man's shop is destroyed and the insurance company refuses to pay saying it's an act of God, so he decided to sue God . so aaa anyways so these are some of the interesting films about courts which aaa I think people get an image of what the court can do perhaps in the better way courts, if they are court aa courts are

shown in films I am sure it will help . aa I think who would like to comment. Please aaa you should be here.

Professor Upendra Baxi- I can say only one thing. first to thank you very much for the presentation. Aaa the question of ethics it intrigues me because the supreme court of india in dealing with aaa censor board certificates has developed a theory and actor Ajay Daksh has aaaa piece on this, he is a film critique himself and ... says that there is everything that can be wrong is wrong with the theory but I wont go into that. But he says that Article 19 has been read by the supreme court as creating and much before the social action litigation in the 80's much before that, a theory of spectator's rights. The spectators have a right to see and participate in a a film, it is not the producers right, it is not the censor's right but the right of the would be spectator. Now ethical is this notion of that spectator, who do we aaa would be spectators right. Spectator comes chronologically after the film is produced not before. So I wonder whether supreme court has been ethical in reading aa 19 Article 19 A as inclusive of spectator's right. What do you think. As a film critique yourself.

Dr. Shoma A. Chaterjee- aaa recently, there was a judgment on a particular film and aaa somebody has made a petition I don't remember the film right now and the judge said if you want to watch it you watch it if you don't want to watch it don't watch it. I mean the spectator has the right to watch it. For example, today I was going through my facebook page and aaaa I wanted to see this film Katti Batti and then everybody said it is a terrible film, terrible film, terrible film and ones you have to go to watch a film in a multi-plex you have to part with atleast Rs. 1000 so I thanked her and I said thank you so much I am not going to spend that money because it is a terrible film, so the same thing I think the public opinion comes. I mean when the spectator is spending money so the spectator wouldn't know what he is going in for but he now tries to balance. That is my opinion having been in this line for 35 years. In the beginning the tickets were sold at Re. 1.25, so even in those days it was not a very expensive thing but today it's Rs 500 or Rs. 1000. I didn't watch Krish 3 , in principle because eth etickets rate in Calcutta was Rs. 100o , I said I am not going to watch it . so spectators rights are also restricted I mean condition to the fact that he spends money to go or he shouldn't go that's all. It's like a TV remote in your hand. That's my opinion I don't know how far I am right or not.

Participante Judge- Mam why should the film Censor Boards clear films which shows court in a pejorative sense and pass in windows on the working of courts and the working of judges.[Dr. Shoma A. Chaterjee- That's what I just aaaa] and secondly, so far as the spectators rights are concerned, the real spectators of the court proceedings are the litigants and they are the ones who really don't view the films because they know what is shown in the films is totally ironic and illusion. But so far as the pejorative content of the film is concerned which caste repression to the working of the courts the spectators are not the ones in the courtrooms, that is not very welcome mam. [Dr. Shoma A. Chaterjee- not at all welcome, even for Jolly LLB, lawyers took very strong objections, but one group of lawyers said no no it's fine] it has to be some limit to glamorization

Dr. Shoma A. Chaterjee- That's yeah aa no there is a very good book by Shomesh aaa Shomeshvar Bhunik , on censor in india , which is an excellent frame of reference, why this

derogatory things are happening , it totally depends and more over the censor , not all of them see all of the films and now they are all politically influenced members, let me be very open about it and I know it, I was asked to be a censor member two three time I always avoided it because ethically I belong to such a generation where I feel when I am a reviewer how can I be on the censor board. I cant, I shouldn't. then another thing first time my film is refused a censor certificate then second time I go to the review committee , the third time the review committee says no , I can just cross over and go somebody directly to the ministry of information or something like that. So the censor board has no meaning at all .

Dr. Geeta Oberoi- can we discuss it in some other session, aaa we are also meeting in the evening time for dinner and movie may be we can reserve some questions for that because now it is 03:33, so we have a session by google india on how internet and digital technology works. So this will be session for 1 hour so we start. It's 3:33 so we start at 3:45, so from 3:45 to 4:45 after 4:45 you can go to your rooms then reassemble at 6:00, the movie is at 6, 6 to 8 and followed by a dinner at Auditorium. So this is how our programme is. AA before we rise up I want to thank today Hon'ble Justice G. Raghuram, Justice K. Chandru and Dr. Shoma Chaterji . thank you so much they really actually made us thing one, ofcourse about Justice G. Raghuram that aaa how much like suo moto power but aaa this is like a discussion this is left to you as a question that you have to decide that in view of what his paper is that, yeah how much actually you know about aa have a knowledge about things to aaaa actual initiate suo moto actions, then ofcourse we had about aaaa other sessions by aa aon about role of media , ofcourse I will be thanking about those participants tomorrow so I won't say much about them but I am just summing up. This submission that were given by Justice G. Raghuram, Justice K. Chandru it was very nice about aa saying that films also affect judges also, they do creat influence and it is up to you that what refrence you think about. And then ofcourse Thank you Dr. Shoma Chaterji, for showing this favourite clip, *tareek pe tareek* ., it's become a kind of aa something I don't think anyone appreciates over here . so aa with this thank you so much . let's reassemble at 3:45.

Session 9 - How the rules of the courts regarding procedures, diminishes /enhances participation of citizens in the Justice System

Justice Sujata Manohar- well we start this session on participation of the citizens in the judicial system. Whether the procedures of the courts encourage such participation. We are very fortunate to have Professor Madhava Menon with us for this very interesting topic. Please you start

Professor Madhava Menon- I thought I have to follow Mr. Arvind Datar but he asked me to first initiate so that all the doubts and aaa questions that are raised will be responded by him. He is more familiar with the courts rules and procedures a s to whether they are barriers to access t o justice or they are facilitating participation of citizens to accessing justice. This is a very important question that we are discussing about , which compels us to reflect to the processes by which we manage the systems on which we preside. And aa by and large they are

based on certain rules which are either in the procedure courts or the constitution of India or which are made by the respective courts themselves. I am not a real expert to be able to speak on that. But luckily before coming here I came across the first issue of a journal that was published by the Orissa National Law University where a certain academic by name Yogesh Pratap Singh, who is head of the law school and in one of the law schools has written a research paper. He said he had been researching on the Supreme Court Rules and how they are facilitating or inhibiting participation of people in accessing justice at the Apex court level and he has many controversial conclusions on his study of the Supreme Court's rules. Which are his views, so these are his views. I take liberty to have his paper published already published so therefore can be and he is on the firm conclusion that he has categorized the Supreme Court rules into seven categories. And each category he argues that it has been inhibiting access to justice for common people at the apex court level. I would like to quote to you some of his observations and how he supports that arguments. In the opinion of Yogesh Pratap Singh Supreme Court rules readily constraints the right of litigants to access the apex court and this is what he has to say about the Supreme Court rules, how it does that. His first attempt as I said is to read Article 145 which provides some guidance to the Supreme Court as to how it should be organizing its work in order to provide access and to organize complete justice. The Supreme Court rules are categorized into these categories for the purpose of analysis. One, rule relating to court fee which he says barrier to the access and I would say just read out to you how he uses that rules relating to court fee. He says lot of payments are required to be made. Payment of court fees by the parties seems to be an obstacle in access to justice. These rules are not in accordance with the principles of parity in power between the competing parties particularly government on one side and the litigant on the other. A common man in India does not have adequate economic support and only a person who has purchasing power to purchase justice can access justice. And he has quoted few Supreme Court decisions which says that with respect to writ jurisdiction in the apex court there should not be any barrier to preventing ordinary man to accessing supreme court. Administration of justice is the primary duty of the state and the it is not proper for the state to charge fees from suitors in courts. Law Commission also observed similarly and therefore whatever is fixed onto the Supreme Court rules to be able to access it are contrary to the demands of Article 32, Article 14, Article 39A, Article 145 and that's what is his conclusion. The second he is interesting is the rules relating to the cost of litigation in which he against quotes the relevant Supreme Court rules to say what is given in the second schedule of the supreme court. Apex court itself in a case that is Premchand Garg v. Excise Commissioner, struck down one of its rule. In this case the validity of rule 12 Order 35 of Supreme Court rules which however the Supreme Court in writ petitions under Article 32, required the petitioner to furnish security for the cause of the respondent which the court in the moment of its good sense held that, and I quote- "the right to move the Supreme Court under Article 32 was an absolute right and the content of this right could not be circumscribed or impaired on any ground as an order for furnishing security for respondent's cost retard the ... or vindication of the fundamental right under Article 32 and contra therefore contravene this right." That is how he argues apart from the other Rajiv Dhawan's article has been quoted where he is saying that the judiciary in India is the best nationalized industry because according to Rajiv the judiciary generates so much income for the state which is perhaps comparable to what it expends the third is relating to

limitation. I don't want to elaborate on that gain. He has quoted again the aaaa Supreme Court rules to say that the limitation is contrary and the aa he has couple of judgments of the Supreme Court in support of it. Sampadi and Co. v. Union of India, 1992 judgment , wherein filing aaa petition for special leave appeal. Delay occurred because petitioner has to gather so many documents and other things. The delay in filing the petition for especially the appeal condon subject to payment of cost by the court in that case. No man in his good sense can justify the verdict of the supreme court, behavior of the protector resembles as of a predator and it acts in slaughtering justice, very strong language used by aaa. But let me come to the main under procedure which aaa under the Supreme Court rules according to him every petition shall consist of paragraphs numbers consecutively and shall be paper with sized. Size of the paper is given, ordinarily, fairly and legibly written, typed written, video graphed One side of standard , petition used in high courts for transacting petitions with water margin endorsed with the name of court appeal from and full tile of the supreme court, no. of the appeal, matter, etc etc. he points that on analysis of these procedural rules we find that law has become so intrecat and procedure of the court so technical that very rarely a litigant is able to put forth his case before the court without the aid of the advocate and if he enters into the process of the court he I sat God's grace. All these procedure especially in civil acses makes the justice administration so dilatory and that the epigram in hindi it is " jo divani main jata hai wo divani hojata hai" well the Supreme Court acts as a obstacles in access to justice . Where the rule made by the Supreme Court to reserve judgment. He says aaa reserving of judgment practice which is adopted is another violation of access to the court and the courts again aaa few Supreme Court judgments in Inamdar Case- rules relating to enforcement of fundamental rights that's where he finds aaaa a lot of discrepancies on the part of aaa rules of the court where he Rule 10(3)(b), where the petitioner shall formulate propositions of fact and law that are proposed to be advanced at the hearing citing under each of those propositions authorities including text books, stutory provisions, regulations, ordinances, bylaws etc are to be aa here the Supreme Court within the definition of state have been..... Its duty to provide justice by demanding compliance to unnecessary procedural rules. Well it is for you to decide how far, many courts in Kumar v. Delhi Municipal Corporation, where Supreme Court aaaa observed it has no time to decide cases pending before it for the last 10-15 years . the time saved by this court by not entertaining the cases which may be filed before the high courts can be utilized to dispose off whole matters in which the parties are applying for relief, so the petitioner has been asked by the Supreme Court to go to the high court. Another barrier which he finds in the Supreme Court procedure. And aa finally on aaa the constitution of aaaa benches in the Supreme Court , he quotes Article145 (3), where he says that in important matters of interpretation affecting constitutional validity has to be decided by a bench of five judges and he condemns the practice of aaa this two judge bench where, he has given a long list of judgments herein the last 20 years where the 2 judges have given 2 judgments. So he says how unproductive is it when you have 2 judge bench, where you have 2 judgments and the matter goes back to aaa 3 or 4 judge bench, 5 judge bench or whatever. So the procedure that has been adopted in constituting benches is again another barrier which according to Yogesh Pratap Singh and he says its violation of the constitution, which says that there should be 5 judges or atleast 3. Article 136 which does not include all substantial question of law , justice and in the opinion of the researcher the Supreme Court being the final court hears or must hear cases

which involve substantial question of law with a minimum number of judges required to decide shall be not and separating descending notes you know these are minor matters but aaa here is Yogesh Pratap Singh , who finds that all the 7 category of the Supreme Court rules acts as barriers for accessing justice in the supreme court. Now I have 2 more points to submit. One is coming from an important committee which has studied aa civil justice system in a country where a former chief justice of India was there Justice Ahmadi along with a senior advocate a lawyer a former solicitor general Mr. A. M. Singhvi along with few American experts who have examined the procedures have found that aaa the report questions the viability of the adversarial system and the way it operates in the Indian courts. Point that I made on the first day. According to them thgis aaa the way it is practiced in India is excessive judicial passivity and near absolute control of the proceedings by parties and not judges. In unequal positions in the adversarial proceedings leads to abuse and delay with impunity which is the finding of the report in which Justice Ahmadi and aaa Dr. A.M.Singhvi were also parties and aaa the study therefore says that there are backlogs and long pendency is because of the systemic defects which are the creation of judges and lawyers. The study identifies therefore, three main procedural factors contributing to aaa inhabiting access. Free access for civil claimants in the courts with incentives for frivolous party control litigation processes, including initiations without a call, extension without any excuse and motions without any merit. Secondly, discontinuity, repetition and fragmentation of the legal process without early or accountable judicial interventions such as court administration in peace management mechanisms and thirdly, limited opportunity or incentive for consensual settlements, including limited avenues for ADRs. This is aaa findings of aaaa high powered committee which has come into to look at the ways in which civil justice system is operated at all levels of the justice system. These systemic defects led to functional distortions of the adversarial procedure with its emphasis on formal procedural justice and have been a loose situation or outcomes . the study therefore concluded that the adversarial model is poorly designed to meet the needs of a rural population with widespread poverty, illiteracy and unfamiliarity with formal legal procedures. Well I don't want to elaborate but if you were to read that report which is now a published document, not published here probably. I got it from the New York aaaa law review. Serious charges on those who preside over the justice system with sometimes a total disregard of aa procedures. So the practice of judicial floatation, now this is being aa this committee has found why do you rotate judges every three years, every four years where they get aa some familiarity with that jurisdiction they are being displaced, this is of the trial court . the practice of judicial rotation which force judges from one court to another every three to five years is said to be the reason for no judicial incentive to be accountable for case load management. This reality dampens the initiative and possibly leave judges to feel relieved when matters are extended, stayed or adjourned. Well again aaa how the procedural rules and practices obtaining in the justice system are inhabiting access and prevent the participation of litigants for quick justice. I conclude with the last which is perhaps a hopeful sign, just aa few days ago in a journal aa published from Kochi I got the aaa the latest rules that have been aa adopted by the Kerala High Court for civil courts case flow management rules 2015. As I read that I suppose that if these were to be enforced rigorously by the high court things will change. It is in tune with of course rules which are there in the civil procedure code. I highlight 2 or 3 points and conclude. Firstly, these rules categorized all suits, appeals and other proceedings of civil nature into

through pretext, tackle 1, track 2, track 3 and you must be familiar with that as track one matters to matters relating to maintenance, guardianship of children, adoption, visitation rights, probate and succession certificates, as rent control matters, civil miscellaneous, suits for money, mental health act as or all summary suits. Now these are the 12 items in track one. In track two, you find matters relating to matrimonial disputes, as not falling under track one, suits for eviction, injunction, motor vehicles act, land acquisition, proceedings under arbitration conciliation, fatal accidents act, suits relating to intellectual property rights, this is track two. And track three suits for partition, relief, specific performance, possession, Kerala buildings as rent control suits of damages, easement rights, trusts, proceedings under insolvencies, suits for accounts, matters relating to execution. These are track three. So all suits, appeals and other proceedings of civil nature that are taken up in a civil courts are categorized in track 1, track 2 and track 3 and this is being said that the court officer shall categorize the suits, appeals and other proceeding in the court concerned into three tracks at the time when they are instituted. So having done that now as how it will be dealt with. The presiding officer shall take every endeavour to dispose off the cases within the time frame as specified hereafter under. One, track one- six months from the date of institution of proceedings having assessed how much time these type of suits will take ordinarily, it has fixed that six months for track one suits. Track two 12 months from the date of institution of the proceedings and Track three 24 months from the date of institution of the proceedings. Provided if any legislation prescribes lesser time for disposal then that as that system will follow and then it has another provision regarding the cost preparation and calling of cases. The various stages of suits, appeal or proceedings before the court shall be as follows- return of summons or notices, filing of objections, hearing of interlocutory, filing of written statement, objection, consideration of ADR, framing issues in cases, pre-trial, evidence, examination, cross examination etc. argument and judgment. Now these are the as it is said that the presiding officer of a court shall cause preparation of the as two cause lists of the cases of calling work everyday, the case at the stage of hearing of interlocutory obligation, consideration of ADR etc etc at pre-trial stage, evidence all this will be cause list one. Execution matters shall also be cause list one. The case at this stage the stage of notices and summons. Non-appearance of parties, filing of written statement, counter statement of objection shall be listed in cause list 2 and wherever the advocate or the party fails to attempt and taken steps to case posted in cause list 2 and does not seek extension of time the case shall be included in cause list 1 and posted for necessary orders within three days. Well I don't want to further elaborate having studied this I think it's a very down to earth intelligent according to law management of case as case flow management by the trial court if they were really to be enforced. And that would be providing perhaps what the law permits, maximum access to courts and will not inhibit access to courts. Thank you.

Justice Sujata Manohar- thank you very much. Shall we have discussion after you have heard all the speakers. I think that might be better. As I will ask Mr. as that will be as please sir as Mr. Arvind Datar to give his views. From as hopefully from the point of view of the lawyers who appear before the court. As he doesn't need any introduction. He is as a very eminent senior advocate of Madras High Court and also he is known throughout the country for his as invaluable books on the constitution of India. He has also written about Nani Palkiwala at the court room genius and he serves on the editorial board of the Madras Law Journal. I have had

the pleasure of hearing his arguments and aa I can endorse the comment that he is one of the finest lawyer in the country.

Mr. Arvind Datar- aaa good morning all of you. I choose to stand and speak because as a lawyer I am most comfortable in standing up and arguing and the audience are all judges. Aaaa I am so glad to be back to the Judicial Academy, I have come after a long time. I really enjoy this campus and I am glad you are having in the morning yoga classes as well. Aaa I am particularly happy that aaa Justice Sujata Manohar is presiding over the aaa session. It is sort of emotional because my first major case in the Supreme Court, my first major case in the Supreme Court was argued before Justice Manohar and D.P. Wadhva and by the grace of God we succeeded and aaaa that really increased my practice substantially. I kept coming again and again. Thank you madam for the kind words. Also thank Dr. Menon aaa I think when he was the in charge of the National Law School he had a wonderful practice of inviting practicing lawyers to give lectures. I always believe that law and medicine is taught much better by practicing lawyers. I was fortunate to be in the last batch of Madras where most of the lecturers were part time lawyers and we had wonderful lawyers teaching us property, Hindu law and so on which I remember. Subsequently, they amended the rules and then only M.Phil. law full time faculty could teach. So I have been requesting his good offices to say that at least invite senior lawyers to give lectures and he had a good system in the Christmas holidays, the National Law School closes in January so the Christmas holidays I would go and spend one week 9 to 1, taking indirect taxes and taxes and in the afternoon me and my family would have a holiday. I wish they have this system..... now coming to this problem of aaa the topic for our session how the rules of the court regarding procedures diminishes enhances participation. Now I am told that I when you talks of aa the topic talks of how it diminishes or enhances participation of citizens in the justice system. Perhaps what it means is that if law is a service then this theory that customer is king an client is king ultimately we are all here for the client and how we make his experience coming to the court as less painful as possible. I think when you go to the doctor or the lawyer you are not in a happy state and you want your problems to be mitigated. I would recommend that if you get the time at page 297 of this book there is a wonderful article by David Rotten and I was pleasantly surprised to read it. They made a major survey in the US and they found enormous dissatisfaction of the citizens in the justice delivery system and particularly to the shocking that among the minority that is the African American population, the Hispanic population only 18% were satisfied and 82% were highly dissatisfied with the way the judicial system work in the united states. Fast forward to 1992 number of steps were taken as the result of this survey. And dissatisfaction from 18% came aaa only came down and it became much less and around 40-55% of the people were satisfied with the system. So from 18% to people satisfied it came to % .now my point is this we all know the problem, everyone keeps complaining of delay but there is no point in repeating what is the problem without seeing what is the solution. And now as far as the problem is concerned I since it is citizens, I spoke to about half a dozen people from different walks and who had been to court what were their experience, and I also spoke to some lawyers about the methods in which we can expedite the disposal of cases how to improve the and enhance the experience of the citizens in the justice delivery system. One thing some youngsters told me from the.... They said that here is a massive change in all the sectors whether it is commerce, its travel, its

tourism, it's anything else only the judiciary has not kept pace with the change, that one such submission. Let us be honest and get And saying that you are still in the same mode. And then I remember the Lecture by Michael Kurbey and he said that if a person was to sit in a time machine and then from 1875 he had to come back to London the only place where he will be at home is in the courts of London. Still people are wearing wigs and arguing. Everywhere else the things have changed but the judiciary has continued. Aa that was aaa very nice article by Michael Kurbey. Now the other thing which people told me about is this complete opacity . we don't know what is the reason for the delay, we come to court and suddenly we know the case and we return. So there seems to be general dissatisfaction . now what is the solution which we can offer. If you see my aaa, I gave this I circulated this article if you kindly, turn to page , this was written when the Bombay high court celebrated 150 years. Justice Prabha Sridevan and myself were invited to contribute to the sentinel volume and I wrote an article on ten steps to improve the justice delivery system in my own humble way. But what is stating are the statistics which are at page 5 and the tables that are given at page 6 and of you come to page 7 for a moment you'll find that in the lower courts the arrears is 27 million to 75, there is 2.8 crores as on December 2009. I have not been able to get the statistics, the Supreme Court website contains some statistics beyond that date and you find in the high courts in the next column is 4 million that is 40 lakhs cases pending in the high court . Now what is significant in june 2004 Chief Justice Lahoti mentioned that 25 million cases are pending and aaaa in high court 3 million cases are pending. In five years there was a substantial jump of almost a 10% jump in the number of arrears. Now you find aaa when I analysis this data for myself and I found see the next paragraph out of the 27 million cases, 4 states accounts 50% of the arrears that Uttar Pradesh, Maharashtra, West Bengal and Gujarat accounts for 50% arrears in the lower courts and in the high courts you have the 4 high courts of Allahabad, Bombay, Madras and Calcutta having more than 50% of the arrears. And then I realize the solution is state specific, we cant have a one solutions for these high court in the country. Each state will have its focs areas on which they can address the situation. Now aaaa yes, in 99 and 2002 there were some agitation on laws amended, then the matter ultimately went to the Supreme Court and we have the judgment of Selam Bar Association case were they discussed all these amendments. And that time in the Madras bar association I sit next to a very very old trial lawyer called Narsimha Iyer, who knew CPC like the back of his hand and he used to tell me that you must keep a pocket CPC in your court pocket and whenever you get time read the CPC. Ofcourse I didn't do that better things to read but then he was that focus on the procedures and thistheory which is quote by other people, the CPC per say is very well drafted, what is the difficulty, we don't implement those particular provisions, that's what his complaint was and his theory I don't know how many of you will agree with me. His theory was if you implement CPC according to its text a trial should not take place for more than 2 or 2 and half years at the most and he was mentioning to me and that is one of the reason I came I remembered my discussion with him and he said that there are so many procedures which nobody implements and I was just suggesting to all high court judges if we can have a manual where we can shortlist what are the provisions in CPC which will cut short the time in a trial. I am focusing on the trial court because I think we should focus on the trial courts we spend too much time in knowing what is happening in the Supreme Court or high court, that they can take care of themselves but what is happening in the trial court because 28 aaa 2.8 crores cases are pending and only

10% of them finally goes up. So we need to focus on the 90% people who have aaaa the poor people who need to have access to justice. So one suggestion is for example, he told me Order VIII Rule 10, if you see Order VIII Rule 10 of the CPC for a minute just see, Order VIII Rule 10 says that if a written statement is not filed on that particular day , then the court shall pronounce judgment against him. Now this I am told by my friends is virtually ever implemented and please note the importance of this significance of this, if the court pronounces judgment under Order VIII Rule 10, under 43 Order 43 Rule 1 b, there is no appeal. The appeal provision under Order 43 Rule 1b has been deleted. So if you don't file the written statements, put the man ex-parte, if it happened 3-4 time there'll be a fear of people filing written statements in time , one suggestion. Now kindly take Order the next, aa okay sorry Order VIII Rule 10. Yes take the next order, order 10 yes, Order X Rule 1. Narsimha Iyer told me take Order X Rule 1, if you don't mind kindly see for a minute and I will pass on to the other side, I will not trouble yourself. It's a very important order which he says nobody implemented. At the first hearing of the suit the court shall ascertain either which party.... Whether he admits it delegation of facts , whether he admits or deny such allegations of fact as aa made in the plaint or written statement or are not as a expressly or admitted or denied by the party against whom they are made, court shall record its admission and now how do you implement it. His suggestion was you take Madras, maximum suits are say for example, a suit not to evict him as a tenant. Its one common case in Madras high court , in the madras court where not to evict me as a tenant . according to Iyer the simple question is when the first hearing comes up or the written statement is filed all you have to do is to ask him are you a tenant, do you admit his tenancy. The answer is yes, the suit has to be closed, the only method to evict him is to go to the Rent Control Board. So these are examples which I have culled out but I discuss with 4-5 trial lawyers before coming here. These are the rules which can be implemented and since all of you are high court judges and you have supervisory control over these subordinate courts. Kindly, consider the prospect of having a manual. You shortlist various provisions of CPC, which can be used to cut short the trail. Aa I am also told that some Supreme Court judgments have created problem in the execution of a degree particularly in Order 21 Rule 9, 27 but this is not the time I'll I don't have time but the point taken is in the Cr.P.C also there are many provisions that will cut short the trail, time taken for the trial which can be implemented by directions from the high court. Now as far as the other issues are concerned now citizens are not coming to the civil courts they are coming to the other court like, consumer courts, the tribunals and so on and so forth. What is the complaint of those people which are I will put forth to you and what can be sorted out. Unfortunately, like in Madras for example, despite creating a consumer court to decide dispose off disputes quickly, the State Commission in Madras has arrears since 2004 and I ask people and lawyers what is your complaint about the system. The simple thing like the rules says the court shall sit from 10:30 to 04:30, I am told that it never sits before 12 O Clock or 01 O clock, though there are huge amount of arrears pending unfortunately high court has no supervisory jurisdiction it's control by the state government so nothing the high court can do. Then for example in the case of Tribunal, you take the company law board they are 9members throughout , I practiced there from the beginning of 1991, throughout it's tenure we never had more than 4 members and then members are not here and so n and so. So, one reason of the which diminishes the faith of the citizens in the system is you create an alternative forum and don't manage with expert people

and you don't give it infrastructure suppose. So that's another area apart from the courts. Now you go to the system of tribunals there is a huge dissatisfaction by the citizens at the lack of manning and the lack of infrastructure and so on and so forth and if you get the time you can just go to the Law Commission or go google I give evidence along with Justice A.P.Shah on tribunal. The 246th report of the Rajya Sabha Committee on tribunal, they documented. Its shocking as how much how little infrastructure is given by the government to the tribunal. You create the tribunal and then you don't give it the support at all and then it didn't function properly that's the other thing. Now I have one pet subject of mine which I wanted to discuss with you since you are high court judges. Yeah this may sound radical but I have mentioned this at page 13 of my article here but I will tell you orally what it is since I have only another 5-6 minutes to pardon me no it will conclude by ten and participation also so yeah. I am just putting forth a radical point I wanted your all feedback. I'll tell you what was my thought process and you just see if it sounds interesting a constant complaint that India has 11.6 judges per million, the UN norm is 100 and in 2002 in the All India Judges case Supreme Court said you should have at least 50 judges per million. I am told it has gone to 13.4 or something like that but it is very below the 50 judge a million. Now there is no point complaining what is important is in this situation with these limitations how do we do our best. It's very easy to keep on complaining and say only 0.6% of the GDP is spent on judiciary and so on. You can keep complaining till the cow comes home but within the system what can we do to improve ourselves. I said that we can't have 30 judges per million but can we have a system where we triple the productivity of a judge. A judge lets say can dispose off a 100 cases a month, if he can with the same equipment, infrastructure dispose 300 cases, how do we go about it. And I was fascinated because I have been fascinated by books on management so I was reading books on Kaizen, on total productivity management, Toyota system. Toyota was making one car for every 6 people were required in making one car in the beginning, subsequently, per employee they are making 6 cars. Now, I spoke to some friends who are implementing Kaizen. There was a Japanese gentleman called Yamabuchi who used to come to India and help people double the productivity and I asked the person if you can improve productivity, the manufacturing sector, can you do it for the service sector, and he said why not you can do it definitely. So you must walk your talks. So I enroll myself for Kaizen, had a trainer called narsimha, I passed 2 exams I failed 3. I am still going to write some more exams and believe me what happen in the first sitting itself in my small office of 500 odd Sq. ft we eliminated 380 kilos of unnecessary paper. Now the principle of Kaizen is this, you will make massive improvement by making incremental changes everyday, don't try to go for mega changes like having lok adalat, consumer courts and so on or what is called the latest what I sit called no no the new courts no no no on courts no no no in among the high court they want to have no no commercial courts bill because I give evidence before a Dr In Rajya Sabha on commercial courts. so what Kaizen says is within the system keep on making small changes and if you improve 1% per day, the improvement in one year on a compound basis because 1% becomes 1.01 and it becomes $1 + x$ to the power 365 by compounding. You will improve 480 % in one year. So I said if you can improve, implement Kaizen how will you do it and what they told me was, the essential principle of Kaizen one is to improve make incremental changes and the fundamental part of Kaizen is this eliminate waste. Muda is a Japanese concept of waste, you have to eliminate waste in our daily life, in our working life

eliminate waste. Now if you a malus a judge's life or a lawyer's life our only plant and machinery is time, our only asset is time. What a judge does from 10:30 to 4:30 decides the outcome of the case his outcome, the more he delivers the better it is for the system, more disposal of cases and fast and so on. So, between 10:30 to 4:30 how do we maximize the use of time. I made a proposal to Justice A.P.Shah, he approved it they saw what we did was, I am just thinking that of some of you are interesting that I don't want to start it all over again thanks to this seminar. I contacted CII, the industry, they got a productivity centre where these Japanese people come to from time to time and they agreed to depute four trainers for courts and we said we'll have 2 trial courts and civil courts and 2 criminal court tested on a pilot basis for 6 to 8 months, see how the output changes because this is a major change by taking simple steps, here he agree but unfortunately, he went off to Delhi high court and then I also did not persuade it as sincerely as I should have but we did a time and motion study in 2 courts in Madras. We just had a person coming and sitting and recording the utilization of time from 10:30 to 5 O Clock in the 6th and the 9th city civil courts in Chennai. And to our surprise we found that logging time for a week only 2 hours, 1 hr 50 minutes to 2 hours 10 minutes are spend on actual trial work. A lot of time is wasted on calling cases, IAs and pass overs and so on and so forth. So, this we found that if the same judge instead of 2 hours can spend 4 hours on disposal of trials, the automatically the case productivity doubles. Now how do you do that one method could be all the calling work could be outsourced to some retired judge like, we got the master for recording evidence that could be send out. Sop from 10:30 he starts doing the trial work. I don't know the solution but I think we must make a beginning because the rule is that if we continue to do what we do we continue to not know where we are. And no harm in trying, it may fail but it may succeed and I started searching the net and coincidentally that time I met Justice Venkatachaliah, I have gone to Bangalore for something and I called on him and I discussed this point and he said that it's a good idea and he told me that in Birmingham they applied 6 sigma to trial courts with great success. And in my note yeah, I have seen these are the 5 principles of lean just a minute, yeah these are the 5 principles of Kaizen, you can go to the web the internet there are lots of interesting material. Please see the last line of page 4 www.lean.ohio.gov. if you get time just see that website. www the state of ohio in the Us is implementing the kaizen principle. And one project was taken by the Attorney General's office. www.lean it's called lean management that is you eliminate all waste eliminate MODA. You'll be surprised that the Attorney General's office in one area consumer complaints, what was taking 48 days to dispose off is now taking 2 days, how do they do it. The basic thing of Kaizen's have studied you know is informal Its very fascinating if you are drafting an opinion they split exactly what it should be doing, what steps should be standardized, what steps can be eliminated. So in a court case in judge's life, trial court life what steps can be standardized what steps can be eliminated and in the Ohio's Attorney General's office they found that there were 171 from the filing of a complaint to its disposal and they could eliminate almost 104 out of them so only 36 steps or 37 steps were required, that brought it down to 2. Now they are applying it to courts in Ohio also. So I was just suggesting why not try it here. Take 2 courts as sample, I will go back and tell Justice Kaul about it and if it worked out we'll try it and perhaps this successes it can be replicated. Talking of Justice Kaul I can just mention one thing, one of the important Which are not implemented is at page 3, the system of ... Order 35 section 35 a and 35 B see one reason why people keep on litigating and very often the party

who is , has all the In his favour is frustrated because the other side keep on talking adjournments filing applications after applications and then no costs are imposed. Atleast from my high court from Madras high court I can tell you in the first court atleast they have started a system where the counter is not filed Rs.5000 cost and that has completely brought down so there is virtually no request for an adjournment. All the counters are filed by a simple thing of imposing Rs. 5000 across the board, whether you are petitioner or respondent. Secondly, if you don't let file the adjournment letter one day in advance, no adjournment, the case goes on and the case is dispose off. So it has brought enormous amount of discipline. So with this I would suggest that aaa those who are interested can always I am trying to follow up the system, let us try something new and if the high courts rae aaa can give the encouragements then we can start with 2 courts trail courts and 2 civil court sand 2 criminal courts . see where all waste exist in our system, eliminate the waste , increase the disposal and we'll have a wonderful system where 11 judges per million can give the output of say 50 judges per million. Thank you very much.

Justice Sujata Manohar- thankyou very much Mr. Datar. Would you like to comment some

Participant Judge- Mam, can I say something mam

Professor Baxi- I want to congratulate both the speakers particularly Madhava Menon and Datar. My friends aaa I would like say that improved management techniques are the order aaa necessity of the judge and no judicial education. I would like to congratulate the director and Ms. Paiker for organizing this discussion on rules because it's very no sex appeal but it is very important day to day management of court. I would refer to Ms. Paiker's volume before you and caution a little bit about the of arrears whether it is Mr. Lahoti or by anybody else aaa Nick Robinson's article in that booklet say aa that there are 3 problems aa kindly, see Nick Robinson's article on Supreme Court when they proceed the supreme court's arrears statistics , there lordships suffered from three this thing aaa three defects which I will not elaborate but all these three defects in them that statistics are caused by double counting. Matters which are already counted are counted twice or thrice and therefore this delay is the delay is not properly reflected and therefore we must be very careful about the judiciary produced the of delays. They are not reliable and they are wasteful because they are not reliable they give you a sense of impending crisis not do they delay but the way in which delay is counted according to Robinson is extra ordinary So the management technique should first of all come to aggregate statistics of court performance and it is only when we underline aa we examine the underline failures of the system. In producing the statistics of arrears of delay or statistics of delay then we can go back to the proposals made by Mr. Datar. The second thing I want to say is aaa Justice Kurian Joseph aaa pointed out in the very tragic Yaqub case aaaa he did not go as far as I have done but he did go by saying that in the curative petition the Chief Justice had constituted a benches in violation of the supreme court's order and rules and therefore, the two judge bench he broke the two judge bench by dissenting and he described the Chief Justice of India's constitution of bench as improper, void and unconstitutional and I am not convinced by Justice Deepak Mishra and his brother aaa opinion judges in the three judge bench aaa who simply crossed over the fact , the Chief justice has no business to violate the supreme court's own rules and the rules were framed in after their own decision in regarding Curative petition. The judiciary itself invented it. Therefore, it is the problem here is of the judges in fact Madhava

Menon is quite right in pointing out that judges don't follow their own rules, the rules they have made themselves by the legislature. Why is this the case.

Justice Sujata Manohar- Thank you

Participant Judge- Yes may I say something mam

Justice Sujata Manohar- after him.

Participant Judge- aaa sir Menon and Mr. Datar thank you very much for your insight and aaaa I come from Guwahati high court and aa I have mentioned it on the earlier occasion this time management and this waste of time in the courts. In Guwahati high court, since you are lawyer that's why I am putting it again aaa we have in lets say about in two hand a half months introduced the system of recording of evidence by advocate commissioner. Now in special circumstances evidence is recorded by advocate commissioner, informed experts but here we are trying to do it across the board and aa it's in thing and we are seeing some development. But what I am trying to pose to you is that here is a serious resistance from the bar members. Infact aaa they have raised slogans, flag cards against the Chief Justice and how far they should be affective will get to know in maybe another 2-3 months time. But to tell you that a number of civil cases we are talking about trial courts. Number of civil cases the evidence part has been completed through this process and in fact the courts are unable to give dates for arguments because already the previous backlog is there. Sowe are seeing some positive developments but then how do you get across to the lawyers that you must try it out. There is very serious resistance I can tell you all over in all the districts of Assam. So I just thought to put is across to you.

Justice Sujata Manohar- if I can just comment on that. In the Bombay high court they have tried to recording evidence by the commission but could not last for 2 or 3 years and it has been a disaster. First of all the commissioner had not right to decide on objections in the cross examination. So the cross examination go totally bizarre, there is no effective cross examination when the total bulk of evidences much longer than it should have been because the commissioner cannot control it and when it comes to the court, the court tends forgets to rule on objections and if they even do rule what happens to the rest of the cross examination. So it Is not at all effective . and there are many judges who have gone back to hearing evidence in court, it makes the matter much shorter and not longer. Aaa anyway one aaa

Mr. Arvind Datar- Can I supplement Yeah one more thing on this examination by aaa on principle I am opposed to it because for a trial you cant have a problem in trial evidence before the aaa evidence to witnesses is extremely critical. So no just one minute.

Participant Judge- Now evidence in chef has come in so therefore demeanor part of the cross is not that the judge who has recorded the evidence [Mr. Arvind Datar -that's true immediate portfolio] so therefore demeanor I don't think is such a vital factor. Just to

Mr. Arvind Datar - The other thing which I want to suggest was that now if you can decide writ petitions etc with 10 crores etc. with affidavits and types of documents. I am also wondering whether it is time to see some amount I s5 lakhs and 10 lakhs. What I sthe way

where we can really think of marking and of objection and see one. I mean I am just thinking for a simple case of a mortgage suit or a pro note suit. If the pronote is there then what's the purpose in calling the witness and he come in the morning and wait in the afternoon. So we need to rethink whether we should require this entire system of a pro at least for small for 5 lakh claim, 10 lakh claim. Eliminate the whole thing we can go by means of documents and so on if they and another thing which I am told that we don't use admissions and denials very often when I was a junior, there used to be the agreed bundle and the non-agreed bundle that's eliminated. And one more thing I forgot to tell you on Cr. P.C., which my senior who was a leading criminal lawyer he did the Bombay blast case. I remember the junior from 1980 to 1985 a criminal session trial used to go on a day to day basis he would go to road, he'll go to asylum. Our judges will recollect, in those days Monday to Friday non-stop the trial would take place, Saturday arguments and you came back. Now what happens is you ... the investigating officer investigated the two questions today, again he comes after one week, also high court judges should check can make sure that trial at least sessions trial goes on a day to day basis.

Participant Judge- Can I say something. one suggestion just one suggestion. The Japanese kaizan formula if implemented in India I think I suggest it should be named as the Datar System.

Participant Judge- Mam with due reference to the very enlightments which have been dawned upon us by Professor Menon and Mr. Datar. The problem of the cumbersome nature of the procedure which is envisaged in the CPC and its concurring effect on the delay in the progress of suits in trial. In trial of a suit the pro before understanding that one has to have the wisdom of having practiced or having being a judicial officer in the district judiciary they.... The under currents of the CPC or the CrPC and they can be engaged only when one has either practiced in the trial court or has been a presiding judge either an additional district judge or a district judge. I had the very great fortune of working with the district judiciary so I have a very practical and pragmatic approach in the provisions of CPC as well as the CrPC. The interest of litigants of infact of hardened litigants is entrenched either in prolonging litigation or in curtailing litigation. beneficiaries of prolongation of litigation would always want to Certain procedures in the Cr or CPC or the CrPC because he is the beneficiary. Whereas the person who is the victim of that cumbersome nature of procedure and its detailing procrastinating the Trial or suit of the criminal case would be at the receiving end. Therefore, it is the experienced skill of the judge how to handle and perceive whether the adoption of any of the procedure which is contemplated either in the CPC or the CrPC by a very various lawyer having long year soft experience engaging the impact of the provisions used to be for stalled or have to be continued to be giving a pro it's a pro logic giving it's logical input. Normally in appellate courts what happen is that either the provisions of amendment of suits Order 6 Rule 17 is resorted to and that too frivolously. Lawyers know that the application would not lie. He was well aware of the fact even at the time of the institution of the suit before the trial court that all those facts which were required be now introduced at the stage of appellate court could have introduced then. This is a highly misused provision of law and there are certain ruling of the Hon'ble Apex Court which do facilitate appellate courts to allow amendments to pleadings even at the appellate court from the anchored of the principle enshrined there in that, where

there are clarifactory nature they are Principle to be incorporated. The greater liberality to corporation of amendments in the written statement because the principles for the incorporation to amendments in written statements is far more liberal so far as incorporation of amendment to the plaint. Secondly, another provision to the CPC which is grossly abused which is Order 41 Rule 7. Besides that the provisions of Order 1 Rule 10, addition deletion of parties. No well that the particular party to the suit, plaintiff being the dominos latus or a defendant in the suits for partition where court have the right to claim partition in a partition suit located in an urban city or other defendants or other than the ones who have impleaded. The seed to resort to the provisions merely for the sake of prolongation of the procrastination of the trial suit . then even at the stage of the execution of the degree the provisions of Order 21 Rule 97 onwards they play havoc with the progress and the expeditious trial of a suit [Mr. Arvind Datar- Have you read the Rama Swamy judgment which created the aaaa] yes so far as sir the provisions of the striking of defense is concerned may not be very practical so far as the mufassil court is concern most of the litigants in mufassil court are poorer , normally a great communication gap is there between lawyer and litigants, lawyers did not file the written statement till he did not get the written statements charges therefore the blaming the litigants for the intelligence or negligence to putting in written statement and baring his defense, rather sequel gross injustice and denial of excess of justice to the poor litigants. So far as session trail is concerned mam, delayed normally does not occurs in the victim, victim always want he should be tried immediately, the delayed occurs from public prosecution or serving agency, they fail to serve the summon to even the prosecutor, even upon the official witness and so far as the professor Menon is concerned refer to certain provision..aaaa..Law which is active in embargo thought excess to justice, but so far the indigence of person is concern lack of capacity to bear the court fee before to institute the petition to large extend to deterrent to overcome by the fact that. Aaaaa Provision for levying the court fee or exemption state funding under state legal funding act, district legal service act, and even the NALSA. And the provision in the c.p.c permitting the indigent person sue to the levy of the court, so there is so many provision to mitigate the effect of any of the person poverty,poverty ridden and his there capacity to bear the court fee and instituted the claim before any court, so far claim under MACT are concern court fee amount is fixed and very very normal and its bearable by anybody.

Mr Arvind Datar -What are the procedure and rules available in laws unless there is cooperation from the biggest community the court cannot be effety implements' the law, for example I tell you order 10 to ascertain that whether the allegation is whether admitting or denying then order 89 specifically inserted and says before entering to the trail..yes.. the court and presiding officer must ascertain that are going to settle the matter, through meditation, cancellation or lok adalat..Whatever may be... but in simple suit or money suit or suit comes for the first time..judge or the defendant see that this money suit whether they are going to admit the decree and settle the matter immediately the difference lawyer provided and stated that no.no.no.. we will not get justice in the hands of this court, because this court insisting to settle this matter I think to lining forward to the plaintiff and immediately wrote a letter to the authority to transfer this matter to other court, this are the practical difficulty. Thank you.

Participant Judge - Regard to money suit not settled to quick time was the money lender started charging unreasonable rate of interest at the time of landing, so by delaying the process normally the court will not grant more than 6% or 9% at best, so justice would be to your party who is default in payment by delaying the process, so rate of interest will come down, if only the plaintiff agree only the reasonable rate of interest as per settlement, perhaps most of those cases. One of those areas we need to focus wherever the interest rate is 18% to 24% they simply write in his plaint 2% per month, in fact works out 24% if only judges could put it cross saying that if the interest can be cut perhaps the principle amount whether the principle amount is reasonable rate of interest could be shorted in quick time, this one area lawyers have to focus a great deal.

So far service of summon ... I am sorry..

Mr Arvind Datar- With regard to filing various petition... which is causing so much delay and also court has attributed, .., courts are responsible for delaying the matter, in the process what are the step should be taken to educate the lawyers and the clients now litigant is the judge of his own case, he knows the matter of money suit based on promissory note, he knows well that he attributed that and inspite that he file case, when the case is file not only denied on several occasion he goes on filing a petitioner under evidence act 73, requesting court to proceed ex-party and whenever the application is dismiss by the court, even go on filing under c.p.c, so why the litigant must educate on his own issue. Secondly lawyer is also judge of his own suit, when he knows well that and clear that you have no case, in spite he file it, in spite of dismiss his petition, what is the role in this process having regard subject to this topic of the client and lawyer, So therefore Third aspect is now courts are used to creational the problem rather than solving problem. The courts are used by the client to create the problem rather solving the problem in this area also these two section one is client and another is lawyer must be educated in my view, there are several provision under c.p.c that any petition at any stage can file no discretions is given and the court say that the petition or justice should be according with law, what is according to the law is only opportunity is to be given only hearing the case, though the court has discretion to dismiss the case at the time of admission stage, but there is no point , in spite of that there are various judgments that application has to be filed at any stage taking the advantage of this lawyer chose this instrument to file the number of petition that is also causing not only defending his case but also the delaying the matter I request you to...

Participant Judge- Other side though the procedure are so simplified after the 92 Amendment it can be either through electronic mail, e-mail, or fax, courier but you should be notified by the respective courts, high courts or the district courts are concern to my knowledge despite the amendment having 2002 till today none of the courier services have been notified and that causes lot of delay, deliberately delay the service by the party or taking care off. Secondly the examination of the advocate commissioner even day before yesterday I did mention that we have in high court of madras evidence recorded by the master who are the retired judges, but they did not get the full fledge power in case the defendant did not turn up of his evidence, but he has not power to set him ex-party it has to came back to the court, as Mr. Datar pointed out that in case of any documents which has an objection to receive as an document there also the master has no power to overrule any of this objections , so these are the issues which has to be

address and are going to advocate commissioner or retired judges who can take care of it for the purpose of time management and for the purpose of time management we have to go by the civil procedure as Mr. Datar say that your guru has stated that this is more self contain and complete procedure which when strictly followed which would minimize the time taken. But off course the judiciary has longer rope when the person did not the file the written statement on time and come up with the application of condo nation of delay and we have also called something undefended board in madras high court so far as orchard rule are concern still we have a longer road to Condon a delay and the person come up with relay petition along with the written statement are we not consider or should we not consider so these have to be taken care off.

Mr.Datar - I just respond to you. I think your are absolutely right , to be very honest in the cause of delay 80% blame lie in the bar there is no doubt about it we have all are lawyer earlier we substantial responsible for delay I think we are focus on solution not in aaaa.. Delay problem in terms of what you mention about the lawyer citric to delay is so on about the imposition of cost why they keep on filing application. My view is that having practice in small court, in city civil court, high court..aaaa.. a major thing is that there is no system of cost you can file I.A after I.A every time like for example you mention about why not order 8 rule 10,you said pronouncing judgment set him ex party you go on order 9 rule 7 then you go on order 13 and then order 41 rule1 (c) and then go on appeal and then come judge and then to the high court every little thing goes on, because he knows if it's land it's based to keep on delaying the matter unless you have heavy system of cost then this delay is continue know as far as the bar is concerned, mentioned that bar does not co-operate once the bar knows that this thing does not go on automatically fall in land today we know that they take liberty to the system and it will go on.as per your question is concern about the aa I did not mention ..aaa.. Late Narshima...a.. Follow the c.p.c will not take time. Why I mention I said that now I don't have... basically I don't like the system of evidence before the master as.. could ...aa. absolutely no connect the evidence , the evidence goes on a very shabby manner and I came and asked two question and said I have to go this court then witness come again to the court, this is not the way the trail should be conduct. I took..aaa...que from lord wolf report, you see the lord wolf report he say if you divided the claim ..aa.. what Prof Baxi has stated that we don't have data got from the details we all complete on analytics what are the suits you have file, what are the nature of the suits we don't have adequate statics at all and once we have tale able solutions to meet there particular need. Now for example my point is this if 60% case are below five lakh hypnotically in madras then if you have a system and you need not go stick rule of evidence you can amend the c.p.c in small claim, like in lord wolf report upto 1500 pound it can be solve through email, things have to be done on net you don't need to go any lawyer, so if you can categories the cases you eliminate the large number of small cases where the dispute.. Similarly consumer case court lot of time can save by.. I don't why consumer court case pending from 2004, that's a major problem I think, I was suggesting the beginning as high court judges we have manual you now part to principle applies everywhere, 80% delay because of 20% of the incidents if you can identify those 20% problem area which are creating 80% problem of the area and how have some kind of standardize manual solution like can we set a person ex party, where the delay occurring what are the I.A's file once you analyze the data we can definitely

come to the solutions and important test I learn, one important lesson I read Peter Drucker who was the father of time management in his book in 1955 effective for the first time he introduced the concept of time management and he said that you can't manage your time you can only manage yourself in relation to time and the second point he mentions is we all make a to do list Drucker says that you do the most foolish thing, first you should analyze the use of time he maintains which I try to do twice a year maintain a time log for morning to evening how to use your time same way in the court how to use your time we did and I found I use only two hours I work once you record your work and collect data and plan how to use the time. Thank you

Justice Sujata Manohar - Thank you very much.. great that there is a lot of room for incremental changes and each court has its own ways to eliminating them may be some of them the work like giving date or adjournments and can be transferred to the judicial register, registrar or master call it of some of the court anyway it is up to you to think I think you have enough material to improve break for coffee for 15 to 20 minutes.

Session 10- Instruments to improve feedback on Public Trust and Confidence

Justice Sujata Manohar- Shall we start aaaa well first on behalf of all of you and aaa all of here on this side let me welcome Justice Kurian Joseph, who has very kindly taken time off to come and be with us this evening not evening sorry this afternoon. Of course I don't need to introduce him apart from his very illustrious career in the Kerala High Court, he has also been the chief justice of the Himachal Pradesh high court before he was elevated to the supreme court. We are already familiar with his judgments and we are looking forward to hear him on what can be done to improve public trust and confidence in the judicial system and what can be the nature of the feedback which the judges can get about their performance so that they can respond to the criticism and improve their working. I don't think we could have got a better person to talk about it than Justice Kurian.

Justice Kurian - I have had my reward now. All the pains I have taken the words spoken of me by non-other than the Chief Justice, my Chief Justice in Kerala. Justice Sujata Manohar was the one on elevations was the Chief Justice to Kerala and mam was the first lady Chief Justice that we in Kerala also but we could not have her for long because Delhi wanted her to be there so, within a few months mam was taken to Delhi. Thank you very much mam for the good words spoken of me. I don't come to talk honestly, I don't come to NJA to talk also, this director Geeta also knows that I just come to participate. Why this time I took double pains also because I was supposed to be here by 8:30, but the Air India took a different route went to Indore, Bombay to Indore, Indore to Bhopal. I was in half a mind to cancel this programme because I have been here successively for the last three programmes. Only reason why Geeta insisted that was sir, this is a very serious conference of high court judges and there are very eminent persons coming and if a serving Supreme Court judge also doesn't show up his presence here then the participant judges will feel bad about it. So I came for the former reason that I suggested to meeting very eminent persons sitting here on my right and left also that is one reason I thought of getting myself benefitted out and there are ideas which are floated in this very academy for

quite a few years now. All of us I am sure have the occasion to hear all these great jurists and Datar is one of the greatest contributors in the constitution bench in which I am also a member of NJAC, both of us sacrificed so therefore our vacation from our hearings from that way also. And aa just out of curiosity it is in the offerings it is likely to be one way or the other shortly. It might take 2 or 3 weeks maximum hopefully. It is almost getting shaped also. It is as much important matter also, it is only 2 months since we have heard it, don't think that we have taken an unusually long time, no. it took an unusually long time to hearing but after hearing we have not taken much time. So we are just keeping our just keeping our figures crossed so that does not goes beyond 3 months period. We ourselves have kept a judgment in any case, I shall not go beyond that. We did not want 3 months to have been taken but it is such an important issue all of has to assemble it have to have a deeper thoughts of voluminous contribution made by the almost all the eminent senior advocates in the supreme court and which was a matter heard for 31 days in 3 session also. We are just looking at so many angles on so many issues also, so hopefully it will be there. So my idea was this to be part of you because we all belong to one family. That way I wanted to shoe my love towards you and I wanted to share your regards to the family also that way, that is one reason I came. But aaa having come here on this issue also. I just asked Geeta whether we have discussed the NJA Draft Model of our National Framework for court excellence. We had in NJA I think Pro. Menon also aa awe started aaaa preparation of such a draft model for quite aaa a few years now and in 2011 it was send to all the high courts or so. Aaa it was called aaa PAVE- P stands for public trust and confidence , A stands for assess to courts , V stands for values and E stands for expedition. This was aaa I think the NJA could give us a copy just to refer and to sharpen our memory also. This was released on 21-01-2011 from here. If not given now, by the time you go can also collect, just to refresh our memory. Public trust and confidence in the due course of discharge of their constitutional mandate to promote justice and be access to court for the purpose of protecting the constitutional legal and contractual rights, especially by the weakest and poorest who are least able to protect their rights without the systems support. See this is the area I just wanted to concentrate this is on values, personal and then aaa the the judicial process the judicial making process and third the institutional. So determining the degrees of adherence to the court of the judicial system or values. The determinant in the integral integrity of the institution and these are the 10 core values. One, is integrity and integrity, competence, propriety three individual values applicable to judges, advocates, ministerial staff, executive functionaries which are essential for the effective functioning of any court. So, three personal values integrity, competence and propriety. We may call them different strength capacity and aaa I would like to add in to this that is confidence. A judge should have confidence of the case that he handles and aa that aa he must deliver the judgments with confidence. He may go for wrong is a different issue but even by going wrong he should have a reason that he has reached this conclusion. That is the confidence that the judge should have. Another is the judge should have the confidence in what he handles. He will not be able to handle the court also and be independent. And confidence comes out of conviction also. You should have a that level of moral conviction as to what you do is right. According to your mere conscience, the conscience of the constitution. Conscience you can't have differently so far as the judge is concerned we always have to the murmuring always in the conscience of the individual which may have a different background of your cultural ethos, your religious ethos, personal philosophical ethos but of the conscience of the

constitution one should not have different views because constitution has only one conscience and that conscience speaks alike to all the judges on the core values, we cannot speak differently, from judge to judge. And independence, equality, fairness, impartiality and certainty these are the 5 judicial making values applicable to judges. independence, equality, fairness, impartiality and certainty and on this I would like to have a bit of a loud thinking which aa individual judges from various high courts , whenever we meet we used to all so painfully used to observe that what should we do. The reason is very same issue we have for 2, 3, 4 judgment very same supreme court what should we do and this is the question being asked by even the lower courts also simple, simple as that in the Motor Vehicles issue and the sentencing issue. These are the 2 things which are aaa common man always has a problem. So in handling this problem of common man are we guided by the supreme court which has the authority under the constitution to lay down law. So is it the laying down the law. Then Prof. Madhava Menon was here and I quite sure that prof. Upendra Baxi might have addressed the audience on the NJAC. This academy used to have the retreat for the Supreme Court judges, quite a few year sit has not been done now. I don't know why. This is my third year in Supreme Court aaa I am not touching that anyone and before my coming also I checked for a few years this was not done. Why do judges meet in a different place aa together for sometime and spend sometime not for any learning but just to be here together here disassociated with the routine work of reading, or a judgment dictation or hearing this aaa just to be aaa in a different place together to think about the institution the duties, cast on them as part of a great institution and to be aware of their obligations, their constitutional obligations to be one in their voice. This is preciously, I don't need any words on this. This is precisely the reason why one need retreat for a particular leaving together you call it a leaving together, you call it retreat, acll it by aa any name but this has a a very very important role in the function of a judge. I still believe. That is as far as the Supreme Court is concerned. And ourselves aaa last aaa not last aaa week before last one lawyer, aa you know in supreme court aaaa very politely put it to you aaa straighten both hahaha what I want to say that they don't needs an event on that . One senior advocate said that we have 14 supreme court No, this is the said plight now on that particular day there were 14 judges also, 14 supreme court that is said if you ask me I will also say that the partly conversed it right . we are not in a position to respect each other and to have a committee in the judges at least in the matter of aaa what you call a institutional approach to the serious issues that we define, we interpret and we apply. On this we should have a common approach so that the lawyers or the litigant public or the the the the what you called the the white collar litigant to the community of corporates do not have a feeling that they can have a foreign shopping in the supreme court. This is one of the shameful thing spoken about the Supreme Court for quite some time that the success of the case depends upon the bench you happen to be for dealing with your case. This could be and this must be resolved as far as the Supreme Court is concerned according to me. And Datar, I am quite sure is the one who always views this institution form far and within also and he also aaa his experience also and I speak out but without offending this is my feeling. But this is aaa I am speaking out because there is a risk aa multiple type of a damage caused a bit of a trust deficit is there in the institutional functioning. why I said about myself now for the aa for the beginning is it is partly true of our high courts also. So this is the second link of aaaa so I started with myself or rather the part of the institution which I am also part of and then I am coming to the high court. This

feel is there about the high courts also the the the success of the case depends on the the judge or the the judges which form the bench or they can aaaaa they can aaaa the lawyers very much know that this or that. Was it not there earlier also, it was there earlier also. While hearing the constitutional bench one day Mr. Nariman said one thing sir, there was a time here everyone in the Supreme Court knew that this judge is a pro-tenant judge. Every time he will have a 10 cases and the 10 by the landlord will be dismissed and a if he had a 100 cases may be 1 against a landlord he will admit but nobody ever dared to murmur anything about him. Reason is he was a very blunt he was aa reason is he was consistent and I don't want to diagnose on this issue. he was consistent he doesn't dependent on person to lawyer to lawyer or place to place or a situation to situation. There was a consistency as far as his approach is concerned so therefore, nobody has any grounds for this everybody knew that this is his philosophy and this is his situation but aaa people were good enough to understand, tolerate and not to have aaaaa negative criticism because he was not to be a judge of high integrity and he was not to be a judge who was consistent on his aa approach so aaa this issue comes in when the the cloud is on our integrity and cloud is on our inconsistency and ofcourse inconsistency is ofcourse aaa something for aaa lack of integrity aspect but I thought of putting it in 2 aspects as well. One is aa the cloud over integrity, two it is aaa when we are inconsistent in our own approach , be it on the sentencing policy, be it on aa common session policy, be it on issues on approach on landlord or tenant or whatever it is. Well coming to the third one so I , I thought of suggesting as far as high courts are concerned I think Prof. Madhava Menon, Prof. Upendra Baxi and NJA should have a such type of retreat for high court, each high court. They need not be called to Bhopal but we should go aa the team should go and aa have people from Supreme Court also, Supreme Court every judge aaa comes across the judgments of the very same high court in aa aaa a a month. The judgments on the very same issue from different judges of the same high court but they are thinking differently and judging differently altogether. There is no institutional approach in terms of certainty or in terms of consistency. So I my one suggestion could be that conference of this sort should be held not for the aaa subordinate judges only but aaaaa but even for the judges of the high court sas to the the the high court of the state. It s a very important constitutional institution in a state. So the aaa 50% of the litigation is there except for the state of Punjab I don't know Punjab & Haryana, Delhi aaa Bombay and Allahabad and these 4 high court are closed for a couple of months Supreme Court, we can dispose of all the cases, all the pendency of cases in a couple of months. The 75% , I am just speaking of my own experience. My experience is that the SLPs have to be handled more than 60 or 70% are contributed from these 4 high courts only. Bombay of course because they are able to afford lawyers like Datar hahaha a no no Bombay people take aaa your roots are madras but you are sort after everywhere but I am saying not of Datar, he is very reasonable, nobody has said anything. But I am saying Bombay people, Bombay 50% of the entry what is my, my lord is also effected person of the entry mode is challenges in the Supreme Court. I am not aaa it's a fact , of course they are able to, this is the only reason and Allahabad, Punjab & Haryana, and Delhi because they are able to walk across, others they are able to spend across, this is the only difference according to me. And if you see the service jurisprudence also, look all the cases decided by the Supreme Court in service suits, more than 90% are of cases pertaining to this Punjab & Haryana or Delhi or this Allahabad because onkly these people on service aaa they could aaa go to the Supreme Court, nobody aaa poor man a down in south in Kerala,

madras or even Bangalore now aaa they are able to now but old days they are not able to but aa the service group aaa contribution is always from this discourse, well forget about that . I am saying that it is high time that somebody from the Supreme Court, the Chief Justice of the Supreme Court though he does not have any supervisory jurisdiction on the high court but it is time that we should have a better community between the Supreme Court and the High Court, not in the exercise of the appellate authority of the jurisdiction but in terms of the the what you call, if you say that is the only one name that the Chief Justice of India gives, a person and institution but for the sake of the the future of the judiciary in India. I am feeling that aaa we should have a better interaction, better community and the high court should have aaa there own meetings. I know high courts where judges even a don't even meet or don't even greet not because they are more in number but there are other situations as well. But if NJA or the Supreme Court take some sort of an initiative or aaaa jurists like them take some sort of a initiative there could be a change and aaa let me make one more confession this I am not to be quoted, I had been sitting with senior judges as well but now I am heading a bench in miscellaneous case non- miscellaneous don't know , but what I to do aaa I am heading a bench now. I have seen judges they are not reading the judgments, they are reading who ordered the judgment. So I have seen a judges they they not seniors, presiding the case, just marking the author of the judgment and saying notice, notice, so one day I said that sir, there is something in the the judgment perfectly alright, Kurian you don't know him, I said I know him sir but I have seen the judgment sir, no no no no, well I don't want to go in further about it. So aa this sort of situations are also there, that is the reason why I said there be interaction from the Supreme Court and the high court consent, individual high court should have a retreat that way. On coming to institutional. Faith and allegiance to the constitutional, the rule of law, the transparency and accountability well I used to aaa aaa a judge challenge the need whether a I don't know whether Datar was on the bench, I said I can preside each word of the oath which I have taken, not because I took it 3 times but I know the the each word of the oath I had taken, I administered some of them but I am saying I am aware of the oath I have taken and I am conscious of it, conscious of it so to me I feel on our table this oath should be there, everyday before we go to court we should read that oath, what are we upholding, were do we awe our allegiance to. Not that we are not aware of it but it keeps aa helps us reminding ourselves about our allegiance, about our duty about our call. On these 3 things I think the the oath should not only to be the warrant should be kept which I have also done. But oath should be kept on the table of every judge. As the president of the Kerala Judicial Academy used to give this sort of things to the the the judges there of the subordinate judiciary to be kept on their table on the quoting from Mahatma Gandhi Ji also and also as their duty what they have to discharge or so. Likewise something good that you have to do. Let me touch a little bit on aaa this contempt jurisdiction also. Now that this is also part of the area where we have, is being handled seriously in the high court sor in Supreme Court and the the the way we handle their jurisdiction has it shaken the confidence in courts, public confidence. This is one area where we should have a little louder reflection. I know many judges telling me it's a great notion so let us not touch it but I have sat with judges also who used to put in my ears we are just aaa aaa let us handle the situation, leave them. We are not dealing with the contempt, we are just disposing the contempt petitions. There is no question of a contempt petition before a court in a contempt jurisdiction, only the contempt-nor is to be dealt with according to this, not only this aaa there is a part of

execution also I don't deny it but the contempt nor is to be dealt with. We spend a lot about the cost of adjournments also, I just thought of putting a suggestion across based on the Singapore Model. Singapore Model the court fee is decided in terms of the number of adjournments you take. So there could be the court fee on the adjournment or court fee on the IS also we are now putting Rs.2 or Rs.5 stamp instead of that let there also be ad valorem court fee also, now they did it this sort of unnecessary adjournments lawyers won't dare to and if you fix the court fee in terms of the time that you think in court by either side also, let them also pay for it then, there will be some difference according to me. Well in contempt jurisdiction there is a need to be a serious handling of the jurisdiction because if one's fundamental premises is this that the system exists on the public trust and if the public trust is shaken because of your cowardness then then the future of this institution is very much in danger according to me. Well there may be situation we may have to have handle it diplomatically. There is something like the judicial diplomacy as well I don't deny that but judicial diplomacy is not your individual cowardness for fear of your name may be other at least your name should be tarnish by this person or by the media or by this person or by that person, so you not only just blink your eyes you just close your eyes less ignorant, less late without even getting an apology for the obvious or the apparent contempt of the institution. This is not the contempt of the judge it's the contempt of the constitution. We are not thinking loudly on that it's the contempt of the constitution. I think that is one jurisdiction where we have to be a little serious about it and though I am writing on constitutional on the judicial side also a bit of it on which I don't have agreement but I am saying there is another area where the public across the country are losing confidence on the system on account of judges avoiding to hear a case. Drop of a hat they avoid hearing so my personal feeling is of course give reason if a judge if he takes oath that he is to be bound by a conscience, he should give reasons why he avoids a case and if there is an absolutely confidential reason which the divergence of which may have any other repercussion then judges feel free to feel so with reasons I do not want to discuss now on account of some repercussion I don't do it but otherwise a judge shall. I know a high court where a case of a particular person was avoided by 6 if not 7 judges if I remember right, only because of the reason that it's a sensitive case, what's our oath, do we hesitate to hear a sensitive matter we have taken, that means we are betraying our conscience according to me without fear, we have a fear now. If we have fear we are not fit to be a judge. This is the fear you don't want your name to be tarnished and anything like that. It's not your name it's the institution's name, it is not our personal name it is our the institution's name, this constitutional institution's name. if the name and fame of this institution, we are negotiating with our personal name we are betraying our conscience. This is my concept about it. So a judge shall not avoid a case, hearing a case unless it comes within the parameters of those Bangalore Principles which we have laid down in the Chief Justices conference, it has been adopted by the UN also of a personal interest a judge has in the case and the likelihood of a conflict of interest and the likelihood of bias being seen by others on account of your relation, on account of your affinity, on account of your involvement. These are the 2-3 guidelines which I and the last thing is an expedition, efficiency and efficacy of the court process, this is what is PAVE and I request Geeta to do this PAVE also circulated. There is no harm in ones again circulating it will help us long. I have a so many things to talk also but I am quite sure that Prof. Baxi and Prof. Madhava Menon and My Lord Justice Sujata

Manohar also would have the contribution and Datar also from this side of the institution because we have a practicing lawyer, we have a practiced Judge and we have two eminent jurists also so it is a great combination we have now and a poor serving judge also so that way we have all the combinations here. So we will have little bit of a loud thinking on these issues and the participants also. I'll stop her for the time being for more I would like to intervene at the time of discussions. Thank you.

Justice Sujata Manohar- Thank you very much Justice Joseph, would you like to say something.

Professor Upendra Baxi- well Justice Joseph, Justice Sujata Manohar dear Datar and Menon and dear friend, I and justices and dear friends and the director and Ms. Paiker. Now I mention Ms. Paiker has produced a volume and I forgot to emphasize also the fact in the last session that the volume consists of this contains an analysis of how the five judges bench in the supreme court has fallen in the issues. Whether five judges bench were strictly constituted in the 80s fifty percent and now they are negligible percentage. So the Supreme Court functions in the 2 judges benches. Supreme Court a long time ago in 80 in my book *Supreme Court and Politics*, I have said the court function as an assembly of individual justices and therefore Dr. Joseph's emphasis on institutionality of the court is very important. The court, justices comprise court, but if there be no justices there will be no court. Courts take precedents over individual justices, the court can never be reduced in assembly of justices. Even when the high courts I know, a single judge bench is constituted he or she speaks for the entire court and that the thing that I emphasize that the justices govern that I under this court here. Now what is that relationship between that institutionality and public trust. It is a very important question that the Lordship has raised. I only concentrate here on the academic criticism side and I preside on. I have been in constant search since I was a young person, I am still young when I was younger a young man I was. I am in search of especially in search of quest of that institutionality or I am in search of to put it differently, of something I call social responsible critique of the judges. Social responsible critique a critique is different from criticism, criticism anybody can offer. Critique only those who are jurists, who have studied law infinite times. Critique is also a reconstruction. I am not interested in any socially responsible criticism of judges I am interested in SRC in short socially responsible critique of judges. And what does the critique of judges consist of. It consists of judging, those who judge, judging the judges that's a very responsible thing and I think the academic community has with great respect, generally failed where they should have succeeded and they are paid to succeed, why they are academic and not the bench. It is not that we don't know the procedure or evidence, we know and 66% of India now in the 67th year of the republic, now look with a telescope to find a jurist to be elevated to the Supreme Court of India and they found none. My colleague P.K. Tripathi was very keen to be here on the Supreme Court, a professor in Delhi and he wrote on constitution but he died a great disappointment to him that he was not elevated, he should have been elevated on the category of a jurist. But have to accept this empirical fact that there are no jurists in India. The Supreme Court has not been able to find not a single person from the academia to be worthy enough on the bench. It has never been my ambition but if it of ambition to some. To my immense comfort. Some judges calling Prof. Baxi, I am happy at that

appellation aaa so I am out of it. I do thing the academic community has failed. One it has failed in developing standards for social responsible criticism, critique of judges and I will explain that why. First of all it has failed by being brahminical, they do not address the high courts, they generally write on the Supreme Court. I am very glad when Prof. Menon referred to Kerala high courts' rules this morning it is very good because state aa when you are talking of public trust and confidence in the judges the actions begin in the Mufassil and then in the high court very rarely Justice Joseph decide when the matter directly comes to the Supreme Court. And it is a matter of great shame if it is true I think it is true, Justice Joseph said in some matter the Supreme Court of India has become Supreme Court of north India, where you can come and go very frequently it is very sad to the extent it is true, it is the entire Supreme Court of India and moreover Supreme Court for India. The academic community has failed I have written some points on so called public interest litigation in Rajasthan, Orissa, there are some studies of high court jurisprudence but very few. I have written myself as an exception to this academic community, I have written on high courts but most of the people don't write on the high courts. And now the trend is aggravation by the fact that the national law Schools have been established in states where the Chief Justice of the high court is the visitor and somehow he or she promotes the view that judges don't like critiques. I don't know whether it is true or not, so they indirectly censor the young people form writing bout the high court. So they write about Supreme Court, there is this person Prof. Menon mentioned in the law review about the Supreme Court rules, has studied only Supreme Court rules, he has not studied the Orissa high court rules. This is because we go to the Supreme Court because there is a distance from the immediate governing bodies of the institutions and this is very wrong but generally, why do the academics don't refer to the high courts, I found the answer that they are Brahminical, they believe that the truth resides in the highest, Brahmins, the highest caste, true never comes below to lower castes. Ambedkar right I forgot the constitution, they most willing be his picture hugged, these are the real Indians we are talking about. Anyways, aaa I also think that the academics have also not raised the question and I want a specific question where the high court should follow very purposely every decision of the Supreme Court under Article 141, the Supreme Court is entitled to lay down the law for the whole of the courts in India. It doesn't lay down the law for the citizens. The constitution said that he Supreme Court of India 141, laid down the laws by the aaa all the laws in the territory of India. So I am not sure whether the Supreme Court can write the rule to me, create obligations on the citizens, but to create obligation on the courts. So now when the high courts are bound to follow the law declared by the Supreme Court but is it manifest the proposition of the Supreme Court, binding on the high courts even as the persuasive percent. I will give you some example, I did not know when I thought about this but I had the privileged to be in the company of Justice Joseph. But Justice Joseph if you don't mind by saying so I have circulated my India Today article which I gave, I don't discern on the adversarial rights, so I will elaborate now. As you know in Yaqub Memon's cases, or Menon's, Memon's case . aaaa he aaa Justice Joseph decided in the two judge bench by saying that the orders passed by the Chief Justice of India in the Curative write petition where in aa I am quoting his lordship's words "*constitutional void and improper*", why because Supreme Court, this morning discussion did not follow it's own rules, it invented curative jurisdiction, it then in a judgment the judgment then incorporated the rules of the Supreme Court , that it should consult as far as possible, that is a technical phrase which is

meaning which is obvious. The curative petition is different from review petition but a review those judges as per the statute who are present in the Supreme Court should be on the curative bench and Justice Joseph said in the Memon's case that the Supreme Court bench as the Supreme Court has constituted a bench in violation of the judgments and the rules. I think the eminent sensible position. The judge says I am bound by rules created, I am bound by the judgments you have given. Now is it manifest the illegal decision by the Chief Justice. The Chief Justice has the discretion to a prerogative of constituting benches. But that prerogative is defined and circumscribed by the rules made by the Supreme Court. The lords themselves nobody else, not by parliament and they made a rule. And if it is possible many debate justices should be included means orally in my opinion and they can be as a opinion in this matter. If they retire or if they are dead you can't recall them, and the possible means is if they are the bench and there were 2 or 3 justices the decision were on their bench, they were not in the curative petition bench and Justice Joseph was quite right. And I am not satisfied by Justice Deepak Mishra who hardly and his 2 companion judges who attribute the decision and said that the decision of the Chief Justice this was quite proper. This was a wrong decision in my opinion. Now is the high court bound by manifestly wrong decision, when the Supreme Court violates its own rules and its own judgments if I may add is the high court then bound by the precedent or is the other Supreme Court justices bound by it as a precedent that is a different question. I'll give you therefore, I think Justice Joseph was quite right in what he decided. You are not challenging the Chief Justice who is in courtroom here in a personal capacity as far as I know you are among the brothers, they are good friends despite some differences which I will not mention. So it is not directed personally to Mr. Dattu, it is directed against the idea that the authority, the Chief Justice you call that constituted the benches and unguided by the oath office and by the constitution. Now public trust definitely weakens when you act against the own rules and I want to refer to Mr. Datar's point about and Prof. Menon in some respect in regard to rules that if you feel that they prevent access to justice. Access to justice is a value that judges ought to promote them. Which they should do the constitutional bench then, they should change it, it is only that the rules are there in place, are you bound to follow a manifest violation of the Supreme Court rules under the doctrine of precedents. Unfortunately, high court judges many of whom we have the privilege of knowing and discussing better take a contrary view, they said a manifest of the illegal decision of the Supreme Court still constitutes the precedent to us. Now as an academic I would say, I said to the high court justices that they are wrong, they should be careful when they decide when the decision in the Supreme Court is manifest wrong, manifest illegal. Take for *In Curiam* decisions of Supreme Court they are plenty as you know. And it is *In Curiam* when you overlook a statute by Justice Gadkar they in the Runn of Kutch case, you overlook at the early general provisions act and there are many examples according to you. Now the Supreme Court acts in *In Curiam*, the chief constituted a valid precedent under Article 141 for the high courts and the high court bound by the constitution, which you take an oath to subvert the constitution as by law established. As the present government of course did not believe this 42nd amendment to the constitution therefore issues an advertisement to cutting out your secularism, socialism from the preamble. I think the department of communication is still a very wrong, the constitution by law is very an amendment of law in the constitution and with our scheduling oath to affirm it. It's very wrong. So they take Anthulay's decisions. Justice

Badrang Nath Mishra, in the last paragraph said that right to speedy trial is a fundamental right applied only to Anthulay's case. Please don't take it as the lordships' says as a precedent, here the Supreme Court requesting you not to take it's own decision as a precedent. Are you bound to follow it as a high court here the Chief Justice of India is saying that don't take the judgment outside Anthulay's case . so Article 21 does not just discuss create a right to speedy trial. He says the right to speedy trial only as far as Anthulay is concerned. Are you bound by the decision, is this the precedent for high courts. These are the questions we should raise when we are discussing the public confidence. A manifestly illegal decision or a pervert decision does it bind the high courts under 141. That's a question I leave open. I now move to 2 other matters and then close. As the first point was that academics are Brahmanical, second point is they indulge in criticism but not in critique. Critique is more important than criticism and I can put this in a different way and it is important for let me make 2 more points. One is the concerned the distinction between episodic and structural and other between the political state and the constitutional state of India. About the first, the first is pulling classes convert all structural issues into episodic issues. I don't need to give examples, in the parliamentary debates in Sikhs genocide and Gujarat genocide of 2002 and 1999 respectively, you know it is there for you to think, in parliament debate, the one side said, in the congress rule said there was this atrocity other side said during your rule state it was that atrocity. So in a political state no issue is structural all issues are episodic , contingent they happen and they are to be dealt with by competitive political practices. The judiciary on the other hand treats all issues as structural not episodic. This is a SAL social action litigation or public interest litigation exists. What is social action litigation, somebody is denied food, somebody is denied housing, somebody is denied now what does the court do. The court says these are citizens they have right to shelter, they have right to food, they have right to this and right to that, right to live with dignity. So they convert what is contingent into what is necessary and episodic into what is structural that's why we have the doctrine of basic structure. In the emergency, a very good underground cartoon which illustrates the point which I am trying to make , well the cartoon was a person goes to a book seller and asks for the latest copy of the constitution of India and the bookseller ask what and he raises his voice and says sir, go next door, there is a bookseller the man followed next door , sells journals and weeklies and court matinees , you go next door you will get a copy of records. It is the emergency the only time where the regime, the parliament and the newspapers referred to the constitution respectively. The mind boggles the constitution is the judges all statutes has been constitutional or not and statute is a much lower creature, weak than a constitution it is the higher law. It was compared with a statute, when you read use constitute to statute, you are indulging in episodic. When you are respecting the constitution you are respecting the structure. So the universe, you may kindly think about this picture. For political classes everything is competition for power, for justices everything goes back to the basic structure of the indian society. That is the difference between political and juristic reasoning. When the judges loose sight of this and begin to convert structural to episodic, I am sorry to say they also behave like politicians. But there is a difference between a political state and a constitutional state. I always say the lordship referred to this instance, I say distance between the Sarthik Bhawan where the law minister sits and the Tilak Marg where the Supreme Court sits is geographically is very small, half kilometer, but constitutionally it is impermissibly vast. You must make the geographical distance small and

you must not make this geographical distance a bridge, the constitutional risks between the two
functionaries of the Indian union. And many judges of course and my second point is this
between a political state and constitutional state. My first point of episodic, political state
reduces everything to competition to power and constitutional state produces everything to a
higher law and this where I think public trust and confidence will only be secured when you
maintain the distinction between structural and episodic and when they maintain a distance
between political and constitutional state. They are paid as they are only there to safeguard the
constitution, they are not there to safeguard the political thing. Political state is necessarily
democracy for elections, for security and integrity of the union, for the army and all that, the
police, you need a political system. But they will only raise issues as they arise, they will
not look at the basic structure or the constitution which only the judges can look at. I don't
know what they will decide, it's a aggressive Attorney General and with the judges case and
with the privacy case it's for the future. We all have our own apprehensions which we keep to
ourselves at the moment but regardless of that, 20 years ago there was no basic structure and
the judges preserved the constitution. It is not the basic structure that preserves the
constitutional state. The first supreme court of India preserved the constitution against Nehru,
where admitted here and there, what Nehru wanted to admit the denial scheduled for the but as
Patanjali Shastri once observed there stood a sentinel guardians of the constitutions. That is
what the judges are meant to do. Judges are not meant to please any regime in particular and
the regime don't need judges to please them they are , a regime is pleased in other ways. So
my friends I would like to simply say to you please preserve the distance between the structural
to episodic between the political state and the constitutional state, that is your real oath to abide
by the constitution of India. If you fail in that role, you fail to win any confidence and trust of
people. Thank You.

Justice Sujata Manohar- Thank you very much . I invite as you like to conclude okay I as
would anybody like to comment on what you have heard, on what are your own views.

Participant Judge- Just one want to ask Prof. Baxi also, when we thought of a supreme court
judge they are thought of a distinguished jurist under Article 124 but the constitution never
think of a jurist in the high court , what could be the reason I just wanted to note down.

Professor Upendra Baxi- The constitution was amended and that was amended by the 43
amendment 44th and there were jurists category to that in the high court but the law was
objected to it even in the emergency as I never had discussions as to this because I am student
as I am not a political person and as the justices take the view that the academic lawyers they
now currently have a term for us in the supreme court you are familiar with it as some judges
refer to us as academic terrorists and as you know what the supreme court did in the Yaqub case
is, whatever your view are but the court followed by sitting in the mid night , I only had 700
words to write in India Today I could not write but as it followed the hang man schedule what
was the hurry to sit at mid-night, earlier was a morning what was as accepting the hang man
was there, an hangman was commissioned why didn't you allow even a terrorist is entitled to
have his last wish in the prison manual, why didn't you allow to talk with his daughter, he

wanted to talk with his daughter besides the fact that there were news on that, I am not taking sympathy for a terrorist please don't get me wrong, the courts well convicted. I am against death penalty and I always say that if the courts can sit for property cases as a full court. In Golaknath, it sat the full court of 11 judges , in Kesvananda Bharti 13 judges, a property case. I say that when 21 is involved the question before you is whether I should live or not live. Why should not a a full court sit and with 1 dissent it cannot decide to hang man. Unanimously the court should aa a the court should sit as a whole on an appeal, on a mercy petition the court should decide by unanimity that I should hang and I will meet my maker but not before that but the aa nobody listens to us that is alright I am saying this since 1979, I have been saying it in my books also. But coming to your question, the chief justices have told me many chief justices have told me who were my must be friends they told me Baxi we cant appoint a jurist because the academicians do not know the procedure, they don't know the rules. Who has written this article in law journal published by Orissa Law School, aaa we don't write on procedure that is true we write on other things. But many of us teach or take intrest in procedure. So lack of knowledge, law is so vast. I don't with great respect to you all whether you know all the law, it is impossible to know all the law. That's why the lawyers bring out such cases and you pick out one argument and another from them. Aaa there is a certain reluctance, now you can safely entrust the education of your worst verse. You can then trust us the confidence, to write a reference word a daughter or a granddaughter to aa Warwick there was a play in USA or UK. We don't draw references to Dhananjay Chandrachud, well Dhananjay is now a judge, Chief Justice of the Allahabad high court, and they were all students. Lots of Supreme Court justices and high court justices are my students in Delhi. We are good for that purpose but we are not good to become judges. It's an old issue and it's over. Now we accept the position, I don't know about Menon, I accept the position that there are no jurists in India. Sixty seven years is a long time in the life of a nation but every lawyer is a jurist, every law minister is a jurist, every PA of the law minster is a jurist according to judges own behavior towards the law ministers and aaa. So there are jurists aaa jurist is what, a jurist is a person who devotes his or her life to study of law that is a jurist. Islamic law is a judge made law aaa a jurist made law, Hindu law who made it, the Shastra's, roman law who made it , not the emperor, the jurists. The jurist have a role. International court of justice in it's chatter said that union of the public is the creation of international law not just the states. So we create our own we don't have any difficulty we do it ourselves but officially the procedure now is that they may not exist. Even in National Judicial Commission Act, says, eminent persons, it does not say law teachers or jurists so you want to prove a complete agreement on the executive, legislature and judiciary that jurists are out. I don't have difficulty with that, it's a misfortune but there are many national misfortunes so so alright. No law jurists are the same also, Madhava Menon and I are not the same or similar we disagree on a number of matters it is good that jurists constantly, disagree among them just like judges, so there is no problem at all in that. But the provision only exists in the constitution for the Supreme Court as the matter of law but it's alright.

Prof. Madhava Menon- I understand in that amendment aaa 42nd and 44th it was there for the high court also but something happened in the secretariat to get this dropped so it's aaaaaa

Mr. Arvind Datar- Can I say a few things if time permits, few minutes yes. Aaa just one thing I wanted to respond to Justice Kurian Joseph on the difference of opinion that sir do you not think that anybody of the judges are bound to be different. In the US Supreme Court there are strong differences we saw what happened in *Bush v. Gore*, so we have one view aa like Justice Kania takes a very extreme view but the other judges don't. So it is inevitable in a system of 9 judges and why not in a system of 40-50 judges point number one. Infact, even in *Liverson v. Anderson*, Lord Aitkin gave a very bold dissent, he quoted humpty dumpty and his daughter then said that Lord Aitkin was ostracized by the lords and they would not have tea with him also, that is an individual issue. As far as the judgment is concerned, just in a humble way I will mention, we were having a discussion with Professor Ved and Cristopher from Cambridge for aa there is a seminar on judicial appointments and Lord Denning had written that he normally decided what would be the output and then find out the reasons to justify the aaaa like, building the bridge and then finding the river. But one view was that is a very wrong thing to do the moment you decide that you will decide the case on what you think the output should be they say it is wrong. As one view taken by Ved and I also want your comments on that, they say the process should be deductive, you take the reasons and then come to a conclusion don't take the process the logical process of induction where you know the conclusion and then you start justifying the reasons that's the second and the last point Prof. Baxi made was is very important, we often ignore the high court judgments and I shall just mention one thing which is aa when the Madras High Court celebrated it's 150 years I was asked to write one article on the contribution of the Madras High Court to the constitutional law and to my delight I found that, aaa not that I am criticizing the supreme court but many judgements from Madras went to the Supreme Court for example, Kannel Dunkali, Champak Durrairajjan. I found the Madras High Court judgments really outstanding by Justice Satayranarayna , by Justice Vishwanath Shastri and so on. So aaa I follow that even in the 301 to 302 cases, compensatory tax, if you take automobile, transport or if you take the other aa the Assam full bench judgment of Ramlabaya and Deka on what was compensatory tax and aa I may finally tell all of you on a personal note one of the judges I aaa infact when I edited Kanga and Palkiwala, we all think of Chagla and Tendulkar as an outside tag bench but I found the judgment of Justice Tambe and Desai extremely enlighten so there are so many classic high court judgments and since all of you are high court judges. I think one of the most outstanding high court judgment which I find not only for its sheer language but by logical reasoning is by coincidently, Justice P. T. Ramannayar of the Kerela High Court and if you go to manupatra, you just put P.T. Ramannayar, he was an IA officer, he was a registrar of Madras High Court, district judge in Trichy and then came to Kerala, unfortunately he could not reach the Supreme Court because of some remark he made, that is what I am told. But his judgments are so beautifully written, yes he came from the ICS. So there is a lot of wealth of judgments from the high court which often people tend to ignore. Thank you so much.

Professor Madhava Menon- one aspect one minute, as far as the criticism is concerned, before making a comment on the aspect of criticism. I would like to say that law, law is to regulate the thinking process, to regulate the action process and to regulate the life process. This also applies to the family and the society. As per the criticism is concerned it should not be to condemn the process of thinking but it should evolve a process of thinking. In these process

unless we have a purity of thought and the purity of action in three areas. What are the three areas- in the temple of god, in the temple of education, in the temple of work place, in the temple of hospital and in the temple of justice? The thinking process is provided under the constitution. What the constitution says is, the preamble of the constitution that is coming to the country's concern. It speaks of the country- sovereignty, secularist, socialism, democratic and republic. This feels the nature of the country. The nature of the people and process, the thinking process of the people should be justice, liberty, equality and fraternity. It apprise to the citizens, institutions and the society. So the whole idea of the thinking process is changing in this country to move the situation.

Justice Sujata Manohar- Anybody else wishes to say anything. I think before we conclude. Aaa ofcourse he is winding up aaa Prof. Menon.

Professor Madhava Menon- I think aaaa this session proved to be a a good finale for the last three days deliberations on the question of public confidence and trust in the judicial system and aa whether it is in danger and aa what we could possibly do in arresting that further ratio of that confidence. Aa it is all because of aa a it is very refreshing to hear from aa Hon'ble Justice Kurian Joseph on the threat to the institutional integrity aaa coming from with him, rather than from outside and his strong recommendation to have a judicial retreat not only for the high courts but aaa also for the supreme court. I think you know ther is a lot each profession would gain by what is called reflective learning aa a not training or not education which all of us everyday keep getting from all sources but to collectively sit and reflect on what the institution is delivering whether it has some short comings, which we can collectively, time has come for that. That's the message that I could get from Justice Kurian Joseph's very enlighten brief, short and sweet intervention. The aaa I suppose the National Judicial Academy is intended for that and we have had a couple of judicial retreat in which aa supreme court judges have assembled and have spend as many as five days. I remember in 2005, we had a 13 judges from the Supreme Court , including the Chief Justice, spending five days here on issues like aaaa the economic liberalization and its' impact on the judicial system, developments in science and technology and its impact on the judicial law and implementation, justice. And eminent people from the fields were interacting with judges, morning till evening. I am glad he has referred to that and a why not it happen in aa respective judicial academies which you have in your own states. Why is it only for the training of the subordinate judiciary you were to find a day or half a day at least in the judicial academy to collectively reflect on key issues which you think are relevant to be addressed whether it is delay, cost or any other which you would otherwise hesitate to discuss in a full court meeting but would like to collectively be away from observers and participants in the judicial system. It will do a lot of good not only to individual judges but the institution as such. I strongly recommend as a person who has been associated with the judicial education and training for a long time that this be adopted at the judicial academy in every high court. Excellent facilities are put up by various high courts for judicial academy aa ai know that all the judges won't like to go back even for a because you will have issues in agenda setting, who is going to come, what is to be discussed but the issues that have been raised here, do you want a 14 supreme courts, you similarly have 15 high courts. If a judge were to take a decision, not respecting the precedents or not respecting his own earlier

judgments and were to vary from case to case his approach and his decision, where is the certainty of law, where is the rule of law, is it the rule of the judge equivalent to the rule of law, where is the respect for the judiciary as an institution from the public. If it is to vary from judge to judge and even vary the same judge on a different occasion. So that is what is being pointed out is that were to happen what do you expect from the public vis-a-vis the institution which is suppose to hold together this nation on a constitution which has promised so many things to the people, we the people of india. Therefore, for the question of confidence we discussed many issues, what is doing the films. What the electronic media is doing, what the lawyers are doing but what are we doing to this enhancement or this aa decrease in public esteem of the judicial institution. You have heard from Justice Kurian Joseph, I tell you sir it has been aaa I consider it as a good finale for the last three days of deliberations and your idea of having some reflective learning in judicial retreat need to be organized particularly in academies where you can discuss because in academic forum views can be expressed and nobody takes ill of it, you may agree or not agree but discuss analyze and see what it has, it's impact among the bar , among the politicians, among the society, the academic world. Yes my second point is that the academic criticism of the judiciary is nil or inadequate. What we have been doing, what little we have been doing, we means the academic community, I hope aaa Baxi will agree as largely been to to see us how law is developing from case to case. Article 14, Article 21, so many dissertations have been written but essentially tracing the development of law from judgement after judgment but not analyzing a particular judgment to be a able to see as to how it aaaa relates to the constitutional philosophy, the constitutional mandate or prior precedents or could it be a best practice and critique aa whether you attribute it to absence of a tradition or pshycho fancy or whatever it is, it has been so totally inadequate. Infact th subject for this seminar aa this workshop could have been a subject for research in academic institutions and any number of dissertations could have been written about public confidence in the judicial system but very few are there. I aa so I was happy to find a on the supreme court rules aaaa person has analyzed it and found it in his own way that the court itself is not following the rules and aa rules are reason for the delay and a barrier between the court and the people access to supreme court riles. My only conclusion is that aaaaa you have pointed out sir the three personal values of the judge integrity, competence and proprietary. Well you can always try to improve the competence of a judge. Professional competence by organized learning system processes but when it comes to questions of integrity, integrity has many meanings and many dimensions I don't want to aa but your integrity to the oath that you have taken, it is the suggestion that was made let the constitution before aaa be before very judge the aa Munsif judge or a magistrate or a district judge or a high court or a supreme court judge. This concept of integrity is something which can be discussed in a a retreat. Personal integrity which a judge will have to cultivate aa on the basis of his aa own believes, his own faith and aaaa the oath. And when you discuss it you realize that what are the dangers involved if you allow this damage control exercise to continue to keep this institution to sustain. A constitutional government for 125 crores of people, if that is damaged by one judge who may be there for 4 years 5 years or another judge in aa another court what will hppen to sustaining this democracy. If you were to ask that larger macro question well this question of delay and speeding up, court management, case management these are small issues which will fall in place if not today tomorrow but on the question of integrity and if that is not sustained and taken care of by whom

not by the politician, not by the executive not by the parliament but by the institution itself. And how do you do it is for you to consider aaa this retreat could be one of the ways. Adoption of those what is that rule by Justice Verma's court when you have adopted it, reinstatement of values could be another aaa how you manage technology aaa so many questions are there but it is not the time to address all that but I do believe that this has been a real good session as a culmination of all that we have been discussing about the public confidence and it's status today. Thank you.

Dr. Geeta Oberoi- Sir aaa mam, can I conclude

Participant Judge- Aa one area which we have discussed a little earlier aa a Professor Menon has a repeated consistency within the same court. There is an inherent risk and danger in being too consistent that will cutle out whatever little scope is available for innovation and improvement. Imagine we were not to innovate Ramanna DayaRam Shetty would not have fall on the statute book today and it has open a new chapter of thinking. Similar are the cases where we have a set pattern if law was to develop it has to be caught of for the purpose of improvements. So consistency can't be discarded but consistency can't also be adhered to be some kind of a hallmark to say to be put within the same corners. It might come a cause for hindrance for development of law. The concept is to keep on evolving to match with the aspirations of the current society and the events faced by it. I feel that consistency also has got a certain limitation.

Professor. Upendra Baxi- The great jurist Roscow Pound said one sentence which is worth remembering in the light of what you said, he said, law must be stable but it should never stand still.

Participant Judge- Sir aaa your lordship, So far as the consistency is concerned the consistent practices may well be adhered to the central areas of law like compensation, sentencing. But since certain areas of law there should always be scope of innovation, re-engineering, re-thinking. If that process of re-thinking is stalled on the bases of consistency then law and society will not grow.

Justice Sujata Manohar- thank you but I think we need to close this session in the intrest of many people who have to catch flights. So if you don't mind let us have the final word from the director.

Dr. Geeta Oberoi- first of all I would like to thank all of you. Ofcourse aa this whole conference

Just just one word since aaa aa consistency I said is on the institutional consistency. One is the personal consistency number one number two aa therefore there is difference between consistency and certainty as number two. Number three law should shut and evolve but aa as a Dr. Baxi rightly put it we must be concerned on the on the structural and not the episodic. When we are on the episodic we invite a lot of criticism, when we are on structural because we aaa before us is the constitution and not the source in the constitution. When we are after the episodes in the constitution we have a problem. But we are on the structure of the constitution

our consistency our certainty will always be there but some law will still grow. This is aa my response

Dr. Geeta Oberoi- any other question. So with this I conclude that we had this aa three days conference where we had asked some questions whether aaa and the first question was whether Should Judiciary be bothered about Public Trust and Confidence and more and more questions were raised . So AA we are going with all these questions unanswered. These questions are for all of you to answer through your judgment and through your judicial research which you will be doing. I have to thank today aa first of all two legends, two law legends I always call them Amitabh Bachchan and Robert Denero in law so it's like aaa we have to decide who is Amitabh Bachchan and who is Robert Denero but then aa ofcourse I am referring to Professor Upendra Baxi and Professor Madhava Menon for the aa they are our main stars. So thank you so much sir for all of you for being here for this three days conference and raising very valid and important questions which judges themselves have to think because we don't have answers. Yes academicians have failed in narrating answers I do take that credit to myself but these can only be given by you and generated through your judgments. Then I have to also thank Hon'ble Justice Sujata V. Manohar, mam you very kindly accepted to come and chair this whole aa proceeding thank you so much. Mr. Arvind P. Datar, who is a very busy lawyer, very difficult to get sir thank you so much. Ofcourse Hon'ble Justice Kurian Joseph, aa he is really nice sir thank you so much and sir you know since morning 4 O Clock he has got up and he is like flying in the air to reach here upto 10 O Clock. So it's a 6 hour journey rather than the usual one and a half hour journey sir thank you so much for taking that long journey. Then I have to also thank our two young bright aaa people over there who are actually attending whole conference though they came to participate as a resource person Mr. Harish B. Narasappa and Mr. Kian Gainz they are very promising and aa it looks like yes something we are really going to come out aaaa with some good results because Mr. aa this Daksh NGO is doing good research bringing out that delay in aaa delay actually what I understood from his statistics is that delay in one between one aaaa case when he has call for one hearing to another hearing does not mean actual delay. So aaa we learned lot of things from Mr. Kian also whether we should be so sensitive about being on twitter or social media. With this I thank you all. But there is a request to all of you because we ought to have follow up of all these conferences so you are requested because out of 18, 14 people have returned our pre-evaluation questionnaire which was sent to all of you by email only. So thank you very much. Four of you are still to give that pre-evaluation questionnaire and which we think you will be giving in due course within next seven days. Apart from this general evaluation form which is about especially infrastructure, your general happiness in the institute. So with this thank you so much and thank you everyone and if I missed aaaa I also need to thank Mam Prema Baxi, mam thank you because without mam sir never travels. So I have to thank her, she is backbone behind everything for aa getting sir over here. Aaa sir is not happy, sir you should be happy so mam thank you Prema mam so much. And I have to thank Paiker, I have to thank all my faculty and also Sher Singh, KK everyone who made this arrangement. So thank you so much and till we meet again Thank you so much.