

# **NATIONAL JUDICIAL ACADEMY**



## **Conference on Functions of Registrar (Vigilance/ Intelligence) [P-946]**

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**28<sup>th</sup> to 30<sup>th</sup> Sept. 2015**

## **Verbatim Report**

**By:**

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## **Session-1: Role of Registrar (Vigilance/Intelligence) in ensuring Judicial Accountability**

**By: Hon'ble Mr. Justice A.K. Panaik, Former Judge, Supreme Court of India.**

**Dr. Geeta Oberoi:** Very good morning to all of you, before we introduce yourself and your panellist for today, can we have brief introduction from each one of you telling from which High Court you are coming, what is position that your actually holding and number of years as Registrar (vigilance), Can you start from you sir?... as registrar vigilance....ok....Judicial Official separately..... Please keep sitting no need to get up please.

I am Uday Shukla, Registrar of Vigilance to High Court of Bombay since last five years five months I am working with Vigilance Department and I am in judicial service since last twenty years...ok... Thank you.

Good morning sir, I am Shailendra Shukla, I am Principal Registrar (Vigilance) of MP High Court, I am here since 1<sup>st</sup> April this year itself as Registrar (Vigilance) I am in Judicial Service since 1987. I am Mr. B.A. Patil from Karnataka, since four months I am working as Registrar Vigilance and since 2002, I am working as Judicial Officer.

Sir, I am Satendr Kumar Singh from Jharkhand high Court I joined judicial service in 2002. Presently I am working as Registrar Vigilance in-charge, actually I was Registrar Establishment, my predecessor was suspended due to some reason thereafter I took the charge and I am working for last one year... Last one year...

Good Morning Sir, I am B.N Pandey Registrar (Vigilance) from Patna High Court, I am working as Judicial Officer from 12 Sept. 2003 and now I am working as a Registrar Vigilance from 13 Feb. 2014.

Good Morning My Lord and Madam, I am Shri S. Datta from High court of Tripura, I joined the service in May 2011 and I am working as Registrar Vigilance since Feb. 2015.

Good Morning I am Mr. M.A. Ali, Guwahati High Court Judicial Officer since 1989 and working as Registrar (Vigilance) for last 8 months.

Namaste to all, I am Mr. I.R. Dave, I am from Gujarat High Court, I have joined Judiciary in 1986 and I am Vigilance registrar since last 2 years and 3 months thank you my lord. Good morning Sirs, I am sorry, I am man odd out here because I am not Registrar , I am Joint registrar from Delhi High Court, I am G R Grover, actually I am assigned to come here in place of Registrar here, I have been working here as Joint Registrar for the last four months only and as Judicial Officer... I am not the Judicial Officer.... I am not the judicial officer Madam, I am in Vigilance Department since April this year. What is your back ground, if you don't mind...? I am from administrative side only...ok... It is my first assignment as vigilance officer.

Good Morning, I am M.R. Tripathi from Orissa High Court, I joined in Judiciary in 1985 and I joined as Registrar (Vigilance) on Sept. 14 of this month. .... Good Morning my Lords Venkata Prasad V., I had been working as Registrar (Vigilance) since 1/7/2015, I have joined in judicial service in May 1985 .... 1985 madam... which High Court is this .... High Court of Hyderabad for State of Andhra Pradesh and Telangana...Yes... Good Morning...Myself Abhay of Rajasthan High Court and joined as Judicial Officer in the year 2001 and Registrar Vigilance, working as Registrar (Vigilance) for the last 11 months. Good Morning I am Kanta Prasad Registrar (Vigilance) from Uttarakhand High Court since Sept. 14 2014 and I joined Judicial Service in the year 1990. I G R Chavan joined Haryana Judicial Service in April 1986 now I am working as Registrar (Vigilance) of Punjab and Haryana High Court, Chandigarh for the last five months. Good Morning myself mu... from Madras High Court I joined as Judicial Officer in the year 2005 and I joined as Registrar Vigilance on 11/6/2015. Good morning all I am Arvind Malhotra, I am Judicial Officer in the Higher Judicial Service since 2009, joined in 2009 aaaaaa on 1/05/2013 I joined as Officer on Special duty Vigilance in the Hon'ble High Court of Himachal 5 July 2013 I am working as Registrar (Vigilance) Thank you. Good Morning I am Mrs. Rajani Dubey ... Vigilance Registrar from Chhattisgarh High Court as Registrar (Vigilance) since July 2015 I am in judicial service since 1990. Previously my High Court in MP, since 2000 I am working in Chhattisgarh High Court thank you.

Morning. .... Registrar High Court of Manipur actually I came here to learn and collect material from here, we don't have full pledged vigilance Registrar, High Court.. Manipur High Court my lord I am Mrs. Golmei Gaiphulshillu 1995 I joined as Judicial Officer and 2015 April this year joined as registrar High Court. Virendra Kumar Tyagi Special Officer Vigilance from

April aaaaa 2014, I joined service as Judicial Officer in Sept. 1984. Good Morning, I am Singh Calcutta High Court my designation is registrar Vigilance and Protocol serving since 2/3/2015 and I am officer of the District Judge Cadre having joined as direct recruit in 2007 thank you. Thank you so much.

Today before I just want introduce my speakers and then objectives of the programme as such I am off course..... Ok alright .... I am Justice A. K. Patnaik retired Judge SC of India, I served earlier as Chief Justice of MP for Four years prior to that chief justice Chattisgarh High Court for six months, prior to that Judge of Orissa High Court for 3 years and prior to that Judge of the Guwahati High Court for eight years and before that I was at the Bar in Orissa High Court.

I am RC. Chavan serving now as President of Mumbai for about nine years before that I have served Judicial Officer my association with judiciary is 39 years I am Hema former Judge of the Kerla High Court I joined Judicial Service in 1988 as Directed recruit I have never been in administration, retired in 2013, never been Vigilance Registrar, I would like to know how you work as Vigilance Registrar and what are your problems? I am Dr J.N. Barowalia I joined Judicial Service in 1975, served the judiciary 33 years and during this period I had been Registrar of the High Court and Principal Secretary to Chief Justice for 3 ½ years, Principal Secretary of Law to Govt. of Himachal Pradesh. I have written some commentary on the legal topics like Commentary on RTI, Commentary on consumer protection Act, so I know Registrar (Vigilance) is the key in the internal mechanism to check the corruption in the judiciary, Registrar (Vigilance) has to protect the honest Judicial Officer also he must know what is the difference between the Discreet inquiry, Preliminary inquiry and the inquiry this conference I am sure will help the Registrar (Vigilance) to achieve that object. Thanking You.

As many of you know me personally, because I have called you many times, this is Shivaraj, and I am working here as research fellow and basically I am not from judicial Officer, I am from Academia and I was Assistant Professor in University, very recently I have joined as Research Fellow in National Judicial Academy and this is my first assignment and very interesting assignment and challenging assignment, hopefully we all, you know deliberate upon very important issues and come up with, you know some changes needed, thank you.

**Good Morning, I am Geeta Oberoi**, Professor National Judicial Academy, now it's my turn to explain to you that, why we are having these two conferences, one today and another in October

12 to 14, so we have another conference for Registrar (Vigilance) Objectives behind this conference is to understand, what kind of rules and regulations are there, what kind of system in place for vigilance in the High Court itself, what are problems and also what kind of consistency can be brought throughout, uniformity can be brought throughout country because what we have seen that everywhere some different kind of rules and procedure exist, things differ very widely from one high court to another High Court, also there are no normative structures in place, we have to see if we can do some recommendations regarding that, third we have also being Judicial Officers have been coming to National Judicial Academy, from almost now 15 years and Judicial Officers have been complaining to us, that when we would tell them that, Why you're in bailable case you don't give bail, they say no, no we don't won't to give, because unnecessarily Vigilance will come back behind us thinking that we have some motive behind giving bail, we leave it to High Court let High court that, so all these all problem kept on coming and your name kept on emerging in the picture so we thought that yes it time that we also have conference with Registrar (Vigilance) to understand what are issues and challenges and how the system work where we can improve upon and bring some uniformity and some structure in place, this all the objective of these two conferences and now I to my first speaker for the day Hon'ble Justice A.K. Patnaik, sir.

**Hon'ble Justice A.K. Patnaik:** Justice K Hema, Dr. Geeta Oberoi, Director, Dr. J.N. Barowalia, Mr. Shivaraj, Programme Coordinator and dear friends, I will come to the objectives of this conference in latter time, there are constitutional difficulties is there. And I will point out how these constitutional difficulties cannot make also SC India change things, unless there are some constitutional amendments. So, this idea of brining of uniformity in all these State judiciary with regard to Vigilance is misconceived and this will not work, I will give an example as to how, an attempt to have All India Judicial Service has been frustrated by because of constitutional problems, because it is totally misconceived, and you see how Rajyasabha is obstructing the present Union Minister and Union of council of Minister's proposals, there are constitutional difficulties you have to accept that, and with constitutional difficulties you can't propose something, you break head against the stone it can never happen, there are constitutional difficulties I will show at the end, let us come directly to the topic. Frist of all, while dealing with the subject you remember that our constitution conceives of Independence of Judiciary and why Independence of judiciary? Because without Independence of judiciary rule of law cannot be enforced. If look at the Bangalore Principles, I think it has been circulated to you all, Bangalore

Principles, in the principles itself, the very objectives is, will read out Bangalore Principles, Independence Value No.1: Bangalore Principles which are formulated by a conference of Jurists and others what are the values and the first rule they say is Judicial Independence prerequisite of rule of law and fundamental guarantee of Rule of Law, as a judge one needs to be independent every judge shall be independent whether they are court of the magistrate SC judge, High Court or magistrate they have to be Independent, if they are not independent they cannot administer they cannot be fair they are under some pressure, right. This is also has been described as basic feature by SC judgement and if you

If you look at Article 50 of the constitution there is mandate there that, Article 50 reads the state shall take steps to separate judiciary from the executive in the public service of, of the state. Why this mandate was given by the constitution? Because earlier the District Magistrates, collectors were known as District magistrate and Deputy Commissioner in the north east they are called as Deputy Commissioner, District Magistrate, they also exercise judicial powers, right. Now, while in some States, the separation of judiciary, subordinate judiciary, from the executive is came very fast, in some of the state it is not so, by that time I was in Guwahati High Court and I found it is not separate in Meghalaya not separated in Nagaland, right, not separated in Mizoram, right so there is problem there and a PIL was filed before Guwahati High Court that then Guwahati was common High Court of seven states now it is not seven States, PIL was filed before us in Guwahati High Court, asking for separation of the subordinate judiciary in Meghalaya, Meghalaya Deputy Commissioner was also Ex Officio District Magistrate, Arunachal Pradesh, right, the Deputy Commissioner is also Ex Officio District Magistrate and he also decides Session case, there is to decide Sessions case, I remember I met Mr. Asheeman, came to me and said that sir please take me to Judicial Academy, for training, I asked why? Because I have so many session cases were pending before me and all dumped in because I don't know how to handle them. So, with this PIL filed from Meghalaya, I delivered judgement full bench authored by full judgement, directing separation of subordinate judiciary in Meghalaya and the last direction was within such and such time issue notification directing state government, that the what you call, place the entire subordinate judiciary, exercising judicial powers and the High Court, by virtue of Writ petition, under Article 226, the judgement has been challenged the matter is pending in SC but no stay was granted result is, Meghalaya must have separated and thereafter Nagaland took up the matter, than Arunachal Pradesh processed separation of judiciary, because if the magistrate is under or this

session powers, magistrate is under the governments control, there will be political interference there is no independence of judiciary, there will be no independence somebody may catch hold of post and get order in his favor Now remember whether you remember which is that judgement which gave you higher pay and allowances then an IAS officer do you remember that judges salary went up and in one judgement the Now do you remember, whether you remember which is that judgement, which gave you higher pay and allowances then an IAS officer do you remember that judges salary went up and in one judgement the secretary cannot give you salary more than IAS officer, SC said IAS officer are not exercises sovereign powers it is the council of ministers who exercises sovereign power, under our constitution there is separation of powers, the executive power vested in council of ministers not in the secretaries, and legislative powers are vested with in the parliament at the central level and in the state in the state legislature. And judicial power is vested mind you SC has said not in the SC not in the High Court not in the chief justice of the High Court it is vested in the Magistrate also who is exercising the powers, so it is vested in the Munsif or the civil judge he is exercising sovereign powers meaning thereby he/she has to apply his mind to exercise judicial power that much of independence is given, Chief justice cannot interfere with it, if the Chief Justice interferes by telephone call directing to decide this way Chief Justice can be booked for contempt, because it is thought that unless judicial magistrate or judicial officer exercise his own mind and exercise sovereign judicial powers they cannot arrive at fair decision that's what Bangalore Principles says, now look at now if this is the position now when the judicial officers become corrupt can you have an external agency like state vigilance, or the central vigilance commission or the CBI entertaining these matters compliant of corruption can you have, if you have than Independence of the judiciary is compromised, he will become afraid right, I recollect what Doctor Oberoi said, Geeta Oberoi said that judicial magistrate are afraid of giving bail. This problem I have faced in MP also when I was here for four years, and I found, I summoned four regional meetings, I asked magistrate and Session Judges also, why you are not exercising power of bail what is the problem. Why reject a bail, everybody is quite, I said no you are afraid vigilance attached to the High Court but cite one case where vigilance went after you because you granted bail and that bail is justified by the facts of the case, if the case talks on its own, vigilance must never gone after the officer. These are the officers who are corrupt, because for them motivation is not for justice, motivation is money, paisa do bail order lo, that's why they are not granting the bail this is my experience as Chief Justice and Judge. Wherever I found a corrupt

judge not committed to justice and interested in taking bribes, he will grant the bail unless he is bribed, if he granted the bail .....(not clear voice) this answer is totally misconceived.

The person who is coming to judiciary, is committed to one goal that is justice, nothing else, fearlessness the justice has to be done with lot of courage and fearlessness. Hardly there has been case where vigilance has gone after the officer, at least in MP High Court, gone after anybody who has granted the bail and that is justified by the facts of the case. When I was in Guwahati High Court... A lady granted bail and I found that the S.P. went and met inspecting judge and told him that she has granted bail so in the full court, that inspecting said that she should be placed under suspension, I said why? I had all information, what she has done...inspecting judge said, that she has granted bail and S.P. has complained the same, I said to the judge concerned, that's what the S.P. has told you... If you are going to suspend the judicial officers because she is granted the bail and the bail is objected by the S.P. than there will be end of the Independence of the Judiciary, right. So, all these background that I am telling you is because, we can't have an external agency, like the state vigilance, or central vigilance, or CBI or anybody, to entertain the complaints against the judicial officers unless they take the permission from the Chief Justice. Otherwise, if we let loose, the Independence of the judiciary is very badly affected, this is the first point I am telling you and that is why Article 235 of the Constitution, if you read Article 235 it says control of the subordinate courts, right. Control over subordinate courts The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may under the law regulating the conditions of his service or as authorizing the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law, so the control of the entire judiciary is in the High Court not in the State Government, not in the Central Government, not in the Supreme Court, not in the President, but in the High Court, this is the first obstacle that will come in the way of Dr. Oberoi's idea of having uniform judiciary, no question of uniformity it will be unconstitutional..... No chief justice conference can impose this, I will tell you an example what has happened in the Chief Justice Conferences, now I will tell you Justice Balakrishnan, was the chief justice of India and Second gentleman in the SC was Justice. B.N. Agarwal and third gentleman was Justice Alam way back in 2006-07 said that we must have an All India Judicial

Service, right and said 30% subordinate judiciary may be taken from All India Judiciary, right and they proposed the Idea, and most of the Chief Justice did not praised the Idea, and just kept quiet. And I told these three judges, how you will do it sir, look at the Article 234, first Article 233: Appointment of district judges

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

Where is the scope of All India Judicial service, right, and then you come to Article 234: Recruitment of persons other than district judges to the judicial service Appointment of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State. So I said sir under which provision of the constitution there can be All India Judicial Services, there is provision but it has to passed by the 2/3<sup>rd</sup> majority by Rajaysbha, so I said the States must agree to that resolution and High Court must cede that power otherwise it is not possible, right. So they said what is to be done, I said refer it to the State Govt. and to the High Courts, to High Courts and not to the Chief Justices, I said none of the Chief Justice have got the powers, the power belongs to the High Court and State Government, the High Court here means under the 235 High Court means not the Chief Justice but High Court Sitting as Full Court, so I told them only thing you can do is you can request the Chief Justices to place the matter before the full court and if the full court say yes we agreed, we can think of it, and in case of state government, if they say yes we agreed, we can do it otherwise we can't do it this is what I have to tell to the Chief Justice. After that many Chief Justices told me that sir, *aapane hame bacha diaya otherwise muskil ho jayta, humto yaha consent de dete, wahna jake full court bulte aap kaise consent diaye*, therefore how to concede this power, right. Because of this All India Judicial Service is frustrated completely, so you can't uniform, if the full courts of the High Courts agree that they will have Uniformity of the procedure with regard to vigilance, right than it is alright. Otherwise you can't have we have federal structure in place, there is no central system and mind you, I am one of those persons, who say that the Judgement of Justice J.S. Verma, as unfortunate, because it has put High Court under the SC, because all have become subordinate judiciary. You read J.P. Singh's Interpretation of Justice, he says that Autonomy has been finished, by this judgement. High Courts are autonomous, totally independent of the SC. SC has only higher appellate judicial powers nothing else. They cannot

impose, in fact in my opinion Chief Justice Conference is not meant for uniformity. But, it is meant for interaction with each other, so if the High Court is following a good procedure why not to follow it in our High Court and if you look at the reading material that you have right, at one places, you will find in the reading material, let me recollect the page, I will point that page number, there are some resolutions adopted by the Chief Justice Conference, at the Chief Justice Conference, in which I have participated, they discussed about the vigilance, page no. 13 sir... alright, alright. This is which year, page number 13, and yes chief justice conference 2009 and before that also in 2007, you see the bottom of it at page 13. Chief Justice Conference held at 6/7/2009 is highly relevant and it was resolved that Vigilance cell constituted in every High Court should be headed by Senior District Judge of impeccable integrity and should be under the direct control of the Chief Justice of the High Court, right.

Then again 2007 it started, 2008 it continued, 2009 continued and in 2015 it is continued, right this where the vigilance system in the different High Court were discussed and let me tell you I have been judge of Guwahati High Court before that I have been Judge of Orissa High Court and before that I have been Chief Justice of Chhattisgarh High Court and Chief Justice of MP High Court. The best system amongst these High Court has been MP High Court.... (not clear audio) Wonderful vigilance setup to my surprise I have found, there are District Judge Vigilance, who are this, prior to this Chhattisgarh also planned some, District Judge Vigilance is not special officer vigilance, District judge means he is regional vigilance officer posted under the Registrar (Vigilance), right so in MP there is Registrar (Vigilance) Directly under the control of Chief Justice, right. Then, why directly under the control of Chief Justice, almost entire vigilance system entirely under the Chief Justice, why? Have you thought of it, to ensure that Portfolio judges of different District Judges, don't interfere unnecessarily in the Subordinate judiciary and allow the corruption, I am very frank, right. Portfolio Judge, you understand portfolio judge, all of you understand Portfolio Judge, yes... as full cannot administrate everything Judges are distributed with, so some Districts are distributed to every judge, right. Tripura for example, (he knows), Tripura Judge will normally head it, but I told the Chief Justice, of the High Court when I was in Guwahati, don't give it to the Tripura Judge, right. Because Tripura Judge will interfere with judicial matters, give it to somebody else, doesn't matter and Tripura Judge complained to the Chief Justice I am the Tripura Judge, why Tripura Portfolio not given to me? Judges are not angels right, even Chief Justice of India, If you read the constitutional debates, we saw the photo graphs

of the father of the constitution, Dr. Ambedkar said, Chief Justice of India is no angel, he has got all his fairy tales, the power of appointment of SC and HC judges cannot left with Chief Justice of India, that's what he said. One man cannot be entrusted with power, because, he has so many power, so much of power, so therefore as I was saying, Portfolio judges is the inspecting judge, Portfolio judges makes the ACRs, right, they may tell this judge is doing very well, on his grading the promotion of the judiciary is depend and they will have control, and subordinate judicial officers who have posted, who were after him they will try to please him, satisfy him, they will try to follow his instructions, that is why it says so far as Vigilance is concerned, it will be under the direct control of the Chief Justice, when I was Chief Justice of Madhya Pradesh some judges uses to come and say sir, *uska against inquiry ho gaya ham ko pucha hi nahi*, I said are you aware of the Chief Justice Conferences resolution, are aware of the system of the vigilance, what? You are not to be asked, Chief Justice, Registrar Vigilance and how will the Registrar (Vigilance) know, right. Registrar (Vigilance) know because of the Complaints received by the District Judge Vigilance, posted regionally, right. So, there was District Judge Indore (Vigilance), District Judge Gwalior (Vigilance), there is one District Judge Bhopal (Vigilance), there is one District Judge Jabalpur (Vigilance). They will get complaints, makes the preliminary inquiry, and submits report to the Registrar (Vigilance). Registrar (Vigilance) will place it before the Chief Justice, if the Chief Justice wants some more thorough investigation, Chief Justice will ask the Registrar (Vigilance) you do it and he does it through his procedure and place it before the Chief Justice and thereafter what the chief justice does is, he recommends an action to the full court, this is the system. Now, as I was telling you, Registrar (Vigilance) this is what they noticed in the Chief Justice conferences that's why they passed that resolution, so, remember the vigilance department, has to be under the High Court and basically under the Chief Justice of the High Court. Ultimately, it go to the High Court in a full court meeting but the entire system will work operationalized under the control of chief justice not any judge or portfolio judge, this is what the system is and that is how this 235 is maintained and remember under 234, 233 recruitment is there, the problem of our judiciary is, and that is also problem of UPSC (1) at the time of recruitment you have no way to check the character of the person, right. You have to only test his talent, his knowledge of law, his English, his command over English and all that, *han*, you carry police verification, police verification is not everything, but what kind of character a District Judge has is only his wife who knows, his son may not be knowing also, I remember, Let tell you one thing you know the case of

Sumitra Sen, I was one of the Judges, who recommended his impeachment in the report, right. That report was submitted by A.T. Shah, A.K Patnaik and Lodha, right and look wise, Justice Sumitra Sen was very smart gentleman, very smart, good judge, very well behaved, and very well dressed, right. What we found, that he was appointed as receiver by the Calcutta High Court, in the judicial side in the Civil Suit, (anybody is there from West-Bengal, Calcutta) and he was entrusted the job of selling some steel materials, in the sale party has not paid the amount, so he has to sell that steel and deposit the amount in the receivers account, he deposited 30 lakh, right. Then in three years, that remained with him, then he became a judge, never accounted for that 30 lakhs, after three years becoming judge, when the case was taken where is the money, then the judge asked, who is the receiver, Mr. Sumitra Sen, now he has become judge, than he asked him to deposit the money, he could not deposit why? He had spent the money, that's what the case is. Ultimately by orders passed by, he later on deposited it with interest. But, there was case of temporary misappropriation that is the finding we gave, right. Now, after Sumitra Sen Left, he resigned, in the midst of impeachment proceedings in the parliament, the judges who had recommended, Justice, A.K Mathur Chief Justice of Calcutta High Court, Justice Kabir, I was there, Justice Lodha was there, Brother why? He was very smart, very handsome, very well dressed, very decent advocate, he was the lawyer, right. Then, what went wrong, I said sir, how can you know from these factors as to what was his character. He deposited money and spent it away, can you know it, nobody can know, yes, yes, yah, yah we have seen it, and we have verified in his account the moment within 7 days 30 lakhs become 8 lakhs, I asked that question why? 32 lakhs become 8 lakh within 8 days, better give an written submission otherwise you are in trouble, nobody can know, character nobody can know at the time of recruitment. So difficulty in recruitment in both, with regard to All India Service, with regard to this and any services, unless you have committed an offence and police officers found somewhere, something, some criminal antecedents is there, otherwise nobody can know the character, right and second is, (2) even if the character of the person is good at the time of recruitment, like in the case of High Courts Judges recommends after satisfied with his character, we see him as lawyer, even if the character is good as in the case of High Court lawyers, it may so happen that temptations of the power may spoil the character. It may be some temptations of power, it may be pressure from the spouse, it may be pressure form the son, it may be pressure form the daughter, it may be pressure form the friend. It may be temptations for the future power from a politician, these things to come in or temptations

for acquiring the property, right. These things may come so, at the time of recruitment you may have taken a good person, very solid person in the course of time his character proves to be failed, right. So, a good recruitment is not the only way to check, there has to be regular purging system, a regular disciplinary system, regular vigilance system, monitoring the subordinate judiciary and that is what the vigilance system of High Court does.

I read Mr. Mohan Gopal's article, in the reading material, there is no transparency to some extent I agree with him but to large extent I disagree with him, right and I will tell you later on, that is because of the now the Right to Information Act, has come in that issue is pending in the SC, I will answer that, also don't totally agree with what Justice J.S. Verma has said, in one of his articles here, honesty in an attempt to show yourself that I am honest to the world, you may affect the Independence of Judiciary, that is my view. It may affect the Independence of Judiciary. I was also the judge who was the part of three judge inquiry committee, against the five judges of Kerala High Court in Mysore sex scandal case, sorry Karnataka High Court. She is very serious (on Justice K. Hema, laughter) but then Chief Justice, Justice Jehawaralal Agarwal/Gupta was also member my committee and Justice Thakkar was the chairman of the committee and the allegation was about sex scandal took place in Mysore, we went there gave notice of public hearing, nothing came out, nothing it was and ultimately one person came in the public response, public hearing, he said I have been reading the Times of India for the last 30 years, whatever comes out in my belief is the truth it cannot be wrong, right. Then we called this Times of India, correspondence who has reported it, we asked tell us what has happened, two persons came, let us tell us what happened, what is the matter, they said what we heard was, sex scandal reported in the newspaper was that judges were found with ladies in each room, hotel room right and that was in the press and when President Abdual Kalam read this report, he was furious, knowing anything, he called the Chief Justice of India... suspend all these five judges, chief justice of India told him that there is no power sir, there is no power under the constitution to suspend judges, how will I suspended High Court judges, right, then some way some way then the Home Minister was also there... Chief Justice of India said, give me a report,... so an IB report, he said I can't give CBI report or some like that, I can give IB report and the IB report was this, given by the local Superintendent of Police of IB that, it is reported that five judges of Karnataka High Court went a particular Hotel, on another table, there were the couple sitting there, the gentleman of the couple he went into the toilet and then one of these five judge came to this table and sat, and the lady objected, and the

mean while gentleman came back scuffle took place, and the gentleman immediately summoned the Inspector of Police, Inspector of Police threatened one of the judges, who was sitting on this table and thereafter the judge summoned the commissioner of police, commissioner of the police came saluted them and put them in quails and sent them back and this is over. So, where are the ladies and High Court judges inside the Hotel rooms? Media, has created this problem, right. Number-2- we summoned the police commissioner, we summoned the police records, we summoned the Hotel people nothing was there, right. But, media has carried the reports, then we summoned the times of India people, what all you have said? They said- we have said never said High Court Judges, than what you have said? You see our paper, we said high up's? Why did you said High Up's? because the commissioner of police included acted as... so high up's from the High Court judges, right and then ultimately even that was not found to be correct because on that day of the five judges one of them was sleeping in, he was having some medical problem so he has gone to the hospital, there was some operation on him, so one of the Judge of the Karnataka Judge said that he was on operation on that day. This is his bed ticket, he was there in the operation, one of the judges had gone to his village, a third judge on that day, the on which incident took place, third judge was celebrating his marriage anniversary along with his wife and children in a hotel he produced the bill. A fourth judge, had been to Tirupathi, and the fifth judge all alibi, so what we say, what report we give, it can be totally false, and if you have going to act on this then you are what you call, going to affect the independence of the judiciary. You are going to affect to put in fear amongst the judges, you cannot act on it, and when we discuss together, Justice Thakkar said Patnaik very disappointed with, he was asking for the materials, Justice Thakkar said Patnaik is very disappointed with this, I made my best efforts, I did not get any material and then Justice Jahawarlal Gupta told me what to do with media, I said what the hell to do with media, just tell them that you are totally wrong. Nothing of that sort has happened why the hell did you report this, apart we submitted the report, Justice Thakur initiated the contempt proceedings, against the Media persons they went up to the SC, Supreme Court entertained it and just kept quite it is not yet decided. Report is there in the SC that's it. When we submitted the report chief justice Khare was there, he said did you summoned that IB person, I said yes sir, we summoned the IB, where it is show? I showed the letter. We summoned the IB lady, lady SP, who has submitted the initial report, on the basis of which inquiry was started. We asked them to give evidence, and what is the reply, showed him the reply, reply was based on rumours that ways floating around at that time. In

Mysore I have no evidence to furnish, then I consulted very senior person VIP. He said sir, IB normally acts on rumours, IB never has evidence. CBI which goes for evidence, we don't have evidence. IB reports are based on rumours, you understand, but in a vigilance inquiry that, High Court does everything is well founded. Everything comes in material, it is not that of loose statement of IB, you follow, and this is how we check, we ensure that a judicial officer is not unnecessarily victimized. Right, and some time a judicial officer also creates lot of problems, recently what happened in Madhya Pradesh against Justice Gangele, that lady judicial officer was transferred, she made halla went to the SC, judges mouth is shout. He can't go to the press, though Justice Gangele went to the press, ultimately SC said the Chief Justice could not have appointed a committee, it is the if it is the High Court judge, it is only a chief justice of India who can appoint a committee and Chief Justice of India appointed a committee, Justice Chandrachud Chief Justice of Allahabad as Chairman and they found no material against Justice Gangele, so they found that there were some aberrations were there that's what the newspapers were reported, I don't know, right how much damage was done to reparation of judges, did you see that, judges are not politicians, we have to guard and if you read the constitution it says that no judge's conduct will be discussed in the parliament, except the impeachment process is concerned, right. So, we have to be very careful, what I am saying is, we have to be very careful, I don't agree really with Justice J.S. Verma and Mohan Gopal, transparent, transparent, transparent these are the languages by the academicians and I am telling to both the academicians, whatever is there, it is provided in the Right to Information Act, and Right to Information does not exempt the judiciary, in other countries Right to Information Act exempts judiciary, but here it is not, I was the Chief Justice of Madhya Pradesh and Chhattisgarh, complaints will come against the judges of the High Court against the subordinate judiciary but you have to scrutiny the complaints and find out whether these complaints are correct or not and then Right to Information Act is strictly applied, what complaint is there, complaint will be given, the complaint will be published in the newspaper, what will happen to the judges you see, ultimately judges authority depends up on his image, his reputation. He does not depend only on power, right, so one has to be very careful, transference is required, transparent procedure is required, to what extent it is required, assets one has to declare and that must go on to the website, right and some judges I must tell you, who are extra jealous and they also the account number of the bank in which the money is kept and that bank is hacked right, that's why chief justice said don't give bank account number, you say in the Bank so and so,

declaration of assets but if the complaint filed before Chief Justice against the judge, if it is thrown into the public domain, without there having inquiry, see just imagine right, it was my judgement, in *Namit Sharma's* case, in First judgement was delivered by Justice Sawtantrkumar, sitting with me, he put High Court Judge and Supreme Court judge... I deleted that his assumption was they are exercising judicial power, but in the review I found, they are not exercising judicial power, if they are exercising judicial powers, because of principle of separation of powers that is there in the constitution, that can be known to the judicial officers, right. But, I held whether it is, whether the information held in the public domain is to shared or not. That decision is to be taken by the information commissioner, he is not determining any rights, he is only deciding whether some, some information with public authorities can be shared to the applicant or not and once that base goes, the judicial officer need not be appointed, that's what I have held in the revision and set aside the old judgement and so, the Right to Information Act does not, you know why that first judgement was came, applications were filed asking the chief justice of India, if he gone to Bombay what did he eat? Where did he stay? Justice Kapadia, this was to the knowledge of Sawtantrkumar, information commissioner started passing wild orders, wild orders, chaotic orders, right. There has to be some balance, there has to be some balance, now this is what I have told you the Vigilance system, but one aspect which is totally neglected, vigilance system must also ensure, quality of judgements, she has said they will reject the bail petition, they will dismiss the suit though it should be decreed, right. They will convict a person, in a case of acquittal, we have to ensure quality of justice also, we can't have negative judges all through but I am sorry to say this aspect has been totally ignored, tough there are powers of the High Court under article 397 *suo moto* revision of the criminal decisions, under the High Court 115 CPC, *suo moto* revision in the case of civil matters and under article 227 of the Constitution *suo moto revision*. So, vigilance should be wide based, and ensure a case of conviction ended up in acquittal, or case acquittal ended up in conviction by examining the judgements a cell must be created in the High Court and where the quality has suffered, you chief justice should say place this matter, for consideration, *suo moto revision* should be filed, before the concerned judge who has the roster. I will give you one example, you know Sania Mirza, Sania Mirza she was sitting somewhere with legs crossed and there was national flag somewhere there at a distance, the media people clicked a photograph, right, and published it. That she has no respect for what you call, national flag. She just sat there, right a complaint was filed, in one of the courts in Madhya Pradesh, I was reading the newspaper

I saw this compliant filed, I think somewhere in Madhya Pradesh. So, I told the Registrar (Vigilance) you cut out this paper from me, place this matter and call for the record straight away, order was passed, right, for *suo moto* revision, and the records were called for but the Magistrate he became conscious he will that. In case Sharukhan, complaint was filed in Indore, is this job of magistrate, how do you maintain quality. This how we had, we tried to introduced, but I don't what has happened afterword, to ensure quality of justice, this *suo moto* revisional powers vested in the High Court. This idea I got from Justice U.N. Bhat when he was Chief Justice of Guwahati High Court, when I was there I use to find that, Judgement from my portfolio District use to come and they all file up in my office, why thought why these judgements are coming unnecessarily, for *suo moto* revision. Now, where is the time for judge to go through all the files, impossible, so each High Court must have cell to examine all the judgements that are relevant after examination the records may be sent back. Call for the records examine the judgements see whether they are of quality or wrong otherwise, there is no problem, this is what I am suggesting you and the mechanism ultimately must be, absolutely effective. In Mr. Mohan Gopal's article there is mention about Transparency International giving a report and I have also read that report. They say three departments are very corrupt in India, one is the police that everybody knows what happens in the police station, second is the transport Department, RTO office and third they say is subordinate judiciary and in my view subordinate judiciary cannot be rated as third, this bad reputation of subordinate judiciary has come through corruptions in clerical staff of the subordinate judiciary. Without some money they don't fix a date that regular money has to come, 300 Rs. 200 Rs. 100 Rs. Earlier in our time when I was practicing, 10 Rs. I never went there I told my clerk whatever you want to do you do I am not going to pay them money and this goes on and it goes in-front and in the court room, or in the office, in Madhya Pradesh it is going on, first thing I told them you do one thing, you separate office from the court. People should not watch this and second thing what I did is, below all the District Judge Vigilance, I posted Additional District judge Vigilance. Whose job is to catch hold of these persons who are taking bribe by the clerical staff and report to the Additional Registrar (Vigilance). In the High Court we will place the matter before the Chief Justice, suspension, immediate suspension, in Madhya Pradesh lawyers are thinking of agitation but when they found that public is liking it they stopped I don't know what has happened now, after I left.

So, to ensure that the image of the judiciary remains alright, right, you must take care of this clerical staff, they are getting good salary now, quite good salary, why to ensure good salary, no question of taking money and another method is computerize everything. They have hardly have any scope, computerize the subordinate courts, when I was there as Chief Justice in Madhya Pradesh, I had very dynamic who was in-charge of computerization, R.C. Lahoti's brother, Justice K.K. Lahoti were the Information Kiosks were put in the corridors of the High Court, all that you got to do is put one rupee coin there and get the information Status Position only. In each Bench, if subordinate courts similarly are computerized and fixation of dates also become computerized there is hardly any scope, for the clerk to ask, right this is to be done, and at the end I should say, Let you cannot route out corruption altogether but the image of the judiciary, has to be improved that can be done by taking steps not by giving lectures, I have lot of respect for Justice Verma, right. He had very High Moral values, I have respect for Mr. Mohan Gopal, right. But, Mr. Mohan believed in systems, Justice J.S. Verma yet to think of what the systems are, you can't preach honesty to the dishonest man, you have to devise system by which dishonest man is kept under control and cannot become dishonest, if he became dishonest out him from the judiciary. In our High Court, in Madhya Pradesh High Court, the moment there was complaint of bribe against the judicial officer, first action- place him under the suspension. Keep them under the control, keep the judiciary purged, through the very strong vigilance system but as I told you corruption is because of the larger causes of the society, system has to be improved and you have to ensure that the system are put in place. That's what I wanted to say, and as I said uniformity is very difficult, because of constitutional difficulties, thank you. Thank you very much. (Applause)

**Dr. Geeta Oberoi:** Thank you so much Sir, points well taken, we will improve, not to think about uniformity, but may be some other concept, as you said that system should be mad robust, things are in order. Now, we will come back at 10:35, is that alright.

**Session-2: Verification of Character and Antecedents of Judicial Officers prior to their appointment/promotion.**

**By: Mr. Kuldeep Khoda, CVC (Jammu and Kashmir)**

**Dr. Geeta Oberoi:** Well come back, We will now here Mr. Kuldeep Khoda, Mr. Kuldeep Kota is Chief Vigilance commissioner for the State of Jammu and Kashmir is a IPS officer and his long stint of experience being DIG and almost 35 years he spent in police force also one of the best thing that we can have from Mr. Kuldeep Khoda is that we can have another perspective how are the organization, like police system have the own vigilance Cell in the place and how they actually conduct the Vigilance system we are in Judiciary we have as a justice Patnaik brought out this fact that, police cannot do Vigilance work for Judiciary because otherwise judicial Independence would be threatened Judiciary has to do its own Vigilance work but at the same time I think it's good to learn how other vigilance systems operate, the Vigilance cell and how they function about it maybe we can take some best practices and think about, in future if introducing in our system with this I give it to Mr. Kuldeep Khoda.

**Mr. Kuldeep Khoda:** Good morning to all of you, here a little bit correction in my introduction by madam Geeta and I am from 74 batch of Indian police service and headed the force as DJP for 5 years from 2007 to 2012 and heading the intelligence for 5 years prior to that of the state of J and K, those where the years of few change security scenario of the state and after by superannuation, I am heading the Vigilance Commission of the state of J and K , I'm extremely grateful to the Director of the academy for having invited me here to interact with you all on a important topic, regarding verification of character and antecedents of the judicial officers prior to their appointment/promotion.

I would like to every briefly give some sort of directions which the government is given, in this regard the comment of India, I don't think this is a forum where, I can discuss the directions we should be confined to the Government of India directions in this regard and also my talk will be back by judgements where finer points have been deliberated upon our by Judiciary at various level to care of certain specific situations, where verifying officers have to take view on either way. As you all know that Judiciary has been first line of Defence in preserving democracy and liberty in all country it actually mandates that the appointing authority of judicial officers is fully satisfied about the character and antecedents of any officer for a judicial appointment, the Judiciary

has been in limelight in our country for very valid reasons especially during the last decade or so, for the types of judgements have brought big changes in our functioning the perception a section of media among a section of people, the Indian judiciary has been able to stand up to the challenges and strengthen the foundation, foundation of our constitution and bring about accountability and transparency in the governor's country. The basic object of verifying the character and antecedents for judicial appointments is primarily to ensure a strong and efficient judiciary, to secure Independence of judiciary from the executive. The appointing authority in the Naxalite states, if you look at the judgements and the government directions in this regard it boils down to one sentence view that is, the appointing authority should satisfy itself that the character and antecedents of the persons proposed to be appointed as such as do not render him or her unstable for such appointment that the basis. To ensure that ensure that these requirements submit it is able to take a view to guide lines which have been issued, one of the things which, which is off which were candidates are considered unsuitable. I am referring to the Government of India's guidelines those who are members of or associated with anybody or Association declared unlawful after it was so declared provided the body or restoration continues to be unlawful at the time of verification, those who have been discharged with or against whom there is substantial evidence of participation in or association with an activity or program which is aimed at subversion of the constitution overawing or overthrowing and by unconstitutional means the government established by law in India causing organized breach or defines of law in what is my dance bringing about on underground whatsoever decision of a part of the country of India or Cession of a part of the territory of India from the union or state and claim of Cession or Cession or which incites of individuals to bring about such Cession or cession disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or being prejudicial to the security state, promoting or propagating or attempting to create on grounds of religion race language caste or community feelings of enmity or hatred or disharmony of different sections of the people this has to be back by substantial evidence it cannot be just merely about a one line report or half page report from an Intelligence agency with out and supporting without supporting that has been happened hypothetical cases which we are distributed to you is linked to this sort of backing by the evidence when the case was decided and this sorts of cases do not prevalent in much of the country but in the state of J and K there are lots of, of practicing lawyers which could not get into the bench because of some sorts of association with these organizations because as you all know that there

were some of the people from elite class also involved with various situations or sections of people who believe in cession the state of J and K from rest of the country. Further guidelines in this regard is, participation in any such activity, particular within 3 years of the date of enquiry should be considered a sentence that the person is unstable for employment unless there in the Interval for change of attitude is not included in this regard of his own or some somebody sent from personal knowledge it is not that, now political party have been kept apart, for this purpose mere membership of a political party is not a factor debar a person from entering the service judicial or otherwise unless that particular group associated with any sort of activity as mentioned earlier, likewise for students who are part of politics there is no bar unless of course that political activities is associated with any sort of like CPI Maoist or any of the Other groups which have been declared on unlawful, now in case of other situations where persons are convicted of a moral turpitude, there has been lot of discussion on that, the context in this regard is that they can be divided into 3 types one is before charge sheet is has been framed, or there is acquittal or the third this is the third group is where person convicted of turpitude in case of filing of charge sheet by the courts and in acquittal the contents of the charge sheet have to be viewed and the grounds of the acquittal has to be seen, based on what the appointing authority finds out in the charge sheet or on the ground he can make up his mind whether a person is suitable for appointment or not, the flexibility has been given to the appointing authority but that flexibility has to be used in very judicial manner, where a person is convicted of an offence of moral turpitude, normally he has to regarded ineligible for appointment however again in this case where the appointing authority feels that there is there are reason to redeeming features and that such a person has cured himself from such weakness, specific approval of the appointing authority along with the grounds which makes him to believe that he is now totally out of it, he has to record the reasons for that, that's a difficult task it's not as easy as easy as said so normally the conviction general results in a person not being eligible for such appointment. There is another guideline regarding those who get disqualified by the service commission of the state of it Centre boards in Union Public Service Commission in debarring in one state automatically does not result in dividing in another state how was the UPSC finds a person a person debarred from any government job it is taken as an acceptable thing for all Central government appointment. If you view have been taken differently when a person has been debarred by one state board and he's been considered by another state, the circumstances and reasons resulting in such is disqualification should be gone into by the appointing authority to reach a

conclusion that the person is not accepted in other state also how do we find whether a person is bad in one state and he is applying for recruitment in another state the reference is to be made to the concerned District Superintendent of Police, where his staying, place of residence and also to the superintendent of police of his permanent residence to the head of the intelligence it is normally additional director general of CID or IGP CID and also the director of Intelligence Bureau.

Now briefly I mentioned, I introduce the topic so that we are in position to discuss and situations which you have encountered and try to find out what is the best way out in those situations and try to find out what's the best way out to reach a conclusion on facing in this regard mechanism of carrying out the verification and we can always be of use provided Judiciary things that fit to take that is style is not to impeach upon the independence of Judiciary because the view expressed by an outside agency, will not necessarily be the view of the judiciary it is only to assist the judiciary to reach a conclusion, the type of records which are available with intelligence agencies and police agencies while taking the assistance of the filed agencies that sort of evidence which already available the appointing authority and they can take view upon that. What is the type of record to be looked into to be a looked into, the criminal record of a person police station where is the permanent resident and where is he resides, if a person gets involved in any offence anywhere else in the country and he gets convicted there or he is charge sheeted there a reference to that police station is made to the police station of the permanent residence police station of his residence for getting that recorded in Register No. 9 station where he belongs to. So the Reg. number 9 is the basic authentic record of any person about criminal antecedents of the person and now about the unlawful association and other activities which are also required in this regard for that the intelligence department maintains a regular record of all sorts of activities which are going on in the state, every intelligence headquarter state level issues the daily statement in our state it is called daily summary of information (DSI) in other states where on day to day basis all political activities all subversive activities, activities of all banned activities are recorded, including organizations supported, the persons who spoke there, different persons in those forms is odd recorded in brief that it is a document which is issued on daily basis which goes to which goes to the people on need to know basis of the state the chief minister of state so there is a record of that one can always see if the SHO or some filed officers says that he is a person belongs a banned organization, hear some situations occurred some years DSI shall always called for and it can provide a cross check whether the report is factual or not. And the Intelligence department now also records of the persons has

get noticed by the activities of individuals on various social sites like Twitter or Facebook they also find mentioned to know the owes of the persons which also that required likewise of the views of NGOs, though they are created for very specific and purposes but let's accepted the factors of many of the NGO have come under shadow for international activities, now they also get recorded. Now, it is not only the these are the guidelines that, the person is accepted or rejected for the appointment, the courts have held view that if the material information is suppressed, there are case laws of which can come during discussion provided time allows us to do so, but, but I will use this opportunity as to know your views on the topic and how best the police and intelligence agencies help you in reaching a conclusion in accordance with guidelines, by various courts in this regard I leave this forum open for discussion thanks..... (Audio is not clear)

Justice A.K. Patnaik.....in this judgement with Gohkale I was also part of the Bench, now you have seen article 234 of the constitution, the power belongs to the High Court and state government, the governor in council and High Court has to make an appointment. And the rules under Article 234, rules to be made right, or all administrative appointments shall, by government in consultation of the High Courts. What was happened in this case was, as far as I recollect in Andhra Pradesh recruitment was taking to post of civil judge and there was a police report that against the candidate that she was wife of advocate, she was also practicing, husband is associated with the Maoists, right. He was taking cases and arguing the matters in the trial courts on that basis police report High Court said no, should not be appointed, right. The matter travelled up to SC ..... And SC said there is no way, Justice Ghokale authored the judgement and the conclusion-said hence we are concerned with the question is whether the appellant could turned back on the very threshold on the ground of her alleged political activities. She has denied the allegation, that she's enemy connected with, with a CPI Maoists, that to CMS there is no material on record to show, that the CMS is the banned organization, or that the appellant is its member, it is also not placed on record in which manner she, has participated in the activities of the CMS and through which programme she tries to intensify the activities of the CMS in Markapuram area as stated in Para 5 of the report. while accepting that husband may have appeared for some of the activists of CPI Maoist to seek bail, the appellant has alleged that the police are trying to frame due to her husband appearing to a post before the police in criminal matters, prima facie on the basis of material on record it is difficult to infer that she has an affiliation with banned organization the finding of the Division in this behalf, rendered para in 19 cannot therefore be sustained. We may

asked to note at this stage, that on selection civil judges remain on probation for the period of two years can District Judge and appellate authority has opportunity to watch the behaviour of the candidate and that probation can be extended, if it so found....

Ultimately the judgement of the AP High Court was set aside and it was directed that the matter shall be placed before full court, with report and all that, and subsequently the full court High Court again they rejected the candidature and the matter again came before me by that time Ghokale have been retired, and we admitted that matter, so what I am saying is, remember that every citizen, if you read Article 16 of the constitution, have equality in the matters of appointment, right, and you can also read that in Article 14, and just because her husband may have some links, you cannot throughout the candidate, whether you can throughout the candidate on this ground, one has to decide. I remember I was chairman to the recruitment in Manipur to the District Judge, a similar matter came up two persons were selected, and for the District judge post and one of them was an advocate who was constantly appearing for the insurgents and the other one was alright one post was there, so who will go in that post, I gave report that he is associated with insurgents, it was not power but to the full court to make selection, and the full court said no, no let us not take chance. Let us not select the person who was appearing for the insurgents, let us select the other person, and the other person was selected, so other person was selected, right. What he has said is regular verification of antecedents and all that, there are also of justice Thakur, not with regard to Magistrate but with regard to small posts, mar pit hogaya, han, a class four employee, right, he got involved on small offence and he was convicted, justice Katju said you overlook it after all you are not going for re-appointment, but the case of Civil Judges and District Judges things are different, right. One has to be very careful, when you are making the selection, as I said they are going to exercise, constitutional judicial sovereign powers, but at the same time you must keep in mind the Article 14 of the constitution. You can't just throughout them out, unless you have material to show that he was associated with bad organization. These are the factors, you must read that judgement and you must ponder, right, but I don't think in most of the high Court Vigilance is consulted for this purpose I wish, you must be consulted and separate inquiry is made against such problems.

**Justice R.C. Chavan:** Sir, in case of any doubt as to the antecedents, government refers it to the High Court, I will tell you out of my personal experience (Justice A.K.Patnaik). I had

recommended a District Judge for the appointment of High Court judgeship, I lady, her appointment was cancelled on the basis of IB report and IB said two things, professionally not competent, right and second that there was this case, reported from MP High Court, right. The prime Minister agreed to the appointment and matter went to the Chief Justice K.G. Bal Krishnan, Bal Krishnan said that IB report said to the IB report and the primacy has to give to the IB Report... (Audio not clear). Then I replied, I said that different judges of High Court can be referred with regard to the professional competence of the candidate, ACR were called for, and it was found that, for ten years ACR were marked asBBBBBBBB for ten years BBB on that basis the IB says that she is not professionally competent. This is the first reply, with regard to the judgement, she was a lady, this candidate was lady her husband died in Motor accident case, she was beautiful in looking, and the Bar is to flout reverse rumour, and the rumour was published by newspaper, a reference was made by the court, when she was posted at the place called, Durg, for the initiating contempt proceedings under section 15 of the Act, notice against the Advocate who published the report..... (No clear audio). But the High Court held it may lead to civil or criminal case but not the contempt proceedings, because the contempt of court is only when she acts judicially, if in the judicial side done something than contempt, this was the order. If she wants to go for defamation she can but not with contempt of court, I said nothing to do with that, ability to be a judge, there shall be reputation to be as judge, High Court has rejected only on the ground that, this is does not amount to contempt of court. How it is relevant, right, I wrote back to the K.G. Balkrishanan, Balkrishanan referred to Prime Minister and the file was cleared. Right.

So the even the report of the IB, report of the Police, report of the vigilance has to be scrutinized by independent application of mind by the High Court. Otherwise you cannot ensure that Article, Article 16 will not be protected, right.

**Mr. Kuldeep Khoda:** Justice, two points...if you permit me... On the both cases the Hon'ble Justice has mentioned, in the first case of AP a, One point Hon'ble judged already mentioned was also brought out that at mention that the appointing authority is the state government so it is their report and there are the appointing authorities, we have nothing to with it, which was objected to rightly by Supreme court there they mention specially the high court failed to exercise its administrative functions firstly on the administrative side by simply relying on the report submitted to it by the government, without enquiring the matter further on its own as mandated under Article

234 secondly on the judicial side by dismissing the writ petition specially the respondents could not prove that the appellate was the member of the banned organization or had links with such organization. There is another case *Chandar Mohan v. State of U.P* (1961 SC 19887) SC of India is laid down that a consultation with high court at the time of mandatory. High Court means full Court of all judges, consultation with some other body or committee, besides the high court would amount to contravention of this article appointment made without consulting High Court would be invalid, any rules made by the Governor under article 309, which violates Article 233 shall be void. this is very specially mention in this AP judgement the High Court had not gone into details on the state government authority another case related to IB reports which is very important as Hon'ble Judges brought out in case of appointment to the Central Administrative Tribunal the IB had in an appointment of member of the Tribunal given the remarks on the professional capability of the Advocate who was who was being selected for the job and I have just mention to you briefly, that I will not be able to mention the exact things but, IB has broadly mentioned that he is not very capable but on the other side there is no objection regarding his antecedents and other issues we concerned the IB report went to joint secretary at the same time since a selection was made by body headed by SC judge, so the appointment can be carried out, but the secretary personnel in the ministry he deferred with that conclusion of Joint secretary and other, focusing on the capability of a person to be appointed to the Tribunal, made in consultation with the CJI and the CJI again the relying on the concerned concurred with secretary, the view of the SC was that since there is mandatory to have view of CJI he was so the authority who has concurred with the view of the secretary personal, so that will prevail and his appeal was dismissed and he was not taken into the Tribunal. (Audio is not clear) recruited on the basis of Caste of Back ward they claim that they belong to Muslim to Kayast, they were converted to Muslim.

Whereas during the course of enquiry I found native village Vellore at district Siddharthnagar equations enquiries were dropped High Court on the basis of report of District Magistrate Siddharth Nagar and district magistrate Kanpur once time was dropped on the basis of report of state government Chandini verified these caste certificates through a committee formed by the district judge Kanpur and these characters certificates were found genuine, state government, it was from district Kanpur (yes yes) now during the course of enquiry I found and recorded statements of Lekhpal and revenue inspector which those names were mentioned in these caste certificates, now they have stated that these caste certificates were not made on their reports they

are found native of the original leave from there for fathers from village Nellore at District Siddharthnagar now they file a writ petition before Hon'ble SC on the contention of these judicial officers an enquiry was initiated by State government and their character certificates were found genuine, this is the problem certificates are not genuine.... (Audio not clear)

Supreme Court in one caste inquiry committee will inquiry and submits its report, that certificate can be challenged, now we have set another constitutional bench of Justice Raveendran, myself and Sathasivam, that you can't file suit, but you can file writ petition challenging the caste certificate and you can also the writ appeal and then he come to SC with SLP, right. So caste certificates are not final given by any authority, caste verification is not final, they are subject to writ jurisdiction, subject to writ to appeal, subject to what you call, the SC, ultimately the judiciary, SC will decide, what is to be done in this regard, whether he belongs to this caste or that caste, what are the materials, right whatever you inquire and state government inquired is not final, it will be decided by the SC, right.

(Audio is not clear) Good morning sir, I just wanted to ask Kuldeep Sir, you have mention of the maintenance of register number 9 at the police station as well as the daily statement also based on some reports from the field agents of the Intelligence Bureau, I just wanted to know, I registrar Vigilance from Calcutta High Court I would just like to know whether it is mandatory to the Intelligence Bureau to trap on and tried to assess the professional competence of people against against whom it maintains records in database the professional competence because this the relevance being our institution actually is base of professional , we are professional most of us are not degrees do with our practices, balance a lot of pressures aaa... I mean the moot point is that, is it within the IBs domain to examine and record and report the professional competency of a professional candidates, thank you.

**Mr. Kuldeep Khoda:** For the intelligence agencies, primary task is to report about the antecedents of the person having bearing on the security of the state, which obviously does not include the professional competence but over period of time the reports of the intelligence agencies by convention have been covering all aspect of working but this is a point in this it's not IB's report which has been totally relied totally, *Union of India vs Kalidas*, the relevant portion which resulted in not being considered and finally accepted by the Honorable Supreme court also is that, the secretary concurred with the performance report the Minister of the State had made a note, that the

department recommendations be sent to the Chief Justice of India and the proposal was subsequently circulated to court, the confidential membership to the CJI he concurred with the memorandum secretary is finally in the final decision after the High Court, based on his rejection suggested that you should be considered than the matter went to Hon'ble SC for a final Judgement, the primary thing which made the supreme court to issue a decision was that, apex court allowed the appeal and held that the dropping the name of the respondent was in accordance with the law and procedure since Administrative tribunal Act, 1985 prior consultation with CJI, who concurred with the view of the Secretary, it was CJI his concurrence finally seized the fate of the person. Not the IB, IB gave the background which was application of mind by the relevant higher authorities and in this case was the CJI who applied his mind and concurred with secretary you every day is with due application of mind and property judgement.

**A.K. Patnaik:** I would like to clarify things, depend upon the rules of recruitment right, made under article 234, right if the rules provide for calling for a report from the Intelligence, Vigilance or police or wherever it may be, both professional competence and this, and then it will be material which has to be placed before the High Court, it is not conclusive, but if the rules won't provide for it, and only provides for it, and only provides for qualified and not professional competence, than IB exceed its scope if they deal anything regard to professional competence. Now so far subordinated judiciary is concerned it will depend upon the rules, right what are the recruitment rules there is district judge appoint or whether it is civil judge appointment all depends on rules, framed in consultation with High Court by Public Service commission of the State or by the Governor, so far as High Court judge are concerned there is no provision in the constitution, as to consultation right, president consultation with chief justice of the of the High Court and SC and such other judges, that was interpreted by the nine judge judgement of Justice Verma and there they have said that so far as state Governor and Chief Minister is concerned, council of ministers with they are consulted, right. It can only comment with regard to antecedents, character, integrity but so for professional competence is concerned, it is the High Court Collegium and the SC collegium right, and this our constitutional provision with regard to High Court and SC concerned has to be read along with judgement of justice Verma... Right.

Now the new Act has come let us see, if its validity is upheld, that the procedure has to be made and they will go with regard to the procedure, procedure bill is separate bill if it is upheld they

have to go by that, ultimately the law or the concerned rules with regard to recruitment of a candidate has to be abided, right.

(Audio is not clear)..... Sorry could not get you, can you speak bit loudly.... Please.... May I know whether the IB reports are based as hearsay evidence or up course as far as professional competence is concerned are as to find out to give such opinion as to professional conduct or efficiency of that person.

**Mr. Kuldeep Khoda:** It is very valid point, it is very valid point, let you ensure you that the IB report or reports of Intelligence their comments are based on record which is not created at that point of time which is with reference to the records maintained over the period of time, the daily summary of time. As I mentioned the daily summary of information, it reports on wide aspects the happenings, the developments, and which remain in the record room depository, which can be consulted at any point of time. These are not off hand reports, the IB has to, if the Hon'ble judge calls upon them to provide supplementary evidence they are bound to provide it, and no IB officers who functions professionally or the intelligence officers at that particular point of time at that level especially as the head of the State or Centre would rely on hearsay, it has to be backed by record.

**A.K.Patnaik:** As he rightly says that the IB report has to be professional, but the difficulty is the IB report cannot some time Independent, right, and the best example is, the case of Gopal Subramanyam, when he was recommended, by the SC collegium the UPA government was functioning, IB report cleared him, right. UPA government decided not go for appointment because the government is going to change, then immediately the new NDA government came, IB report was different IB report. Not clearing Subramaniaum, most unfortunate thing IB could have done, most unfortunate thing, and I was the person who gave the interview, that this is unfortunate case that Gopal Subramanium is known for his integrity, he is above Board he is very competent, in one case IB gave the clearance report and suddenly government changed and IB changed report, we expect our IB and vigilance people very honest and fair in this matter. Some time it has not happened because these aberrations, because they yield to political influences, judiciary cannot take their reports on their face value. They have to inquire and find out whether the IB report is right. IB report as I say is not binding on the high Courts it is only a material, remember this one has to be very careful.

So, had Gopal Subramaniam's matter placed again, with the IB report before the SC, Gopal Subramaniam backed out by saying I don't want to go with it, SC collegium would have considered, the first IB report, second IB report would have formed its opinion, which would be reconsidered because the power was there with collegium but the very very unfortunate case that the government this case and pushed other three cases and the President is also concurred with it.

Sir, may we know certain guidance with regard to extraction of information because, regarding some allegation against judicial officers, generally IB reports are alright I have been member of the collegium, I have seen also, and good person I will give simple example six names were recommended from the Orissa High Court, three were absolutely honest IB gave very good reports about them, law ministry also concurred the collegium also concurred the three appointments made. Three names were having their own problems and specific problems were pointed out by the IB report. This is the problem regarding A, I found it correct, this is the problem with regard to B, I said correct, this is the problem with regard to C, I found it correct. Those three names were came out everybody was happy and they were appointed, let me tell you one thing and it is one of the most unfortunate part of the collegium system, two of them who were rejected by Justice Kabir's collegium had earlier been rejected by SC collegium and when I went to SC, I said it is the case of injustice done to two judges, their name should again come that should again come, and it is cleared by the Collegium. Out of those three two are also relieved but the ultimately the justice was done, and the dishonest would not become, and the Orissa High Court send a message, anybody who is dishonest cannot aspire to be a judge.

May we have such guidance, as to how to extract information regarding the allegations made mechanism to extract information because we will not have much mechanism except to collect the affidavits or sworn statement of parties who are making those complaints can we make another efforts to make to extract additional information against the officer, absolutely the Hon'ble justice mentioned the statement called IB report is subject to enquiry by the decision making authority, decision making authority has to be satisfied with whether the report is genuine or not in the same manner if you for the assistance any of the bodies connected to the verifications, the District SP or from the intelligence, they will be too happy to provide that assistance to they have on the records in regard to the person concerned but after going through the report, but after going through the reports and the evidence on record which will be submitted to you in a confidential manner, you

have to satisfy yourself as to what sort of decisions to be taken on the basis of the record and the evidence placed before you. Otherwise I appreciate the difficulties which face on ground level because you try to independently go about it, I think you should feel use these resources because this huge amount of information which is available with intelligence agencies the persons and I think on the basis of report you have to satisfy yourself and its correct or not. Sometimes yes they can err nobody is above not committing a mistake, that's my suggestion is definitely you have to use the resource available and satisfy yourself about any sort of material which is placed before you.

When there is an allegation against the officer, how can find such information with IB, because the IB may be watching the activities of that officers, but they may not be having a particular or solitary instances.

**A.K. Patnaik:** How they collect information?

About the Chief Justice they will collect the information from the Police Guard who had posted at his residence, right. Right from the police escort which takes the Chief Justice, where he visits, where he goes simple thing, IB does not have the network throughout the country, right. About the judges who have been recommended for the High Court Judges, the IB will go quietly to the Bar and collect the information, *Ye kya hai, candidate Kya hai, are oh judge saab ka saath bhut close hai, unko aapas me bhut hai chalta hai*, so that report is passed and it is filed. Everybody knows in the local setup what, which judge is doing, I would quote Justice Venkachallihia when he spoke to us in 1994 in Guwahati when I was just Judge, the judges and judicial officers reputation is known by the nearest pan shop owner, if he is good the nearest pan owner will say good, if he is corrupt, when the litigants comes and ask the pan shop owner, *Kyasa hai judge, teehk hai paisa vaisa kuch dey do hogyaga tumara kaam*, he also knows, so justice Venkatachaliah says in that, the judge doesn't have to go to the house stop and say that I am good, *that the nearest paan shop waala knows*, what is his reputation is, and he followed the policy of transfer and that time the saying was amongst us, I got transferred to Guwahati High Court.....the saying was before the judge was transferred reaches the High Court, his reputation transfers to the High Court. SO the judicial officers his reputation is known to all the lawyers, through the lawyers to the litigants and all that. Right, you know these information *sab aatihai*, IB also collects the information, sometime they will also go wrong as he rightly said, it is only a material to be considered, no rule ever said

it is binding if it is ever say it is binding Article 234 will be violated 233 will be violated, 235 will be violated, right. He will catch hold of some political leader and political leader will manage to influences the IB or vigilance or whatever may be that person and that report will come, a candidate who is gentlemen and report has gone against him, ..... (audio not clear) a mischievous man manage report in his favour this is what the situation, sir you are hitting the nail on its head, Hon'ble knows too much of your department and let me share a point about this in supplementation to what Hon'ble justice mentioned that information mostly in this way that I will tell you. (not to be placed on record as requested by the speaker). Lot of intelligence/information comes from the colleagues of about whom we want to know but then we will cross check it. That is whether it is out of some personal information, personal vengeance, or genuine information so basically it is huge data collection, (absolutely sir).

(From one of the participant) one point that I want to bring to the notice of Hon'ble Judges, that on the basis of appellate court, that a person is going to be condemned or that he is going to be appointed or something, what happens to this Audi alteram principle, without giving him any opportunity he is going to be condemned.

We are all verified, I will give wonderful example, there was judge recommended from Shillong, Meghalaya, right. IB report was he has two wives, one must be the wife and the other must be kept, right. Then the reference was made, why he got two wives, how he was recommended by chief justice, and it was found that they customarily they had two wives and he had two wives, in Meghalaya customarily they are allowed, customary law provides for two wives, like Muslim which provide four wives, right. Than that feedback came, through the IB report and they appointed him, one wife he kept at Shillong where he was living other wife he kept at Kohima where he was posted, what you have to say to that tell me. So, they verified, it is not that they verify, some time they does mistake, but invariably IB reports are good. My personal experience is, they are alright and sometimes even if the report is adversely reported against a judge, (audio not clear).

Again one point to just, I keep on recalling some of the incidence just to make you aware as to how things cannot be always be perfect, there was case where a induction was to made to the Bench of the high court, as usual the names came I was heading the intelligence and we found from the very old record 1965-66 that the said person was detained under the Maintenance of

Internal Securities Act and he had after few months of detention, roughly after three or four months, got parole jumped out on parole, he never returned back (after the expiry of the parole), we are not aware about that, when the name was in circulation things start cropping in, it is subject to verification, we able to find the papers in the jail and in our department but since they were very old records, it took some time we report the matter and which is considered to be struck after few years, I was still heading the intelligence after few years the name again came, we repeated the same thing but this time he got inducted he was made as the honourable judge.

Tea Break

**Vote of thanks to Mr. Kuldeep Khoda**

### **Session-3: Discreet Inquiry against the Judicial Officers**

**By: Hon'ble Mr. Justice R.C. Chavan**

**Hon'ble Mr. Justice R.C. Chavan:** I hope you had a refreshing tea break and therefore would not mind before my grinning you for another hour before the lunch beckons us. I am supposed to be speaking on discreet enquiries against judicial officers, discreet enquiries are the foundation on the basis of which we start either preliminary inquiries or even regular departmental inquiries or the High Court may decide to take some action on the basis of report of discreet enquiry. Now before I go to the topic I would like to ask a question, Why did you opt to be Vigilance Departments of the High Courts, because there was no option, the chief justice posted you and therefore you came, because posting as vigilance registrar recognizes your worth as a person with integrity, because you feel something seriously about the reputation that the District Judiciary has gathered we are part of District Judiciary, I had been a part of District judiciary for very long time and I still consider myself to be part of District Judiciary, subordinate judiciary.

Therefore I feel hurt when somebody says there is corruption in judiciary but at the lower level it hurts because you are a part of that system which is castigated by persons, and therefore if you feel hurt join the Vigilance department because of that hurt, in order to ensure that this stigma is washed away, or at least we do our best to ensure that the people no longer say that District Judiciary is bad, there is corruption in judiciary but at lower levels, if you feel that way then continue, otherwise tell the chief justice to appoint some else. There is no point in occupying the position on the frontier between truth and falsehood, between right and wrong, and then abdicating your duties and permitting wrong to thrive it should be our duty as member of subordinate judiciary. To ensure that we attack the evil of corruption for that first we have to recognize that this evil does exist, we have to recognize that yes there is something very seriously wrong with existing judiciary. Things which we cannot control, cannot change we may not to, for example how people come recruited in our hands it may take a long time. For Public Service commission or High Courts to think of tests which would ensure the character of a person is also assessed before he enters Judiciary, as the Justice A.K. Patnaik said, even if the character of the person at the time of entry is ascertained, where is the guarantee that he will continue to work in the same fashion in the times to come what are the motivating or demotivating factor we have no control over those factors, because there are other departments of high court there are many perceptions, many powers but as far as dirt in the

system is concerned, if that is the job given to us to remove the dirt, let us do it honestly, let us do it without fear or favour. If something is wrong let us try to remove it, what is vigil, keeping vigil? vigilance department, the basic term is vigil on the activities of the district judiciary, do you behave like police officer, even the crime is committed in his presence, who asks for where is the FIR, who says let the FIR Come then I will take action. Should we be waiting for reports and affidavits come before we take action, forget what SC says its perception of protection of judicial officers or protection to judicial officers is flout, again Justice Patnaik said, I am thankful to his lordship for a candid expression of what is happening in judiciary.

People don't avoid passing the bail orders because of fear of the Vigilance department, those who are honest will pass the bail orders warranted in the case of dishonest will take the Ambridge take the shelter of vigilance department saying that vigilance department will take action therefore I will not pass the order. Therefore if you have to keep a vigil we don't have to depend on complaints to come to us, complaint supported by affidavits protecting judicial officer does not mean protecting an incompetent dishonest officer merely because there is no complaints against him.

Some of you have been working in the High Court for short time, some of you have been working for a long time. Mr. Grover have been working have been working in the High Court for quite a long time though he is in vigilance department for short while. You should let me on this, that there is a mechanism in every High Court dishonest officers ensure that complaints against them are filtered out at the inward and outward desk itself, so there is no compliant. Do you say that there is no complaints against and therefore we won't take any action, I suppose it is necessary for the vigilance department to give away the role of being post office? Receiving a complaints, preparing a note putting up before the committee obtaining orders, passing on those orders to somebody to conduct discreet enquiry report processing the report it cetera. Are we post office post office by post district judges head this departments, we would have the postmaster to do it better, if we have accepted this responsibility heart because it ultimately hurts all of us, corruption in judiciary is stigma for all of us, one more thing again and just expanding on what justice Patnaik said, they are good lawyers who become good judges, there are successful lawyers, who became good judges, they get elevated to the bench. A good lawyer when is in the bar maybe concerned about quality of justice about the working of judicial officers but it is not necessary that after becoming a judge after being elevated he would have similar concerned to the about quality of

Justice. He would be more concerned about what quality of judgements he writes, what reputation he gathers personally as judge, many times abdicating the responsibility of article 235 to control over the district courts, many judges they don't even recognise that there is such a duty. They believe that it is the chief justice baby, High Court means chief justice let him to whatever he wants, they may not be always scrupulous but they look at the utility of the person rather than his integrity. Once a Hon'ble judge asked me about a particular lawyer, I said he is a very competent lawyer, has thorough knowledge of law he is very good advocate, but I have doubts about his integrity.

So, *judge saab asked me are lawyer ka kya integrity hoti hai*, this was a shock to me I said in Maharashtra Lawyers have integrity I suppose in other states also lawyers have integrity. So therefore this is the perception we have to understand we have not only to deal with keeping vigil in the district judiciary but also with persons whose fundamental perception may be fraud and there is no point in giving an excuse that the committee so decided what could I do, the Bad apple continued to be in the basket because the committee so decided I place the matter before the committee, committee rejected it would be my failure if I don't convince the committee or get an order from the committee to see that the rotten apples are thrown out.

Now all this a sort of tall order but then this has to be done and with apologies to Shivaraj and Dr. Geeta keep aside the judgements which are been circulated or about which you may be knowing keep aside rules for the time being in the Military Academy they teach officer cadets, Oppenheim's law of war, you must have heard of Oppenheim's law of war. Likewise in these academies we have learned law of enquiries, but when a captain company on the Frontier try to partway of an attack by enemy has to act he does not keep that Oppenheim's law of war in his mind, the objectives are clear to kill the enemy law of war will be looked after by the Generals who are sitting in the tents behind, let them do it after words but first, it is necessary to find out who is our enemy, and it is not simple as of finding out the enemy on the border it's as difficult as a cancer surgeon would have to find out cancerous tissue distinguish cancerous tissue from healthy tissue it looks alike therefore discreet enquiries are very important they have to be conducted with thoroughness with an understanding of human mind works having a network of friends who would be able to tell you the truth. Justice Paknaik had a very good concept working in Madhya Pradesh District judges Vigilance or additional Registrar vigilance if Vigilance registrar could build up

such team in every district that he is a trustworthy officer whether you name him not another that is another thing because he may not misuse his position because once you name him he becomes a sort of bully, he may bully others let him to do that, have such team identified, for this you have to be in the vigilance department in the registry in the judiciary for a long time to identify the persons who would be able to discharge this function, without fear of your affection or ill will, in our country almost in every state caste is plays very dominant role people who are otherwise good would when it comes to person of his own caste would say that well the mistake can happen. They will say this not mischief after all this is the mistake and we have got very good mechanism of ignoring everything we say that judicial work is altogether different judicial performance cannot be judged with mathematical standards therefore on the basis of a judgement you delivered you cannot you cannot condemn a person I am not taking this out of my hand I have heard this argument in the disciplinary committee's deliberations after all this is the judgement, it will be challenged in an appeal, how can this be foundation for an enquiry/discharging an officer many time judgements, which are maintained right of the supreme court are thoroughly dishonest given by dishonest means. There are judicial officers who prepare a judgement lawfully in favour of a party but would not deliver it till the party makes a payment, how is this judgement tested in appeal, this is to maintained naturally but for this the fellow has was paid the consideration, all these things are quite nebulous it's very difficult to have any standard rules therefore again we can't have rules about this is discreet inquiries this is the secret operation which we carry out we find out about the officer from various sources we build up some good contacts as Mr. Khoda said as even peons and sentries can tell but don't ask peons and sentries that would be humiliating your own officer that would be giving too much importance to a peon, how to gather an information from a peon is also an art not by putting questions but without putting questions how he will bring out information to you is something which has to cultivated it is something doesn't come in 3 or 4 months of state Vigilance department. You have sit at the feet of someone who have gathered information. You have to follow the tricks and take information in discreet inquiry it's not difficult to reach any person it is said that in world there are maximum seven steps with which you can reach anyone seven intermediaries if you can think of just imagine how many persons how many acquaintances you have to cross to reach Obama and you see that not more than 7 president Obama also with intermediaries you know him he knows you know she, she knows him etcetera.

So therefore in every Bar you can have good lawyer who can be a reliable source of information again it's not always necessary that good persons are source of good information sometimes their own vision is clouded, it is also not necessary that a bad person will not pass a information to you, a bad person may pass on information it all depends on how you arrange things so keeping all these things apart rules etcetera forget all the judgements, once the action is taken the legal department or somebody else will fight, effectiveness of action fighting is important Mr. Shukla will corroborate me administration as to act firmly we had three judicial officers working in the DRT they were recalled by the administration 2 of the officers put on their papers the third fellow went on leave the administration what did it do, it sacked him without any enquiry the chief justice said at least up to the date of retirement he doesn't come back let him go to Supreme Court, disobedience won't be tolerated.

I don't say that ultimately he got money and all after his retirement Supreme Court that's different thing. But, this is how administration acts, it does not this position it does not necessary act according to judicial principles, principles of natural justice Audi alteram partem all that, why regular inquiry starts we will consider all that right now for collecting information so long as you don't break any Law, so long as you don't breach any law, do water gate plumbing or putting devices in somebody's house out of bounds otherwise getting information is perfectly legal it can be done. *Sahte prati Shayttam*, is the rule again as I told you first you have to ascertain whether the tissue is cancerous or not otherwise if you run after healthy tissue treating it as cancerous would be causing more damage to the system then serving the ends for which you have been appointed.

Allowing tissue to remain giving it benefit of doubt may also be permissible but keeping everybody in check is important. Now, if you embark on a discreet enquiry ensure that it is indeed discreet that nobody else comes to know of it, many times what happens is the officers to whom you entrust discreet inquiries create a problem I don't tell this because I was a victim in this, this is what really happened there was a complaint signed complaint, anybody can sign know in anybody's name it's very easy you can make compliant in the name of justice R C. Chavan, signatures are available anywhere, so a complaint was made, and some officer was entrusted with discrete enquiry I did not know of this but a friend of mine sent a paper cutting to me that at this place an officer has come for conducting an inquiry against you the detractors would find a way to publicize this because the fellow was not discreet he was not a bad man, but he was not discreet, why you have

come for this purpose everybody became alert. Our Vigilance department was established by Justice Dhbolkar, he was not judge at that time he was an additional district judge, he established this vigilance department and he looked after the vigilance department for a very long time. He built up a team, a network I was lucky in learning a lot of things from him at the time I also did not have telephone at my house, so he would call me up and use to say I'm going to speak to you have to say hum...hum...hum because or at somebody else's house you know, should not make to listener in the house what you are talking, happening at your house and your wife and children are around don't say anything just listen to me and then go for this enquiry once he told me to go for enquiry at a particular place called Akola, to find out something he said a room would be booked in the name of an Krishna Rao Deshmukh in the Circuit House you stay there and just conduct this inquiry and come back I said Baba Shaeb it's ok I will go there but that is my in-laws place if stayed their firstly my wife will suspect and will send me in jail, and my in-laws will also be angry know, so I told I will conduct the inquiry don-t worry I have a place to go, I will go there no issue, when you conduct the discreet inquiry don't go in for the officer against whom discreet inquiry is directed. Beating around the bush is necessary because staff of the judiciary are very alert so therefore if you wish to conduct inquiry against the Joshi call for the records of Deshpande. I am taking Maharashtrian names, so that they are common names, so that fellow do not know why you are came, than going for that record very discreetly without anybody coming to know, sometimes you have got singed complaints so therefore you know the complainant and complainant is also there irrespective of the what SC says many of the signed complaints are in fact false complaints made for the purpose of harassment. Many unsigned complaints are true because he is afraid of retaliation, there was an advocate in Anna Hazare's outfit, *Brashtachaar Nirmolan Saamiti*, because he was Brashtachaar Nirmolan Saamiti he was having authority to malign anyone na, so he made complaint against a judicial officer, she just completed her probation using all sorts of wrong words he called her beautiful buffalo etc. and send a complaint making an allegation against judge of the high court would been elevated in the meantime in whose office she had earlier worked. Naturally a scandalous (now I feel bit more strengthened by his presence Justice Ravi Tripathi and I have shared this forum more than 50 times I feel little embolden) so scandalous allegations were made and naturally High Courts was aghast, in such cases inquiry has to be made, the inquiry came to me, now what is the first step you take you call the person and take his statement know. I decided against it I first gathered all the information about the fellow

because his name was there, from part and parcel and so many sources, gather all the information about him and then called him, I told him that very good that you are taking the crusade against corruption in judiciary and person like you must help us in weeding out corruption and your complaint is there it is quite elaborate there is no problem. You know when we start inquiry against the judicial officers you have to be cited as witness in that inquiry, and the officer would have right to cross examine you, therefore I would give a test how you face the cross examination, I would be asking questions, to elicit information from you it is truly a sort of cross examination, he said no problem. In about 40 minutes of cross examination is broke up, now I am feeling well I am feeling some short of heart burn, I will come on some other day. He never turned up. The complaints was false there was another such person signed complaints C Anthony Louis, we have got heave, he is press reporter, makes all sorts of wild allegations against all judicial officers, whosoever decides matter against him, or whosoever treats him without curtesy (what he believed to be deserved). Even against the persons who are now been elevated to bench, this fellow use to file complaints, we had dossier on him so it was decided not take cognizance of what he says, he use write to me that I sent complaints to you to take action not for being used as PO, because you don't have PO or something like that. Eventually he manages to enter the chief justices chamber, fellow working on that day at chief justices office did not know this man. He sent card as reporter etcetera and chief justice said ok come in. The peon there immediately rang me I was Registrar General at that time. Such and such had happened Anthony Louis had entered the Chief Justices chamber I immediately rushed to the Chief Justices chamber, I have to have an urgent word with you, I said gentlemen please go out, chief justices said what is this, I said it is very urgent. I briefed him about this man, Chief Justice called him ask him to sit, so matter was over. I am just quoting these examples to show how signed complaints by people can be misleading and false.

There was an IAS officer, retired IAS Officer his name is Shinde, no harm in disclosing the name also because Mr. Shukla would know this, he made complaint against a District Judge, all sorts of nasty allegations, because of nasty allegations and nasty language by an IAS officer so complaint was directed to be inquired. He was through lawyer, I tried to tell him what is not to be written but he did not liked it, and ultimately I said to him whatever you want to dictate, dictate it to the steno sign it take your copy. This is what happens when signed complaints come but there are some anonymous complaints which may be true, for example there was complaint against the judicial officer about talking to young girls in the Bar. He would go for jogging etc. and run after those

girls, nobody would make complaints girls would not make complaint, it came up, I conducted discreet inquiry, so when the girls were called. When the girls are called we are not ready to sign, both of us unmarried how we can give such statements it will affect our matrimonial prospects. I said ok you don't worry I will note down what you say, no statement one girl agreed, so I noted down and made a memorandum of what she said. I said may I read it over to you, she said ok, I said whether whatever I read it over to is it correct? She said it is correct. Both the girls duly corroborated each other, a report was made, now when the departmental inquiry started girls were cited as witnesses you know, so I have told the girls, see I have already made a record, If you feel that I should be branded as a liar than you do whatever you like no issue. I have recorded your statements faithfully, it is now up to you both of them were supported and the fellow was pardoned to parsimony. A subsequent development is also a funny part that I will tell you, the fellow filed Writ petition, the regular inquiry was conducted by another officer, who was also ultimately elevated to the Bench. My Predecessor had filed an affidavit supporting the action of High Court. When the Writ petition came up before the Bench asked the lawyer for the High Court to ask the Registrar to appear before the Court. I was the Registrar so I went, they asked me what the matter is, I said I don't know he has called me, the judges said what is it, How can you mention the XYZ as Mr. so and so, he is Mister Justice so and so, I said sir when he gave the report as inquiry officer he was a District Judge, that's why his name is mention in that why, but you want it than we will revise the affidavit and send the fresh affidavit. Do it send a fresh affidavit, so a fresh affidavit is made that Mr. Justice so and so than again the matter came up before the Bench? Again I was called, now what is it, who had made the earlier affidavit, I said my predecessor, than why are you came, because I was called, the Bench simply did not want to take up the matter, wanted to find some excuse. Matter got adjourned, these are the things sometime happen when you process complaints. So here believing in *karmanyē vadikaraste mafalesu kadacana*, you do your job let the judiciary or let the matter takes its own course.

As I mentioned first step in any discreet inquiry is to tap resources don't jump into immediate to start an enquiry, when the complaint is refereed to you tap resources which you have, from that place find out from whom you can gather the information and for this you must have some resources with you, some police officers are also very good but this has to be on person to person basis, this cannot be institutionalized because if you institutionalize and get that information in writing and something like that this may create problems in the Writ petition and ultimately many

things can occur, get oral information and then you can find documentary evidence, you know before the courts oral information police officer is of no consequences, you can't be evidence you know. About evidence there are case laws, Shivaraj has very meticulously collected and circulated the material, what is the scope judicial review in administrative actions, very limited know. In departmental inquiries all that the court can find whether there was some evidence on the basis of which the action was taken, appreciation of evidences is not possible but off course for judiciary there are different rules, when it comes to a Writ petition or matter concerning judiciary the rule is show you the man and I will show you the road.

So therefore all the judgements about Judiciary do not necessarily make good law they depend on the person who take action who was the chief justice at that time what was the estimation about him in the minds of the Hon'ble in the Supreme Court etc. Apologies to everyone in the apex court but this is what happens therefore it's not necessary that the judgement may deter you, ultimately it may pass the muster also, whether there is evidence or not is a matter of personal perception, what is evidence, whether evidence contemplated in the Evidence Act is evidence, or there is some material which judges find that this is evidence. So you don't bother about this and that at the stage of enquiry, but find some evidence police officers oral communication and written communication cannot be evidence. Than as I to find out records but not about the case about which the complaint is filed beat around the bush take ten more records, find out the attendance record of the judge, his cause lists, I will tell you many time you stumble upon a bigger problem then what is not present in the complaint if you beat around the bush and then the vigil pays than you get some times a bigger shark. Therefore do this.

Step three is to hit the bulls eye, hitting the bull's eye is the last thing that is to be done and with great circumspection for this you have to have a lot of study of persons, individuals how they are likely to react, hitting the bull's eye sometimes opens all the door sometimes it creates stone wall, therefore unless you are sure that this is going to provide necessary evidence don't hit the bull's eye, collecting evidence from surrounding circumstances is a safer way. It is something like a young boy not having courage enough to propose to a girl, now a days there is no problem, now a days there is a direct proposal but in old days, so beating around the bush pays. Sometimes the direct question may get direct web off, so this is the third step which you do and then when you collected enough material check it up once again to ensure that you are actually running after the

cancerous tissue check it up with reference to the other conduct of the judge not concerned with the complaint the conduct of the officer and other places talk to as many persons as you wish and possible in order to find out what sort of reputation s/he has and then put a report, because it is necessary to protect good officers who may have committed mistakes persecution is never the object of activities on the vigilance department we don't run after person's we try to find out what is wrong and try to correct it if you take this Precautions I suppose in 90% of the cases, your discrete enquiries would yield not only good results in respect of the complete which is referred to you also but also ensure you in keeping vigil over the activities of persons working in the judiciary and you have done a good job when the matter is ultimately processed in the court as I told you people say this is after all about judicial work of the officer, how can this be a subject matter of Departmental Inquiry, there can be some people who say that well if you ran after a girl that his private life, how does it concern judiciary. He may be a man with sort of fancy for girls all sorts for girls but he is good judge. All sorts of things are said in the disciplinary committee depending on who is the person here again the blame on disciplinary committee and they decide it, what do I do would not be proper, they decide because I have nothing to lose they don't come from subordinate judiciary. When the subordinate judiciary is blamed for corruption or bad behaviour there away from it is you and I would take the hit therefore it is our duty to even convince the committee, once it so happened that report was being processed about, undesirable advances by District Judge towards a female and the members of the committee, one member already had ward with chief justice about the officer being good officer etcetera and then chief justice said about the members what is they are it happens we were aghast I was the Registrar (General), how can this happen, the inquiry has been conducted again this caste problem I will mention again, enquiry has been conducted by officer belonging to the same caste, to which perspective delinquent belong, we use to take that care in order to ensure that there is no unfairness on the count of caste, and though it may sound little bad and also to ensure that the figure should not have any grievance afterwards that I was treated partially, so all this was going on regular departmental enquiry was also conducted by persons belonging to the same caste, regular departmental inquiry was conducted by an officer ultimately elevated to the Bench, the discreet enquiry officer was yet to be elevated and he was also subsequently elevated, when the deliberations of this committee were taking place than we were flower-ghasted but a member of the committee could see what was trouble on my face. I said chief all this in Marathi know, you don't know Marathi let us get it

translated into English, and then let us see what will happen, we will adjourn this and keep it on the next day get it translated first and the matter was put off. The judge me in his chamber and asked me what is the problem, I said what is this if it happens then whole object and purpose of conducting discreet inquiry will fail and not only discreet was conducted but full-pledged inquiry was conducted he was found guilty by officer of impeccable integrity he said don't worry now, I will look after the matter, and then things moved so this is what sometimes happens to your labours you make an and the fruit is sometimes not what you desire, but then don't think of the fruit again I will say *Karmanyē Vadhikaraste, Ma phaleshou kada chana*, do your duty and if you have so affinity to subordinate judiciary for you, are a part of it, so it is for us to decide whether the stigma can stick to us or not, we can't afford to be complaisant on this front we can't afford to allow people to say that yes there is corruption in Judiciary but in subordinate courts it is all the more bad because it affects the common man, who have no means to go to High Court or Supreme Court to get injustice undone, and corruption in the High Court and Supreme Court may affect elite sections of the society of those who can afford to so, therefore it is my earnest appeal to all of you, and in fact I came here for this conference only because this scar on the subordinate Judiciary still pains, hurts thank you. (Applause)

Any questions you want parallel on to him, lordship the concept of the NJA is that due to fear of vigilance bail are rejected or cannot grant the concept is totally wrong, the reason is if the person grants the natural bail than nobody would approach him, if the officer does not grant the bail in certain matters he would be approached. The money is passed even in conviction and in acquittal, the money is passed even in cases of dismissal of the land.... (not clear) both side are equal, not only the one side but both side..... so your agreeing to what we are saying, so far is honest judge, you are agreeing to what we are saying, judge must be committed to justice and he cannot give reason saying that I am afraid of vigilance.

Yes... My Lord I have one query, while conducting discreet inquiry generally what I am doing is I am collecting information from subordinate staff, advocates over telephone or otherwise I am not recording their statements or not taking the signature in the statement, based on that report when an inquiry will started those person may turn hostile in that case a allegation may come towards me that I am tried to first falsely implicate that officer, with some false allegation, than what is the safeguard to Registrar (Vigilance) on that point.

**A.K.Patnaik,J:** what justice Chavan not touched upon, vital aspect is what is the purpose of this discreet inquiry, one is to collect prima facie material right, before initiating the inquiry, prima facie material, if you get information having taking bribe and delivered judgement or some quid pro quo that is not protected under Judges Protection Act, I have seen Section 31, it says for delivering the particular judgement you will not be held guilty. But, if there are additional material like having accepted the bribe, judgement may be right from the point view of law, but if the additional material has come in, that he taking the bribe in giving this, or he has been giving some land, in quid pro quo, you remember that Calcutta case he must be knowing, in Calcutta judge in the High Court he initiated writ petition with regard to allotment of land, by than Govt. of Mr Jyoti Basu, for Defence Personnel (.....) he entertained the writ petition. And he was furious over the Bench, suddenly govt. thought let us give him trouble so they allotted him land and he delivered the judgement in favour of the government, matter went up to the SC, Supreme Court found that he has taken the land, SC held that High Court is the trustee, by that time he has constructed house there and he had also retired.

The judgement of Justice Hema was that return the land along with property, right, this how it ended, so judge cannot afford to have quid pro quo. His judgement is right you can't find out fault, but if ..... Is done he is not protect under the Section 31 of Judges Protection Act. Discreet inquiry may indicate prima facie indicate what is happened and then you proceed you may get materials you may not get materials. Suppose you don't get any materials what happens, as that as if the officer go scout free, as there is no evidence or there is no evidence, as it happens in criminal case. Than what happens does it end there? No. there is provision for compulsory retirement at the age of 50 and at the age of 55 at the age of 58, three stages no materials required, impression is enough right. Some judicial officers may be completely thrown out, Gauhati High Court did that before I came there, and Justice Raveendran was Chief Justice, many officers not one 14 officers, they went to Court, nothing has happened, because High Court has that power. No material is required reputation, even if materials are not coming forward, if the Vigilance can be relied on and he has rightly said Registrar (Vigilance) must be man of integrity, character, of balance, of fairness, of honesty who has given this report, alright Mr. Chavan has given this report when he was Registrar (Vigilance), must be correct. Chief Justice knows this, I had Registrar in Madhya Pradesh who is having strong integrity, one of them will come in October Session. They will come in next meeting they will come, and address this gathering, solid absolutely nothing can go wrong, and

they must not be posted as Registrar (Vigilance), he rightly said Chief Justice has found something in you so therefore posted you as Registrar (Vigilance), person of loose character as Registrar (Vigilance). There will be objections, O theek nahi hai saab bolenge, the Report of the Vigilance is very strong, right. Than what happen apart from 50, 55, 58 years compulsory retirement, ACR entries need not be based on evidence. Even if the Portfolio judge supports him, I found in Madhya Pradesh chief justice is final, some entries Full Court, and some entries by Chief Justice, Madhya Pradesh Chief Justice, right.

The chief write I don't agree with Portfolio judge, right, there is vigilance report, his integrity is doubt full enough to damage the carrier of the judicial officer. He may challenge it (.....interruption by participant.. audio not clear) *han Kuch nahi hoga, kuch nahi hoga* that is only CCR entry, CCR entry will be taking into consideration not for punishing you but for no promotion thereafter retirement right or compulsory retirement, retrieval, do you follow, so Registrar (Vigilance) discreet inquiry even if it does not lead to a punishment or disciplinary proceedings, in which materials are required can lead to compulsory retirement or can lead to an adverse entry in the ACR which will accumulate and thereafter compulsory retirement, is that clear, yes anything else, any other question.

Generally sir we hold discreet inquiries when there is compliant received, but otherwise when there is no complaint received, when one comes to know as Registrar (Vigilance) that there are some wrong doings are taking place, the judicial officer is indulging in something which he is not supposed to do, what to as Registrar (Vigilance) do then?

Mr. Chavan rightly said, many useless complaints come, whosoever aggrieved sends a compliant or whoever supposes himself as Anna Hazare camp he send a compliant. IAS officer sends complaint, a Police Officers sends a complaint and some activists also, like he said they will send the complaint, right. But, they are scrutinized by the Registrar (Vigilance), inquiry karega is complaint may kay hain, there may be anonym's complaints which may have truth in it, because the person who sent the compliant he is afraid in disclosing his identity, mar kha jayega, he is afraid so anonyms complaints should be thrown into the dustbin no, right. You should ask the Chief Justice, Chief Justice ask the Registrar, anonyms complaint *hai koi baat nahi lekin*, find out go through it, chief justice has no time. He may telling totally lie, *sumese kuch nikal jayaga, kuch* officers may scout free. But, if you catch hold two or three persons, sufficient to send a message.

Sufficient to send a message to subordinate judiciary, *chalega nahi, ye cheej chelega nahi*, right. I will not do it, *mar jaonga lekin nahi karunga*, that's all one officer is suspended one officer action is taken means the message goes to entire subordinate judiciary, right. This is what I must say, and at the end I must say, the Registrar (Vigilance) is very busy person and he totally relies on the fairness, competency, and the honesty as he rightly said if the Registrar (Vigilance) is competent his note will be so strong, so solid, so well placed, and cannot be by passed, right and that solidity must be there, Registrar (Vigilance) must know what the rules framed, what are the materials? What kind of information? If you make one good note, right and that note put up before the full court considers and even if there are ten judges supporting it, the full court cannot support it, I will give you one experience of mine, a judge who came from the, transferred from the Gujarat, very powerful judge,... he has lot of power, right, then he called all three Registrars and said before these Registrar, be transferred by the resolution, committee passed through the resolution. Before I reached their, at that particular place I am going there, Indore, before I reach there, this transfer order should be made, I don't know how, all the three Registrars, sir, sir this is what he has said, I said why your shivering they all knew that he is very difficult to handle, I said do one thing, you ask that District Judge you has transferred to send a recommendation, representation to the chief justice, and representation has to be given to the committee, committee has to pass it to the chief justice, right. To the committee of the full court, so in the next committee will decide, next committee will be after three months, and then I asked Registrar that you tell him that this is what Justice Garg also wanted,... (audio is not clear)... so... and I found all the judges were saying that let us cancel that transfer order let him remain at so and so place, I asked the Registrar, where is the representation of that judicial officer, sir he did not filed any representation, he has joined sir, so I lifted all my judges like this, so I told to all the judges that he has joined and they said in that case we have to maintain the transfer order right. Ultimately the confidence of the chief justice over the Registrar (Vigilance is very important, don't think that judges of the High Court, SC or the chief justice can act arbitrarily, if the action is arbitrary he will not do it, he will not do it, nobody can do it. the difficulty what happens is if the Registrar (Vigilance) is very scared of the judge who is supporting that officer, end of it... I must committed to my job, Registrar (Vigilance) must ensure, so that purity in the subordinate judiciary is maintained. Without that commitment vigilance is as good as I can say useless, he may good job at the judicial side, without the commitment to the honesty, he is as good as useless. If I was the chief justice once I know that

Registrar (Vigilance) is not honest to his work or not doing proper work, either being unfair, or is dishonest, next opportunity he will have to be transferred and if the full court opposes it, I would say, who will the Registrar (Vigilance) it is completely the discretion of Chief Justice. The High Court Registry mind you, entire High Court Registry who will be there who will not be there is entirely at the discretion of the Chief Justice. Full Court has no Power why? The High Court administration is directly under the Chief Justice not under the High Court. SO it is 1:10 let us go for lunch.

**By Participant:** Your Lordship there is D.O. Letter, written by Hon'ble Chief Justice of India, in the 2014, that without the affidavit against the judicial officer, inquiry should not be conducted, that chief justice of India should not have interfered with the Powers of the Chief Justice of the High Courts, it's my answer that's all. Many mistake the chief justice of India have done, right, which they have no jurisdiction to do, that's all. The power under the constitution, I remember, I was the Chief Justice of Madhya Pradesh Court, I transferred one judge who was very lenient to the Bar, and about to bring another judge from Gwalior, backed with report that he was very tough, the Bar threatened with strike, right. Boycotted the entire Jabalpur Bench, 50 of the lawyers came to chamber, that we are going for boycott why are you following this policy of brining judges from outside, judges of Indore and Gwalior should be there in Jabalpur, all the judges of Jabalpur must go out, I said Mr. I have the constitutional power to decide as chief justice, not with President of India, not with Chief Justice of India, not to the Bar, not to any judge, it is the Chief Justice of Madhya Pradesh High Court... they went back, right. On Saturday, Chief Justice India with all other five or four judges has to come for golden jubilee function, so this was Monday boycott, on Wednesday I went to the Bar, to address the Bar, then I said that, this is your function I don't want to interfere with the boycott it is your wish, but on Saturday, I will come as *mushafir*, I will transferred as Chief Justice somewhere, I will retired, Golden Jubilee function is your High Court's function, It is your High Court, It is your function. Chief Justice of India and other Guests are coming you must participate, and just added one more word, If have anxiety to protect my power as Chief Justice, and I told something which hurts you, I am very sorry, right. Saturday, full pledged attendance, of 2 thousand plus and they said to the president of Bar you go to hell we are going to Chief Justice and participate. That should be the courage of the chief justice, if I am going to yield to the bar, which I have not said so, is one of the root causes of corruption, right... you need to have that conviction, is that clear, yes.

**By Participant-** Mic is off...

**Hon'ble Justice A.K. Patnaik-** nothing, not to report to him, your problem is your fear, are judge hai hame kuch kardega, Chief Justice job is to protect the Registrar (Vigilance), right from all other judges, (participants Mic is off) *han o tho aapka mistake hai, aapka procedure main mistake hai*, you have to see the chief justice conferences resolution, *Zonal Judge kya karega jise kaam karvayega usko protect karega*, if he is dishonest person *kya karyaga*, you go and put up the note on Chief Justice, the Chief Justice conference resolution is there put it before him, you must put up. Which is this High Court, Jharkhand High Court, *Naya High Court hai systems malum nahi hai khya karega, nahi to patna se system leye honge*, system has changed, chief justice conference resolution, how it will function, if portfolio judge is the honest judge there is no problem, if the Zonal Judge is trying to get things done through different motives, *hota hai*, it is truth, and as I told you in the beginning of the session, Justice J.S. Verma's lectures will not help, proper system will help and the proper system is right, that the Registrar (Vigilance) must report to the chief justice of the High Court... and the Zonal Judges role will come, only when the matter is placed before the committee, he has to check up, but you go by *Zonal Judge katam ho gaya*, yes.

**Hon'ble Justice R.C. Chavan:** One judge, asked for file from me, show me this file, so I mentioned it to chief justice that judge has demanded this file and I can't give it to him, he said what is this, Justice Thakkar is the Gandhian, how can you secrets from judges, what is so great about it give him that file, I said to him, sir if the Sixty persons decided to run this court it will be impossible, it is only the chief justice what is to be done, he said then what is to be done, you decide, he said, tell the judge that the file is with chief justice.

Chief Justice has to be very tough, Registrar (Vigilance) has to be ... those things have come because, in the Chief Justice I... chief justice had to protect.

**Hon'ble Justice Ravi R. Tripathi:** So one of the judgement of the Gujarat High Court starts with by saying, people power will have to be bitter, I think registrar (Vigilance) is one of such key post, where you have to not only bitter, you have to be better to the heart. You have to bitter right from the heart and then function as Registrar (Vigilance). You have to bitter, you can't please everybody, it is not possible.

You have your duty, our *Guruji*, art of living, he had come to Jabalpur, so we went there all the judges also went, asked *Kuch Puchna hai to puchaye*, I said, I only have one question, when it comes to doing duty as chief justice, I have to suspend the officer, I know suspension means lot of hardship, dismissing the judicial officer who is corrupt but he has family and all, what to do I do. You tell me art of living, he said no, no, no *duty tho karna hai*, do your duty, forget about the consequences, the Gita right. You have to do your duty, and the movement you go out of that duty ..... Have you heard the story of Thomas Becket, Thomas Becket was close friend of William Richards of England right, during the time a king and church are fighting, archbishops at that time, and Thomas Becket, was going along with having lot of fun, running after girls, killing animals in jungles, right, while they were chasing a girl having good fun an messenger arrived, they said, why the hell are you disturbing us, in the middle of the night, he said I brought very important message, what is the message, archbishop has expired he has died. So, what, post cannot be kept vacant, somebody has to occupy that, right and the king said may I know the qualification required, messenger said non, alright I hereby Thomas Becket as the Archbishop of the church, Thomas Becket said I as archbishop, head of church means so many vices, what are you doing king, I have decided, Thomas Becket goes back, Kings command, coronation over, he goes alone before the lord Christ and says, with ring kissed it and said hence forth I will protect the interest of the church as against those of the Crown and he protected it, right. Thomas Becket was murdered by the Kings men, though the king did not want it, right. They thought this is the only way the king can be happy. Then he went to dead body, he asked somebody to weep him, I am responsible for some words I did not mean your death, he went into the crowd and crowd was shouting that we want the murderer of the Becket should be punished. By tomorrow morning before sun rises murderers of the Becket will be hanged, these are the things, once you changed the role, from advocate to a judge, and as Registrar (Vigilance) it all wants honesty, right. Thank you, let's go for lunch.

#### **Session-4: Assessment and note on ‘Annual Confidential Report’: Issues and concerns**

**By: Hon’ble Ms. Justice K. Hema**

**Shivaraj S. Huchhanavar (Coordinator):** Once again good afternoon to all,

See, I am just underscoring that, in this post lunch session, we will give more scope to participant to speak upon, so the basic idea is you know that there are catena of cases relating to the ACRs and most importantly, the view of the judiciary is not certain on the particular issues relating to the ACR and some of the High Court judgements of Supreme Court judgements they need certain you further probe and fine insights and basically my, and especially National judicial Academy’s focus is on improving the pattern writing, standard of writing as well as, you writing ACR must be fair, must be just and objectivity, bringing objectivity in writing ACR is essential but unfortunately when I read, I went to the various high court rules I find that since I’m High Court is a Portfolio judge who writes, in some High Court it is the District Judge who writes, in some High Court assessment of the ACR is done by the Register (Vigilance) in some High Courts the assessment and nothing is done by the other authority and then we were puzzled, to whom we shall address the issues relating to ACR this issue relating to the ACR and madam told me as a particular ACR is being very important aspect of judicial life as well as moment in the ladder of the Judiciary we decided to include this particular ACR not only for the register Vigilance we will include this particular topic and we will discuss in the next coming Registrar sessions for example Register Administration and madam assured me that we will discuss this particular issues even at the high court justices conference is over here in National judicial Academy in this regard I just provided my hypothesis based on the supreme court judgement and I have provided the post a comment on behalf of the particular person I mean petitioner or as well as argument which may be raised by the high court there is thesis and antithesis there are argument provided, there are counter arguments provided an agreement provided. Now we want to hear from you what are the improvements required in writing, assessing as well noting of ACR, based on experience we this note I sign off. Thank you

**Hon’ble Justice K. Hema:** Good afternoon ladies and gentlemen, seeing your drowsy mode after lunch I do not know whether I must wish you good night and good afternoon, (nobody is drowsy, everyone is alright) alright, when see I was told yesterday that I have to address you on this, actually not to address you on this but lead discussion on this, some discussion on this, when I saw

the topic, first of all I will make it very clear, I will not be addressing you, because I know that in a, for a group of judges experience judges it is not a wise decision wise method to make didactic or the Lecturer type of a training rather we would go for interaction, interactive session is always better because as I told you in the beginning itself I was not vigilance registrar, so I do not know what problems you face and what suggestions you to make for improvement of the system so rather than imposing my Ideas on you which I would have gathered from various decisions and the articles, I thought I will collect from you and then pass it on to you and for this particular session this is to be passed on to NJA for a better purpose, so then listening as always been very tough as judges you know we have been listening to long arguments, long arguments, so I do not want you to be a victim of my lecture so that that reason also avoid it when I found the topic assessment and note on annual confidential report.

I was wondering why this topic comes for discussion here because Registrar in my High Court, in Kerala High Court Registrar have absolutely no role, in the preparation, assessment of annual confidential report. If anyone of you any one High Court you have a role please pass it on me, if there is any Registrar (vigilance) has role in assessment and preparation of note for. In High Court of Tripura madam, (High Court of Tripura ok) one part of the ACR is done by the Registrar (Vigilance) that is, disposal statement of the officer concerned, disposal of cases so that is done, that is evaluated by the Registrar (Vigilance). I mean the Judgement will be evaluated, statistics of disposal, statistics that can be collected from the Registrars as well, Registrar, see what we do is we get it from the Registry, disposal of the cases is available in the respective courts also so we collect it and place it so I do not know what is your role in just collecting this, (participant, actually we calculate the unit). Yes, we calculate that thing and give a grading, whether it is good, very good or outstanding, we also take consideration of the disposal of old pending cases, percentage of old pending cases, Yes Registrar will not have sufficient time to do all these, so Registrar (Vigilance) is asked to do this, alright so there is something in Tripura, any other Court, any other High Court.... Mam we have in Himachal High Court, we have prepare the statistics so far as evaluation is concerned, the number of cases is concerned .... Disposal by judicial officer and thereby calculating he stands go good on the disposal side, finding very good and all, in addition that, we also point out if there is any enquiry discrete/fact finding, or a departmental against him pending that also we do mention that particular portion of the ACR, it is required to be filled up by Registrar (Vigilance), than getting these ACR ultimately finalized, that is also within the I mean

working of the Registrar Vigilance like in the case of District Judges the ACR I mean, reporting authority I am mean Portfolio Judge that and ultimately they are placed before on the chief justice where after it is taken up to the full court and full court is the is the final authority, I am mean accepting authority, in the case of the District Judges whereas in the Magistracy, We have the District Judges for reporting is reporting and then the commenting authority is the is a Portfolio Judge and ultimately accepting the Hon'ble Chief Justice (Hon'ble Chief Justice) yes, and in the case of magistrates please and in case of District Court it is the Full court, in addition to this in the very beginning what all I mean leaves he has availed and the academy program, how many programme programmes training program he has attended that record is also recorded, supplied by the registrar Vigilance, so you have some rules to play in the assessment, I mean those ACRs got finalized by the registrar Vigilance, Not finalized, they are got finalized. Yes, yes but still you have role but in many other High Courts, there is no such role, ok so, you have role, yes mam, ... Which High Court, High Court of Andhra Pradesh and Telangana, what is your High Court now, Andhra Pradesh and Telangana, the District judges send the entire statistics of their District with regard to all officers, they send they assess the judgement, statistics as far as senior Civil Judge and Judicial Magistrate are concerned my lord an as far as District Judge and Additional District Judges are concerned they straight away sent to the Registry my lord then they submit the same before the Hon'ble Judges, no it will be sent to the Registry, but what is the role of Vigilance Registrar, we examine once again, you, we examine the statistics once again and place it before the Hon'ble the administrative judge, hon'ble judges records. Ok, for only corruption is ours my lord, we examine it, it mean there is some role, there is some role for the Vigilance Registrar, any other High Court is having, Guwahati High Court also having the same only the examination of statistics..... (audio not clear) any inquiry or any adverse remarks these are to be given, (that also be done, alright). In Punjab and Haryana High Court, ACR being conveyed to the officer directly under the signature of the Registrar (Vigilance) and thereafter it will be sent to confidential Registrar, which is under the control of Registrar (General) so this is the role performed by Registrar (Vigilance) in Punjab and Haryana High Court. So, the first report will be from you, (no) report is coming from administrative judge and then it is being to the concerned officer by the Registrar (Vigilance), so you have definite role there. So what we are supposed to do in the session is, she I started with the feeling that you have no role at all, the vigilance Registrar have no role at all because in my state there is no role at all, but then this session is hypothetical, I am mean your

asked to do certain exercise and then give, see the topic is assessment and note of annual confidential report: issues and concerns that is the topic so the NJA has asked you to place your synthesis your view point, so if your experience we get better, better viewpoint from you plus and minus so we will consider,... intervention by Hon'ble A.K. Patnaik, J. no one aspect where she is missing you have also worked as District Judges so also as reporting judges (no many sir) wait, may be Registry can get benefit also from your ideas, opinion regard to ACR as reporting officer not as only as Vigilance Registrars, also as reporting officer because you have that experience, right. As a reporting officers, as reviewing officers if it is subordinate judge right, it is quite possible that you also have that experience, so you please start asking....,

**Justice K Hema:** how many of you have been reporting officer? How many of you have written ADRs? Many, all, all, so you are very senior officers (*han, han*) in my High Court junior officers never been judge of District and Registrar, though it said that it has to be senior officer, it is always better, in assessment we can make, view point can be made. So you are District Judges...I had been (participant) District Judge, I have written ACR so many times, alright, alright.

So, what we have to find out is the view points of the Vigilance Registrars as His Lordship said, as reporting District Judges also, what are the best practices which the High Court, the way in which High Court in this country should adopt in preparation, maintenance, assessment and Communication of the ADR, so we'll start with the preparation will start with the preparation. What you think is a best practice in preparing the ADR, how it should be? Participant, Mam, in our High Court, my parent High Court was the Allahabad High Court, before that can two of you note down the points and then hand it over to the NJA ok, ok, ok, ok, somebody recording ok, ok, parent High Court was the Allahabad High Court, in Allahabad High Court there is a system that the circular there is a circular of the Hon'ble High Court for the self-assessment of the Officer, the officer use to fill up his self-assessment, thereafter District Judge use to scrutinize his bail order, injunction order, judgements and others, and after that the complaints received against him during the tenure, and thereafter he records the ACR of the Officer, before sending it to the Hon'ble High Court it is mandatory that if the ACR is against the Officer, that has to be communicated to the officer concerned, no no no we are only preparation, so you mean to say, there are several aspect to be discussed, yes mam, so we will confine the discussion first to the preparation, how it is to prepared? Who prepares the ACR? Which is the best practice in preparation of ACR. Self-

assessment is given by himself, self-assessment yes yes, that is checked, no, no, no, that's the different matter, so ACR, the preparation of ACR basically, the first thing is the self-assessment made by the officer on what points?

**Participant:** on the points work done, communication received by him, any incident by the Bar, or any other thing, incident involving bar, involving with the officers, or colleagues or senior superiors, his work done, that is number of disposal, quality of judgement mam, quality of judgement also, judgements like ex parte injunction, bail orders, injunction orders on the merit, so of his own judgements he has to assess the merit and then report at random, yes, yes, so it is first self-assessment by the officer himself is this done in any other High Court, self-assessment. Almost all the High Court. (audio is not clear) so yes, quality of the judgement, what is the number of cases decided by the officer, target achieved so far as pendency of the old cases are concerned, alright. That sort of information is parted, formal information only, yes, statistic wise that to, if the quality is mentioned, obviously he will mention best quality (by Hon'ble A.K. Patnaik J.), he is going to that. So the quality of judgement is not there in certain High Court but in certain High courts it is there, what you think is it good practice to make self-assessment, of your own judgement. Self-assessment is quantity only, moreover if he has performed any other activity, let us say he attended number of camps. Legal literacy camps, what all other activity he has carried as District Judge or other judicial officer, no, no as a judicial officer, no, no, no, at present we will confine to the quality of judgement, a judges asked to write/ comment upon his own judgement, is it good practice or not. No, no, no not a good practice, (chaos) quality of the judgement by the District Judge that shall be assessed by the District Judge, in self-assessment there is only quantity column, not quality column, and any other activity. No, no, basically sister- it would be possible for NJA to collect that self-assessment appraisal, from every High Court, it will be possible, they will be able to collect it, basically that self-appraisal form or documents only the information the judge wants, higher authority to take into consideration, while assessment or writing his ACR, in my view see it is very good proposal to make I mean to comment upon your own judgements, you can you can give copies of certain judgement, which is good well written along with the CR, that's a good proposal I think.... But not along with the ACR, for the purpose of ACR (by participant) it is there it is there (by Hon'ble A.K. Patnaik, J.) but he does not say that my judgements are wrong, right. He encloses his best judgements. (by: Justice K. Hema) I remember in occasion you know, in ACR adverse comments were made against the District Judge, then what judge said was, let my

judgements also be placed, the critical comments were made against, please keep my judgements also with ACR, understand. When in the column which is meant for commenting on the quality of the judgement, all that the District Judge wanted was please keep copy of the judgement in the ACR, so he was of very confident that judgements is of good quality, but it was wrongly assessed. So the self-assessment, I don't think it is wrong process, it is good process. Tough every person will feel that my judgement is the best, at times you know certain judgements are well written, so there is nothing wrong in saying that it is of good quality and you can comment upon it.

**Hon'ble A.K. Patnaik, J.:** for you kind information when the High Court Chief Justice considers candidate for elevation form all District Judges, obviously seniority and all that, a letter goes from the Registry, please send your ten judgements, those judgements are taken into the consideration by a committee of judges, earlier the collegium use to do it, latest circular of Chief Justice of India is, the collegium has to set a committee of three judges, and the committee of judges assess the judgement, so a committee of three judges, they go into the judgements and then make a remark, these are good or bad so and so, right. So far as Guwahati High Court is concerned the ACR was introduced by justice Bhatt, V.L. Bhatt earlier there was no ACR system and along with the ACR the judgements sent to the Portfolio Judge, large number of judgements are also included, right so that the judge who fills these columns are able to comment as to whether they are good quality, average, very good quality or excellent quality. As a column there.....first you get the ACR forms that are prescribed by different High Courts and study that whether it has self-assessment column. In the self-assessment column what are all the remarks, what are the columns with regard to ACR, what is the role of the reporting judge, what is the role of the District Judge, when the reporting judge gives appraisal reviewing judge has to see whether appraisal is right, if he does not agree he has to note why he does not agree, right, then it goes to the portfolio judge, from portfolio judge in some cases it goes to the full court and in some cases it goes to the Chief Justice, and then those remarks are sent and they are entitled to representation against the adverse comments, that once gain placed before full court.

**By Hon'ble Justice K. Hema:** So, but the Suggestion is collect form from of ADRs all the High Court, ACRs and if the forms are effective in some area, no, no the thing is the NJA wants your valuable opinion on this, they will independently do that, off course we can make recommendation, we have collected the forms, yes sir, let them do it. But, your comments are most valuable now

because your experienced on this field, how far according to you the self-assessment of the quality of the judgement and enclosing the copy of judgements, in my High Court we don't enclose the copy of judgement along with the ACR, ACR forms, we don't. We just enclose the disposal statement, not the judgments, judgments are called for, when we are considered for the promotion, if the officers are considered for promotion they are then this is called for, so this is how it has done. (Hon'ble Justice A.K. Patnaik), but there must be a column, in the ACR regarding the quality of the judgment. How will you fill up that quality? That column unless you see the judgment...all High Courts, all High Courts... for the quality there is column.... My lord... for the quality there is column, now without the judgment how anybody can see the quality.... Reply- no judges were repeatedly looking into it, the calendar statements, as your lordship earlier pointed out, calendar statements are there, whether the judge is to suppose to--- Supposed to what nobody reads, your belongs to which High Court, Kerala High Court, he (Justice V.L. Bhat) has introduced in Guwahati, but I will tell you I never had time to do this, they were all piled up and no judge ever looked into. There has to be self, there has to be a self, right and that is very important, the High court judge... there has to self by the experienced judicial officers, who look into the judgement the quality of the judgement then the High Court has to look into it, but how can you possible ask the High Court Judge, portfolio judge, to go through the judgements, of so many judicial officers in his District it is not possible. In my opinion the system that is given by the Jharkhand is not correct.

**Dr. J.N. Barowalia:** In Himachal High Court there were instructions when I was principal secretary to the chief justice that while deciding the appeal the judge has to write what is the quality of judgement, whose judgement has been come in appeal. So, there, we communicate that, this is the quality of your judgement after the judgement is passed in the High Court/the District Judge, than we send the copy to concerned judicial officer, that your judgements has been assessed as under, outstanding, very good, good or so they can (that's alright), from here the statistics are taken what is the quality of judgement of the judicial officer.

**Hon'ble Justice R.C. Chavan:** The problem here is, judgements are assessed for so moto revision, which has been practice, that is impracticable because, it is not possible for so many judgements coming from trial court, one. Two, for the purpose of finding out whether the judgement needs to be revised, i.e. the *suo moto* revision, what you will find out the judgement is

right or wrong, needs intervention of the High Court, but for the assessment of quality is concerned you can do the different things, whether the judgments are in proper language, whether the issues have been properly framed, final orders are properly passed these things come in the assessment, for this we have to have judgements of Officer called for at the time of writing of the ACRs there is no other alternative. As Mr. Mr. Barowalia said about the assessment of judgment they come in appeal, what happens is, appeals are heard years after, the judge is even promoted, and therefore this assessment may not be use for writing ACRs. If the appeal is heard is in the same year its ok, otherwise if the appeal is heard after three year or four year what is the use of that assessment. Therefore for the assessment of performance of quality of the judgement, the best practices is to call for the judgement to examine the judgement on the point of quality, of language, than martialling of the evidence, application of law, etc. these points could be there, whether the issues have been properly framed, points for determination, how the operative order is drafted, all these things would count.

**Hon'ble Justice A.K. Patnaik:** Justice Chavan you are right, do you remember what is the idea of ACR, the most important idea of an ACR is to make an annual review, right, of the officers performance and make some remarks if he is going wrong somewhere, if there are defects, you can communicate the defects to him, so that they can improve next year, right. So, the quality of the judgement is not good, than to communicate that your judgement is lacking in this this, right and he improves this the entire idea of ACR, basically to ensure that the judicial Officer when he comes in, he is guided by comments from the, what you call higher authorities, in such manner, but if the ACR is written after five years, ten year and so and so, how do you improve, this is the one of the purpose of ACR, apart from promotion and all that.

**Hon'ble Justice K. Hema:** the reference is made to Hon'ble Justice Bhat's collection of judgements and then making remarks, see in my High Court, when I was District Judge, Justice Bhat was the Judge, in particular judge, portfolio judge, Justice Tohmas was also portfolio judge, they use to get as per the criminal rules of practice there, there is provision calling for the judgements, and the Judge in charge, we call Judge in charge, he has to pass remarks even on grammatical mistakes we were benefited by that, we were called and pointed out, I mean faults used to be pointed out, you have gone wrong here in formulating the points in criminal case do like this, do like that and improve your language or so many things, they use to tell us, they use to

correct the judgement by themselves and then communicate in some cases, if the judgement is very bad, they will call the officer and do it, that is only on the criminal side not on the civil side, that is by virtue of criminal rule of practice, so these judges use to do, as the days passed on years passed on, we have stopped there, as his lordship stated, (judges are became very busy now, by Hon'ble Justice A.K. Patnaik),...no..no.. in that time they were taking only few cases, few cases comes to High Court so judges had lot of time to go into the judges has to read briefs, so many briefs go to court room, come back they get exhausted and then go and deliver lectures if they are SJAC in that place, than they have to attend the legal aid camps, the activities of the judge has grown, right, he has no time. Some other system has to devised.

**Hon'ble Justice K. Hema:** About the preparation of ACR anything else, we were on self-assessment, anything else, how the judge should assess the ACR.

**Hon'ble Justice Ravi Tripathi:** In fact one of the judgement of Gujarat High Court says, it was Justice P.D. Desai, and at that time it was considered very celebrated judgment, he said that the one who use to write ACR, must maintain ephemeral role, it should not happen that for last one month the judges able to please the Higher Authority he writes the Good ACR he says that person who writes ACr should maintain ephemeral role, ephemeral role means short of dairy about of that particular judge and good thing about that he should take a note of that, again he did anything wrong which came to his notice he should take note that and at the end of the year or period, when he chooses to write ACR he should have glance over that particular note and then only he should write ACR, because ACR, in fact we had a District Judges Conference at High Court we wanted to tell them how they should be very particular about the writing of ACR. The things which are supposed to be very serious are taken to be very lightly, and let me confess here the normal practices is call his old file look at least 3 years ACR and then make some changes cosmetic changes if it is very good it's alright let us maintain very good and then you feel that no, no I have noticed the officer than it will be upgraded, normally it is the practice which is followed which is really very bad because as such ACR is an X-ray of that person, and on that basis it is going to decide his carrier so you should be very particular in fact I am very happy about this topic is included here, because not today tomorrow again if you are going to be back to your PDJs position, once again you are going to write ACR this is going to help you a lot, and what sister is trying to emphasis that right from stage one, what should be, I mean the things which should be kept in

mind that is all rightly labouring on that, these are the things which you should have in mind at the time of writing ACR, appreciating ACR, communicating ACR, reporting further, or whatever, comments you are making on that.

**Hon'ble Justice K. Hema:** So, dairy should be maintained, yes, time to time you can make note on it..... (audio not clear)... Sorry..... mic is mute (of the participant).... Work done, work done, we are now on the preparation, the first question is whether there must be role of Vigilance Registrar to prepare the ACR, sister I am sorry, I am sorry direct role is not there, whatever the friends have said, not there, not there, we have to discuss and find out whether it is better to involve in the ACR preparation, accept giving them information that against this officer this inquiry is pending, (Hon'ble Justice A.K. Patnaik) no, no there must be some clarity. The Vigilance Registrar is not the reporting officer of the Judicial officer, all that he said about ephemeral role and all that, neither the vigilance registrar can do nor the High Court can do, right. It is the only first reporting officer who can do, like chief judicial magistrate, like District Judge, right. They are the reporting officers, all these instruction are meant for them, you see in day today work, he is observing his work every day he is assigning work every day, he is the person who is to do all these things, question of vigilance registrar having role to play in this regard is not important. Vigilance registrar has been given his role, because ultimately the registry which takes up the finalization of the ACRs. So, the Chief justice said alright, I have got three Registrar (General), Registrar (Administration) and third may be Registrar (Inspection) and fourth may be Registrar (Judicial) I will assign to one of them, who he will assign, either to Registrar (Inspection) or to the Registrar (Vigilance). If he sees that the Registrar (Inspection) has got too much of work, alright Registrar (Vigilance) you do it. So, that is for the Chief Justice to decide and this job is basically to ensure that the ACR are finalized in time, if the District judge is not sent the ACR of his District, you will send a reminder, why you have not sent, then to ensure that the statistics are all compiled and place before the Portfolio Judge, Portfolio will give the remarks than to ensure, carry it to the Chief Justice or placed before the full court, this is your role, she rightly said that it is basically a clerical job, post box, right. A post box, right. Reporting officer has real role, reviewing officer the next role, third is the portfolio judge, fourth is the chief justice or the full court to assess and there is also a self-assessment. Because what work he has done he must also place it before the officer concerned, right. There must be some clarity on this, ephemeral role and all that, that is not for the High Court Judge, that is for the reporting officer, yes.

So, you agree with this, no role should be there of Vigilance registrar in preparation of ACR, yes. Only the reporting officer must have role, that is your consensus, is it. She this is the forum for discussing only, several opinion will come, because I and my friends they say, you should keep quiet. You shall come out with your own points, when judges say, former judge of the SC, better be better to keep quiet, that should not there, this is the forum in the interest the entire judiciary across the country. Whatever points you have, must be discussed. Please, please, he himself said you have to be bold, be bold, if there is any difference of opinion you have to say this, this is the forum to say that. See vigilance Registrar has role at least ultimately, ultimately when an allegation comes, report is made, and there he alone is the authority and the chief justice. But, when the ACR is written, where vigilance registrar has no role, is there any justification in saying that, understand.

When an allegation comes against judge, vigilance registrars report has very great importance, no no, sister there are two different things, (Hon'ble Justice K. Hema) writing of ACR placing it before the concerned forum that is altogether different, and when complaint comes, report is to be made on the complaint, the Registrar vigilance role is very primitive, there is no difficulty on that, it is very important role also, both fields are different. See we are not on what is the procedure so far followed no, we are finding out, whether there must be change brought in. So, the vigilance Registrar is the authority to say, and he is the officer is correct and the chief justice also correct, and placing it before the judge in-charge, the question is why not they be in the picture, no, no, no, Registrar (Vigilance) this is off course my personal view, and it will go according to the rules of High Court, no what I am saying is, we are here, we were working as High Court judges, we are here to make our opinion, of course we want their opinion. You are right in that, but possibly what his lordship has saying is the correct position. Registrar (Vigilance) cannot have any role of equivalence to the reporting officers or even reviewing officer, he will not. He may point out whether enquiry is pending or not, yes, yes, whether the vigilance inquiry has taken place, that's all.

Why this did not come from you.... (they have said it) they have already said so, no, no, no that is only relating to one or two high courts.....Mic of the participant is mute. He has to run the District, he has to run the District, the difficult seems to everywhere the ACR rules are also not uniform (Hon'ble Justice R R Tripathi), in our High Court at least there is definite column which says that is there any vigilance inquiry is pending, whether any departmental inquiry is pending,

yes that can only be given by the Registrar (Vigilance), and in that if the Registrar (Vigilance) has given that input his role is over. .... (not clear) to find out the more detail, what is the nature of allegations made therein, what is the primary material which is collected in and that should be taken into consideration by the reporting officer and reviewing officer, they cannot have any direct involvement, further than that unless that is asked.

**Hon'ble Justice K. Hema:** See, reporting officer never turns to vigilance collect his information, that is what I wanted to know, it is there in the form, what is going on is the officer himself will write if there is vigilance inquiry, he himself will write. No, unless he is given feedback by these people (Justice R.R. Tripathi) he cannot write whether the departmental inquiry is pending.

**Hon'ble Justice A. K. Patnaik:** When the District Judge sends the report to the High Court, than the Registrar vigilance and he says in these column these are the investigation going on or the Registrar (Vigilance) says no inquiry is pending. That is an independent column that has to filled by the Registrar (Vigilance), right.

**Participants:** My lord in our High Court.....han..... (Mic is mute)... so report officer has to consult isn't it, to find out from the Vigilance Registrar... whether any vigilance officer... no, no that is different stage, reporting officer will report right, after it comes to the High Court, the Registrar (Vigilance), Sir, we are only on the preparation of ACR, no they have no role to pay, as to the inquiry is pending, Vigilance has no role to pay, you have no role to play, the question is whether you must have role, they should not have. You should not have role, if the inquiry is pending you should not be consulate.... (Not clear)... mam there are many instance where the District Judge is not aware, District Judge only writes ACR at the level of CJM, Higher Judiciary *ka jo hai o High Court judge leekthe hain, sahi bhataya..... aap ka Registrar (Vigilance) hai kin ahi, hai, tho registrar vigilance leekega kin ahi, inquiry pending hi kin nahi...* Lordship I have one query, what is the purpose served that an inquiry pending, in an assessment report of an officer, what is the purpose served by, administratively speaking, alright, very good question, very good question put, see when the promotion is taken up, I am speaking from experience, let us say a senior officer has an inquiry pending against him, it may be disciplinary inquiry or vigilance investigation pending, right. Can we by pass him? And can you promote him? You understand what normally, I believe is to the Chief Justice get this inquiry completed as early as possible, otherwise all promotions will be held up, right. You can't supersede him straightaway, it is

pending, allegation are not been found, SC judgment is there if the allegations are not substantiated in an enquiry this column, helps the High Court to take various decisions or suppose I wanting to post this officer as Registrar (Vigilance), chief justice, he has taken a liking for handsome man like you from Calcutta he is feels that you should be Registrar (Vigilance), then he will be cautioned that his ACR indicates that the inquiry is pending against you, so he will say that I can't post him now, if he became Registrar (vigilance) he will finish up the entire investigation in his favour. These are the column that are to be filled up, but not necessary that you shall be punished. Not, necessary that your promotion be held up, right, but this feedback is required. Otherwise you will not get good idea, as to which officer posted where, which officer has to promoted, which promotion has to be exported ok,

**Hon'ble Justice K. Hema:** So, we go back, reporting officer must ascertain that the inquiry is pending or not, yes or no. Now, from the discussion it has emerged, we will overrule the earlier... in fact mam, at times it happens that reporting officer say he is District Judge, and he is reporting about the judicial magistrate, and in the District he is not aware the vigilance inquiry is pending, he cannot be aware of those things, which confidentially moving on, that is true. The question is... and he reports upon the officer that the ACR is finally accepted, with report of the Registrar (Vigilance) it will be placed before accepting authority who may consider at the appropriate stage whether these reporting officers comments are to be accepted or not. This is the purpose, it may be the purpose but the question is, whether the reporting officer must know? Not necessary, it is not necessary, here comes the role of Registrar (Vigilance), here comes the role... may be knowing may not be knowing... whether he should know, no, no, so will strike it off, I will strike it off, see the entire subordinate staff is directly under the Chief Justice, even portfolio judge may not be knowing, the reporting officer, the District Judge may not knowing, nobody knowing it may be investigation carried on, I will tell you one incident, which I have came across what you call as Chief Justice of Madhya Pradesh High Court, the Chief Justice of India telephoned, such and such judge of the High Court, while he was an advocate gave an opinion, to the Bank as an advocate of the Bank and on the strength of the opinion Bank accepted certain property as security, right and the matter has gone to CBI. CBI wants to examine him what do I do, I told the Chief Justice of India to examine my judge, so what is to be done, you can ask the CBI to prepare some intermediaries (questionnaire) and it will come from the CBI it has to come from you only send to me I will call the judge to my residence, ask him to fill it up and then I will send it to you and then

you can send it to them, anything short of that, will affect the reputation of my judge, which I as Chief Justice of Madhya Pradesh High Court will not allow it to happen, right and that procedure was followed, I called the judge concerned he filled up the intermediaries, I said thank you I sent it back to the CJI, whole thing was given to CBI, right. That is how judicial reputation is maintained, independence is maintained, and everything is maintained. If, I was to allow the CBI to come and interrogate my judge in Jabalpur, all in headlines, and the electronic media, and the electronic media, fantastic electronic media that they have. This is also been recorded, (han) you can send it to the electronic media, (laughter) sir this is only for our use, (laughter).

**Hon'ble Justice Hema:** So, ultimately we come to this reporting judge need not know about the pending inquiry in the ACR, is not it, Mam, the process of writing the ACR is taken up and it is over, by that time if the inquiry conducted..... sound is not clear.....you are telling the reason. While writing the ACR in that way it can be taken into consideration. That's question whether it should be there with the ACR, in preparing the ACR whether there should be a column, regarding the pendency of the Vigilance Inquiry, *nahi* column should be there not to be entered by the reporting officer, but to be entered by the Registrar (Vigilance). So, in the ACR there must be column to be filled up by the Registrar (Vigilance), ok, ok than I will record it. But, there in Kerala there is no such column, sorry there must be a column, in Bombay High Court there is column, no, no, Guwahati High Court there is column, there is column but not to be filled up by the reporting officer..... (by participant) because ACR up to the Civil Judge Senior Division written by the District Judge, then only it comes to the High Court, only ACR of the District Judge and above, it directly come to the High Court and then only Registrar (Vigilance) fills up that column. Before coming to the High Court, already a good number of ACR, are reported by the reporting officer, without the entry with regard to vigilance, it is only after coming to the High Court.

(By participant) Vigilance Inquiry should not be included in the ACR, my view is, not at all! Not at all! unless and until vigilance inquiry is concluded and departmental inquiry is started, because it will be embarrassment to the officer concerned. (by another participant) yes, I do agree, because the controlling officer he has to have his independent view, if he sees that column and all he may be affected, so that has to be kept aside. It is one respectable opinion, but when it comes to the High Court, at that point of time High Court should come to know, alright but will the High Court know, I suppose yes, no no Chief Justice even he instructed the Registrar not to disclose it to the

Portfolio judge, how will the portfolio judge know, about the pendency of the inquiry, he is not supposed to know, he will not.

A bold vigilance registrar shall not say that, this is my opinion, yes, yes, (participant) not at the time of .... (by Hon'ble Justice A.K. Patnaik) As you said rightly, reporting officer will give his report of assessment of the officer, reviewing officer will give his explanation in case of District Judges the portfolio judge is the reporting officer, he gives his assessment, of the District Judge, right, as reporting officer, right. At that stage finally, when the High Court considers, at that stage Registry Vigilance, must indicate what are the pending cases, otherwise, you are going to take decision without an input. Without an input, right. So that input may be there we cannot hold anything against him, right. You say there is an inquiry pending right, at what stage it is, and we are very clear that without finding we will not hold not against him, will not be prejudice against him, but we have to expedite it, right lower officers will be held up.

**Hon'ble Justice K. Hema:** Whether the ACR should contain a complaint column for reporting and not reporting. At the stage of reporting no, no alright. Preparation any other point. In preparation.

(By participant from Allahabad) in Allahabad there is a separate post of Registrar (Confidential) every compliant received at High Court is registered at his office, than he put up a note before a note before Hon'ble Administrative Judge, administrative judges invariably call the report of the District judge, than after receiving report of the District Judge, Hon'ble AJ recommend for Vigilance inquiry or drop the compliant. There is a compliant committee also, of three Hon'ble Judges who also examine complaints when Hon'ble Chief Justice send them to examine it. (By Hon'ble Justice A.K. Patnaik,) No you have Registrar (Vigilance), I am Special Officer Vigilance, what is your role? My role is, after marking by Chief Justice for vigilance inquiry, therefore your under the control of Chief Justice, Yes. Are you under the control of the Portfolio judge, no, are you under the control of compliant committee, no. So, there is vigilance system apart from compliant system, that's all.

**Hon'ble Justice K. Hema:** So, you have Registrar (Confidential), yes Registrar (Confidential) is separate post, yes in the High Court, so whenever a information confidentially to you, about an officer not to you to the Registrar (Confidential), he will report to the reporting officer, no, he will put up a note before Hon'ble Administrative Judge and Administrative Judge calls report from the

District Judge, after receiving report for District Judge, Hon'ble Administrative Judge either recommended for either recommend for vigilance inquiry to the Hon'ble Chief Justice, Ok. Hon'ble Chief Justice may send it to Hon'ble complaint committee, for examination of the complaint. Alright so there is particular post. Yes.

So these, complaints which are received by the Registrar (Confidential) will be communicated to the District Judge so that will put him informed, alright the District Judge will know about it. Unlike the Registrar (Vigilance) yes, yes, the complaints to the Registrar (Vigilance) in respect of which there is an inquiry, by the Vigilance Registrar, pendency of this complaint will be known to the District Judge, who has to write the ACR, (participant) in case of every compliant, District Judge knows, (Hon'ble Justice K. Hema) is it good practice?, should there be a Registrar Confidential? My lord...before the Registrar (Vigilance) and after matter placed before the Hon'ble High Court and.....so....Alright. So, the procedure so far discussed there is some difference in your state, other High Courts also my lord, (Hon'ble Justice R. C. Chavan) every High Court has a different procedure, why don't we write it down and to Shivaraj, also suggestions, because, no but then who will decide whether it is best practice or not, it can't be decided because, (Hon'ble Justice A. K. Patnaik) see as I rightly submitted that is the authority of the High Court, right. No one can, neither this conference can suggest, not the Supreme Court can suggest, nor the Chief Justices conference, it is the power of the High Court, that is true, the High Court, will decide what manner it will carry, *kis cheej se kuch phayada nahi hota hai*, we are vesting our time in discussion. No, no, the objective of the NJA, try to understand, no I have this kind of conferences, one thing sister, let them write them the procedure and give it, this is our suggestion.

See the Idea or the object of the NJA is to find out the best method possible, so that this can be circulated to the High Court, if the suggestion is acceptable, let the high, court...(Hon'ble A.K. Patnaik) High Court never accepts it anything I am telling you, no it should not sir, the trouble is the question is misconceived. Each High Court has got, at present 74, it is difficult to convince one judge, any right or left my right or left, right and you expect the NJA to send recommendation to send the High Court and High Court will accept it, not recommendation, than what, this what has been the view points of the officers, no view point nothing, I can tell you, it will go there and it will go to the waste paper basket, they know all the judges, unless they think and change their mind nothing is going to work, and particularly with regard to the ACR, I told you what happen to

the National Judicial Service, nothing is going to change, you are discussing the role of Registrar (Vigilance) this I can understand. To change the system of ACR followed by one to the other, it just an impossible. No, if good suggestion comes, why not the High Court think about it?

**Hon'ble Justice R. C. Chavan:** Sister may I give an input, Justice Sanjeev Banerjee of the Calcutta High Court, Justice Chandangowadar of Karnataka, Justice Madan Lokur, who was in Delhi High Court, now in SC and I, worked in the NJA with all these conferences on making a good comprehensive form for ACR for about three years not one day, in three years may be about twenty meetings and nothing came out of it. NJA has all the material with it, was it communicated to them, yes, yes, yes because why this happened is because the problems of Manipur are different, there are ten judges, and two High Court Judges, Allahabad there are 74 High Court Judges, may be three thousand Judges, the geographical canvas is also different, so therefore it is impossible in this federal structure. It is impossible, yours is god's own country, we are human's country, so this is impossible. No, No, I would not say that, therefore there are problems, we have tried this, this did not work, what I suggest we exchange, and then if you find you can move your chief justice, sir, I went for conference, this is what I have noticed in the other state, this was possibly good, you make suggestion the Chief Justice may accept it. But, from this if you are expecting something to happen, because I have spent at least 20 conferences into five or six hours you can imagine, hundred hours, and you can ask Sanjeev Banerjee and I am telling you the names, Justice Mohan Shantangowadar we worked very long time, and having these ACR formats, this is the most sad part, that writing of ACRs most causally done in all High Court, there is no assessment, who suffers it is the good judicial officers because of this, that's why NJA is trying (Justice K. Hema); (Hon'ble Justice A. K. Patnaik)- see I will tell you, listen- no they were again repeatedly... nothing will come out of it NJA cannot do it, let NJA confine it to its own job, upgrading the skills of the judicial officers, in trying to deliver the judgement, right. I will tell you about bad, very bad experience, I had come from Gauhati, a particular District judge was to considered for, elevation, his ACRs were not good, ACR are the ACR incompletely written, I asked all the officers that how he is good, I asked him to give self-assessment, then I tried to complete his ACR, and according to the Orissa High Court Rules, the final grading is given by the Full Court, so it went before the Full Court Justice... was the Chief Justice .... I said now you give the grading, and I cautioned them, if your grading is good or very good we have to recommend him for elevation, we have no option. If you grade him as average or bad than we will not consider him, so you decide, let the

full court decide, right. I said Justice B... is concerned, he is from Gauhati thereafter in Calcutta he does not know this officer, I have just come from Gauhati, I also don't know the officer, now please tell us, all of them said sir, he is good officer, grading was given as good. Man was elevated as High Court Judge, (yes there are occasions), listen, listen, listen he turned out to be a dishonest judge, after confirmation. After confirmation he became dishonest judge, right. Than by that time his reputation was known, he recommended by than chief justice for president of the consumer commission, one name is sent. The government knew that he was dishonest judge, government says not acceptable, please reconsider, the Chief Justice was under the pressure from the top, he said I retreat, right. The government was helpless, then a PIL was filed, two judges there was pressure from the top, directed his appointment. Directed his appointment he was appointed as president of state commission and the persons who are benefited by that appointment was his two sons, who are practicing, right. Then a consumer came to me, when I was already in the SC, sir what is he doing, everybody knows corruption is going on, two sons they earning money, I said I can't do anything, unless you sent me a complaint, and consumer association gave complaints in writing, than what to do, I read the rules, than I found that government has appointed him, so I wrote a letter to the Chief Minister, having this is the complaint have it inquired as per the rules and then chief minister ordered the inquiry asked the chief justice name a judge who can conduct the inquiry, judge conducted inquiry, gave a report against him and finally he was removed, still hold myself guilty for having recommend his name, but I am helpless, why, because all the judges of the High Court who knew them accept me and chief justice, did not know that he is dishonest and they all said he is good, why because the boss is sitting and he was very close to the boss, this is the unfortunate state of the judiciary, you mean to say what the NJA will recommend and they will follow, this has to come through their heart, let them not to do sir, no, no, not through the NJA, it will open there itself, NJA can upgrade the mind of the judges, skills of the judges but not the systems, let us not work on the system and NJA is wasting its time working on the systems, is that clear.

**By Shivaraj (Co-ordinator):** Thank you very much for your participation, next, as per the tentative schedule we have library reading, but I have small proposal to make to the participants, off course we have to let the resource persons to take rest, I have small exercise this is my if accept my proposal then you know, things will be carried on, see in all this two months with this particular assignment about register Vigilance I have identified many issues relating to the Registrar

(Vigilance) especially talking about bottlenecks, number one I have identified some issues relating to the institutional difficulties, functional difficulties and also difficulties relating to other areas of Registrar (Vigilance) somehow I think that particular identification of bottlenecks shall be from the Registrar (Vigilance), because you are you are the one who is facing those bottlenecks, so from discussing this particular institutional difficulties from academician's perspective, my idea is to have your views collected first and then, today you will make five/four groups, amongst our Registrar (Vigilance) available, you just discuss on your own and we will provide you separate rooms where you go and discuss and discuss and come up with some points, bottlenecks or some problems facing at your respective High Court level and tomorrow will have particular session in which you will be, one of the speaker, one of the leader, I am mean to say one of the speakers from your group will speak upon and our resource persons will be responding. That would be, I think, I feel that will be a proper way of addressing the concerns of Register Vigilance, if you agreed then I have this plan to execute up on, what you say? Can we have this particular group discussion for today, and presentation tomorrow by you or you want library reading. It is simple, Library Reading! Then let us go for library reading.

Thank you.

## Day-2

### Session-5: Conducting Fact finding inquiry against Staff of the Judiciary: Issues and concerns

**BY: Hon'ble Justice R.C. Chavan**

**Mr. Shivaraj:** Good morning to all of you, I welcome you all to this particular first session of second day let us take, first session, thank you.

**Hon'ble Justice R.C. Chavan:** problems in the academic guest house, but because I was battling with myself, because I should be saying things today, which I vomited to say yesterday and then decided that there is no harm in sharing with those soldiers against the experiences that we had. First, I will deal with today's topic which is about inquiries against Staff members. Normally Registrar (vigilance) do not conduct inquiries against staff members, they are conducted by the District Level, not even by the Principal District Judge, he would normally delegate it to someone else because he is the disciplinary authority, at the High Court level unless there is something very serious and against the officer of the High Court, the vigilance Registrar will not come in picture, inquiry would be normally conducted by the Administration Department against High Court staff therefore Vigilance Registrar's role in the whole process is not much, in some High Courts may be Vigilance Registrar's do deal with administrative appeals when a District Judge passes an order in the departmental inquiry, and the inquiry concerned questioned possibly before processed in some High Courts by the Vigilance Registrar but mostly by some other department. All the same, since all of you would all be District Judges, a line or two on inquiry against the employee may be useful, we are concerned with fact finding inquiries against the employees. This fact finding inquiry against an employees is simple matter sometimes not, if the aligned with some other officer, normally again there is no vigilance department in the District Court and therefore District Judges rely on reports, complaints made in order to start a fact finding inquiry against an employee, employees have their duties defined therefore it's easy to find out evidence of delinquency in respect of employees misappropriation most easy thing to detect because if you just have a look at the balance sheets and cash boxes, things come to light.

What happened in Uttar Pradesh was of course bad but then this happened because of lack of vigil by the District Judge, had the session judge been vigilant he would have been able to find out why

these things are happening in that way, missing cases, may complaints are about missing cases, provident fund was an exceptional situation, not crediting the amount to the government in time, giving wrong dates advocates, telling party one date and actually recording some other date in the Roznama, pushing cases under the dais, virtually under dais, because it is wooden dais, the case gets lost, and only the employee who has done it can find it out. In Bombay High Court, don't know whether Mr. Shukla remembers' it or could find it out data record of case of Shindia property was lost. I don't know whether it is still retrieved, so these things happen, and these things can be traced out, if you have a look at the balance sheets, Roznama when the case was lost, who was the employee that stage etcetera and it is easy to find the culprit and it's also find the evidence because most of the things are well recorded and well documented, again in district courts or when your taking out inquiries against employees don't ever go in for soft targets go in for Ring leaders, because it sends good message soft targets in fact if you find some delinquency calling and counselling him helps he becomes your asset because he knows that has been pardon you should give me answer to him he becomes your asset, he knows that he has be pardoned, you have shown leniency to him he becomes an asset and he's on the border because he is not an employee with impeccable morals he is a deviant, because of this deviation you get many information's which you otherwise would not have got therefore small delinquencies condone them with small warnings or even counselling without recording anything in the ACRs or his dossiers but keeping an ephemeral role, it is ephemeral because it vanishes after a year. You don't have to bother about ephemeral rolls but if there are ring leaders, you must take them by the horns this helps in increasing a sense of discipline. Many times High Court that is all of us who run the registries are not supportive of district judges for ABCD reasons you have a bad opinion about District Judge and you would not support him, or there is some personal grudge it happens after all, all of us are human beings therefore sometimes it happens a District Judge starts a proceedings against a employee and the High Court registry interfere stalls the proceeding without realizing that this affects administration of that district. The District Judge suffers in very early days of my carrier, I was civil judge I had gone to see the District Judge when an employee came and with box sweets offered them District Judge and said that sir, your order has been set-aside and I have been reinstated by the high court give me posting now, so the District Judge accepted a piece of sweet ok very well no problem and then after that if the employee has gone he said would you accept this baby. Yes, I will accept him, and the baby was sent to my court, then I found that fellow was

very brilliant he was balieef he was president of the State Balieef's association but his energies were diverted to all other activities rather than, what he should have been doing I suggested to the because he is qualified, district judge we promote him to the post of section writer, copyist he has to type 5000 words a day he has to sit in place, fortunately District Judge saw the merit in my suggestion and the fellow was promoted one who was punished was promoted, so he also felt very happy, I said to him that there is open space for you to rise to the top now we will you study, will see what you can do, and the fellow became a copyist spent most of the time there did all sorts of other works which I entrusted to him like pay bills were taken to the Registry to the Treasury are which create lot of problem, you master this trick he said I will do it, his energies were channelized in different way things move in a different order what I was telling is sometimes the registries interference administration of a district judge and create problems for him this also we learnt in the hard way, we suspend an employee and the Registry sets aside that suspension order the employee comes back we can't do anything about him we can't get work done, so while starting fact finding enquiries that is preliminary inquiries we device method to spit the allegation, it may be 1,2,3,4 allegation in the complaint, we will take up only the first allegation and ask judge 'Á' to probe into it, find out facts about that after a week or two the second allegation, after two weeks the third allegation and so on, so that by the time the first report came and we decided to initiate action, even if the Registry in the High Court set aside that order, the second inquiry would be started, and the third and the fourth, and we had to tell the registrar see you have not run a District , District Court you don't know all these things don't try to interfere we have got means to overcome all the obstacles which is raised if you don't stop this we will go to the chief justice and tell the chief justice what is happening but most of the times this work, there was a President of Maharashtra State Judicial Service, class three, class IV association.

A nasty fellow he had the audacity to, there was a lady judicial officer her husband was posted elsewhere, he was working in some other company, she was staying alone with her daughter this fellow was peon in fact so, he would do small errant for her because he was assigned to her court, they belong to the same caste, because he belongs to her caste she trusted him, one day at 10 PM he came to her house, she had to call her neighbours and gave good thrashing she reported the matter to the District Judge, what is there how these things happen, you must encouraged him and all, after that District Judge transferred I had misfortune to preside over that court, and find out the fellow was creating problem for many persons, we have to ascertain the truth of everything and

then started one enquiry got it completed, he was not aware that something disastrous was to occur because before something disastrous could occur I sent second charge sheet to him, got it served on him, now second enquiry what is there, it gone on this District Judge also go one day, after the second charge sheet was served in the afternoon a special messenger went there and handed over the civil judge and told him that sack him just now, he was shocked, he took some time for him to come out of that shock, still since he was resourceful he did all sorts of things, challenged the order in an administrative appeal, the judge who was hearing the appeal dismissed appeal without hearing him, because there was no need to hear him, rules do not provide a personal hearing be given to the appellant in an administrative appeal, we have to go by rules know, whatever stated in the appeal is there he could supplement is by written submissions if he wanted. Because he was not given a personal hearing, he filed a writ petition, in writ petition, writ court for ABCD reasons felt that the though the rules did not provide that personal hearing should be given Audi alteram partem but there was a difficulty, there was a judgement, which would not permit the division bench to take such a course. Therefore a matter was referred to a full bench, of the which the Chief Justice was himself was part, came to uphold his contentions that judgment created a problem for the Registry of Bombay High Court itself, and when is the matter, in a disciplinary matter the question was raised, the members of the disciplinary committee had to tell that this judgement though you have authored it, it is not correct but it is a full bench judgment what to say, the fellow was given personal hearing etcetera, by the time he was officially out of the service to be cut off from, his comrades and therefore we could discipline him. So while starting preliminary fact finding inquiries look at the future, look at what is likely to happen in future, and then ensure that when you take action the action is effective, first a District Judge never raises his hand but if he does all the five fingers must be visible on the cheek, otherwise you don't raise your hand this was our policy, be persuaded with vigour and with considerable success, whether it is according to law or not or whether it confirms to the ideals of the judge or not for you to decide, I would suggest the judicial remedies or judicial procedures or judicial methods are not always apt in administrative decision making, in judicial decision making you follow up a process which is prescribed by law and whatever conclusion is arrived at after following that the process you accept it you don't decide that the suit is to be decreed before the suit is right, but in administrative decision makings you decide where you have to go and the device path which is not conflict with law but which will take you to the destination so decision is first made and then the path is deviced.

I see nothing wrong or nothing unscrupulous in this course because otherwise administration cannot be run, but because we are judges, by training we tend to go by that judicial method, forgetting that it is not always an ideal method of dealing with every sort of problem. If you have a boil on your hand some time an ointment would be enough, sometimes an injection may have to be given, some pills may have to be taken some times surgical operation would have to be performed, there can't just be one method judicial method for solving all the problems of the country that can be done. When we sit as administrators we should forget for a while our judicial training, Shivraj and Dr. Geeta want us always to frame rules, rules give us a sense of comfort, where there are rules we feel comfortable we feel supported that you are doing something which is supported by rules this is a course which is taken by a timid man who wants a path to be laid out and he walks on that path, doesn't take risks be brave, don't depend on rules, don't seek rules, don't frame rules which will cut up your discretion. If you have too many rules there will be too many restrictions on how you act.

I have one question? What is the proportion of forest as against human habitation? That is better cultivated land, houses, industry, building ideally on the earth, what should be the proportion between human habitation and uncontrolled growth of forests or natural things? Like deserts, rivers, mountains, what do you think? Ideal- at least 50:50, 70:30, so human habitation should be only thirty percent, 1/3 if the earth has to survive, likewise rules which regulate human conduct cannot be more than 1/3 of the human activities. Otherwise it will stifle all human activities.

Therefore his lordship yesterday said, let's try to work on skills, minds rather than going in for formalizing some sort of rules which should be followed by all High Courts, every situation is different, every lock has a different key you have to find out that key there is no master key, now I come to things which disturbed me last night, we did not build the family, family in the sense of the word used in Godfather, but we did build up something may not be an organization, may not be a network, but when Justice Dhabolkar he was at that time a District Judge, he first founded the, the Vigilance department, he naturally thought of some persons, like minded persons would think as to how we tackle the menace of corruption in judiciary. We formed a loose network because the lines were not formally drawn, we thought over the problems, and then felt that the best course, or the necessary course was to build up some sort of structure, not a structure is a loose sort of assembly which would be able to help and the RSS ideal, tackle them young so we first

decided to recruit people when they join the Judiciary, when they come to the judicial officers training institute. We devised lines of succession after me who takeover after him who takeover likeminded people who had only goal one mission in the life, that is tackle corruption in judiciary.

We did not take any oaths or there was no rituals we will do this etcetera on the fire nothing like that, ensuring that nobody none of us belonging to a caste which would ultimately tires down, ensuring that none of us are belong to an ideology which should again bind us unnaturally those who believed that there is no caste, no creed, no religion those who believed that only, caste, creed and religion is an honesty came together and we started running around the Judicial Officers training institution where I was posted, around the time justice Dhabolkar took over and established a vigilance department provided an opportunity to find out young minds we would hammer them tell them, that if you have to leave an honourable life in future, if the people don't want rise fingers and say that here goes a dishonest judge, ensure that the dishonesty is removed from the judiciary. Because you will honest but then dishonest judges would make people to feel that you are also like that, and then some did take this seriously all of those who are indoctrinated were not necessarily efficient, were not useful tools, some of them would be hasty some of them would be reticent and some of them would be timid, but all of them at least had one thing in common, that they believed that we have to fight this menace of corruption. We decided on one more thing that none of us who had come together, would ever stay in Circuit House or guest house or hotel when we visited the place where a comrade was there, we would always make it a point to stay at the comrades house and a comrade would not read comrade, and the comrade would stay accordingly at our house.

This also helps strengthen the bonds we knew each other lifestyles if some flashy gadgets were purchased by someone, one of us would ask from where did you get it so this kept check on each other, we ensured none of us wavered from the path decided, we watched on each other not for the sake of communicating it to the High Court but to ensure that we will stay on the track this went on we had line of succession in the High Court also, you may find it odd wrong whatever it is, yes we decided who succeed who would go to which positions, put up things in that way so that the control did not go elsewhere. Things moved in our way, but never did we take any action against the person without Panchas coming together deliberating up on it and then decide that yes he is a target to be eliminated again as in case of employees no soft targets if it is soft target call him

counsel him, try to bring that ship back to the port. Create an asset, but then this line got disrupted midway not because of any wrong reasons, no wrong person took over but there was some sort of as in Aam Admi party all intellectuals tend to fight, somebody felt that these people taking things to far so some other well-meaning persons disrupted the line of succession and things changed we did not mind that because we don't mind after it is amoeba our structure is like an amoeba, anybody may join anybody may come it's not necessary that there should be some Central authority which would decide everything therefore people come people go this is how over period of time, over almost 25 years we have built up a network, Rome was not built in a day know, like that if you have really carry out the vigilance activities without inviting outsider to peep into your affairs you have to have a team of soldiers who are ready to fight, ready to sacrifice, if you can do that not just half the full battle is won, if you feel that you can't do it than it's time to leave not occupy the chair, some other position would be better, see just a water cannot rise above its source, actions cannot be louder than thoughts, if you don't believe in yourself you won't able to deliver, so first believe that yes we can do something, we can make things different it's not that corruption can be totally eliminated, as people say yes true, because it is to bigger cancer but we can definitely bring it in check, today what has happened is, thieves and rascals walk with their swollen chests and honest judicial officers with chin down face bored this has to change an honest judicial officers would be able to walk with chin up and these rats would have find there ways for elsewhere at least this much we can do, we can try and friends ultimate it again question of our own reputation and therefore we have no other escape. We must do it if you don't do it we suffer we accept that we have surrender to the demon, which I suppose none of you want to do, if you want to blame me after this for running the family you can I don't mind, we also again tried our hand is having people through recruitments, in Maharashtra District Judges have the power to recruit, the first recruitment was carried out again by Justice Dhabolkar, when he was District Judge at Satara, we decided that Sifarish won't do and ensure that the process is totally transparent, no corruption we did it, even Hon'ble judges who suggested names we are told that this process is like this, and in this process nothing can be done nobody can give more than 5 marks there are so many examinations everybody has five or ten marks at his disposal, the total is made in the end of the day, this Dhabolkar pattern he was just started he was District judge at that time I picked it up and I tried it at Nashik in 1994 then at Nanded 1996 Aurangabad in 1999 my friends also accordingly did this in their own districts, now I suppose it is perfectly standardized in High Court. We had one day

recruitments, recruitment one month total schedule and one day recruitment process it begins at 7 AM and publish the list at 7 p.m. at every stage transparency if a person gets 10 marks he has grievance additional District Judge show him this is your paper go back, so many persons, everybody is establishment participated so, there was no question of one person holding the keys, result was we had, we have 500 employees in the district who had not paid a bribe for getting that job, who had any sifaris, nobody knows them in the High Court, again the day they joined, we hammered them, this is what is required to be done, we have to eliminate all bad things in the system. Now they are assets, they behave they communicate, not all of them, some of them, when I went to the Registry in the High Court there was question of recruitment in the High Court, I requested the Chief Justice to permit me to hold a walk-in recruitment and declare the results, declare the results while the candidates he or she was interviewed, the Chief Justice was aghast, what are you talking in Mumbai you want walk-in recruitment, there will be crowds you won't be able to manage, I said we have done in the past permit us, 59 thousand applicants were handled at Aurangabad this is not much of a problem what about the telling the selectees that you have been selected, how can you do? I said that sir we want to that because the moment we prepare a list, type it out somebody can take advantage and say that you are selected give me 25000 rupees we don't want that to happen we can know, know we have to recruit so many people, how to recruit so many persons, he thought for a moment, OK go ahead but at 7:30 in the evening at my bungalow you must show me the list. I said yes sir, no issue, all fears about crowd etcetera were proved wrong, because our people are not serious about anything, we had said that first test is punctuality, those who knock the gates of High Court at 7 am come in, after 7 am both gates are closed, we had just five to six thousand people inside.

Not much of a crowd in the scrutiny wasn't there then and there by hundred section officers no issue 70 or 80 candidates per booth, test immediately, by & 7 O'clock everything was over, these people also became assets because they had come without any recommendations this is how we build up an organization, we build up a structure, you get information. Two, more things I will tell you, which I missed yesterday, yesterday his lordship refereed bail orders, it is said that people avoid passing bail orders, not because they are afraid of vigilance, but because they want to make money there was additional session judge by name Pavase, I also name him because, there is nothing wrong he was at Pune conducted, in a sessions case a trial was conducted before him, the trial was over, our High Court prescribes that within 15 days of conclusion of trial you must

deliver a judgement, this fellow did not and the defence advocate made a compliant this fellow in not delivering a judgement, he said I will not, it was the judgement of acquittal I will not, he was to retire in another 15 days or a month or so, so defence advocate filed a writ petition in the High Court, seeking a direction to that officer to deliver judgment. Matter came before an honourable judge, he asked me what is this, is he waiting for getting money, I said what is the name of the officer, he told me, I said no impossible, I know him, he can't be waiting for getting money, but I will get to the root of the matter, I asked the fellow, what is this, why are you not delivering judgement, this defence advocate is the dismissed judicial officer, he has taken money in my name, from the party concerned and I don't want to tarnish my image before I retire, the message must go to the party that money has not come to me therefore I am not delivering judgement.

I told the honourable judge see this is the problem just put up matter by another 15 to 20 days the fellow will retire, and matter will over and the matter was over. this is what sometimes happens, people take undue advantage, of course we tell judicial officers not to listen to anything, having not heard this he would have delivered, because he heard this the problem arose, lawyers have tendency to sell judges, without having coming to know you may be auctioned by both parties, together, it happens, as his lordship remained I am coming back to the inquiries, before that one more incidence I will tell you, about how bad bar bullies judges, at one place, there is famous hill station, there was a judicial officer, who was transferred and after his transfer entire bar made a compliant, that he was corrupt, this that, when I went for inquiry the Bar members insisted that you must here all of us together not individually, no collection of evidence individually.

All of us speak in one voice you have to take that, I said ok no problem, while talking to the entire bar, I found that there are 6 or 7 doubting Thomas were there, proceedings of that day was over, thereafter I called doubting Thomases one by one, then whole cat came out of the bag, the whole bar was involved in corruption with judicial officer and the fellow went away with big kitty without discharging his obligations, therefore these people were aghast, because I was wondering why they are after him, after his transfer and further things happen, but since the whole bar was involved I suggested the chief justice to post two rouges there, he said you have rouges in the judiciary? I said yes we have, there are useful, you admit to having such officers, two rouges were posted, why two rouges? Because the pendency does not justify two judges, because the pie is small, these two will fight for bigger share in the pie and they will create against themselves and the bar also will

be divided, then both of them will go home and this happened, both of them went home. So, far every lock there is different key.

Now, coming back to staff inquiry, preliminary inquiry against the staff, fact finding inquiry against the staff in which vigilance Registrar is not necessarily involved, as pointed out, is not always easy matter if the employee is connected with judicial officer, then there are problems, for examples judicial officers who would cause list to be tempered with, this is done by the employee, but at the behest of the officer and then it becomes difficult to find out as to how this mischief has been done, what type of complaints could normally could come against the employees, one is misappropriation, sale of gold ornaments from the strong room or the treasury chest, properties, yes, what else, loss of records, bungling in the auction, not remitting fine amounts, the file receipt would mention 10 Rs. Fine recovered from the person concerned may be hundred rupees, this happens mostly in Motor Vehicle Courts, there are on tool, if that person says I want receipt, wait you will get receipt it will take some time, we have to process the things, the fellow pays and goes away. Ultimately, the receipt are of all ten rupees, fine collected is hundred rupees from each person, sometimes the receipt book is also so maintained, that on the counter file only ten rupees appear, whereas hundred rupees are shown in the receipt given to him, all these things are traceable, if you trap proper persons, tell me one incidence where the employee would not be caught, do you have any instance where you found that the employee was wrong but could not caught, we had in Aurangabad an employee who sold High Court Garages, Garages in the premises of High Court, new building of the High Court he sold those garages, saying that High Court Judges they don't need those garages, their bungalows are in the same campus, they come and the cars are parked in the bungalows itself, this came to light one of the purchaser sought to set up a shop there, he said after all I have purchased it for running a shop, the Registrar found that how could you run a shop in the judges area and then the thing was discovered. So, there are bold employees who can take any risks, corruption in this recruitment, tempering with dates on which applications are filed, changing applications, assuring people that they will be recruited, but tell one incidence where fact finding inquiry was found to be difficult by you, no. Because in the ninety percentage of the people leave a trace, modus operandi bureau, know, heard of modus modus operandi bureau, no, no, nobody has heard, who has heard about the modus operandi bureau, the police run something which is called as modus operandi bureau, every crime reported to the police

station, the details are sent to the MOB, modus operandi bureau which is computerized record of all crime in India.

On the basis of record they keep they make suggestions, if the new crime is committed, modus operandi bureau makes suggestion to the investigating officer, that these are probable suspects, who would have done it on the basis of modus operandi, likewise our employees also have modus operandi, everybody operates differently, and you can find out by looking at his past record, what next mischief he is likely to commit, he will do it in the exactly identical manner because he is cozy with that thing, he knows that this passes, **therefore build up a modus operandi record of your employees**, how he does it? Know you say that every three years the judicial officers are transferred, how do we build up this record? It is generational transmission, the outgoing judge tells the incoming judge, X is like this, Y is like this, Z is like this, ABC are, so that this transmission ensures the employees are kept in check, which are the weakest point on which you can attack? Suppose a litigant has to pay a bribe, which are the weakest points where you can attack and catch, see no litigant would be pay unless there is guarantee of result. The money reaching at the proper place, if an employee decides to take money in the name of judge, the person who make the payment would try to know whether the money reaches there are not, so therefore this correction is difficult for those persons, this is the place you can attack, because he has to show that the judge is there, judge is taking his trover in a park, his scooter is parked there, dicky is open the employee says that go and place the money in the dicky and then judge nods, the person who makes payment want to be assured that the money has gone to the proper place, this happens with employees also, you can't always keep the drawers open, judge may come and see the drawer, so the court canteen, canttewala receives money on behalf of all employees, therefore society's of employees are keen to run the canteen, they don't want an outsider to come and run the canteen. These are small things, if you keep your eyes open know you can find out, very small things if you encountered any difficulty tell me, I will show you the, try to give you the key, because we have sphered none, if you found something wrong he has to go, so if there is any problem about fact finding tell us as far as rules are concerned, again keep rules for the regular inquiry, takes place follow all the rules, *audi alterm partem*, natural justice, hearing at all stages, giving copies of evidence everything and if all resolve the corruption at staff level would come to an end but what happens we while practicing as lawyers also indulge in bribing when the employee ask for money, we pay him, the worst was in Bombay High Court, the judicial officers would come for interview

for promotions know, the Chowkdar in the Chief Justice Chamber would also have his hands stretched, and the people would say *saab aapko bathaunga main, jeb list banjaygi tab aapko bathaunga main*, as if he come to know first, we have indulged in this and therefore we feel that, what is there a small man, *chalta hain, chata nahi* should be the mantra, let us stop everything and then things will improve. If I have spoken anything that hurt you or which felt that was improper, I am sorry, but please make it a mission of your life, will fight corruption for the sake of our duty, as an employee of the High Court, but it hurts all of us as those belonging to District Judiciary, when somebody calls District Judiciary the filthy or corrupt, it must hurt us, it must make us bring into action. Thank you. (Applause)

**Hon'ble Justice A.K. Panaik:** Please tell me you are all Registrar (Vigilance), has the High Court or chief justice assigned you the job of looking against the complaints against the staff of the subordinate judiciary?...Only judicial officers? Staff also? Yes, Staff of the subordinate court? Not of the High Court, Staff of subordinate court? First thing I think you should impress upon your chief justice that since even amnesty international says, sub-ordinate courts are corrupt. It is normal perception it is not because the judges are corrupt, my experience is judicial officers are not so corrupt, few of them, but by and large the subordinate judiciary is free from corruption, that is my experience and my, but it is considered as corrupt because of the staff of the judiciary is very corrupt and the staff of the High Court also may be corrupt, right. So, **first of all we must assume that jurisdiction, tell up on, impress up on the chief justice...** Why I am telling you? You see, regarding their strategy is one, keep the boss happy, so the attempt of the staff always is, to keep the presiding officer of the court always very happy, if he is working in the District Court, keep the District Judge happy, right. If he is working with the Chief Judicial Magistrate keep the Chief Judicial Magistrate happy, if he is working with the Magistrate keep the Magistrate happy, he is working with civil judge, keep the civil judge happy and the civil judge would not know what he is up to, chief justice would not know what his staff is up to, he has to very, very careful and all these incidents happened in Gaziabad, many other incidents when I was in Guwahati, you know judges get LTC for travelling, right. So, what the cleric staff is to go to bank to collect money for LTC, today the judge sings LTC bill by evening he gets money, the judge is very, very happy, *ley aaya accha, bhaut acche ho* very efficient fellow, but over a period of ten years, he defalcated more than 21 lakhs, How? *LTC bill may yek zero add karte gaya*, where LTC bill was one lakh he collected ten lakhs that he add on 50 thousand and corrected it as 5 lakh and this part of the LTC

bill that is the one which went to the treasury bill that was paid right, sanction was something else by the Chief Justice, it is paid and, over the period, he add that one judges were very happy, chief justice was very happy, who was knowing what was happening? Look at the danger, a very corrupt intelligent, because the staff he knows his limitations, right. He knows limitation that, if he scout...he will be very intelligent. He will operate very intelligently, but he will realize it much letter that he had finished, CBI inquiry was directed, by me along with Chief Justice of Guwahati High Court, CBI inquiry was conducted, submitted report, charge sheet was filed against him.

I will give another example of staff, in my court I refused interim order, I said I am not inclined to stay the transfer order, the 'not' word was eliminated, from the certified copy of the order, not from the my order, original order, only from the certified copy, and the litigant took that certified copy of order and produced before the government. The government Advocate came and say, I think your lordship has said not inclined, but it has been noted as inclined and so I passed the order accordingly, the 'not' word is eliminated in the certified copy, I said my order has been changed, no, no your order, I have inspected the record, your order is the same certified copy is altered,... CBI inquiry was called? Why CBI inquiry? They will catch hold of guilt. They came to me examined everybody including Private Secretary and all that and charge sheeted. Tendency of the presiding office, kush kiya hai suko,

*Nahi to unka wife ko kush kyi hai judicial officer ka, oh logo kush rahate hain o log, the tendency of the presiding officers is to protect them, O bi aakar per par geer jayaga, ham aapkeleye keya hain, we have done for you, you kindly stop them, kindly see that no action is taken, this is the problem you would not know, nobody will know, one method would be complaints, but many people will not know him, if the litigants would not be affected or somebody does not bring it to your notice how you will know, that these things are happening, right. This is the most difficult thing regarding staff, how to get the compliant? By the time you get the compliant, or come to know... one man has created so much of problem, so much of problems. Malkhana, in Baribada, there was malkhana which had this some ivory things, and ultimately that ivory thing, very costly ivory thing was missing, and poor District Judge who was posted there was put into lot of problems, CJM I think, malkhana is with CJM, CJM got into lot of problems, in the fag end of his carrier, but that was detected much later, and the full court said that the CJM is responsible, so the*

judicial officer is responsible, that topic in the next one hour, the judicial officer is whatever happening under him, record manipulation, certified copies, right cash.

I remember in Pulwani, money was missing from the cash box, Registrar went there and gave a report and the District Judge immediately suspended, right and the District Judge did not know what was happening, but the cashier said I have given to the District Judge, he wanted it when he was in some problems, so many things happen, when the staff keeps presiding officer very, very happy and he is extremely good to him and try to help him, right. That is the starting point that he you can know that he is going to do something wrong but the difficulty is you will not get, that's what happens therefore, fact finding should be at the earliest opportunity, I will give example of a staff, not a staff but how the vigilance gets information, against the judicial officer, who was travelling in a train, from Bhopal to Jabalpur, right. there was restoraka he opened up a bottle of whisky and started drinking, this information was given to me, by the Vigilance people, sir this is there what is to be done, when he gets down, in the next station depute a person, in Jabalpur straight away enter, or whichever station at the earliest, enter into the restoraka seize the bottle, seize in front of him and recorded and notice was served, he was placed under suspension, he must be knowing it (han).

You see I got the information, when I was chief justice, that three probationers who were making lot of fun in the Bhopal District Judge, right. They were found in there table, *table pe pair rakehnge, telephone karange...* the discipline was completely spoiled, since they were probationers we did not take any action and transferred them, right. So, earliest action is most necessary, from the High Court, early you act more better will be the results, this is what I wanted to say and how you go about fact finding, depends upon the facts and circumstance of the case. Late action means Ghaziabad Case, you know what is Ghaziabad, so earliest action, it must come to light at the earliest, **somebody is body is some mischief that must come to light immediately** but first thing is you must tell the chief justice. You must have this art, because the staff is, in fact, while I was chief justice I appointed a Additional Registrar (Vigilance) for the staff only and additional district judge in all the four places, regional places, three or four places, three places, for only the staff complaints and lot of corruption was stopped, you know who was the most unhappy persons and they were not happy with this kind of system. Advocates were unhappy and the presiding officers do you follow, some of the presiding officers not all the presiding officers.

Because they also want to them, at that time a message went around, clerk is not accepting even hundred rupees from anybody, but I told that has been withdrawn and now they are thinking of reintroducing it, that would not have been withdrawn but that is necessary, you have to keep your staff clean also, they are well played. You look after them otherwise, give them good facilities, but they can't collect money in courts, from advocates very, very important for the image of the judiciary, he rightly said it.

Regarding one point he said about administrative strategy and judicial rules, is different. Broadly, he is right to be practical you must have administrative approach, but when you drop the administrative strategy that must be consistent with the law of the land. If it is consistent with law of the land the administrative strategy will end up in the failure, it will be set aside by the court, right and it has to be very carefully done, something that happened in Orissa High Court, I am partly responsible for it, there was lot of pressure form the Supreme Court, to fill up all the Fast Track Court judges, so I asked my Registrar to advertise, I was in-charge of the appointment, he advertised, he issued the advertisement, in the advertisement he did not mention, I was busy in some work I also forgot to notice it, he did no mention that in the interview you have to qualify, and there has been qualifying marks.

Now, when full court was there, in Orissa High Court full court takes the interview and that time Orissa High Court was very small, eleven judges only, when the full court was interviewing the lady candidate came in she had done very well in the written, but when you asked her, about her experience in the Trial Court, she said none, no experience whatsoever, she was daughter of a lawyer, her husband is magistrate, she had taken the exams and qualified, for the additional district judge post, right. Then all the judges felt that she had no experience, at the end I just asked one question, we want to just know, what does your husband do? She replied her husband as magistrate, right. I wanted to stop at that, Chief Justice was very open, very simple man, Oh your husband is the magistrate and you want to be additional district judge? Only this much he said, right. I was insisting him, don't say, don't say, any way she went out.

Then we had discussion, in the full court what to do, what marks we should we give, all of them she does not have experience of trail, never conducted cases, either sessions cases or magistrate cases, she only preparing and writing exam she did very well, we have to disqualify her, but the advertisement does not make mention, interview will have minimum marks, no, no sir this is the

big mistake you must correct it. Minimum marks out 30 will be twelve marks, then the full court marked ten or eleven, something like that. Disqualified, she was not selected, right, she came to my chamber and said that, I wanted to meet the chief justice, chief justice does not permit me and said go to Justice Patnaik, I said yes, she said why are you not selected me, I said because you did not conduct any trials, how could we entrust you the job of additional sessions judge, the fast track court. She said that, that is not the real reason, very strongly, the real reason is my husband is the magistrate and I can't be additional district judge, and went away.

She approached the Governor, approached the President, right. The Governor said, you send the entire full court interview, approached Supreme Court judge and failed everywhere. I was operating as administrative judge, to the Governor I sent him full court resolution...the President Abdul Kalam secretariat was interfering, one letter after the other, right. We informed that the matter is subjudice... matter was subjudice because, she filed the writ petition, in the writ petition two judges of the High Court, they followed the Supreme Court judgement, if something is not in the advertisement right, rules cannot be changed after, entire selection process was changed and she was appointed, Orissa High Court challenged went to Supreme Court, by that time I had shifted out, I told the Orissa High Court judges don't challenge it, you will be trouble in the Supreme Court, don't challenge it. Initially they got a stay, then it went to justice Lahoti... dismissed the SLP.

She became a Fast Track Court judge, continued as fast track court judge, what must have happened to the accused I don't know...I know I know what happened, thereafter, we heard, myself and Justice Swatnarakumar heard, what to do with these fast court judges, are they to be regularized? They have filed cases in all the High Court, then I told Justice Swatantrakumar pass an order for regularization after testing the their suitability, suitability comprises of written examination, internal only confined to them not to outsiders and also interview, right then the judgement was delivered. This was meant for the entire country, and that lady fact remains that she had no experience at all, and this time the High Court did not selected her, by her assessment also it was found that she is not able to perform. I did not know that I heard that she and another person is not selected, two persons were not selected. After ten years she was thrown out, right. But, initial selection, was changed, right so what I am saying is, unless you keep the law of the land, Supreme Court judgements are binding under 141 as law of the land. Unless you scrutinize

the judgement and follow, the natural justice principles are to be read into the rules, that's what Supreme Court has said, they may not be there in the rules, so you have to be very careful, examine the legality and ensure that the action is not only administratively as well as practicably sound and also sound in law then only that decision will sustain otherwise not, right. You can't say *dekhenge jo hoga so hoga*...so this what I wanted to say, I think now it is time for tea.

## Session-6: Inspection of Courts

By: Hon'ble Mr. Justice A.K. Patnaik and Hon'ble Ms. Justice K. Hema

### Honorable Justice R. R. Tripathi:

Welcome back, good morning to all of you the topic for the this particular session is 'inspection of courts' right, now if you technically speak about then you'll find that register Vigilance has no role in inspection of courts, but then as we cannot be you know in the water tight compartment, you have to have the information about the results of the Inspection Reports, that can be useful to you, in discharging your duties,... (participants mic is off)... whether the act compliance or not, we place whether or not, therefore what I am saying is, is that directly you have no role to play either in the inspection itself or in the inspection reports, from your sources you should know what are the contents of the Inspection Report, because then, that Inspection Report may contain some information about some particular staff member or of the judicial officer which may be of some use to you when it happens to come to you for some other purpose. (Participant) Sure my lord, we also examine the inspection report, when there is objection raised as to non-compliance where the objection raised by the inspecting judges of subordinate court, we process the same and place before the Hon'ble judges, to give certain directions to them, to record the compliant or grant time to the courts concerned to comply objections which were raised at the time of inspection by the inspecting judges who are, who generally who are District Judge and additional district judge my lord, for moment I interfere again (Justice K. Hema) see I have come to know that, you have absolutely no role inspection of the courts, so I have only one request to you to, go to the decision of the supreme court, the citation is this, the inspection of courts falls under Article 235 the provision was referred to by His Lordship Justice Patnaik, falls under 235, I yesterday's discussion it has come out, that since it is 235 NJA has no role, tough, I mean there is no point in giving recommendation or anything to the High Courts because no uniformity can be made, in what was the topic we were discussing, ACR no uniformity can be made, because under Article 235 each High Court will have their own stand, and our recommendation would fall on deaf ears, but the decision of this court, the Supreme Court while they were considering the scope of Article 235, regarding the inspection of courts, this is what the Supreme Court has said, Inspection of subordinate court is one of the most important functions which the High Court performs for control over the subordinate courts, very important as good as ACR, now time has come, the proper and

uniform system of inspection, a subordinate court could be devised by the High Courts, not singular, plural and what is done is, this subject however can well be considered in the Chief Justices Conferences and as the High Court itself can devise an effective system of inspection of the subordinate courts, the Registrar (General) shall place a copy of this judgement before the Hon'ble Chief Justice India, for him to consider, if the method of inspection of courts could be matter of the agenda for the Chief Justices Conferences, I do not know what happened later, this direction must have been complied with, and what happened in chief justice conferences also I am not aware, but this is an indication that the Supreme Court felt that there must be uniform system of inspection so subordinate courts.

So, yesterday, I am taking support from this judgement, why not the recommendation go from NJA if something good we gather. So for 235 this is the principle, rest I will give it to... sorry one more one more sorry, now the Supreme Court also commented up on the object of the inspection of the courts, object of the such inspection is for the purpose of assessment of work performed by subordinate judge, his capacity, integrity and competence, and these words we find in ACR, is it not, in inspection report plus ACR, in spite of this Supreme Court found, this is something where a uniform system must be there, then, since judges are human being and also prone to all human failings inspection provides an opportunity for, finding out mistakes so that they are avoided in future and deficiencies if any in the working of the subordinate court remedied. Then, inspection should act as catalyst in inspiring subordinate judges to give the best results, they should feel a sense of achievement. They need encouragement, they need encouragement, in my state they say, you can only bend not break a stick, if there is some fault with you, it has to be corrected at the appropriate time, bend and break don't take any hasty action, give the officer time to improve.

They work under great stress, not only the Supreme Court judges or the High Court judges, subordinate court judges are in worst condition, according to me. Because at least facilities and infra-structure available better in High Court and in Supreme Court, we all work in AC rooms, whereas subordinate judges even do not have even goof chair to sit, chair to sit I have seen, some chairs being repaired by the Officer himself, to appropriately sit, that's the working condition, so you are working at great stress, and under great discomfort and hardship. There should be some scope of self-assessment, yesterday there was a discussion by the officer concerned, we discussed something on self-assessment and left it there, every time I was noting down something and

striking off, a satisfactory judicial system depends largely satisfactory functioning of the court at the grass roots level. Remarks recorded by the Inspecting Judge are normally endorsed by the full court and become part of the Annual Confidential Report and a foundations on which the judicial officers carrier is made or marred. Inspection of the subordinate court is thus is vital importance, it has to be both effective and productive it can so only if, only if it is well regulated and is workmen like, inspection of subordinate court is not a one day, one hour or few minutes affair, it has to go all over the year, casual inspection can hardly be beneficial to the judicial system it has more harm than good. So, this is what I wanted to mention it is not my opinion, this is the opinion expressed by the Supreme Court. (Participant) my I know the citation your lordship, citation is there in your reading material **page 97 and 98**, right.

**Hon'ble Justice R.C. Chavan:** Object of keeping inspection of courts in the Registrar (Vigilance) is somewhat different. It is like this, when a officer goes for inspection, District Judge goes for inspection, he should be carrying with him all the complaints received by him, against the subordinate officer or against the staff, as also the complaints which may be referred by the Vigilance Department of the High Court. When he goes for inspection, has a thorough view of the entire working of the court and therefore this gives him better idea about the truth and falsity of the complaint. He can look at the entire spectrum and then decide whether the complaints has substance or not, therefore always, when a inspecting officer goes he carry with him all the complaints, which have been received or referred by the Vigilance Department.

He will carry out the inspection bearing that in mind, whether I have to find out if there is substance that supports the complaints, then when the inspection reports comes, inspection notes come, vigilance department again just peer into them and find out whether the inspection note contain anything which have vigilance angle, don't just allow the notes to rest in the inspection department, if there is grievance about the judicial officer call for the note from the latest inspection note from the inspection department, go through that, so that you find out how the officer in fact functioning. This was the object in keeping the subject of inspection of courts in the workshop for vigilance Registrars.

**Participant:** In Himachal my lord we are having, vigilance both in one wing, (Hon'ble Justice K. Hema) but that inspection is something different...

**Hon'ble Justice A.K. Patnaik:** Just a minute, actually, first of all you tell us, start from here, earlier there was no, Vigilance Registrars, Registrar (Judicial), right and Registrar (Administration), right and Registrar (I and E), Registrar (Judicial) who are in-charge of the High Court, listing, cause list, right. Registrar (Administration) he dealt with only administration of the High Court, then there was another Registrar (I and E)- Inspection and Enquiry right, then now, in Madhya Pradesh I found and now after that Chief Justices Conferences Resolution, 2007 which is the angle that I gave in the Chief Justice Conference, they have been asked to create post of Registrar (Vigilance), so it is not necessary it all depends on chief justice, if he finds lot of work is there in the vigilance side, and Registrar (I and E) cannot combine then he merge like you say, you are from which High Court? Himachal Pradesh, han in Himachal not much of work is there, they have combined Registrar (I and Vigilance). In Orissa our officer who has come from Orissa, he got posted as Registrar (I and E) it was there, but they are now carved out separate post of Registrar (Vigilance) when I was there in 2002-05 there is no post of Registrar (Vigilance) they have been carved out after the Chief Justice Conferences Resolutions so now, wherever the chief justice find that sufficient work one person cannot handle both the work Registrar (I and E) and Registrar (Vigilance) in Orissa there is sufficient work for Registrar (Vigilance) right. It is there, so it all depends on quantum of, number of subordinate courts you have, number of judicial officers that you have, so in some place they have combined in one post Registrar (I and E) and Registrar (Vigilance) in some places, some courts, some High Courts, they have been separated, like Registrar (Vigilance), this is the position, therefore, in any case, inspection and Registrar (Vigilance), Registrar (I and E) and department of vigilance are inter-connected, both are to do with sub-ordinate courts, Registrar (Judicial) has nothing to do with subordinate courts, in some case, some courts Registrar (Administration) they have to deal with subordinate courts and High Courts, in some places it is only confined to the High Court, it may be with regard to the postings transfers, Registrar (Administration) so you are getting the clear understanding, now so far is inspection is concerned, first you must know the constitutional position, we have already seen Article 235, control of the Subordinate courts vests in the High Court, there is another provision 227, Article 227 of the constitution, very important, power of superintendence I am telling you all the time, we have federal structure and a will show you how the federal structure, right. You see 227: Every High Court shall have a superintendence over all courts and tribunals throughout the territories in relations to which it exercises its jurisdiction, similar power is not there with the

Supreme Court, over the High Courts, right. But, through back door method the Supreme Court is taking over, supervision over the High Courts, which was not correct, not correct it has to be broken. Broken because it is unconstitutional, if the Supreme Court starts controlling the High Courts, right, then the Independence of judiciary and of the High Court will be over, mind you, very carefully they have drafted this constitution, and therefore this country before the nine judge judgment of the J.S. Verma has produced very good chief justices, and strong chief justices of the High Courts, after the transfer policy that adopted in the year 1983, and after the judgement in the collegium case, right chief justices are not being so strong, I am not saying so, I am not saying so, it is said in the constitution review committee report submitted by Justice Venkatachaliah's committee, very weak chief justice he comes from outside, he does not have strong roots locally, he is afraid of the bar, he is afraid of local factors, he is thinking of his promotion, way promotion because collegium is there, Supreme Court Collegium, his ...(word cannot be made out) is affected, as result, the High Courts have been affected, this aspect has been discussed by G.P. Singh in his book the interpretation of the Statutes. Autonomy of the High Court is destroyed by the Collegium judgement, now this collegium judgement, we will see what happens to it, totally destroyed. The strength of chief justice can't imagine, there has been chief justice of Bombay High Court who refuse to go to Supreme Court, Justice Chadda he declined to go to Supreme Court, Chief Justice of Madras High Court Raj... who declined to go to Supreme Court, Chief Justice Malimath declined to go to Supreme Court, many chief justice had declined to go to Supreme Court and for you information, Chief Justices salary and allowances more than Supreme Court, presently including transfer allowances, right therefore, High Courts are autonomous, they have got powers of superintendence, over the subordinate courts is the relevant aspect, Supreme Court has no power on High Courts, so much so, that in one judgment, the Supreme Court directed the High Court to dispose of case within such and such time and Chief Justice of the Guwahati High Court... he said what the Supreme Court has directed the High Court, he passed an order, Supreme Court has no powers under the constitution to direct the High Court to dispose the particular matter in such and such time, because no power of the Supreme Court... but under this power of the High Court is there, you see the fine distinctions so therefore, the Supreme Court now when it wants to dispose of the matter, within certain or expeditiously, it observes we request the High Court to dispose this matter. Dignity of the High Court autonomy of the High Court has to be restored, only thing the Chief Justice gets when he goes to the Supreme Court is, three more years, three more

years, and now there is proposal remove that three more years, make the High Court judges retire at the same time, that will bring up the autonomy of the High Court. So this is the very important provision and see, sub clause 2

(2) Without prejudice to the generality of the foregoing provisions, the High Court may

(a) Call for returns from such courts; right returns from such court, you have been called, they are furnishing it,

(b) Make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) Prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts

Therefore in High Court you will find GRCO's (General Rules and Circulars) both in the Criminal Side and Civil Side, and what are they how the records will be maintained, how the orders shall be made, how the Malkhana will be kept, right, how the cash will be preserved, everything, and each High Court has got GRCO's right, you check out that, then, when we carrying out inspection what would be the decisions, what the chief judicial magistrate will see, everything provided, remember, so therefore, you have now seen, she has pointed out that, the judgment of the Supreme Court which is there in the page number 97-98. Object of the inspection that is all right, that is not the only object. Right, while writing judgement they were only concentrating on particular case, they write this, but that is not the objectives of the constitutional provision, 227 supervision, of the subordinate court by the High Court and in the absence of the provision of the constitution what will happen, just imagine, each District Judge, each Chief Judicial Magistrate, each Magistrate will be boss of his own, there will be chaos, right. Malkhana's will not be maintained properly, records will not be maintained properly, they may not sit in time, they may get up at before lunch, have the lunch go for nap and may not come back, all these things happens in subordinate courts, right. So, to ensure that there is no chaos and remember, in the US they have separate set of federal courts, enforcing the federal laws, separate set of State courts, enforcing the State laws, therefore in every state there are federal courts, they are accountable to federal set up, but in India, there is no separate set of separate courts, the subordinate courts, has contemplated in that particular chapter starting from 233, will also enforce the central laws, Indian Penal Code, right. Motor

Vehicles Act, all these things come under that, but the subordinate courts, is put under the high court, high court... SC is only an appellate authority and a constitutional court, you must have this distinction, therefore no judge of the Supreme Court can come to the High Court and say I will carry out the inspection, remember, no judge, (Hon'ble Justice K. Hema), I thought in this context... see the facts are not important, some passages... (mic if off, voice is not clear), High Court is not a court subordinate to the Supreme Court, there is Supreme Court judgement, and then something, High Court exercises power of superintendence under Article 227 over all subordinate courts, Supreme Court has not been conferred with any power of superintendence... If a Supreme Court and High Court both are thought of to be brothers in the administration of justice, High Court has larger jurisdiction, but the Supreme Court remains the elder brother...(laughter) I like this judgement, I like the way this High Court reacted, I mean the very admirable way the Supreme Court dealt with the issue, it is worthy that decision you must also read, (Hon'ble Justice A.K. Patnaik) you must also bear in mind, (you must read it, it is very beautifully interpreted) *Tripathi Balaji Telefilms Limited v. Union of India*, His lordship says there was a direction, who is the supreme court to direct, that was there, that was the reaction of the judges of the High Court, now coming back to the point, assessment of the work is not the only thing, for which the inspection is carried out, real work is supervision to ensure that the subordinate courts do their work properly, right. Monitor their work, if you don't monitor things will become bad, things become lax, so now, so therefore, how does the High Court perform this function? In Madhya Pradesh when I was there, there were forty three judges, all the 43 judges cannot go around entire state, there will conflict, this is what Summit asking me what is this Guardian Judge? Zonal Judge, Portfolio Judge, High Court says alright, so and so is the portfolio judge, he look after these judicial districts, why Portfolio Judge or Zonal Judge look after these Districts? Right they will carry out inspections, right, of the courts and a High Court Judge must carry out inspection, not only the District Courts, they will carry out the inspection of Chief Judicial Magistrate in his area and assist the High Court... no that's the different thing, now. He assist the full court, he gives the report and says I have done this, this is what I felt to tell you.

This is one you must understand, how the High Court exercise supervision powers? Then, the District Judge, District Judge carries out inspection of all the courts under him. By virtue of, if you read the Civil Courts Act, what are the roles of District Judge, you will find it, the law is Civil Courts Act, and High Court also carries out inspection through the District Judge, it may say you

find that in such and such Chief Judicial Magistrate such an such are the problems there, it may direct the District Judge to go to that particular corner of the District and submit a report, this can also be a method. High Court can carry out the inspection through the District Judge or District Judge may himself has an independent power, by virtue of the enactment in the Civil Courts Act, right. So you can see therefore their powers.

Then, what would inspection cover, it would cover maintenance of record, if the records are not maintained properly, there will be chaos, if there is *Malkhana*, you know what *Malkhana* is, everybody knows that what *Malkhana* is, you are all District Judges, when a case is going on right, let us say NDPS Act, right. The case goes on to the Supreme Court, until the case is finally decided right, all the material that are seized that are to be kept in the *Malkhana*, it cannot remain in the police house and in the *Malkhana* so many things will happen, it has to be produced before the court for inspection, at the time of trial so many things will happen, so it has to be very carefully preserved, records for example inspection may have to conducted by somebody, some evidence may have to come in, order sheet may have to maintained, they have to maintained carefully, cash box, fines, penalties, all those provisions were there, and cash box means lot of temptations, then, next cleanliness of the court, cleanliness of the court, courts decorum must be clean, dignified, decent, unfortunately, when the Britisher's constructed the courts they did not provided for urinals, many of the courts don't have urinals even now also, everybody urinate in the Maidans, all the litigants who come in Maidans, very, very unfortunate, I found it in Orissa there were no Urinals, the witnesses come, the parties come no urinals, now a days in modern courts if you go to Bhopal District Courts, very modern, urinals and every things are provided. Urinals have to be provided, you must point out to the High Court that sir, there is no urinals, they will sanction it, the computer room, see the computer room, it is very important, every court has got computer room, this is also under the District Court, then inspection has to also in the Bar, why you must go to the Bar, when you sit in the bar, you will collect lot of information, I remember in Orissa High Court when I was there, there was compliant office, going to the Bar, talking to the particular young lady, who was unmarried, lot of rumours came around, the men was removed, right and then he again appeared, for the post of civil judge and we found him very good, better then all of them, better than all the candidates and he knew every procedure,... others are fresh candidates for civil judges, then I suddenly recollected this is the person who was removed.. and I told the PSC chairman, I had gone there as an expert from the High Court, I think that this man was removed, right, so bright and he

knows every procedure, because he worked for four years, we found out, and we got a set a copy of public service commission, public service commission found that in his application he has suppressed it, his candidature has been cancelled, for suppression right.

He was removed, not any charges, he was under the probation and he was removed, because the rumour was he was carrying on affair with lady advocate, if he carries on affair with somebody else, he is carrying an affair with lady advocate who is also going to his chamber and all that if you are in probation the conduct is also very important. If you go to the Bar, you will get to know lot of things, lot of things which are true and lot of things which are untrue, they will poison your ears some time against an honest judge, but they will tell you something and that IB reports that we were talking about, most of the IB report is from the Bar, about the candidate who is appointed to be judge, thank god when IB report, thank god when the IB report was called for, when I was considered to be judge, wonderful report they have gave, so I was saved, they can also damage you, you never know, right. But, IB scrutinizes also which information is correct which is not correct, and **then surprise inspections**, right. What are surprise inspections, we get to hear, vigilance Registrar can also say to the High Court, to get the information, this and this District Judge or this chief judicial magistrate is not sitting in time, not sitting at 11 O'clock he sits at 12 O'clock, sits at 1 O'clock, so the chief justice calls the inspecting judge, to have surprise inspection, nobody will know you go there, sit down in the court at 11 O'clock as litigant or a lawyer, whatever it may be you go and sit down, if the judge is not there, and judge arrives and if he is able to recognize the judge, the judicial officer well and good, if he is not able to recognize... right... otherwise how do you discipline the subordinate courts, or particular chief judicial magistrate is not sitting in time or particular magistrate is not coming in time, surprise inspection has to be carried out, or you call the District Judge quietly and carry out the surprise inspection, tomorrow morning, to ensure that he sits in time or suppose he gets early and doesn't sit after lunch, carry out surprise inspection, these are the some of the examples. Then, whether the judge conducting court very casually, there are some complaints at time that the judge, when advocate argues, the judge gets angry, he uses vulgar words, to the advocate, tell me, (some Email is coming now) what do you do, so you have to carry out the surprise inspection, you have to sit down quietly in casual shirt and pant in the back bench, see how the judge conducts himself, lawyer is arguing he does not know who you are, right, suddenly lawyer argues and then he uses vulgar word, then you have to report that he is spoiling the decorum of the court he is using the vulgar words, this is

how you maintain surprise inspection. Now, what is not done by most of the District judges, though the Jail Manual provides for this, inspection of jails, right. When I was Chief Justice of Madhya Pradesh a PIL was filed, not PIL I received a post card, internee in the jail, saying that the diet is horrible and though they are given good amount, the diet is horrible, I entertained it as PIL, and then directed simultaneously all the District Judges, to carry out the inspection of the jails and report to the High Court and also the inspector of prisons to carry out the inspection and they found that,... and everything came, horrible state of affairs, IGP was saying we are giving, so much of money and the District Judge says the diet that has been given to the Prisoners, the cost is much less than what there being paid, they were in total corruption, right, these are the things and then, follow up which justice Tripathi will point out, in his own session as follow up of inspection and inquiry reports, there are deficiencies in the inspection notes you know, prepared very comprehensively, they were also treated as SLP. What are the deficiencies they have found, right? But, I may tell at the end, have you seen... a movie, a Gujarati movie, Bengali movie, Bengali movie, Hindi movie, Utpal Dutta Bengali actor, he had gone for inspection and the local officer, he was very much scared because he was indulged in corruption, then he told wife, newly married, he told his beautiful wife, young wife, that I am in trouble, indulged in all kinds of corruption now the inspector person is coming, he will catch hold of me, right and then I will be placed under suspension,... then wife says, don't worry I will take care of it, Utpal Dutta was very gentleman and this lady very smiley, first invites him for dinner, served very nice food, and then she finds out what he is interested in, he is interested in *sikar, sikar veekar karke*, this Utpal Dutta was very happy, very happy with the inspection, and goes back and submits a favourable report, right, saying that everything is alright, inspection is prone to be influenced by all kinds of things. It may be sweets, it may be good fish, it may be good mutton, it may be liquor, all kind of things, you have to avoid all these otherwise inspection reported will be tainted, totally infected, truth something happening in the field. But, the report will be contrary to the truth and that will be placed before the court.

The Full court is oblivious as to what has happened there, little knowing that the inspecting judge, District Judge, were taken very good care of, by some way so far as weaknesses are concerned, that is what happens you know in the Inspection of the Bar Council, Medical Council, right. That kind of inspection will not, inspection has to be very solid, remove deficiencies, so that the court functions efficiently, that's all.

**Hon'ble Justice R.C. Chavan:** May tell two stories, (han) one is of Justice V.V.N. Bose, V.V.N. Bose was Chief Justice of Nagpur for sometimes, he went for inspection to District Court Amaravati, and District Judge was one Khan, he also became judge of High Court subsequently, Ilish, Bengalis, Ilish is the Fish you know, so far V.N. Bose, that fish was specifically brought and served, V.N. Bose asked District Judge Khan, do you get it in Amravati, he was very proud, I got it from Nagapur, who brought it? To the Balieef, At that time bus fare was 1 or 2 rupees something like that, V.N. Bose said that take this five rupees, and don't do it again. This is how things can be stopped, don't allow the entertainment to cross the limit,... (Mic is off sound is not clear), (Honourable Justice A.K. Patnaik) because Registrar (Vigilance) or High Court judge or Chief Justice has his own likes and dislikes, liquor he may like, why? We don't know, he may like fish, he may like mutton, nobody knows, no problem, buy it from the Market and do it in your own house, no problem but when go in for inspection, if you allow yourself to entertain this way, or somebody is trying to make this offer, restrain yourself, restrain yourself, I am very frank, I like my whisky, but wherever worked, nobody can say that I have been influenced by any litigant any officer, by offering whiskies to me, I took my own whiskies in my own house, in my own bedroom, in my own drawing room, and also with some of friends, judges. No problem, this is your life your personal life, nobody can have anything to say, but these things should not affect, your work, your judicial work, or administrative work, this is what I wish to say.

**Hon'ble Justice R.C. Chavan:** Story two about, surprise inspection, the registrar inspection went to a court, for the surprise inspection, the presiding officer, did not knew him, nobody knew him, he had just joined the Registry, he sat in the court room, nobody was there, clerk asked him, he said I have some matter, which matter, after half an hour past court hour, the presiding officer came to the chamber, because he could hear it in the court, he said what is the cause list today, some seven cases listed, he said that discharge all the board today, it is my birthday today, Siristedar came out Board is discharged, everybody will go, this fellow did not go Registrar (Inspection), he said what is it, *abi so na saab ka birth day hi aaj too sabo ko greet karke jahvaun*, he said ok he went inside and some litigant is there, who says that he want to greet you on your birthday, he said ok come in, the fellow went in sir many, many happy returns of the day, congratulations, etc. I did not know that your birth day was also, so important as Gandhiji's birthday to have court closed, he said what do you mean, first he had accepted and all that, he said I am so and so Registrar (Inspection) of the High Court the fellow, was virtually trembling, this is

this I had problem and all that, then he said no issue, he came and reported matter back to the Portfolio judge, Portfolio Judge said transfer him immediately, the fellow prepared a note, and I was the Registrar (General) before my signature would taken the portfolio judge already signed below me and Registrar (Inspection) brought it to my signature, I told him that you are touching hot coal, because he did not knew but I knew the judicial officer and his resourcefulness, your touching hot coal this will backfire, he said no, no I will manage, next day I received a call from a judge, he said what are you done, I said what I have done, XYZ senior administrative judge is furious he says that this fellow is too good for his boots and all that, I said I don't know anything, better go and talk to him, so I went to the Senior Judge, what is the matter, I don't want to talk to you, I don't want to listen anything, I said what is the matter, what you think District Judges like this, who are you, I said I don't transfer judges, ultimately I put up a proposal, it is your lordship who decides know, how come you have transferred this fellow, I have not transferred as yet, but there is submission, it has come to your lordship, your lordship can say no, finish matter will be over, I told the Registrar (Inspection) see I have told you, not needle this nest, but you have done it, bear the consequences he said don't worry, tomorrow the officer will come to your chamber, I did not know what has passed through the inspection, I simply put note, without mentioning the incident, I did not knew this, next day the gentleman came to the chamber, the Registrar (Inspection) was also present, Registrar (Inspection) asked him that, you want a transfer know, he said yes I want transfer, then make an application, I said he was the senior must District judge about to be elevated a piece of paper was given to him, I said no, no, write an application, he wrote an application that I want transfer to an insignificant place, place of lesser importance, I said on you can go, I will give you photo copy of this, acknowledgment photo copy was given, now you take this to the administrative judge we have transferred him because of his request, so this is how some time happen in surprise inspections about jails as his lordship said know, jail inspections are very important from the vigilance point of view also, because when the District judge goes to jail know he comes to know many things, how prisoners are produced in the court how they are dealt with in the court, what happens in the courts, prisoners know many thing, provide you are ready to listen, many times what happens is jail peoples scare you, no no it is security issue you can't go alone, you can't talk this that, just as your borders have no security issues, I have no security issues, I am ready to sign, if something happens to me I am responsible, ninety percentage of the criminals they won't harm judges, once I had been to open jail, three or four faces looking familiar, I said I

seem to have seen you somewhere, *aap ne hi to beheja ta life imprisonment ke liye*, then you have no grievance, but then you will come to know when you listen to prisoners, without the jail authorities being around, wardens are ok keep the superintendent out, you will come to know many things, as his lordship said, every aspect is very, very important, if you don't look at it as burden know, you will enjoy every part of this world.

**Hon'ble Justice A.K. Patnaik:** you see we may end now it is 11:30, I will give you very good humour, we had very good special judge, working in Bhuvneshwar, very good, honest, very simple, good man. But, he had the habit of, whenever he is no dais he use to open up his shoes, makes himself more comfortable without shocks, keep working, suddenly he found a High Court judge is sitting there and come for the surprise inspection, he said my lord, he got down, without the shoes, he was totally nervous, he was without the shoes and socks and then the High Court Judge said, I have come for inspection I will go down, at that time Bhuvneshwar did not had District Judge, Special Judge was in-charge, High Court judge walking in front of him the Special judge walking without the shoes and socks and then at the end of it, High Court judge said now I am going, things seems to be alright, but please go back and put your shoes on right. You don't have to be so disturb you should have worn and come back, so this is the humour and I am ending with, let us now go far coffee.

## **Session-7: Sexual harassment at work place: Role of Registrar (Vigilance/Intelligence)**

**By: Hon'ble Justice K. Hema**

**Mr. Shivaraj:** Welcome back, now we will have seventh session on sexual harassment at work place: role of Registrar (Vigilance/Intelligence), with this I will just handover Madam to continue with.

**Hon'ble Justice K. Hema:** the topic very sensational, sexual harassment at work place, Role of Registrar (Vigilance/Intelligence), I asked you a question whether you are involved in or whether you have got any role in sexual harassment of women in work place, majority said you have no role, especially after this Act, the most uncontroversial judicial legislation contain in *Vishaka Case*, following this, this Act came in 2013, here there is committee, ICC is to look into the complaints, so what is your role here, I find the ICC, there is provision by which, the presiding officer must be lady, women, and then the same thing is retreated in section 4 constitution of Internal Complaints Committee, it has to be a lady, so the Vigilance Registrar from across the country are here, and I find only one lady, who is a vigilance Registrar, no she is not vigilance Registrar, she has come to know what is happening here, in Manipur you are not having Vigilance Registrar, alright you please tell chief justice,... that I have attend conference, Justice Patnaik was also there, he had asked me to bring it to your notice that we don't have Registrar (Vigilance) as per Chief Justice Conference Resolutions,...or vigilance work has to be assigned to one particular Registrar, you have got you have got small High Court, now there are three District Courts, how many District Courts? There are may not be sufficient work to do, one of the Registrar assigned with vigilance work, no work has been assigned, is there, then it's alright.

So, the qualification is a women, normally you will be disqualified to be in the committee, I just wanted to point it out, then as per as sexual harassment at work place is concerned, this was very totally neglected area, people say it is because of lack of gender sensitization. Several criticism are made against even the judges, saying that there not very well sensitized on gender issues, so some time training programme were held, but I would like to know from you, what is your idea about sexual harassment, see in SAKSHI, this NGO took survey of superior court judges not very relevant in this, but still about the gender sensitization, one question was put to various judges of superior court judges, that time it was on harassment, domestic harassment, the question was if a man slaps a women just once, at his home will it amount to harassment or cruelty. 60% of judges said nothing wrong just one slap, then the question is if the slap comes from the women, against

the husband what will be the reaction, so several questions can come, what constitute sexual harassment, sexual harassment has been defined, it is not very relevant for you, it is better that we look into the relevant provisions, what is meant by sexual harassment? Whether particular act constitutes sexual harassment. It is for you to say. But, what would you do, when a complaints comes to you, some of you have said that you had an occasion to consider the cases of sexual harassment, may be as per the directions of the chief justice. What will happen after the constitution of ICC? I do not know, why in spite of that you are directed to conduct an inquiry, in cases involving sexual harassment. How will you normally conduct, if you coming across the complaint, this is something will not be brought to light all of a sudden, judicial officer or clerical staff, are most reluctant to say that I am sexually harassed. Because of various a women will not come forward and say I am sexually harassed.

See, some of you have said that, sexual harassment cases are generally not genuine, some of you have said, that can only be genuine, so there is very strong difference of opinion, as to whether there can be a sexual harassment or not at the work place. Some of you have said that, depending upon the facts you will decide, so there is strong difference of opinion as to, whether the complaints are genuine or not. With what mental attitude you are going to listen at complaint, when a complaint comes before you, that the person, women is harassed, how will you look at it, whether you have proper sensitization to look into it, what would you normally do if you come across with a complaint, it is confidentiality given to you, it is not about vigilance registrar, there is no direction by the chief justice, as a judicial officer you come across the incidence where, women is sexually harassed in the work place, how do you deal with it? What will you do? You will ask the lady to give statement in writing, please, please, it for the further discussion it is better that some opinion comes or you will say now I am vigilance registrar now, I cannot deal with the matter, because the direction has to come from the chief justice, or you go to the ICC and say, how will you, how will you?

Sorry, (mic of the participant is off)... so you want statement to be recorded first, and then if you have no authority then I will send it over it over to some other person, the person who is in authority, then any other view, not officer it can be anybody, yes, you will inquire, make an inquire...without... han what purpose...(mic of the participant is off) if you have no authority to ... if you have no authority under the Act, what will you do, can you inquire, all that you got to

say is, you give a complaint, what you said to me, say it to the authority concerned. May I ask you one question?

(Participant) it will be placed before the CJ of the High Court, that we get order from him, no, no, I am at the inception, I am at the inception, he said that he will ask a complaint to be given, will you insist that the lady must a complaint in writing to you? Or will you softly tell her, there is committee please go and tell or will you deal with it any other manner. I just wanted to know how things are being dealt with by the judicial officers, I just wanted to know, nothing, I am not going to trap you for anything, just I am asking, *hota hai na apkaa wahan kuch hota hian yesa pilota bholeye* then you will have that experience, (participant) as District Judge once I received a complaint of such nature, I have received, sexual harassment *ka* complaint *aap ke paas aya hai ki nahi* I have received a complaint my lord, how are dealt with it? Your lordship she filed a complaint in writing, I was the District Judge at that time, thereafter as per the conduct rules, the complaint was against her colleagues, I mean the staff, we referred the matter to the ICC, we constituted that committee, thereafter the committee gave its finding, (committee as per the Vishaka guidelines) no under the Act, at that time Act was not there, so the question is, you will initiate action only if the letter in writing, complaint in writing, no if the lady is bit hesitant to give it in writing but still she wants some action, we will assist her, if she permits so, that complaint can be reduced in writing by us, it means for the initiation up on the action you will insist some matter in writing. So as to crystalize the allegation I mean, that is true, if this lady turns around and say I did not said anything, you will be in trouble so will, (Hon'ble R R Tripathi) sister, sister, for that brother Justice Chavan said you yesterday, that when to girls made a complaint and refuse to give statement in writing, he said alright you just narrate and I will record, after that he did very smart thing by saying that I read over the contents to you and you agree with contents and they were to appear before the inquiry officer, he said this is what I am already recorded according to you and now it is up to you to depose before the inquiry officer, something that sort of, you have to find out yourself, that the things can be taken to the logical end.

That is one view, I will tell you an incidence, what the Act provides, whether it contemplate compliant only by the victim, language, Act, Act, complaint of sexual harassment, may make in writing a compliant if so consider to the local committee, if the victim is unable to make an complaint? On account of her physical and mental incapacity or otherwise, but any way complaint

must be there, either by the aggrieved person, or somebody on his/her behalf and in writing. Some complaint must be in writing, alright.

Do you think women will be ready to give complaint in writing, if there is genuine sexual harassment, if there is genuine case of harassment, may not be. So, what will happen, how will deal with problem, suppose says in my work place this problem is there, as judicial officer what will you guide her, how will you guide her, you give her letter in writing most of us very, very hesitant to say, go and file complaint before ICC, normally, so where is the protection, prevention, prohibition, redressal? If the people like us who are very well versed with these provisions, insist on complaint because there is complaint, can you do anything for redressal, prevention, prohibition of sexual harassment at work place. No, no, see the complaint may be by the aggrieved women or it may be by somebody else, in writing right. It is quite possible that, in a set up like judiciary, one officer can also make the complaint, but that officer must have the strength, to do so, but officer can also make complaint the vigilance officer can make also a complaint. Why not? But he must have that character to make complaint, there is no difficulty in character when he was the subordinate judicial officer, it has come more regularly from the staff of the High Court, no problem we can make complaint, but if he is High Court judge, you don't have the guts to do it, right. Then Chief Justice can only make the complaint, or administrative judge can make the complaint, sometime these kind of things happen, there has to be machinery, which takes care of it, there has to be machinery. Take human beings they are, right there has to be machinery to take care of and mind you I have been chief justice, a very beautiful girl made a complaint to me, from Madhya Pradesh, against some District Court, against the High Court judge and looking at her I thought her it may be possible, because she was so beautiful, so quite possible, so all that I did was I changed the portfolio of that particular High Court judge, from that District, the problem was solved, so that inspecting judge has no opportunity to visit that place and it was signal sent to that High Court judge, that perhaps the chief justice came to know about this.

**Hon'ble Justice K. Hema:** So, I will tell you one incidence, that was the only case in which I got information about sexual harassment at work place, I use to sit even after five O'clock after the work is over for some more time I will be sitting in the chamber, one day beneath the shop shutter the lady was sitting, so asked the *Dapedar* is there any lady inside, it was about 7 O'clock, he thought that I was going to pull him, he said that lady comes very often, every day she will come, I wants to see you madam, I tell her you can't meet, I said what's her problem, she will not tell

me, she want only talk to the judge, I said you send her in, she was a staff, so asked him, who is she? She was lady staff, not from my court, some other *munsif* court, so this lady, I was District Judge, so this lady wanted to come and meet me, she said madam I have some grievance, one of my staff sexually harassing me and I put to lot of trouble, was there is evidence for that, what is your complaint, said he writes anonymous letters and the last is he sent a piece of paper, on printed matter, which is phonograph, where in a men and female nude, the picture was there and he was doing something, wherein it is written in vernacular, Malayalam, this is me and this is you and then how do you enjoy this, I asked her why do you say that men has done it. Madam, I have lot of experiences I know, my question was whether you have put the grievance to the judge, *munsif* was the lady, you should have brought to her notice before coming here, she said, yes mam I told her also, I showed this stuff also, she said I am mad, your mad, I said, I am reluctant to believe what you say, a lady judge, a lady officer she normally not say your mad. Was there any problem with you when you made this allegation, why this officer has told you presumably as mad? She said because that gentleman, that gentleman has very good reputation, he was very hard working, he was in the good books of the lady officer and every staff if you ask, this is my problem madam, you ask anybody, they will say that he is very popular staff, very gentlemanly in behaviour, but I know for sure, that he is the culprit. This officer thought she is saying some rubbish, but I do not know, but can I send her back, that I agree with *munsif*, I thought I will probe into the case, then I said that this letter, how can I find out that this letter is written by him, have got any material with you, address is written in all capital letters, therefore capital letters were very difficult to identify, this is the person, then how will I find out, its all written in Malayalam, have you got any material in your court, which shows some entry in Malayalam written by that person, she said know, English is there, which are the Registers, I got details from her these Registers were maintained by him these Registrar Will contain his hand writing, in English but not capital, running hand writing, so I noted down that, I said are you intended to make any written complaint, I have children, girls, daughters and my own reputation, I do not want to give any complaint. If you can please help me out of this stress, I have been through this stress, my husband is also not doing anything, how can you go forward with this sort of complaint where you have no evidence and you yourself say he is men with reputation, what will you do, so on the next day, the *Shirasitdar* is coming to my chamber. So this happened at about 7 O'clock nobody knew except this *Dapedhar*, and some staff police man outside, that this lady came to my chamber, *Shirastidar* is coming and without any

introduction he is telling me, madam that *Munsif* court man is perfect gentleman, I said who asked you for your opinion, why do you tell me about him, what's the matter, no no madam one lady has came yesterday she is mad, why you say she is mad, no she is very arrogant, when I said she is mad I mean she is very arrogant, why she is so arrogant, because she the daughter of a Magistrate, who died while he was in service, she got an LDC post and she is a law graduate, therefore she poses herself to be higher than a *munsif*, so there is ego clash there and this lady always poses herself to be a big person, and that is the whole problem and that is the reason, the core issues there, so she must have made some complaint.

I said no I don't want to disclose anything to you, and I do not any of your opinion but get me these records least and connect to the *munsif*, I called the *munsif* and I told her, asked her about this, immediate response was, madam that lady is mad, how would you say, are you a psychologist, psychiatrist to say that she is mad. So she was casually telling me not officially, then she told me this lady is unnecessarily making against man was very perfect, who is very hardworking and he is very helpful to the functioning of the court. I said alright you get documents, you get these documents, you collect it and send it over to me, so the inquiry started, I do not know whether it is proper, whether it is legal, there must be role, nothing.

I got his record, so on that itself I told the *Shirastidar*, ask that person to come to my chamber after the courts hours are over, again the *Shrirastidar* said no mam, I have lot of confidence in you that, unnecessarily man will be punished, he is such nice person, you can make any inquiry anywhere, this person is really good, having very good reputation, so alright let him come, he came after five O'clock he came to my chamber, so nobody was there except me him and the staff outside the chamber, so asked this man, whether he knows that lady, he pretended, which lady your talking about madam, he must have known everything but he is asking me, which lady your talking about, I said one lady working with you, han yes yes I know, I know, he was smiling very artificially he was smiling, there is some complaint against you, what complain madam what is the complained against me? You ask anybody I am not such a person, yes that's what I believe, till now that's what I believe, you are such good person I have inquired, I found that you have good reputation and good reports have come, but I want to know whether the allegation made against you is correct, so this man said that, I do not know about the allegation made, then I showed him this letter, the piece the pornographic material, I asked him whether this is written by you, this my god I am not even seen this, I am not even seen this before, so I said alright, then what I did was, I had by the time I

have compared the English letters with this letter but, I could not get sufficient material, because it was all in capital, I did not get much evidence, to show that he himself is the author, so I kept aside, this pornographic material contains certain writings in Malayalam, but there is no previous record, which will reveal his hand writing, so I said do one thing, I will dictate something you write, whichever alphabets were there in the Pornographic material, on which he has written by himself, with those letters, some words were dictated, which will include those letters, I started dictating, I started by saying word aa, so you know the full scale paper, he wrote in the middle aa like this, I said why are writing like this, if your given paper how will you write on a paper, why are you embarrassed, keep your elf cool, write as if your writing submission to the *munsif*, why submission to the *munsif*, no write in that form, if the paper is given there will be margin, and then the font will be particular size, so I started dictating, then he was faking his hand writing, I found very, very carefully, very cleverly faking, when he was ask to write aa, he was deliberating in some other manner, he was trying to fake so what I did was, I started the dictation as fast as I could, he has to catch, I said write, write, write, you are slowly writing your trying to fake, I said know you have to write and finish it off, then comes the real culprit, all these letters were matching with the hand writing, in the pornographic material, I put round on all these and said, you could not fake when the dictation was fast, you could not fake look at this, so he was looking me like this, he was baffled, he was really scared, I said you know the consequences of what you have done, yes. Then he started admitting what he has done, he admitted that this was written by him, I said if your honest there will be some benefit to you, to certain extent I will be able to help you, if you are dishonest there ends the matter, he knows that what I mean by this, so he said madam, that is all done by me, I asked his explanation why this matching with pornographic material. Then I told you know, you can be suspended immediately, yes I know that, before that lady staff your colleagues, I will see that your suspended, I may not be suspended, I will catch your leg, no don't do that, after having done this, I don't want to touch my feet. No I will not allow, then I said, I will propose some punishment for you, one is to entertain the compliant, and start inquiry and put you under suspension, another is being very serious, and she is magistrates daughter, you also told she is the magistrates daughter, she is having big attitude problem, that is her problem she is mad and all, I will send report to the court, to the High Court with these materials in support your hand writings and with rounds within, here, or the minimum, I will give you a transfer, then he was

slightly relieved, I said I will give your transfer not only transfer to the place which is far-east from your home and I give you choice, which place you want to go.

So, he made choice of that place, I said this punishment may be given, I said alright I will give you that punishment, but choose the place, he choose place 'A' I said you will transferred to place 'B' because it was inconvenient place, he was actually collapsing, and then I said tomorrow, get ready for packing up, you know why I am choosing for this punishment, not because I am grace I am giving you, I am thinking of the women behind this, firstly that women, I do not want that women's reputation be tarnished by asking her to make a complaint, and then go on with an inquiry, that is the legal procedure, if I do that, the most affected person will that lady, especially with your reputation that you are gentleman, now you have admitted everything before me, therefore I do not want to harm that lady, this benefit you are getting only because, she is women and in the conversation he had told me, he has only his wife and three daughters are there, I said those four women are in my mind, your wife and the three other children, daughters who will suffer, if this happens, so tell me if I give transfer to you you will be under observation, I will keep under observation, and then if you utter word against that women anywhere if it reaches my ears, you know even the walls have ears, if it reaches my ears, the end of it. These records are with me, he said I will not utter any word, please transfer me wherever you want, tomorrow itself I prepared to go, I am so grateful to you that, my wife and children will never knew this, alright. So the next day, he was transferred, I did not many any record, later I got the place of his choice, next day I called the *Shirastidar*, but this time he had no stuff, so that is one verification, you did not mention about what went on, the *Shirastidar* I said in that matter, what happened madam, yesterday that man came, I will repeatedly tell you, you will commit a mistake if you take any step against him, he is such a gentleman, I said I am not on this, you write a transfer order, I am transferring him to this place, he was my god, you must see the manner in which he reacted, madam you are committing mistake, I said, I don't want your advice, your comment on this make show that he has wanted this transfer, please ask him whether he wanted the transfer or not, without anybody knowing, I transferred him on the next day, I do not know the legality of this, but I wanted to protect a women who is sexually harassed at the work place, in this very small way, he got the punishment, and I protected four women in the whole episode in two days because I knew, If a written complaint is made, what all problems she will have to face.

This story is not over, after four days this lady came again, the aggrieved person came again, wanted to know whether her husband and she can come and meet me, because husband wants to discuss something with me, so I said why do you want your husband should come to me, because he did not support you, did not give you any moral support, why do want your husband come to me? No madam, he wanted to come he is such loving husband, I ask them to come to me at my residence, both of them, husband started by his vote of thanks, and then said, there is some problem with her, see was in the verge of getting in to dome psychiatric problem, she got so stressed out, and now this punishment and this relief, this affected so badly, and now so relieved that some problems she is showing at home, see was having very good repo with his mother, mother in-law and daughter in law were having very good relationship, now she always... but see appeared to be very, very nice, very un-disturbing to me but he is saying that there is some problem at home, after three days of everything and he got transferred she started showing some problem at her home, so I was thinking why she must show some disturbance, when she should normally feel relieved, I said there is one psychologist who is very good, when I was family court judge, I know her well, I gave them this number, and I called the psychologist and said everything what happened, and after about one month, this lady the magistrates daughter, her husband and the children came to me, profusely thanked me. This I did, not as judicial officer, as human being, what I want you to know is, when sexual matters, allegations, come before you, please treat as human being rather than an judicial officer, then you will definitely get result, if you have properly mind to redressal for the lady. Prevention, Prohibition and Redressal everything can be made, provided you have proper mind to do this, may be, your action may be criticized, but this is not known even to the High Court, I did it as District Judge, which High Court is going to criticize you, may be this incidence will be, will be stated as an example for all of you, is it not. So, what you need, is not the role, not the Act, not the guidelines in Vishaka, but the act might deal with it, in the best possible manner, if you have the sincerity, take it for granted, definitely the result will come. This is all what I wanted to say.

**Hon'bel Justice A.K. Patnaik:** You heard a lady, now listen to me, when I was posted in Guwahati High Court.... (audio is not clear) transferred to Orissa,... in one month I joined in Shillong, the acting chief justice there, wanted to post me in Shillong, that is in Meghalaya, right to Shillong Bench, of the Guwahati High Court then the common High Court for 7 states and he said that we will dispose of certain matters in judicial side, three judge Bench, the lady the acting

chief justice and myself, I am the youngest member of the bench, first time I am sitting in Shillong, there are hundred matter I found listed, we use to sit at 10:30 and our work will over at 12:00 I started wondering what 100 matters by 12 O'clock then I started the briefs which are come to me, they are references under special marriage act, of divorce cases right. Under Special Marriage Act, made to the High Court for confirmation, Divorces cases has to be confirmed by the High Court, then I started reading the pleadings, in all the cases, story was only one thing, Divorce case was filed by the Husband and only one story., I got married, I got married to such and such lady and started staying in her house, in her house the first confusion, in Orissa the wife marries and starts living with the husband, I said what is this, in Orissa the wife gets married and goes to the husbands house, the second averment for one year we enjoyed good marital relations, thereafter my wife became adulterous she started bringing in male people to my house, when I objected she told me shout up, if you don't want to stay go out, then I went and filed complaint before the church, the church ...her, she was not bothered, then she went and filed the divorce application, right. Notices were served, summons were served, she never bothered about the summons, let the divorce come through. Ex-parte decree of the court, in to the High Court, we confirm the ex-parte... right.... What is this? What is this? This is what the position is here. Why? Under the law that is there is Meghalaya, the property is owned by the lady, no men can own a property, the result is, the male is totally dependent on the wife for his living, if wife throws the bed, he has to live with it that's all. If you don't like me you get out, see the message that I am conveying is, physically yes, a women may be weaker than the man, but mentally not, today women is very intelligent so you can't say women is weaker then man so far as intelligence is concerned, in all respects women and men are equal today, In democracy physical force does not count, in democracy law counts, if law gives equal rights end of it, right and in democracy we have Jayalalithaa ruling in Madras, nobody can change her very difficult, we had Indira Gandhi ruling us for so many years, we had Smt. Bangarnayake in Sri lanka, we had her daughter also Chandrika nayake there, today for US presidency who is contesting Clinton, and I remember you may not have read that book... it is fiction about the first women president of US, her life. So, women today, can beat anyone in a democratic set up, provided the law gives her equal rights, remember this historically in our country, she was saying who is going to compliant, historically the women's position in India has been such that they are in the background, they are in very difficult position and therefore when the Vishaka case came up, Vishaka came up in Guwahati, before the guidelines were given, that

also conducted one work shop, I have been in the Guwahati work shop and I have been in Haldia workshop, right and the Guwahati workshop it was total failure, because they started attacking the judges, that you have that gender bias in your mind, and all the judges got up and went away. I also got annoyed before they were attacking, in Haldia workshop they became wiser, they followed they showed picture first, before starting the session, they showed pictures, there was Canadian judge who had come, from Canada he showed pictures, pictures showed uncles exploiting their nieces, in the domestic house also women is being exploited.

Because she is physically weak, but when it comes to intelligence and other things she is very strong, no difficulty today in the judicial services, you see how many persons are coming amongst the ladies, in Orissa High Court the question came up whether the reservation is to be given to the women, we said the reservation provision is now 33%, 33% percentage because in all other services, you find in Bhubneshwar and Cuttack a smart lady officers police officers, both traffic police and all that. We found that in normal competition they are coming up more than 30%, 40% why should restrict him to 33%. We said if 33% do not come in, right then we will make it up to 33% by providing reservation, if more than 33% comes no reservation, right. So, the idea is if you give rights to women, their equal rights, like Meghalaya they became powerful in democratic country, physical factors don't work in the democracy, similarly now the Vishaka guidelines has to be issued, there was no law in place, now the law in place, today they can file complaint you must have read in the newspaper now the Supreme Court retired judges are getting into the problems, because the law is changing, the law is changing the law is going to protect the women, you can't help it, if the law is that, the famous saying of Narashimarao Prime Minister, law will take its own course, remember Harshal Mehta case and all that Narashimarao's famous saying the law will take its own course, right, so law will take its own course, law confers the right by Sexual harassment law, on the women to make grievance, they will became smarter I will file complaint, if they won't file complaint somebody else notices it, even vigilance officer comes to his notice, because of the law he has to point it out to the chief justice, if he has the courage. If he does not has the courage it will appear in the papers, right and put the High Court judge in the trouble, we have seen the latest. What is happening? When the law is in favour of the women, this required like Schedule caste reservation we have, backward class reservation why? Historically they have been pushed behind. Historically women are being pushed behind in India, you have to give them specially lift by law, that is what the law is doing, right. Historically they have been exploited I

am quite sure, once the law is there we have to implement it, we have to give women their equal rights. This is what I wanted to say, we can't just...

You see I will tell you very interesting thing,... Rotary had earlier provision male only provision, only a male can become member of Rotary, US, United States it appears to be very progressive, you can't admit a women member in to a rotary club, all of us on particular club in the US, admitted a women member, why? They have got equal rights, all are equal, Rotary international expelled that club, that club carried the litigation, right up to the US Federal Supreme Court, and the US Federal Court says the expulsion is wrong, women have equal rights, they can be members of Rotary and the organization like Rotary. Rotary international surrendered before the US Federal Supreme Court, so ultimately it is the law, and you know for examples the blacks who were slaves in the US, once the state passed the law giving equal rights to blacks that was challenged went till the SC federal Supreme Court, when the US Supreme Court was at its lowest depth, you know courts' also have ups and lows, you will go and read in the US Supreme Court in front of it. What is mentioned, US federal supreme court set aside the judgment of State Supreme Court and said Blacks don't have equal rights let's wait and what followed was civil war, courts also don't do their job properly, don't do the job in tune with times, if that judgement has been otherwise, if the State law was upheld giving equal rights, civil war would not happen, Abraham Lincoln used that civil war, got an amendment passed, giving the blacks equal rights. Have you seen the Movie Lincoln, you should see all that, Lincoln absolutely an honest dead honest but he bribed congressmen, he threatened congressmen, he threatened through the civil war, and got that constitutional amendment passed.

His friend written, his house his wife was black lady, what happened was the constitutional amendment was passed, yes it was passed, by the purest men of America by following the impurest ways so this is what it is. Equal rights have to given ultimately, it will come, definitely come.

**By Hon'ble Justice R.C. Chavan:** See the sexual harassment at work place, what was the necessity to pass an Act and Vishaka judgment all that came, because we can't India cannot fight the world with one hand tied one hand tied behind the back, unless our women also join as equal partners in the field it will not be possible, with more and more women coming out of the house it is necessary to ensure that they are not hooked up on always as objects of sex what has happened is so long as they are confined to the house their roles were limited, the moment the women come out of the house you don't have to look at her, with stereotype view of either as mother, daughter

or something like that, that she is a worker just like you and me are isn't it, so unless we provide protection to women when they come outside this, unless the culture will change takes place, we stop looking at women from the point of view of sex, things will not change and we can't afford to fight the world with one hand and one hand tied behind, women have to be brought in they have to work with us, they have been working in the fields, you see the agrarian economy they have been working in the fields, along with men rather more efficiently than man, they don't look at the women as objects of sex know, what has happened in this educated class, this perverted look towards women is possibly a phenomenon which came up in educated middle class, therefore this act became necessary.

We have to ensure as district judges as Vigilance Registrars, that women can move about freely, without anybody make a comment about the dress you wears, why she should not wear whatever she wants? How does it matter? There is the old story in Bengali, you remember that know, some English judge ask about modesty of these Indian women, in Ganges view find so many women begging we can see their vital parts, the Indian Barrister told him my lord, but gentlemen don't look at that, this is the vision, our look have to change. What the woman is wearing, how she is behaving cannot be a matter of concern, what she is doing, how she is performing, should be our focus. Even for us, the moment you look at or notice my tie, the whole of my talk is useless because your noticed my tie not the talk. Same thing with women comes to the work place, look at what she does? And not how she appears, appearance are they should not be noticed at all. Once in while compliments, I told to Barowalia, *Bhut jach rahe aaz*, this is different thing. You can't be... at women. So there this is necessary.

**Hon'ble Justice A.K. Patnaik:** I will tell you, from the wordings of the great philosopher who is based his comment now on human experience and you also have the so many most them are male, officers, two women are there, from both women's experience and men's experience, I support this statement of the philosopher, he says man have will, but it is always women has way, *aapka Gahr me jo bhi ho jaye paile thu aap gussa honge, nahi nahi karanje*, ultimately wahi karate hain jo wife bhoti hain. What she says is more correct, we do that, right and I always think of that quote, wonderful quote, he is foreign philosopher, men have will but ultimately that will does not succeed it is not implemented, women has her way and what the women wants its implemented. Thank you let us go for...

## **Session-8: Follow up action on inspection/inquiry reports**

**BY: Hon'ble Justice R. R. Tripathi**

**Mr. Shivaraj:** Till time is available but let us take this particular session so that if something remains, we can discuss afterwards right, I request Hon'ble sir to continue with the session that is Session-8, thank you.

**Hon'ble Justice R. R. Tripathi:** Good afternoon to all of you welcome back post lunch session yesterday sister said that post lunch sessions are always difficult sessions, but then his Lordship said that no we did not have so much over eating, that they will go to a drowsy state, and they will be quite attentive to what we are going to discuss, we want to keep our blood sugar and obesity under control, give a gap of minimum one hour, after your meals, whether lunch or dinner, normally I love an afternoon nap, but I think this one hour gap, one and half hour gap will help me to reduce my obesity, right it is absolutely necessary, never sleep. May you feel drowsy and all that, never sleep, the moment you sleep soon after eating you will become fat. And I need only one hour because, my session will be over by three O'clock you can have nap. Provided Mr. Shivaraj permits you to have that.

Friends, session we are going to have is, follow up action on inspection/inquiry reports. In the morning we have session about inspection of courts and about the inspection of courts we did have a discussion that directly as a Vigilance register you may not have a rule inspection of courts, right, but then before the discussion was that whatever inspection are there you should have a thorough perusal of those reports, so that they can be utilised for the purpose when a particular officers matter comes to you if you find anything in that particular Inspection Report. Especially, follow up action report or follow up action on Inspection Report, you'll find that the resource person has compiled that, in session no-8 that you will find, and on page 97 onwards and in that material I want something to be just looked into, his lordship did invited the attention to you on Article 227 of the Constitution of India now that is very specific power under the constitution of India available to the high court to have supervision or superintendents over the courts which are within its jurisdiction, right. No such power is available to the supreme court, but then we are not going into all that because, you people are so submissive I don't know, we expected more from you people, but then those reactions are not coming maybe because you are still under that you know discipline mood that all the judges were sitting here, they're going to write your CRs, let me ensure you, that

we are not, not only that any expression which is made here is anonymous and we are not going to communicate to your even to your parents High Court that this was the expression of the express by any of the judicial officers be assured of it. I am quite sure that they have courage to immediately point out that sir this is not the position, am I correct? Han, but they are not advocates, they are not members of the press, they are not activists, who don't mosh about what is happening inside the judiciary, they know everything what is happening inside, what is the procedure and all that everything they know and wherever there problems they are pointing out, right sir. Even so I wanted little more vibrancy among the participants maybe having more active participation in the topics follow actions could be know, if only recently a paper is given to you, this is again pertaining to, Orissa inspection of subordinate courts, by the High Court's rule 2004. You have got this paper with you, now you will find that there are number of columns which are to be there as part of Inspection Report if you just go to that, that you will find it page number 199 that's schedule number-1 and it is information sheet, now in that information sheet, the first column is this Court was last inspected by then there is a blank something is to be filled in there, that this court was inspected by particular judge at particular time that you will find there, the difficulties I don't know my information is that inspection so far by the portfolio judges are concerned, they are not very regularly taking place, that is my information, I may be wrong but so far as District Judges are concerned they are regularly taking inspection that I know I know that also but I know so far as portfolio judges are concerned they are not taking regular inspection, and in a particular High Court I know about it, there were instances for last ten years there was no inspection, sir I am really sorry this, but then this is this is what is known to us, unless some picnic spots are there (Justice A.K. Patnaik) laughter, then the difficulty is, then there is another problem the inspection report will be just signed, no I'm saying something further than that, then you will find besides Inspecting judge other judges are also visit that particular place, but then the second part will be that Inspection Report will be signed at the end of the picnic is over and which will be necessary by the judge accompanied by his family and maybe family friends but we are not going into that because as the lordship rightly saying, every time you need not take the Bull by the horns, no, every time you need not take the Bull by the horns, and more particularly when he is the portfolio judge or a High Court judge, we don't want you to be martyrs no not at all but at the same time we want to appeal to your conscience, to see that as far as possible, you discharge your duties by the meaning within the frame of Law or frame of rules, whatever is available to you and still doing some positive

contribution to the institution, because to my mind, registrar Vigilance is a very important key post, and for that if you want just a look at, what is vigilance the resource person is rightly incorporated it on page number 98, you have got that material ready with, you can just come to that, you know sometimes what happens in common parlance for registrar vigilance, for a particular role but in fact If you come to, that particular meaning you will find, Vigilance means to be 'watchful', Vigilance means to be watchful to be alert as to what is happening and why, what may happen this is what the Vigilance dictionary meaning says. Now, you being registrar vigilance, if you confine yourself to your chamber, that may not be discharge of duties of your duties in a effective manner, you have to have your resources which will be giving you feedback and if possible it should be as widespread as possible, if you feel that no, you can discharge your functions as registrar vigilance effectively by remaining close in your chamber, I am sure that is not correct approach about your duties, because you'll have to be, not only watchful, you have to be alert, and not only that you will have to further inspiration or may say you should have some vision, that what may happen, so not only what is happening for that you should be watchful, you should also have an idea as to what may happen and only then will be a fit person to occupy this chair of Registrar (Vigilance), right, now coming back to this information sheet as I told you the court was last inspected by well there is one of thing which I can say, then you will find, in the inspection report you will invariably find that what is the position of different things, say for example record to be maintained, now as I told you this may not directly come to you, that this is Inspection Report of this particular court or this particular officer, but then you should have an access there and from that access you should keep that particular information in your mind because tomorrow any complaints about a particular officer that he is not meticulously maintaining the record and if you immediately able to connect it with the inspection report note, which is made at that date, yes when the inspection was carried out, the record was found to be defective or shortcomings were there in the record maintaining you will be able to correlate that particular complaint or that particular enquiry which may come to you about that particular officer, if you have that information in your mind, say for example the second complaint comes about something, some important articles or valuable articles which are missing from Malkhana, now if that inspection report which is of course again here and you'll find that on page number, which is given to you that is in schedule number 2 on page number 203 cites and you're find, Malkhana is on page number 207, if you have this information again with you, that Malkhana, there are short comings

which are recorded in the inspection report, and you will be able to correlate it and you will be able to discharge your duties better. So, there is something related to follow up action on Inspection Report again technically speaking follow up action means whatever short comings are noticed they should be conveyed to the that particular Judge, if they are very serious then up course in writing and all that otherwise which may done by you people because you are registrar vigilance. But those who are otherwise supposed to get those inspection reports implemented or complied with it is their duty to see that whatever I am doing and there short coming got to be removed from the concerned officer depending upon the nature of the shortcomings that information should be conveyed to a particular judge, normally it again depends up on the person who is making Inspection Report, that is why this resource person is very rightly said, the inspection is not necessarily about the person who has inspected, but is also reflects about the person who is inspecting and that phrase you will find on page number 97, 98 yes paragraph second, the object of inspection —The object of inspection is to satisfy the District Judge and through him the High Court that the Courts are functioning properly, that rules are not that, yes exactly that particular,... 703 yes I was , I was pointing about this, —An inspection note is not only a commentary on the court inspected but also on the officer inspecting. If you are inspecting officer, whosoever he may be, if he is really resourceful and meaning the improvement of the system at the time of inspection itself he will be passing out certain instructions to the officer concerned, that these are the points on which was supposed to improve upon, unless there is a grave irregularity or grave misconduct noticed, it is to be solved there and there, so it also reflects on that particular thing, coming back to this Malkhana Part, on page number 207, items are very important, whether property received in the Malkhana, are properly entered in the Register then and there, and the separate compilation which is given to you, rules of Orissa High Court, whether valuables like gold, silver and other ornaments are received in the Malkhana, after being tested by the em-paddled gold smith, and preserved safely as per rule, whether results regarding disposal of properties are being noted, in the register, whether the Register of valuables are being verified at regular intervals and report submitted to the High Court. Now you have to find that malkana items are variety in nature and there are various temptations attached to each of the item, I remember any incident where opium was one of the article stored in Malkhana, later on the report was made that the, rats have eaten away the opium, rats have eaten away the opium, as his lordship was rightly saying that, temptations are there, more particularly when it comes to cash box, or when it comes to these

ornaments and all that, Ivory things all those things are possible and you will find variety of temptations. In liquor matters, all the bottles are empty, staff drinks it up, and in one court several staff members were held for this, right the bottles were empty (Hon'ble Justice K. Hema).

Honorable Justice A.K. Patnaik: No, you see I will put it better, some police officer had gone for vigilance, had gone to raid, right and he has recorded his seizure list, right full bottle of full bottle of scotch whisky, black label, then he says  $\frac{3}{4}$  bottle of scotch whisky, then he says half bottle of scotch whisky, then he says quarter, quarter bottle of scotch whisky, finally says empty bottle of scotch whisky and then he was prosecuted for this proportionate of scotch whisky, he was very senior officer, then he was asked, so many things were seized, he said there was only bottle of scotch whisky! Black label, why so many bottles are written, and then the officer accused said, it was full when the officer seized it, right. We started consuming, one by one from full bottle it became  $\frac{3}{4}$ , then half, then quarter, and then empty finally, they left empty bottle, actually sir he told me, actually I had one bottle, one black label scotch whisky, this has become like this, the more the drinking that was going on, they were adding one more, yes continue.

**Honorable justice R. R. Tripathi:**

So, in modern days in whisky, you will find that... that whats-app message had come where, near the sugar factory, where there all that distillery, where the monkeys use to drained in molasses, they are so habituated that, there are remaining there only having consumed and again they wake up they will again consume that, so this may happen and other thing which may happen is I mean the contents of those articles, may get dried away, as clearly as my lord is saying, where whisky bottle was one and then it became empty bottle but then, these things are very important, important for the purpose that, at the trial they are important, and then if they are to be produced especially in the NDPA matter, where the purity is again the important question of that particular thing seized and unless it is preserved in a proper position it may not be helpful at the time of trial so that is again important.

**Participant:** Mic is off, SSP- it is not controlled under District judge... item may become three fourth quarter, these properties of trial, are laying still at police station, Ok, ok, ok there is no space in Sadar malkhana's ok, ok.

**Honorable justice R. R. Tripathi:** see we have been discussing all these things, these are the problems of the peculiar I mean particular places, where you find this type of difficulties and that is why there are judgements also, you will find that in the one of the matters in the High Court, I am mean in Gujarat, the quantity seized of NDPS is so much that, it required big, warehouse, to store all those things specifically those are specially in tablet form and they are to be stored in the warehouse so those are the peculiar difficulties, but coming to this follow up of actions will find the next one page number 207 is again about accounts. Having noticed all the things you will have to see that if you are one of the person who are required to take any follow-up action, that particular action shall be taken at the relevant time, now as a Registrar Vigilance you'll find us as his lordship rightly referred to, there are few important or sensitive points or the what you call, particular aspects of inspection also, say for example when it comes to keeping a vigilance, copying section, specially because where there is a possibility of miss being played, you have to be more vigilant about, the possible remarks and possible mischief which can be played there, I don't know it must be your experience also in the matter of getting certified copy, the advocates do get their application of shifted to a higher priority number, from the bottom all those cases, if you have a particular information about that, you can be watchful about that particular employee or that particular employee/staff and that particular points on which these types of mischiefs are possible, that is why the copying department is there at page number 209.

Then will come back to our material which is given to us, study material and you'll find on page number 98 we have read that particular part of it, about the report of inspecting officer also, I was telling about Inspector officer himself on page number 98 you will find it is fourth paragraph, which starts with the word, does the object of inspection is to satisfy, in that you will find last fourth line, minor matters should be disposed of in personal discussion with the judicial officer but all important point should find a place in the Inspection Report for every minor thing you need not to draw a long run procedure you know having been informed, having his insurance to you that this is been complied with this will be complied with in future this how you have to be careful about it then we come to page number 99, that vigilance is divided in two parts, into part 1 is preventive Vigilance and other is punitive vigilance, can you articulate the meaning of preventive vigilance and punitive vigilance. It is already there and I want you to have it in your own words, what you mean by that, (mic of the participant is mute), Right.

Prior to that... you know pass on advises, warnings, in trying to prevent that person and encourage him to do better and keep on ... on his activities, that is preventive, but when we start thinking about, punitive, penalty, minor or major that is punitive vigilance. Yes Mr. Patil, by the definition itself, that the registrar has to be alert that is what is happening and what may happen, so if he is noticing that what is happening, in that way so he can give a caution so that the future life of that particular officer also going to be saved, many a times that we have done it, no that this is the wrong that you likely to commit or that you are doing, so please prevent this, thereby some improvement can also be done in that, very good.

Yes you want to say anything, Mic is off... if something is there we can warn that officer or transfer him for particular district, even before committing that type of error or mistake, the punitive means after committing that, by way of punishment the things will be taken, ok very good.

Now, one of the guiding formulation could be particularly for Registrar (Vigilance), pardon the mistakes, but don't allow the Mischief to go unpunished I think that conveys very important message to, you people especially when you register Vigilance, if you yourself are convinced that no it was a genuine mistake on his part, then it is to be allowed to be pardoned, howsoever small it may be but if you find that there is a mischief played by him that, mischief must be allowed to go unpunished that to be your one of the guiding principles you can call it or you can keep it in mind that as registrar (vigilance) what you supposed to do is this, now I will tell you, you know this is the phrase, you may not attribute us for the purpose of almost every one of us as the former judges, and that is the tendency which my lord will pardon me for saying, every judge who comes out of the system has gone worse, no, no, we are not saying that, specially not saying because we have come out of this system. But, this is time where the system is under a strong stress, I am referring to judicial system and as a Registrar Vigilance you have a very important role to play to keep the prestige of the institution High. Because you have a very important role, you should simultaneously see that the mischief are not going unpunished, and at the same time you have to be very careful, as it is said in one of the news item which his lordship just passed.

You will find judges have no spokesperson, judges have no spokesperson and that is our judicial training, that we speak only thorough our judgement, and we do not go to the pree to address them, no, no this particular allegation made against me, is baseless and what not, we don't go to the press... we have done wise thing by not going there, many people ask me, why don't you go to

the television media, I said I don't want to go, my favourite expression is I am shy. I am very shy of media that is right, judges should say so, I am shy at media, you speak through your judgement, speaks through your orders, believe in handsome is he who handsome does, not handsome speaks, today's media today's world is people speak very nicely, act very badly, judiciary must act very nicely, need not speak anything speak only thorough the order and judgements. Yes.

The reason which I am saying it is, reason I am saying that we are under the stress is, you will find that media is somehow or the other has no liking for us, reasons we need not discuss here,.... No, no has not done that job properly as judges do, because everybody knows that judiciary is doing quite right job, and they don't want get involved in this things, but media loves all, they want that controversy, otherwise their work of media, business of media does not go on. Their business must also go on, yes.

So in fact, I was coming to this by saying that you'll find the normal days experience, there will be news item, triple murder has taken place in the city or any part of the territory, so in bold letters, second day police is not able to do anything, police is still grouping in dark, fourth is able to break out the whole thing and these are the culprits they have narrated the story those story will be there, there will be pause in between and then in one fine morning the news item will appear, *court ne saab ko chod diya* I don't know whether you have experienced this or not, you will find this is the normal trend of almost every sensational news in the newspaper, *court ne saab ko chod diya* as if the court is out to their, to just allow the people to scout free, roam in the society and allow them to commit the same horrified action again, that is the way of their reporting in spite of the efforts of by the High Courts in particular cases, in spite the efforts of the supreme court in some of the cases, it is never reported that the investigation team faulted at point number 1 2 3 4 5-10 in bringing the real culprit or real material before the court, they do not report that, the prosecution has failed at 1,2,3, 4, 5, points and therefore in absence of any material to hold him guilty and hold him behind the bars, the court has no other alternative to pass an order of freeing them, this is not done this is not done, now you may say that it is deliberately not done, you may say that in absence of any particular system this is done that media reports only in this particular manner, to my mind you know mechanism is to be worked out, where every case when it is a publicity is given, there is compulsion on media to tell that well these are the reasons, the reasons by which the court was under compulsion to pass this particular order, unless that is done I am sure that media will go on

doing this and it will continue, and such circumstances it is always your role, which will come in importance and you will have to see that you are able to discharge your duties as fearlessly as possible, of course not as you know, affected by or influenced by the presence of his lordship here, you may not be lucky enough, I am saying may, I don't know, you may not get to chief justice like his lordship, who will be ready to bear the burden, I remember my personal experience, I was representing the government of Gujarat in in a PASA matter, prevention of antisocial activities and all and the person came by saying that there is no sufficient material, therefore this PASA order is to be revoked, it was division bench, because in Gujarat matter has to argued before the division bench pertaining to PASA so at the time so one of the judges was earlier an APP and therefore he knew about our handicaps and limitations, so when the Other judge started dictating saying that APP is not able to say this this this and therefore we are saying this, he said no brother don't say that, you better say that on these points there is no material which is placed before by us by the prosecution side and therefore, we are passing the order of quashing, idea was judges want to take burden on themselves, for having satisfied that, there is no material which is place before court therefore we are passing this order, instead of putting it on the shoulders of APP. Every time you may not find chief justice, who will take the burden on himself and then we say alright this is what my decision is.

I remember an anecdote about US President, US President when US done very badly in that Vietnam war, it was advised to the president by saying that, you can defend your action by saying that my advisor are advised me like this, and the reply of the US President was, it was the duty of the Advisors to advise me ultimately it was my decision and where I feel must take the burden on me, you find very few people are coming up to that test, to that particular quality, so in those circumstances again your work becomes very difficult am conscious of that, therefore his lordship rightly referred, it may be possible when you are talking about your colleagues, you may be bold enough, but when it comes to you know talk about higher authority, let me say that you want to point out that, here is the material against his lordship it may not be possible for many of you to pursue the same with that vigil, that's possible but ideal situation will be that you will be able to withstand that particular duties accordingly, I think this is what I like to add, rest of the things if my lord is kind to address.

**Hon'ble Justice A.K. Patnaik:** first of all you must have seen many places when you travel inspection Bungalows right, and in inspection bungalows had come right from the British days British system of administration is because they had what you call British colonies are went throughout the world and at that point of time it was said the sun never set in the British empire, how do they administer, such a small country how do they administer, throughout so many places, through their officers, through the system of inspection, right. Otherwise they can't at that time, there was no internet no, no emails no telephone, nothing so, remember the importance of the system of inspection, this is the only point I am making regarding this, now, deficiencies, the idea of inspection many is many, one is how to improve the system, how to ensure that there is no deficiency, wherever the deficiencies are pointed out, it has to removed that's what he says, supposing that they are not removed, there is no improvement, deficiencies are pointed out, preparing the inspection note, nobody takes care no improvement, so either as Registrar (Inspection) or as vigilance registrar, whether it is vigilance angle or registrar inspection angle, these deficiencies must be as he rightly said, referred to concerned officer or District judge, these are the deficiencies in your place, giving an instruction to remove them, if he does not remove them, there is no meaning in carrying out so many inspection, right. So let me tell you an example of the British system, my father was clerk in board of revenue, thereafter he left that and did business, there is board of revenue, his name was Gopal Patnaik so number of officers have to be promoted to Higher posts, to the Division officers and one particular officer, sub-divisional officer was very close to the member board of revenue, he was sure to be promoted, he told his relatives that I am due for promotion I am very close to member board of revenue, I will get promoted, so his relative told him, will you listen to me for bit of advice, you go to Gopal Patnaik and take his advice, before your promotion matter is taken up, so he thought why should I go to, I know the member of Revenue, why should I go to him, he did not come, all the candidates who were due for promoted he was not promoted, he was surprised he was the closet to the member of board of revenue, how the Britishers acting you see, he went and told his relative, he said I advised you to go to Gopal, didn't you go? Know I didn't go? Go and ask him about the promotion, he thought perhaps it is the ego of Gopal Patnaik that has stopped him, he said why you stopped my promotion, no no what you are thinking? I would be very happy if you were promoted? Then he showed the file, five inspection done, deficiencies pointed out, communicated to you deficiencies not removed, he said that all that I did is, go to the DPC, department of promotion headed by headed by member

board of revenue made a note that deficiencies pointed and filed are not removed by this officer and they said, even though he is senior his promotion may be withheld, others are promoted because they had removed the deficiencies, my goodness this is the reason, yes so what is the remedy, go and remove the deficiencies, right. And communicate that I have removed the deficiencies they will bring another inspection, if the deficiencies are removed then they report, if the deficiencies are removed then you will be promoted that's all. Because you are due for promotion as per your seniority, you understand, how important this is, unfortunately the Registrar (vigilance) or the Registrar (inspection) will not point out this **thing promotion are going on only by ACRs, only ACRs and judgements** *kisa hai* ACR good, good, good, if there is column there, inspection done, these deficiencies are pointed out, removed, go ahead. Inspection done, these deficiencies pointed out, not removed, promotion held up. You see the efficiency, the competence of the officer goes up, and there is movement, to see that how significant it is, this is the idea of improvement, don't just, not just the assessment of the officer and this has not been mentioned in any SC judgements, right. This is the idea of inspection deficiency therefore you see the deficiencies to be removed, that is how it improves. Next point, see the officer who reported, how inspect it, it is the High Court judge goes, I remember once I have inspected while I was in Guwahati, the Johara court and I found one very competent chief judicial magistrate, I found his files, his judgements, his orders, I conversed with him, apart from the District judge, the judicial officer very competent, he subsequently became Registrar, now I think he is judge or he is retired I don't know, who is from Guwahati, chowdary what is his name, the Registrar who had become the high Court judge, he had suffered heart problem during justice Garag's posting,... now he is High Court judge, very competent, very honest, very competent, right, he was at posting as CJM, when he was recommended for High Court judgeship, I was there in the Supreme Court, then I said who is this ...I pointed out was he posted in Jhorat as CJM they said yes, immediately cleared, told the Supreme Court collegium clear him immediately, right this is an impression that I had, as an inspecting judge, of the officer concerned I am giving you as an example, of how doing inspection as High court judge or District Judge may have his impression, we do not know, Assam for example has got so many officers, how does the High Court know him, unless he goes and sees his actual work, not by his tie and suits and all that, his work, right. I remember I was in Orissa the First District that was allocated to me was Puri and I went there and inspected, there were two additional District Judges, once the disposal was three times than other, I carried the impression,

his name also came we cleared him the only difficulty was, there was rule, there is circular of the Central Government at the time of vacancies you must aged 58 and half at the time vacancy he crossed that age therefore, he could not become High Court judge. Very competent, very strict, he was three times more competent than his colleague and an honest also, you see that, so in inspection, they might have written might have written in the Supreme Court judgment that, it is also about inspecting judge, I will not agree with that, the idea is during inspecting the subordinate courts we will have first-hand impression about which judge is more competent, which officer is low, which officer is *deela*, and similarly High Court gets first impression and then accordingly decides, if this man if posted in this post he will do very well, if this man becomes High Court Judge he will do very well, if this man becomes Registrar (Vigilance) he will do very well.

This impression are formed, if this man entrusted with difficult District called Indore, in MP he will do very well and suppose there is District bar is creating lot of problem like, Mevaar, right Bar, so this man is tough he will be good there, in the MP the gentleman sitting here he knows in my chief justice period, the Bar has succumbed, the District judges of subordinate judiciary is totally under the control, all the High Court judges were totally under control because of this information. Every weekend I was out from Jablapur, I will be some interior corner of, Saturday and Sunday means I am out. My judicial pendency was nil, the board, hardly one or two matters, unless, I was not an inspecting judge, I thought unless I visit these places and collect the information about District Judiciary, my decision about the selection to the High Court would go wrong, let me tell you very frankly I once travel to check, had my Dharshan of Lord Shiva, the Mhakali Temple and collected the information about the particular trial that was going on, trial of prof. the man who died Sabarwal, and I am not happy the things going on and then I knew that the session judge who was conducting it, unless he is immediately withdrawn from there, his promotion will be affected, I came back and said, bring him here as Registrar (Administration) otherwise he cannot become High Court judge this is my gurantee, he could not understand, nobody was understand what I was doing and chief justices decision was to appoint him as Registrar nobody could differ, told the Registrar (General) that chief justice wants him as Registrar (Administration), you know what the District Judge Ujjain told him, let me finish this judgement then I will go, then he came back, Registrar (General) came back, sir he want to write that judgement, no no he must not write that judgement. If he finishes the judgement he will get into problems, he has to report immediately leave that judgement as it is and come, one witness or the

other...very controversial case, matter pending in Supreme Court, I was wondering why the Supreme Court is not transferring that case from Madhya Pradesh, after most of the witnesses were end over, there Akhila Bhartiya Vidhyari Parishad students were involved all the accused persons police were supporting them, witnesses were.... Government was with them, trial was in a mess, Sabarwals family filed petition in 226, I would have transferred form that court to other but I can't transfer it to the outside the court, outside the State, wisely they went to the Supreme Court, for transfer for outside the state, again it was transferred to Nagpur, by the Bench of the Supreme Court, evidence was over and they are ended with acquittal, the unfortunate case, though there are video clippings and cameras about what they did to Professor, our job is to administration of justice is done and I telephoned to the judge concerned from he was from Orissa, I asked him, why it takes you one and half years to transfer that case, and said why what happened? Evidence is over, all the witnesses have gone against the poor, what will come out of it, and the Nagpur Session judge what he will do? Acquitted, right. And then this man became High Court judge, person was transferred from there he came to me with tears and said- now I understand you transferred me from there to here, removed me from there and brought me as Registrar his brother happened to be a Public Prosecutor appointed under the State Government at Indore, you understands the implications, Chief Justices job is to protect judicial officers, all the judicial officers are not perfect so, that's what I am saying you must know your officer, Inspection helps you to know your officers and take right decisions as to who will be posted where, who will transferred to where and ensure that administration of justice is done, target is not to punish anybody or harass anybody, to ensure that administrative justice is very clean and pure, right and then there was the question that he put preventive vigilance.

What is the meaning of Preventive Vigilance? Right, you know in Orissa, the Orissa National Law University, established and everybody knew that Justice A.K. Patnaik wanted that the National law University must come up, government has sanctioned fund of rupees hundred and fifty crores, building was coming up, one day I went to Orissa to my house I got telephone from my brother in law, you retired as Director Vigilance, he said here is Vigilance Officer has come, who knows me and he is saying that, in the name of Justice A.K. Patnaik, they say that justice A.K. Patnaik's dream project is this National Law University, contractor and all that going ahead with construction I hope it does get you a bad name, my good ness I was really scared, because I was there also Hidyatullah National Law University, but the construction came up later on, but the

construction came later on, I had gone to the Hidayatullah National Law University, the standard of quality of flooring and all that not good. Anybody there from Chhattisgarh, have you seen that National Law University? Seen the flooring all stained. Contractor was in lot of controversy, the same contractor was also here, this is the information I have, so I immediately went to the Chief Justice, then Chief Justice was Justice Gowda and told him you call a meeting, of the judge in-charge and the commissioner of finance put a right vigilance system in place, so that this leakage don't take place and nobody can say anything and they selected, a man who was finance commissioner who was retired, very tough guy he told me, I know him when I was Senior Standing Counsel, he very meticulously said no I will not pass the Bill, I am not satisfied with Bill for clearance, this is called preventive vigilance. Then contractor was said I will not do the work, why? My bills are being held up? But, ultimately the building has come up, there was some slowing down on the project, but when you are dealing with public funds, you have to ensure that, building comes up and at the same time the scam is reported, who gets the bad name, judiciary gets the bad name, so all these are checks, if I was to point out, if you look at the provisions of the Constitution, the comptroller and Auditor General of India, CAG, right now Comptroller CAG is not exercising any powers of the controller, he is exercising the powers of Auditor, you know what is the meaning of Comptroller? It has come from English, comptroller means before a bill is sent to the treasury comptroller will check and give certificate, which bill to payed, and then leakages are very difficult. But, in India I was called by this auditor's office, Auditor General of Assam's Office, to address them in one gathering in the Staff, I said how the veterinary scam took place lots of money leaked, hundreds and hundreds corer leaked, bills were paid but the supplies were not made, same thing happened in Bihar, but supplies were not made, and supplies in Bihar was meant for Animals, who cannot file a complaint, that we have not got our food, so well strategy for misappropriation, did you see that and money, stipend out from the treasury, so preventive vigilance means, before the payment is made, or before the action is done, which you want to prevent, keep a check and you have to devise, Vigilance Registrar has to devise, preventive vigilances, your job is to identify where the preventive vigilance can be done, here is the case which preventively done, I give you a simple example, you know after coming back from the chief justices conferences, we found that recruitment were not taking place in time, recruitment for the post of Civil Judge were not taking in time, Public Service Commission was doing it, then the Justice Agarwal, he was the Chief Justice, he said that why don't you do one thing, don't involve the PSC, let the High Court do it,

right. Because the public service commission had their own, own burden, of doing so many recruitment they could not take up the recruitment of civil judge in time, the recruitment was held up so I came back and resolution was adopted was adopted that the High Court should take up on their own, I came back I referred to the rules, and said let us amend the rules, right and take the recruitment of the High Court. .. then who will set the question papers, our Registrar said who will set the question paper? Some High Court, *I said khanka high court judge, ya hanka High Court Judge! Kisiko malum hogaya to khy karage? Leakage hoyaga to khy karaenge, Vayapam* you see what is happening, there has to be expert from outside the state, then printing outside the state, you see how the decision have been taken, how it will come logistics we have professional well-guarded, right Shulka, where is Shukla now, Shukla was administrative Registrar (Administration) he was in charge, then he was in charge, in the initial stage, we had OMR type test for scrutiny English and all that, next stage is the written examination, we all provided for well seen, well checked and the result was brought in, nothing happened, no scam yet reported, this is preventive vigilance, preventive vigilance is very, very important I will tell you and preventive vigilance is required, can be done only if the Chief Justice or the District Judge is very honest he has to anticipate this problem may come if you can't anticipate the problem will come and after the problem has come damage is done, damage is done, you should be able to anticipate that is the administrative job, that is the vigilance job also, this may come through very good angle that is set, won't bother about the media, just don't fear of media, very wrong thing that can happen to the judicial officers of the judiciary, politicians have to bother about the media, media can affect the political carriers, right. Judges, you go by the Law, by the Evidence, by the records, by the sense of conscience and truth.

I will tell you one example of media, I told you about Times of India yesterday, about the Karnataka what they had said, now I will tell you what times of India did, in Karnataka, our inquiry the person has said I have been reading the times of India for last 13 years whatever comes out of Times of India is the truth? If this is comes out in the times of India this is the truth and nothing else but the truth. I will tell you what happened in Times of India, I did not told you, I don't want to insult him, I don't want to hurt his feelings, I was the judge on the Guwahati High Court, sitting with justice B.K. Khanna, do you remember justice B.K. Khanna, we were hearing a matter, and we have kept it apart very sensitive matter, I had been to Imphal, Justice B.K. Khanna telephoned me, brother the advocate general has come with newspaper saying that we have delivered this

judgement, have you delivered this judgement? He thought his memory is fading, he was asking me have we delivered the judgement. No, is that is parted, then how the judgement has come out? I said in which newspaper it has come out? It has come out in the times of India! Right. So, then I went back, then we issued contempt notice to times of India, that with our judgement is brought out, how do you report our judgement and also said what all written in the judgement.

Then, times of India editor said, the report is Mr. Subahs Kyshap...very liable report working for last thirty years, never made this kind of a mistake he will answer, so far as we are concerned we relied on him. We issued summons for personal appearance, he came with personal appearance, yes what do you have to say? I have shown of copy of the judgement. We said that you disclose the source who had shown you and all, our record shows we have not delivered a judgement. He said I will file affidavit, we gave him time, he filed the affidavit and saying that it is the journalistic ethics we are not to disclose the source of our information. All right then, we will take action, under the contempt of court Act, I don't know what your lordship is going to do, but so far as I am concerned, I have already condemned myself, I cannot look into the Mirror, my own face. I know that judgement has not been delivered, I am going through crisis of conscience, I am not getting a sleep, I am very unhappy person look at how is hesitant? I have published the judgement which has not been delivered, then reserved our judgement. Chief Justice and, myself took up the view that, since he has express all these we will not punish him, right and instead we asked him to publish a corrigendum, corrigendum said that judgment has not delivered and publish it in the newspaper and we passed that order. He issued that corrigendum that the judgement has not been delivered and we also asked for apology to the readers this is Times of India, right. For the electronic media is concerned, you know what happened, Justice Sawanatra his Photograph was shown, he went for defamation suit, trial court Pune awarded damage of 1 crore, that was reduced to thirty lakh interim order and Supreme Court sustained that interim order. This is the media, right, Justice Kapadia once asked me, why is the media behaving like this, I said sir, why are getting disturbed, we need not be disturbed, I will tell you why the media is behaving like this, I have an article of Amartya Sen with me and will send it across to you, someone deliver it you read that article, come tomorrow will discuss, we will sit together, wonderful article written by Amartya Sen. What is media today, media those person who are writing and those person who are speaking they have a limited caliber. Right, till their caliber and intellect grows, the standard of media will remain the same, this is my approach to media, they may write anything, don't get scared, we have

a wonderful moto in our, in our national moto, Satyam mev Jayate, truth always prevails, before truth media also cannot stand, if you are truthful and solid, nobody can stand before you, right it takes sometimes, it take sometimes to truth to get eventually it is only truth which prevails so be just strong and devoted to the truth do your work, no media can damage you, right as in the case of Times of India, we saw for the Gauhati High Court, ultimately you know what happened to that reporter, Times of India reporter Subhas Kayshap he suffered a heart attack and died. He could not get over that mistake, the blunder that he had made, that blunder that he had made, let me tell you very confidentially at the instance of a Union Minister, who was fighting with the chief minister, I don't want to disclose his name, he delivered the copy of the judgement to him, and he published it and suffered the **consequences, he did not verify and suffered the consequences, before truth no Minister survives no judge survives, no one survives, truth only prevails.** Thank you, thank you very much, (applause)

**Mr. Shivaraj:** Thank you sir, before we take break, I request all the participants to give big hands to Hon'ble Justice K. Hema Madam, who was there although for two days, thank you madam.

(Announcement for movie show and special dinner).

## **Session-9: Contribution of Registrar (Vigilance/Intelligence) in maintaining higher judicial standards**

**By: Hon'ble Justice Ravi R. Tripathi**

**Mr. Shivaraj:** I want to share something with you, Hon'ble Tripathi sir were you know discussing about page number 97, 98 and 99, this article, that is on page number we are having an article that is **'Identifying the different objectives of Inspection as well as Vigilance'** honourable justice was referring this particular article yesterday, actually it was written by our Shukla sir, Register Vigilance Madhya Pradesh High Court and I thought I have not mentioned it is his contribution and we must be thankful for him, I on behalf of all the Registrar Vigilance and my personal behalf, extend my thankfulness to him for contributing something for the Registrar Vigilance and for having this particular write up on the topic, thank you sir.

**Hon'ble Justice Ravi R Tripathi:** only one thing I like to add here, when this article is read may be that to you do not have sufficient time to contribute to similar article but I and NJA will be very happy if you later on also make some, some write up and then send it to NJA, you know the difficulties are of coordination we are not able to send the material and all that in advance, and you are not able to contribute to that effective state which are we are expecting may be no difficulty on that but now that you have been here for 3 days and having all sorts of you know discussions and views expressed by the resource persons here, even later on if you make some contribution that will be very appreciable thing, and please try to do that please. Thank you

**Registrar Vigilance MP:** Sir, I have given another article, written by me, that is what is expected of an enquiry officer so that is it him.

**Mr. Shivaraj:** and I have another announcement to make here regarding this particular writing article and Writing Write ups, I and another coordinator of the next function related to the vigilance we have decide to write at least 80 to 90 page article, especially on Registrar Vigilance, in this regard I invite all the Registrar (Vigilance), on the topic of their choice write something 10 or 15 page send us we will make a sort of book on the register Vigilance and if you have contributed then that will be authoritative because you are the person work experience in this filed so I invite, it is open invitation to the all Registrar (Vigilance) you just write up and send us and we will also write the things and come up with the report and all, and will compile with the help of NJA and NJA will not be having any difficulties in the compiling the things.

**Hon'ble Justice Ravi R Tripathi:** In fact in the days of internet every single idea which occurred to you if it is put then you can collect the comments on that they can give you a very good this thing, last time we had registrar administration with us one of the participant was from Gujarat High Court Mr. Asheem Sinha who is very good at Computer technology, in internet technology it was possible done by Tamil Nadu, I think, resource person commented that if your put your heads together, right at the initial stage, the time would have been saved on the both the parts, you know both did the same exercise almost, almost same exercise you know providing for the display of boards taking of the cause list, and then giving them so many things messages to litigants or the Advocates relating to the matters listed and all that. So, they said that if you possible to put your heads together there is internet facility now, the things can do definitely better, then what we are able to doing, MP I don't know some or the other day, done very well earlier also one compilation was given to us wherein all relevant rules for the staff they are compiled together and one booklet is given to the staff member he is supposed to know everything about that and not like some circular lying in some corner, the staff and the judges on the courts below they are not knowing about it and not that whole thing is compiled and Mr. Shukla must be knowing about it, that was the wonder compilation and in fact taking clue from that other judicial academies also undertook that particular exercise, and coming with the compilation at that particular time. So, we have to put our heads together, I don't know I have been telling all my friends who are here that, it is very crucial time which we are passing through we are target of every one, and let me make no secret that, political parties are always against judiciary on any given point, on any given point, you know because this one limb of the constitution which has troubled everyone, so what they are trying is they are trying to attack us from every nook and corner, you know some remote place in some remote from part of the country some incident on the conduct and they will make it a headlines. Now copying case, I am not defending mind you let me be very clear, I am not defending that our officers who copied in the LL.M examination that was good thing or could have been depended by any standard no, but at the same time, the proportion in which it was published, as if all judicial officers are without any morals and they just go on acquiring the qualification only by this you know illicit means, that sort of publicity which is given, I am against that only. I am not defending those officers I am not saying for minute that they were, they were justified even by remotest possible standards, not at all, but at the same time, that proportion if you notice, you will find that it is always different, the scaler are different, of course in this very article Mr. Shukla has written

and he has said that though in the discipline rules, the word mentioned is government servant and technically the staff below the District Court to downwards, it is government servant, but when you are attached to judiciary, expectation of people are much higher, with regard to that particular staff, and therefore there is shloka in Sanskrit I don't know the whole thing but it says that if you commit the sin, it is sin no difficulty but that sin gravity multiplies if it is done in a place of Teert. If you go to Banaras, go to particular place which is, which is a pious place there you commit the same sin, it's gravity increases, same with the case is the judiciary also, a person doing the same thing in some other department of the government, or some other private sector no difficulty, but it happens to be judiciary related person, I am mean employed with the judicial department then that gravity is definitely higher there is no doubt about it, therefore I always being telling to the participants that you are a judicial officer for all 24 hours, you are not judicial officer only when you sit on the dais, and at the moment you get down from the dais, you ceases to be judicial officer, no in loose term I use to tell them and I am telling you people also, when you walk on the street, the people must feel some difference, they may not immediately come to know, Mr. Shukla is a judicial officer, therefore way of walking, his way of interacting with the people is different, no from that difference they must try to find out who is he? Then they should come to know that no he is judicial officer, therefore he looks different, from every aspect, not like Brother Justice Chavan said that tie should make the difference no, no these are very colourful tie it looks like imported tie and therefore he seems to be a judicial officer, no that is meant for IAS people and IPS people, again not as criticism, but then their training is different, their culture is different, they are training in the different atmosphere they are supposed to be discharge different duties therefore it is ok. But, for judicial officer honesty and the integrity is one foremost thing, which is expected from every single judicial officer, my neighbour makes complaint though I am honest I am suffering one two three four five, no you are honest and honest of your own choice. So, don't make a complaint, sir here is dishonest person and he is he is perusing in different this thing, let him be, you are honest because says that your concise says that you should be honest and therefore never compare yourself with anybody, there was message in whats-app never compare yourself with anybody because god's every single creation is perfect in-itself and particular when your judicial officer, you are supposed to be different you should have, different standards, I told to the participants and you people also, when you start having group like this, you know likeminded people, others will not venture to enter that group at all, they keep away from you no difficulty,

that is why I use to tell the students especially, if you happen to just practice speak in English, forget about the states which are in southern part of the country, otherwise in Northern Belt, you will find that the English is little difficult thing to the people, if you start trying to do that somebody says oh! *Khya bahaat hai aap to aaj kal aap English mein baat karte hain* see that man is out of circle, because then he is not your friend, he is not wishing that you should come out, will up course start the session before.

Friends I am sorry I did not wish you good morning, in the emotions I started addressing you people, well good morning to everybody, I was specially having trying of NCC, where that good morning use to respond, that good morning I expect from all my judicial officer, so once again good morning to all of you, well that's very good. I am sorry sir (to Hon'ble Justice A.K. Patnaik). It shows now that you have taken your breakfast.

Now coming to topic, it was supposed to be last session, but because of my flight schedule I have to leave early, I have to leave by 10:30 or 10:40, now this is contribution of Registrar (Vigilance/Intelligence) in maintaining higher judicial standards, a very specific topic, your contribution in maintaining when I say, I mean the Registrar (Judicial/Intelligence) whatever that post, you have nomenclature part, maintaining higher judicial standards, to my mind what was the impression which I gather is, that it is something like a good police officer in the city, and I don't know you must have seen Indian Movies also, now that I am here, half of the illegal things vanish automatically, there is impression is such, he carries that particular character with him, he carries that particular message for those anti-social people. That, he is not going to tolerate any hanky punky no of course they exercise it, Home Minister telephones him and he says that nothing doing sir, I am not going to succumb to your pressure, that is the different thing, we need not be martyr that also I told you, but at the same time I am sure, if you have sent a message by your conduct, that you mean only business while you are in chair, I am sure half of your work is done, half of your work is done, I am really thank to my lord, having learn that, there is especial bonding between, Registrar (Vigilance) or whosoever is that officer, who is assigned to this particular work by the Chief Justice, you know ultimately it is the chief justice who ultimately administer entire stage, he can administer entire stage only with the help of an officer of his confidence, appointed as Registrar (Vigilance) of course the other Registrar's also supposed to be the man of confidence of the Hon'ble Chief Justice, but then you have specific role and that role is, that you must send a message, as I told you yesterday, mischief will not go unpunished and therefore, I was trying to

visualize what could be, your personality should be? And because these are the days of Ganesh festival, I thought everyone of you should be Ganesh, I am not saying Ganesha, mind it I am not saying Ganesha, because I am an Indian, I know it is Ganesh, it is Ganesh and it is not Ganesha and it should not be Ganesha, because we don't have Rama, we have Ram, but somehow the other we have feeling as if everything which comes back from Distant Countries, it is most clarified it becomes forty caret and not even 24 caret, that is an impression we carry, why we are carrying I don't know, we have obsession for fair skin and that obsession sooner we come out of that will be better for our country I will tell you, and therefore I really feel bad, when people say, oh there was a Ravana, what you mean by Ravana, you are Indian, you know he is Ravan and he is Ravan. Because in English language there is difficulty of writing the full letter Ravana then also put 'a' otherwise 'n' is not complete. Rama also they have to write, 'ma' also write and put 'a' because 'ma' is not complete without 'a', but then you need not read it as Rama, no that being so you will find, Mr. Complier, Mr. Shivaraj has done a wonderful thing when he has put two pages in the compilation page number 47 and 48 and also 49. What a wonderful thing it is, it says about ancient India about judiciary and corruption in judiciary, it is not something you know for the first time English people came and they concluded that no no that there should not be corruption in judiciary and any part of the administration. No that was very well known with us, Kautilya is such old name and very familiar, when we were talking about the politics he is Chanakya, and we are talking about Arthashastra he is Kautilya he is the same person, like our District and Sessions judge, when your deciding civil matter you are District Judge, and when you decide criminal matter you are Sessions judge, he is the same person he is Kautilya, when we are talking about *Arthashastra*, and when are talking about the politics he is Chanakya, what a wonderful thing he has written about, he showed the means by which judiciary is totally corruption free, he has gone to the extent that if a person is caught, a judge has caught, having taken any personal gain, his entire property should be forfeited, he had said the same thing, that being judiciary man, he is supposed to be above the other part of the administration or limbs of the administration, he is supposed to be higher, that's why, of course Mr. Shukla has rightly incorporated that, again I invite your attention to those two lines, page number 98 possibly, page number 98 you will find, it may be seen that the rules relating to the misconduct are concerning government servant judicial officer/officers are although government servants, yet the standard of conduct, expected of them, not provided in the rules has to be much higher than the government servant because of sanctity attached to the judicial servants and judicial

system as whole in order to make and enhance the reposition of faith in the system amongst the public at large. So, again come back to what could be your contribution, and your contribution could be, a very specific message to all that Mr. so and so is Registrar (Vigilance) and if anything comes to notice, well finish and for that you need two things a very effective network, I said you should be Ganesh, you should have minute eyes, you should have minute eyes, your ears will be broad enough receive all information we have to receive all information and then of course you have to churning them. You have to go on churning them, how far it can be believed, let me cross check all that lordship also said yesterday. Whatever, information you get, you should have a cross check verification, you know belly should be very large, you will say sir we will be suffering from obesity, blood pressure then, simultaneously sugar will come, and then sir what are you talking about. It is again symbolic, you should have storage of all information with you and that is why I told you yesterday also, inspection report, you are not directly concerned with that, you should have eye on the information which is you feel that can be relevant tomorrow, you should have it, you are not supposed to meet with what is happening, no everybody can do it. An India police officer does it, after everything is over, somebody comes and fires bullet and says order *sub log khade ho jayiye* and that is done no that is not done, you have to anticipate what may happen, what may happen if you are able to presuppose or if you are able to conceive that act then you are succeeded there will be no difficulty at all, then you are successful in maintaining higher judicial standards is very much know. Normally, I find that people feel bore when this type of talk is going on, I tell you why? You feel that we are doing all these, you go on telling us, and then the first principle of conversion is that present company is always excluded of, when I told it to be punctual, I don't mean that you people are coming late, no not at all, what I am trying to do that what I am trying to emphasize that punctuality is very important part I don't know you people must have noticed it, you people reached your office, at nine thirty you cannot afford to come at nine forty five. He will not and if you sit in your office till six thirty thought the timing is six ten, Gujarat High Court he can't go before that. He will go only six forty five, after you leave at six thirty, some of the things are not to be told to them. The moment you start, implementing, practicing automatically whole things starts in practice and that can be done very easily, there is no difficulty at all. I am conscious of the fact that your success depends upon, the response given by the honourable chief justice. No doubt about it, but then your tack fullness is test, if you are able to win over his confidence and he believes your word, the moment you say this man is having some

doubtful integrity, will take everything note of it. He will again cross check according to it and then he finds truth in that, next time your word will be again taken at the face value, otherwise it may not be taken, no all these things, they count in discharge of your duty and I will tell you as we have the saying delay denies justice, but then justice hurried is justice buried. You have to practice all this, you know any departmental inquiry pending about ten years, the whole purpose is lost, whole purpose is lost even if that men is under suspension I sometime envy those people. Because after six months, may be according to the rules after one year, he gets seventy five percentage of his salary for doing nothing except carrying that stigma that he is under suspension, otherwise he gets 75% of salary.

What is he loosing, he can occupy that particular time for any other purpose which is not official, he can deal with shares in the name of wife and the children, he will be earning lot of money out of it, he will be having full time to devote, he will be having time to read Indian Express, business page he will read Times of India business page and then he will make out what sort of investment I shall go on doing it. I feel some time angry but happens only because, let me tell you our staff at the High Court level are found to be very submissive, I was in the High Court for sixteen years and I have found them to be very submissive, you should not be that much submissive, it is bounden duty invite his lordships attention, sir if your lordship permits may I put the list of departmental inquiry which are pending, more than five years old. More than three years old, more than one year old, I am sure that Chief Justice at some given point of time will appreciate that yes, five years the departmental inquiry is pending, let me do something, all this can be done by you people and if you start doing all these, I am sure your contribution to maintain higher judicial standards is achieved, friends I may tell you one more thing, it is not necessary that every time you are rewarded for every action of yours in tangible matter, no, not possible may not be every time you are tangible means but then be confident of the thing that, in tangible way every action rewarded either positive or negative both ways mind it, in both ways it is possible and it is all depends on your conscience, if you do all this, you will be able to make a definite contribution to the system, which requires a saving hand from all possible corners, you know you may feel that because Justice Patnaik is sitting here, but no, but then I did not have so much information that he has taken various activities at various places, I wish every judicial officer will be able to take that, it is not done, you just tell me one single reason why inspection are not carried by the Portfolio judges for ten years, what is the justification for that but as subordinate judicial officer you will

not be able to telling sir your lordship has to visited this District for last ten years or this District there is no inspection for last ten years, there is out for that, you prepare a list District so and so last inspection carried out such and such date, you are not telling who has not done and all that, because that portfolio judge must have keep on changing every possibly for six month or one year, you will find that portfolio judges go on changing. So you need not tell anybody you only say this District was last inspected in such and such date, you are not accusing anybody but you are not pointing finger to anybody still you are doing your job and you will feel satisfied in your conscience that no I have done my duty inviting the lordships, chief justice attention to the particular fact now is his look out that how does he inspire his colleagues to see that inspection is carried on.

Mr. Darve is here and he will tell us that in Gujarat High Court also, we had the similar problem, and when Justice Mukohpadya came, he invited this information like statement wise, he also did not say anything to anybody in a full court he gave that particular information to all the judges and invited by saying sir when did you visited your District and the whole thing started but the difficulty is with the change in the occupant of the particular chair the things change, this very bad thing for that we don't have any readymade solution. One solution is there as far as possible make the things institutionalized, that there is some sort of resolution of full court that every District should be inspected at least once in year, now that circular then you can every time you can go on putting to the chief justice saying that here is circular and these are the dates on which the last inspection are carried out and this is it. This is your biggest contribution in making these judicial standards higher and I tell you every time inspection carries very different effect. From my personal experience I am telling you, I went to Surat, I was the portfolio judge for that I don't know what clicked me, I would like take the a round of the building, and when I took the round, you will find all dirt was collected in every corner of the building and building is multi-storied building, built at the cost of corers of rupees, and one of the gentleman in the adjoining chamber of the judge was sitting with legs on the top of the table, just adjoin now the menace we have that the mobile either he will be busy with whats-app, or he is busy with the messaging or he is busy with something he must be enjoying that it is so easy he is stenographer as I taken his name and given him letter of suspension immediately, half of the staff peon, class-4 don't have the name plate, they don't have the shoes, they don't have the uniform, they are just causally going on, then I went to one of the court. This I am telling you only because this may help you somewhere, I am

not saying that this can be done by you, I am not saying that, I went there the presiding officer where he sits at the end of it there was fen and on that, I am not exaggerating half thick centimetre dirt accumulated on that, half a centimetre thick means it must not have been cleaned at least for six months, because the room is not AC, so naturally there will be dust in the atmosphere and naturally it will collected on the ends of fend. So I told the presiding officer by making the door closed unless you are utilizing your peon for your personal purposes you will not have had this particular situation, you will not able to tell them to clean this, *sir abi to aapne bola bacche ko school le jayo*, how can I go on cleaning this and also go to the school, he will be able to reply to you, or in the evening if your wife seem to go to vegetable market to fetch vegetables he will be saying sir I have to go early because otherwise *madam gussa ho gaynge, saab be kuch nahi bol saakata because mamdam saab ka bhaat aagya* so this can happen only if you are taking some personal services from that particular staff. This is only illustrative how much is applicable to your facts and circumstances you have to apply to yourself, if possible convince your friends also and if that everything is done, I am sure we will be able to make some contribution may be little, don't worry about the quantity of the contribution, because for that you must remember, when that Seethubandu was being constructed, *Ramayan, Seethubandu jo hain na o construct ho rahata us time yak squirrel aaya Ram Bhagavan ke pass*, bhole sir I wont to contribute to construction of bridge, so his lord just smiled, alright you can do it, she went to the water, get herself wait, then she had sand on her body and then she went again back and put that send on that particular thing, this may be the quantity of your contribution don't worry about it. But, then that willingness, that desire to help that itself is sufficient and I am sure if all this is done, well friends we have one hour visit to Bhopal, and you people have also have one visit to Bhopal, thank you very much. I request my lord to some addition to this. (Applause) very nice listening to Justice Ravi Tripathi (by Hon'ble Justice A.K. Patnaik).

**Hon'ble Justice A.K. Patnaik:** He is very much right that you have to initiate, you can't say that corruption is there everywhere, what can I do? I just came here and spend the time as Registrar (Vigilance) and then when my next posting come I will go there, don't have that approach, have a complete approach right and every little contribution improves the system, your system can be improved by the chief justice alone, no system can be changed in this country by the Prime Minister alone, no system can be improved by the state by the Chief Minister alone, everybody has to contribute and each one has to contribute, and if you would contribute somebody else will look at

you, additional registrar, or subordinate will look at you, just as in a family, whatever the father does the son will do, that is the culture, Sanskar that is there, so therefore you have to bring in this sanskar this culture, gradually and gradually if you initiate next men will come, if you go astray, just as your son picks up also, right, I will tell you about my own father.

My father was very fond of playing bridge, very hardworking businessmen so he is to play bridge in the club and comeback late till night. My brother started coming late, two of my elder brother started coming late, then I told my mother why don't you ask my father to ask his elder sons to come home early, they don't come early they also come after 12 O'clock from the club right. So, my mother told him, I have told him, you know what he said to me, I have been doing it, how can I tell my two sons to come early, right. Similarly I will give you story of Mahatma Gandhi, more illustrative, mother came with child that is in Gujarat told Mahatma Gandhi, I have known that if you take lot of salt it is very bad for health. This son of mine is taking lot of salt, ultimately he will end up with bad health. Why won't you advise him to stop it? Then Mahatma Gandhi said, I will advise him but after three month, then she went back after three months she brought him, then Gandhiji told him, now you stop eating salt, Bapuji is saying so he stopped, she was very happy and came back to Gandhi with child said he seems to have stopped taking too much of salt, but I have a query to make, why do you ask me to come after three months? He said because I was myself used to take lot of salt, right. This illustration I am giving, that you can't lead by lectures, you can lead by setting example, he was telling that so many things his lordship has done, I never went about turbulent, you do your work leave other to speak out, you follow it. I am not going to seek votes, election *tho ladna nahi hain, vote tho lena nahi hai, kuch nahi hain* but you do good work, set examples your son will follow it at your house and your successors and your subordinates follow you, right. You saw how the Bombay Justice was saying Dhabolkar, Dhabolkar, Dhabolkar, Dhabolkar, why because he did something and everybody else followed, and every High Court builds up gradually a tradition, Madhya Pradesh High Court has built up a very good tradition of Vigilance, when I came here, I noticed so many judicial officers completely thrown out, compulsory retirement, right I said why so many compulsory retirement? In Orissa I have not seen so many compulsory retirements, in Guwahati I have not seen so many compulsory retirements, because there was a system. They will not tolerate any judicial officer, who is dishonest there is culture of Madhya Pradesh. The moment culture become lax, by some Registrar (vigilance) becoming lax, some changes becoming lax, the culture gets spoiled. So, this culture has to

maintained and when once you are on that seat, you have to maintain that culture this is what Justice Ravi... Now, tell me one thing, what are the standards? Standards you have to follow, what are the standards? So many cases may come up before you, in Orissa in one case we found that the judicial officer travelled in the train without ticket and he uses to do that frequently a complaint ultimately came from the Railways, that he is travelling without tickets, then the issue came up, whether it is part of the conduct rules, whether it is part of the standard rules to be maintained we said yes, you have to look into so many things, whether he is drinking in his house, do you say he is doing something wrong, right, you have to find out what are those standards, what are those ethical standards which are to be followed, this is very important, for High Court judges and Supreme Court judges nothing was laydown, nothing was laydown so justice J.S. Verma, during justice Venkatachaliah committee was found and justice J.S. Verma was the head of the committee, and his committee comprises of two other judges they evolved what are the standards the High Court judges and Supreme Court judges has to follow and they made restatement of judicial values, you have heard that the supreme court has got no jurisdiction whatsoever, supervision over the High Court, so what have to be done High courts were requested adopt them if possible in their full court meetings and in full court meetings most of the High Courts adopted them, supreme court has also adopted in its full court meeting, self-imposed standards right but so far as subordinate courts are concerned, there are rules, if you see almost all the states subordinate **judiciary there are rules and mostly they are rules conduct rules the same as are applicable to government servants.** And if you look at the government service rules they are almost like the Central Civil Service Conduct Rules, 1964. Right and if you read that, Central Civil Service Conduct Rules, Rule three invariably adopted in almost all the state,

Every Government servant shall at all times--

- (i) Maintain absolute integrity; (ii) maintain devotion to duty; and (iii) do nothing which is unbecoming of a Government servant. (IV) commit himself to and uphold the supremacy of the Constitution and democratic values; (v) defend and uphold the sovereignty and integrity of India, the security of the State, public order, decency and morality; (vi) maintain high ethical standards and honesty; (vii) maintain political neutrality; (viii) promote the principles of merit, fairness and impartiality in the discharge of duties; (ix) maintain accountability and transparency; (x) maintain responsiveness to the public, particularly to the weaker section; (xi) maintain courtesy

and good behaviour with the public; (xii) take decisions solely in public interest and use or cause to use public resources efficiently, effectively and economically; these have come later on, but in the first page many have come, in the earlier original rules only three principals were there, i) maintain absolute integrity; (ii) maintain devotion to duty; and (iii) do nothing which is unbecoming of a Government servant right. In your case it would be, maintain absolute integrity; maintain devotion to duty; and do nothing which is unbecoming of a judge or judicial officer.

What is unbecoming of the judicial officer, registrar vigilance? Some complaint has come, ticket less traveling, right whether it is unbecoming of judicial servant/judicial officer, yes, something else will come, slaps his wife, and how do you answer? Slapping your wife? Han, whether you will apply vigilance principles, so these are the doubts, how do you resolve it? You have to go to some standards unbecoming of a judicial officer, that's why in the Bangalore conference, Bangalore principles of conduct have been circulated to all? You see that Bangalore Principles, unbecoming of a judicial officer, you have to apply the Bangalore principles and they are given here, at the first page, Preamble, The following principles are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, then These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge do you follow, in other words, apart from the rules of conduct there in the conduct rules, I don't know some states may be having their own conduct rules, for subordinate judiciary, most state say whatever is applicable to the government servants is also applies to the judicial officers, in addition to the Bangalore Principles, and Bangalore principles had not been drafted like that, possible in UN declaration many judges unions want to and ultimately drafted like- First value Independence- Second value- Impartiality, third value- Integrity, forth value- propriety, *han* then in propriety they have given illustrations, right- A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities. As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial

office. I remember, I was first posted at Guwahati. A particular judge who was the member, invited to go to a club, Assam club some function was there he could not go so, he made request, that I want to go to the club, the function took place, then after that they say, sir why don't have a drink in the Bar, I said no that I can't do, I am a judge of the High Court I am not go to the Bar, I can come to the club no problem but I can't go to the Bar, right. Why? if somebody sees me in the bar, right what will be the image of the judge I can drink at home no problem but I can't go to the Bar, so they asked me you don't drink, no I drink at home. But, I can't go to the public place and drink, right. In Chief Justice Conference in 1979, then obviously Moraraji Desai was there, right. If you see chief justices conference resolution there is a resolution there and that time justice Chandrachud is to drink, many judges use to drink, in early chief justice conference drinks used to be served, suddenly after the Prime Minister Moraraji Desai came in 1979 conference Drinks were discontinued, and the Chief Justice Conference a resolution was adopted that no judge will drink in public, right. So, a judge can drink privately at his home, or may with his colleagues privately but not in public similarly if you go to a shop along with your wife and then he does not give you a discount, you can't say I am judge you have to give me a discount, these things have happened, these things we have come to know, if they gave it, it's all right. If they are giving to others they are giving to you, in Madhya Pradesh there is VIP discount you know that, if you want to go, go to that shop and get some saris for your wife, and ask them is there a VIP discount they say yes, are you VIP if you say yes then they will give you, if they are satisfied but they say no no you don't have, I am VIP you give me a discount it is wrong, they are also human beings they have got needs they have got problems. We don't say that you become saints, right so these are the supplementary principles that you have to follow, and then equality- Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office. In the court if you start giving more respect *tie wala suit wala* less respect to a common citizen then there will be problem, right there will be problem, you will be viewed as if you are treating rich people, *suit bhut ki Sarkar, han suit bhut ki Sarkar*, there is also a perception, a litigant came to me and said that, sir I want to know one question, my father is inside the jail he is the political leader I think he was the Minister in the Maharashtra Govt. and now he is facing prevention of corruption act, I went to a particular court, the court had granted bail to Jaylalitha but refused bail to my father, you see that, that perception goes, that perception goes, I remember one Thappa was there he got midnight bail from the Supreme Court, long back by a particular judge of the Supreme Court and I was

sitting in the Supreme Court as lawyer in that court one Kumar was contesting in Presidential Election, so his nomination papers were rejected, he was trying to move it at 10 minutes to 4 O'clock right for a stay of the Presidential election, then the same judge who had granted bail to Thappa, he said you are coming at 10 minutes to 4 it's too late, how can we consider your application for stay. They said your lordship granted mid night bail to Thappa, why can't your lordship stay order now, after all it is application for stay otherwise the election is going to take place, the judge should have said, no we normally don't stay there action, he used the wrong expression and the same judge ended up as Chief Justice of India also, so you can't. Every citizen expects equal treatment, this is one example. Competence and Diligence right, next page and at the end of the page you see, by reason of nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles, these are all the international principles mind you, as I said Universal declaration human rights like Bangalore Principles as an international convention, right. So, at the national level is required we don't have judicial conduct rules for subordinate judiciary at the National Level, jurisdiction is that of the High Court or of the State Government in consultation with the High Court and Public Service Commission, Article 234 Rules, right. Article 234 has been held by the Supreme Court I also held it, Ranganath Misra also held it, it is an independent legislative code, therefore the reservation act does not apply, there has to specific reservation under rules made under Article 234, right therefore reservation Act does not apply, after I held it, Supreme Court also held it in Bihar case, so rules have to be supplemented how you will supplement these principles, how it is get supplemented because of that expression 'unbecoming of the government servant' will get substituted as 'unbecoming of a judge', unbecoming of a judicial officer, what is unbecoming or not you go by this otherwise you will group in everything, some *Jaghada* takes place with wife, you know one thing? When the wife and Husband fall apart, they file complaints against each other, and they come to the chief justice also, right. I remember, when I was chief justice of Madhya Pradesh there was lady Doctor somewhere, Gwalior or somewhere and her husband was working as judicial officer, right Husbands promotion was held up, he filed the writ petition in the Madhya Pradesh High Court an very carelessly, carelessly an affidavit was filed from the Registry saying that one reason why his promotion is held up is, his wife made a complaint regarding his behaviour towards her, then Husband's relationship with wife still turn bitter, that you have made complaint against me, that's why my promotion is held up, why addressed a letter to me, when I was chief justice,

saying that such affidavit has been filed I have never lodged the complaint against my husband, how this has come? In the matter there was complaint, she wrote letter to me, yes, yes there is complaint just show me the complaint, send it to the wife, let her know that she had made the complaint, the Xerox copy was made and sent it to the wife, wife promptly wrote back this is what I have sent, this is not my signature, some mischief has been done by somebody, may be by his rivals or by somebody, right. So this must be taken out from the record, I ordered, find out whether it was not her signature that was taken out from the record, otherwise judicial officer was suffering and bitterness was growing between husband and wife so these things also come in, wife complaints against the husband, also come in whether you entertain it as unbecoming conduct or not, you have to go by some guidelines, right. There shall be some guidelines to go by that is very, very important and judicial standards yes, but what is judicial standards is not standards you have to be very clear on that, before initiating inquiry, thank you thank you very much. (Applause)

**Mr Shivaraj:** we have got 8 minutes, you can ask any question or share your experience

**Participant:** there is a problem before me, one judicial officer purchased the property, and initially the property was of 'C' person, he filed the suit against the husband that lady, from which the judicial officer purchased the property, wife and husband committed the murder of that person, who has filed the suit against him, thereafter that lady committed the murder of her father in law and brother in law, thereafter 'C', (you are making us more confused, what has the judicial officer done?) the judicial officer purchased the property from that lady, does he know... yes, yes at the time of adjudicating the sale deed, it was written that suit number such and such was pending before the court and that has been settled by compromise, meaning thereby he has the full knowledge about the genesis of the property, before executing sale deed, that committed the murder of own husband, with collision of some other man, at the time of executing the sale deed officer was not posted at where the property was situated, as soon as he purchased the property he was transferred to that station where the property was situated, the question is the suit was not pending/ the cases were not pending before the court of officer, but it was within the knowledge of the officer, that this is the disputed property and for that property four or five murders have been done. Whether this is misconduct on the part of the judicial officer.

**Hon'ble Justice A.K. Patnaik:** if he had the knowledge, this is happening, he should not have purchased the property, you can initiate action ultimately it depends on what action you will take, it depends on the evidence you collect, (participant) in the sale deed, in the sale deed it is mentioned

that there was a suit was filed by such and such person... Resource person: Suit may not be enough, but you must show his implication of some guilt act, (participant) it is the duty of the judicial officer to know about the property.... Resource Person: If he says that I am careless, I am careless, it can be a case of carelessness also, so you have to go very carefully, *pushgayte hain koi koi matter main buri tharaha push gayte hain*, hun, evidence *aagyega uske baad malum padega kya hai*, you can initiate action.

Participant: My lord I have one query, actually to work as Registrar (vigilance) often we are instructed, even we are required to maintain some source... to collect information from different stations, as to what the officers are doing, simultaneously when we are working as judicial officer, we are naturally advised from our institution, that we have to keep some sort of isolation form the society, not that we discharge from the society but some sort of isolation is required to be maintained, is not is self-contradictory approach, because to engage source I have to mix up with some persons a bit closely or bit..

**Hon'ble Justice A.K. Patnaik:** Not necessarily, it is all depends on the case, you are right being judicial officer you have to be very careful you can't go straight way and do the things, I remember while was in Orissa, a complaint was filed against a District judge... right, and the complaint was he had so much of money, this and that...and that district judge was going to retire, right and an order has been passed by the portfolio judge for investigation, right. They thought that the portfolio judge has put pressure on him in judicial side since he did not do that work portfolio judge has initiated the inquiry unnecessarily, then the portfolio changed, I became a portfolio judge, then I took up the matter, I called judicial officer, I called an officer who was no longer in judiciary, he was working as member secretary of Legal Service Authority, I deputed him to Calcutta to go to that bank and find out whether this man has got any account, and come and report, it is a official communication, he has an account or not, if he has the account what is the amount.

He came back from Calcutta, the statement was he has no such account, and he was suffering with an investigation to the complaint, right. Immediately I closed it, and thereafter he retired, very good judicial officer, right. So, we also have to protect our judicial officers against the false complaint, but we can't protect a judicial officer, if he indulging in some kind of corruption matters, right. Yes.

**Participant:** yesterday that we were discussing, that the missing of the records by the staff, usually, whenever missing of the records are there, that disciplinary action is going to be taken,

but sometimes the Hon'ble judges that who are close to particularly to the staff, on judicial side, that they will pass an order, saying that reconstruction of the records has to be done and the officials who are that is missing the records they have been exonerated, what will be the effect that?

**Hon'ble Justice A.K. Patnaik:** You see reconstruction of records is done, for the purpose to ensure that the litigant does not suffer, the parties don't suffer, the case has to be run and disposed of. So you have to call upon the petitioner or the plaintiff and defendant to reconstruct the records, if had got some certified copy of the order, that is for their interest. Because the case cannot be held up for that does not stop you from initiating the disciplinary proceedings against the person who is in-charge of the record, he must give an explanation.

**Participant:** Exoneration has been passed in the order itself.

**Hon'ble Justice A.K. Patnaik:** No, that should not be done, judicial side I don't think the judge can exonerate it, it is a **administrative action, you see many of our judges are not clear as to what is there judicial power**, and what is not there judicial power, right when I came to Madhya Pradesh as Chief Justice I noticed, that the judges were passing orders, asking the Registrar (judicial) to comply these orders, Registration of the case should be like this, this has to be Registered like that, this has to maintained like that, right and sometimes this judge passes on one order and another judge passes an conflicting order, so what I did, to make them understand that they don't have any powers, I can't tell them that you can't have powers, they have not been appealed against also, in one matter, similar order I place before a full bench of three judges, I was presided over the full bench, in that full bench held, that under the constitution no judge has power, to pass order with regard to procedure to be followed by the High Court, that power belongs to the administrative side, what procedure will be followed in the administrative side rules have to made right, right. Later on we relied on 1935 Act, we relied on constitutional provision and ultimately delivered full judge judgement. Thereafter the High Court rules were framed again, because Madhya Pradesh is the successor of Nagpur High Court, Nagpur High Court rules were framed in 1937. Madhya Pradesh High Court framed it's rules, in 2009, right. New Rules and those rules were framed by rules committee, right objections were also invited from the Bar, and ultimately rules committee finalized the rules and published, and rules are published so judicial side cannot, chief justice can on the administrative side, if he has the power under the rules, right. To make some alterations, in exceptional cases, which matter will go to the full court, full bench, which matter will go to the Division bench, which matter will go to the single judge all these laid down

in the rules, and in the judicial side orders cannot be passed, in the same analogy, disciplinary proceedings, High Court has the power by virtue of Article 235 and 227 right, a judge in the administrative side, who exercises judicial power only cannot exonerate officer, is that clear?

**Participant:** Sir, is it ethical to use secretly recorded evidence during the court proceedings, (happened inside) the court? Sometimes the person started recording the things, and send the CD of it, what are the things are going on, be clear what you are asking, sir, now a days this new thing is coming up, that clients or advocates secretly record some utterances, or something, even the video recordings, it is not permitted, but the court does not know, it has been recorded secretly, don't rely on it. Sir, what has happened in particular case, there was very rouge advocate, absolutely very High tempered misbehaved with the judge, judge ne khya kiya hai ki, (in the subordinate court) he dismissed order his application under order 7 rule 11 of the CPC, the case was rejected, what happened that, no no he was against rejection, against his plea the case was rejected that advocate become furious, when he became so furious he even said, *salanko jute marana chayiye* what the judge did, he secretly recorded it, and that advocate did not come to know about that the judge is recording it, later on judge without telling that I am recorded, he moved contempt against him, the movement he got the contempt notice he came out with defence, that this judge is corrupt judge he was demanding bribe, and I took up the matter so he moved a contempt. And that point of time that judge came out with CD, everything is recorded, now the question is, the ethics of having secretly recorded, the device, (whether) that evidence can be considered, in our proceeding because that advocate has made complaint against the judge.

**Hon'ble Justice A.K. Patnaik:**... see the reference under section 15 of the contempt of court act, (participant) that is separately going on, that advocate has also sent a complaint to our vigilance, that he is corrupt judge, *han* vigilance can consider it, in the judicial proceeding cannot it is administrative inquiry hain, vigilance can consider it. But, the moment you go to the court of law, are if you go to the disciplinary proceedings, 63 SC said that you have to give copy of that... signed of video recording, on the basis of video make a preliminary inquiry, if the voice is recorded, all those voice and all that they are finding the place of evidence Act, IT Act, provisions have come to the effect, right those principles have to applied that's all. Ethics of whatever is going on in the court, because that is prohibited, recording device inside the court and all that Embargo that prohibition... fact if fact... truth is truth alright. What happened in the court, it is the question of fact, and the evidence act will come in, and in domestic inquiry Evidence Act, may not be

applicable, but in fact finding inquiry it will come in, but you have to give him an opportunity, right? What do you have to say, right? He may say it is not my voice, you never know, yes, then you have to send it somebody who certify whether it is his voice or not.

**Participant:** there is no prohibition as such for taking an electronic gadget inside the court, there is no prohibition as such, until and unless the rules specifically states so, they cannot, but there are judgement to this effect if some recording goes on, if somebody records it, that recording or that electronic gadget causes sort of inconvenience to the judge or there is disruption of the proceedings going on one can prohibit it. so here if the judge did so, he was rather protecting the majesty of the court, but you don't say authentically because ultimately you don't know what the law, that is there, right but there, once supreme court decides 141 is binding, and then supreme court is final not because it infallible right, is final because there is no appeal, that's it. It is infallible because it is final, right. Yes

**Participant:** collection of evidence even by illegal means, collection of evidence even by illegal means, it is admissible as is said by honourable supreme court in India your lordship it is said in the NDPS case. Yes.

**Mr. Shivaraj:** Any other questions, shall we break for the tea then, well break for the tea, I request all the participants' big round of applause to Hon'ble Tripathi sir, thank you very much we break for the tea... and return at 10:30 thank you.

**Session-10: Role of Registrar (Vigilance/Intelligence) as Appellate Authority under RTI Act, 2005**

**By: Hon'ble Mr. Justice A.K. Patnaik and Dr. J.N. Barowalia**

**Mr. Shivaraj:** Welcome back, let's take last session of this particular conference that is on RTI, I request Dr. J.N. Barowalia take over and continue this session, thank you.

**Dr. J.N. Barowalia:** Honorable Mr. Justice Patnaik, Professor Geeta Oberoi, Mr. Shivaraj and friends, I am grateful to Director of the Academy to uphold me this opportunity this morning to have interaction with you on the very important subject role of appellate authority under the RTI Act.

Friends I know this is not age to teach and to be taught I have made Power Point presentation but I will not go for PowerPoint presentation and I will make it participatory, where your questions and my answers will be there so that will be I think better course to discuss the matter. Friends section 19 (1) the appellate authority can entertain The Appeal against order of the PIO within thirty days of the order or the knowledge of the order but for sufficient reason the delay can be condoned by the appellate authority and the appellate authority is the higher officer than PIO in the same organization as you all know we have in some High Court registrar general as the appellate authorities, in some High Court Registrar (Vigilance) is the appellate authority in some High Court Registrar (Inspection) as the appellate authority and at the District we have generally the District and Session judges as appellate authority, this is the practice prevalent in almost all, so friends to understand how this appeal is to be decided I think it is necessary to through the provisions of Act, coupled with the law declared by Supreme Court of India which is binding under article 141 of constitution of India, it but before I proceed friends I will only say 1 thing that when I joined service in 1975 My chief justice was Hon'ble Mr. Justice R.S. Phatak, and when we called for his lordship before joining he asked one question, you are joining Judicial Service do know the meaning of judicial service?

We all confessed, then he told us young boys services (judicial) Service to the nation, service to the society and above all service to the poor. Whatsoever you will get as pay is only an honorarium with which you can lead a very good life, but it is not your earing, your earing will be your reputation, build a reputation of honesty and integrity only then when you are transferred from the

satisfaction people will remember you when you retire from service people remember you that he was honest judicial officer, who actually did justice to us and if you want to make money, don't join the profession or business this was advice, which was given to us on the very first day on joining by Hon'ble Justice R S Phatak and friends, it helped us in discharging our duty honestly with integrity and now coming to the subjects friends, we adopted democracy in 1950, democracy is government of the people, by the people and for the people, so why secrecy? Article 19 of Constitution of India says that every citizen shall have freedom of speech and expression but how it can be used unless we know how the government is functioning and very good judgement delivered by the Honorable Supreme Court of India on this point in *State of Uttar Pradesh v. Rajnarain* 1975 judgement which is also known as Indira Gandhi Election case, the Supreme Court has held in government of responsibility like ours where all the results of public must be responsible for the conduct there can be but few secrets the people of this country have a right to know, very important, the people of this country have a right to know, every public act, everything done by the public functionaries, the right to know which is derived from the concept of speech and expression under article 19 of the constitution, is the factory which one should be bear, secrecy is graved for transaction which can at any rate which have no repercussion on public security, so in 1975 they have said every citizen has right to know the functioning of the government. But, it took thirty years thereafter to bring this Act in 2005 and it was enacted in 2005 and was implemented from 12 Oct. 2005 friends even the report of National Commission for Review of Working of the Constitution of India, under the Chairmanship of Justice Venkatachaliah is submitted its report on 1<sup>st</sup> March 2002 laid down in para 6.10.1 the right to information should be granted and needs to give substance in this regard government must assume as its responsibility and mobilize skills flow of information to citizens, the traditional insistence of secrecy should be discarded, and very important, in fact they have suggest that, even schedule should be maintained, in fact we should have an oath of transparency in place of oath of secrecy, very enlightening report was there and then some NGO's came forward they said, in our state bridges are constructed, roads are constructed, one day the news comes everything is washed away, actually nothing is constructed, so we must know, we must have the master rolls where daily progress of the work is recorded so then what happened, the government came forward and they, this act Right to information Act, 2005 was passed in June 2005 and implemented on 12<sup>th</sup> Oct 2005.

So, this Act is in force in last 10 years, after 12 days it will be 10 years old, and the preamble says to promote transparency and accountability and to contain corruption two objectives, but how corruption can be eradicated, friends we are implementing it for the last ten years but we are not given mere of the definition of Right to information, it has been defined in clause (j) of the Section 2 it says (i) inspection of works, documents, records, how many of us know that we can inspect that we can inspect the work under going, any work which government is doing can be inspected, if friends I put this question to the audience please tell me how many of us knew that we can inspect the work, anybody, we only know that we can inspect document and records, out of one lakh applications only one is for inspection of work after ten years we are not aware what is this, so as appellate authority, when appeal comes to you, that this inspection of work I wanted to work but I will deny this right. So appeal has to be allowed, so this is first second, taking notes abstract copies of records this we are doing for last ten years, we are giving the document records, mere we have to give we are not give it has been held by the Supreme Court of India, I will come to those, judgements how appeal is to be decided, in what cases we will give the copies in what case we will not give the copies I will come to that (iii) taking certified samples of the material- the citizen has right to take certified samples, of the material- but how many of us know it, for the last ten years this Act is there, how many applications had made for certified samples only then corruption will come out, whether cement and sand is in the ratio of 1:3, 1: 4, 1:5, 1: 6, 1:10, whether the coals are used in the roads or not, this public money is being filtered away, so this is very important Act, but half of the Act is implemented... this is there then section-4 lays down *suo moto* information has to be given to the public and friend this has proved to be very good, if we give more and more information *suo moto* to the public under section-4, there will be less applications under RTI and there will be less appeals, as in the morning it was being discussed, *hamare courts main* what is the position in our courts? Most of the cases are not listed for the day, and then staff member has to be pleased and then the case is put up in the court but today due to section 4 of the RTI and the revolution in the information technology the cause list of almost each and every court in India is computerized, I can click here on my computer, I can admission in court because in Karnataka I can see my number in the cause list, this is the transparency which has come after this Act has come into force now section 5, likewise I can take copy of Zamav-bandi of any courts in India, here the computerization you can take the copy of Ghaziabad here in my computer because computerization is here, in Himachal we have the computerization we can the

copy of nay Zamav-bandi in our computer so CIOs have been designated, appellate authorities have been designated under section 5 of the Act, Section 6 says- how the application is to be made it should be in writing, it should be accompanied by that minimum money minimum rupees ten or whatsoever prescribed under the rules and then section 7 says that how the application should be disposed of, it is to be disposed of within 48 hours if it relates to life or personal liberty. 30 days ordinary application, five days more if the application if the application made to the APIO and 10 days more if relates to the third party because notice has to given to the third party, clause (9) of Section 7 is very important it says that the information is to be disclosed in the same form unless it is disproportionate with... but, what happens our Act is being misused, mostly what happens our acts are misused, *jahanpe likha hoga no parking vahape VIP ki gadi khadi hogi, fine bi likha hogo*, no parking fine rupees five hundred we see vehicle standing there, likewise this Act, very good if I know my application had not been dealt with, I have not given water connection, the person who has made application after me has been given water connection I will only move an application under RTI, before reply is given to me, I will be given the connection and then reply will come we are sorry by negligence we could not be given the connection, we had given your so this Act is very good but, the misuse of the Act is there, so when there is mis-use, if somebody has applied for five hundred pages of information, our money is being involved, our resources are being involved what will happen we can give him an option this has been upheld by CIC also, High court judgement is not there, they have upheld that you can give him notice you come to the office inspect the record see and then ask what is the information you require so that it can be given to you. So this can be worked, then section-8 is exemptions and honourable Supreme Court has laid down in *CBSC v. Vidhya Bandopadhyaya* that RTI Act seems to bring ... two conflicting views (i) to bring about transparency by providing such information under the control of the authorities and (ii) to ensure that revelation of information in actual practice does not conflict with other public interest and section 8 of the Act, which efficient functioning of the government, optimum use of physical resources and preservation of ... sensitive information so the balance has to be maintained by the PIO as well as by the Appellate Authorities also, so friends Section-8 lays down, I will give the citation 2011 (8) SCC 497 my lord it is very good judgement, I think it is excellent judgment on this RTI I would discuss I will discuss three or four judgement my lord, it has been written, what is to be done what not to be done, ... *hamare slogan hota hai* court may... work without any fear or favour, so what is being done, our judges even when I give lecture to Chief Judicial

Magistrate for PIO's in Himachal they say we fear from the Information Commissioner we give all the information, no it is not so, we have to even the PIO even the Appellate Authority, has to see what information is to be given and what is not to be given. So, section 8 lays down and then Hon'ble SC in *Khandapuram... v. Administrative Officer*, AIR 2010 SC 176 lay down that under section 6 of the RTI an applicant can get any information which is already ... accessible to the public to the public authority whatsoever information is available only that is to be given, it is not to be created it is not to be consolidated, nothing is to be done, we can only give the information as it is, this is AIR 2010 SC 176, I will give you a copy of my presentation all the judgements will be there I will be giving it you shortly so in *Institutes of Chartered Accounts of India v. ...Satya* AIR 2011 SC 336 supreme court has very beautifully laid down that, there are in section 8- nine exemptions out of which six are absolute, PIO can't give any information under those categories which are in those six clauses, in three clauses that is (b) (c) and (j) information can be given if there is larger public interest otherwise not so this is, then coming to, friends first of all I will come to ACRs, we had been discussing ACRs, friends I had been in service for 33 years and I know how ACRs being written, *Patnaik saab ne bhola*, and I will put one simple question, How ACRs have been written? What is your opinion, you will get outstanding ACR, if you had very good relation with the Boss, this is the perception I think, but friends this is not correct perception, I am speaking from my experience and you will agree with me, when I will explain it to you, that this conception is wrong, it depends upon the psychology of the reporting officer, accepting officer, you must have seen, that if you are serving at a particular judge he will give you the outstanding or very good reports, you are transferred or the officer is transferred, you will get good or average report, how it defers, why it defers? I will tell you, I was District and Session judge Khangda, I had two judicial officers at a particular station, both of them sent their ACRs and I was accepting authority so when I read the ACRs, one civil judge has given, to all the employees average and good, the other sub-judge has given to the employees outstanding or very good, so naturally I was perplexed, all the officers under this judge will be promoted, all the officers under this will not be considered and our endeavour is that we have to post some intelligent officers, some mediocre in every court because *agar ye pancho ungliyan hamara barabar hoti to hum kuch na karsakte* they have to be, if you post all the intelligent officers in one branch there will be no work, you have to post some intelligent some mediocre and so on, so I called both the judges and then I asked you have given you have given outstanding and very good, sir I got generally outstanding or very good employees,

then I called another, sir I never got any entry above good, so it depends upon, psychology of the officer who is writing the ACR, I know in Himachal there was one IG, every police officer wanted he should be posted under that IG, because he was giving outstanding entries to all the, so this is the perception that if I had very good relation, If I treat very good my District and Session Judge he will give me outstanding entry.

**Hon'ble A.K. Patnaik:** When we consider matter for promotion if somebody has got outstanding so in the promotion committee we ask one question, *kis ne diya hain, han so and so officer diya hain, o sab ko outstanding deta hai* right if somebody has got very good and outstanding and somebody else is not as good as this person, gets outstanding under 'Y', the committee, DPC which takes up the matter has to find out who has given this ACR, in Supreme Court we have found *ye tho o deya hain*, you know how we uses ACRs... that consideration is also taken by the DPC, right this has to be handled better, **ACR writing in my opinion is not satisfactory practice that is going on**, I have told how a person become High Court Judge also, by full court marking somebody very good, ACR marking is not going in any way that is the different subject, right, we are now in the Right to Information Act.

So, under the RTI Act, you can make... your ACRs even... (Mic is off)... Office, our own but not the other colleagues because that is under the fiduciary relationship between the department and that official and it can't be given, but Honourable Supreme Court has gone even further in *Devadutta v. Union of India* AIR 2008 that, every entry in the ACR and not merely poor adverse entry relating to the employee under the... police or under the service... judicial or police or other service except the military must be communicated to him, with reasonable period and makes no difference that there is bench mark or not, even if there is no bench mark it has to be communicated to him within reasonable period and this view has been upheld recently in 2013 by the Supreme Court of India in *Sukhadev Singh v. Union of India* they have said that you have to communicate the entries to every employee within the reasonable period. As far as communication of the non-communicated ACRs are concerned it has been dealt with by Hon'ble Supreme Court in *Veejit Josh v. Union of India* 2009 (16) SCC 1646, so it has been communicated to the concerned officer or official whosoever he may be within reasonable period.

Then coming to examinations, we have the department of examination, we the department recruitment and examinations so under RTI Act, the candidate has right to inspect his answer sheet,

he can inspect his answer sheet or... in *Institute of Chartered Accountant of India v. Satya* it was held that he can inspect because the application was only for the inspection of the answer sheet, so friends you can inspect your own answer sheet, but the instruction in this judgement two points were there, that instruction issued by the chartered accountants of the India to the examiners and model answers, it has said you can't take the copy, you can't see them because they are under the fiduciary relationship, so two things are not allowed, but this was allowed then again hamare judge saab ka judgment achi aayi *CBSE v. Adhitya Bandopadaya* very good judgment here... but it was beautiful judgment, what has been left in the earlier judgment has been covered in this judgement, it has been held that you can inspect your answer sheet, second that you can take copy of your answer sheet and third very important thing, it was argued that we can take the copies of the answer sheet for last twenty years, because in the Act it is provided that you can take any information for the last twenty years, the bench said no, if the rules provides that the answer sheet are to be kept only for six months you can inspect the answer sheet, or you can take the copies within six month after six months they will be destroyed, answer sheets will be destroyed very important judgment came in *CBSE* and this *CBSE* case has settled most of the questions which were unsettled, so rules will provide how much time the answer sheet to be kept and within that period you can take the copy, if they are destroyed you can't take the copy of the answer sheet.

Now, coming to DPC proceedings, friends, very important, another one thing more point has been discussed in the *CBSE* case that while supplying the copy or allowing the inspection you will have to delete everything which can disclose the identity of the examiner, head examiner etc. if he had written any remarks they have to be covered if he has signed it has to be covered his identity should not be disclosed because he can be in danger so very important judgement form these points of view.

Now, coming to DPC proceedings friends, DPC proceeding again the same procedure is there, that during the pendency of the DPC proceedings no copy can be supplied it can't be allowed to be inspected after the DPC is there the copy can be supplied but the names of the chairman and members have to be deleted, you can't disclose the name of the chairman and member because they may be in danger. Their life will be in danger so they have to be deleted, rest of the information has to be supplied.

Now, coming to third party information, again honourable Supreme Court lay down the law beautifully friends, I put a question that I go to the office late, in some civil judge court the employee has come late his explanation has been called, he has given the reply, then after the reply departmental reply was there he has be censored, somebody come forward under the RTI seeks the information whether it has to given or not to be given. Whether you give the information or not to give the information. Yes, can be given, anybody else so friends the Honorable Supreme Court has said that this information is not to be given this is in *Girish Ramchand Desphande v. CIC* 2013 (1) SCC 212 it has been, supreme court agreed with the High Court that the details called by the petitioner copies of all memos, issued to the third responded show cause notices and orders of censure and punishment etc. are qualified to be personal information as defined in clause (j) of Section 8 (1) of the RTI. The performance of the employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspect are governed by the service rules which fall under the expression personal information the disclosure as no relation to any public entity or public interest and therefore the application has been rightly rejected and the SLP was dismissed. So this is what the honourable SC was laid down we should be wise enough while disposing of the appeal that such information not to be given and now what is larger public interest.

Friends, because in three clauses the information is given if the larger public interest is there, personal information, fiduciary relationship and where intellectual property is there, these are three if the larger public interest is there, information is to be given, so what is larger public interest. So far honourable SC has not settled the law, but we had two judgments of Gujarat High Court under RTI Act. One is *High Court of Gujarat v. State Information commission* AIR 2008 Gujarat, other one *Reliance Industry v. Gujarat Information commissioner*, AIR 2007 Gujarat, so they have beautifully described what is larger public interest? It has been held in considering whether there is larger public interest the PIO the following,

1. the objection raised by the third party
2. whether the information sought by the applicant has larger public interest or the data is against the third party and in deciding the profile of the person seeking information and his credentials have to be looked into and if the profile of the person seeking information in the light of circumstance leading to the construction that under the pretext serving the

public interest such person is aiming to serve personal score against the third party it can't be said that public interest discloser of the information solicited.

3. The PIO while dealing with information related to person are supplied by third party has to constantly bear in mind that act does not become the tool in the hands of the busy body to settle personal score.

So to settle personal score the information need not be given. So this is what is larger public interest now friends coming to fiduciary relationship and ... medical leave, if somebody applies this officer has gone on leave or taken leave give the copy of the medical leave application, his medical certificate and fitness certificate, so what you are doing as appellate authorities, whether this information is to be given or not, friends it can't be given because illness is recorded therein, likewise medical reimbursement bills, very important judgement of SC two months ago, I could not lay hand on this judgment, because it is unreported, so it has been held by the SC of India, it is two months back, exact date I don't have today, but has been held that, details of amount of medical reimbursement claimed of the judge cannot be disclosed under the RTI Act, it was said that today he sought the information of the amount claimed and tomorrow he will come out, ok what are the medicines prescribed, then he will know what is the illness so they have held that it can't be given, this is the judgment of the SC but it is unreported, I am trying to get the copy of the same, as soon as I will get I will revert back to you, so next is important thing is, where rules provided how the copies are to be obtained then what is to be done for example friends well know that today our courts are busy with supply of information under RTI Act, even for judicial files, order sheet, judgements, people are applying under the RTI Act and most of the High Courts I have seen they are giving the information under the RTI Act, so friends there is judgment, I will come to the judgment of Karnataka High Court, State in Public Information Officer and *Deputy Registrar Karnataka v. M Ramaswami*, AIR 2010 Kar 64. Very important judgment they have said, held that here Karnataka High Court rules and orders are applicable the copies can only be obtained under those rules and RTI will not be applicable... copies of all the orders sheets in the writ petition and the reply filed by the other party to the writ petition so they said no that can't be supplied and friends SLP was filed against this judgment in honourable SC which was dismissed in time, so this judgment is here though it has the persuasive value for other high courts but still we can take another judgment is of Bombay high court recently two months ago, Mr. Shukla, I requested him, but I could lay hand on it, the appeal is pending before the SC, against that SC again the same

principle was there that where the rules provide how the copies are to be supplied there RTI Act will not be applicable, so these judicial files, but the most of the High Courts ham *jo hai koi be aadmi aatha hain RTI file karke*. MSET case he will come forward and take all the copies *sare ke sare copies hamare se mang te hai* and we are supplying them so you have to consider whether, in Uttrakhand they have specific rules in their rules, that where these High Court rules are applicable RTI application will not be entertained so in Uttrakhand they had in rules itself, so we can make such provision then coming to Income tax returns.

Income tax returns: they can't be given again the same judgement *Harish Ramchandr Desphande v. CIC*, 2013 SCC 212 again SC in that judgement has held that the income tax returns can't be supplied under RTI act, as it is personal information relating to person it can't be supplied. Likewise Bank statements they can't be supplied, even father can't take the statement of the son from the Bank but when we supply these in our offices from known persons or unknown purposes our offices are supplying those information, they can't be supplied to any person.

Sub-judice matters or inquiries: so long the matter is subjudice it can't be supplied, if the inquiry subjudice it can't be supplied but still friends we are supplying the same, we should not supply and then coming to very important, section 8 says no information is to be supplied where it may affect the investigation, prosecution, or trial of the case three things, but friends when I switch on the TV, daily in the sensational news, *aaj hehanpe murder hova haam SP saab ke pass gaye unnone kaha isme char mujirim involved hai, do hamne arrest kar liye do indore ke tarp bhaye hain hamare team gayee hai*, it will affect the investigation CBI has not disclosed that information Delhi High Court has held we are bound to supply the information under RTI where the trial is pending then camera proceedings, we have to CCTV camera will be there so we are not to supply the information if the life of any person can be in danger, so far example in this case *A.K. Singh*, A.K. Singh moved an application that I want the CCTV putting of such and such date of the police station, the PIO said no it can't be supplied because if this is the photographer and other persons are there so we can't supply this information to you, it was upheld by the CIC also and held that such information can't be supplied.

So, friends now I will request his lordship make us wise by his comments, thank you my lord.  
(Applause)

**Hon'ble Justice A.K. Patnaik:** Very nice talk, he was in the judiciary... he has got very good book on the right to information act and he has published book also and he said that India is becoming democracy long back, right to information Act, has been enacted in 2005, became democracy in 1947, in 1950 constitution was adopted earlier what was the position, we were under the colonial rule, British colonial rule, we had official secrets act, right. Then this system of ACRs, and all that, it is called as Annual Confidential Report, they have come long back so the approach was different was different from a democratic country, when we came from British colony they had Official Secrets Act, and anybody who discloses an official secrets is punished right the perception was different, perception was that government functions in secrecy except in so far as accountability to parliament, state legislature, so far as court is concerned, right, hearings in the court, open court hearings, a judge when he goes to the dais, sits in the open court that is the big check on arbitrariness of the court, a bail application is moved, arguments made, press can come in there, the parties can come in there, members of the public come in there sit at the back seat and the judge in the open court can he easily grant the bail in the murder matter, open court, parliament functions openly, legislative assembly functions openly, but what happens to the ministers chamber, to the governments secretaries chamber, nobody knows, similarly what happens in the judicial officers chamber nobody knows, so administrative side was not functioning openly it was shrouded in secrecy is that clear, and the government goes for election after five years, but after the election again for five years nothing is open, whatever the media catches over or whatever the media decides to make it or by announcement or by press that is open what else happen inside the chamber nothing is open, a project is started, a bridge is constructed, what is the sanction who gets the contract, you don't know nothing is announced now a days right this was the position, so to make public authorities accountable, right. The Right to Information Act, was made in 2005, they must on longer function in secrecy, you see Mohangopal's article he talks about transparency and secrecy so the government must function, all public authority must function transparently if they function transparently then they,... ham jo bi kar hare hai , koi dehk raha hai that is enough so that is why this Act, if you come to the preamble it talks about an Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto. And whereas

democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed; And whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and it talked about, say that there is contract of 10 lakh for the small patch of road if somebody comes to know it is small patch *paach lakh main kaam hojayega ye das lakh ka contract kiav diya hai* you see all becomes questionable right and then the authorities become more conscious somebody is watching everything is available in the right to information Act as a right they have got that, we didn't had the right, no citizen had right, that right had to be confer, we only had fundamental right under article 19 (1) (a) freedom of speech and expression and the SC developed the right to freedom of speech and expression involves freedom to information earlier it does not provides for press also in Indian Express case SC said the freedom of speech and expression also include freedom of Press and now the SC also said it also include the right to information, right. In case of candidate standing for election, it include right to know about the candidate's assets and his antecedents,... so SC also coined this expression right to information under article 19 (1) (a) it became fundamental right, but what is that right that has been defined under this Act, right statutorily it was recognized as right and it was regulated also what information to be given and what information not to be given, right so you must first understand that it was thought as something for ensuring so that democracy become more effective, those in public authorities became more accountable decisions are taken in transparent manner corruption is reduced but at the same time there is one paragraph in the preamble which says- and whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information; right so this right to information may come in conflict, citizen should be informed, it may conflict with other interests which must be kept secret in the public interest therefore, exemption under section 8; security of India, sovereignty of India, all those things are there, pulse trade practices, commercial secrets otherwise nobody will share this information, we are dealing with the cases in arbitration matters, they say no I can't give it, because it will affect may business... tax matters, tax returns, he cannot give, they are protect right from day one under the Income Tax Act, sales tax also protected, these are confidential information even if a party wants you can't give otherwise they will be abused, you must be given

whatever is there in the public domain with the public authorities, right and whereas it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal; democracy on the one hand which means transparency and accountability and the other larger public interests, including progress and development to trade and commerce all these have to be balanced and regulated and this right to information Act, 2005, not only confers the right to information to a citizen, mind you the word ins citizen right but also regulates this right to information so as to protect other interest in the larger public interest of the country, right this you must have the broad idea now another broad idea you must have we made a mistake Justice Swatanrkumar and myself justice Swatanrkumar wrote the judgment in first *Namit sharma's case* she what happened was this right to information Act was framed by activists like Kejriwal, Mr. Kejriwal, Mr. Prashant Bhusan Ms. Arundahti Roy, Aruna Roy and they made it very expansive adding to that some of this activists became information commissioners, they did not maintain a balance right, they are more inclined towards parting information they did not balance with others, let me tell you Prime Minister Manmohan was worried as to what is happening, in the right to information act they are asking for so much information, you also can't give in the interest of the country right, I remembered the day in the Judicial Academy when I was the chief justice of MP, this Act just been notified, there was the session this, did you see that large auditorium, when you go for walk large auditorium chief justice was J.S. Agarwal the next men was Justice Balkrishanan, Mr. Moliy has come also, he was not law minister then something else, he was the chairman of the Administrative Reforms commission, I had come there as Chief Justice of MP, speaker after speaker praising the right to information Act, this will assure the real democracy, transparency and accountability, right when I went to SC, when found Prime Minister was worried about Right to Information Act, justice Balkrishanan was worried about the right to information Act, everybody was worried about right to information act, we had overactive information commissioners, who are saying pass on all information, pass on all information, no balance there was attempt to make by the government to amend the Act, but the Sonia Gandhi was influenced by Aruna Roy, no no amendment... there will be criticism against the government in that set up first *Namita Sharma case* came in right, Swatantarkumar and myself were there we thought that something has to be done, Swatantrkumar gave a big thrashing in that judgment but exceeded the authority of the SC, information commissioners must be headed by High Court Judges, if possible by the Supreme Court judges, right I told him in the Bench, anyway it was delivered then thereafter the conference

of the right to information commissioners took place in Delhi, Prime Minister Manmohan gave them a big thrashing some of the activist like, who are there, Sailendrkumar he was trying to defend whatever the information commissioner are doing all the information commissioner bounced against the Swatantrkumar you over active information commissioners are responsible for this attack by SC on us and by the Prime Minister there has to be some balance I am ... in this point there has to some balance, you can't put all the authorities necked absolutely for nothing, in democracy the preamble itself provides for balance then the review is filed, I thought that enough is enough, in the review judgment I rejected the reasoning of Swatantrkumar... he won't able to see under our constitution there is separation of power a judicial power cannot be conferred has to be conferred on the judicially trained mind on judges he took that view in the first judgment, in the review judgment which I have delivered, this I reported in AIR 2014 SC 121 and SCC, 2013 (10) SCC 2009, by that time Swatantrkumar has retired I was sitting with Sikiri I delivered the judgment the view taken in the Namit Sharma that information commissioner exercise judicial functions therefore must be manned by or headed by Justices is not at all correct right because they won't decide any right, between parties if they decides some rights of the parties then they exercise judicial function all that they decide is, whether a particular information which is there in the public authority has to given to the citizen this is basically the administrative function, authority want to part the information, whether that information has to given or not, that's all. No, two parties come, and that why there is provision here third parties cannot be affected, so I have analyzed the second judgement and there is no judicial function performed by the information commissioner or by the lower authorities to the information commissioner, the only function performed is whether a particular information is to be given to the citizen or not and he has to decide that by the parameters lay down in the Act. This is basically an administrative function and hence justices need not be appointed but in some cases of complicated questions of law, law knowing persons must associated, right. This is what really held, then we found one more thing, retired IAS officers being appointed, government favourite officers are being appointed, how can they exercise their mind independently, we said when the Act provides for people of public eminence, why the Act does not say IAS officers, Who should be appointed as Information Commissioner, people of public eminence, they would have experience in the public, that may be in any field, but the must have public exposure, they must have public perception, they must think of public interest... if the government servant is appointed or IAS officer is appointed, IPS officers are appointed, who are

loyal to the government and they manages these appointments, then the purpose of Information commissioner is not served and then you must advertise the post, many people will apply to the post, there must be screening, and then you select the people, why it is a file is moved somebody is appointed, all those direction were find place in this second judgment of *Namit Sharma* so this was only to make your perception clear, what really is the function of those who are appointed as state information commissioner or Central Information Commissioner, right. One more aspect, you see which was dealt in *Aditya Bandopadaya* this in fact deal with tow aspect (i) In *CBSC v. Bandopadaya* the chief information commissioner has rejected the application of the candidate for answers scripts so the candidate came to the SC and mind you what a difficult matter judgements after judgements were cited before us by the CBSC and other examining bodies that SC has been consistently taking a view unless the examination regulation provide for it the answer scripts cannot be given, judgements after judgments till the end Justice Raveendran and myself deemed that SC...till **one youngster argued the matter** he says in some cases they are giving information, candidates are giving the answer scripts right justice Raveendran and myself we discussed, we discussed we took the view that examination rules are different today the examination regulations under which you may not be able to give but today we have right to information Act, a new Act, like there was an official secrets Act earlier under which information could not be given, today there is right to information Act, the perception has changed, the new right has come in, the question is whether that right has to be given, that's all. So you can't cite examination regulations, to say that we can't give it. What about right to Information Act is it protected under section 8, is it exempted under section-8? If not end of the matter, they were saying they were saying that fiduciary relationship, we said there is no fiduciary relationship between the examining body and the examiner, right this is what we have held. After that many of the academicians who want to correct it, you are giving it to the students for marking they have stopped, look at the effect good result. But, Id don't know you faced this problem or not, SC was facing the problem, you see the information which is not being kept in the SC was being asked for, give us this information, this High Court this is and from High Court this is not there, that means you want us to collect the information also and then furnish it to you if our registry is busy with that, then what work the Registry can do, right. So, therefore this paragraph is very important you must remember, otherwise our registry will be full of applications, one after the other, people like Kyshap will file it, right. Some Agarwal is there *na*, some Agarwal is there he keep on filing application give me

this, give me this, give me this, give me this, give me this and your registry will be busy in feeding information to him, right to information act, but this is what the SC said, at this juncture para 35 in *CBSC v. Aditya Bandopadaya*

35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses

(f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non- available information and then furnish it to an applicant, is that clear, so these are the basic perceptions, you must be very clear now you will see that under section 5, you read section 5- provides for, . Designation of Public Information Officers. (2) every public authority includes the judiciary, I have told in some countries judiciary is out of RTI, there is already an open hearing; right. But, in India they have not exempted, they have not excluded from the public authority if you see the definition it says 2 (h) "public authority" means any authority or body or institution of self- government established or constituted by or under the Constitution; by any other law made by Parliament; so high courts are not excluded, subordinate courts are established by law, by Acts of state legislature; right. Supreme Court established under the constitution; they are public authorities and the result is one they are public authorities under Section-5 they have to notify under sub section (2) one officer who will be the public information officer and another officer senior to him in rank will be the appellate authority under section 19, right section 19 provides for appellate powers, so under this a notification I have seen rule has been made by the Orissa high court which has been circulated to you. So it all depends whether the notification names, the vigilance commissioner as authority so far as High Court is concerned, registrar vigilance or the Registrar (judicial) as appellate authority or the Registrar (I and E) appellate authority it is for the High Court to notify you may have to exercise that power, you may not have to exercise that power but since you're in the capacity of registrar in the High Court, in the Subordinate Courts what is the position you will see, Orissa High Court has notified under

section 5 who will be the, in the District Court who will be the first officer and who will be the appellate authority, now you all know what is the position of law regarding the exercise of appellate powers, mere appellate powers are not really specified, what is the law? That is one thing, Registrar (Administration) is there, now what is the law suppose the Act says these are the Appellate powers then you have to go by that, nothing beyond that but the Act is silent, no, no it say you will exercise appellate powers, appeal over the decisions will be disposed by you this what the section 19 says, information commissioners power they are given, but we are now concerned with the High Court, you are not information commissioners, right. So what is the general law, it is the same powers as the lower authority, yes, whatever is the original powers has to be exercise by the appellate authority, right. So look at section 7 of the Act, how the request for information is to be disposed of same powers are to be exercised by the appellate authority, you have to see whether the decision taken is correct or not and whatever the powers under the section 7 are there you will exercise those powers, not beyond that is limit, right, Finally I would like tell you a very fluid subject, law is not yet established you are listening to various judgements coming, even if we sit and here, whether this information given right to information Act, SC judges became very difficult, new concepts are coming, the law is not stabilized, it has not become certain, you can't say for certain this is the law, no the wind will change... right to information Act is a new Act, but you keep on deciding as per decision have come there may be sometimes conflicting decisions of two High Courts, if there is decision of your High Court go by that, right. You keep on deciding everything is very fluid, right everything is very fluid and the law is evolving, keep on getting informed of the latest decisions and then you can discharge this function, right. Thank you (Applause). Shall we go for coffee?

**Dr. Geeta Oberoi:** No it's over, in fact right to information Act just we want to share information, here also send applications, we are asked why you arrange particular programme? Why you are called particular resource person? Is like very, you know but then, it's like so many, one day someone asked like, give us all programmes conducted, why they were conducted? Along with reasons also.

Participants: madam reasons could not be provided... why...

**Dr. Geeta Oberoi:** then people are also using RTI, for example, if one person has case against another person, some of your employee so they will ask how much salary he is withdrawing? Yes personal information then which house you allotted? Why you allotted, why did you allot that house? All kind of yes... (Participants mic is off)...ok... I am just sharing... I will just tell you... it is very difficult (Hon'ble Justice A.K. Patnaik); I am just sharing that, no body is left untouched with this Act... implication of this Act; (Hon'ble Justice A.K. Patnaik) that is why I told justice Balakrishanan when I was in Supreme Court, sir you were praising the Act that day very well, but now you are saying it is troublesome Act, (laughter) right, it is troublesome Act, it is troublesome Act, right so I told them that you are praising the other day now, you are filing appeals, some appeals are pending in the SC, you know what was one right to information Act by Subash Aggarwal, pending you know, you know what was the query made, and that time Act was already landed in the SC, why justice Patnaik was not brought earlier? Han and why he has suddenly found suitable for SC? right and then he has tagged on everything all the information, earlier three times my name came to the collegium on what reasons it is rejected, who objected, right. Then Balkrishanan said I must have it as an appeal, han and he has kept it in an appeal before the SC, against the order of the commissioner, that is before the constitutional bench, referred to constitutional bench right. In the meanwhile thank god I have retired and uspe o newspaper bi quote ki hain, newspaper have been annexed, what, who has sent, as to why not taking into SC, he is the member of the collegium opposed him, how Nariman has given a statement that he was considered thrice by the SC but only after particular judge retired from the collegium, retired from the SC, he could make into the SC, o sab us main quotation *hain*.

**Participant:** (mic is off)

**Hon'ble Justice A.K. Patnaik:** only copies and inspection and we have made it very clear, who has given the marks that will not be disclosed. Otherwise he will go to his house and thrash him, one has to keep everything, public interest in mind also, right, we have to be balanced, but our information commissioners who were there, appointed earlier they did not maintained that, sab de do, we have to apply our mind, right. One asking information at that time chief justice Kapadia had been to Bombay, what did he eat? Where did he stay? All personal information, and information commissioner passed an order to give, I asked the Attorney General why that previous judgement has come, when he was arguing in the review matter, it is come because of this,

thereafter in review we changed the approach,.. a big jolt to the information commissioners, big, big jolt, second time when I wrote the judgment, Hindu commented, wonderful judgement, why? because the judges were withdrawn from, there is no provision for judges appointment, very sound judgement, but then you must appoint those kind of information commissioner, the government appoints either the lawyers who never part of the administration, he keep on rejecting or some activist that earlier appointed, may be on the recommendation of somebody... High Up, right. Then he will create havoc, selection of information commissioner it has to be very carefully done, in MP the chief minister appointed somebody law secretary who was very close to him, what he will do, he will not part any information... that is not how this function has to be discharged, right. Now, therefore the SC wherever the Act provides in consultation with chief justice of India, the High court, and appointment will be made, Justice J.S. Verma has written a wonderful judgement, wherever it provides in consultation with the High Court, or the chief justice, whatever the Chief Justice says is binding on the government; right. Otherwise the government will select its own people, you see how Lokpal, Lokayukta problems are coming, no governments wants a lokpal, who will be independent, then what is the meaning of the concept of Lokpal, what is the meaning of the concept of Lokayukta, they are very scared of, why did you bring this constitutional amendment and all, central government is not appointing lokpal, even Kejriwal is avoiding this Lokayukta appointment and he is the man, who is arguing for because they know, government it may get into problem, right. So person who selected for this post, very sensitive post, they have to have balance and then select it, everything has been made topsy turvy alright.

**Dr. Geeta Oberoi:** can we have big round of applause for Hon'ble Justice A.K. Patnaik, (Applause), thank you, it is actually his energy, his commitment and all his experience that he shared with us, without any hesitation, which has enriched us, which has actually kept us all energized to attend other conferences, sir thank you so much for being here, sir was not well also still he took you know effort to come over here so he deserves... no, no I thought this conference is very important, yes... thank you sir, thank you so much., I also have to thank Mr. J.N. Barowalia, thank you so much sir for being with us, also this is Shivaraj's first programme, so our research fellow, we hope he will continue to do good work and to all of you also thank you very much and definitely we will now break for some five ten minutes and assemble back and do feedback and evaluation session where you will be given a form which you have to fill in that form you can tell

us like, there may be certain topics which were I think were not relevant, certain topics which we should have taken we missed all this information can be given to us, through those feedback forms, they help us in designing second conference which is there form Oct. 10 to 12... thank you much sir. We comeback in seven eight minutes is that alright...