

**WORKSHOP ON ACCESS TO JUSTICE (P-954)**

**NOVEMBER 13-15, 2015**

**Transcription of Sessions**

**Prepared by:**

**Mr. Rajesh Suman,**

**Assistant Professor,**

**National Judicial Academy**

## **DAY 1**

**13<sup>th</sup> November, 2015**

**SESSION 1 09:00 AM – 10:00 AM**

**Shift From Legal Aid to Legal Services: Constitutional Perspective**

**Justice D.M.Dharmadhikari, Justice S. Muralidhar, Dr. Yogesh Pratap Singh**

Dr. Geeta Oberoi: Very good morning to all of you. By and large what we hear from everybody that judges are individually very sensitive people to needs of everyone around them but as such system is like heartless. This is a common phrase now used. So it's a question that why such sensitive and social.....those who are very you know bent towards any socio economic rights, such kind of people are made judges. Still why the system is heartless. With that subject in mind this conference is organized. It's a 3 days conference, where we will all of us will deliberate how to make whole system responsible and sensitive to needs of people. So everyone over here will be giving you different kind of input because you as a principle district and session judge at the trial court level is the last court for litigants, for 80 % of litigation, if there the experience is good then the whole subject of saying that system is heartless can be actually diluted. With that objective in mind we now give it to people who have really taken lot of efforts in their life if you see. All of them have taken lot of efforts to make not only they are themselves very sensitive but they have done lot of things to make the system more sensitive towards people and we will share their experiences and may be you can learn lot of things and there will be lot of takeback messages. With that I invite Hon'ble Justice Dharmadhikari.

Justice D.M.Dharmadhikari: First of all, my greetings on Diwali. I have a request to Geetaji not hold conference on not to hold conference on Diwali. Today is a very important day to meet our sisters, to meet our family friends. In fixing calendar and program you must keep in mind that people coming from the long distance have to leave on Diwali day that is one part. Let us do something useful now since we have assembled here. This is a subject has been debated number of times. This has not been strengthened as it should

be. Since you are associated with law courts at grass root level, there are large number of cases awaiting dispensation of justice but much larger number of cases which have not been instituted in courts at all. In this country it is very difficult to get justice and very easy to suffer injustice. For medical and justice both sides, poor people who have no finances they have no option but to die. Similarly those who cannot have access to courts they have no other option but to suffer injustice. In such a scenario whether judicial fraternity should come forward or not come forward is the question. My 5 years stint in human rights commission has given me several ground realities and inputs. There are large number of bodies for human rights, for women, elder citizen, commissions are there and government authorities are nominated.

They are working on their way, no coordination with legal services authority. If there are governmental bodies, non-judicial and NGOs working within your area. How can you elicit their support and cooperation? That should be culture of legal services authority. Legal services authority has their own infrastructure. But if child commission is there. Suppose for domestic violence, every level there is service providers under that Act. Services providers under this Act such women working in panchayat, they have not read Domestic Violence Act. They have been empowered and police is kept away in that Act. How are they going to function, they have not understood the Act, they do not know how to function, there have been training course but their intelligence level is such is that they are unable to grasp anything.

Then MP particularly police has developed parivar paramarsh kendra and they found it necessary because under 498A many people used to come and houses may not break therefore they decided to first send it to counseling center. When this domestic violence Act was passed objections were raised that how can police which is now under that Act has been asked to keep away police from these programs, how can under the guidance of supervision of police, these parivar paramarsh kendra can be allowed.

In MP this is history from 10 to 20 years. Matter came to me then I said that let these paramarsh Kendra keep little away from police station. But they are necessary and now

there are trained people where women working. Why not give them recognition under domestic violence Act. That had not happened.

These Kendra has no work now no work left with them. So this is because of lack of coordination. All of you know, preamble itself says and we are committed to provide economic political and social Justice. Article 14 say equality before law and equal protection of laws. Equal protection of law has a positive content. Some proactive action is required on the part of the state to protect people by law. Not that people have to go and ask justice. You have to reach to the doorstep particularly for marginalized, poor and needy people. Now this requires social study and our honorable judges lot of experience are with me. PIL is one subject which is totally out of use. Why can't legal services authority get involved into it? Legal services authority under the Act permit them to undertake social studies, legal awareness programs.

Legal services authority under the Act can permit them to undertake social studies, legal awareness programs, reach up to the people who need justice, debate deliberate along with the different authorities involved in the subject and if necessary to approach the court by way of PIL. Since public interest litigation is one such subject where constitutional courts are busy all through with the PILs. Institution, taking cognizance then see directions are fulfilled, monitoring it and for example Ganga pollution Yamuna pollution is going on generation after generations but Ganga is as polluted as it was. So this PIL jurisdiction should be taken over by legal services authority. This is one area where lot of work is required to be done otherwise all PIL and there also what happens we involve lawyers, they have no expertise.

For example on the subject of pollution an expert committee was set up and they said that it is better that some treatment plant should be set up and all affluent from city should be first treated and put in the Ganga. Then expert came and said that, sir you are again polluting more and fresh water is polluted with this treated matter. So these things are happening because we do not have proper experts. Legal services authority, where an informal discussion can take place with the different authorities and let me tell you this experiment had been very successful. For example environmental

issues, interdepartmental there was no talks between them. We insisted sit together and find out the solution. And many PIL were diffused and resolved in human rights commission itself without requiring us to go court of law. Human rights commission also permit us to approach the court. Legal services authority now this decision on transgender should be a trendsetter. Nobody took up their cause they went to court in a PIL Now transgender are given human rights equal with other genders. These all experiments that are required to be done. And this is a constitutional obligation. Article 21 has been interpreted in series of decisions to say that life and personal liberty can be saved by providing legal aid. Reasonable opportunity hearing means hearing through a legally trained person. This concept is there. So access to justice is a spirit of the constitution. Section 89 of CPC in MP nowadays because of ADR, constitution of several tribunals and many subjects are being taken up by several tribunals as it is civil work has been reduced to great extent in district court. So if a civil suit is instituted, they will ask the lawyers would you like to go.

We talk to the lawyers, both of them said they do not want to go. Now it is that stage where you have to apply your mind to find out, whether mediation and conciliation can be insisted upon. In America, we had training and they told us that majority of judges they are spending their court time on talking to parties on conciliation and mediation. Unfortunately at district level, there is no medication centers. Mediation centers have to be developed through the legal services authority. Mediation requires special training, everybody can't be a mediator. Our society is such that if the judge too much interact with the participants, there are lot of apprehensions.

So I was just telling that this ADR system requires special training. And our society is such that in legal awareness programs the judges sitting along with executive authorities in the dais. People coming and meeting. This creates so much of embarrassment and ultimately if the person comes as a litigant before me what could be his apprehensions. My personal opinion is that legal services awareness programmes should be supervised from a distance by the judges. Sitting judges should not themselves participating. There is no difficulty in outsourcing the entire program. You have to be only proactive in involving local people, intelligentsia, women organization and bring them on

your forum and ask them and give them a training program then send them. Now we work on principle that ignorance of law is no excuse. But we are not doing anything to make people aware of laws. There was forest rights Act that all forest dweller up to a particular notified date, if they are already within the forest area their residence will be protected. Now tribals did not know this. In some areas, some people were evacuated, then naxalites came on in that stage, they were educated. They told tribals to take advantage of the notified date you must show your possession and encourage them to encroach. Then there was residence from forest authorities.

Who will tell these tribal people not to be misguided by these naxals? And why such a notified date, supposing a person just before a day removed that notified date should be... is only a fictional thing. You have to find the realities whether the person was dwelling there whether he was removed by forest authorities. Many issues are there. For SC/ST people for their protection there are laws but they are not aware of those laws. Similarly for women there are number of laws, they do not know. Domestic violence is for domestic women, housewives, they do not know. We want to empower them by bringing them in a democratic. These all problems, judges must have to take some interest in it. Because just to go on doing traditional work is not at all satisfactory to the litigants and how much cooperation you can get from the advocates is also very difficult because they are all professionals. They do not take much of interest in legal services authority where you get substandard lawyers.

We find that when judges request the lawyer, they leave all their work and do that work. So you have to give them a mission and purpose and the lawyer's cooperation will also be there. Students can be involved and when they will come to the profession they will know the society that advantage they can have. Give them problems to find out such as how many deaths are taking place because of malnutrition. Unfortunately in MP I demitted office in 2005, in date there is no successor appointed. Woman commission is vacate, child commission panels are not working. When I visited children home here, entire responsibility is on the magistrate who visits only fortnightly. At the time there is no legal assistance from anybody. In domestic violence Act the service providers say sir we send notices to parties do not come, how can we function.

In domestic violence Act the service providers say sir we send notices to parties, parties do not come, we can't take police help under the Act, how can we function. And a woman who is tormented if she doesn't know where is that service provider, where is her office and when she attend that office she is told that she has been deputed on some other work. Legal services authority is everywhere, why can't you say to the woman that please come to us, we will provide you legal services and ask these people to work let service providers come to your forum and train them. Their training programs are going on but not to the complete satisfaction because there are no legal trainers. Elder citizens Act is also there and all high court give it a priority.

Elder citizen definition, 61 years and everybody is an elder citizen. Even legal representatives are brought on record. They are not getting any hearing. Majority of cases are relating to pension and medical reimbursement. For lady pensioners in remote village how can she approach? She uses services of an agent and he eats the money. If you feel something is required to be done you have to shed your coat and be ordinary citizen and do some work on that. Only two hours every day and you will see the miracle. People want solutions and solutions can be given only in the forum of legal services authority. In the court room you can give judgement and judgement satisfy only one party. This is the challenge now two wings of the state is in shaky situation today. Judiciary is the only resort of the common people and common people means those who are affluent, can engage a lawyer on payment of fees.

Others have no recourse. That section is very large. To that section how can you reach? Everyday our judges in district services authority sits for one or two hours and that can make a lot of difference. Invite litigation there and whatever kind of litigation is coming some can be resolved then and there. Some can be resolved to approach to the court. I pointed out a provision in the human rights Act that there is an amendment where under section 12 A even a court can make a request to the commission. But I have not seen any court making any application. Human rights court under the Act are nonfunctional. They are only notified but there are no offices defined and there no regulation framed. So human rights courts are nonfunctional. Therefore only approach under section 12 A is to the human right commission. Human right commission is also a recommendatory body.

If you feel like you can yourself file a case. I am presenting a paper also Geetaji because I have not covered all the subject. In short my only three submissions are that how to take care of women, children, elder citizen, PILs and legal awareness programs. In legal awareness programs public participation is must. If you are going in tribal area unless you know the tribal language you will not be able to communicate. They must be told law in their own language. Most important is under different enactment whatever authorities bodies have been created, how a linkage can be developed by legal services authority. Because all are working towards the same goal but in different directions. If these activities can be coordinated, you will be supported because there may be crunch of staff and other things. Together we can make it successful. With these words I thank you all for giving me this opportunity.

Dr. Geeta Oberoi: Now Dr. Yogesh Pratap Singh will present his views for 20 minutes so there could be time for question answer.

Mr. Yogesh: My Lord Hon'ble Justice DM Dharmadhikari, My Lord Hon'ble Justice BP Singh. My Lord Hon'ble Justice S. Murlidhar, My Lord Hon'ble Justice G.S. Kulkarni, Dr. Geeta Oberoi, director in charge of this judicial academy, respected participants, ladies and gentleman. When I came to know about this workshop and I was invited, I agreed to come, because I wanted to learn from people who are the real stakeholder in the justice delivery system. Law schools, law colleges, they are now shifting their approach from legal education to justice education. However as a teacher of Constitutional law and judicial process I find many paradoxes in the concept call access to justice. I would like to draw attention of this august gathering towards these paradoxes. As my Lord mention that our Constitution ensures justice social, economical and political in the constitution, which is the fundamental law of superior obligation.

Justice itself is a very controversial and complex concept in the history of civilization. Some people like Bentham say that justice is the maximum happiness to maximum number. If you can ensure maximum happiness to maximum number you are doing justice. But our Constitution say justice to all of the citizens it does not say justice to maximum people maximum population. It says justice to all of its citizens. So we rely more



on the Rawlsian principle of justice which means fairness. Fairness in everything, in distribution of resources, in justice delivery process. So Constitution imposes a duty on the state to ensure justice and Article 14 as my lord says that equal protection and equality before the law. So it has substantial and positive content also. State has to ensure justice to all of its citizens but within this scheme, we also find and this is the paradox we also find a law called Indian Court Fees Act. I did a research and I did not find in ancient Indian legal system for there is any provision for court fees, there was no such provision for court fees, even in mughal times there was no such provision for court fees.

First time it was introduced by the British because they wanted to generate revenue from all kinds of activities they wanted to perform in this country and this was one such instrument. We find this paradox, the problem is only because we drafted our Constitution in 1950 but we adopted all the laws which were passed by the British before the Constitution. Some of the laws, without any change, without bringing it in confirmation with the Constitutional principles. When this court fees Act was passed there was no Constitution, there was no justice there was no welfare state. But in spite of having a justice oriented Constitution we adopted court fees Act, we accepted court fees Act without any change which I think is not according to the Constitutional principles, rule of law or constitutional justice.

I came across a book written by Mr. Rajiv Dhavan, Litigation Explosion in India published by NM Tripathi publication where he did research on Allahabad High Court during 1961 to 1968 in this research and he found in his research the income earned by Allahabad high Court through various court fees or fee taken from writ and vakalatnama. He found that income earned is much more than what they spend on justice delivery system and he called that Indian judiciary is best nationalized industry. There was a rule, Supreme Court Rule and one such rule 12 of order 35 of Supreme Court rules which was subsequently struck down by Hon'ble Supreme Court in Premchand Garg case which provided that if you want to file a writ petition before Supreme Court under Article 32, the petitioner has five security for the respondent's cost, in appeals. This was challenged in one of the petitions and was struck down by the Supreme Court that this is a restriction on access to justice, you cannot take money for the respondent costs from the appellant.

So this is one paradox which was emphasized by 14 Law Commission report also. The cost of litigation in this country is very high. There is no parity of power in the litigation process, keeping in mind we have adopted adversarial process where lawyers play a very dominant role. So if one party has best legal services he has an upper hand, the other party who cannot afford best legal services in this country or who is dependent on the state resources they will be on disadvantageous position. Another paradox which I found we have adversarial justice process which believe in principle of fair and transparent trial or justice should not only be done but it must seem to be done.

The emphasis is more on procedural law rather than substantive law. Dikhna chahiye ke justice ho raha he. As a result we adopted big procedural code like CPC, CrPC and Indian evidence Act. The whole process civil justice delivery process and criminal justice delivery process because of these complex procedural codes. We have other system in other parts of the world where inquisitorial justice delivery system is functioning. They don't have such complex codes like CPC and CrPC. People say jo diwani mein jata hai diwana ho jata hain. I saw cases from my family cases filed 25 years ago they are still continuing. There is no end of the civil litigation. As a result people are relying more on ADR methods because of these hurdles. Cost of litigation, procedural problems, procedural complexity in the justice delivery process.

All the process of ADR involves a kind of compromise or waiver of fundamental right which the Supreme Court has said long back in *Bheshwar Nath vs. Commissioner of Income Tax*, the waiver of fundamental right. We can't permit state to allow these kind of principles. But still all these things are happening. Another paradox in access to justice is judicial performance. We are not able to fix any system, any method where we can evaluate the performance of judicial officers. The Supreme Court is still struggling, there is a bench deliberating on the reforms of the collegium system and they have invited suggestions from lawyers, judges academia, that how to reform the collegium system. One of the issue was how to appoint good judges, what should be the parameters on which we can assess the performance. If a person has been appointed a judges of the high court, what should be the parameters? If a person is elevated from the high court to Supreme Court, what should be the parameters? These are some of the questions which

I thought I have not worked in the field so I will learn from all the respected participants. But as a teacher of the Constitutional law, these questions were bothering me for long and unless and until we find answer to all these paradoxes, access to justice is not that effective as it must be and it is something like providing a key to the door in the tunnel of the justice system. As a teacher we encourage law student as they can play a very important role, in the access to justice processes in the legal aid clinic. We encourage our students to participate in the legal aid clinic.

The Bar Council of India says that every law school should have a legal aid clinic. Most the law schools have that but only few are doing some effective work. So we are also working with the help of district legal services authority and we tried to provide legal aid help to people who are need of legal aid. We try to organize awareness camp, legal awareness camp so that we can make them aware. This is one area where I think district judges and district legal services authority can effectively participate in coordination with law schools. These are briefly the point which I wanted to bring to the attention of this august gathering. Thanks you.

Dr. Geeta Oberoi: Now I was thinking that though we do introduction in the beginning, now we have enough time with us. We have 22 minutes. Each one of you can tell about yourself as to from which court you are coming and if one or two lines about your experience about legal aid. Please share that also.

I am Nutan Sardessai, Principal District and Session judge, Goa. I have been working in the district cadre. We have legal aid camps, we have legal aid clinics, para legal volunteers. The response that we expect, we don't get that type of response. We have training programs for policeman, for para legal volunteers. But at the end of the day you are little disheartened because you don't get the feedback, don't get the response. People are not very positive to such type of interactions. But our endeavor all along is that we enlighten people and get the positive response. The response is not very heartening.

I am Uma Devi, Principal District and Sessions Judge, Hyderabad. So far as my district is concerned, it is working under the control of city civil court. Mine is the Taluka legal

services authority. In Hyderabad recently steps were also taken for mediation. The mediators list has been sent to all the courts to make efforts to set up matrimonial cases. We are also conducting legal awareness camps and also conducting lok adalats and guided by the Supreme Court of India, we are conducting National lok adalat. Cases under mediation is not effectively functioning but slowly we are taking steps.

I am Gita Gopi, Principal District and Sessions Judge, Surat, Gujarat. I am recently posted at Surat. Mediation center in Surat is working very effectively. Lawyers, bar president is one of the member and he is working very hard for bringing success in mediation. So far as para legal volunteers are concerned, only two or three of them who are really interested in taking the work in progress. They are meeting locals and finding out the problems. Recently I have started one coordination center having all the police persons over there and I have thought of bringing solution to the problem of serving summons. I am thinking to join all the protection officers and para legal volunteers through the police shelters. I will going to have meeting with police persons and will going to join all the centers. Another area of legal aid, there are certain lawyers but they are not getting opportunities and they are not getting the briefs. So I am gathering all the lawyers and finding out best of them and making a panel so that we can give effective good legal aid to all the people who are need of that. Even in law colleges we are having good professors over there and they are also serving in the legal aid centers.

I am Yogesh Khanna, Principal District and Sessions Judge of Delhi west. I am also the chairman of DLSA in my district. In our authority there is desk where one legal aid lawyer sit from 10 am to 5 pm assisting the poor persons who come there and to see whether he is entitled to legal aid and to see whether he is entitled to legal aid, then the counsel is made available to him. In our district under the guidance of the High Court we are having various legal aid counsels schemes. The counsel is engaged in every magistrate court and in the remand work also. Then in ACM court and child welfare court also, we see that the lawyer is provided. We further have a system of continuous lok adalats. In this year we have settled about 3327 cases till October 31st in the lok adalats and recently in Delhi we have a revised payment schedule with regard to the payment of legal aid lawyers and the fees was increased so as to attract the quality lawyers to appear in these particular

matters. So various amendments were made in the criminal cases also, the fees was increased. We have also organized legal literacy and legal awareness campaigns. Now in my district 572 programs in schools and Gender resource centers they have been undertaken this year. We have legal aid clinics. Now a legal counsel within jail, every day, six days in a week from 3 to 7 pm whether he sees that under trials have sufficient representation in the court or not. Recently there was a judgment of the Supreme Court about inhuman condition of prisoners where an order was passed to overlook the fact that whether the section 436A has been properly implemented or not.

So the under trial review committee that has been formed in our district and district judges in Delhi have been appointed as chairpersons of those particular review committees and DM is also one of the member as wells DS is also one of the members. There was another judgment Laxmi vs. Union of India in 2014 where the Supreme Court has ordered appointment of criminal injuries compensation board with the district judge as a head. So we are providing compensation to acid attack victims. Recently we have settled about 4 and 5 cases, we have awarded one lakh Rs. as interim compensation and the Supreme Court has said that 3 lakhs Rs. has to be paid that particular person in acid attack within a month.

I am Talwant Singh from District East Delhi. My colleague has already explained the programs. The same programs are being implemented in all the 11 districts. The main problem is that we are unable to reach to the people who are in need of justice. So we have started an innovative program. We have conducted a training course for all Municipal Councilors because people go to them first. So we educated them and they said that it is an eye-opener for them. Now we have kept our forms legal aid forms in the offices of all the municipal councilors. Now he knows in which sectors we can provide them legal aid and they are sending those persons to us. Second thing we are holding our camps in gurudwaras, temples and churches and mosques also. Wherever we find that 20 people are gathering. One legal aid lawyer has to be there in that gathering. We have this kavad yatra every year in Delhi. In kawad camps also we have our legal aid camps. Delhi commission for women chairman we invited her she came and interacted with all our people. She said she is doing duplicate efforts in Delhi commission for women

also because they were running some mediation center without getting any proper results and all. She said that now she will be referring all the mediation cases to us. Similarly all other matters Delhi women commission has agreed to cooperate with us.

I am Anil Kumar from Kerala. I am Principal District and Sessions Judge and I chairman of the DLSA. In Kerala we are getting good response in the field of legal service authority. We are conducting national lok adalats by the schedule. We are conducting classes on anti-ragging. We have organized many classes in medical colleges and engineering thereby what we could achieve is crime is decreased. People are responding to lok adalat. But one aspect is cases that are being referred from courts, the people are not up to a mark. In pre litigation matters, people from all walks of life participate. But in matters which are pending in court, people are reluctant to settle for one or other reason.

I am P. Dhanabal from Tamil Nadu. As a chairman of legal services authority we are conducting jail adalats and we disposes many cases through lok adalats like MACT cases. We are having more than 30 % of mediators in our districts. So many cases settled through mediation. Then we awarded victim compensation under 357A of CrPC.

I am Jitendra Singh from Jammu and Kashmir. I am Additional District Judge from Baramulla. As CJM, I have been the chairman of the legal service committee. The legal service authority are doing a commendable job particularly at the time of natural calamities. Last year there were devastated floods in Kashmir valley and land slide in Jammu region. The state legal services authority did a commendable work. In lok adalats pending cases are not getting results except for bank cases and mact cases but other cases like matrimonial and other we are not getting good results. The reason for that in J & K we don't have permanent lok adalats. We spend whole day in making the party to reach compromise and when they reach to consensus we ask them to come after two days for settlement. In those two days the decision of the party changes. So permanent lok adalats are not there. Mediation process is also not to my knowledge getting the desired results. So permanent lok adalats are required to be set up.

I am Sumanlata from Andhra Pradesh. I am direct recruit of 2007 batch and I am working as PDJ since one month. I have got very rich experience both as chairman of District Legal Services Authority after I became PDJ and also while i was working as second additional district judge in Chittoor district as chairmen of Mandal legal services authority. In my opinion how much satisfaction in giving judgements, equal satisfaction I got as working as chairman of DLSA. I just want to share one experience while I was working in Nagarpalli where a women came filing a petition before the legal services authority for mercy killing because her son who was a engineering graduate while he was proceedings to receive his visa to go to Australia met with an accident and got paralyzed and the brain stop working. The small quantity of money she got she educated hoping that he will lok after herself and her husband. But due to accident her husband died and she was left with her son whom she has to attend all 24 hours.

Therefore she even could not go out to do any work. and with the little money she got she provided treatment and she was left with no money even to make her livelihood and therefore she file a petition in legal services authority and then I consulted my principal district judge and in turn my PDJ consult the honorable judge of our district and my PDJ directed me to do what best we can do for that. Then I issued notice for principal secretary of the government and also to the district collector and then I gave a press note inviting any donation so that we can help that woman. At least to provide basic necessities. To my surprise within a one month I got 49 lakhs from the entire country and also we were getting some money orders from outside the country also because there were publication in times of India. So i was concerned that how to deal with that amount and then I consulted the high court and the high court directed me to form a committee with district collector and also the bar president and to open a joint account in the name of that boy and also mother and to give periodical grants for providing medical aid. Then I consulted institute for providing treatment and the doctors gave treatment and by the time I got transferred, the boy was speaking. The fund was kept in bank with direction to release the interest for sustenance. It gave immense satisfaction.

Secondly when I became district judge, with the coordination of police I set up the task of selecting a village and making it litigation free village. So primarily whether I could

succeed in my attempt or not I took up a small village where there are only compoundable matters and the small matters. We are trying to settle those matters and effecting compromise those civil disputes also. I take up a case which was before me through mediation where husband and wife were fighting for custody of children and we have successfully resolved the disputes and they are living together for the sake of children. So I think the District Legal Services Authority at Andhra Pradesh is working very good.

I am Sandhya Raikanawar, Principal District and Sessions Judge, Wardha, Maharashtra. I am Principal District and Sessions Judge since 19 June of this year and I am chairman of DLSA. There is no separate post is provided like other districts and Principal District and Sessions Judge is looking after this work. Through legal aid committee we are conducting legal aid camps. We are also conducting legal aid in jail on the subject of plea bargaining and providing free legal aid to the poor litigants. We have 2 gram nyayalayas. We have also formed a committee to provide compensation to the victim. We are conducting legal aid camps but we are not getting much response from the litigants. We have separate building for mediation and it is under construction.

I am Ali Zamin Principal District and Sessions Judge Mirzapur UP. We are conducting programs as schedule by NALSA. We have established legal service clinics and headquarter at district level. We also conduct jail inspection and find out if any under trial is not represented by lawyer from legal aid and lok adalats are getting very good response particularly in matrimonial matters.

I am Nani Grayu from Arunachal Pradesh. Our state judiciary itself is separated in 2010 with the recruitment of myself and one of district judge. Since 2010 to 2013 I have also acted as a member secretary of SLSA all over India, Trainings which I have got in the conference I have tried to implement. Luckily in our state we have traditional institution in the local area to negotiate cases and settle the petty matters at local level itself. We are interacting with those people also. In one such conference the then Chief Justice Madan B. Lokur had attended the program. In this way we are trying to implement legal services and holding lok adalats and try to make awareness of law with the people of the state and that much I have to say.



I am Niko from Nagaland. I am posted as a District judge and in 2013 I entered into service. Now as a chairman of the DLSA I would like to highlight some of the activities. We have lok adalat, we have restored fifteen children in family and rescued 11 children from bonded laborer, assisted 9 domestic violence cases and forwarded them to district legal services authority. We are working on creating awareness on women and child rights. We have been assisting the court and the victim family. The victim was caused mental harassment and abated to commit suicide. We reported the case and the order of compensation and medical expenses and for arrest of husband and other accused was made.

Dr. Geeta Oberoi: We break for tea and assembled back at 10.30.

## **SESSION 2**

**10:30 AM – 11:30 AM**

### **District Legal Services Authority as Effective Tool to Enhance Access to Justice**

**Justice D.M. Dharmadhikari**

**Justice S. Muralidhar**

KN Chariani, from Baloda bazaar district, Chhattisgarh: sir my experience has been inspiring. Sir I want to share one experience. Sir we take up the matter with the authorities and we asked whether there is anything which entitled that lady to discharge the functions. So we coordinated and fortunately that lady was taken back and she was reinstated. In some of our remote villages, the evil of witchcraft hunting is prevalent. So what village panchayat, complete family one of the family members, they are boycotted on the pretext that they have cast some spell and one is suffering from fatal disease. In some of cases FIR is also registered. We are conducting literacy camps there. Recently on legal services day we have connected some 99 villages. We divided that particular villages in 11 sectors village gram panchayat secretary which is a statutory body under the panchayat raj Act.

We have titled as nyaya mitra and we have asked them to cooperate us in this legal service function.

My name is Anup Kumar, PDJ, Bematara, Chhattisgarh. We have in our districts legal aid clinics are administered and each legal aid clinic we have paralegal volunteers. Our district is agriculture land and some more awareness is required but we are getting very good response from public.

I am Ashish Naithani, District and Session Judge, Uttarakhand. The main concern of our district is rehabilitation due to recent natural disaster, many people are missing and about 900 final report are still pending. Due to disaster it is very hard to reach out to people. Even despite that we organize regular legal aid camp and clinics in the far flung areas with good results. Second major concern of this district is that people who come to pilgrimage often get a baggage like mentally challenged people along with them and they leave them behind and it is really heartening to rehabilitate these kind of people. Our policing system is quite different from all over India. Policing is divided into two parts. One is revenue police which looks after the villages and the other is the civil police. Revenue police is usually not trained and lacks of the basic amenities.

I am Rajesh Kumar Vaish from Jharkhand. I am PDJ Latehar. In Latehar there are more than 70% population are tribal and District Legal services Authority is working under the leadership of our secretary. Conciliation center and mediation center is also working. Para legal volunteers and panel lawyers are working in front offices and they are providing legal aid to needy persons. In mediation cases are referred and civil cases are decided and then a panel lawyer who is in a mediation. Legal aid camp, lok adalat, mega lok adalat are also organized. Victim compensation committee and disaster committee is also working there and in recent years, bank matters, forest authority related cases, electricity matters including bank certificate cases and mact cases are been disposed of.

I am SG Chattopadhyya, District and Session Judge from Tripura: I was a member secretary of SLSA as legal services authority. Legal services authority must be omni present to provide services to the people. We go everywhere, to legal aid clinics, to jails,

to children homes, to old age home. When I was a member secretary of the state legal services authority, we had para legal volunteer and in their efforts they made it possible to provide education to the children of the prisoners to attend the medical needs of the wives, friends and relatives of the prisoners. We have setup our legal aid clinic in mental health asylum. in some cases the mentally ill person even if they have recovered are not being taken care by their relatives for reasons best known to them. Our para legal volunteers who are working in those mental health clinics in the mental asylum help them so that they can go back to their home. At my personal level I wrote a letter to my Chief Justice regarding problems in child labors in my districts and immediately the Chief Justice registered it as a PIL and issued wonderful directions.

Justice Deepak Gupta as patron in chief he visited old age home and found that there was woman who has four children and all of them were well placed in government offices but they left their mother who found a place in the old age home and immediately Lordship issued the direction. I have one question. When I was sentencing a person for 10 years imprisonment in a cases under section 376, IPC. His wife was in court and they had a six month old baby and when I was hearing him on the question he was telling me my wife and daughter and in such cases what we can we do. How can we help them? They suffer for no fault of them.

Justice DM Dharmadhikari: Victims are victims of offenses and they get support. But suppose a breadwinner gets involved into a murder cases and imprisonment for life. What will happen to the family? Police is also asking this question. They have to suffer because of the offence committed by their family. But there are children, they are innocent and they have to be supported. That Delhi scheme can be a model. Apart from victims of crimes Persons who are involved in crimes their family members are also required to be supported. Otherwise what happens one person go in the jail and then the woman has to go to ways?

Justice Muralidhar: The background of Delhi scheme is that the wife killed the husband because of continuous torture and the children were orphaned. She was in jail for 302. Either way children have to be taken care of.

I am Prem Kumar working as Principal District Judge, Amritsar: Our team at DLSA Amritsar is making efforts to achieve the goal of preamble and the Constitution. As a matter of our experience sir that legal aid counsel are not doing their job very well. Even they are not cross examining the witnesses and they are not able to argue the matter. In Amritsar region, NDPS cases are very large. The police is implicating innocent persons and they are not able to engage the counsel, we are providing them counsel but the counsels are not doing their job. This matter is required to be concerned and efforts have to be made.

I am Rudra Prakash Mishra from Saharasa, Bihar. Under the guidance of NALSA program, so many lok adalats are being organized under my chairmanship. So far as success of the programs of the legal services authority or lok adalat is concerned. Since last 10 months my experience is that in Bihar the literacy is poor. So in every Sunday under the guidance of the NALSA program, so many legal awareness programs are to be organized at the District level, block level etc. According to my opinion legal awareness among the litigants and the training programs to the concerned panel lawyers from different fields. In spite of this so many executive authorities are involved.

If the police officers are trained and executive authorities are to be involved then so many cases at pre litigation level can be resolved at the police station. Ultimately my experience is that role of lawyers in this type of programs can be successful ultimately on the role of the lawyers. Agar role of lawyers' badiya apna role play kare toh chahe wo court ke lawyer ho ya from the concerned panel lawyer from the different fields then these types of programs can be successful. My concentration is on 12 December where there will be Rashtriya lok adalat.

I am Vikram Patnaik from Orissa: In my districts I am giving emphasis at the grass root level going to the village to aware the people regarding lok adalat, mediation and conciliation. And first of all I am giving them message regarding their legal right and how lok adalat will help people without court fees, it will save time and there will be great settlement within the family friends. In every panchayat I create awareness in their local

language and people are coming to the awareness camp. My district is running is very fast.

DJ Gopal Chandra Bahera, District and Sessions judge from Orissa High Court. I am conducting legal aid clinic at village level. I have instructed my legal aid secretary to produce the...on the newspaper and whenever I found any problem any violations. I used to call for a report from SP and collector. I am taking PLV in every month. One of my PLV has produced a document before me that he has settled a village dispute along with taken the assistance of amin and he had prepared a specimen along with allotment with their consent. So I am giving more emphasis to train the PLVs in every month, what are the problems they are facing and what solutions should be given to them. I found an injured lying on the road. My driver stopped the vehicle. I asked the orderly and I shifted the injured to medical. I asked CJM to apprise me what is the problem of the victims. The SP told me that his life was saved. I asked the SP and collector to give the helpline member and I have well-advertised at many places.

I am RK Verma, PDJ, Shimla, Himachal Pradesh: I am not directly connected with the implementation of legal services program since last two years being on deputation but in my state all programs of NALSA are being implemented successfully. Legal Aid clinics have been set up from high court level down to taluka level and panchayat level and in all three thousand panchayats legal aid counsel and para legal volunteers have been appointed. Then scheme for rehabilitation of victim has been framed by the state government and it is successfully implemented through district legal services authority. Lok adalats are being held regularly in all courts including national lok adalats and good number of cases have been decided and we have good experience of implementing all legal aid programs except mediation which is not doing well. All judges and many lawyers have received 40 hours training in mediation.

I am Ajay Kumar Gupta, District and Session judge from West Bengal. In our district we are organizing daily lok adalat, monthly lok adalat as well as national lok adalat and settling many motor accident claims, insurance as well as electric bill dispute matter, telephone bill dispute matter. Apart from that we are also organizing legal awareness

camp in remote villages. Now we have decided to telecast the legal awareness camp through local channel and I have applied SLSA to grant permission to organize that legal awareness camp that local channel so that everybody can get awareness through tv program. We have mediation center from where we have solved many matrimonial matters as well as land dispute matters and we have solved many matters which were referred by different courts. We have also placed para legal volunteer in each police station to look after the matters which are coming to the police station. In this way we are going ahead to give legal aid and legal service to the local people.

I am Jafar Hussein Beg presiding officer, MACT from Jammu and Kashmir. Without the cooperation of executive district administration, the holding of awareness camp in rural area is not possible. I saw a person who was very poor and was suffering from a disease and was unable to walk. When chief medical officer was with me. He after examination of that old person informed that the disease is curable and we can treat that person. Thereafter the person was shifted to the hospital and after six months when he came to me he was all right. That was the benefit I took chief medical officer along with me as that poor person was get right. Now as a presiding officer of MACT the difficulty I face is that the interim award, which is only 25000 in case of injury though the injury is more than 80% and the medical expenditure at that time in lakhs if through this it can be conveyed that interim award may be enhanced even in those cases

I am Rajesh Garg, Additional District Judge in Haryana presently posted as OSD vigilance in Punjab and Haryana high court. I had the interaction and opportunity to work with the district legal services authority in Haryana. Whatever you do outside the court whereby you resolve the dispute of nay litigant or a person even he is not a party before you in the court and it gives you immense satisfaction. But particularly when a serving judicial officer approach any awareness camp in a village he has to be extra careful because sarpanches and numberdars of the villages try to come close to you and sometimes they misuse their position by showing their relationship with the judicial officer and mislead the litigants.

I am Ashok Kumar Tiwari, District and Sessions Judge, Dhar. We are doing well in legal services as per the direction of the high court and SALSAs. In the last lok adalat, we have

reduced 24% pendency of my district. So far as the legal aid, we have the direction that we have to give only genuine number of cases. As per the direction of high court and SLSA we have a order and a separate committee has been formed just to check that the cases which are been taken in the lok adalat are genuine or not. Therefore we are doing well as per the direction. Everything is going well.

Good Morning. My name is Shiva Shankar from Karnataka. I am working as Principal District and Session Judge Udupi district. I also incidentally chairman of the district legal services authority. So far the topic of this workshop is concerned access to justice. The work of DLSA is having bearing on this topic in two ways. One is legal literacy and second one is legal aid. We are holding legal literacy programs apart from our judicial schedule. We have to hold these legal literacy programs not only in our working places but also in remote villages and we have to hold these programs either before our working hours or after our working hours. The response from those villages and public because of those hours wither it is prior to 10 am or after 6 pm in the evening.

The people concerned who are beneficiary will not attend those functions and therefore the legal literacy programs which are conducted are not effective. Because only some students will be brought. Some students will gather or some persons who are not having any occupation they will attend those functions. The second aspect is to improve this, in our state in some districts some full time member secretaries have been appointed who are from the cadre of civil judges and only in the few big districts they have been appointed and they are taking care of this aspect and second aspect is legal aid. Legal aid to the poor is becoming poor legal aid. The reason is that we are selecting panel advocates. We invite applications, we hold interviews, and we select panel advocates. Only incompetent, inexperienced who don't have practice they will file applications.

The person who is having a good practice, good experience, competent they will not file applications. Therefore out of the applicants we select the panel advocates and we give litigation to them. If a judge ask a senior lawyer and he may take up that litigation and this is also provided in the regulation number 15 of the ...district legal services authority can ask a senior counsel to conduct that case and it is only in few number of cases the district

or a judge concerned can ask the senior counsel. Therefore these two problems are faced and it is affecting the access to justice.

Justice Muralidhar: First of all happy Diwali to all of you and many few probably were deprived of the occasion with the family to celebrate Diwali this time. It is been quite good to listen to wide variety of experiences. My own experience has been as a lawyer in the Supreme Court practicing over 19 years and a sizeable number of those years were spent for the cases of Supreme Court legal services committee.

That is a learning experience for me. Right from representing convicts on death row to taking up cases in PIL and being appointed as amicus and it was a learning experience. This is the best introduction you get to the lives of the poor because our constitution promises justice social economic and political. Now justice is a broader notion. It is not confined to the cases in courts. Justice in the sense of fairness and I fully endorse this view. The Rawlsian theory of fairness that professor also spoke to Justice implies fairness and the implicit recognition of the fairness and equality. So you just take this constitution and look at the preamble. Apart from justice and liberty the one thing that strikes is this concept of fraternity. In today's concept, fraternity becomes very very critical.

Various kinds of issues. That is the very Indian character. How do we ensure that everybody lives in the life of dignity so which is why you find a line saying fraternity assuring the dignity of the individual and the unity and integrity of the nation. If we do lose this sense of fraternity because it brings together all of us. It makes us spell out our concerns, those common issues that concerns all of us. We are in this place mirroring the respective concern of the people amidst whom we are discharging our public function. In every step of discharging that public function we must make it relevant to the population we are serving. After all it is a service and what confronts them the most.

Therefore it becomes a duty to identify those issues that confront those people whom we are serving. The district legal services authority is a wonderful opportunity that we have. It is an opportunity to step outside the courtroom. Step outside not so much physically as metaphorically. Stepping outside the courtroom and addressing issues that confront the



people the most. Access to justice serves two purposes. One it should ensure that every person is able to invoke the legal processes for redressal irrespective of the social and economic status or incapacity. That incapacity could be in various forms. It is not about economic incapacity. That is only one notion of destitution. There could be social incapacity. Because of the place in society where you are not allowed to step out or they are not allowed to access. Even in a very rich family because of family oppression a woman may not be able to step out to consult her own lawyer. She may be facing domestic violence at home but unable to contact. So this is social incapacity which is not limited to economic incapacity and that is something that our legal services authority Act recognizes. So if you have to ensure access to justice you should be aware of the various barriers to justice that exist and the whole goal is to ensure that every person should receive a just and fair treatment within the legal system. I will run the presentation because it is something that all of us know.

Concepts: Justice and Access to Justice

- ❖ **Justice** implies **fairness** and the implicit recognition of the principle of **equality**
- ❖ **Access to justice** serves two purposes
  - ensures that every person is able to invoke the legal processes for redress irrespective of social or economic status or other incapacity, and
  - ensures that every person should receive a just and fair treatment within the legal system.
- ❖ B Mystification of law and legal processes
- ❖ Privileging of sections of society and criminalizing poverty
- ❖ Dependence on lawyers
- ❖ Costs, delays and uncertainties
- ❖ Institutional model of state-sponsored legal aid
- ❖ Special disadvantages not limited to poverty, social status, economic status, gender, age, sexual orientation
- ❖ Failure to integrate the non-formal legal systems with the formal legal system

State Response to Access to Justice

- \* Constitution of India: Articles, 14,19,21,22,39-A

- \* Section 304 of the Code of Criminal Procedure, 1973: Legal aid to accused at State expense in certain cases
- \* Order 33 Code of Civil Procedure, 1908: Suits by Indigent Persons
- \* Legal Services Authorities Act, 1987 (Section 12: Criteria for giving Legal Services)+ Lok Adalats
- \* Arbitration and Conciliation Act, 1996
- \* Gram Nyayalayas Act, 2008
- \* National and State
- \* Human Rights Commission
- \* Commissions for Women
- \* Commissions for Protection of Child Rights
- \* Commission for Minorities
- \* Other Tribunals including those for accident claims, consumer disputes, debt recovery, issues related to employment under the State and the Armed Forces, telecom disputes etc.
- \* Delhi Government's mediation centres
- \* Public Grievances Commissions/Cells
- \* Permanent Lok Adalats of public utilities
- \* Other dispute resolution mechanisms including Crimes Against Women cells and committees for complaints of sexual harassment

### Three waves of Access to Justice

- ❖ **First** Legal representation: the traditional model of legal aid which is based on providing representation to poor litigants in courts
- ❖ **Second** – the expanded notion of locus standi – class action and public interest litigation
- ❖ **Third** – ADR: Mediation, Arbitration, Conciliation and Lok Adalats

### Evolution of legal aid

- \* First Phase

- \* Pre-independence era: Introduction in the 17<sup>th</sup> century of the Anglo Saxon adversarial model of litigation
- \* Early recognition of the right under the 1898 CrPC
- \* Courts alive to the need to provide legal aid in criminal cases: Re: Llewelyn Evans AIR 1926 Bom 551 and P.K.Tare v. Emperor AIR 1943 Nag 26

### The Second Phase

- \* **Constitution:** Articles 21, 22 and 39-A
- \* **Expert Committees on Legal Aid**
  - \* Expert Committee on Legal Aid (Central Govt) (1973)
  - \* Juridicare Committee (Central Govt) (1977)
- \* Committee on Implementation of Legal Aid Schemes (CILAS)

### The Third Phase

- \* Enactment of the Legal Services Authorities Act 1987
- \* Formalising the hierarchical and institutional model of legal services delivery
- \* Focus on Lok adalats and other pragmatic means of ensuring speedy justice
- \* A model of legal services delivery conceptualised and controlled by the judiciary
- \* Gram Nyayalayas Act 2008

### Lawyers and Representation

- \* Issues concerning lawyers
  - \* Availability of experienced and competent lawyers at all levels: **Quality** of legal services delivery
  - \* Payment of commensurate **fees**

- \* Perception of the **role of a lawyer** as a legal service provider: State driven and not Bar driven
- \* Different models of use of lawyers for legal services:
- \* Amicus curiae, Pro-bono lawyers, duty solicitors

#### Response to the Problem

- \* Judicially evolved PIL
- \* Expanded notion of standing
- \* Informality of procedure
- \* Appointment of Commissioners
- \* Court reaching the problem, and treating it as a non-adversarial litigation.
- \* Monitoring of implementation
- \* Development of law in specific areas (human rights, environment, judicial accountability)

#### Response to the Problem

- \* PIL as a strategic arm of the legal aid movement.
- \* Issues addressed in initial years of PIL
  - \* Conditions in custodial institutions
  - \* Bonded agricultural labour and child labour
  - \* under trials in jails
- \* Issues addressed in later years
  - \* Environment
  - \* Right to Food
  - \* Urban Life

#### Alternative Dispute Resolution

- \* **Section 89 of the Code of Civil Procedure, 1908**

- \* Arbitration (Arbitration & Conciliation Act, 1996)
- \* Conciliation (Arbitration & Conciliation Act, 1996)
- \* Judicial settlement including settlement through Lok Adalats
- \* Mediation (Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd. (2010) 8 SCC 24; Salem Advocate Bar Association v. Union of India (2003) 1 SCC 49)

#### The Legal Services Authorities Act, 1987 (LSAA)

- \* LSAA inspired by the draft legislation appended to the 1977 Report of the Juridicare Committee in **two** important features:
- \* Definition of 'Legal services' includes "the giving of advice on any legal matter"
- \* Special categories who are entitled to legal aid irrespective of their qualifying the means test

#### LSAA: The Institutional Structure

- \* Hierarchical pyramidal structure
  - \* National Legal Services Authority
  - \* State Legal Services Authorities
  - \* Authorities at the High Courts
  - \* District and Taluk levels.

#### LSAA: The Institutional Structure

- \* Composition: dominated by executive and judiciary
- \* Shift away from the beneficiary of legal services to the institution dispensing legal services.
- \* Sizable portion of the budget for salaries and maintenance of the establishment
- \* Co-option of the judiciary by the executive
- \* Multi-tasking by judges at district and taluk levels

## Informal Legal Systems

- \* Paani Panchayats
- \* Khap Panchayats
- \* Katta Panchayats
- \* Shalishi Courts
- \* Naari Adalats
- \* Muslim Women's Jamaat
- \* Other caste, community dispute resolution mechanisms
- \* Parallel systems

## Challenges

- ❖ Reluctance of people to engage with the Formal Legal System (FLS)
- ❖ A robust Non-formal Legal System (NFLS)
- ❖ Need to reorient the FLS as a people-centric system relevant to their problems
- ❖ Effectiveness of '**Lok Adalats**': "Bread for the Poor"
- ❖ Identifying legal services needs and catering to them at the earliest point in time
- ❖ Integrated approach to law and legal services reform
- ❖ Critiquing the institutional model of legal services delivery
- ❖ Inter-disciplinary approach": Involve a wider cross-section of the society

## Legal aid needs of the rural population

- \* Problems of security of land tenure;
- \* Availability of access to resources like clean drinking water, water for irrigation, transportation, and pricing and marketing of commodities;
- \* Availability of finances and repayment of loans taken for agricultural operations;
- \* Issues concerning agricultural labour;

- \* Displacement on account of manmade calamities (incl. Caste conflicts) and natural calamities;

#### Legal aid needs of the rural population

- \* Access to basic facilities including primary healthcare and education;
- \* Loss of shelter and livelihood on account of forced displacement to make way for development projects
- \* Growing unemployment and lack of avenues on account of failure to develop alternative skills;
- \* Forced migration to cities seeking employment

#### Agenda of the Legal Services Committees

- \* What the activities **ought to include**:
  - preventive legal aid elements like advice, counselling and mediation
  - Making it available at the point of entry into the system – within closed penal institutions
  - social justice litigation on matters “of special concern to the weaker sections of the society and for this purpose, give training to social workers in legal skills.” (S. 4 (d) LSAA)

#### Programmatic Content and Implementation

**Visibility and Accessibility:** Organize periodic visits to closed institutions (prisons, juvenile homes, police lock ups, women’s shelters, beggars’ homes) by team of lawyers, doctors and social workers and follow up with remedial steps

**Awareness:** Prepare brochures, pamphlets in the local language explaining laws, constitutional rights and remedies: Tie up with local educational institutions to outsource such activity

**Outreach:** Travel to urban slum clusters and remote corners of districts to increase visibility and enthuse participation by the disadvantaged sections in the legal services programmes

An ideal legal services delivery model

**Preventive** This includes providing counselling, advice, pre-litigative resolution mechanisms at the nearest point in time and within easy reach

**Remedial** This envisages strengthening the existing models of providing legal assistance from the point of entry into the legal system till the point of exit

**Rehabilitative** This envisages an expanded notion of providing legal services even beyond the litigative phase: Relevant for issues like bonded labour, child labour, persons who have been under involuntary incarceration in penal custodial institutions

Agenda for change

- ❖ Challenging the constitutionality of laws that criminalize poverty
- ❖ The use of law and institutional reform litigation as a strategic arm of the legal aid programme
- ❖ Legal aid as part of the overall package of welfare measures intended to support the economically and socially disadvantaged
- ❖ Sensitization of the judiciary
- ❖ Incentivizing lawyers' participation
- ❖ Interdisciplinary approach
- ❖ Clinical legal aid
- ❖ Widening the range of legal service providers: para legal, civil society

I am conscious also that I am talking to an audience where judges may have greater experience than I have. I have served for a decade in the high court but many of you must have served longer or more deeply aware of these difficulties that people face. One is mystification of the law and legal processes. The terms we use in the law the expressions we use, the lawyer use. You will always find bewildered face of clients in the courts. They



don't know what happened and even after the hearing over they would be having blank look on their faces and hoping that the lawyer will explain to them what happened. So that is something which you should be aware of. Second is privileging a section of society and criminalizing poverty. There are certain sections of society who will always be viewed as criminals like for instance vagrants in the roads. Law which we have today in major metropolises and I am talking of Bombay, Madras, Delhi perhaps Calcutta too where you have a prevention of begging law which is a criminal law.

The very act being found on the road without visible means of sustenance means that you have committed a crime. You are defined as having committed a crime. So you are picked up in a raid even from outside temple or from outside public places like a bus stand. People are rounded up produced before a magistrate and sent off to a beggar's home. And then he is processed as a criminal. That is a penal custodial institution. Although the law says that they should be rehabilitated. They should be given skills within these institution. In reality that does not happen so there is a great loss of liberty. In society itself the way you view the poor, the way the law views the poor is very different the way it views the well off.

So that is something we must be aware of and this is therefore an important task which you perform as a district legal services authority is to how to identify vulnerable population. People are there on the streets not for choice. Very often they are out because of circumstances. Like a street child. The child that is born on the pavement, grows up on the pavement. We know number of families if you go through cities. Some of us who lived in cities. We have actually watched whole families or generation living on pavement whose life does not go beyond that pavement. There are number of children on railway platforms. If you enter any city. When you approach the city on either side of the railway track. There are large slums. You wonder how children survive in those slums. What kind of food they eat. What is the quality of water there and yet on a Diwali day you will find that candle are lit there. People are smiling. People are laughing.

They are finding joy in deep sense of deprivation. So our attention should be drawn immediately as district legal services authority to the most vulnerable population whom

we perform a public function. In the Supreme Court legal services committee we mandated that in a case involving sentence of more than 7 years. There should be combination of a senior lawyer and less experienced lawyer. So you can try and experiment with things like this. Like the judge from Amritsar was pointing out that questions have to be asked in a cross examination are not being asked. I would also say that in various point of time you can halt the trial exercise your power under 165 of the Evidence Act and be active and put certain kind of question but of course the larger issues of getting the best possible lawyers, costs, delay and uncertainties which is what are the reasons given in lok adalats. You are very happy that cases were resolved, lacs of cases are settled but these are the people who came for the justice system, hoping for full justice but they are returning not with full justice. This is better than what they could have got if they battle through the whole system but this can only be a short term measure. There is an institutional model of state sponsored legal aid.

The special disadvantage not limited to poverty, social status, economic status, gender age, sexual orientation. After Nalsa judgement instituted by the national legal services authority to get justice for transgender. The judge from Karnataka would be aware there is a film which got an award. It is a real story of a transgender, born to a very rich farmer but the farmer can't accept that the only son he has is actually a transgender. So the person is thrown out of home and forced into destitution. That shows how a large number of transgenders have to function as eunuchs are into prostitution. This is a not a matter of choice. If your hormone are such that although you may be physically be a male but you feel, think and emote, the most important part is emotional intelligence of the person. If emotionally you are a female this is not a choice you make and there has to be a greater awareness of this.

It tells us that you are pushed from the zones of perfect legality. You are born as a man, you have not committed any crime. But you are forced to live a life of crime, you are treated as a criminal and they don't respect you sensitivity. It rejects anybody who is different very easily. Coming back to fraternity assuring the dignity of the individual. Dignity of the individual seems to be the core of the Constitution and as long as we have

this Constitution and we imbibe these Constitutional values in ourselves and therefore disseminate that spirit to people around us.

There is still hope for the disadvantaged people of this country. The last of the most serious challenge we all face is our failure to integrate the non-formal legal system in the formal legal system which is why you still have witch hunting in Jharkhand. Women treated for no fault of theirs. So we have a large section of Indian population who are still punished by the informal legal system. People from Tamil Nadu know the Katta Panchayats or khap panchayats in Haryana. These are the verdicts which no sensible person can accept. You have to talk in their language because you speak in different language and you alienate the whole people. Which is why certain politicians are very successful when they go to particular district they speak the dialect of that population then immediately you are connected with the masses. So you will take the respectable persons from that community, put them on the panel and make them address the audience. How to make the system friendlier to the people. Now I will going to run through this because we have talked about it already.

There are three broad waves of access to justice. If you look into history the first understanding of legal aid was that there was somebody without a lawyer and provided that person with a lawyer. That was a limited understanding of legal aid. It is different matter that if today you hear from Amritsar or Karnataka, facing the same issue still. They are not able to get a good quality lawyer to represent a function. If you look into the Constitution, there is an anomaly there. If you look at Article 22. You will see that there is no fundamental right to legal aid. Legal Aid is still under Article 39A of the Constitution which is under the directive principle of state policy and it says that every person who is arrested and detained in custody shall be produced before the nearest magistrate.

So it doesn't say free legal aid. It say that he expresses the desire to be represented by counsel of his choice, he cannot be denied that right. How many people can say that persons can say that I want Mr. Ram Jethmalani to represent me? That is not even practical. So there is no fundamental right to legal aid and creatively it has been interpreted in large number of cases from Husseinara Khatoon. There is therefore there

is no fundamental right as such which is why legal services authority Act become important because it goes beyond what the Constitution provides in part III. It says every person in custody. If you look at entitlement to legal aid in section 12. The criteria of legal services. Any person in custody.

Even a person in preventive detention which is what Article 22 denies. Article 22 (4), 22 (3) says nothing in clause 1 and 2 applies to any person who is arrested or detained under any law providing for preventive detention. So you can extend legal services even to a person in any form of custody including preventive detention. That is a creative way of looking at. The second wave of legal aid saw the public interest litigation movement and it was completely an innovation by the court itself. It started with Husseinara Khatoun case where the court took notice of a news item in Indian express concerning under trials languishing in jails of Bihar and it is being completely court driven.

Unlike other countries where the Bar on its own has to provide legal services, In India again 80% of the work is controlled by 20% of the lawyers. So when you talk about legal aid to lawyer they will say how about legal aid for lawyers. In fact in other country to litigants pay for lawyers' welfare. We actually have a lawyer's welfare Act and there is lawyer's welfare stamp on every vakalat which means every litigant is paying for the welfare of the poor lawyer. That doesn't happen in any other country. So to expect this kind of bar to come forward to offer legal services is not easy which is why we have state sponsored legal aid. Fortunately we don't have shortage. This is something I found in my research doing my PhD.

Large number of amount are return unspent. Nalsa is waiting to give money to state legal services and they are not able to fully utilize their funds and we must find out why this is happening. They are still unable to utilize the entire budget earmarked for legal services. This is not about shortage of money, it is about devising programs and scheme where we can use the money for legal aid. If you properly plan your programs well in advance. You can possibly utilize all the funds that is available. Third phase of legal aid saw ADR. This is the greater dissemination where we are looking for outside the formal legal system. How do we reach out to the people? So there is free litigation mediation. This is where

the most creative part comes. In India we have all these three phases going on simultaneously. In all these three phases there are challenges there are inadequacies which we have to address.

Today we continue with the situation where people look upon court in a negative sense. There is no thinking to get something positive I can go to the court. That impression has to change that how well we perform as legal services authority will matter. Likewise we turn to Article 23. This is the offence which is traffic in human being and begar, it is not beggar but begar. Most printing of Constitution get it wrong. It is actually an italicized word. If you see the original constitution. It is a word called begar which is an Urdu word. It is a form of slavery and it could be various forms like bonded labor, child labor, and the domestic help that we have in our houses. These are all forms of bonded labor, nothing short of it. So constitution says trafficking in human beings and begar and other similar forms of forced labor are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

So this defining certain acts as offences in the Constitution is something so unique to the Indian Constitution. So one of the things which we have to identify within our districts is not how many convictions comes under the prevention of atrocity Act. That is bound to be very low. As judges we know that the more ever the penal law the lesser the rate of conviction. So it is not about criminalizing that act. There is no point, khap panchayat is a criminal act. Rape is used as a tool of oppression against Dalit women in Haryana. I was just reading an article in epw the other day. That is the other thing you all need to do. Expand your reading. Reading has to go beyond bare acts, judgments and legal articles. You have to read a wider range of literature. Whether it is in the regional language or in English. Please exchange your reading. You have to do it. If you are in the legal services authority you will not get the information that you need.

You will not get the knowledge you want through just reading judgments and bare acts. It will have to be expanded. You have to know the social realities of the area in which you function. So if I just want to end. One is that you have the informal legal system like the pani panchayats, the khap panchayats, the katta panchayats, nari adalats and there is

hope now in this country. Some of these movements. I don't know if the judge from Tamil Nadu is aware. There is something called the muslim jamat and I saw this in the documentary. Muslim women have formed a jamat. They have said that this task of interpreting the Koran should not be left only to men. It requires a great courage, just it require courage for manual scavenging women to say I am going to stop cleaning toilets from today because I want my children to lead better life and I don't want to live this life of indignity. I don't know where I am going to earn my next meal but I am going to stop doing this. This is the kind of people who inspire us. This is the next task. Of course all the task which you have been doing is very encouraging but there are something called hard issues and soft issues. Hard issues one could be custodial violence. Why do certain people get picked up and where do they go to if they don't get legal representation. What is a person is not actually arrested. No arrest is shown in the book.

He is only detained for questioning and later what we get back is the dead body of the person or a badly injured body of that person. There are many families facing this. There are issues in many parts of the countries including the north east, including the left wing affected districts, including Kashmir where people have lost the family members who have not come back. Just one night somebody has been picked up. Either by uniform police man or non-uniform policeman. You have very powerful non state actors and they have not heard of these people after that for twenty years, fifteen years. So where do they go for help. What kind of counselling would they need. What kind of interaction with the state government do they need? These are hard issues.

These are not easy issues to handle. But this is happening within the community in which you function as a legal services authority. In handling these issues you may not rely only on lawyers. So should rely on the wider section of society and keep your channels of communication with the local administration going. It require lot of skills because what we should not lose is the faith of the people in the system. If that is broken then anarchy sets in and people start taking law in their own hands. People are losing faith in the system but if you have to regain the faith if you have to restore the faith in the system we must work at a very close level. I have a different point of view than Justice Dharmadhikari. Sir in some instances.....In certain instances your intervention might be useful when you are

talking with the police. This is basically my thoughts and I am very happy for the feedback which many of you gave on your experiences on legal services authority. I think that the best practices of legal services authority should be shared by all you and that can inspire persons in other areas to pick up those kinds of examples and move forward. Thank You.

Participant: As far as ....our high court of Madras recently directed the police officers to appoint the transgender as a police who have secured more marks.

I am reminded of my two experiences. I was invited to inaugurate a sweepers conference and despite advice of my brother, I said I will definitely will be there and in the course of my speech I said that it is the time where class distinction have to be removed as state by Gandhiji and Vinohaji that Gita should be provided to sweepers and broom should be provided to Brahmins. There was uproar in the city and lot many Brahmins condemned speech. I told them that I said that Gita should also be provided to sweepers and broom should also be provided to not that they should be deprived of Gita. So spirituality and religion should also reach them. That is one thing.

Second is that the subject which should have been better dealt by legal services authority was taken up by a public spirited person. In the jails although put to rigorous imprisonment or not put to rigorous imprisonment work was taken from the prisoners and as per the Supreme Court directions they are required to be remunerated. This amount was being kept in deposit for their interest, interest were being obtained and it was just a sort of separate fund. Not distributed wither to the prisoners or to the families or to the victims. This person took up the issue. Matter came to the high court then high court involved human right commission to see that it is distributed. These are subject for the legal services authority because you are regularly visit the jails and you should have found out whether this begar is going on there or not. .

Dr. Geeta Oberoi: So we take a break and come at 12.10.

## **SESSION 3: 12:00 PM – 01:00 PM**

### **Decongestion of Dockets**

**Justice B.P. Singh, Justice G.S. Kulkarni**

Justice GS Kulkarni: After our first two sessions and the important thoughts which were shared by all of you definitely we can see that there are two sides. One is a good side where lot of work can be done and also on the other side lot many things can be done. The topic is decongestion of dockets. It is a huge topic which is directly connected to the issue which we were discussing today and that is access to justice. Courts are overburdened. What could be the justice which could be given ultimately which can be given to the person who approached the court? What are the causes which would cause congestion of dockets and what can be the remedies. To just give a brief outline. I will give a little background on the concept of access to justice to add to what Justice Muralidhar has said. Access to justice is a concept which is a very old concept. The discussion on this possible started during the time of Henry 2 in 1215 when there was a rebellion account of the abuse by the king.

So the king henry 2 had a solution that let us have some kind of solution and the rights which are given to the citizens can be redressed and the ultimate outcome was Magnacarta where the rule of law for the first time came to be established. The concept was that the king would not be above law and whosoever want to redress his rights and it would be redressed in the manner which was formulated to maintain the rule of law this is how access to justice become part of the common law which we have inherited from the English system. The Bill of rights which are prevailing in any of these countries access to justice was recognized. It was also recognized in so many Constitutions. The ultimate concern is where there is a right there has to be a remedy. Now the congestion of dockets is a thing which is bothering almost all the countries. It has bothered us most. Ultimately all of us and you being the principle district judges having such important jurisdiction over all the entire district. So many subordinate officers below you can do wonder.



It has bothered us most. Ultimately all of us and you being the principle district judges having such important jurisdiction over all the entire district. So many subordinate officers below you can do wonders if you desire so with the legal setup we have today and lodge an operation. Now experience have shown that there are several hurdles created in what we want to achieve and ultimately the result is that the justice which is required to be meted out in time is delayed. Justice delayed is justice denied. What are the causes of congestion in the dockets of the courts? There are many causes which would bring about a situation that courts are not in a position to dispose of cases in time. Causes are that there is definitely a change in the social pattern.

Now people have become more aware about their legal rights and we are also making them aware in the legal aid and the various program we undertake. So they would not fear into going to the court. They want to go to the court. Particularly in Maharashtra I have seen our colleagues were coming from Maharashtra and Goathat they want to definitely not remain outside the system. They would say that I would assert my rights I would go to the court may it be a criminal matter, may it be a civil matter but we have to go to the court and finally sort this out. So this is the attitude. Now if this is the attitude of the majority of the people then definitely the courts are going to be flooded with more and more litigation. Then what do we do. The second case is that people have now got resources.

Apart from being aware of the legal right they have got resources. The standard of living in many of the states of the people have definitely. Then the other reason is there are large number of commercial activities in every state. Now take for example a small place in Maharashtra or in Shirdi where you have the temple of Saibaba. Now in the periphery there are so many commercial activities. About thousand and five hundred hotels are there. People have never visited these kind of places, temples, shrines and now you see the whole scenario has changed in last 10 years. Now places where the government has taken initiatives to develop tourism, every kind of things happen in these kind of places. For example in Goa, I was sitting and I just asked the prosecutor who was appearing before me that what is the crime scene here.

He said sir in Goa we have absolutely no problem except for small crimes. All these problems are created by the people who are visitors, who are outsiders who have come here for labor etc. This is how the criminal matters have increased and courts are burdened. Now how do we tackle with this particular problem? What are the effects of all this. For example taking the civil matters. What will be the consequences? Now a case has come. Case is not being disposed of within a proper time schedule. Evidence is likely to deteriorate, parties may die, and matters may abate. Ultimately there is no justice. The whole system will accordingly collapse and the most important aspect is that the confidence of the person who has come to the court is definitely shaken. He is not sure that whether he will get justice.

Timely justice is very important and we have to discuss as to how we can improve this particular system. I was going through some of the research papers on this particular topic and I could find that there are at least about there are 60 to 70 papers apart from two to three exhaustive law commission report on this particular issue. Now the law commission in the 254 report the law commission has said that the categories are three rather four. There is a concept which is called pendency. After a deep study in about seven to eight states in the 245 report of the law commission. It says that there is a difference between pendency, delay, arrears and backlog.

We generally use there is pendency, there is congestion of dockets, there is backlog and we don't know and I was also not knowing until I saw the report. So they say very interestingly what pendency is. We say that there is pendency. That those matters which are instituted but not disposed of would be the pendency. Now what is delay? Delay is that case in court is pending for a longer time than normally required. So what could be the normal time limit say if I speak for the high court and a writ petition is lodged? Suppose it is a service matter or it is a writ petition dealing with direct tax or indirect tax. How long can the matter will remain pending in the high court. What would be the normal time? That would depend. It may depend on what would be the situation in the Delhi high court or the Madhya Pradesh high court or the Bombay high court. Depend on the pendency, number of benches etc etc.

So that is what delay is. Now what is arrears? That cases delayed unwarrantedly and in the system for longer time than necessary. If they are delayed unwarrantedly and they are in the system for a long time then this is arrears. Now what is backlog? Backlog is institution in a given time is higher than disposal and the difference between the institution and disposal is backlog. So number of cases instituted and not disposed of. That will constitute a backlog. So these are the intricate issues which the law commission has examined and made a recommendation to the government on these issues. Now one of the issue which was considered by the law commission was and this will be the case.

Do we prescribe a time limit? For example in civil matters whether a schedule can be prescribed. And the criminal matters also a prescribed time limit can be given once a case opens to be disposed of. Now definitely the judge concerned can lay down a schedule and try and see that the schedule is maintained as far as possible the schedule is not broken in some manner but the issue went to the Supreme Court after this recommendation and in a Constitution bench judgment in P. Ramachandra Rao vs State of Karnataka which is reported in 2002 (4) SCC 578 the Supreme Court said that no mandatory time limit can be prescribed. However it did not find it as a problematic concept and that the judge for himself can definitely set out a time limit and adhered to it. But it can't be mandatory that no this is the time limit you have to finish there can't be a mandatory time limit like that. So you can't force the lawyer and the litigants to hurry up in the case because ultimately that would derail the justice that is what the Supreme Court said.

As one of our learned brother said that once it is gone to trial it is very difficult or brother from Kerala has said that once it is gone to trial it is very difficult to have a settlement to be brought and it is quite true because by the time the feelings between the parties very hard and possibly the things are out the evidence are out and you never know how many reasons you know there would be. But at threshold it has proved to be very effective and we share some experience with our judges in Maharashtra. Many of the judges could bring about this particular success when the case was considered at the threshold. The moment the case came the lawyers who are appearing. They were first asked as to why you don't sit down with them.

This is the small issue and ultimately success was brought and many of the cases were settled. Now the need today definitely today is speedy justice and the faith of the people in the judicial system. Now there are two or three other important aspects. There are three parties which play an important role in this all issue of pendency. First is the government, second is the lawyer and the third is ourselves. The government is the biggest litigant. In every court you see there are cases against the government. You should try and persuade the government pleaders who are appearing to see that whether it is really a litigating cause or whether it should really proceed to adjudication.

That should be your endeavor. We have seen in the high court many cases where we called upon the government pleaders or the prosecutors even that they should examine at the highest level of department and see whether they can proceed with the matter. In fact you have a national litigation policy you are aware, national litigation policy of the central government which was brought into force about five years back, five or seven years back and where the each departmental head is required to consider that whether the government should really pursue the particular legal matter and the opinion is required to be given. But many times we have seen that only a certificate and it is mandatory for all the government departments to attach a certificate for every litigation which is instituted.

I don't know how much it is being followed in all the other states but at least in the Maharashtra, they have been following this at many levels and that certificate ultimately is given but what we see is that a certificate is a formal certificate. There is no real application of mind by the head of the department. We called the head of the department once and said what is this, this case is completely and fully covered by the decision of the high court even later on some Supreme Court judgment and still you want to litigate and you want to litigate and the matter was adjourned about thirty six times. What is all these. So ultimately the matter was taken up. If you don't withdraw this we will take care of it and ultimately what we found out was that there were about 150 such cases.

We told them there are many such cases which are coming and all those matters were disposed of. So we had to take our, it has to be the initiative of the judge himself because

the matter may come how you look up the matter. This is very important for the judge concerned. Now the lawyers play an important role. Now you are very well aware that you are senior district judges now that many times the lawyers are interested to prolong the matter. They would come with adjournment application for one ground or the other. Many times the prosecutors are also interested to delay the trial and for reasons you know why they want to delay. So this should be very sternly dealt.

The Supreme Court says that this should be dealt with stern iron hand. Adjournments has become an absolute concern for the judges everywhere and in every state and at all levels. Now in a report of the law commission which was a report in 2009. They said that even in the criminal cases where the prosecutor is asking for a time and court feels that it is unwarranted a minimum cost of 500 Rs. should be imposed. It was not accepted and I am told that the issue is still pending in the Supreme Court and somebody has challenged it in a PIL as to what is to be done and there was a notification which was issued. So I don't know what is the result but ultimately on the cost minimum cost of 500 Rs. that was a recommendation. It was accepted so as to curtail the delay. That was also challenged. Now the lawyers and now the judges. The judges as I said the most important aspect is that we have to maintain the faith of the litigant. Now one more aspect is required to be taken into consideration is best use of technology. Now everybody has dockets and one of article which is there in our compilation today Justice RC Chavan of our high court he has very nicely mentioned that the judge concerned should look into his dockets. Suppose a session judge say about fifty or seventy sessions cases which are pending on his docket then he need to see which are the similar session cases..

Like you may have murder case in respect of a stabbing so list all those cases because the moment you try one case because the moment you try one case you know the entire law you know what evidence to be seen and if these kind of cases are club together and decided one after the other it will definitely give a speedy disposal what Justice RC Chavan has shared with us in the one of his articles. It is a very important input. Now technology can be definitely used. Now with computerization of most of the courts everywhere all over the country we have a complete data as to how many cases of which

category are pending now all those matters can be clubbed together and can be seen for example the land acquisition references.

Now you have earlier because of the maintaining of registers and no computerization you were deciding each of the land acquisition references separately because it used to happen in Maharashtra that similar matters were dealt independently but now with this we can definitely club matters though the matters were coming the reference were made during different point of time. I can share example with you. In Maharashtra next to Bombay there is new Bombay and there is large scale land acquisition to set up this new town which is known as new Bombay project and also it had a port trust which is known as Jawaharlal Nehru Port Trust. Large number of references. Now large number of references came to be filed. There was reference under 18. There was reference under thirteen. Now at Thane after this computerization. The judges have shared with us that all this work bunch together and large number of reference came to be decided. Now many of the cases also came to be settled through government initiative and the cases were sent for a settlement and ultimately lot many matters were settled. So this is one of the things. Now there is one more thing I would like to share with you. Two very interesting concept in the pre-trial attempt which I said. In the US particularly in the state of Massachusetts. They have a huge pendency problem.

The government really become worried what is to be done? The American citizen being deprived of justice. This is not a good state of affairs at all. So they came with a legislation and under the legislation appointed bar auditors. We can make use of it without legislation in our system. The bar auditors are those persons who are practising lawyers. Now the law would mandate that in a given situation the judge would refer the matter without opening the trial to the bar auditor. He would complete the evidence he would do everything what a judge would be required to do and make a reference to the court.

The court will consider the matter and consider the opinion and what is the decision which is weighing with the bar auditor and would confirm it just like you know arbitration. Earlier under the 1940 Act, the award would be filed in the court and once it is filed in the court there is no challenge that it would be accepted. Something of that nature and it really

worked and this was implemented where there was large pendency and there was huge docket you know of these courts. Similarly very interestingly in the state of Pennsylvania, in divorce cases they appointed masters now the master would hear both the parties. He would make a report to the court.

He would gather evidence in divorce cases and make a report to the court the court would accept the report and ultimately the issue would be resolved. So this is everything is outside the court. Now we would be definitely benefited by taking recourse to section 89 of the Act. Everything out of court. Lawyers can sit down, it can go for arbitration. Then recording of evidence. This is very important. Now we have seen the prolix, and the verbose and the repetitive examination, cross examination over weeks together by lawyers that should be avoided. In one case which I was dealing as a lawyer I could see it was a testamentary matter which has come they said it is a issue pertaining to the will of a deceased Parsee.

So I said that may be it is a short matter and I said that you can send the brief and when I saw the cross examination itself was 950 pages. So I asked the briefing counsel what is all this. No no it is cross examination of a senior solicitor in Bombay. He was one of the witness to the will of the deceased. But 950 pages. He said he is one of the most eminent counsel in the Bombay high court and the question which are put to the solicitor are about 1600 questions. I said these things can never go on in the court. In a given case it can be referred to commissioners. Commissioners can be appointed where you feel that it is futile to waste judicial time.

They can report and ultimately the matter can be over. Then the other important thing is identification of unproductive judicial time. Now I would like to have your feedback on that. You can save that time and attribute that particular time for your judicial duties. Then identification of pendency. How do we identify. Now you as district judges you are concerned with many talukas and other courts which you are required to administer. Now how to identify the pendency and the pendency in respect of which kind of matters. You can invite a weekly disposal list from the judges that how many cases they have disposed of within a week that how many matters are pending so that you know and whenever

there is occasion to meet these judges and your colleagues you should always impress upon them that how they should work because everybody require guidance and the guidance from the principal district judge will always be welcomed.

Now placement of judges. Now the district judge is the best person to know that who are the judge who are working under him they are working under what jurisdictions, who is a competent person to deal with a criminal matter, who is best suited for civil matter etc. He can always get back to the high court on this and say sir i feel this is what to be done as pendency here is so much. So the quality of judicial officer is required to be identified and the quality of judicial officer is required because they would definitely help. It may happen and it is very human. A particular civil judge or a junior magistrate has been appointed and he has hardly dealt with a category in the matter.

Today we are not in that kind of system where are we render him to learn. Ultimately we have to see those who are coming to us for justice delivery. So this identification would be very useful and competent judicial officer which you feel can really deliver can be placed at those places and you can definitely make recommendation to the high court. Then the number of courts. Now this is another thing which I would require your views on this that you feel that a particular place at particular taluka or a particular jurisdiction the number of courts are less, the number of judges who would actually be required to be appointed are less. In that situation have you any point of time reverted to your high court, the registry or the guardian judge this is what the problem is when I have taken charge of the district. You need to have the support of the high court or the higher officials in the system.

Now about the ADRs. You would be the best person to see that which matter can be mediated whether it can be settled and whether it can be referred for arbitration, mediation or lok adalat etc. etc. That endeavour you should inculcate in every judicial officer. Then identification of priorities is another aspect and you need to identify the priorities. For example how do you identify. Some matters are required to be given precedence. You may feel there are many matters which are pending for a long time. But ultimately some matters can be given priority. For example you have the fast track court now and some



matters where there is lot of public outcry where you really feel that it would be the faith of the people and people are actually looking at this. These kind of matters have to be given priority. For example corruption cases required to be given priority then cases involving offences of rape and sexual offences, those can also be given priority.

Then cases involving violation of human rights of weaker sections also required to be given priority. You need to have the confidence of the people who are in business because ultimately business will going to promote the entire economy. You cannot concentrate on only one particular branch of law that these are deprived this is causing social impact etc. You need to also look at other. So you need a very good balancing act. For example in intellectual property where the matters pertains to intellectual property rights. Those matters are definitely required to be given priority which we have been doing in the Bombay high court and also in Delhi high court the cases are being disposed of quite early. There is already a competition between Bombay high court and Delhi high court where so many intellectual property matters are being filed.

So these are some of the things now there is one thing which I need to finally say that with utmost devotion of our judicial officers and the hard work which we are all doing people have maintained faith in judiciary. Now people don't go anywhere else but ultimately they come to judiciary. In Maharashtra there is a delay which is caused also because of the strike of lawyers. The lawyers going on strikes. Now is it happening in any of the state where. Now that situation should be avoided. The Supreme Court already in *Harish Uppal vs Union of India*. Which is 2003 SCC. You need to really inculcate and motivate these lawyers. That work culture and futility of strikes is required to be taken care by you. This has delayed the matter in many of the places in Maharashtra. We had a recent example where there was a demand for Kolhapur Bench in Maharashtra and there was also simultaneously a demand of a high court in Pune.

The Pune district bar they went on a strike almost for one month and ultimately it was really a collapse of the system and the matter came to the high court. The bench issued contempt notices and they were called upon and when they were threatened that their licenses would be cancelled and the judgement in *Harish Uppal* will be strictly

implemented the strike was called off. So you need to go out of the way and take drastic steps to avoid these kinds of things. Now the last thing which is important is that you need to take the executive in the confidence. The collector's commissioners persons who are posted at the revenue districts they also need to be taken in the confidence and to see that a situation is brought about where things are mediated and you know things are settled. With these words I would just request Justice BP Singh.

Justice BP Singh: It is lunch time now so we have to rise for lunch they say that bhuke pet na man gopala so you can't even prey on empty stomach. Any way what I was thinking that my brother has made some very useful suggestions. many of you must have different jurisdiction seen different types of difficulties which arise in the disposal of a matter for a class of cases and you may have thought of some way of getting over it I would like you to tell us what is your experience. Identify the points which you want to deal with and suggest the solution if you have any so that later on we can discuss these matters and come to certain concrete conclusions as to what are the real causes for delay and what possibly could be the methods to deal with the situation. The fact is that congestion cannot be disputed.

Justice DM Dharmadhikari: On behalf of all judges at the district level can I say that they have also a fundamental right of rest and leisure. So much of work with legal services authority, lok adalat, every holiday is lost, no family life, no time to think on the subject because ultimately everything is not provided by law. Unless judges are given sufficient time of rest and to reflect they will not be able to deliver good judgements and basically we are forgetting that it is because of the litigation explosion in this country we are thinking of this substandard dispensation of justice. Best thing I agree with Justice Ruma Paul who said that to empower and strengthen the traditional court is the best thing. You may have alternative dispute resolution of class action class cases. But the courts are required to be strong and there should be a division between judges doing traditional work and judges doing nontraditional work. Unless this culture is developed our judges will be under tremendous work pressure and they will not be able to deliver as they are expected.

Dr. Gita Oberoi: Thank you to Justice Dharmadhikari.

## **SESSION 4**

**2:00 PM – 3: 00 PM**

### **Poverty As An Impediment in Access to Justice**

**Justice B.P. Singh, Justice G.S. Kulkarni**

Justice BP Singh: We would like to hear your version of the problems you face in different jurisdictions like we had in the first session. You can combine both the sessions i.e. 3 and 4 because we are running against time we can do that. After you have told us give us your feedback then we will respond to these and see what suggestion we have to make.

Participant: We are talking about the congestion...as far as congestion is concerned we all face this practical difficulty of reducing the pressure of work adjusting the board rather than management of the docket so by and large what we try to do is to keep similar type of cases together say for example land acquisition cases or cases on motor accident cases. Those types of cases are bunched together so that evidence can be recorded, time can be saved witness sometimes are common so you can save lot of time by clubbing together these type of cases. So it does help to ease the burden on the docket and it help to examine many more witnesses in the case. Now as far as criminal work is concerned say session's trial also it is not possible to have any classification and combination of cases together. That has to go individually but that we face the difficulty my lord that witness are not easily forthcoming though we are supposed to do trial on day to day basis. The system which I have evolved is rather on day to day basis. In the place like Goa where the population is less education level is very high but on the criminal side we face a difficulty because there are very few lawyers who handle criminal cases so what happens is that the same lawyer is appearing everywhere.

So there is very less population of lawyers on the criminal side. The system which I follow is that give dozen date at a stretch. Different dates and I tell the public prosecutor to identify the witnesses so that the defense lawyer known which day which witness is coming so he can prepare and it is not the case that there will be any overlapping of the case. So what happens is that if today trials opens with the framing of charge then I give

the dozen dates at a stretch and then asked the public prosecutor to identify the witnesses who will be examined in sequence so the defense lawyer is ready and he does not have any conflict of date with the other courts so I can get an expeditious disposal in the sense that at least within a year's time I can complete a trial. So that is the way i try to manage session case. Appeals and all take their own time but then of course there is no difficulty.

Now next topic poverty as an impediment is concerned. It is a ground reality in the sense that the poorer a person the less educational exposure the less access to justice and those who may have a very utopian sort of scheme that legal aid should be provided or all the facilities should be provided to the poor and downtrodden. We use the services of para legal volunteer also and through them we also try to enlighten the members of the public so they are made aware that these are the rights they have and these are the sources from which you can access these rights. So the fact still remains that poverty is an impediment but we ought to see that how in little way we can make justice accessible to them.

Participant: Most of the cases pending on my file are appeals and mostly appeals. When the case came up before the rent controller, this examination took place for one year that was the cause for them to move an application for transfer of the case from that court. When both counsel appears before me. How much time is required for them? They told that 40 minutes trial is required. Then I gave the direction to rent controller. The case was of severe nature and cross examination was continued for more than 40 minutes. then again they moved an application before me then I directed the rent control for recording of evidence then complete the cross examination within one day. So fa as poverty impediment that i agree that most of the poor people get justice. Legal aid is being provided by people who are not been able to engage the counsel

Participant: The judges needs more strength and protection because for everything they boycott the court, for every trivial thing they are going for boycott. The administrative work which is also been entrusted to the judges has become an impediment to do the full extent on the bench because we have to attend both the administrative and judicial work simultaneously. Sometimes circumstances are like that when we go for two or three

complicated judgments, we have to invariably postpone one matter and then attend to the administrative work so that we will not get any reminders and such things from the high courts. At least conducting lok adalats every Saturday we are being entrusted to conducting lok adalats or mega lok adalats and Sundays we hold some workshop practically entire month we will not be getting even a single day to take rest or to spend for our families.

It is true that as a judicial officer our 24 hours should be dedicated to our work but I think in my humble view at least a day should be there for taking rest or to attend our families. Every Saturday and Sunday is working day for family court. Whole one month not even a single day to take rest or attending the families. Next thing is prioritization of cases. Everything has become a priority now aged person priority, women priority, children priority, poverty priority and prioritization of cases has ultimately has lost its significance. The last thing which I want to say is burdening of cases. Heavy pendency is not a big task as far as I am concerned. If the judicial officer is given full time to dedicate to the judicial work. Even in my court there is 800 pendency. If i am given 2000 pendency also if I am not given full strength and no administrative work I can dispose of all the 2000 matters within an year my lord.

Justice BP Singh: I would like to know from anyone of you if you have any experience which you like to tell all of us because most of these cases were, most of these cause for delays will be more or less the same. But there may some special reasons for delay. If you could highlight that if any one of you have experimented with something.

Participant: Section 309 is very clear about how to conduct a trial when the case comes for the session court. Now there is Supreme Court mandate also for day to day trial has to be done. I was having a fast track court earlier but now I am a district judge for the last one year. In that fast track court there were 250 sessions cases in that cases how to apply the mandate of 309 is very difficult. I use to fix the case for three or four days continuous. So that all the material witnesses they should be examined there and then. Otherwise it is not possible to have early trial as per the mandate of the section. So the best practice is even out of these things they have to evolve. In our district as well as in all the district

in Delhi, the high court has directed us to have study circle every month of the judges. So there also we have study circle and we share our experiences and evolve best practices. If you look into the session cases some of the best practices where if the similar witnesses are there then in that case why to examine all the similar witnesses.

Like in NDPS cases, there are so many witnesses of one single file and increment matters also. So only most effective witnesses to be examined. For official witnesses we used to take affidavits or we used to just get the admission or denial of the accused. If they never seriously oppose those particular things in that case then we can easily exhibit those particular documents and dispense with those particular witnesses. There is mandate of the Supreme Court also the case was remanded for this particular ground that certain few questions which were to be asked, material questions to be asked from witness, neither the legal aid counsel ask those questions. Even the judge also did not interfere. So there was a reprimand from Supreme Court. So we sensitize, not 313, cross examination. Even we have the system of sensitizing the legal aid counsel also. We have monthly meetings with them where we generally discuss various principles of civil procedure code. Section 53 A on these particular topics where they face difficulty and then we make those particular issues there.

Participant: I have a suggestion if you referring to mediation center only post litigation cases. Those cases which are pending in court, we are referring to mediation centers. So by making referral of cases during pre-litigation stages also we can really force arrest prospective litigation. Section 89 doesn't warrant the referral of case which are at the stage of pre litigation. If we can manage to amendment of section 89 in the CPC we can have pre litigation cases also refers to mediation centers. So that.....

Justice BP Singh: 89 is an enabling provision. Otherwise also it can be done.

Participant: Before a case being instituted. I said before institution of plea. In maintenance in several family matters. Once the litigation is comes before the court the inevitability is nothing rather than divorce.

Justice Murlidhar: Why have 89 because 89 is for the pending cases. For instance in the high court mediation center in Delhi even at the district centers there are some pre litigation cases. What you have to do is to announce either by brochure or pamphlet or even boards that even persons who have not yet filed a case are free to come and refer the cases for mediation.

Participant: But our ADR center is not permitting. In Kerala we have an ADR Centre. Our board of governor should sanction it.

Justice GS Kulkarni: The answer is in 2002, the amendment of the legal services authority Act and chapter 6 came to be inserted where it is specifically pre litigation and conciliation. The disputes which are in pre litigation can be referred to the lok adalat and lok adalat can take care of that.

Participant: I have no doubt that matters can be referred to lok adalat I am only on the mediation center. Can it be sent to mediation center?

Justice GS Kulkarni: If a pre litigation case to come up before a particular judge so therefore the provision has been specifically made under 22C. It says cognizance of cases by permanent lok adalat.

Participant: Coming to my opinion because of non-following the procedural laws there is still pendency in courts. Because already procedural laws have some limitation for doing the work. For example after filing the suit within seven days the matter has to be. But how many judges following that procedure. Thereafter within 90 days statement has to be filed. But the case is pending for filing of written statement. Thereafter according to order 18 we have to file proof of it to reduce the time of the court. But judges allowing the lawyers to cross examine the matter. Without pleading we cannot permit to adduce evidence. So we have to curtail the cross examination of the concerned counsels.

Then there is some time limit to pronounce a judgement. According to order 17 we have to adjourn the matter only three times. But we are adjourning the matters for the years together for cross examination and chief examination. So we have to first of all follow the

procedure in CrPC. Already the Supreme Court in so many cases direct the judges to post the cases on day to day basis and trial also has to be conducted day to day basis. If the defense counsel is not cooperating with court first of all we have to impose cost to the accused. Thereafter we have to cancel the bail to the accused but we are not following. If we follow the rules the matters has to be disposed of. We have to adjourn matter only three times. Thereafter we have to follow the other steps. The Supreme Court has directed that to initiate disciplinary proceeding as against the concerned officer.

Justice BP Singh: As it is we are running short of judges, most of them will be suspended

Participant: Most of the judges adjourn the case because of fear of the advocates.

Participant: In Tamil Nadu it is mandatory to say the litigant that we have to pay the advocate fee whatever is mentioned in the order.

Justice BP Singh: I think so far as this de congestion of dockets is concerned. We are almost all agreed to some of the cause and also all agreed how to get rid of it. But then what happens is that main reasons is that the courts are overburdened. The strength that is sanctioned today is highly insufficient. Insufficient in the sense that if for a certain population in America they have 167 judges for the same population in developing countries with whom we can compare ourselves. They required about 65 judges as against that in India we have 10 judges. So if you increase the strength of the judges six times then you can perhaps reach a step where the pendency will be reasonable limit say within a year or year and a half two years matters will be disposed of.

But that is not going to happen because it has many problems. First can we afford that two where we will place them, we don't have infrastructure. You cannot get a stenographer nowadays. I don't know why but whatever you are willing to pay they will not come. Second is the number of vacancies that we are having whether at the district court level or at the high court level. The vacancies are as it the number is not sufficient over and above that there are vacancies which are not being filled up. Then infrastructure is a problem as it is today even the court buildings are overcrowded. When you talk about a court the majesty of a court is if he find judge is sitting under tree and doing justice then



he will not think much of him. But if he finds him sitting in a proper court room then he thinks he is best in doing justice. That is the psychology of a litigant. I am not saying he should be given very comfortable places. But then the district courts as they are in many parts of the country are terrible. There is no scope for bringing more officers.

Even at high court level there is difficulty in filling up the vacancy. One of the problems is that there is no place then. Where will a judge sit, courts don't have a chamber, they don't have a courtroom. 75 vacancies today in Allahabad high court but they don't have 75 rooms. So what is the use of appointing them? Therefore the problem that we are facing is obvious. Therefore we have to think given the circumstances what can we do to make the situation better, more acceptable. They say so many cases are pending but what they don't say is that how many cases judges have disposed of. That is one figure which is quite revealing. I don't remember the exact figures. But say I am just giving an example if one crore 50 lakhs cases have been filed in a year all over the country in all courts. One crore 47 lakhs have been disposed of.

It is only 3 lakhs which joins the backlog. And that figure goes on every year so it is in crores. So what people do not know is that it is not that judges are not working. Today I can say with some pride that the judiciary is the only institution where people still work for 10 to 5 or whatever be the court timings. You go to executive court you will not find the officers sitting there. Go to an office of the district magistrate he will not be there at all may be attending a party. But then our judges don't do that and we are proud of that. But then despite this the problem is still there. You don't have only judicial work, you have other works also and they are more tedious than judicial work. I am surprised that Sundays sometimes are also not available to judges but this burden of cases pending continuously weighs on your mind. It does affect your judgment because you don't have the time.

So you have to do something and you have to do a quick job. The quality does suffer. Compare the judgments written today by judgments written by Privy Council or by the federal court. Now quality can't be the same. One of the reasons is that you don't have that leisure that judges must get because your work is mental. Sometimes in very simple cases lawyers will come and cite 20 cases before you. Now all of them may be irrelevant

but for the sake of writing the judgment you have to through them. It takes time. Therefore you are right that the quality of work will suffer. But then it is one way of doing as much as you can in the circumstances in which you are placed. I think classification of cases when you classify cases of a particular type and assign it to a particular judge I think that judge should be there for some time.

He should not be there for 15 days and then he shifted to some other jurisdiction, the idea being he get acquainted with the law after having decided four or five cases. The process of speeding up the trial get accelerated you can dispose of more cases but that is only if you remain on same jurisdiction some time say six months or nine months then perhaps you can do justice to the cases pending before you. Merely classification and transfer from one jurisdiction to another will not serve the purpose. Now the other way in which you can perhaps reduce the time taken is to do your homework. Now again you say that where is the time. But I think you have to find the time because even if you all have to get the matter settled, unless you are briefed on the facts of the case you are not able to give the valuable suggestion to the litigants that look I have seen your case.

This is what can be done. May be it may appeal to them. But if you don't know the facts then one lawyer will say one thing and the other will say the other thing and then you don't know where you are. Therefore preparing yourself for the hearing is a very important aspect of your job. The general impression people carry that on Sundays judges are free so they will come to meet you. They don't know that for Monday the Supreme Court sits for admission cases and you have 80 briefs to read. Now 80 cases thank to you thanks to the high court the briefs are quite healthy. We at least sort of know enough to control the proceedings other the irrelevant things will be argued and you will waste lot of time and mind you all those cases are disposed of on Monday.

Some judges will sit for 6 pm or 4 pm but there are others who can finish it by 11.30 or 12.00 also. That is a different way of doing it. But anyway so. The second advantage that you have if you have read the briefs thoroughly at home. The second advantage you have is that you control the proceedings. You can always cut a lawyer short if what is argued is not relevant. Otherwise the matter can go on and on. In the Supreme Court you must

have heard of Justice JC Shah very illustrious judge of the Supreme Court. One day he ran through his list and by 11.30 he had no matter on his list so and chief justice from his least send some matters to him. They were the last 10 matters. The lawyers make their own arrangement.

So they thought these matters will not be so early so they were not ready and suddenly the matter which was at 15 or 20 in the other court came up as number one in his own court. So lawyers were disturbed and one of the leading lawyer said what is the matter. He said alright I have one case before them but that is not a big case and it is not something that I cannot argue but anyway you people get ready I will take some time so he went to court and he was the authority on Hindu law and he started administering the principle of law and it went on and on and on until 4pm judges were hoping says we have to look into this and that. All that happened and when he came out. Sir you said it was small. He said they have not read the brief therefore they were hearing me. Tomorrow when they come ready with brief then you see how much time it takes.

Adjournment is something which you have to control and mind you if you are known to be a judge who does not grant adjournment they don't ask you for adjournment also. They ask for adjournment only where they know that adjournment will be granted. Many of my brother also told me that you so liberal with everything else except adjournments. Latitude does not means license to go on getting adjournments after adjournments. Therefore I think that stage has now come where if you are given the latitude which Supreme Court wanted you to give beyond that you should not give. How it affect your disposal. If you don't adjourn that matter you take up some other matter. But then you will see when the statistics are made then these are the cases which get delayed.

These are the cases which have shown as the cases which are pending for 7 years or 8 years. Now the other thing is one reason are why lot of cases in appeal are filed. Apart from legal advice given this is a judgment I want to appeal. Lawyer will say yes we can take a chance. That is not fair. if a point worth arguing I can understand and where there is nothing and particularly so look at the government matters. All government pleaders matters are sent to them, whether an appeal should be filed they will say yes. The appeal

should be filed because no one is prepared to take the responsibility of saying that no appeal should be filed. Because tomorrow they will start criticizing him you have shown a favor to this party by not appealing. So everyone tries to see and the burden is thrown on your shoulders. Let the judge decide whatever he wants to decide. In certain jurisdictions you have this kind of problem of a particular type of case coming up in very large numbers. These teachers I never knew when they went to school because there were four benches only dealing with teachers' pay scale. The same teacher will file two or three petitions in a year. Anyway they are also to be disposed of. We have tried to find how similar cases to be classified and one order we did succeed in some manner but in entirety.

One other reason why our dockets are congested is that in foreign countries particularly in America and European countries whenever a law is passed an assessment is made as to what is the extent of litigation that this law might create and based on that and based on that they create special courts. In our country we pass numerous laws and every time you amend the law or you pass a law you create a crop of litigation. At one time the criminal court did not have many cases of atrocities on women but after 498A God knows how many cases have been filed. Some were true most of them were false. But then it is there. So many laws are made for the benefit of a certain class of person take for instance 498A who are the ultimate true sufferers of this prosecution.

One is the girl who complains against his father and she might not be married thereafter and who the second who suffers, mother-in-law, so many judges say, bail, except mother-in-law etc. As if mother-in-law is such a bad person who should always be put in jail not realizing that mother-in-law is also someone's sister, someone's mother, someone's wife. Therefore this type of prejudice against any section of society I think is very unjustified then it happens. Many people sincerely believe, genuinely believe that mother-in-laws are bad. But mother-in-law can also be wife, she can also be the daughter.

The other suggestion I can make is that in discretionary matters, it depends on the facts of each case but the Supreme Court has also emphasized that not the binding nature of discretion but there may be some inconsistency in the orders of the court. It would be useful sometimes for judges to sit down discuss matters which arise and very broadly a

guideline as to how that discretion is to be exercised. It should not be that in one case you are given a relief in a particular form, in another case, no relief is granted. Therefore in discretionary matter also to the extent possible to achieve consistency there must be an attempt judicial officers to sit down, discuss amongst yourself.

But then it makes your task easier. You are guided by a particular guideline. You take that into account and you can decide the case faster than if you have to from beginning consider all the aspects of the matter then find out what should be done in the matter. But let me tell you in a lighter vein that all this theory is alright. I saw an advertisement said in hindi, khatmal marne ka shartiya ilaj. six annas was the prize. So many people send six annas and got that parcel. It had a chinta and it had a small hammer. usem likha tha ke chinte se pakdo, hatode se maro. So ultimately your pending cases are also like that in the ultimate analysis you have to pick up any one of them and dispose. There is no other remedy all the theory are there. So you have to pick them one by one and dispose them of by one by one. That is the only way that you can decongest your docket.

Now coming to the other issue, the subject we have mentioned. You see poverty is an impediment to everything. Poverty is something in our materialistic world which impeach everything. Whether you ask for justice, ask for house, ask for cloth, ask for land, poverty is one cause which defeats your most of wishes, deprives you of most of the desires that you have. But in our context, this will apply to the courts at the lowest level. Because the poor person does not have the means to go to district court, nor he has the means to go to high court and he cannot go to the Supreme Court.

Because whatever you may say legal aid, everything is there. But it does not involve some expanse which he cannot...therefore at the lowest round, we have heard all of you the efforts which you have made, to give legal service, to give legal assistance, to find people who need legal assistance. That is all very good. But that is about all that you can do within the framework. But what I was emphasizing was that the emphasis has to be at the lowest level because that is the level where you will find these people. They have small problems. They don't have big issues to go to the original side of high court, nothing of

that sort. They are very small issues. The only thing which I can tell you is that you will have to have some sympathy for these people. If you strictly apply the law this poor man not know that such a law exist. So I don't say that you disregard the law but then when you are dealing with the cases of the society. He comes to you for justice. In merchant of Venice that justice is also given by mercy. Some compassion, kindness for the poorer section of society.

They are the more rejected class of people. They don't have any future. But then if they have a dispute. The fear is that the danger is that in most cases of this poorest class the oppression is by a stronger person belonging to stronger section of society. Now their fear is if they ever to go to court of law. They will be subjected to more oppression. That is why they do not wish to go to court. They want to settle their dispute or suffer it. Now that is where other institution, NGOs and all have to come forward and help these people to come into the court. But their fear always is that in a case for all my whole life I have to put against these persons whom I have annoyed by going to the court. So that aspect of the matter you have to consider. So I have nothing more to add. Perhaps my brother would like to say something.

Justice GS Kulkarni: Poverty is a hurdle to justice, a matter of concern for the courts, even prior to independence. In fact there are two very good decisions. One is of the Nagpur Benchin Lalwin vs. Lalwin Evancs which was a division bench of Justice Foset and Justice Madgaonkar which dealt with the rights of the prisoner and a question was a person who is the under trial prisoners who is remanded to the police custody. This is a case of 1926 whether he would be allowed to have a legal aid or a legal advisor at that stage. There was a strong objection on behalf of the crown. But ultimately in two independent judgments of Justice Foset and Justice Madgaonkar they said no it is the right of the person and definitely this case should come forward and granted legal aid.

Then there is another very celebrated judgment of Justice Vivian Bose on Habeas Corpus matter in Prabhkar Keshavaro Tare vs. Emperor. The court took into consideration the basic human rights at that point of time and said that yes he has a right to dealt with in accordance with law. After the Constitution has come into force in 1950 we have Article

32, we have Article 226 where citizens can directly approach the Supreme Court or the high court and there is no question of court fees etc. So the rights would be protected if citizens approach these higher courts. Now the legislative cognizance was taken by incorporating Article 39A which we are discussing on legal aid which was by the 42nd amendment of the Constitution where Supreme Court repeatedly has said that it would be the endeavor of the court to see that the legal aid is immediately made available it should be at the cost of the state.

It should be made available at the first go when the prisoner is in jail and therefore in Sunil Batra and Delhi Administration in 1983 Justice Krishna Iyer said that it is the session judge or district magistrate who would be under an obligation to go that it is part of the fundamental right of the prisoners to go and visit the jail and see that whether the legal aid has been made available to him. Then Husseinara Khatoon case which was the case where the concept of locus standi was considered for the first time by the Supreme Court. Supreme Court was acting on a newspaper article and the petition by a journalist that large number of prisoners are languishing in jails when they have actually undergone the sentence under which they have been charged. The Supreme Court came to their rescue and said that speedy trial is a fundamental right. That is what the Supreme Court has said in Husseinara Khatoon. In a case Bihar Legal Support Society vs. The Chief Justice of India. One Lalit Mohan Thapar and Shyam Sundar Lal were the two persons who were in custody and they had moved a bail application and the Supreme Court Bench was sitting late and hearing the case and ultimately they were granted bail. The petitioner said that you are giving this kind of treatment to influential persons why not to all who are languishing in jail.

The Supreme Court in Justice Bhagwati's Judgment laid down that doors of the court are open to everybody all are equal before law and what has been stated in the preamble of the Constitution and we would be dealing with the cases of the poor and the downtrodden in equal manner as we are dealing with the other class. Here the Supreme Court for the first time also said that we need to have a change and that is for the legislature to think that instead of having a high court why not have a court of appeal. You have a court of appeal rather than matters pending in the Supreme Court from the orders of the high

court. Why not have the court of appeal above the high court. Then you have the cases like Suk Das which came in 86 again free legal aid at the cost of state and the state cannot say we have no funds.

Participant.....I saw that the informant and her husband were coming in the Motor cycle, assaulted them and snatched their chain from their neck...identified accused. After one month police picked up a person at the time of checking of vehicles and one gold chain was recovered from that person. TI parade was conducted now the medical examination of the victim was on the record. I think it is a lost case. Accused has been convicted on the basis on their statement. We are worried about the disposal of the case, we are not worried about the inflow of cases. We should check the inflow of the cases also. The number of conviction is bleak so what we should do in that case. I have a suggestion also my lord. At least the decision should be allowed to submit the case after verifying all the records.

Justice BP Singh: ....Could have said no case has been made out. I don't find any evidence.

Participant: Number of cases are pending in the docket..

Justice BP Singh: Each case is decided in its own fact then you can always say that in all cases where acquittals have been recorded.

Participant: The public prosecutor should be a cadre officer. They are coming from political parties. In Orissa all PPs have been nominated from the political parties.

Dr. Geeta Oberoi: Our Conference is on access to justice. How as judges you can enhance access to justice for people, they can approach your courts. Here we have assembled to understand what we can do not what government can do. These are policy decision.

Justice BP Singh: Like every other citizen of this country who has the fundamental right to have a counsel of his own choice.



Justice G.S. Kulkarni: There is one other issue that Madam has raised, about the pressure of work and quality of judgments. If the judgments are not of good quality then definitely the high courts will be flooded. So we have to take care that we write quality judgments.

Justice BP Singh: Mr. Seervai always used to say. Once he was arguing a matter then. The judge observed that justice delayed is justice denied. He says that justice hurried is justice buried. So it can always be both way. But you are right wherever quality is involved time is required. If you don't have the time then you will produce something and it may also be acceptable but may not be acceptable to you

Dr. Geeta Oberoi: I think now we should respect all of your human rights as well and give you a break. We have suggestion that we should show movie after half an hour or may be if you are very tired you can go back and may be around 7 7.30 we can see movie. Ok we will see at auditorium.

## **DAY 2: 14<sup>th</sup> November, 2015**

### **SESSION 5**

**09:00 AM – 10:00 AM**

#### **Role of PDJs in Enhancing User friendliness of Courts**

**Justice Kurian Joseph, Justice V.S. Sirpurkar, Justice Manmohan Sarin**

Justice Kurian Joseph: Best wishes for Diwali: Diwali was celebrated here or there. At home. This is a post celebration meeting. We had a pre Diwali meeting 9 high court judges last week. So post Diwali is good.

Dr. Geeta Oberoi: This session is about role of PDJs in enhancing user-friendliness of courts. So can you throw what your role is there because PDJs has lot to say with respect to infrastructure of the courts? How many of you are PDJs. This is about how much of

your courts physically can be accessed easily. For example you have rules like no one can enter this building without showing their identity card or something like that. Or if there is some other blockage which stops people from approaching. There is no such impediment. Anyone can just walk in. We will begin the session. You can give your input about this whole thing.

Justice Kurian Joseph: Any court where you have a help desk. Front desk is provided by the legal services authority. Delhi, Surat. Is there any district in Gujarat where you have a help desk?

Participant: Facilitation counters we have the staff of the rank of a head clerk.

Justice Kurian Joseph: That help desk is managed by a sheristadaar. You have a sanctioned post for that but you manage. He is there all time...But he has got other duties. Have you been to a bank? Have you noticed a special counter? That is called may I help you. So they ask what purpose you have come. Have you been good textile shop? Who receives you there, the lady or somebody? She ask you what is the purpose for which you have come. How does it help you? So you don't have to go about the whole mall. Somebody takes you. You do your business and comeback. A person need not come to court for litigation, does he come. He may come for the litigation, he may defer the litigation. He can be a witnesses, for an enquiry, come to have just a possibility of litigation. If your sherisatdar answering the queries. Is there a person available front side of the court just to guide people what is the purpose.

Participant: For the last 13 years legal services have their own separate setup. But anybody who come to the court. Some people can come for the next date of hearing in their case because their lawyer has not informed them.

The purpose of front office in the legal services authority is only to help the person about the services available to the legal services authorities and its organs. . Delhi is quite good and you manage with the existing staff.

Sometime few courts are not in session. I have got 80 sessions court and I have got only 75 running. So the high court staff can manage. Filing we have got a separate person. We have deputed one. There is filing also but there is separate counter. There is one counter specially only for enquiry. Any type of enquiry people can make. People come with number of inquiries about courts.

Justice Kurian Joseph: Where are you from mamda, Andhra Pradesh, which district? You have felt a need for this. Any steps taken. How does the existing staff manage it?

Participant: I have not felt the need of computer till now.

Justice Kurian Joseph: You have lot of computers available. We are just having a brainstorming session. How many district we have this facility of somebody to help in a court or guide. So you ask for your judge in charge.

Participant: My proposal is to provide a helpdesk at the entrance. We have two complexes. At each complex

Justice Kurian Joseph: How many judicial officers are there in court complex?

Participant: 16 judicial officers both complexes put together. Both courts are computerized.

Justice Kurian Joseph: If the complex and building and courts are computerized unless you behave as assistant at the help desk. If a person come he can guide that person. He needs only information. We have just found out 560 district courts in the country. This facility of help desk or guidance somebody to welcome and seek and give some sort of information. This is available only in three districts in the country. One is very effectively done in Delhi. It is done in Gujarat, partly done in Goa and at least a desire by a judge from Andhra Pradesh. Has anybody felt the need for such a system which can improve the function? Do you think it is not necessary at all? Because 99.9 we don't have. Need is felt.

Participant: I am from Karnataka. The first division clerks and second division clerks are selected by public service commission and some selected candidates will be sent to judicial department. Out of the selected candidates. Recently we have received some candidates who were 100 % blind, partially blind and we are not able to get their services because court work requires reading and writing of papers. Whether we can use their services for this helpdesk.

Justice Kurian Joseph: So want to engage helpless persons to engage in the helpdesk. How to manage the three persons allocated. How to engage their services. In Supreme Court we have a totally blind lady. She is doing excellent work. Have you felt the need for such help desk? If you have felt then what is the impediment in pushing it up.

Participant: I am from Arunachal Pradesh. Because of the shortage of staff.

Justice Kurian Joseph: Delhi you have a surplus staff so as to engage the people.

Participant: No Sir, we are always short of staff but we felt the need of having one person as PRO.

Justice Kurian Joseph: Court managers 13 Finance Commission are out. They are still working. What do they do?

Participant:

Justice Kurian Joseph: It is not posting I asked. I asked this because court managers are actually given so that they can take care of this situation. So I just want. A system of help desk is required in a court. So you have a shortage of staff and you don't have the assistance of court managers in this regard.

Participant: Court managers are appointed mostly they are MBA graduate. They do not have the knowledge of what

Justice Kurian Joseph: I didn't mean that court managers are being given helpdesk. I only said that did they not suggest you that in a court there needs to be management by your...

Participant: The court managers doesn't have the knowledge of the court procedures.

Justice Kurian Joseph:

Participant: In my court Surat it was a suggestion by the court manager itself.

Justice Kurian Joseph: We had a meeting with court managers and it was decided that the first thing is done in every court that there should be a help desk.

Participant: He suggested me that the lady was working at the APBX center. She may be given the work of helpline inquires. So intercom facility are there, computer facility are there in that room itself and that lady is doing good work. We also have a center which is known as coordination center where we have police personnel's for processing of the summons and warrants and all and witness center is also there. Someone wants to help at the police station also. So that center also helps to get the copy of FIR or any other thing or any other help. That also we have. That was also suggested by my court managers.

Justice Kurian Joseph: That is a very good idea if in Surat we can have this sort of assistance because that person in the court itself will coordinate. It is a police liaison officer, coordinate with any police station help the litigants. We had a discussion of this 138 issue so one major issue post by all the officers was summons could not be served. Suggestion was there that they could be served with the jurisdiction police. The center helps you in serving the summons. So how to make our courts user-friendly. If you have a file section there. If you can pullout just one person help you and put on the help desk will it not reduce the burden of all other people also. Because this man is in the position to guide.

Every time the people coming in and asking and making their inquiries taking time. The corruption in the district judiciary is towards clerical or administrative side. This is where poor litigant get bothered. The other type of litigant their corruption is totally different but I am talking about poor litigant, peon asking them, process server asking them. Help desk can solve the problem in courts. This glaring situation 99.9 % of the country do not have

such a help desk in the district court complex except three districts in the country. Do you have any idea of the system functioning anywhere?

Justice Manmohan Sarin: Friends I don't think I am a stranger to most of you because in one program or the other I have interacted with principal district judges. I will take you to some of the basic which you may find a little dreary but this is also essential for you. You see it is of great significance and importance that the litigants who come before you they are in majority of litigants and they are most of the time marginalized or disadvantage section. Those who are with resources have the wherewithal to approach the high court in writ jurisdiction or otherwise and seek the remedies.

What we need to do is how we are going to make access to justice being available to marginalized sections of people. One of the essential element can be there are various handicap which a litigant before he comes to you. The first thing and I think it is the foremost duty of all of you to make his experience with you a pleasant one. I have a concept which is slightly different and I think which is going to be the future. Please treat the dispensation of justice as you are a service provider and litigant is the consumer of justice. Now if you are a consumer if you go to market buy a product if there is deficiency in service you go under consumer protection forum. Tell me why should a litigant who is also a consumer of justice be not entitled for excellence in service and also have user-friendliness. There is an old saying in hindi bimari or kachhari se bhagwan bachaye. Please save me God from illness or courts. Now that concept has to change. The consumer of justice must start thinking of have process available to me for vindication of my rights. I will come to little which is a part of your court behavior in making it user-friendly. A person is before you, the litigant is there the client is there.

There are two options available to you are not convinced. One is throw his file away and say dismiss. The other is say sorry it is no be possible for me to grant the relief. Now the lawyer also goes back not a dismantle or that one. The litigant also think of availing of higher remedies. So there this is the part of court behavior do the same thing but do it in a polite manner. There is also need of promoting of economic and social rights of the vastly marginalized ones. This is fraught with several inhabiting factors. Majority of

marginalized have lack of awareness of their rights which is to be taken care by education. Those who are not marginalized ones they have PIL available to them.

They can engage counsel and go ahead and get relief. There has to be a change in our mindset. It is no longer the colonial court which is sitting here where you are dispensing justice. User-friendliness is another part of it. It is our obligation that it can be accessed by all specially the marginalized ones. It is available with ease in remote parts at affordable cost and inexpensive. These are the few obligations we have. Society has great expectations from citizens. Elected representatives. There is a saga of failed promises. Take the executive. It is either marred by corruption or arbitrary, excessive use of power denial of justice to them. So what does the consumer do what does the litigant do? He falls back to judiciary and I think this is one of the factor that I think that despite that aberrations that we may have in the judiciary, people largely have faith in judiciary and it is for us to redeem that faith. Affluent have the means for the protection of their rights but for the poor and marginal they generally avoid and shudder.

I am reminded of a very old incident. I was at that time in class 10 in school in 1960. We were travelling to Bharuch. When you go to Shimla. Bharuch has traditional old puriwala where the train stop there and everybody rushes to have puri there. There was some paramilitary personnel from who were coming from a hockey match from Shimla. They belong to one of para military forces. So they demanded puri immediately and that fellow said come in a queue and there was an altercation and they beat up and broke the shop. We were going to uncle house in Shimla where he was posted, One of my aunt was public spirited and she said this is something bad.

That poor fellow was running from one compartment to the other saying dekho apne dekha hai these people has vandalized my shop. Please give me your name and address so that as a witness you are available. So this aunt of mine gave him the address. Now just see what happens. Once she has given her name and address saying that look I saw this happening and this is wrong. By the time you reach home the first thing she got was a reprimand from her husband saying what is wrong with you have given your name as a

witness there we are posted in Calcutta and we will be summoned. Who is going to come from Calcutta to give evidence and what kind of stupidity have you done.

Are you the only crusader left? So that made me think that look katchari me jake kon dhakke khayega. Now I ask you is this was fifty years back. If this incident was to happen today. Has would the reaction not be the same. Would a witness still not avoid the court? Or do you think we have made user-friendliness or facilities available for a witness who feel comfortable and come and say yes I depose. Has the situation changed? It is worse. Now we have a collective responsibility for this. What do you think you as principal district judges can do to retrieve the situation? We have statistics available and the executive says that in the 13 Finance Commission, 5000 crores were allocated. Out of which 80% was returned unutilized. What was the factors in which we have not been able to utilize this for improving our infrastructure who is responsible. In the kind of setup we have you people rest and content that after writing a letter to the chief justice or the registrar general in a typical bureaucratic fashion saying you would like these facilities please provide us.

The state government do not sanction. They find one reason or the other to reject it. You have administrative department. You have finance people with you to guide you. Please follow it up. And I think if you follow it up effectively. There is no way that it would be refused over a period of time. It also calls for commitment on your part. Do you have a waiting room anywhere in the court complex? None. Where for whom. Only for woman and something like that. That is regard to those cases, rape victim and others. Not otherwise. Tell me why should when infrastructure is timely available.

Please do it and let me tell you on another side of this. There is a sea change in the thinking of the executive also. In Delhi the chief minister and the governor has a ...everyday which is before the courts. This is one of the factors which impelled the chief minister to make a statement. He says I have given instruction to my finance department any proposal from judiciary shall be sanctioned without ifs and buts. Don't be disheartened that I have applied for the sanction and it has not come. Now tell me why there should not be a sitting room. When witnesses are old and inform when the case has to be taken ion the afternoon he can sit there. Have there the facility of tea coffee. In some



countries I have seen this happening. At times a litigant is having total frustration he is under stress. You have to ease that stress. There should be somebody telling him don't worry you will receive justice. How many time in your courts return with this feeling that ultimately I get justice. Thank you.

Justice Kurian Joseph: Thank you very much. If we go to you reading material. We find one interesting study done in Maharashtra where the suggestion is that the bar association should take a decision as to fee structure on each type of case. Is anybody here who took steps to utilize that fund and then because of road block he could not succeed.

Participant was in e-committee for some time. So one arm of e courts handling project and other arm was having this infrastructure project. They used to say, we were doing computerization. So there are two main reason why this fund of 4200 crores was not utilized. The one impediment that 75% grant to come from central government. 25% money was to be spent by state government. And no state government was ready to pay even 25%.

Justice Manmohan Sarin: This was not the condition that if the state government do not pay then central government grant will not come.

Participant: It was there because the money to be released only when they commit 25%. Second was availability of land and third was lawyers were not ready to shift from existing court complexes. Which were in the middle of the city. These three reasons were there and the 4300 Crores could not be utilized.

Justice Manmohan Sarin: Please tell me something. What prevented you from suggesting additions in the existing complex? If you apply for a temporary shed there and one facilitation center. There is lack of will

Participant: In Delhi our affair has been doubled.

Justice Kurian Joseph: Delhi is one state where absolutely no problem for any infrastructure. The type of facilities, accommodation is provided. We are envious. We are just saying. Delhi is fast in terms of infrastructure. How many of you are having the experience or rather of pain taken but no gain.

Justice Manmohan Sarin: What you are doing as principal district judges, looking after the inspecting judge who comes there for inspection and he is fully convinced of your efficiency and the matter stops there. The consumer of justice is the last priority. I am doing some plain speaking. Please don't mind. Not completely all right at least 75% it is right. So let's face it we need to change that.

Justice Kurian Joseph: In your courts do you have this training of staff. How many judicial academies in states have the training of staff in courts? The training is given to all staff including the class IV. I want to know whether it is available from class IV to class II. Don't you think class IV is the category for whom training is actually required because they are the people who are actually handling the litigant public. Have you thought about it? So the training should be given to the class IV staff and not to limit it to class III or class II. We concentrate only on class II and class III. But the poor litigant have this cry of corruption or they are the people who claim to manage the court and they are the touts and they are the middlemen. They are the people on whom we have to concentrate. Bailiffs, process servers comes under class III. These are the people who actually who come in contact with the people directly. Like the people who go for postal service, like the people who go for execution, they go for service of summons who otherwise handles the class IV works. They are the people who act as middlemen between people and court.

Justice Sirpurkar: Very good morning to all of you. I started my practice in a taluk court. My both the parents were lawyers and practicing in the taluk court of Maharashtra. Therefore having seen the scene of litigation at the very basis of taluk court. I started practice somewhere in 1968. I was quite enthusiastic about practicing in the trial court. I continued the trend when I shifted to Nagpur for my practice in the high court. The first thing that a litigant is afraid of is can I enter the court? If I enter the court will I not be

arrested? Particularly in case of have nots in the litigation. We will not speak about the criminal side first. We will see it about the civil side.

Taking the cue from the two previous speakers about the courts friendliness. When I was chief justice of Calcutta, we created a window. I hope it is still working because my common experience is that when the chief justice is changed the norms he has set up also change. That happened in Uttaranchal also when I became the chief justice. There also we tried a complete overhaul in some systems. Now first coming to the helpdesk. In Calcutta in that single window any person who come and ask about the appeal on the basis of the name of the lawyer, name of the litigant, name of the court and the number of case pending matter. He could give all the information in 5 Rs.

He had to pay only five Rs. since I was dealing with the NIC one extremely competent engineer was the in charge, Dr. Taluqdar and he set up that. It was found to be so beautifully executed that the whole working changed. A litigant could come and say Sir My name is Rakal I have filed an appeal through this counsel. Is it filed and in a minute he used to get the answer. It is not filed. There is no appeal in the name of Rakal chandra. You have contacted which lawyer some Mukherjee. There is no connection between Mukherjee and Rakal Chandra. Your appeal is not filed. The whole Calcutta bar was straighten just with one window. Sir what has happened to my bail application? Forget about the fees structure of the lawyers. The fees structure is changed from lawyer to lawyer, the fee structure will change from litigant to litigant. So this is the importance of that help desk. When you to any hotel where you go first.

You first go to the reception. That reception helps you to locate your room register you as a guest. If you want any assistance from the room you call the receptionist. On that basis if the district judges takes a lead to create a help center at least for the places which are headed by the additional district judge. Once the PDJ comes in the zone of consideration he stops working. More works more mistakes less work less mistakes competence. Fortunately in some states the computer friendliness has exceeded Gujarat, Maharashtra even West Bengal even Uttarakhand. When we are speaking about the court friendliness

he is a consumer let him feel that he is coming to a place where he is welcomed. What is the scenario in the Taluk court where he comes?

He first contact the class IV. Chaprasi in those days unless he took 5 Rs. from you he will never ever look at you. If the proper person is setup at the help center reception things would work. Things would definitely work. That person should be receptive enough and as far as possible a lady because they have less tendency of shouting. There are exceptions no doubt about it. I am sorry even the director is a lady. But then this is the common experience that they are more soft, they are receptive they would at least realize. So that should be an expectation from the help desk so that a litigant can get the information. Lawyers have no time. If you just go to a lawyer and if they ask certain questions that is the way lawyers convince the litigants. But the litigants must have information.

Number two witnesses. We have to create a mindset in the witnesses' minds that to be a witness is a matter of honor. I am presently heading a tax tribunal I am presently heading a tax tribunal. I am heading the authority for advance rulings. My suggestion to the CBDT chairman was. Create a fearlessness first in the minds of your income tax officers. Create a free atmosphere if that ITO takes a particular decision he will not be scoffed at that you have taken this decision. Because in my tribunal I always found that you want to go record. I will like to bring you on the record. That such and such Act is not available. Such and such provision is not available. They are never prepared to go on record. The PDJs have to create this atmosphere for their staff, not only judicial staff but also non judicial staff. That he should be having a sense of responsibility.

A district judge in a district is much more powerful much more effective than a junior high court judge. As a junior high court judge you have nothing. As a PDJ you have a whole family not only judges working under you but even the whole kind of persons who are not actually on judicial side. You are their father. Once you create this impression in their minds. When I was the legal services authority chairman of Tamil Nadu. My chief justice gave me a free hand brother you do whatever you want to do. I did not wait for jargon of

funds and this and that. I simply asked the concerned district judge to contact the concerned MP and the MLAs.

The idea was to create a lok adalat bhavan in all the districts. I said we have lot of space everywhere. So 14 districts I was able to create and just the telephone call from the district judge to the MP the MP would stand up and take the call, the MLA would stand up and take the call. In Tamil Nadu which is directly divided by DMK and AIDMK. It works wonders. The lok adalats which had to pay the rent for the tents, rents for the mandaps they were. In Tamil Nadu I could bring MLA from DMK and AIDMK and both of them contributing and at that chief justice would come and they would take great pride. Why can't we create some facility in order to increase the friendliness of the court with the litigants? Do something for them after all he pays your salary.

He pays the taxes and therefore the courts are working. Take the money from MP land there is nothing wrong in it. We got amendment done in the MP land system. They say no sir we are it supposed to give the MP land for construction of building. We got it changed. Through the speaker of the assembly and we got it changed and now the collectors would be available. The MP land money will be available why can't we pull the money which is being unnecessarily spent in some bus stand. Convince your chief justice that on the Tamil Nadu Model on the Nainital model we want to create the lok adalat bhavan. That is one more step you will be taking in order to make the courts friendlier. Then there is another problem. That I have spoken about the help desk. There should be a sign board in each court. Why should there should not be a sign board in each court. The sign boards should be of three kinds. Sign boards can be educative. Then it should be cautionary. That both bribe giver and bribe takers are criminals. Do not pay bribe. If some clerk ask for the bribe report to the help desk.

Sign board could be if you are not having a lawyer you can go room number so and so where you will get the legal aid counsel. The legal aid counsel their mentality and their mindset must change. I was hearing a very contested appeal in the Supreme Court where five persons were burnt to death. I was considering the death sentence matter. Justice Thakur was sitting with me as a junior judge and some obvious questions were not asked.

We said what is this Mr. Why. Sir he was a legal aid counsel. Ye koi tariqa hai kya. If the legal aid counsel did not ask the question what was the PDJ doing. Why didn't he put the court questions? He was not there only to find out whether he was guilty or not doing justice. You can't sit as an icon of justice without putting one question on one side and another question on another side. The justice suffers. In Nagpur I recalled. Pdj wardha has come no. You will know there is a place called sitabargi where there was a murder. No witness. This unfortunate situation should never come. Witnesses should feel honored to come. This situation should change and the PDJs should work on that side.

Then how friendly their court is. 11am the doctor comes why can't he be the first witness why does he should wait for 3 pm and then to be told that today it is not possible. Which doctor is going to come to you? I took charge of my new post on 3 December till today I don't have a bungalow. The questions were asked. Which Supreme Court judge will going to come here. If you don't give him even a residential place. I asked them that if you are not going to make available the Bungalow I am going back. If the litigant doesn't get what he wants. If the witness is not treated in a proper fashion. Very slowly there is a change coming in. That people take pride in paying the income tax. Like that we can inculcate that feeling in the minds of the witnesses in the minds of the doctors. Justice Chavan has written a beautiful article in you reading material. I went through the article. How these things can be taken care of. This is not for me. I am not going to do it. Let high court do it.

Your budgetary powers. You have to have an expert advice from you court manager on the budget. In one district we did not had the toilets for the ladies. One MP came and he built 4-5 toilets for the ladies where would they go. When I was a high court judge, the chief justice said brother go and inaugurate that court. We went found it was godown a huge godown. One part bathroom, another part court room, third part registry. A lady judge was appointed there who did not had a toilet even today. This is what happens. We have to bring all these things to the notice of the chief justice. At least the chief justice would know. JMFC have the board witnesses are not available, warrants not served, accused not present. Every PDJ must have one monthly meeting with DSP. All of you meet. In that the SP can be said that you have to create that cell and give three adjoining

police stations. Then all the warrants from those police station would stand honored. This has to be done. First you do something. Thank you.

Justice Manmohan Sarin: How many of you in your court you have a ramp and a wheel chair available. Just three. Now this is not going to cost much. Have a map made and wheelchair available. For this you need no sanction. There is a provision section 133 CrPC. Where if you have an application made by those who are from slum cluster who are affected by it. On that you would have read the Ratlam Municipal case where the SDM ordered a drain to be made because there was a public nuisance i.e. 1980 4 SCC 162. In civil side you have section 91 CPC. There is an article by K Ramajoy Rao 2001 7 SCC J57. These are the areas of how these provisions can be used for the benefit of the poor and marginalized. You have the responsibility to say that the district magistrate can invoke these powers. We are talking about a litigant getting relief. So when you conduct program make your magistrate sensitive to these.

Justice Kurian Joseph: Just want to ask you is that Ratlam municipality is familiar to you. What it is famous for. What it is infamous for. We must read that judgment and then. This is a judgment one cannot ignore. We get back after tea break and then we will have this exercise.

## **SESSION 6 & SESSION 7**

**10:30 AM – 11:30 AM & 12:00 PM – 01:00 PM**

### **Victim Compensation and Rehabilitation**

#### **Simulation Exercise: Discussion & Presentation**

**Justice Kurian Joseph, Justice V.S. Sirpurkar, Justice Manmohan Sarin**

Justice Kurian Joseph: I am told that in the office you will be getting a copy of the Ratlam Municipality. So of you could read high court as well. You can't pass you're a judicial service without once reading that judgement. That is a very important judgment in the Constitutional history. I was just telling when former director Dr. Mohan Gopal was here.

At least once in an hour will refer this judgment. We will ask you something about the judgement. We need a little more discussion about the access issue.

Because this is an area where we need to do things by ourselves. Justice Sirpurkar shared very good examples of best practices done. Except north east my lord somewhere or the other associated with the administration of justice. One best practice I experimented while as a judge in Kerala for 10 years. My regular schedule that we used to call a meeting of MPs and MLAs together in the district. On August 15 2013 just to discuss about the infrastructural issue in the district. These are very wonderful experience and many of the road blocks were cleared. As for as provision for a new court, provision for a construction, road block in the construction. Wherever I was in charge of a district i have a meeting of the judicial officers. When the legal services program started we had joint meeting of panchayat, MLA etc. Some judges started founding that those people are getting access and they are even just making a telephone call that I have a case tomorrow. No politician know about the laxman rekha.

They were able to convey the message. They won't do it with a high court judge never, they will do it with Supreme Court judge, never but they will definitely take this freedom to the junior judge civil division or a senior division etc etc. This is something you can experiment in your districts. Tell your judge in charge and if he is not in a position to come. You can convene the meeting yourself on 15 August. That is the day I am quite sure these people will be available. I did that in four districts in Kerala and it proved wonders that area is concerned. So one suggestion which has come out and another suggestion is training to class II and class IV. Not concentrate on the class four only. Class four in the sense particularly the process servers, the bailiffs, the amins, the court attendants. These are the areas. How many of you has ever attended a leadership training course.

I would like you to take to this book now. Please take the book. We will read together don't worry. It is expected that you come reading the material. Please note one quotation at page 239. The quotation of Peter Drucker. Management is doing things right. Leadership is doing the right things. As a district judge you are certainly the leader of the district in the judicial activity. You have to be a leader of the entire family of judicial officers



working with you. Their families as well, the staff under you and the statutory committees where the district collector and the superintendent of police also participate and need of regular meetings. How many of you has ever visited the sub jail or the jails in your jurisdiction. Anyone who hasn't. You have never seen a central jail. How many among you have seen a central jail

How many among you have seen a central jail. Out of 30 present here 6 have seen the central jail. Do you have a statutory duty? How many you have in your district. Six jails. How many jails are in this district? Four jails. Delhi is a totally different place. It's good that you are here so you set best practice. They have good judges that have been very good for them. Delhi is useful to assess something challenging something inspiring. How many of you have seen all the jails in your districts after taking charge. All jails. How many of you have been in your district for more than one year. Do you visit the jails every year? Once is 15 days. Which rule. You have a state rule. That state rule enjoins the district judge to visit. Have you found that your visit to the jail has had any good result? What did you do there?

Participant: There was no facility of visit of doctors at least occasionally to the jail. Then I addressed a letter to the district collector and got the doctor posted there for checkup or attending any immediate needs of the inmates of the jail.

Justice Kurian Joseph: Was there a legal aid clinic available in the jail. Regularly available.

Participant: In my experience the jail authorities were not allowed the legal aid counsel to inside the jail to meet the inmates. Inmates meets the counsel in the one room, in front room. Thereafter instructed the jail authority to allow the legal aid counsel to go inside and meet the inmates.

Participant: I went to four jails. Common site which I could notice was they were not allowing to wear their shirts. I asked them why you are not wearing. I called the prison officer also. Please explain. He said normally there is a rule but we don't allow them. I asked the prisoners to wear he shirts. Till my departure they were wearing. Late I got a complaint that after my departure they were asked to remove the shirts. So I asked the

jail authorities under what authorities you are doing this. They say sir this is the practice we dont know. In fact I require an advice on this what I am to do.

Justice Kurian Joseph: In all the jails you have seen inmates with shirts also. That is fine. I will tell you regarding the history. Uttaranchal

Participant: We have a quarterly inspection and when I was in Chamoli. All the cells and we initiated a help desk there a separate cell at the entrance and we nominated a panel of lawyers and they regularly visit there. Recently my lord when I became a district judge of present district an inmate committed suicide and the reason was he hung himself from a ledge which was adjoining the bathroom. The first thing we called the engineer and sorted out the problem.

Participant: I make periodical visit in sub jails in the south district. I made surprised inspection and jail administration was not on its guard and he told me why do you come for surprise inspection we will give you guard of honor. I said that is not important. But I will go each cell individually and interact with prisoner. Try to find out from there what the difficulty is and they voiced their angst they voiced also their concerns and sometimes I address it by writing to the IG prisons. They are able to meet some of their requirements that they are not allowed phone facilities to talk to their relatives. Some people are allowed facilities on payment of extra charges. Such surprise inspection helps to keep some sort of check and balance on the jail authority.

Justice VS Sirpurkar: We have created courts there only so that and one magistrate is directed to attend that on every Friday. So that all the person who want to admit and who want to get away can have this.

Justice Kurian Joseph: I was part of a bench and we have issued a direction that officers should go to the jail and see 436 and see that whether they have crossed fifty percent of their term and it has some effect. We asked the officers to go there. The jurisdictional officer, be it CJM, be it session judge. So the under trial prisoners in the stricter sense are not convicts. Officer from Kerala asked why they were not permitted to wear the shirts. Kerala they always took a pattern of central jail.

The first thing they do in jail these dresses available only for convicts. For under trial there is no particular dress is available. So you wear this only. That is a simple convention and that is a bad practice also. One does not lose the dignity. They have a right to dignity even as an under trial. He may be absolutely innocent. You are only going to try him later on. So why should he undergo the ordeal of human dignity been taken away. This dress they are entitle to and you must insist that they should wear permissible dress to the minimum extent possible. What about the space. Have you found a shortage of space? In 1/3 of jails across the country and particularly in Kerala.

I have seen that they take turns in sittings in one cell and they turn 32 hours just lying down and he gets a right to sit or rather liberty to sit once in 24 hours. This is terrible as far as the violation of human rights of under trial prisoners in the country are concerned. After your visit to jail you must call the superintendent of jail. After suggestions what steps have been taken? Unless you respect the rights there is no question of protection. Learn that practice of respecting the rights of others. When our rights are affected we become offended. No body files any anonymous complaint. I got an anonymous complaint from woman prisoner from Tihar. I took it up and I forwarded it to the Delhi high court. One letter IU wrote to the Chief Justice of the Delhi high court on the pitiable condition of children right in India Gate. My letter was taken as a PIL and then steps were initiated and they issued directions

Justice VS Sirpurkar: there are number of persons incarcerated in the jail because they have not been able to fill up the bonds or to give security.

Justice Kurian Joseph: There is a provision on liberalizing the condition of prisoners on bail bonds. The second letter was on Tihar jail women. The plight of women prisoners in Tihar jail. Where you find injustice you must respond. If we don't do it who else will do it. A prisoner in a jail will never do it. Who are the people who are coming to the ordinary courts? They form the 80%. You can take other representative also. Now the new terminology has come, medium bpl has gone now. So we have this commercial courts etc. as does from 80% go for a commercial litigation. But they are dragged into commercial litigation. Am I right? The commercially potential people like the banks or

insurance they drag the common man to the court. They come to the court as respondents, violators or defendants. If at all they do they take case straight to the high court or Supreme Court and get it quashed.

Justice VS Sirpurkar: In consumer protection court on trivial issues are fought by the corporates up to the Supreme Court.

Justice Kurian Joseph: So we must be aware of this situation. Who are the representative of people coming before us? They do not belong to the 20%. They belong to the 80% and that 80% have only the 20% of the wealth. This is called a socially relevant factor. Please come to page 120. Can anyone of you can read.

Participant: We therefore need an alternative delivery system with a different model of legal service in rural and tribal areas. How can one fix the land rights of the poor when they have neither 'pattas' nor other valid documents? How do water rights and forest rights get protected from exploitation? What happens to government-sponsored schemes for food, sanitation, health and employment, aimed at alleviating the misery of the poorest of the poor? How to ensure that children are in school and are not abused and exploited? What can be done to prevent atrocities against the Scheduled Castes and the Scheduled Tribes in villages, and their forcible displacement? Where do they get credit for their livelihood activities and how are we to prevent victimization in the process? Do they have fair market access for their produce? What happens to the bio-diversity of rural and tribal areas? How best to preserve and protect traditional knowledge and other intellectual property rights of the rural poor?

Justice Kurian Joseph: Now next paragraph one of the sisters.

Participant: What about the labor rights of the unorganised rural poor? How are the rights of farmers to be protected against profit-hungry multinationals' monopoly on seed, fertilizer and pesticide business? Are the villagers being exploited by state agencies like police, forest officials, banks, revenue officials and mining lobbies with impunity because of the inaccessibility of the justice system? Why is it that the Gram Nyayalaya Act,

supposed to extend quick and cheap justice to the rural poor, is neglected by lawyers and judges?

Justice Kurian Joseph: So that is the grim situation as far as the poor is concerned. We are now discussing about the litigation friendliness in our courts built look at the people coming there. We must really be aware of them and if we want to know the system's problem please come to page 245. How is the system runs at. This is on social context education. I am sorry it is page 126. My apologies. A damning indictment of the inherent bias of the judicial process against the poor and disadvantaged people is caught in the system. Please read that.

Participant: On the civil side adversarial legalism is expensive and dilatory by making litigation and adjudication slow, very costly and unpredictable. Adversarial legalism often transform the civil justice system into an engine of injustice compelling litigants abandoning just claims and defenses. It encourages and rewards manipulative lawyering and extortive demands it is source of inequality. Sophisticated litigant gain an advantage not only because they are better at withstanding the cause and uncertainties of adversarial litigation but also because they are better able to devise ways of circumventing it.

Justice Kurian Joseph: Is it a fact. It is a fact. What to do. System exist for them. System exist for 80 % but it is ransacked by 20% and 80% is soon to death of injustice. They give up they are not able to. We the National Judicial Academy and state academies have something for that. Please read page 136. Please start from the paragraph. The National Judicial Academy and state academies make a beginning in this direction through the following strategies. Please read the strategy A.

Participant: Select issue for priority in equality and social justice, collect studies on them, invite judges on them the strength and weakness of social context judging. In all case the overarching principle of justice discussed and interpreted as the right of equality and it exposition in the Supreme Court decision and international human rights instruments.

Participant: Refresher courses of this type organize so far to family courts, juvenile justice courts, environmental courts and IPR courts.

There is scope to extend similar exercise for judges presiding over disability court, mental health court, atrocities courts, forest Act courts, human rights courts etc.

Justice Kurian Joseph: Is in any state there is a disability court. No. Is there any court dealing with mental health. That is designated. Human rights courts, all district courts have been designated.

Participant: Introduce variety of social sciences data bearing on adjudicative issues, reading material circulated among trainee judges in training sessions.

Participant: Develop bench book, functional use of social science knowledge, performing judicial function when judges sits in specialized courts adjudicating social justice equity and equality issues.

Justice Kurian Joseph: What is bench book? Functional use of social science knowledge

In Delhi about 10 years ago Asian Development Bank Came. They came with an experience in Pakistan where they developed Bench Book for the civil courts and Criminal Courts. So we have developed our own bench book which in easy language at every step a case is explained to a judge. So there is no need to refer to CPC and CrPC on a particular issue. As per the prevailing practices. It is a handbook which assist the judge in conducting the court.

Participant: In Tamil Nadu the state judicial academies are provided handbook to each judges and the staffs.

Justice VS Sirpurkar: He had created one book in Tamil Nadu but it was for the use of litigant also. Justice Sampath as he then was. He was a district judge. He had created that book he had got it inaugurated also. It must be still in use.

Justice Manmohan Sarin: There is another practice we followed in Delhi i.e. the Delhi Judicial Academy for instance for any particular subject in simple language. For consumer of justice the judgment have to be simple the legal jargon can also be used to an extent the layman does not know what way and why it has been decided but here in this procedure which you call the bench book. The idea is such that judges should not read law. You said without reading they can go ahead. That is not the idea. The statutory provisions are mentioned. They are clearly given and what the interpretation and few judgments are there they are also referred. Secondly sir for instance Delhi Judicial Academy has published a in my time also on the negotiable instrument Act section 138. They will give simple steps for the litigants, simple steps for the judges what are the decision on jurisdiction briefly given and that book is circulated. So that it is available easily.

Justice Kurian Joseph: On the lighter side this will help those judicial officers who are either never learned anything in the collage and two who have learned everything in college and nothing practiced. These books will help them.

Justice Manmohan Sarin: Immediately after law they should undergo some years of practice.

Justice Kurian Joseph: Unanimous in all sessions I used to ask that question experience should be there before one becomes a judicial officer. Now the bar council of India is filing a petition for review of that because that was a time otherwise people from national law school student will be stolen by the corporates so let's also catch them and make the best use of them and make them judicial officers but is has caused havoc in many places.

Justice VS Sirpurkar: My experience is that all the national law school graduates know absolutely nothing about CPC about CrPC and about evidence Act. They are only on Constitution, high flying principles and human rights and IPRs and what not. If you ask a law graduate from them. Number of them were my law clerks when I was there. I just asked them that if in your house somebody trying to encroach what will you do. They did not know 145 of CrPC. That is a very tragic experience and that is why they don't go for

the litigation. They go for the MNCs, because in MNCs you don't have to know about how to draft a complaint and what is the difference between a plaint and a complaint and what is the difference between a complaint and the police report.

Justice Kurian Joseph: Now a days it comes to international law.

Justice Manmohan Sarin: Sir this is applicable not only to lawyers. I will go to the extent of saying we have had some lawyers who have done exceedingly well and are practicing on the writ jurisdiction. But on question of leading evidence there is disaster. They don't know. And I am sorry to say even after elevation as judges of the high court. They are very uncomfortable if you are put on the original side. It takes some time.

Justice VS Sirpurkar: Or you are on criminal side and I don't know why but criminal law has always been considered to be a secondary law. The best law is civil law. I don't know why. But I have myself argued in Bombay high court. While arguing a criminal appeal I saw a judge reading 162 statements. And he said why Mr. Sirpurkar he has said so in the statement. I said your lordship don't read it. Then the senior judge was extremely embarrassed. This was a junior judge. Extremely embarrassed. No No brother I will take care of that. Brother I will take care of that don't worry don't worry and he would want me not to notice. I said what is this. My lord your lordship don't read those judgment. Why cant. This has happened in Supreme Court also.

Justice Manmohan Sarin: Every lawyer must go through at least five years of trial work before he starts practicing in the high court. This is fundamental. Don't do it there is something which are missing. There is something the ability to analyze, ability to understand people is also not there. So five years of practice and have no hesitation in saying. You see I had a high flying job at IBM. Once I quit then I started practicing. ZI went to tis hazari. Spent five years at tis hazari and learned from a to z. Applied for certified copies.

Justice Kurian Joseph: I don't want to use this word. I give to the bar council a very thoughtful suggestion. I told them you amend your rule and say unless a lawyer practices



five years on the trial side. You should not practice in the high court and unless he practices 5 plus 5 in high court one should not jump to Supreme Court.

Justice VS Sirpurkar: Because if they do it, bar council will stop being elected and their first question is how to get elected.

Justice Kurian Joseph: But it is a painful reality. Unless we have trials at practice it is very difficult for you to because in everything you go to high courts. People rush to high court. They don't just bother about the plain or any procedure on the civil side or criminal side everything they use only the writs. Only writ nothing else.

Justice VS Sirpurkar: Eventually they draft the writs like a plaint and they draft the plaints like a writ. So that is the whole trouble.

Justice Kurian Joseph: Sir if they draft the plaint like a writ it will be very good. Sitting here trying to read the plaint they have drafted you are shocked because you have not laid any foundation and you are arguing all these things in the Supreme Court. What can we do? We sometimes feel our self so embarrass, so helpless but still we have that weapon with us. We will do something there also

Justice Manmohan Sarin: The fundamental question is in place all you are required to do is facts. He has a very simple suggestion. Please remember make a plaint brief and concise. Don't miss the relevant facts. Remember everything you write it may contain an admission against you.

Justice Kurian Joseph: Let me ask you a question would you like to continue this discussion little more because I have few more things to discuss. I would like to finish this victim compensation area partly before lunch. Just complete this d.

Participant: Publish occasional papers by jurist and judges or repute who have persuasively canvassed judges to be problem solvers performing social justice roles for which the conventional court is neither equipped nor inclined.

Justice Kurian Joseph: These two aspects three parts we have read now. Forget about the leadership. We have read three parts now. How the system has to respond to calls and cries of the poor people and who form the 99% of the litigants in our trial courts. Number two and well the system is ransacked by the so called 20% and their representative lawyers and number three how our system is helpless in responding to them and number four which we have read now but academy has suggested as to the areas where we have to respond and the level of sensitization we need to have and the step we could take. I request you to please come to page 149. One good thing that is done here in this book here is this is done with the experience here of talking to you or listening to you. So this compilation is always out of rich experience and contribution made by you people only or all of us together only.

So these are the small suggestions. At page 149. There is no point in listening and discussing. But at least after going from Bhopal. One should have a feeling in your mind that I will do something. So in the morning we decided that we will have training ton class four employees. That is simple thing which you can do. Two for the infrastructure we will have a participatory level of meeting with the representatives of people or rather make them contribute to the development and make it a people friendly infrastructure. Sister is a very senior judge in the Delhi high court, Justice Gita Mittal. That is infrastructure. I have read a judgment where she has effectively used this compensation area and taken a proactive role.

So the helpdesk that was the third thing. These are the decisions you have taken for yourself not somebody asking you. At least the 32 judicial officers here go back to their respective districts will do it. One you will start a help desk. You don't have to do anything. Just find out a smart a proactive employee in the class III level and just train him. Just make him understand the entire court system there and give him a computer and intercom and help him so that you will never permit outsider to go to the sections as one major way you can control the court premises and also control the discipline also and prevent corruption also. That is one and second was meeting and the third decision took was. Leadership we must ask the state academies. Please come to page 149 we can read. Please read this 149.

Participants: There are some small steps entirely within our powers which would make the system

Justice Kurian Joseph: So we are thinking about something which we can do. Other than the three which we have resolved to do. This is for small steps. Make our system more citizen friendly.

Every court must commit itself to a time frame within ordinarily each type of case could be disposed of. We must tell the litigant by what time he may expect particular stage in the life cycle of the case to be reached. You must ensure by fixing program of trial in such a manner that parties are required to visit minimum number of time and witness are not required to appear more than once. For example in a civil suit a party may be required by the court to appear only when the court is examining settlement before issues and then only at trial may be three or four times. In a summary criminal case a person can accused may appear once to furnish bail and engage an advocate. Maximum twice or thrice for recording evidence statement and judgement for four times. In a warrant trial after the first appearance there may be a hearing on charge or discharge followed by three to four days for recording evidence statement of accused or given some judgement a sessions case may not ordinarily drag on for than a week. If we take those steps.it would not be necessary to seek.

Justice Kurian Joseph: I just want to ask from your experience. Have you ever finished a sessions case in a week?

If we take those steps it would not be necessary to seek any fundamental reform in law or burden the state with the additional demand for manpower or infrastructure. This would ensure that the common man who is vary of coming to court because he believes the law is an ass, justice is blind and therefore a wise man should not end in the court comes back.

I wanted to read these areas because unless we have a real picture of what our predecessors have thought about these areas and what we have done in these areas and what our system is and who are we addressing and what are the challenges. So

going back from Bhopal at least individually taking a resolution that I will do something. I want to continue this discussion but I am told that you have a simulation exercise. Is tea break require now so we will skip the tea break?

### **Presentation: Group 2**

We have deliberated on the problem. The first issue which is there is whether there is lapse on the part of a trial court judge concerning compensation of the dependent of the victim. The first anomaly in the order which is passed in the sentence is that no fine or compensation has been ordered by the trial court. Section 302 makes it compulsory to give fine also. There are number of judgments of the Supreme Court and section 357 is also there. The judgments says that section 357 is basically compulsory and firstly the trial court judge looking at the capacity of the accused or he should have ordered the fine and he should ordered compensation for the rehabilitation of the wife of the victim. But nevertheless the trial judges has found that accused was not financially viable then in that course section 357 A ought to have been resorted to where the state government or the legal services authority which are there in the districts they could have been ordered to pay the compensation to the victim.

The second query is with regard to provisions of law so i have submitted that section 357 is there and the Supreme Court has already stated that 357 is mandatory though the word may is written and it has been interpreted as shall and secondly the Supreme Court has ordered that in case the trial judge is refusing the compensation he has to give the reasons for that refusal so compensation angle has to be seen by the trial judge while awarding the sentence. If the accused is financially capable then in that case from the fine the compensation is ought to have been ordered and if he was financially viable then in that case section 357 A ought to have been resorted.

Then third issue which is there is whether accused can be asked to pay compensation to the dependent of the victim and what should be the amount of compensation. Though earlier some of the courts were not awarding the compensation to the legal heirs but if one looks at the definition of the word victim under section 2 of the CrPC even the legal

heir also included and recently there is a judgement of the Supreme Court i.e Rampal vs state in criminal appeal which has been decided in May 2015. I have gone through that particular judgement wherein the victim has been defined and it also include the legal heir and of course the legal heirs ought to have been compensated by the sessions judge. So the amount of compensation depends on the facts of the case. So what is the financial capability of the accused and what amount is required by the victim for the rehabilitation?

Another issue is whether court can order an enquiry against the police functionaries who refused to register the FIR when the wife of the victim approached the police station? Of course it is a cognizable offence. As soon as the woman has gone to the police station. It was the duty of the police to register an FIR then and there. The SHO was not there. The constable called SHO as well as a women police officer. So the woman police officer should have been called and even the SHO should have been called there in the police station and the FIR ought to have been registers then and there. So the delay in registering the FIR may have repercussion on the trial of the case. So what should have been an ideal response of police towards the wife of victim when she approached the police station? That i have already responded.

The do you think that little attention has been focused by courts on victims of crime as persons deserving protection of the administration and the society for rehabilitation in an honorable and dignified manner? The rehabilitation issue ought to have been taken into consideration by the learned session judge who has decided this particular matter. Thank you.

Justice Kurian Joseph: we will go one by one. This we will finish and will go to next.

Justice Gita Mittal: I don't know if it struck any of you is fine synonymous with compensation. You have to realize that the power to award compensation is in addition to fine and fine may not be mandatory depending on what the IPC says but compensation is.

Ankush Gaikwad said that and we have followed it in the Delhi high court. Secondly definition of victim. Here also legal heir of the victim. Wife was legal heir but imagine a

case we had a case on honor killing where one of the partner was killed on account of caste economic etc. So the person who is survived which is not necessary in the conventional sense a victim but we have expanded the definition and said that surviving partner in honor killing is equally a victim of the crime. There are several such instances where there may not be a legal relationship. It will depend on the facts of the case it is not necessary that victim will be confined to legal heir only. Judges fails to evaluate compensation and Mr. Khanna has said that the fine should have been imposed but if the person can't pay you can ask the state so inherent in this finding is that the accused does not have the capacity to pay the fine.

So incumbent on a trial judge is to conduct an enquiry as to the paying capacity of the accused. So this enquiry must be instituted the moment the accused is before you irrespective of what you do. On this also the Delhi high court has said a lot. There is a guideline in the judgment look at those. This enquiry is imperative because how do you assess as what is adequacy of a compensation. You can't go only by the needs of the victim or the earnings of the victim and we have suggested the MACT formula for assessing and say that it is mandatory. You will not be able to pass a meaningful order either of fine or of compensation unless you have undertaken the enquiry. How you will do it. It is there in the judgement so we are not going into that. So just a direction that compensation must be paid by the state is not enough. It is incumbent that we expand our role as proactive judges as judges who are doing real justice in the courts to look and examine these issues and follow the law.

Justice Kurian Joseph: Justice Gita I just want to ask you. You said that IPC offences, fine is mandatory. You said compensation is mandatory but look at the situation where at a case where there is no legal heir or there is victim available now.

Justice VS Sirpurkar: How do you justifies that compensation is mandatory?

Justice Gita Mittal: Section 357 talks of cost of prosecution as well. We have expanded on that also in the case. We have undertaken a huge exercise as to what should be go into cause. Whether it means just the cost of the prosecutor whether it will include the

cost of investigation. We in that case included that the fact that the accused let police car was recovered in Karnal but he took the police to Rajasthan. He took the police to different stations and got the car recovered elsewhere. All those costs which a trial judge must evaluate and call upon the prosecutor.

Justice Kurian Joseph: Was those elements of fine or compensation.

Justice Gita Mittal: Section 357 talks of cost of prosecution. Fine is to be assessed by the judge. Keeping in view the. You have the discretion to direct that part of the fine towards compensation. Fine may goes to state.

Justice VS Sirpurkar: Unless it is directed otherwise under section 357 that part of the fine can be paid.

Justice Kurian Joseph: My doubt is still the same. How do we say that compensation is mandatory in offence?

Justice Manmohan Sarin: Let me simplify. 357 provides for fine being imposed. Now 357 fine and compensation both are there. When fine is part of the sentence. Now while imposing the fine under 357 he could direct part of the fine to be paid to the victim. That is one part of jurisdiction to be exercised under 357. Now either a situation where fine has not been imposed like in this case. The questions that firstly he could have sentence provided for fine also. There is a mandatory duty. There are two judgements Suresh and another vs, State of Haryana. Ankush Shivajo Gaikawad vs State of Maharashtra. They have traced the legislative history and saying that loo we have all forgotten the victim and in this case there is a duty on your part and see that the victim was not left.

Justice VS Sirpur: Mandatory duty to award the compensation or mandatory duty to consider the compensation. It cannot be mandatory duty to award the compensation. It cannot be when the law does not require. I can understand the duty of consideration but may be it doesn't appear to me.

Justice Manmohan Sarin: When we come to 357A the purpose is the rehabilitation of the victim and there is duty cast on you to award compensation. Let's take a case where the accused is acquitted or in a case where the accused is not even found. It is a blind case. Child is raped that is one of the cases. In that case again under 357A. You have to award compensation to him. So there they have said what expressions are used. It is a mandatory duty to make an enquiry and award compensation. In Ankush Shvaji Gaikwad you read paragraph 25, 30 and 42. It says that only other aspect that needs to be examined is whether any compensation be awarded against the appellant and in favor of the bereaved family. This matter very often and has been a subject matter of many pronouncement of this court. The same require express in bold certain aspects needs to be address by the courts but have despite the decision of this court remained obscure and neglected by the courts at different levels in the country.

30. With modern concepts creating a distinction between civil and criminal law in which civil law provides for remedies to award compensation for private wrongs and the criminal law takes care of punishing the wrong doer, the legal position that emerged till recent times was that criminal law need not concern itself with compensation to the victims since compensation was a civil remedy that fell within the domain of the civil Courts. This conventional position has in recent times undergone a notable sea change, as societies world over have increasingly felt that victims of the crimes were being neglected by the legislatures and the Courts alike. Legislations have, therefore, been introduced in many countries including Canada, Australia, England, New Zealand, and Northern Ireland and in certain States in the USA providing for restitution/reparation by Courts administering criminal justice.

37. Back home the Criminal Procedure Code of 1898 contained a provision for restitution in the form of Section 545, which stated in sub-cl. 1(b) that the Court may direct "payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court".



42. The amendments to the CrPC. brought about in 2008 focused heavily on the rights of victims in a criminal trial, particularly in trials relating to sexual offences. Though the 2008 amendments left S. 357 unchanged, they introduced Section 357A under which the Court is empowered to direct the State to pay compensation to the victim in such cases where "the compensation awarded u/s. 357 is not adequate...."

Which then provide that you can exercise the discretion under 357 as well as 357A for such rehabilitation, or where the case ends in acquittal or discharge and the victim has to be rehabilitated."

In one of these cases you will find there is blank cases there is no accused and yet 357A was invoked.

Under this provision, even if the accused is not tried but the victim needs to be rehabilitated, the victim may request the State or District Legal Services Authority to award him/her compensation. This provision was introduced due to the recommendations made by the Law Commission of India in its 152nd and 154th Reports in 1994 and 1996 respectively.

now the scheme has been made by the state legal services authority and the judgments given by the Supreme Court in number of cases are like in other judgments it is said that you follow the scheme which is the highest one which may not of your state.

62. To sum up: While the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order u/s. 357 CrPC. would involve a certain enquiry albeit summary unless of course the facts as emerging in the

course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.

Please see Suresh and Another vs. State of Haryana. There you read para 14. This sums up we are of the view. Page 178.

14. We are of the view that it is the duty of the Courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief.

So these will cover also cases where the accused may not be there...

On being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim.

Not necessary by the victim to make an application. At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case. We are also of the view that there is need to consider upward revision in the scale for compensation and pending such consideration to adopt the scale notified by the State of Kerala in its scheme, unless the scale awarded by any other State or Union Territory is higher. The States of Andhra Pradesh, Madhya Pradesh, Meghalaya and Telangana are directed to notify their schemes within one month from receipt of a copy of this order. We also direct that a copy of this judgement be forwarded to National Judicial

Academy so that all judicial officers in the country can be imparted requisite training to make the provision operative and meaningful.

What they found was there was there was hardly cases where under 357 judges were omitting to grant impose a fine or give part of it to the victim.

Justice Kurian Joseph: 357 is only post-conviction. 357A is irrespective of conviction. When fine forms a part of sentence it is mandatory that the fine is imposed. Fine is mandatory when it is prescribed. You have no discretion to record reasons and it is mandatory. Now the last one which we have been discussing, it is mandatory to consider the award of compensation and you have to record cogent reasons for refusing or declining compensation.

Participant: I have one question to ask your lordship that under section 357A is the trial court award. It is the district legal services authority who is empowered to award interim compensation as I have gone through section 357A when it is a case of interim compensation.

Justice Kurian Joseph: I understand as far as 357A is concerned, it is done through the participation of legal services authority.

Participant: Yes court does not have the power. It is clearly written in subsection 3 of 357A (3).

Justice Manmohan Sarin: The answer would be if you read 357 (2). The answer is there.

Justice Gita Mittal: Also what you are forgetting is we are looking at access to justice. Victims are not aware that they are entitle to compensation or the State legal services authority will do. So it is your job as judges to divert people and directors of state legal services authority. That is what our courts are doing in Delhi. Our court are referring cases in legal services authority. Most of the victims in 376 are people from poor people, somebody has gone a acid attack, may not be having economic means. Can you close your eyes?

Participant: I have to read a judicial order. I have read the section.

Justice Kurian Joseph: If you read 3 it will give a picture that it is a duty exclusively of the court. But to me what I feel is this operation of section 357A is through the participation of the legal services authority. Only simple question is can you ignore the district legal services authority and award this compensation under section 357A at all.

Justice Manmohan Sarin: I will read 357 A 2 wherever a recommendation is made by the court for compensation the district legal authority or the state legal authority shall decide the quantum of compensation to be awarded under the scheme referred to in subsection 1. This provision itself requires an amendment. Here it is for the judge to make a recommendation and the district legal services authority is to decide the quantum of compensation. Under the scheme they have fix the minimum and the maximum compensation. Now the judge who will going to conduct the enquiry can't left in a situation where the district and session judge who is making a recommendation and the district legal services authority say sorry we do not agree with your recommendation made.

Justice VS Sirpurkar: Subsection 2 starts with the phraseology whenever a recommendation is and by the court. So this subsection will come into being inly and only where the recommendation is made by the judge. This means eventually by the interpretation of statues principals it may be open for the judge not to make the recommendation for the compensation also. Similarly 3 if the trial court at the conclusion of trial is satisfied. So the trial court may not be satisfied in a particular case to award the compensation. What is of essence is there has to be application of mind by the trial court.

Justice Manmohan Sarin: Recommendation is made by the court for compensation the paying capacity of accused take a case he imposes a sentence with the fine and out of that fine he says so much can be paid to the victim. In addition the judge makes a recommendation for compensation considering the position of the victims the help they need and that is done by the legal services authority.

Justice VS Sirpurkar: All these judgement Ankush Gaikawad, Suresh do provide that you have to apply your mind to the question of compensation in each and every case

Justice Kurian Joseph: But the question here is. There is an operation through district legal services authority or state legal services authority in 357A. But 357A 3 says de hors of recommendation can the trial court itself award the compensation without referring to legal services authority. If there is a recommendation certainly it has to operate through the legal services authority. 2 is a recommendation and 3 operates in a different field. It again comes to recommendation.

Participant: I made a recommendation for Rs. one lakh for the child when I was a judge in Mahila court.

Justice Kurian Joseph: Only two modes in section 357A one is a recommendation the other is on application.

Justice VS Sirpurkar: The third mode is that even when there is no conviction even in case of acquittal there can be a ...that is the most important thing in 357A 3.

So therefore this we are hungry for justice now forget about the appetizer. It can only operate through the participation of legal services authority because subsection 5 says on receipt of such recommendation. So it is a recommendation. It is only a recommendation so if it is a recommendation it can operate only through the legal services authority. The quantum is to be decided by the legal services authority only the court has only right and a duty to make a recommendation.

Justice Manmohan Sarin: Under the state legal service scheme and there is a judgment of the Supreme Court the payment is of the highest amount fixed.

Justice Kurian Joseph: Sir the question is in 357A you don't fix a quantum you only make a recommendation to the eligibility and the quantum is fixed by the....357 is always available to the court but the moment you open 357A your duty and right ends with the recommendation and the quantum fixed.

## **Group 1 Presentation:**

Complaint has been filed under 200 of CrPC how cognizance is taken by the court. The case is about a 3 years old daughter of Riskha Puller. The case is of 5th June 2015. Now the matter would come to the special court under Pocso Act. How the cognizance is being taken when no FIR is registered in this case. So under section 200 a civil society organization they come to the court then section 33 (1) of the POCSO Act the special court has to take the cognizance of the complaint. Section 33 (1) says that special court may take cognizance of an offence without the accused being committed to it for trial upon receiving a complaint of facts which constitute such facts or upon a police report of such facts.

Now in this case there is no police report. So under section 200 the NGO has come forward to make the complaint so the first question whether the direction should be given by the trial court for ordering compensation under section 357 A of the CrPC. Being a matter under POCSO Act we have to go by section 33 (8). The rule be 7 of the POCSO. Now the word is after registration of the first information report. In this case the FIR is not being filed.

Now the second question is whether the trial court can give directions for the conduct of a proper and fair investigation. Whether the Superintendent of Police can be directed to monitor the investigation and to submit a status report before this Court within a period of two weeks? In Pocso Act non filing of an FIR is itself an offence. It is under section 21 provided. In this facts of the case the FIR has not been taken. The child is not being mentally examined.

The medical officer has not taken the responsibility. Now that we can refer to section 27 of POCSO. It says about medical examination of child special court can take the cognizance and ask the special juvenile police unit or the local police under subsection 6 of section 19 of the POCSO Act without unnecessary delay but within a period of 24 hours of child welfare committee or the special court. The provision says that in sub rule 2 of Rule 7. Now in this case also the accused is not traceable. Whether interim compensation

could be given or not. So the sub rule 2 says that the special court may on its own or in an application filed by or on behalf of the victim recommend the award of the compensation whether the accused is convicted or when the case ends in acquittal or discharge or the accused is not traced and in the opinion of the special court the child suffers loss or injury.

After the result the medical report says that sexual assault has taken place. So in this case the direction can be given to the police and if they do not follow we know the penal provision is there under section 21 where even to the medical officer also. If no special medical attention has been given to the child then that can be done also. Then the third question which arising. Whether child court can give direction to the Chief CMO to personally monitor the progress the treatment and place a status report.

Participant: Madam you have not answer the second part whether the direction can be given by the court to the superintendent of police.

Participant: Yes it can be given. The Act itself provides that the direction can be given by the special court after the cognizance is taken on the private complaint also everything can be done special court has all the powers to give direction for the filing of FIR, to give direction to the medial officer and even to give direction to the superintendent of police.

Participant: But the manner of conducting the investigation is the prerogative of police. Can the court can direct?

Participant: That is the reason that special Act has been provided. The Act itself says. Act is for the protection of children and if any person fails the protect the child then penal action follow so everybody has to take care of the child and section 19 gives clear provision. Every report should be given. The Act is very exhaustive.

Justice Kurian Joseph: The question that was asked is investigation is carried on by the investigating officer but can this family court give direction. Special court investigate the case can such a direction be given by the special court. it is given by the Constitutional Courts. Certainly it is given when the question here is monitor when there is serious

lapses by others. What is wrong if the trial court ask the SP himself to conduct the investigation? I am just wondering what is wrong with that because in the given this is a very classic case the IO and DYSP, next officers all have been criminally negligent. The special court having seen the entire records what is wrong with the court says this case to be investigated by the SP himself and the report should be submitted. Special court's powers are under 33.

Just see it because it is a very serious situation which you may have to face in all these cases you may find big people involved.

Participant: Subsection 33 (1) even on receiving the complaints on facts which constitute such offence a special court has a power to take the cognizance.

Justice VS Sirpurkar: Question is whether the special court has a power to direct the SP to monitor.

Participant: The special juvenile police unit is there the local police unit is there. Local police would come under that so the direction could be given. If we consider the DSP pretending as a local police the direction can be given to them. We cannot ask them to conduct the investigation as power dictates. We have monitor we have to see that the compliance is coming.

Justice Kurian Joseph: Legal position is that part you may have to leave to the Constitutional courts as far as POSCO is concerned Superintendent of Police can only monitor. But you can effectively monitor. As far as POSCO Act is concerned the special court has no power to take up the investigation by the SP. The special court has the power to monitor the investigation. But what is monitoring. So 36 power is there.

Participant: The superintendent of police cannot be directed to investigate. So if you consider local police may be we can consider giving direction to local police. Whether this word local police section 19 Special juvenile police or local police. Another question that whether a trial court can give direction to CMO to monitor the case and to place a status report. Here also the word use is monitor. So section 27 is there in POCSO Act and more



so in CrPC 357 C is there for the treatment of the witness even we can direct because here any absence or any initiative not taken by the CMO the police would follow penal provision so directions could be given. Then the fourth question is what should be the role of district legal service authority in this regard. Here the offender is not traceable. In 357 (4) where it says that offender is not traced or identified but the victim is identified and no trial takes place, the victim or his dependent may make an application to the state on the district legal service authority for award of compensation.

Justice Kurian Joseph: That section is very clear if there is a victim is identified the moment victim is identified 357 (4) operates and the compensation can be claimed and will go as a recommendation to legal services authority and it shall be assessed accordingly. So there is a role for the district legal services authority.

Participant: Rule 4 of the POCSO Act is also there when in emergency medical care how medical examination should be conducted how the child should be taken into custody for the treatment.

Justice Kurian Joseph: You are referring to the 57 (C) it doesn't speak about the POCSO.

Participant: In section 42 of the POCSO Act IPC provisions are there. Section 42 A is also there

Justice Kurian Joseph: 357 (C) is a special provision in respect of offences under 326 B C D or C of the IPC. POCSO is a special procedure as such is provided.

Participant: Provision is also made in 42A in POCSO Act that the Act is not in derogation of any other laws. I conclude my submission.

### **Group 3 Presentation**

Participant: After amendment in CrPC section 357 A is for victim compensation. Clause 4 says if no trial taken place the victim can go to the legal service authority for compensation. 357 (A) clause 6 district legal services authority as the case may be to allievate the suffering of the victim to order for immediate or medical benefit to be made

available free of cost on the certificate of the police officer or the rank of officer in charge of the police station or the magistrate of the area concerned. During the course of investigation or enquiry

Justice Kurian Joseph: As far as this calamity is concerned. You don't have to go for all other procedures. It is immediate. It is your duty instead of waiting for the procedures for to be completed medical relief is also. Suppose there is nothing left somebody has to buy the ration or by the consumer Articles. So you cant ask the case to be recorded so it is immediate. As far as natural calamity is concerned. It is immediate and it is permissible under section 357 A 6 3.

Participant: Under the Sikkim J & K it is the fixed amount of Rs. 1 Lakh. Now it has been enhanced to 3 lakhs which in my opinion is not sufficient because the victim belong to different category having different capacities.

Justice Kurian Joseph: Just see the question no. 3 is wrongly worded. What materials should be called by the court? It is not the duty of the court it is left to legal services authority. Court only eligibility for the compensation and makes a recommendation. The investigation goes to the realm of the legal services authority. So let us understand this clearly. I don't think that court has to call for the materials of the income. Assessment of the quantum is with the legal services authority. For eligibility you don't have to call for materials etc. They can but the question here is Court does not have to call for the material for assessing the quantum of compensation. The court has to be substituted by the legal services authority. Please come to 4.

Participant: The entire focus must not be on the offender to punish him or to seek him for rehabilitation but our focus. Our focus must be for rehabilitation of victim and the defendant but not on the punishment to the offender or his reformation or rehabilitation.

Justice Kurian Joseph: Focus should be on both.

There are many impediments lack of legal knowledge, lack of finances for compensation.

Justice VS Sirpurkar: Still it should be left open to the victim to civil court that is always open. Civil court will not have the power to reject the compensation which has already been.

Justice Kurian Joseph: Question is very simple. In civil court you go to civil court and you get back compensation with the simple interest of 6 percent and can the court in fact comes at appellate stage what is already given under 357A of 1 Lakh is deducted. He has already received one lakh under 357A depends on the state. So ultimately the trial court civil court finds you are entitled to 5 lakhs with 66 percent. Well this 5 lakhs at the stage of execution this three lakhs is to be deducted or not. If the amount is granted by the state government and not by the wrong doer. The victim goes by filing a civil suit against a wrong doer should the amount be deducted.

Justice VS Sirpurkar: It can be considered it will be up to the civil court but we not here to decide the role of the civil court. We are considering as to whether you can cut down upon his right to go to the civil court. The court can still say that in spite of the compensation having awarded is inadequate.

#### **Group 4 Presentation**

I am SG Chattopadhyaya district and sessions judge from Tripura.. In problem the man who was killed by accused persons was in his prime he was 27 years old and he left behind his wife, two daughters, no sons and his aged mother. Now the first question for us is whether the trial court should have recommended the compensation u/s 357 CrPC or under section 357A, CrPC to the dependent. So the victim's wife, two daughters, no sons and his aged mother. Under section 357A, CrPC the trial court has sentenced the accused for imprisonment and fine. No compensation was given to the victim either under section 357 or under section 357A, CrPC. This judgment reflect retributive justice and not restitutive justice. Under section 357, CrPC where court order the part of fine shall be paid to the victim as compensation that can be paid as compensation. That compensation can only be realized when the case disposed of. If the accused suffer the sentence and pay the fine, fine cannot be realized from the accused. So in terms of realization the trial court

must act in view of the need of the victim must have awarded compensation under section 357A, CrPC.

This question is what are the major obstacle before Indian trial courts in awarding interim compensation under section 357A, CrPC to victim. We the group members discussed the point, we discussed that there is no such on obstacle but under section 357A, CrPC interim compensation can be paid only under under section 357A (6), CrPC. So when the question of payment of interim compensation comes immediately after a person becomes a victim of an offence the question of payment of interim compensation comes. Suppose in a POCSO case in a case under section 376 (1) or any other subsection, the trial court is session judge, so the case will go to the session judge only after the charge sheet is filed and the case is committed. Interim compensation will be frustrated.

So interim compensation under section 357A (6), CrPC only the district legal services authority will pay the interim compensation because there are advantage. Because except IR there may not be any papers. It will be easier for the district legal services authority and court will pass any judicial order only under subsection 6 that last word any other interim relief. So it is the district legal services authority.

Justice Gita Mittal: Ankur Gaikwad mandates summary enquiry.

Participant: Before the case goes to the trial court, the purpose of paying

Justice Kurian Joseph: The question is pre committal stage. Trial court is the Court of Session. The pre committal stage the case is before the magistrate. Can the magistrate award interim compensation. Let's address the question. What is the power of the magistrate at the pre committal stage? Committal comes only when the procedure is complete. But the magistrate feels the victim needs some interim compensation. Special court has so many powers. So let's not go to POCSO at all. We are speaking about a general case. Even at the pre committal stage the magistrate is competent to recommend an interim compensation.

In response to question no. 3 that do you think that sentence awarded by the trial court reflects restitutive justice and there is no remedy based on restitutive justice which required compensation by the wrongdoer to the victim or his family members we are of the view that my lord we don't think it is based on restitutive justice.

Now the fourth question is that do you think that judicial as reflected in sentencing also should appear to be responsive to victim. Yes it should have been more responsive. Responsive to the personal factors and characteristics of victims. Personal factors as we have understood.

Justice Kurian Joseph: You have to think loud because all the judgment sentencing accused, the personal factors and characteristics of the victim.

Participant: In case of child murder or something we always considered it as a rarest of rare case and award the sentence of death. Regarding enquiry from DLSA we are not calling the victims we are sending our PLAs to the houses of the victims to see what are their needs.

Justice Gita Mittal: In this case we had a judicial officer who was an OSD in the legal services authority so the accused is so affluent wanted to show how good they are, are the relatives looking after them. So we asked the OSD to conduct the enquiry to give full liberty to the accused and the victim's family to place all the materials. In this case we also set the stage to commence an enquiry. What is the appropriate stage? Initially when the investigating officer doing the investigation into the offence they can very easily get the information with regard to the status of the accused and the ability to pay aspects even though you may not pay awarding compensation but you save time when the material is ready with you commence your enquiry into the sentence. We have actually put the guidelines.

Justice Kurian Joseph: The best practices in Tripura is that DLSA is not calling the parties to them but the DLSA is going to them.

Participant: Myself in district is fully utilizing this provision. Even in cases of discharge u/s 321 CrPC when a petition is filed for withdrawal, the victims are given compensation under 357A.

Participant: 138 cases the magistrates are awarding compensation may be running into crores of Rs. because the cheques are of crores of Rs. In 357 (3) when a court imposes sentence of which fine does not form a part such amount may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced. I am taking 138 cases, the sentencing for 6 months has been given and they say that cheque was of Rs. one lakh, now you pay Rs. 2 Lakh. Suppose that person doesn't pay that compensation. If you are not going to pay the fine. Then you have to go for simple imprisonment. If the person doesn't pay the compensation what will happen. If in appeal the point is magistrate's power to impose fine to certain extent so whether the compensation amount also there is a limit or not.

Participant: There is no limit on the amount of compensation and amount of compensation can be realized on the same basis as fine only. The Supreme Court judgement is there on both the points

Justice Manmohan Sarin: We have child related cases and what we experience was guilt was established they were appealing against reduction of sentence and these are mitigating factors. In each of these cases it is very humane. In all these rape cases generally the accused were known to the child or the neighbors. Now what happens is on the practical side, once the accused is to come back the trauma of the victim gets revived. In all those 22 cases half of the child victims have shifted from the utility for those who are not shifted we did what we may call rough justice what we told these people was. That is how we take care of the victims also in a larger jurisdiction. Thank You.

Justice Kurian Joseph: We can get back to this issue. Thank you very much. Just to add to what finally said in a situation where you may have to largely interpret the provision on victim also. If you see the definition of victim under section 2wa. The inclusive definition we can stress. Thank you very much.

## **SESSION 8**

**2:00 PM – 3: 00 PM**

### **Physical Infrastructure & Security Rules as Impediment to Access to Justice**

**Justice Kurian Joseph, Justice V.S. Sirpurkar, Justice Gita Mittal**

Justice VS Sirpurkar: About physical infrastructure we spoke about availability of buildings, even in the advanced state of Maharashtra there is terrible dearth of physical infrastructure. The buildings all the buildings are old buildings complain of leakages. While I was heading Calcutta high court, one of my civil judges in Howrah had he been an upright judge he would have been dead because where he was sitting the fan fell directly but since he was busy writing and age old fan fell. There are end numbers of example where the very presence of building, dingy rooms crowded rooms with litigants, lawyers, lawyers' clerks. It presents a very dark picture of our courts. It is now that the buildings are coming up and people feel like working there.

But when we speak of infrastructure we just not speak only of building. Building is a big problem. Practically all over India good old days when I used to practice I went to a court in Ghaziabad. I was appearing for the defendant. The court was absolutely horrible. Then during that time I visited the court of Calcutta and they said Sir no work today. I said why. Sir one of the lawyer is dead. So what. No Sir any lawyer dead and we don't work. I said that I have come from all the way from Nagpur to conduct this divorce matter. Sir that doesn't matter. Then they took me to the bar association. There was a chair and that chair was garlanded. I said why have you garlanded the chair.

Sir he used to sit on this chair. Same thing continued then I have to negotiate with the bar association. Chairman of the bar association when I was chief justice that look here if you are boycotting the court or abstaining from the work on every day. I said Calcutta boasts of 7500 lawyers. Everybody somebody will be dying today or tomorrow, yesterday or whatever. But this can't help. Ultimately we came on a formula that in every week Friday we will not sit from 3.30 to 4. Jitne us hafte me maren hai unko sabko shraddha give shraddha to all. The infrastructure is very closely connected with the institution of the

lawyers. If the infrastructure is complete if the infrastructure is proper then the lawyers will not have this tendency to call no work today or abstaining from the work. Have you ever gone into bar association and the state of affairs in those bar associations?

Have you seen the miserable condition of the library? The library of the judges particularly at the JMFC standard or CJJD standards there is practically nothing. No they have started adding funds to the library but this difficulty is practically by all the courts of the library. The practical experience is that unless the chief justice is pushing, unless the district judge is pushing. This has come ever since the courts has started, decentralization has started. Even in a place which was a village the court has reached. With the ambitious program of reaching justice to the place. The first thing that is wanted is the building. Therefore a building is rented from normally a lawyer who is a rich lawyer rents his building for the court. When I was chief justice of Uttaranchal.

I found that in the distance areas like badrinath, rudraprayag, kedarnath, there used to be number of courts but no court was available for them. So I put a proposal to the state government that I want a court in a place like talari, in a place called j0shi math. I proposed about 25 courts. The state government report came and they said that there is no enough pendency in Badrinath or in Talari. He would know where Talari is. Then there is non pendency. Sir the pendency is low how can we give them. The pendency is low because a person cannot walk 30 km, cannot then take a bus and cannot then reach a court for filing a civil suit. You will have to give the link courts.

For link courts you will have to give the infrastructure and then not only would the litigation go up but it will be an access for these persons to the court. In Calcutta I opened a court in Minik where all Gorkhas live. I told them you are all bahadur log but to be not fighting against the injustice is amounts to be cowardice. If it with this idea to reach the person who is otherwise deprived even otherwise of opportunity of approaching the court then think in terms of those tribals those aboriginals those persons living in areas particularly Gadchiroli district in Maharashtra which is full of forest, which are inaccessible but then the policy should be at least to create a link court there in that area. In Uttaranchal, a



person living somewhere above Joshimath for his remand has to come to a place called Karnprayag. Karnprayag is sixty km away. In the hills sixty km is three hours.

But how he come when he will come therefore we had to create the court fortunately the government agreed even in West Bengal government agreed and created the courts in order that judges should be able to work properly, in order that lawyer should cooperate there has to be a proper infrastructure. Not only in terms of building but in terms of the computerization, in terms of the trained computer operators, in terms of trained court staff. Infrastructure will include proper building even for the judicial academies. All the institution which are connected with the judiciary would have to have the buildings, would have to have the infrastructures. I think it is time to move to Justice Gita Mittal to speak about the physical infrastructure and security rules.

Justice Gita Mittal: We are discussing access to justice for 2 days and I want to point out something very basic. We in our minds have conceptualized access to justice and it is treated synonymous to access to courts. This is not so because if you keep this in mind the access to justice within your courtroom shall improve drastically. There are several barriers. You look at the women who has been ill-treated within a matrimonial home, she is living in a joint family. She is illiterate and she is unemployed and she is looking after the house. What is justice to her is that her ill treatment stops her dignity is restored that she is able to live comfortably.

How does she get back for that her first need will be to be able to speak about it? She has to speak to her mother in law, to her brother in law or sister in law. For this there are so many barriers as to how they would react. There may be a lack of faith lack of trust. She doesn't have the financial capacity to go to a lawyer and speak independently. She will be scarred for going for lawyer because society inhibitions and rules will lead to her ostracisations. She will be looked down upon. There will be psychological barriers. This is a person who comes to court almost every other day all of us see a person who is placed like this. We must realize that before the person has come to us he or she has overcome huge barriers. There may be economic barriers, because of illiteracy. There is also a complete lack of awareness by and large.

When you are talking of access to justice you are mostly talking of people who are disadvantaged in some manner or the other. There will be ignorance of rights and the availability of legal remedies and there will be huge fear of approaching of judicial institution. All these are barriers in access to justice. So access to the court is a last resort. Overcoming these barriers are all steps in accessing justice. There is fear of reprisal. Your husband will attack you more vigorously, get a better lawyer, and use all the financial resources. You may face social ostracism.

Then there is legal complexities and technologies. We get a petition we return it to person it is not verified or the affidavit doesn't say make the complete declaration and attestation. There is psychological bars in approaching the courts. There is lack of uniformity in procedures and methods, civil vs. criminal all these details which are not uniforms. Then the delays in the legal system and court would be the last resort for most people. Please remember that access to justice is not synonymous with access to courts. You must remember the various barriers the person has overcome in approaching a court as a means to access to justice and seeking justice. There are three levels of access, first one which is physical access which can be looked at from two perspectives one is geographic proximity.

The further in terms of distance the court is from us the more difficult it will be for the person to approach. In the mountains, there are large number of areas where the court may not be set up where the case population ratio is too scanty but they be only because people haven't approached the courts because of the distance involved and then and also the second aspect of physical access is the ease of entry which is afforded to the law enforcement agencies and more importantly the courts. How easy for you to enter the courts which is also related to the physical infrastructure in terms of building. Every year there is huge debate on judicial arrears and it is immediately linked by the state and most of us also to the judge population ratio which is really pathetic in this country. All of us are loaded with much more work which we should be doing and immediately the government comes out with the proposal of enhancing the number of judges. But then increasing the number of judges without providing courtrooms and the staff is counterproductive. So lack of infrastructure includes everything, building staff, judicial academies, libraries,

computers all of that is completely meaningless. So none of these factors can be considered in isolation.

The second level of access is the financial access which relates to affordability of legal services. How much is the court fee I have to pay to enter a courtroom or what will be the fees of a lawyer which we have to pay in order to file a case. All these termed as financial access which is not related to session so I won't expand on it. Third is the technical access which relates to the complexity of legal procedures, legal language the treatment public official afford to those people who are approach the court. But none of these factors can be looked in isolation when you are looking at an access to justice situation and each one of them may provide a complete barrier to the person who is approaching the court. I had an occasion to test the challenge.

Court fees in Delhi enhanced 400 times without an upper limit and the bar association has challenged it and this was where I had the occasion to examine the impact of court fees as an access to justice issue and we have analyzed after looking at lot of case laws from all over the world that mere court fees by itself may be a complete barrier. For instance to file a suit for maintenance u/s 18 and 20 of the Hindu Maintenance and Adoption Act, the court fees Act says that the suit has to be valued at 10 times the annual maintenance claim and court fees will be paid on that amount. Suit valuation and court fees are same. So if you enhanced the court fees 10 times.

10 times annual maintenance where will a women who has been thrown out of his matrimonial home and has no means of livelihood. If you look at indigent person then you have to go through the indignity of proving your poverty. You have to stand in the witness box and on oath come out and say how poor it is. Nobody asks a rich man to prove his economic worth. This is also an aspect which law has legalized and it is really related to the dignity of a human being. There is another important aspect of access is relating to disability. I will read the facts of case which was before US Supreme Court. It is 2004 judgement in a case called Tennesse vs. Lane. The Supreme Court of the United States had opportunity to consider the claim of two paraplegic claimants who relied on wheel chair for mobility. They claimed that they were denied access to the services of the state

court system by reason of their disabilities. One claimant alleged that he was compelled to answer a set of criminal charges on the second floor of the country court house and that had no elevator. At his first appearance Lane crawled up the two flights of stairs to get to the court room.

For subsequent hearing he refused to crawl again had to be carried by the officer of the court room and he was consequently arrested and jailed for failure to appear. He was physically challenged. The other claimant John was a certified court recorder and alleged that she was not being able to gain access to number of county court houses that were not accessible to the disabled. As a result she lost the opportunity to work and earn and to participate judicial process. The US Supreme Court confirmed the right of physical access in a number of contexts and certain were constitutionally guaranteed and subject to judicial review. In the US context physical access will include geographical access includes access of disappeared person in the court.

The right of a criminal defendant to be present at all stages of the trial where his absence might frustrate the fairness of the proceedings and the life of civil litigant to a meaningful opportunity to be heard by removing obstacles to the participation in judicial proceedings and the right of access of members of the public to criminal proceedings. There is hardly a toilet in which a wheel chair can go in. there is no toilet which has a railing and a rod which can enable person to sit on the pot or to rise from it. Even in employment we have reservation for the disabled whether it be as judges whether it be as staff but we don't have any ramps to the dais so imagine somebody has a physical disability and how he or as judge will reach the dais.

The indignity that person has to go through to be seated on the dais in the presence of all the lawyers and the litigants who are waiting. Think of a disabled steno who has to climb to reach his or her computer to type their work. If the court room is on the first floor or the second floor no lifts and power cuts. So these are integral parts because disabled are a part of our community. There is no measure for the blind person to reach without taking the help of somebody. Same is for the deaf and dumb. We are treating access to the court room as an integral part. Access to the court has been read by the Supreme

Court as a fundamental right. Though legal aid has been made a part of Article 39A but the rights which they ensure is an integral part of Article 21. Please ensure that the person has overcome all the barriers which he or she may have faced and is on the level playing field on the other side. Defendant must have as good a lawyer as the plaintiff has. If they are in the disadvantage group needing assistance.

Participant: Madam I have a doubt. Whether right to legal aid include right to payment of court fees if in a suit part of the court fees was paid and the court order payment of court fees the party approached the legal service forum claiming payment of fees because he doesn't want to invoke 433 he doesn't want to sue pauperis as an indigent person on the other hand he claims he request the authority to make the payment of court fee. Whether that can be granted. Whether the broader concept of legal aid will take payment of court fees.

Justice Gita Mittal: That is not permissible. You request the rule of DLSA authority and request your authority. See Delhi we are fortunate. It is a city where the state government gives us the money. Even it has been said that financial liability will not be a consideration fundamental rights issues are concerned but you need to take a closer look as to what can be done.

Participant: Provisions are there in the regulation of NALSA itself. He don't have to look at the Kerala rules or Delhi rules, provisions are there in itself. He will have to make an enquiry and he will reach to the conclusion whether that person is eligible.

Justice Gita Mittal: So we will move to the second aspect of security rules as an impediment to access to justice. In most of the court rooms in high courts. Delhi there is no such rule of impeding any person to the court. They are completely open and anybody can come. Delhi high court was also like this till there was a bomb blast and after that a very hard regime of rule was put in and Supreme Court also has difficult access rule. You can't access Supreme Court without a get pass. Get pass is given to very few people. You have to be the litigant, your case listed on same day, certified by lawyer with a photo identity card. This seems very reasonable and very necessary. You have to ensure safety

of the court. But look at the impact. Courts are meant to be open courts. They are meant to be open to anybody not just a litigant. That is the meaning of an open court. If a court room has to be confined to the litigant whose case is listed then what would call in a criminal or judicial parlance legal parlance.

Trial in camera, proceeding in camera. CPC and CrPC both stipulates the condition in which you can hold a trial in camera. In the Kehar Singh judgement, the trial was conducted in the Tihar Jail. There in the Supreme Court they said you may be conducting a trial even in a house but the trial has to be in an open courtroom unless for specific circumstances as laid down in section 327, CrPC a camera trial is to be held or now there are several other offence, sexual offence, POCSO offence, trial has to be in camera. But other than that you cannot have a camera, a trial in camera. What is the effect? One effect of these security rules of restricting entry is are we not converting the court into a close court. There is no judgement on this.

I had the occasion to examine the security rule in a case which arose in very peculiar circumstances. Learned single judge of the Delhi high court was examining a challenge into maintenance order under section 125 of CrPC and in that he laid down the law that revisional court can challenge to a maintenance order only if the revision has deposited the full amount. It will render nugatory the impact of the challenge. The person may be saying I am laborer daily wager. I can't pay the amount of 10000 pm. So if you impose a deposit as a pre-condition you have denied him the right to challenge the order. One such maintenance order was pass against such person who claim to be a daily wager in a remote place in UP. When he filed the revision, it was dismissed because he said I don't have the means to pay the amount.

They brought this second revision under 482 proceeding to the high court the learned judge referred it to a division bench and this was treated as writ petition and it came to a bench which I was presiding over and we were not inclined to take the revision without him paying something, some money to the lady but there were three children on the other side. Lawyer said he has no means you pay the litigation expenses. He said we are looking to see if this can be resolved so we placed the matter after three weeks issued

notice to the wife and the children. We called up the case in the morning. The wife is there with the children no husband. We asked the lawyer he said he is getting his get pass prepared. So we kept it over 12.30, 1.30 no husband. So then we sent out a court staff with the lawyer and get that man in and he said I am sorry they are not issuing the get pass.

He doesn't have a photo id. So we asked him he must be having something. Aadhar card, ration card, bank accounts, a driving license. He says no I have nothing. I am a daily ager from some remote village and I don't have any money I can't stay here and I can't enter the court room. Then it struck us that this must not be the only man who is coming to the Delhi high court who doesn't have a photo id and we need it to understand what are the rules that are in place and what is their impact. So we called for a report from the deputy registrar and he gave us a report that these are the rules.

There is a form, item number, case number has to be in the form, the photograph of the person and then in the application the get pass which was issued you have to produce a photo id. So even though the rules were not providing a photo ide they were still insisting on a phot id and this because people are unable to produce a photo id. Now this rule has been put in place because of a bomb blast so in the name of security concern of the court we were denying complete access to the court whose cases were listed. Apart from the court room the Delhi high court has its court and mediation center and we have asked to give us a report because if a wife comes for mediation she doesn't come alone.

She comes with elder brother, a father a mother. If it is a custody case the child can't come alone. But this high court registry says you don't have a case listed before the mediation center so you can't go in. So therefore even if you have a phot id but you don't have a matter listed. I have written an order again we have analyzed extensively that what we have done in the name of security. One was made an open court system secondly we were effectively barring complete access to this group of people who didn't have a photo id. The whole purpose of security is to keep bomb out not people. So even if you have a get pass you are still frisked. They still take your photograph. They still take your fingerprints and yet you have to produce a photo id. Even in a city like Delhi there are

many people who don't have photo id. In US they have an expert committee on security which have examined all the measure which are needed and there are rules in place so you could go to any place in US. No matter what is your status level you have to go through the security breach? Everything goes through the x ray.

But you will not be kept out of the court room what we have put in place. Unfortunately we haven't made these rules these rules are made by some members of the court staff some of our judges but we are not the expert on court security. We don't know how effective the x ray machine is where the person walks through. So you need some recommendation from experts who will guide you as to what are the measures. There are also disaster management concerns. In Delhi in high court they shut down every entry and exit except one or two. If there is a crisis we don't know what will happen in tis hazari most of the gates are locked and locks were completely rusted and the caretakers don't know where the keys are.

So if there is a disaster an earthquake or a man-made disaster like a terrorist attack. You will not be able to get out of the court room. This judgment we had a difference of opinion. I said give a report to the chief justice who will take a view in this matter because ensuring entry or exit of a person of a litigant in my court room is a concern of the judge. But this case and several others what this case highlight is it is the poor the disadvantage who are disproportionately affected even by our security measures because it is poor person who doesn't have an identity card. This was my experience with security regulations.

Justice VS Sirpurkar: Justice Mittal told you about Delhi high court concerns. Supreme Court of course it started when Justice Hidayatullah, Justice Grover and they were sitting and one person just goes up and tried to kill a particular judge with a dagger. Thereafter they made enclosures for the general public, enclosure for the lawyers. General public was not allowed to come near the. Thereafter there was a secret report then in Delhi, the easiest target for the terrorist are Supreme Court judges. Ever since the advent of that report, our security rules were tightened they brought 24 hours security to our residences so that nobody can come. I will tell you why are these security rule necessary. In Nagpur there was notorious gunda akku yadav. Akku Yadav has raped a dozen of girls killed two



three persons. In one matter when he was being tried in court room there were 25-30 ladies present. The moment he was brought, there was an enclosure, he was behind enclosure and the ladies was occupying the front of the court room.

All these ladies entered the enclosure and killed him in the open court. In still other sessions court, Bombay an accused was shot done in the court itself. In UP it is a usual story and that the person of the other side come and shoot the accused person or the witnesses. This has been happening all over India. In Madras there was an accused, Pandri. Pandri in Tamil means swine. He was killed in the open court. Therefore the security rules are necessary but as Justice Mittal rightly said there should not be an excess of security rule.

The security rules should be to the extent that in the sensitive district. Now some of the districts are sensitive, some of the courts are sensitive. In Bombay that trial took place in Arthur road jail. The kasab trial was also conducted in specific security arrangement. You have to be careful but you don't have to be strict about the general public coming to your court. That is your discretion. There is nothing wrong in checking the cars. All the persons entering into court room can be asked what is the purpose. They may not be carrying id passes but you can always ascertain from them as to why they have come. Number of times particular case has a political colors, the person concern come. In one case it was a question of the rights of the head of the Vohra committee.

I don't know what gave them this impression both sides there was a group, the priest and his rights were being challenged. So all those who supported that priest they used to come in particularly white dress. Every time that case used to be there in Nagpur court there used to be hundred Vohra flooding the court. If this happens then even the witnesses are overawed sometimes. You have to arrange your security in such a manner that it should not be impossible for a person for a villager to not to be able to access your court. Now when the incidence of arson and terrorism has increased manifold some district are sensitive districts, some courts are sensitive courts. Malegao court in Maharashtra, it is an extremely sensitive court, Akola districts some taluk courts are extremely sensitive. Every year there will be looting and disturbances between one

community and another community. At the time of Ganesh festival, in a particular village in a particular district, Ganesh festival all the Mohammedan goons are they go out of their own volition. During the Ramazan the Hindu outfit persons they would remain out because they are afraid that they would be arrested. Something odd will happen. Therefore the as the PDJs, So first find out which are these sensitive places. Are these the sensitive places? There is no point in making too much in the name of security but you have to be conscious of the security and accordingly you have to instruct your SPs. Security for the witnesses, for the litigants who are present. There are many cases where in blasts poor persons who had nothing to do had to lose their lives. Accordingly you have to be very careful. Thankyou.

**DAY 3 - 15<sup>th</sup> November, 2015**

**Sunday SESSION 9 & SESSION 10**

**09:00 AM – 11:30 AM**

**Leadership Style**

**Justice V.S. Sirpurkar, Mr. Vidyanand Jha**

Dr. Geeta Oberoi: So today last day, I think all of you are very happy, yes I can see this. But the first and last one are happiest. So today we have three sessions. As PDJ al of you, before I speak leadership I want to introduce Mr. Vidyanand Jha. He is a professor at IIM Calcutta. We would be learning from him that what sort of leadership style all of us have. Sir you are not allowed to speak in the Conference Hall. You are Principal & District Judges so all of you have, a principal district and session judge is a leader of that whole district. In ten minutes, those who are PDJ can they tell us what kind of leadership role they are performing and what do they understand by the term leadership. How that term leadership is relevant to your position as principal district and session judge.

Dr. Vidyanand Jha: Very good morning all of you. I am a professor of behavioral sciences at IIM Calcutta. I have a PhD from IIM Ahmedabad and I have been teaching management

to post graduate student. So firstly thank to your group because it gave me an occasion to visit Sanchi which I was trying to do for many years but I did not had time enough. Very frankly, when I was asked to take these sessions, I don't know enough about judiciary. In fact in my part of the world, I come from region which is partly in Nepal and partly in Bihar they say that you are lucky if you don't have to deal with three things hospitals, police stations and courts.

So luckily I haven't had any exposure of courts yet and as an academic I realize that though I am a professor of management we know very little about what we actually do. I could gas something but how we have structured these sessions that in the second session we will actually have a questionnaire, something called a managerial style questionnaire. I don't know whether you are qualified to be called as managers or you would like to see yourself as managers but part of courts seems to have managerial kind of aspects so essentially we will have questionnaire administered and then some feedback on that. But before that what I thought here is group which is practicing justice at district level and I am sure many of you exhibiting leadership abilities.

So I thought there was great potential for the group to learn from each other. So for our purposes let me make a distinction which has been made many time before between managers and leaders. So managers in a sense manage things as they happen in a day to day kind of sense. Things for which there are precedents there are rules, procedures SPOs and so on. Leaders take care of the extraordinary situations things which are not written in your rule books, something which happens and so on.

For next 15-20 minutes you discuss amongst yourselves and just bring at least one situation in which you have to deal with an extraordinary kind of situation and the situation can be either about resources, it could be about people, it could be about processes which you have to deal with and what do you do in that situation so for next twenty minutes five minutes you can think through and next fifteen minutes you can discuss in your groups and at the end of it we would like to each group to present one case where you have shown good kind of instance of leadership. So at the end of it we will have six stories and hopefully there will be some learning from there and in future if you want to find out more

details how the specific person did something you will be able to know about that. So we are trying to explore the leadership exhibited by people like you. So what we are saying we are divided into six group. In each group you have to spend two three minutes thinking about a situation in which you did something extraordinary out of ordinary. Either about resources or about people or about after two or three minutes you get together in your group tell each other your story in brief and then as a group select one story which you would like to share with the larger group. So in management we talking about two kinds of problems.

One is called problems and second is something called constraints. Are you familiar with the term constraints, anybody can tell me. It is a restriction and it can't be solved in the short run. You have to take it for granted live with it. Your leadership in solving a problem not a constraint. If you say we don't have too many people that is true for everybody but still some of you will be doing something in a sense get better of that and some of you may not be able to do. So the idea is that we should be able to tell each other one story from each group in which somebody handled a situation in an extraordinary way and hopefully there will be a good kind of learning. Let me organize you into groups. So I think that these two tables could be one group, these two tables in another group.

So can we come back to the larger class now? Can we have some quick sharing from each group and only one request that please be brief?

Participant: Good morning, I am Nutan Sardessai from Goa. I am principal district and session judge, south Goa, Marga. I represent group no. 1 and I would share a small experience which I had while working as principal district and session judge. We received an anonymous complaints from the staff members that particularly the process servers that they were facing difficulty in the serving of processes. I had meeting with associate judges and took a collective decision to conduct a workshop for the class IV process servers which was never done before in the district prior to my tenure also. So workshop was held for the bailiffs where they were asked to be comfortable that is something which took them by surprise because they were always made to stand in front of the judges and for them we made to take a seat, they felt that are put on some higher platform. I had an

interaction with them. Asked them their difficulties in the matter of serving of processes and they shared their experiences varied experiences.

They said particularly in cases of ex parte injunction orders or some such order which are served on litigants. Sometime some of the litigant would get violent would come to abuse them would come to assault them, sent dogs on them and one bailiff quoted an instance where he was physically assaulted. So what are we supposed to do? They expressed their anguish in the sense that they didn't had a sense of security about their duties as process servers. So said what do we do. So we guided them about how they should go told them the various steps in the manner of serving of processes and if need be they could lodge a complaint also with the magistrate or chief judicial magistrate as the case may be so the process could be set in the motion to protect their rights.

Ultimately they could not escape their duty or serving the processes because that is one of the fundamental step in the conduct of any litigation unless the process is duly served the case does not progress further and which account for delays and protraction in the trials so having such type of interactive workshop for the class 4 process servers give them a sense of confidence that they are senior superior and we are concerned about their welfare and I think that is one of the experiences that which made me feel quite responsible for them. Having due consideration for their plight was also our collective responsibility and it also help in serving of the processes.

Participant: Good morning. I am Sumanlata, Principal district and session judge Kurnool of Andhra Pradesh. Before starting my experience as a Principal District and Session judge and also as a chairman of Mandal legal service authority. I want to share what I believe as leader. My firm belief is that a leadership led by example. So I have made it a point to come to court early that means before any judicial officer enters the court premises I am in the court and I leave the court after all judicial officers leave the court because they have to inculcate that habit of initiating that work. I say the judicial officer you complete the work on that day and leave that and don't keep that in mind go to your home have time with your family and your friends. Don't think about the judicial work there whenever you spend the time with the family and when you enter the court don't carry

any family worry or anything and dedicate the total time to the court. The second principle I follow is the quote of Napoleon Bonaparte who says when hundred lions are led by a cat they will act as cat and when 100 cats are led by a lion they will act like a lion. So a leader should have that quality of leadership. So the experiences I want to share is as a principal district judge I have successfully done two things firstly we have bought a new conference hall constructed in the court room complex but by the time the construction is completed and that conference hall is very small cannot accommodate 35 judicial officers of the districts.

We formed a committee consisting of three district judges one of the senior division and two of the junior division and to my surprise they measure the hall themselves and they have downloaded the model conference halls from the website and they have made a beautiful structure like U shape and they have submitted a report before me along with the photographs so that we could accommodate not only 35 judicial officers with a good platform and the dais and they have provided space for a clerk and a stenographer. Then implementing the process wherein we have called for the quotation I asked the committee the amount that a district judge can spend by himself or herself is to the extent of three lakhs only and they said it won't cost more than 75 lakhs but when answered the quotation the lowest quotation is 13.25 lakhs so we thought our entire exercise is a waste but I received a good suggestion from one of the judicial officers that the convicts are making the furniture very good furniture very good furniture so that we can order the furniture to them. It gave me immense satisfaction as a district judge.

The other thing is the petition I received about mercy killing by a mother and a child who are unable to maintain themselves disability of a son who met with an accident and had taken the task and with all the cooperation not only from judicial officers I have gathered a sum of Rs. 79 lakhs from the various sources and with the permission we have found a committee where the district judge the collector and the president of the bar association are members who are authorized to direct the concerned bank to release the amount whenever the mother need of sustenance and it gave me immense satisfaction what a judgement could not do has been done by the legal services authority who can give life

to a mother and confidence and I think Article 21 was put to use by the lowest judiciary to the fullest extent in that case.

Participant: Good morning. I am Ali Zamin, District and Session Judge Mirzapur from UP. One day in the month of June I reached to the office bar member agitated that there is no laboratory facility and purified water for litigants and district judges are assured for two years but still it had not provided and they will not work. I contacted district magistrate and a manager also of state bank of India discussed with them and they assured me that it will be done within 10 days. Then I called bar members, discussed with them and thereafter work resumed and it was made available to us and in this way the problem was solved.

Participant: I am Jafar Hussain Beg, presently presiding officer, MACT, Jammu. Before my posting at presiding officer, MACT Jammu, I was principal district and session judge. In 2014 I met a situation where the leadership was tested. After recording the statement of the victim of rape both the parties accused have assembled in the court premises and they are waiting for the decision of the magistrate whether to handover the girl to the parents or to the accused. If it would have been handed over to the accused then the parents of the victims would said the court building on and if it would have been handed over to the parents then the accused party would said that the court building on fire. This was the not the new situation there.

Before that also the said building was set on fire. After receiving the information I immediately said to magistrate that don't hand over the girl to the parents or to the accused because it is the investigating stage and it is the investigating officer to investigate the matter and thereafter the custody of the victim will be decided. As soon as this approach was conveyed to that gathering, the situation was diffused and in this way I saved my courts and records from setting it on fire. Thank You.

Participant: Good morning. My name is Ashish Naithani. I am district and sessions judge at a place known as Rudraprayag in Uttarakhand. I want to share an experience dating back 2008 when I was first additional district judge at Udham Singh Nagar. One fine day

when I was dictating a judgement, a clerk comes to me running and said Sahab there was one new HJS Shamsheer Ali. So he comes running to me and said that Shamsheer Ali ke 200-250 vakil has surrounded. I took the car and immediately went there and I asked the officer to retire to the chamber and politely asked the lawyer, the president of the bar and one female member of committee only may come in the chamber and we shall discuss and they came in chamber and they flooded me with the complaints of the officer. Incidentally I was in charge district judge so the situation was to be handled by me only.

So ultimately the thing was sorted out and I invited them in my chamber for a cup of tea and then we discussed it in detail. The problem was that they complained the officers was very persistence and he is doing all sorts of orders. But eventually the matter was subsided and then I told the officer that look if that during our induction we were taught that if this kind of situation arises you simply retire to the chamber and have a glass of cold water and things like this should be taken in cool minded manner. So the matter was subsided and I was glad that no problem cropped in before my district judge and everything was all right. Thank you.

Dr. Vidyanand Jha: I was very touched by listening to all these conversations which you may have and about and it is in some way actually leadership and during the exercise was moving around one person asked me that what extraordinary I haven't done anything extraordinary so what can I share.

These are all very extraordinary things related to resource scare, out of scarce resources a good conference hall was built or how did you handled a crisis situation and I came to know in some ways that what kind of tough situations you may be working in and so on and people decided to train their colleagues. So this in some ways what we think and talk about leadership. If I just give you a five minute talk and I am actually these days trying to specialize on the talk because I think after watching TV, people have attention span of more than 5 minutes. So three things basically, one thing is that your ability to envision the future because none of us have seen the future and the people who work with you they wasn't some kind of idea, guidance about what future would be like, in fact leaders



are in a sense are interpreters of dreams, they dream up for people. We are thinking about the larger picture. Thinking about something worth living. In fact while you were doing the exercise because you are a new group to me, what keeps this group going, what makes you wake up in the morning because at your age and mine, I think you realize that is the big thing that actually makes a difference between whether the day would go good or the day would go bad. What keeps you ticking?

First thing is the ability to envision a future which people will think worth living, which will make them get up from the bed. Second thing is eye for detail. How things happen. What is going on? I am not saying that you should do everything you should be able to see things in detail so that you can point out this is not working and in some ways both these are contradictory. In life you will find people who can either think bigger or having an eye for detail very rarely you will see both in some ways and third thing is an ability to bring people around to your way of looking things. If you have thought of a future thought of a dream, how do you see the others see the same dream, others believe in the same dream.

So these three things what leadership is all about and when I came into this room I was bit kind of hesitant to talk to a group like yours. You are mostly subject experts like a doctor, you are like a professor like I am. I may know my subject but I don't have to interact with too many people. There is another wing of my institute. There is a colleague whom we appoint as director he and the administrators they take care of the things. So I don't have much of managerial work, leadership work. When I talked to people I also realized that you are actually the head of the whole judiciary in the district. So there are also aspects of managerial role which you have and aspects of leadership role which you have. You are highly procedure bound people.

I must point out what I had asked you didn't do that. I have asked you to share your stories and then tell me the best story from the group. I think whom you find most able to talking and put task to them and they ended up doing that. But I think in every group you should try to share those stories. At least in the group now you have five stories. You are familiar with immortality. All of us have the desire for immortality. Out of all human desire that is

very strong human desire. We all want to leave our footsteps. Now one way of becoming immortal or perpetuating your self is a much more biological way which is in some ways produce children and most of you see around society. People do it like that. A more interesting way which again people do is to do things leave ideas which others will remember. That way think about your own situation. Think what had you inherited. What are you leaving which may not be really kind of grandeur even if dealt up a little bit better than before that is about leadership role. Living a world a better place for people who come after you. At some level I also have to recall a story. This is a story of Valmiki when he supposed be a robber called Ratnakar. And one day he was robbing a person because those days there were jungles and people would cross those jungles.

The way to Sanchi from Bhopal is one of the oldest trade routes in India. He one day robbed a person. So this person actually asked him that why you are robbing. He says this is the way I earn my leaving. He said that living will generate sin for you. He said this is the only thing I know and I have to raise a family and what could I do. The man said that is you are generating pap through this do you think that your family will share in that paap. He said that they might as well. Ratnakar tied the chap on a tree and goes back home and his family has told him frangibility of money, money has no color. Mother Teresa had taken money from many including dictator rule of Haiti.

They were very bad rulers. She taken money from them and she was confronted why did she take money from them. She said it doesn't matter where it comes from more what matter is merit goes to that is the idea of frangibility of money and that is what actually the family in some ways told him and there is frangibility and we don't care where you bring it from it is your duty as the head of the house to bring money and you just live on that money. So Ratnakar went back and so on. Now ask yourself the same question

In fact why I am asking you because I deal with people like you working people, when in the earlier generation if you ask people why do you live for? Why do you work? These would be the reasons. I work because I want to earn for my family. Most of you sitting hear from your class background and from your social background I can tell you that your family is taking care of themselves. So you don't need to actually work for your family.

What would keep you going? Why you still get up every day and come to your work and do whatever you want to do. So that is the idea of finding a larger purpose in life and that is again at the core of leadership. If you have any quick one or two questions and what we did you are welcome. If you have no questions, have a break.

Participants: Today our leaders become MP, ministers, governor and ultimately they involved in some scams. Even superior officers.

Dr. Vidyanand Jha: I would like to answer it in a very cryptic ways. Just talking to Justice Sirpurkar right now and he grew up in a place called Varora here in Maharashtra. Varora is famous for a person called Baba Amte. Baba Amte was to me a great leader. Google Baba Amte and see his life. I have a degree of interest as a citizen in politics around us and so on. I have also given up at some level. I realized as long as in my daily life, it is not a problem. I never have controls over who rules India and I will not have a control I hope. So earlier I was trying to explain constraints and problems so politicians are a constraint. There is a grave crisis there.

So Singapore for example pays politicians one of the highest salaries. What is the way for a politician to earn money because as of today money is the currency which speaks? What are incentives? Suppose today if you ask school kids, what you want to become. How many of them would tell you that I want to become a politician and there is a problem there. I will just leave at that. Let's have tea and come back.

Justice Sirpurkar: Before we go for tea. This is some idea you know the story of Mahabharat. You all know the story of Mahabharat. I hope even the persons belonging to Islam know the story of Mahabharat, Christians also know the story of Mahabharat as we know the story of bible, the old testament, Quran, prophet and everything. Who according to you was the leader proved himself as a leader of Mahabharat. Krishna is remember for what. He has become God. I am speaking about the mortal human beings who proved to be leader at least in so far as our field of law is concerned. I have given you a big clue. Yudhishter, Bhishma anybody else, Draupadi, anybody else. The answer according to me is Gandhari. Why. Our highest court is the Supreme Court of India. The

moto of the Supreme Court is Yatodharmstya Tatho Yahaya. If you go to the Supreme Court of India and look beyond the judge who is there and behind him is written Yatodharmstya Tatho Yahaya. Every judge is then asked that look men are not great, leaders are not great. What is great is law Yatodharmstya Tatho Yahaya. Why do I say this because during the war when it begin, then Duryodhan went for the blessings of victory?

Had she said yehi bhavan in, I have no doubts that her prophecy was so powerful because of the penance she had all through her life that Duryodhan would have been victorious. She gave a plus ton Lord Krishna also that you knew everything, you could have stopped everything yet you didn't stopped everything your clan will perish and that is what happened. In prabhas shstram, all the yadavs fought among themselves and perish so she had that power. But she didn't do it. She said I am not here she was a judge at that time she has to decide she has to prophesize and what did she said. She said Yatodharmstya Tatho Yahaya. Where there is law there will be a victory and no wonder this sentence has become the Supreme Court's moto.

Every judge is told that my dear Mr. Judge you have to go according to law. What is dharma is nothing but law. Dharma is the epitome of your good values which the society holds. Society holds the dharma as in the last story told by Dr. Jha that when looting was the dharma of Ratnakar so he was doing. It was his behavior. It changed ultimately. Dharma is one which is held by the society and what is held by the society. Society holds the good values. The good values becomes the rules of the society and those rules when they have the sanction of the king, they become law. You will not rob others. You will not kill others. You will not cheat others are all those good values held by the society which became niyams and when they receive sanctions they became adhiniyams. Niyam rule, adhiniyam law.

According to me therefore Gandhari was the greatest leader and she did not discriminate between her sons and sons of Kunti. She did show the bias in favor of her own son. Doctrine of bias. The basic tenants of the principle of doctrine of rule of law. No bias. No

discrimination and she passed the judgment with just mind where Yatodharmstya Tatho Yahaya. Thank you.

## **Tea Break**

Dr. Vidyanand Jha: I have just now distributed a questionnaire to you. It is called managerial style questionnaire. It means how do you behave with your people who work with you. There are thirty statements there. You need to read each statements and then for each statement there are five options. Option number one is rarely or never do things that way and five is you almost do things that way.

This is a feedback instrument and we are not going to collect it back so need not be worried about the privacy of your data so fill it up as truthfully as you can and your data remains your property. If you get into trouble with any of the statements just raise your hands. Now would you do that? Essentially you will realize that at the end of this scoring table there are some abbreviations. Some abbreviations appear in this table. So you have to transfer your score in the appropriate places.

If you get into trouble, raise your hands. If you have finished just check that everybody on your table has finished scoring. So individually some of you have been asking me what do these terms mean. In this room have you ever heard of something called transactional analysis? In 1960s there was this person called Eric Burn and Eric Burn and his colleagues they started this way of looking at human behavior which is known as transactional analysis. Even now if you go old footpath bookstalls you will see like I am OK you are OK and so on. What Eric Burn and his colleagues thought. They thought that if human beings understand psychological concept then they can understand what is happening to them and their awareness level will increase.

So they tried to translate complex psychological concepts into their own English language but as they said that path to hell is paved with good intention so we have to understand some basic terms before we analyze questionnaire. One of the basic term which they use in transactional analysis is something called ego state and ego state is basically is pattern of behavior and it says that all of us are capable of three basic kind of behavior. One they

termed as parent, second they termed as adults and third they termed as child. Now all the behavior which we learn from others that is termed as parent ego state. So do we learn our behavior from anybody and we do we learn from, parents teachers, seniors, religion. So all these basically learned behavior is known as parent ego state. All the thinking analyzing kind of behavior is known as adult ego state and all the relatively spontaneous behavior is known as child ego state.

One thing you must realize that here the parent is divided into parts. What is the task of parent? What do we do so we take care of others that is called nurturing parent. Do they only nurture or do they do something else also. They also tell us what are the right things to do what is the wrong. So that is the regulating norm behavior so that is the regulating parent. Take care of others by regulating them. Adult was left as it is. If you go out in the tea time and if you see next something is sitting and you feel happy. So sudden happiness sudden joy, sadness and all that.

That was termed as natural child behavior. Children are very known to do new things. So all the behavior to do new things that was termed as creative child behavior and suppose somebody is trying to control you what are your options so either you rebel or you obey. In both cases the behavior is something in some relation is done. That kind of behavior is called reactive child behavior. Now before I go ahead let me just ask you a question. Do you think that these behavior patterns are they analogous to a biological age? So you will exhibit natural child behavior only when your child. So firstly all of us are capable of exhibiting all these kinds of behaviors all the time. As per the situation we should decide.

So as Singh Sahab is saying actually that essentially what transaction analysis suggest that don't get fixated with only one kind of behavior. Behave according to situation. So first put your adult into attributive position and then decide what kind of situation is this and then decide and behave accordingly. One thing which happens with people is that they get fixated with one kind of behavior. So if my students asked me what is your phone number I say go and find out because if they are computer savvy they won't be able to know my phone number? It is in public domain actually. So one day my wife asked me for something I said go and find out. She said remember this is your house and not a

class. So you should not fixated. Second thing is that sometime what happens that our parent ego state in a sense gets into our adult ego state whenever we should make a decision based on thinking. We go by things which we have heard. Let me give you an example of this we have all something called stereotypes.

What are stereotype. Stereotype are terms in psychology where example suppose you have to buy a gift for a small child in your neighborhood. You have got a birthday invitation and you have to buy a gift for a child say 10 year old kid if you it is a boy are you more likely to buy a car or a doll. Of course gun. If it is a girl. But it is irrespective of what this kid like. So what is the rule that is operating in your head? If it is a boy it has to be gun. If it is a girl it has to be doll. So this means actually a gender stereotype. Similarly there is other stereotype that woman like what color pink, man like blue or so on.

There are stereotype related to communities, religions in fact Sikhs recently went to court that most of the jokes in the country related to them for no good reasons. That is again ethnic stereotype. So what could happen firstly your adult could contaminated by your parent situations in which you should think and make decision? You go by whatever you have heard from somewhere in some other situations your adult could get contaminated by your child. Wherever you should think and make a decision you just go by spur of the moment. You don't go by what is known as intuition. I have worked in decision making sometime so how many of you go by intuition. Do you ever use intuition in your decision making? Here we are saying go by facts rather than intuition but may be some other occasion I told you how intuition works but essentially with this brief introduction we are ready to go into your questionnaire

So now I have done the groundwork you understand actually the first column. First column is behavior pattern, same behavior pattern so to say, nurturing parent, regulating parent, adult, creative child the active child. Second column is good style associated with the behavior pattern. Third column is the not so good style associated with the behavior pattern. At this point in time let me ask you can somebody tell me what is the maximum and minimum possible score on any of these dimension. So your score could lie between three to fifty. Nurturing parent is about what kind of behavior. It was taking care of others.

There are two styles there one is supportive and one is patronizing. Anybody who has a small child at home. When your kids learning to walk did they ever fall and when the kids fall how do you feel. You feel more hurt. So if I give you suggestion that you should always hold the child hand then the child will never fall and never hurt himself. Is that a good suggestion? So that is the difference between supportive and patronizing. In supportive you help your subordinate when they need it. In patronizing you help them all the time. If you help them all the time what happens.

They actually don't develop, they become dependent on you and overtime they develop into good for nothing. Not that they will hate you for this. They will love you. They will say my boss takes so much care of me but overtime they are not learning anything. If you are not in the situation suddenly there is a vacuum. They can't do anything. So I don't know how many of you are getting phone calls in the training programme. People saying the sir what do we do of this, what we do of that. May be that is a good indication of how you are developing people. So essentially therefore what I am saying is that being supportive is good being patronizing is not good. Mostly you would have very high score on supportive and patronizing and very highly correlated.

So essentially what I am saying that you think you are trying to help your subordinates but may be this help is not helping them. I was also pushed in it and say that in extremes may be you think it is actually your that assessment of them which is actually which is masquerading as sympathy and concern and care and so on. So next time may be just leave them on their own sometimes. Start with the task kind of world will not fall even if they mess it up and let them do it on their own. You will see in most of the cases they will end up surprising you by how well they have done the task.

You may not even realize they can do this on their own and surprises you. You should be high on supportive low on patronizing. What was regulating parent behavior about? What kind of behavior. Telling people what is right what is wrong. There are two styles there one is normative and one is prescriptive. Normative is you tell them in broad terms what is good what is bad. Prescriptive is you give them exact instructions. So which one is better. So say from here to place where you have been living for last two days. One



direction turn left take three steps turn right. Walk for another three steps. Are your steps and mine steps same. If you have heard of an old tantrik paddhati is called parkaya pravesh. They used to try and get into others bodies. So in prescriptive style who is working you or the subordinate. It is you it is your atma which has got into in other's body. You are trying to make the other person into a zombie so the person becomes zombie.

They will do it in their way and after few times they would just give up. I thin day before when I met Rajesh in the evening he was asking what is the, I was fresh from Japan, I came from Japan on Monday on short trip. So he was asking me what is the difference between India and Japan and other places in terms of management. One of my colleague did some research and said that in India bosses think of subordinates as children and you will see this. For my PhD work I worked with some industrial worker in NCR region and there the supervisors who really quite young would tell about workers who are as they will say hamare ladke hai our children in some ways. So bosses are father figure. Subordinate actually live up being children because they have tried to use their mind once twice but then things does not happen so you say ok give up.

It is a very Indian phenomenon that inside my workplace. Let me explain two basic psychological kind of attitudes one is something called self-efficacy. Self-efficiency is the belief that I can do thing. So if in a situation i leave you will find out the way of doing things. There is another opposite of self efficacy something called learned helplessness. Learned helplessness is that people learned to be helpless. They say mere se to kuchh nahi hoga. I have tried nothing can be done by me and so in some ways, Indian workplaces are learned helplessness rather than self-efficacy and that would be perhaps I think all workplaces are not similar but between a good workplace and bad workplace that would be the difference. That in a good workplace people can take ownership.

They can take charge. They can say they do things. In a bad place they can say no I cannot do. That is the difference between normative and prescriptive and normative as Mr. Singh has said you give them broad guidelines and then leave them on their own. If you want to make your people into good boatman. You should not tell them how to make boat. You should create a desire for sea into them. Once they have desire for sea. They

will find out the details. So that is the difference between normative and prescriptive. So normative you have given those broad guidelines and then leaving them to discover things on their own. In prescriptive you are giving them precise instructions. Remember if your prescriptive scores are high that also means that what do you think that your subordinate must think of you.

They will actually realize they will not take ownership. First chance they will go around they will come back to you with a poker face of it didn't work. So they will never use their own brain not use their own initiative and so on. So that is where the difference between normative and prescriptive. Let me just spend a minute more. Sometimes we also realize that basically you may not be doing things which are expected in your role. So you are getting stuck in your last role and that is why in fact. Let me tell you a Sufi story which is attributed to somebody called Mullah Nasaruddin who was a historic figure in central Asia. In this story Mulla is walking in the evening time somewhere and he will see that his neighbor is looking for something near a lamp post.

So he is in a hurry he just crossed his neighbor may be half an hour 45 minutes again he returned on the same path. He will realize his neighbor is still looking for something Mullah was supposed to be a very curious person. So he asked him what are you looking for so he said I have lost my bunch of keys. Have you seen old locks and old keys? Typically they used to be quite big. I don't know about efficacy of how good they were to hold things but the idea was to drive people away. If you see a big lock you will think it is difficult to break. So Mullah also look for 10 minutes 15 minutes even he can't find out. So after some time Mullah will stop and think and he will ask his neighbor where did you lose your keys? So the neighbor would say somewhere there. So he would say why are you looking for it here. So he said stupid Mullah can't you see there is darkness there.

I can see only in the light so I am looking for it in the light. So what happens that when you change in your own role what do you think is your formula of success? Whatever you did in the last role. So now the things are required to be done are the things which are required in the current role. But you are most comfortable with what you did in the last role and that is where you actually have all the time in the world. You will tell your

subordinates that when I was in your position, I used to do it like this. That is why you should do it like this. They may not know of only one way of doing things. May be if they think of something they will come up with the better way and so on. So that is where I am arguing with you. You should be high on normative and low on prescriptive. Adult ego state was basically behavior which was related to thinking and analyzing and so on. You have two styles there problem solving and task obsessive.

In problem solving what happens is that you look at variety of options, the alternatives make a decision but you still take care that decision should be it should take care of people's feelings and so on. In task obsessive you just worried about task so to say. I come back to what Rajesh's question about India and Japan and so on. One of the basic research in Indian leadership style which we know that here people look at bosses as father figures, mother figures. So suppose your subordinate has to put a kid into school. They will have an expectation that you know which are the schools whether they know somebody in the management committee. There also they will think that you should take interest in it. As Indians in cross cultural situations in fact one of the first question which an Indian ask others.

Are you married, how many children do you have. These are the first questions with which Indians are fond of asking so to say. In western work places. How many children do I have, whether I am married or unmarried that is my personal business? If I am friends with the boss, maybe we will know over time. Otherwise work is separate life is separate. In India actually if you don't take interest in people's life they actually feel they don't care enough. So that is where what I am saying you should not be task obsessive. You should think through if I make this decision what is going to happen to people's feelings then may be prepared for I am not saying you should never do things which will actually keep everybody happy.

Because there is a saying you can't keep everybody happy all the time and in your profession I have a very small portion of your profession I have to judge students tell them that you are good bad ugly. In your profession you must be coming across many such situations that you are right or you are wrong and so on. So essentially even if you do

that, how do you do it in a way which takes care of people's feeling. Whatever research we have available actually in terms of justice and there is good amount of work in our discipline open is what we call procedural justice and second is what we call outcome justice. We know for example within organizations whether I got promoted or not definitely matters to me. But also what matters is whether the process which was followed was correct or not. There are many possibilities there.

Suppose I take that my outcome is good. The process followed was not right. Do you think I should be happy in that situation even then interestingly does not create a good kind of feeling because I don't know what are the rules. This time it has favored me. Next time I don't know what is going to happen to me so to say. Anyway to go back what I was telling you from adult ego state right now. You should be high on problem solving and less on task obsessive. Creative child behavior was basically doing new things and there is two styles there one is innovative and one is bohemian.

I think some of you got quite interested by the term bohemian you are asking what it means. Innovative means whatever idea I have I see them through to completion. In bohemian what happens that I jump from one set of ideas to other set of ideas without completing them. If I make you today ok let's do these two new things. Tomorrow when I meet you never ask what happens to those two things. You come up with different new things and so on. So over time if I am your subordinate and I am listening to you what will I realize there is a harmless guy loves to talk? You don't need to do whatever he or she is asking you to do and that is how I will spend my time.

So what they are saying you should be high on innovative, low on bohemian. Finally reactive child is about how do you behave in response to regulating parent and this is basically behavior with regard to your superiors. Now here let me just find out from you. My own expectation is that your score on both confronting an aggressive would be relatively low than other scores. Is that true. Why I was saying it could be low let me explain that to you. There is whole research on various societies and how do they deal with conflict. India as a society is something call we characterize as face evasive. Face evasive culture. So if I have a difference of opinion with you I will not say face to face. I

will say everything is alright. I may be keep quiet and then actually I go out and tell others that what was this guy was saying. So basically as a society we like to avoid conflicts in face to face situations. It is not that conflict goes away. In fact as a society we are highly conflict prone. We don't like to express disagreements out in the public push it under the carpet. Here basically the difference between confronting and aggressive is that in confronting you express disagreements but do it in a way which doesn't hurt the other person. In aggressive you don't care how what happens.

You should be high on confronting and low on aggressive. In judiciary do people express disagreements to seniors? Almost no I don't know what are the reasons. But essentially what we are arguing with you right now that we should be high on expressed disagreements. Because after all somebody needs to tell your superior how things are going. But do it in a manner which doesn't hurt them so to say. I think I am running out of my time. i will just close here. I still have three minutes. One of the basic laws of giving feedback is that you should give unasked for feedback. I have violated that. You didn't asked for this but I generated this data. Pedagogy purpose teaching purpose.

I wanted you to basically examine your own behavior and I am happy one of the places which make me happy about MP is Place called Bharut. Bharut is an old Buddhist site and there is a panel called Bharuth panel which is exhibited in Indian museum which is the oldest museum in the country in Calcutta. So in Bharuth panel there are two birds. One bird is sitting on the branch and the other bird which is sitting on the branch looking at this bird. So essentially this is supposed to be our two selves. One is the self which is concerned with doing things. The second is the self which looks at this self. So this is the introspective self. What is your time mostly go into action or reflection?

Where does your time go mostly action or reflection? Action most of the time we are doing things. There is also reflective self which we need to have once in a while we need to step back and see what I am doing. Is this I should be doing or I should be doing something else so to say. So what I have generated right now. The data came from you. This questionnaire helps you to see things in a particular way. You don't either accept or reject whatever the questionnaire says too quickly. Observe yourself for two three months. If

after sometime you get kind of convinced that what your style is all right it works for you. Live with your own style. If after sometime you realize that may be there is something which the questionnaire is saying that I should change according to that may be you should change. So I have time for just one question.

Participant: Like you have given example that we should observe our behavior for two three months and then change it accordingly. So whether it is feasible to change the basic character of our personality now at this age.

Dr. Vidyanand Jha: So basically there are two world views. One world view which you seem to hold and which you in great company. So there was this Russian novelist called Fyodor Dostoevsky he said whatever I have to learn I learned by the age of 40. So basically saying that people cannot learned beyond 14. There was psychologist called Carl Rogers he believe that people are in the process of becoming. If I look at my own self till last year for example, I may not have known how to use a particular app. Today I know. If you google them there was sixty five year old woman in Gujarat learnt how to operate a movie camera from rural Gujarat and made a movie.

So if you look at your own self you are also changing. So I do believe in this divide and people change always change. Either for good or bad. So we are capable of change. Here what I am saying you look your own self you are happy with the way you behave continue. If you are unhappy then how do you change that is an important thing? Start with low risk situations. You have seen how companies try to sell you things. They give you a chhota pack. So start with chhota packs. Nothing much great would happen and after those small winds it will lead to bigger kind of business. Thank you.

Dr. Geeta Oberoi: we break for tea and come back at twelve and have our last session on time management.

## **SESSION 11**

**12:00 PM – 01:00 PM**

### **Time Management**

**Justice V.S. Sirpurkar, Prof. Dr. Parul Rishi**

Justice Sirpurkar: Welcome back to the last session now of this course. Last session is always the sweetest session because after that you have your lunch and then ladies go for purchases and so on and so forth. Also the gents. I should not be saying only about the ladies. Time management according to me the most difficult management there can be is the time management. We often come to the term where I don't have time, I don't have time. As a lawyer I practiced law for 24 years.

Thereafter became a judge and this is my 24 year of becoming a judge so I am divided between the two. As lawyer there was no time management. Whenever the clients comes to you, in the life of a lawyer there is no time management. The only time management is when the client comes dispose him of as early as possible if he is asking too many questions and let him be there if he is paying fees and it is coming out in cash. But as a judge the task becomes very difficult and I learnt it in very hard way because as a lawyer you can see the person at 11.00pm at night and to the lawyers those who are practicing on the criminal side invariably the client for their bail, for their anticipatory bail they will invariably come to you after 10.00 pm.

Then also when you are a busy lawyer you had to at least read the books. Your paper books at night in case you don't want to be caught napping in the court or you don't want to invite the ire of the judges which is very easy to invite. But once you become the judge there is no alternative but you manage your time very properly. My father who was also a lawyer always used to say that I don't want to become a judge because you are caught in that 11-5 syndrome. 11 am you go to the court, 5 pm you come back from the court. 5 to 11 you study the next day's files. 11 pm you sleep. But that is not true. The judges and more particularly the principal district judges have to have a great time sense, time management sense, because they are having multiple functions. It is easier for the high

court judges. Particularly for the high court judges at the junior level because they do not have any administrative functions. But at least you don't have the multitasking like the PDJ is having a direct interaction with the general public which a high court judge does not have. The whole image of the district, the whole functioning of the district depends upon the principal district judge or the district judge as a case may be whether he is disciplined enough whether he sits on dais at 11 am or 10.30 whatever is the time. I was a collegium judge when I was in Madras high court and we rejected a judge because he had invited a bad remark on account of his not sitting at 11 am on his dais.

He was not a bad judge. He was a good judge but he never sat and therefore he was asked by the high court to mend his ways because if you don't come in time then the time table of all those who are to appear in your court is upset. A lawyer thinks that he will come, he will request he will take his number one. He will request either for an adjournment or he will request for some accommodation and you are not there and the lawyer has to run to the court number two, court number four. When he goes to the bar association ease why does he not come on time that is how you are discussed. It is good to be discussed but not for these wrong reasons.

The time management is not only to be regarding your daily routine. But then the time management in the court is more important. Then what are the task that you are giving and when you are hearing an appeal u/s 96 you have to decide how much time you are going to give for hearing of the appellant for hearing of the respondent. I was in America, I was attending the Supreme Court at Iowa. The somehow or the other came to know that a sitting Supreme Court judge has come where the Supreme Court is working. They invited me. They said judge would you like to sit with the spectator or would you like to sit with us. They were prepared to grant me that honor.

Even I had offered that honor as a chief justice of Calcutta to Justice who was in Calcutta for private visit. I was asked, I said no I would like to be with the spectators and here. They said we have the session today and we have the three cases, four cases. Gentleman fifteen minute appellant, fifteen minute respondent, five minute appellant, in no case the lawyer exceeded his time even by the minute. I have done this and I will be



sending my written briefs. I have supplied the written brief to the other side and I am expecting their response and so on and so forth. But well in our courts that hardly ever happens. We let them go on and on and it all depends upon whether the client is sitting behind. Some of the lawyers have the tendency not to argue to the judge but to argue to the benches and argue to the gallery.

You have to take care of all that and I am sure you all must be taking care because otherwise you can't finish of your work. The first thing which I decided when I became a high court judge is that unless I finish my board I am not going to rise. Rule number tow I am going to finish my work in time otherwise there is no time. We have seen some district judges sitting up to 7 pm and even some high court judges and even some Supreme Court judges also did that. They sat up to six pm particularly on the SLP days and they were not received very warmly and they were not talked very highly.

People criticize them and people criticize them very heavily. You will have to decide as to how much time you have to give and that you can do when you first see the board. Of course when you see the board only when you sit at the dais the things are going to be very difficult. You know the nature of the appeals how much time has to be given. You have to be flexible sometime, you have to be strict sometime if the lawyer is repeating. They think that unless they repeat the judge will not understand the importance of their arguments. Be that as it may.

The technical side of time management and how much time you devote to the hearing and how much time you should devote to your learning and how much time you devote in library, how much time you should devote to your research and how much time you should be left with for your own sake for your own meditation, if you meditate, if you are exercising for your exercise. You have to also give the time to your family. You can't only be a judge. You are a father. You are a brother, you are a Uncle and the one who is able to maintain all the time management becomes a successful judge. You are fortunate in having Dr. Parul Rishi. She will be speaking about the time management and the technical aspects thereof.

Dr. Parul Rishi: Thank you Justice Sirpurkar for already transferring the wisdom of time management for you before I take over. The crux of whatever we all are supposed to do has already been given by him with the range of experience that he is having in the practical field in which all of you are there. I am an outsider but whatever technicalities, some of the conceptual and applied to the judiciary in time management I am trying to share with you.

I have a small exercise also. That is for the purpose of learning how do you do your time management and you will be practicing on a sheet of paper actually whatever you do and you can categorize them. We are starting with an interesting quote time vs success. Being successful doesn't make you manage your time well. Managing your time well will make you successful. So this is what we are starting with. By some estimates people waste about two hours per day due to following, cluttered files, many times you are not able to find your things. We are unprepared for the kind of work which we are doing because we didn't get the time.

Try to do things which other people are supposed to do. That is another problem that many times we are getting inefficient staff. The other thing is that staff is efficient but we are not able to delegate work in a way that is supposed to be delegated to them as a result we consider ok they are not able to do it well so let us make it on our head. Other people also realize ok if I am not doing he or she is a person who will be ultimately doing it because ultimate responsibility is on this person and they also start neglecting the work and ultimately things keep on piling up on our head and we are actually responsible for that. When we are taking the work of other person also on our head we are tired we are unable to concentrate. So we start with an 80 20 rule.

What is this 80 20 rule. Good administration and judiciary system or good way of working that comes with time and experience. That is absolutely fine and having the art of identifying the trivial vs. critical issues. So 80 20 is basically the rule of identifying the trivial versus critical issues. Critical issues are 20%, trivial issues are 80%. But what we do. We spent our 80% of the time on 80% trivial issues and we are left with 20% of the time for the critical work that we are going to do. So critical witness critical case

details critical administrative tasks they are 20% and trivial disrupting unnecessary details which have nothing to do with the case but still they are on our head so we have to listen that or other activity. So time spent should be reversed that is 80% on 20% on critical cases and 80% on trivial details which have nothing to do with that.

But somehow we are not able to do that and that reversal of practice basically makes us difficult to manage our time well because most of our time is wasted in managing the trivial details and ultimately we become less productive. So with another management gurus Peter Drucker he is known in management field. Work where you are strongest 80% of the time means your core work is giving judgement. So everything crucial, everything related to the core work of delivering the judgement for that you have to spend 80% of the time. Learning something then 15% of time must be devoted or where you are weakest is actually 20 but it should end with 5% where you are weakest only 5% of the time. So this is the way we are just aspiring to function when we talk about the reasonable time to the optimal time frame when we talk about that.

Cases are managed and disposed in due time. That is our main concern about which we all are gathered here to learn that. Without any undue detail the undue delay and without compromising the quality and fairness of judgement. So we not just concerned about the time. We are also concerned about the quality and fairness of judgement also. So with these two if cases are managed and disposed into due time so that is time line of judicial administration. So this is the optimal time about which we are looking forward. Now we are coming to the tools. What tools we should use for that quantification is the first thing and second causal analysis and third accountability for delay.

We have to analyze when we are managing the whole judiciary that how delay is acceptable. Delay will definitely be there because everything is no in our control. There are various things presence of witness, so many other things which are beyond our control. Then what cause delay causal analysis of delay whether causes are avoidable or unavoidable. So at least we should have control on the avoidable causes of delay. If that much we are able to have then may be 50% of the time we can keep under our control. Leave aside 50% because ultimately if you aspire for 100 time management that

is not possible. Then accountability for delay because of whom you are not able to manage your time. Whether it is you or your lawyer or your witness or community or the system as a whole because as the head of the system you had not delegated the things properly. First thing is to plan our time through time frames and the ultimate objective is timely judicial management.

Time frame is the toll to achieve the timeliness of different activities that we are doing under judicial administration and they have to fit within the local administrative culture. From state to state there are cultural variations. In certain places in certain states, if you want to enforce the strict time frame people will cooperate and you will be actually do that but in certain local condition in certain states you will find that it is practically impossible. People will just raise their hands and say simply not possible. How can you do it and you are just helpless.

But we can't ignore that local culture. We have to fit in whatever we want to do within the local administrative culture we must modify that the way it is possible the way it is within your limits but not at the expense of people revolting and people not cooperating with you. So that we have to see and decide. Having time frames is a prerequisite to evaluate the results of efforts that we are doing. So you will find that the first step is setting realistic and measurable time frame for each judicial activity. Realistic must be realistic, it must not be imaginary. Ok I am going to finish everything today.

Then enforcing, you plan but if others are not cooperating it is ending up in nothing. So cooperation of others and using the local strategies to enforce the time frame in the whole system in which we are operating. We all are not island in itself. We all are part of the system and we are not integrating our self with the system. We can't do everything alone. So making it enforced on the people on the system who are part of the system and then monitoring whether it is actually taking place or not. So planning realistic and measurable time frames then enforcing and monitoring. Just planning can't do anything.

So now how time framing help us. The objective of time frame is to help us is to help us organize our time in more organized manner. Time framing is basically the goals that are

shared and pursued by all. So all the stakeholders of the judiciary they are the part of time management process. So their objective is to build common commitment. If you try to manage the time but others not then you can't do anything. So you have to create a kind of common commitment. So the kind of experience you are gaining by attending such training over here. So if it is not transferred in your system then nothing can work out. You have to have a collaborative meeting in which you are sharing your views and in this way I want cases to be disposed of in this particular manner.

In this way we are going to plan the time frames and with your cooperation. We have to be a little down to earth. But many times even if knowing that a person is quite below our hierarchy but we have to go down at that persons level and try to think from that persons perspective what are his or her practical difficulties because of which he is actually not able to do that. We have to see whether there is some lack of capacity on that persons part that he is not able to do that or there is some lack of infrastructure because of which he is not able to do. In most of the cases it is simply lack of willingness on the part of people.

If things are not planned in a collaborative manner then actually there is human tendency that we all try and blame the other for not doing the things in the way they are expected. we just try to blame one or the other person except our self we don't want to take the accountability for whatever happens with us and if we are able to take accountability for that we will say little more effort can make it little more better. I can organize myself and do it in a proper manner. May be it was a difficult paper but it was my responsibility to prepare myself in such a way that whatever difficult paper is coming I can handle it well. If this kind of attitude we can inculcate in our self and we will never blame our advocate our lawyer or people at administrative staff or any one. I am the head of this place it is my responsibility to take the help from everyone. It is my responsibility to make them learn what I am doing. So considering the local legal culture that is something very important.

I will just share with you time framing across the world although some of the things are already shared by Justice Sirpurkar.

## Examples of Time Framing Across the world

- Finland- Optimum timeframes for each type of cases are agreed and Targets for case processing are set for which Judicial Administration plays a crucial role.
- Slovenia – court sets a timeframe of 18 months after the case has been presented before the court. If a decision is not taken within 18 months, the case is considered delayed. The head of court may ask the judge in charge of the case to report the circumstances why a decision has not been reached and that explanation has to be build up by Judicial Administration after analyzing the complete scenario.
- Sweden – targets for civil and criminal cases are set up by the Government. All units within the court define their targets and Judicial Administration plays a crucial role to ensure meeting of targets.

## Setting of timeframes for kind of procedure

- Denmark– 58% of the civil cases should be disposed within 1 year, 63% of the criminal cases should be disposed within 2 months and 95% within 6 months.
- Norway – Timeframes are proposed by the Ministry of Justice with consent from the Norwegian Parliament. As of today, 100% of civil cases should be disposed in six months, 100% of criminal cases in three months. Judicial Administration remains at their toes to make it happen.

So it is basically not the comparison of these very small some of the Indian states these countries are like that. We can't compare because we have the huge pile of judicial work in comparison of these small cases but definitely whatever timeframe is permissible is realistic. Looking at our local conditions, looking at our culture but something must be decided and not just decided must be enforced monitored and taken care of. That is probably we are missing because we have no such time frame on the top to which we have some kind of binding

## Setting timeframes in collaboration with justice stakeholders

- The building and maintenance process of setting realistic timeframes must involve the stakeholders at the different levels (state, court, J Admn).
- Setting timeframes is not a *once for all event*, but it has to be a continuous process built through consensus and shared objectives between the stakeholders.

## Enforcing the timeframes

- Timeframes are not designed and implemented in a vacuum.
- They are organisational tools that, in order to give the expected results need to be shared and supported by the stakeholders and, in particular, by the people who work in the organisation.
- Therefore it is necessary to create an organisational environment to support and enforce timeframes, which will be affected by the institutional setting of the justice system (e.g. structure of the judiciary, role of the chief justice, sensitiveness about judges' internal independence etc.).
- Also, other agencies and the bar associations should support the enforcement, which should also be mentioned in the ethical rules for lawyers.

## Major functions of Judicial Administration

- Judicial/Case Record Management
- Reports Preparation
- Lok Adalat
- RTI
- Issuance of Cause List/grouping of cases/Listing of Cases
- Indexing of Judgment
- File Tracking /Management/Delivery of Judicial Files
- Preparation of Certified copies of Documents
- Preparation of Judicial Calendar

- Roaster of Judges
- Coordination among different courts
- Submission of statements regarding case disposal
- Ensure Compliance
- Supervisory Function
- Infrastructure allotment and management
- Complaint redressal
- Budgetary functions
- Analysis of statistical data and quarterly report preparation.
- Parliamentary/Assembly questions

This matrix is having four cells you can see. The first cell is urgent and important. Means in our life, in our working life, in our family life whatever work we are doing. We have certain task which are urgently to be done and which are important also. So critical pressing cases deadline driven activities, meetings, assembly questions, whatever may be whatever is to be immediately responded to and important also. So you have to manage that thing and you have to do it now. You can't postpone it. You have to just. There is cell number two also. Cell number two is having certain urgent things which we have to do it now. We know that it is not important to do it but because it is on my head at this point of time I have to do it I can't avoid it divergent papers, witness reports, interruptions, media interventions.

There are so many things when you are involved in your core activity. Certain things come on your head you know it very well. So delegation is something which you have to do that ok these are the things is it necessary that I am the only person going to do all these things. Definitely you have the staff to whom you can delegate all such kind of task. I am citing certain things which I could list up. then not urgent but important this is the crucial cell where you are doing certain things you have to focus on that judicial administration issue, record management may be for the administrative part but whatever case related court details for which you require information about the case, your knowledge your experience on which you need time. You have to focus on them but your complete focus.



So this is the third and most important cell where we are doing important but not urgent activity.

If you are not avoiding these if you are not limiting the cell number four. These things which are not urgent but you have to somehow limit and dump them and just try to consider and identify the difference between trivial issues and critical issues.

80 20 law just bring it in your life so that limit that that can avoid that and if you are able to avoid and limit cell number 2 and 4 only then you can focus on cell number 3 you will find enough time to focus on cell number 3 otherwise everything will pile up on cell number 1. When everything is becoming urgent and important definitely we are not able to pay that much attention to that. Now the replica and blank sheet of that matrix is already with all of you. Please imagine your last working week and try to distribute whatever you did. Try to feel you matrix in your own way.

What you did was coming in the category of urgent and important. What you did was coming in urgent but not important. So try to write something in all the four cells there will not be equal number in all the four cells but whatever you actually did this is for your learning we are not going to share it. It is for your experiential learning. Spend five minutes time on what you did in the last working week or if week is too much to write in these four cells, one single day and try to have a kind of self-understanding about your self, how your time was distributed in these four cells.

Live Above the LINE-

Covey's Time Management Matrix

<b>MANAGE</b> Critical Pressing Cases Deadline driven activities Meetings Assembly questions <b>DO IT NOW</b>	<b>AVOID</b> Diverging papers/reports/witness Interruptions, Phone calls Media Interventions <b>DELEGATE</b>
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<b>FOCUS</b>	<b>LIMIT</b>
Judicial procedural issues	Time Wasters
Record Management	Disturbances
Cause list preparation	Unwanted people
<b>DECIDE WHEN TO DO</b>	Unrelated details to confuse
	<b>DUMP</b>

I will share with you some of the statements that we say when we are hard pressed with time and people are just pushing us to listen to them. I am in the middle of something now. Can you just hold on for few minute or start I only have five minutes to start with and then you can person is on the critical issue and not on the trivial issue and that will give time to decide between what the person is trying to do. You can stand up, compliment, thank you shake your hand, like that you can give all kind of gestures look at the clock to make that person realise that you are hard pressed with time at this particular time and you cant afford to spend that much time in a very very polite and courteous manner, you have to make people realise that it is basically impossible for you to manage.

Then you have to use a kind of statement to yourself what I am doing that doesn't really need to be done. What I am doing that could be done by someone else. What I am doing could be done with little less time can I do it and what I am doing for saving my time for managing my time I am trying to waste the time of other people. So all these are self-verbalizations and questions that we have to ask to ourselves. 3 Ps are very important in time management. One is planning, another is prioritizing which you have already done it in the previous exercise and third is procrastination.

So the exercise procrastination is just postponing the time for the next day and it never ends that we all the time consider that what will happen if I do it tomorrow. Nothing ok, let us postpone. So these are all the crucial things which we have to think that in all the cases we can do something. So the exercise that you have done right now is basically teaching you to prioritize. How to prioritize the thing. When you will be writing in all the four cells. You will find one or the other cell must be loaded and rest may be a little less loaded and

it will vary from person to person. In certain cases you will find there is balancing of all in the four. So the effort that we have to do is to reduce the pressure on cell number 2 and four and have major activity in cell number three. Cell number 3 is very important. If we are able to manage our cell number 3 then our time management is proper and our things will not be forcefully be pushed in cell number one which is urgent and important. When things become urgent and important they are on our head and we can't spend a sufficient time and apply our mind that to do that we were under pressure and whenever we work under pressure the quality is not that much. Another is parkinsons law.

Parkinson's law is an interest law of bureaucracy that work expands so as to fill the time available for its completion. For doing a particular work if we have three days' time we will be hard pressed worth all the ways to do it in three days. If we have thirty days for the same work will plan our work in such a manner that we consider that even thirty days are less to do it. In bureaucracy it happens that whatever time we have we just expand.

Lets have little more details about this case and study it further. But if the time is less we do the same quality of work in most of the cases, if not the same at least similar and we dispose of the things within the given time. So this is balancing which is very much required.

Exercise 1- How do you spend your Time?

- Go back to your last working week.
- Record the major activities that you did in the first two days of that week.
- Note down in the format provided.
- Also note the approximate time spent on each activity.
- Note down the total time wasted during those two days in mins/hours.
- Who was accountable for that- self, others, situation.
- How satisfied you were in the way your time was spent in those two days?
- Give rating from 1 as least satisfied to 7 as most satisfied.

Group Exercise

- Get into the group of 5.
- Discuss your activities in a group.
- Place them in either of the four cells of Covey's TM Matrix.
- Analyse the wasted time and discuss if it could have been avoided.

### Everyone has Good and Bad Times

- Find your important time. Defend it ruthlessly, spend it alone, focusing on important and not urgent works which require your thinking and full commitment.
- Find your dead time. Schedule meetings, phone calls, and mundane stuff during it.

### Cutting Things Short

- "I'm in the middle of something now..."
- Start with "I only have 5 minutes" – you can always extend this
- Stand up, stroll to the door, complement, thank, shake hands
- Clock-watching; on wall behind them

### Using Time Journal Data

- What am I doing that doesn't really need to be done?
- What am I doing that could be done by someone else?
- What am I doing that could be done more efficiently?
- What do I do that wastes others' time?

Comfort zone is another thing where people is just want to enjoy comfort zone that in this working at this pace is comfortable. If I want to increase my pace of working I have to come out of my comfort zone. I have to push other stakeholders and nobody want to come out of their comfort zone and that is the result that many time management fails. So identifying why you are enthusiastic to just expand your area of comfort zone that I

can afford to work to this much why not this much. So in that way your efficiency increases.

You push yourself much. Not only you yourself push yourself you push your system. Fear of embarrassment, fear of failure these are two reasons that I don't want to embarrass my self to do the things quickly and later on I have to repent. If you consider that without compromising the quality you can push yourself and increase your level of efficiency you can just think delegate. No one is a island you can accomplish a lot with others help. So try to just make the people around more efficient along with you.

### Comfort Zones

- Identify why you aren't enthusiastic?
- Fear of embarrassment
- Fear of failure?

### Delegation

- No one is an island
- You can accomplish a lot more with help
- Most delegation in your life is from faculty to graduate student

### Is The Jar Full?

- Stephen Covey in his book, *First Things First*, shares the following story
- "How many of these rocks do you think we can get in the jar?" he asked.
- After many guesses, he said, "Okay, Let's find out."
- He set one rock in the jar . . . then another . . . then another.
- I don't remember how many he got in, but he got the jar full.
- Then he asked, "Is this jar full?"
- Everyone looked at the rocks and said, "Yes."
- Then he said, "Ahhh" He reached under the table and pulled out a bucket of gravel.

- Then he dumped some gravel in and shook the jar and the gravel went in all the little spaces left by the big rocks.
- Then he grinned and said once more, "Is the jar full?"
- "Probably not,"
- He reached under the table and brought out a bucket of sand. He started dumping the sand in and it went into all of the little spaces left by the rocks and the gravel.
- Once more he looked and said, "Is this jar full?" "No!" we roared.
- He said, "Good!" and he grabbed a pitcher of water and began to pour it in.
- " Well, what's the point?"
  
- Somebody said, "Well, there are gaps, and if you work really hard you can always fit some more things into your life."

"No," he said, "that's not really the point.

The point is this: Put the Big Rocks in First

Priority Listing

- A
- B
- C

of Time Management

How to Get IT Done

- 20 minutes at beginning of week
- Review your Roles
- Sharpen the Saw –Read and analyse beforehand to save time

- Prioritize by Choosing Big Rocks first
- Which is the most important case requiring maximum time and effort? In short, your ABC of Time Management.
- Schedule the Week keeping in mind the reversal of 80/20 Rule

This is the last part of my session which I just sharing with you with due acknowledgement to Steven Kowe. You must have seen on internet the story of jar of rocks. This jar is in front of you with some rocks are there inside and how many of these rock do you think we can get in the jar. Can you give assessment of number of rocks we can put in this jar? Steven Kowe is saying ok let's find out twelve ok. He said one rock in the jar then another then another. So like that the jar is now full. I don't remember how many you got it but we got the jar full in that we have been able to fill the jar.

So then we ask is this jar full. Yes everyone said yes this jar is full of rocks. So gravels are coming up. He pulled the bucket of gravel and he is putting inside and when dumps on gravel and he shook the jar and the gravel went in the little spaces just left in the jar at some sides. Then he said once more is this jar full. No, probably not, he is putting some sand, a bucket of sand was also there under the table and he started dumping the sand inside the gaps which were there, little spaces left with the rocks and the gravel they were just full by the sand and once more he looked at said is this jar full now. Now everyone get the idea by that time and they said no.

Water yes, he took a pitcher of water and began to pour in it. What is the learning of this? Certain spaces are left many times we think that we are working at our full capacity and we just can't take any more pressure we can't manage. We are already managed enough that is the kind of feeling we have. So at one side this story basically tells us that everywhere there is some space in which you can just exert some you can qualitatively feel the spaces which you have created in your life.

That qualitative feeling is very important. Not just you are feeling your life with anything, qualitative things which you can use to fill your life. So let's see what is coming on. Somebody said well there are gaps and if you work really hard you can always fit some

more things into your life. But is it important to put more and more things in our life and pressure ourselves all the time and just struggling. Can't we become under stress if we are doing like that. So what sir is saying is actually correct that the more important is. He said that is not really a point. The point is put the big rocks first. If you could have on the very first instance put the sand it would have been full at the most you can put water to adjust the sand but you can't think of big rocks.

So this is the way we have to priorities our life we should have the list of time management. Type a priority number 1 that we have to do it. These are my big rocks so I must identify the critical issues of my life, critical issues of the cases what are my big rocks. What are my priorities of the day. A list followed by the B list and C list. Don't worry if you are not able to complete your A list on day x doesn't matter. There is reality that all the time that we plan we put a little more amount of work. Ok I can manage this much also. At the end of the day we realise we couldn't do that and we become disappointed and then we think what is the point of doing all this time management forget about it and next day we stop it please don't do that.

If something is left out from the B list, put it on the A list and try to start with that. So keep on doing your ABC lists whatever is left out consider it as realistic that ok with the given time I have done it. I can now do it in the first part of the day. So 20 minutes at the beginning of the week you can review your roles you can sharpen the skill by reading and analysing about learning and reading. Justice Sirpurkar has already told you about all these things that you have to learn and read before you just go to make the judgement. So sharpen the saw prioritize by choosing the big rocks first which is the most important case requiring your maximum time and effort and schedule the week reversing in mind the 80 20 rule that is started with the session that 80% of the trivial issues should be get only 20% of your time and 20% of the crucial issues should get 80% of the time. With that thank you.

Dr. Geeta Oberoi: We should give big round of applause to Hon'ble Justice VS Sirpurkar also and one big round of applause to yourself. All of us together make this program. Now just we will take 10 minutes not more than that. There is one possibility is that you go for



lunch. All of of you and just come for lunch for five minutes over here. We just want to have oral evaluation report. Finish it of. So these are forms you can fill in because they are important for us to understand where we fail.

Now I would like to hear from you what it is where we underperformed where we could have performed well. No underperformance ok. So you are nurturing parent because you are bothered about what will happen back at home. Ya lot of administrative responsibilities are there. If suppose next year same conference is organized then what subjects you would like us to have.

Participant: Case management and caseload management.

Participant: I suppose most of us were really impressed with the topic on victim compensation because we are called up to manage. Law related subjects we may be mostly interested because regular to the issues related to legal problems that cropped up every time so that the classes if they are organized on the basis of legal questions etc. This is my personal view. This time management those are all they are general topics that probably we may be able to manage with ourselves but the classes if they are arranged on the basis of legal questions etc then that will be beneficial to judicial officers.

Dr. Geeta Oberoi: Any other viewpoint

Participant: So also the period of training that may be kindly related to two or three days. I feel fed up because of atmosphere because I am from Kerala. So it may not be allowed to go beyond two or three days. Maximum three days.

Dr. Geeta Oberoi: I am seeing no observation coming from this side actually.

Participant: From the first day, the class may be at 10.00 am. 9.00 am is so early.

Majority of people over here i have told please leave us at 3 because our mind switch of. So therefore we say ok when your mind switch of then there is no point on continuing the class. Just for the sake of sitting with each other it is better that. If you see the teaching time is just four hours. Sometime people exceed the limits. That would be too much of

wastage of resources. Don't you think so government will object to it? Three hours will be too less because this is all funded by government of India. It is not private we are not earning money out of this so naturally government will going to question. Our institute will be closed down. We don't want to take any action which lead to our closure. We are calling people as far as Kerala, Kashmir to Kanyakumari. Ya lecture can be curtailed. Some other methodology can be adopted. Yes that can be done. We can have role or simulation or field visit that I agree. Yes. Thank you so much. Your input are really helpful because next academic year I try to do this. Implement this. Your suggestions.

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