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NATIONAL JUDICIAL ACADEMY



NATIONAL CONFERENCE ON FUNCTIONS OF REGISTRAR INSPECTION

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VERBATIM REPORT

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OBJECTIVE AND EXPECTATION OF THE CONFERENCE

Good morning everyone, I am R K Tripathi, retired High court judge from Gujarat and sitting to my right is Mr. R C Chavan retired high court judge from Bombay. We have met here 13 years back when we both were registrar generals in our respective high courts. It has always been a pleasure to come to National Judicial Academy. Now can we all have our introduction. I am Jyoti, working as research fellow and otherwise a judicial officer from high court of Patna on deputation.

I am Geeta Oberoi, professor NJA. Can we have the introduction from all the participants - I am Nalinkant Tyagi, registrar Inspection at Allahabad high court. I am Rabindra nath Samantha from Calcutta I am Ravishankar Sharma Chatisgarh Venu karunakaran from Kerala, I am Mir Alfaz Ali from Assam, I am from Guahati High Court and working for inspection for four five years I am Shankar Rai from Uttarakhand high court I am J L Uridra from Gujarat high court, I am registrar legal law and inquiry and have the additional charge of inspection, I am OSD Challana from Rajasthan High court jodhpur bench I am K S Pilegi from Karnataka High court, there is no separate post as registrar Inspection in my state I am Mitra from J&K high court I am S L Vinay Joshi I am registrar inspection at Bombay High court I am Kumaratran registrar IT from Madras High court I am Praveen Appal JR Inspection branch from Delhi High court I am Narshima from Andhra Pradesh High Court I am District Judge from Andhra Pradesh. Our nomination was only for registrar inspection, I am the vigilance head of my district and we deal with the ACR of the Judicial Officers. I want to ask the participants that how do they feel as a registrar while working, what are the basic problems which they are facing, what kind of the challenges they are facing and how well they themselves believe that they are doing justice with their jobs.

Registrar inspection is used as a residuary department: -(too many voices simultaneously) all the participants unanimously concluded that this is the post which is observed by other as a post where no work is there and hence any kind of work which other department are reluctant to take are given to them, there is a need that such perception must be changed that only check over the judiciary is done by this department. Overburdening of the work:- due to considering the department as residuary much of the workload is shifted to them, secondly there are many committees which are made under the high court and almost every time the work is being delegate to the registrar inspection section. No specified area to work upon:- the speaker is of the opinion that they have to inspect district courts, sessions

court, they have to take departmental action, at the same time they are also the first appellate authority under the RTI act, but these are the basic areas otherwise they have not specified areas to work upon. In the different states and according to the different circumstances they are being given work there is no criteria on the basis of which work is done. The participants from the Kerala told that in their respective high court they are having six different type registrar and they meet on the daily basis to each other as well as chief justice and they share each other's work so as if the above two problems are not taking place there. The participants from the Andhra Pradesh high court has told that in their state there is no specific work or the post of registrar inspection rather such work is being delegated to the district judges. He also told that Meaning of the work inspection :- the whole discussion was moved on the issue that what are the work of the registrar inspection and some of them as stated are as follow-Finding fault in the working of the lower judiciary, Portfolio works, To study the judgments of the judicial officer To compartmentalize the work. For all those things according to the panel the participant must develop the habit of being vigilant in their work they must understand that the work they are doing is to be done by the team and at the same time it must not also get compartmentalized.

Judicial work versus inspection work :- two points need to be discussed under this ; the participants stated that they must not think that they will be posted back in the field with their brother judges and thus so they must not take action on them rather it is the justice they are serving not their brother judges secondly they must also work to make the judiciary in their respective jurisdiction upright by taking cognizance of the cases which are taking a lot of time in the court they must insist the judicial officer to solve the case on a day-to-day basis. Inspection questionnaire:- the participant from the Bombay high court stated that they have prepared a questionnaire in which they have referred to all the possible points on which the registrar inspection has to look on and then they are circulating those questions and accordingly they are having a quick response, the questionnaires are on the following points, Performance of the stenographer, Requirement of the infrastructure like building stationary and so on , Judicial branch, Administrative branch. Cut copy paste of the old reports :- the participants were told by the panel that there is an old habit of copying from the older reports of the judicial officer and then pasting it as it is, they must refrain themselves from doing so as they must understand that on their shoulder it is the accountability of the judiciary which is placed in which a grave trust is posed by the people and they must respect that trust the people has posed and must always make a fresh report on the judicial officers.

Non utilization of the funds :- they stated that the ministry of law has asked a budget and the same was given to them by the ministry of the finance and the amount was 5000 crore rupees and they have given back to them around 4200 crore as unspent and still they are complaining of the infrastructure, it is a serious question which must be dealt by the judiciary and as a registrar inspection it is their duty to locate in the lower judiciary the need of the infrastructure by asking to the concerned judicial officer and must acknowledge to the judicial officer that they must utilize the fund whenever they would be coming. Experience of the participants when they themselves were in the field :- the participants were asked by the director that what preparations do they used to make when they were in the field for the inspection teams; they replied that when they were in the field they were given notice of their coming then they use to provide them with the documents which they asks for, the stationary, computer and sometimes their staff also but now time has changed the inspection committee has become technical and they only things which are being taken care off when they would be visiting the area is only dinning and the accommodation. ACR: - the participant were told by the panel that they must take the work of writing the ACR seriously. Briefing by the inspecting judges: - as a inspecting judge they must always have a briefing i.e. the kind of direction they would be giving in accordance with the situations, the critical documents which must be looked for and so on. At the same time they must also see that if the mistake pointed out by them is rectifiable or not if it is then it must be corrected at that very step or otherwise must be reported.

Example of the Bombay high court: - the participant told that a budget section must in the office of the inspection judge so that there conflict of interest do not get entangled. Encouragement by the panelist :- the panelist told to the participant that once there was an officer who was district and session judge who was very hard working, intelligent, having an outstanding work ability and dedication towards the work because of these qualities he was called up by the high court and he was requested to become the registrar inspection, he has not done that kind of job but with his strong determination he was able to get the requirement of the job and was performing accordingly and at the last he was made a high court judge. Thus the hidden agenda of this conference is that the participant must inculcate a firm determination to do work and understand that they are special that's why they are being selected to the post of the registrar inspection.

The judicial process is a set of interrelated procedures and roles for deciding disputes by an authoritative person or persons whose decisions are

regularly obeyed. The disputes are to be decided according to a previously agreed upon set of procedures and in conformity with prescribed rules. As an incident, or consequence, of their dispute-deciding function, those who decide make authoritative statements of how the rules are to be applied, and these statements have a prospective generalized impact on the behavior of many besides the immediate parties to the dispute. Hence the judicial process is both a means of resolving disputes between identifiable and specified persons and a process for making public policies. For centuries hundreds of writers in thousands of articles and books have tried to determine what is the essence of the judicial or adjudicatory process, what distinguishes it from the legislative and administrative processes. During the last several centuries this exercise in political taxonomy has taken on special urgency and normative concerns. For under the doctrine of separation of powers it became improper for legislatures to engage in the judicial process—issuance of bills of attainder, for example—or for judges to assume functions that are thought to be within the scope of the legislative process.

The classic doctrine of separation of powers divided the world of political activity into the three familiar divisions based both on what was thought to be the behavior of political actors and on what were thought to be the requirements for the maintenance of liberty. The judiciary was assigned the function of applying the laws that the constitution makers and the legislatures had created and that the administrators enforced. Today political analysts have abandoned these categories in favor of a continuum. At one pole is the legislative process for making law (formulating norms) and at the other the administrative and judicial processes for administration or applying the law (individualizing the norm). (These categories are analytic, and the activities are not necessarily performed by agencies with corresponding labels.) As to the distinction between the administrative and judicial, some writers—such as Hans Kelsen and Otto Kirchheimer—insist that these processes cannot be distinguished functionally and that it is more or less a historical accident whether some disputes are assigned to what are known as courts whereas others are assigned to what are known as administrative agencies. Others, such as Roscoe Pound, insist that the difference grows out of the fact that administrators are not obliged to make their decisions by following prescribed procedures or in accord with legal doctrines. Administration is seen by these writers as power and discretion, whereas adjudication is rational and controlled. The dispute here is but a facet of an ever-recurring discussion to which we will return later.

According to what is variously called the “mechanical,” “slot-machine,” “photographic,” “formalistic,” “conceptual,” or “orthodox” theory of the judicial process, judges, like doctors or scientists, are trained technicians who apply their specialized knowledge to discover answers to legal disputes. Judging is to be sharply distinguished from politics. Political forces determine what the rules are; the judge merely applies the given rules to the facts. If the judges come across a novel situation for which there is no agreed upon rule, by a process of analogy and logic they discover what rule should be applied; to this extent, and to this extent only, they may be said to create rules. Some commentators have even gone further: to them the judicial process is a self-contained world with its own dynamics and is totally divorced from the political system. And even those who recognize that legal rules and judicial decisions are related to the political community insist that the judges and the law they apply are neutral among competing interests within the community. The judge is a spokesman for the more enduring values of the society, not merely the wishes of those who are for the moment governing it. As the noted English barrister Sir Carleton Kemp Allen phrased it:

Our law has had its political vicissitudes, and at certain periods of its history it has been threatened with degradation into an instrument of government; it might, indeed, have suffered that dismal fate but for the resistance of men like Sir Edward Coke. But today there is nothing more repellent to Anglo-Saxon legal instinct than the corruption of law by political “ideology.” (Allen [1927] 1964, p. 56). This formalistic conception of the judicial process has always been questioned. But beginning toward the end of the last century, and with great zeal in this century, there has been a mounting criticism of it. The attack has come from many sources and from many different writers. The skeptics represent a wide variety of different kinds of analyses, many of which contradict one another, and it is difficult to present the skeptics’ views as a consistent whole. They are often grouped together under the label of “legal realists,” although at times this appellation is reserved for a smaller number of American writers of the 1920s and 1930s. Using the term “realists” in its broadest sense to include all who are skeptical of the traditional analysis, we might mention three of the major assertions. Legal rules do not determine judicial decisions. “The theory that rules decide cases seems for a century to have fooled, not only library-ridden recluses, but judges”. [The] half explanatory, half apologetic reference to the judge’s subservience to the law is at best a playful protective device; at worst it testifies to his unwillingness to understand his own role in the social process.

The point here—and about it there remains much confusion—is not that there are no legal rules or that there is always uncertainty as to what the law requires. The skepticism relates to the extent to which rules determine judicial decisions. There are rules, for example, conferring jurisdiction on courts and making their decisions authoritative. Clearly understood laws govern the great bulk of human transactions; most men know what they must do if they wish the contracts they make to be valid and enforceable by courts. Most legal conflicts do not give rise to litigation, since the law provides relatively precise answers to most questions without the necessity of bringing the matter before a judge. Furthermore, often the judge is not asked which rule should be applied but what happened, that is, to determine who did what to whom. And in other instances, especially at the trial level, the judge's function is to legitimize a transaction by applying a rule about which there is no dispute. No judge is likely to make a decision in such a case contrary to the widely accepted rule; if he did so his decision would not long survive, and he would be unmasked as an incompetent. In this sense he has no discretion, and the rule does provide a guideline.

However, when a judge must resolve a conflict and there is a dispute as to which rule should be applied, the traditional explanation of the judicial process is misleading. According to this explanation judges look to past precedents or to constitutions, statutes, or codes and find the proper rule to resolve the dispute. But there are conflicting precedents and an infinite variety of factual situations to which the uncertain precedents can apply. Nor do constitutions, statutes, and codes provide certain guidelines. “Much of the jurisprudence of this century has consisted of the progressive realization (and sometimes the exaggeration) of the important fact that the distinction between the uncertainties of communication by authoritative example (precedent), and the certainties of communication by authoritative general language (legislation) is far less firm than this naive contrast suggests”.

(2) The formal theory of interpretation and the fiction of legislative intent are methods of “paying lip service to the prevailing myth of statutory interpretation and to the equally mythical notion that judicial legislation is both unconstitutional and improper... Attempts to hide that fact [of the creative function of statutory interpretation] behind a cloak of verbiage are fatuous at best. And the judicial creative activity applies, to some degree at least, to all statutes”. Judges do and must make law. But this is not to say that when judges make law they are acting improperly, for such lawmaking is inherent in their function. A judge may be

neutral between the parties to a lawsuit and dedicated to the principles of his craft, but he must choose; and the difference between one judge's choice and another's does not stem from any difference in their technical knowledge of the law, but from their differing response to the conflicting values which the case presents.

To recognize that judges make law is not to conclude that they are "free" to make any laws they wish; and while one strand of the realist ferment emphasizes the choice-making, creative role of the judge, another searches for the variables that condition and restrict that choice. The decisions are not personal choices of the judges, accidental, arbitrary, or divorced from the rest of the political system. Although some American realists of the 1930s seemed to suggest that judicial rulings were determined by the personality traits of the jurists—which some was labeled the "breakfast-food theory" of jurisprudence—most writers have concluded that to add personality to precedent does not substantially advance our understanding of the judicial process.

Statutory directions, traditional procedures, the demands of the judicial role, and the organizational and political connections between the judicial process and the political system set limits to and give a direction to judicial decision making. Underlying much of the work of the realists is the view that since judges must inevitably choose between competing values, awareness of the fact that they are making such choices, some knowledge on which to base these choices, and concern for the social consequences of the choice are desirable. During the 1920s and the 1930s the American legal realists emphasized empiricism and attacked formal legal concepts, and they made what seemed to be sharp distinctions between the "is" and the "ought." But there was no agreement among them whether judicial or any other values could be established by objectively demonstrable standards. A relativist position toward value questions did not—and does not—necessarily follow from a realist analysis of the judicial process, although many critics of realism have so charged. It is true that many realists, especially those writing prior to World War II, were skeptical that judges were any better equipped than legislators or administrators to determine these value questions. And they felt that many judges had too simple-minded a conviction that they had some special insight into justice.

The realist "ferment" of the 1920s and 1930s had important political consequences, especially in the United States. At the time American, English, and Canadian judges were striking down or restricting the scope of social welfare legislation, were generally hostile to positive government relating to economic matters, and were not

particularly zealous in protecting civil liberties. The judges looked askance upon administrative agencies and wherever possible insisted that decisions of administrators be subject to review by judges.

During the 1920s and 1930s realists were critical of the particular policy choices the judges were then making. Legal realism became a tool to attack judicial decisions and to reduce the role of the judges. Within the context of the realist analysis the statement that the judges were making policy did not necessarily carry any critical content for, as realism taught, such policy making is inherent in the judicial process. But the “forward-looking scholar” (who was most likely to be abreast of the thinking in the neighboring discipline) found grist aplenty in the current product of the appellate courts to disapprove and to ‘show up’ as being by no means inherent in the scheme of our law”. Realism tore off the mask of detachment behind which judges, consciously or more likely without understanding what they were doing, manipulated legal symbols in behalf of their own limited concepts of the public interest. And in addition to furnishing ammunition with which to attack the laissez-faire judicial decision in the 1930s, realism had strong overtones critical of judicial restraints on political and legislative majorities. Not surprisingly, liberals tended toward a realist evaluation of the judicial process, to favor restrictions on the scope of judicial authority, and to be critical of the courts as policy instruments.

On the other side conservatives not surprisingly used the orthodox explanations of the judicial process to defend the restrictive judicial rulings, to urge judicial control of legislative and administrative agencies, and to stress the desirability of judicial checks on popularly elected and politically accountable decision makers. Although conceding that some judges might act improperly and permit their own political predispositions to influence their rulings, the conservatives contended that these were exceptions. Proper judges merely applied the law as given to them by the constitution, the legislatures, or past judicial decisions. The judicial decisions under attack, they argued, were not to be considered either as conservative or liberal, either proemployer or antiworker, but in accord with eternal verities. And, the conservatives argued, to suggest that judicial decisions reflected the judges own economic and social views was dangerously misleading, destroyed public confidence in the courts, and undermined the concept of an independent nonpolitical judiciary.

The post-1945 period. By the end of World War II these attitudes toward the judicial process began to alter. Within the democratic nations, especially the United States and England, judges—many of whom had been educated in the period of the realist ferment—were now supporting governmental regulation of the economy and at the same time protecting civil liberties. At least in the United States, this alteration in the stance of the federal judges seemed to be based on political factors making it probable that this liberal tone would have stability. For the first time in American history conservatives, who now had a louder voice within legislative chambers than they had within judicial halls, were raising doubts about the desirability of judicial restraints on legislators and administrators. Still clinging to the concepts of mechanical jurisprudence, the conservatives charged that the judges were making decisions based on “sociology” and not on law. On the other side, liberals began to repudiate some of the conclusions drawn from realism and, building on more orthodox explanations of the judicial process, to defend judicial review as a device to protect and keep open the democratic processes. In 1960 the major leader of the realist ferment wrote, “jurisprudence [in the 1930s] promptly became a football of politics, study of the courts’ processes of deciding was suddenly taken as an attack on decency of the court’s operation, issues were distorted, energies were wasted. One looks around, after war and foreign danger have sweated some of this silliness out of us, and sees a vastly different scene... The danger lies now in altogether different quarters”. The danger now is that men will lose confidence in their judges, thinking that they operate without regard to generalizable standards.

A group of scholars for whom there is as yet no label but who may be called the “neo-orthodox” have redirected attention not to how the judicial process is like the legislative but to how it differs. The whole purpose of the judicial process, they argue, is to permit knowledge and argument to lead to a reasoned decision. To reduce the analysis of the judicial process to the same terms that are used to describe the legislative process is to strip the judicial of what distinguishes it from the other ways to order human affairs. Although it is not to be assumed that judges are superhuman logicians or even that their decisions always are the deductive application of legal rules, nonetheless their decisions are products of a different set of conditions than are those of political actors who are directly accountable to political majorities and who are assigned different tasks and different roles.

Some skeptics of the orthodox ideology concede that the judges sometimes do make value choices and that the law does not necessarily determine their behavior.

Nonetheless, they argue, the policy-making activity of the judges is an exception to the general course of judicial business and stems primarily from giving judges the power of judicial review. Whether a synthesis between the realist and formalist concepts of the judicial process will result and whether such a synthesis will provide a better tool for understanding the dynamics of the judicial process is yet to be determined. As it stands, in the world of scholarship the formalist view has been modified, and the statement of the realist position is no longer so shrill. Among sophisticates the orthodox explanations of judicial behavior are no longer in good standing. On the other hand, there is no longer much shock value in pointing out that the judges are men and like all men are subject to limited perspectives. Few scholars now deny that the judicial process operates within and is conditioned by the political system and that judges make policy, but because of their adjudicatory function they make policy in special ways. Outside the world of scholarship, the orthodox position still holds. The prevailing expectations still require judges to state their decisions as controlled by statutes or precedents, and the official explanation of public men and practicing lawyers remains that the law is independent of the judges and controls their behavior.

The organization of the judicial process is determined by its purpose: to adjudicate particular kinds of disputes. (There must be a conflict between parties presenting the judges with a “yea” or “nay” choice.) By definition, among the factors that distinguish adjudication from the other techniques of dispute deciding—bargaining, electioneering, voting, fighting—is that each side in the conflict is entitled to be heard by an outsider to the dispute who is to make his decision solely on the evidence presented to him and in accord with a standard of right and wrong. In democratic societies adjudication is based on an entirely different set of expectations than those that underlie the legislative or executive functions. What the majority wishes is what the legislators should decide. But adjudication calls for decisions in accord with standards of right, to be made by persons who are free to apply these standards without concern for the popularity of their decisions. Adjudication rests on the conviction that some kinds of differences are best resolved by an appeal to a specially qualified elite.

Based on these expectations and in accord with its defined function, the judicial process is deliberately organized to “disconnect” it from the rest of the community. The judicial system ordinarily does not have direct lines of accountability to the political authorities. (In some American states where judges are elected for short terms obviously this is not so.) This independence of the

judicial system from the community is based on the need for dispute deciders who are not subject to outside instructions or coercion. Both realist and orthodox analyses support this independence in order that those who come before the judges may have a hearing by a tribunal free to make a decision on the basis of the evidence and arguments presented to it. The orthodox ideology has the additional advantage of squaring this judicial independence with the principles of democratic politics, for portraying the judges as technicians who do not participate in the resolution of policy conflicts makes it unnecessary to hold them politically accountable.

Selection procedures and tenure arrangements vary from nation to nation, but their design is to reduce considerations of partisan politics and to maximize attention to professional qualifications. Although lay participation still survives in the form of jury and lay judges, the definition of the “best qualified” now carries the expectation that the judges will be men trained in law. As early as the seventeenth century the celebrated Lord Coke told King James that since he lacked knowledge of the “artificial reason and judgment of the law” even the king was not entitled to decide cases but must act through his law-trained officers. Nowadays the legal profession has much to say as to who among them shall be selected as a judge, even if the actual selection process vests the final choice in political authorities. (The Supreme Court of the United States is to a considerable extent an exception in that the president exercises something like a personal prerogative in choosing justices for this Court.) Once selected, judges are expected to perform in accordance with professional standards, and they are measured by these standards: judges are members of a distinctive professional group who look to that group for their prestige.

More important than the formal constitutional and institutional arrangements in disconnecting the judicial from the rest of the political system are the factors growing from the judicial role. This role conditions and restricts the way the judges should behave and limits how others should behave in their relations with the judges. Once appointed to the bench a judge is expected to withdraw from active partisanship, to refrain from taking public positions on controversial issues, and to conduct himself so that there can be no suggestion that his official behavior is in any way influenced by his own personal concerns or attachments. His role makes it improper for any groups to make out-of-courtroom contacts or to use any of the normal methods of influencing political decision makers. To do so is not only improper but in many instances illegal.

The “disconnectedness” of the judicial process from the political system, however, is only relative. Changes in the rest of the system affect the nature of the decisions that will be made. Like all who make decisions affecting the fate and fortunes of the community, judges exercise their discretion not only within the confines of the requirements of the judicial process itself but within the context of the political system of which it is a part. What distinguishes judicial from other kinds of political actors is not that the judges are outside the system but that they are related to it in a different fashion than are the other decision makers.

In the Anglo–American nations there are no distinctions between courts created to adjudicate disputes and those established to hear conflicts involving questions of “high politics.” The higher appellate courts, however, operate under rules specifying that they are not to hear cases merely to do justice between litigants but only where the public interest is paramount. Nonetheless, they are organized like and function as ordinary law courts. Civil law nations do attempt to distinguish more sharply between courts created to adjudicate lawsuits and those established to deal with questions of more general public significance. In the German Federal Republic and in Italy, for example, special courts deal with constitutional questions. Their jurisdiction does not depend on the ordinary litigant but may be invoked by public authorities. In France a separate court system deals with disputes between citizens and administrative officials.

There are limits to courtroom access. Generally speaking, only those who are able to persuade the judges that they are personally and directly involved in a dispute may seek a judicial resolution of it, and there are some kinds of disputes judges will not attempt to decide. The technical rules and rationalizations to distinguish between “justiciable” and “nonjusticiable” issues vary from nation to nation and time to time. The widest range of subjects are dealt with by courts in nations such as the United States, Australia, and Canada, where the constitution is a legal as well as a political document, that is, a document subject to construction by judges. In the United States judges have the broad jurisdiction characteristic of the commonlaw countries, plus the authority to treat the constitution as a legal instrument. The Supreme Court of the United States has been squarely in the middle of almost every major political conflict that has arisen within the American republic. But even in the United States the judicial process has played a minor role in some areas: conflicts over control of the machinery of government; price policies for the

distribution of goods and services; and the whole area of American relations with foreign nations.

Civil law nations attempt to restrict the impact of decisions to the immediate cases, and except in a few nations—and here only since World War II —constitutional documents are not considered to be subject to judicial construction. The French judiciary, for example, has never been the pivot for any major political interest. It is impossible to cite a single judicial ruling that has had a substantial impact on the political life of that nation, which is all the more remarkable in view of the highly divisive nature of French politics.

Litigation as a device for making policy depends upon the ability to formulate a lawsuit that presents judges with a yea or nay choice. However, for some issues a day in court is easier to secure than a day before the legislature. The “chips” for winning the judicial “game” are different from those for winning the legislative “game,” since judges are related to the political community in a different fashion than are legislators. Groups who lack electoral strength may, therefore, find it more profitable to resort to litigation than to legislation. However, without some political strength in the community, major alterations of public policy through litigation are as unlikely as through legislation. For the chance of securing favorable judicial rulings is not unrelated to the political configurations of the community. Unpopular minorities whose activities have been restricted by legislation seldom have more success before the courts than they have had before the legislature. Yet in many nations because of such factors as federalism, bicameralism, election district geography, rules of debate in the legislature, and so on, even relatively widely supported values may not secure legislative expression. The judicial process thus provides a forum for raising issues in a different context from the one provided by legislative or executive decision makers. By definition adjudication is distinguished from other techniques of dispute deciding in that it calls for the open presentation of evidence and reasoned argument before impartial judges who are to make their decisions in accord with the evidence and arguments presented to them and in accord with established standards. Courts exist to settle lawsuits, and this function imposes certain requirements on judicial procedures. Whether these requirements accurately describe how judges behave is for the moment irrelevant, for they have a significance divorced from consideration of whether they are descriptively accurate.

Judicial decisions are expected to be based only on the information formally fed into the system. In contrast legislators and administrators (except when they are expected to perform as judges) may secure information whenever and however they please, may contact rival claimants in private, and are under no obligation to give each claimant an opportunity to respond to the other side. Judges, however, are forbidden to discuss a case or to gather evidence outside the formal proceedings. Although in the misleadingly named “inquisitorial system” of civil-law countries, judges have somewhat more leeway in making independent investigations, they too operate under narrowly prescribed procedures designed to exclude from consideration any facts or arguments except those which the participants have presented in formal proceedings. (The doctrine of “judicial notice” provides an exception. Judges are permitted to make rulings in light of knowledge that is so widely known and acceptable that it may be taken into account without being formally presented to them.)

Perhaps the most important single formal requirement is that judicial decisions be based on reason. All decision makers are expected to act on the basis of the best available knowledge and to make decisions that conform to the rules of logic and rationality. But no other political actors are expected to perform solely in terms of reasoned argument. The legislative process provides for an infusion of knowledge and argument into the proceedings, and the legislator’s decisions are not without supporting reasons; but the ultimate outcomes are without apology recognized as determined by political power. They are better explained as part of the political situation. Few expect that any series of legislative or administrative decisions enacted over a course of time will form an internally consistent series of logically interrelated policies, but this is precisely what is expected from the judicial process. Judges are required to phrase their decisions and explain them in a technical language that conceals any subjective elements. Their decisions must be justified as the single right answer, required by precedent or statutory command, and consistent with the whole corpus of the law.

Students of the legislative process have not thought it profitable to analyze debates on the floor of the chamber in order to account for the legislative decision. They assume that most of the significant data is the behavior that takes place outside the formal proceedings. In contrast, and in response to the formal model, the main staples of research concerning the judiciary are the evidence presented, the arguments before the courts, and the judge’s formally stated reasons for his

decision. The judicial decision is approached as a product of a controlled debating contest.

Recognizing that to focus on each decision isolated from its political situation, and with awareness that judicial decisions do not depart too far from the configuration of political power with the community, scholars have started to look at other materials and to develop models for analysis other than the traditional debating society framework. Nonetheless, they cannot ignore the fact that the judicial process is deliberately created and specifically designed to reduce the impact of political forces and to maximize evidence and reasoned choice. And the freedom of the judge from direct political accountability and the expectation that he will base his decision on arguments presented to him help to explain why the same individual will behave differently and support different values as a judge than as a legislator. The judicial process does make it possible for interests that lack large numbers of votes or controlling legislative representation to win favorable decisions.

The requirement that the judge base his decision on evidence and reasoned argument shades into the requirement that he be impartial. Again, other political decision makers are also expected to be impartial—it is contrary to the mores for a legislator or an executive to participate in decisions where he has an immediate financial stake in their outcome—but again the standards of impartiality required for judges are of a different order.

Judicial impartiality between the immediate parties to a lawsuit is obviously required if the judges are to be able to function as outsiders to the dispute. If a judge is under obligation to one of the parties or if he shares the fate of one of the litigants, he clearly cannot be dispassionate and neutral. This kind of impartiality is easy to achieve. At the next level of impartiality, although a judge may share some of the characteristics of one of the disputants—they both may be white southerners or both may be from the middle class—the judge is obliged to make a decision uninfluenced by such factors. Since judges are recruited from among the educated members of the community and are likely to be from among the dominant social classes, and since they ordinarily are not directly accountable to the electorate, the impact of the class structure upon the judicial system cannot be ignored. Whether judges do permit factors of personal bias, prejudice, or subconscious predispositions to influence their rulings is an empirical question, but that they will not do so is the working assumption of all established judicial systems in the free nations. And in an open society it is generally easy to secure agreement that judges have met these

requirements of fairness and have made their decisions uninfluenced by personal, partisan, or class considerations.

There is no difference between the realist and orthodox analysis with respect to the desirability and possibility of securing judicial impartiality in the sense of neutrality between and even-handed treatment of all parties. It is at the level of value choosing that the realist and traditionalist analyses differ. According to the traditional descriptions of the judicial process the judge can and should be neutral between competing concepts of the public interest. He should be an uncommitted man, the servant of the legal system, a mouthpiece of the law. If the law favors one interest over another, it is because the legislature has so ordained or the logic of the situation so demands. The realists, on the other hand, although agreeing that the judicial process requires and in fact secures neutrality as between parties to a lawsuit, insist that however desirable it might be in fact, it is impossible to secure a system in which the judges will be complete ciphers in the process of balancing competing claims to justice. The judicial role, the statutory directions, and the precedents may well structure the judge's choice, but his is a positive and creative participation in the determination of which values the laws will reflect.

Judges must explain decisions. Other decision makers are often called on to justify their actions and to put their decisions into the rhetoric of the public well-being. But only judges are compelled to provide detailed, formally stated, and—at the appellate level—frequently written justifications of why they decided as they did. The fact that a judge knows that he will have to justify his ruling and expose his arguments to the critical attention of a professional audience of his peers has an impact on the decision he makes which is easy to see, difficult to measure, and little studied. The formally written opinion, of course, tidies up a much more complex decision-making process. Many students have been concerned with the various forms of reasoning judges use and have wondered whether they make decisions first and then seek rules to justify them, or whether they move from general rules to the particular dispute.

A judicial opinion justifying a decision, especially of an appellate court, itself becomes a factor in the political process. For the opinion is both an explanation of a particular decision and instruction to law officers, including subordinate judges, as to how they should dispose of similar disputes. And these opinions, like statutes, are themselves subject to a variety of constructions. Both the traditional and realist analysis of the judicial process tend to emphasize the finality of a judicial ruling.

Chief Justice Charles Evans Hughes's famous quip that the constitution is what the judges say it is is frequently cited to demonstrate that although the Congress may pass a law, it is the Supreme Court which determines whether it will be applied. To the same point is the often quoted remark by Gray, one of the intellectual fathers of the realist movement: "Statutes are . . . sources of Law . . . not part of the Law itself In the same tradition writes, "The validity of a norm does not follow from its existence, but from the fate it suffers in the administrative and judicial process".

In all political systems where there is any measure of stability, a judicial decision normally disposes of the dispute between the parties to the lawsuit. In fact, review of a particular decision outside the judicial system (except for executive pardons) is thought to violate the doctrine of separation of powers. And in all nations it is accepted that court decisions *ought* to be obeyed, that rulings of courts are *authoritative*, and that the policies pronounced by judges, especially those who serve on appellate courts, *ought* to guide the behavior of all, especially those who administer the law.

But whether the rulings announced, as distinguished from the resolution of the particular lawsuit, become the standard that controls the behavior of others is no more—perhaps even less—assured for judicially created rules than for legislatively created laws. Judicial constructions do not necessarily end a policy dispute and are no more self-applying than are statutes. What a judicial ruling will mean in the next "individualization" and the next is just as open to the push and pull of the political process, of which the judicial process is a part, as is a legislatively announced rule. What Gray said of statutes can also be said of judicial rulings: "They are sources of the Law . . . not the law."

The precise impact of judicially proclaimed rules has only recently been investigated. At this stage we can only report in terms of the most sweeping generalizations and cannot trace with any assurance the mechanics that determine which particular judicial rulings are likely to be translated into substantial alterations in behavior. Since judges have no direct command of political or military force and depend on the executive for the enforcement of their decrees, judicial constructions have been of little significance when challenged by totalitarians in control of the legislative and executive agencies. It is impossible to cite a single instance in which judges have been able to defend democratic institutions against onslaught by antidemocrats who have taken or been given legislative authority: not in Nazi Germany, not in fascist Italy, not in the Soviet Union, not in Latin American

nations. Although the judges in the Union of South Africa were able to dull the edges of the restrictive apartheid laws for almost a decade, ultimately they were forced to capitulate. After a totalitarian system has been established the rules produced by the judiciary are not likely to conflict with those coming from the legislature.

Some have felt that if the judges are authorized to defend the basic constitution, then they are better able to maintain democratic institutions. Undoubtedly the hope that this might be so accounts for the creation in many of the nations established after World War II of constitutional courts empowered to declare legislative acts unconstitutional.

In stable democratic nations the differing institutional arrangements and the freedom to form differing combinations of political groups often result in conflicts between judicial and legislative agencies. But there is little in the history of these nations to suggest that judicial rulings are likely to endure in the face of determined legislative opposition. For by design courts are not as responsive to the political forces of the community as are the legislatures. (Here we are referring to legislative officials with a nationwide constituency. Compared to regional officials, national judges are more likely to reflect dominant political forces than are the local authorities, and the history of judicial victories over such regionally accountable officials confirms this generalization.) “Except for short-lived transitional periods when the old alliance is disintegrating and the new one is struggling to take control of political institutions, the Supreme Court is inevitably a part of the dominant national alliance. . . . By itself, the Court is almost powerless to affect the course of national policy” (Dahl 1957, p. 293).

Yet it would be wrong to conclude that judges are merely passive instruments reflecting current sentiments and tools of the dominant political groups. For judges themselves are active members of the governing elites and create as well as respond to the political situation. And within stable democratic regimes where the community is divided, judicial support for particular values will often be the critical factor in their emergence as the controlling rules of the community. To have the judges on one’s side and to have their stamp of legitimacy for one’s course of conduct can be an important political asset. Most of the time the judicial rulings will “stick,” although without significant political support they will not stick for long. The key word, of course, is “significant,” and with additional research we may

be able to specify the conditions under which the law announced by the judges will control the behavior of the community.

Locus of Control: Skill Building Paradigm Shift: Skill Building

Following are the points on which the I would like to deliberate Leader: - the leader must be a person who is well managed and having a vision of the future and all the circumstances must be in his control to get the desired result. The leaders are the person who take the charge of the circumstances, they never feel helpless in any of the given circumstances. Thus a trust is posed in the leader. In the same way the trust is posed in the judiciary by the people to do justice and accordingly they must inculcate habit of the leader. In the eyes of layman the judges are their leader thus to do justice they must take charge of the circumstances they must not feel helpless they are the leader they always have to give direction and thus they must imbibe the qualities of the leader. At the same time they must also understand that at the stature of their post they must understand that higher the post the higher the qualities of the leader the person must possess and is asked for.

Controlling of the circumstances:- the successful person may not be well managed but a well-managed person can become successful and a person can become well managed person if he is controlling the circumstances around him an instance is being discussed by the speaker that in one of the court in the Bombay at 10:55 there would be a lot of advocate, witness running towards that court as the judge there was not in habit of postponing the work he was never in the habit of waiting for the witness: he is of the opinion that if the witness or the evidence is called out it must be there otherwise he used to dismiss the matter accordingly and thus nobody use to take risk in his court in the same way the leaders control the circumstances in the court and it is the duty of the of the participants to inculcate such habits. Objective of the lecture :- the speaker told that the objective of the lecture is three folded and which is :- Double loop- thinking b.) Paradigm shift c.) More control over the circumstances

4.) Control over certain circumstances: - the simple formula according to the speaker to control the circumstances are the urge to do a thing differently, backed by the will power, and firm determination and that's it. After the deliberation the resource person made participants to perform following four exercises:-

Exercise 1: are you master of your facts? Under this exercise the participants were divided into four groups and two groups were made to watch one movie in which

it was shown that in the country of Israel which is the gulf although it is not having any oil and is fully desert have find the technology to do a fish farming which is a commendable job they have found out that the saline water under the desert is very beneficial for the fish farming as it is warm and saline and at the same time they are also breeding the fishes which can become the food of the other species . The other two group were shown that in the same country through drip irrigation they have also started the agriculture and they are producing in an good amount: the writer asked the participants to select among themselves a person who will answer two question and prior doing that they must discuss the question among themselves. The two question are as follows:-

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

The groups has made the following points:-

Group no. wise Observations

Story of fish farming in the desert The group told that the first option was that they would have not done anything as fish farming in the desert is not possible. The have the second option of whatever the result may be they must try to do fish farming in the area and they have opted for the second. At the last it was the need or the urge to do the thing which has made possible for them to develop fish forming in the desert . Story of fish farming in the desert The first view that the must be having was that they must be possessing the extreme determination to do that thing or rather they would have sit by seeing the adverse circumstances and it is their determination which has worked for it. Story of agriculture in desert The one option with them was to think of the negative conditions they are facing that there is the only country in the gulf not having oil how would they survive but they have surmounted the problem by application of the human mind and then doing innovation. Story of agriculture in desert . They do not have circumstances in their favor, they could have given the excuse of the bad luck but they have set out the decision first that they will do agriculture in that area and then they have work accordingly and they have succeeded.

Exercise 2: Location of problem:- the speaker is of the view that there are three things in our life and they are- Things or work about which we are concern Things or work about which we can influence, Things or work about which we can control .The speaker asked the participants to take up three topics and determine

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

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

The following are the charts made by the participants

Circle Of Concern

Circle Of Influence

Circle Of Control

The chart made by the participants is as follows Circle of concern Circle of influence Circle of control

Group 1 .Backlog and number of cases.

- Legacy of number of cases
- They can influence the creation of the
- Large number of cases can be solved out
- Vacancy in the courts
- Creation of the courts
- Shortage of manpower
- Noncooperation of lawyer
- Lack of infrastructure courts by asking to the respective senior officer.
- They can coordinate the problem of the noncompliance of lawyer with the bar and can sought it out
- Filling up of the post by promotion or selection can be done to fill up the post

- Infrastructure can be maintained with the help of the technology we possess and which earlier was not there.
- Selection or appointment of the officer can be made

Group2 .) Manpower and staff issue

- Sufficient budget of the sufficient courts
- Behavior of the bar
- Bar member can be persuaded by different measure
- Assignment of work to the staff and training them
- Training of the staff can be done

Group 3 Infrastructure and Availability of Budget

- It is totally of space land/building
- Computers, stationary, records
- Facilities for the litigants
- Furniture problem and so on
- Budget problem influenced from the collector or the local politician in the way of donation from the development fund which they receive
- Computer, stationary etc. can be arranged of the will of the concern officer to look at the availability of the land and building if he wishes so he can find it
- Facilities of the litigant can be taken care

Exercise 3:Discussion on the case :- the participants are required to read an abstract from the case Akil @ Javed vs State Of Nct Of Delhi¹ and which is as following “Under Section 309 of Cr.P.C. falling under Chapter XXIV it has been specifically stipulated as under:

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

the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

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

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

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

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

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

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

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

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

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

“24A disturbing trend of trial of Sessions cases being adjourned, in some cases to suit convenience of counsel and in some others because the prosecution is not fully

ready, has come to the notice of the High Court. Such adjournments delay disposal of Sessions cases.

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

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

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

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

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

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

should be given forthwith to both sides and immediate steps be taken to stop the witnesses and secure their presence on the adjourned date.

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

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

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

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

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

(Emphasis added)

29. In a decision reported in Chandra Sani Jain and others V. The State - 1982 CrL. L.J. NOC 86 (ALL) a Single Judge has held as under while interpreting Section 309 of Cr.P.C.

“Merely because the prosecution is being done by C.B.I. or by any other prosecuting agency, it is not right to grant adjournment on their mere asking and the Court has

to justify every adjournment if allowed, for, the right to speedy trial is part of fundamental rights envisaged under Art. 21 of the Constitution, 1979 Cri LJ 1036 (SC), Foll.” (Emphasis added)

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

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

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

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

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

3. We are unable to appreciate the difficulty said to be experienced by the petitioner. It is stated that his Advocate is finding it difficult to attend the court from day-to-day. It is the duty of every Advocate, who accepts the brief in a criminal case to attend the trial from day-to- day. We cannot over-stress the duty of the Advocate to attend to the trial from day-to-day. Having accepted the brief, he will be committing

a breach of his professional duty, if he so fails to attend. The criminal miscellaneous petition is, therefore, dismissed.” (Emphasis added)

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

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

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

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

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

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

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

(emphasis supplied)

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

13. Now, we are distressed to note that it is almost a common practice and regular occurrence that trial courts flout the said command with impunity. Even when witnesses are present, cases are adjourned on far less serious reasons or even on flippant grounds. Adjournments are granted even in such situations on the mere

asking for it. Quite often such adjournments are granted to suit the convenience of the advocate concerned. We make it clear that the legislature has frowned at granting adjournments on that ground. At any rate inconvenience of an advocate is not a “special reason” for bypassing the mandate of Section 309 of the Code.

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

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

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

34. Keeping the various principles, set out in the above decisions, in mind when we examine the situation that had occurred in the case on hand where PW.20 was examined-in-chief on 18.09.2000 and was cross examined after two months i.e. on 18.11.2000 solely at the instance of the appellant’s counsel on the simple ground that the counsel was engaged in some other matter in the High Court on the day when PW.20 was examined-in-chief, the adjournment granted by the trial Court at the relevant point of time only disclose that the Court was oblivious of the specific stipulation contained in Section 309 of Cr.P.C. which mandate the requirement of sessions trial to be carried on a day to day basis. The trial Court has not given any reason much less to state any special circumstance in order to grant such a long adjournment of two months for the cross-examination of PW.20. Everyone of the

caution indicated in the decision of this Court reported in *Radio Sharma V. State of Bihar - 1998 Curl. L.J. 4596* was flouted with impunity. In the said decision a request was made to all the High Courts to remind all the trial Judges of the need to comply with Section 309 of the Code in letter and spirit. In fact, the High Courts were directed to take note of the conduct of any particular trial Judge who violates the above legislative mandate and to adopt such administrative action against the delinquent judicial officer as per the law.

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

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

3.) Exercise 4:Test:-

A test was conducted to see whether there is internal locus of control in the person or

the external locus of control. It was told as a judicial officer a person must have

ainternal locus of control otherwise he will be moved by the others and the test is as

following:-

To explore tools to help judges effectively deliver timely justice

□ Through developing more control over circumstances

§ Through double-loop thinking

§ Through a paradigm shift

Justice and Care: Advocate Michelle Mendonca:

Contact at 7506662231/ 7506610176



*Effectiveness by Gaining Control Over
Our Circumstances*





Discussion

- Why are some people successful in the same circumstances while others fail?
- Test for locus of control



Are You the Master of Your Fate?

§ When something good happens do you credit your actions or your luck

§ When something bad happens do you take responsibility or credit it to fate

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Locus of Control?

§ Julian Rotter, a behavioural psychologist, developed the concept of locus of control

§ People with an external locus of control place responsibility for behavioural consequences on luck, fate, other people etc.

§ People with an internal locus of control place responsibility for behavioural consequences on their own behaviour and personality characteristics

Video

Discussion

§ What are the 2 kinds of responses the Israelis could have made?

§ Why did they respond the way they did?

Conclusion of Exercise

Presentation

Summary of learnings

Can we Change our Locus of Control?

§ Locus of control is developed through childhood learning, culture and life experiences

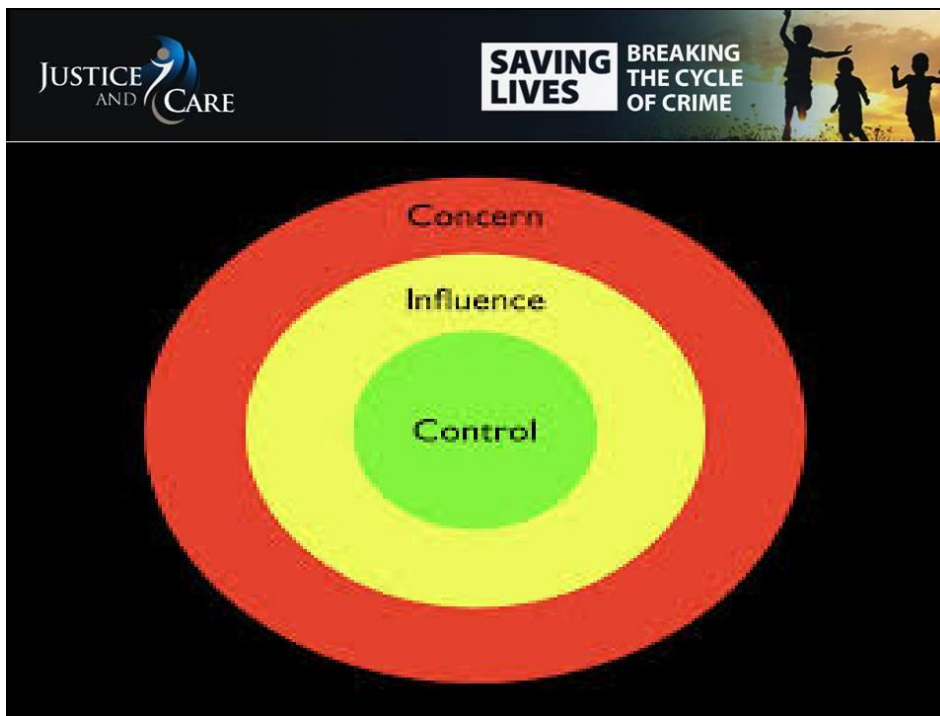
§ Can we unlearn this?

Circles of Control, Influence, Concern

Circle of Control: Situations we can control (situations involving our own behavior)

Circle of Influence: Situations we can influence but not control (situations involving other people's behavior)

Circle of Concern: Situations that affect us but we can do nothing about (your past, global issues, terrorism)



§ Circle of Control: Situations we can control (situations involving our own behavior)

§ Circle of Concern: Situations that affect us but we can do nothing about (your past, global issues, terrorism)

§ Circle of Influence: Situations we can influence but not control (situations involving other people's behavior)

LARGE GROUP DISCUSSION

§ What are the courtroom and environment circumstances that make judges feel disempowered?

SMALL GROUP DISCUSSION

§ For each factor and circumstance that emerged from the large group discussion, divide into small groups and plot the factors in the circle.

Presentation

Summary of learnings



Effectiveness Through Double-Loop Thinking



SINGLE LOOP V. DOUBLE LOOP THINKING

Single Loop thinking: what should I do?

Double Loop thinking: why am I doing what I am doing? Double Loop thinking leads to innovation.

SMALL GROUP DISCUSSION

What is the goal of this activity I am conducting (in the scenario) How can I perform the activity in a way that leads to the goal?

Before starting on the discussion, each group will share its goal with the larger audience. Thank you, it was wonder experience of being here and interacting with judges. Thank you.

Financial Audit

By Rakesh Jain

Deputy Comptroller & Auditor General

My presentation is divided into eight parts and in the same line of progression I will be conducting the session:-

1.) Internal control:-it includes the fulfillment of the obligation which is being put up

on the shoulder by the institution it means that the person must comply law and regulation and must execute the audit orderly, in an ethical way, in an economical and effective way, he advised that they must have a reasonable assessment before going on for the adults.

2.) Internal audit:- it is the best way in which internal control can be examined by the

senior management concerning the effectiveness of the of the control system and in the way to check the accountability of the system.

3.) Types of audit :-he told that there are three types of the audit

a.) financial audit

b.) operational audit

c.) departmental audit

4.) Financial audit:-according to the speaker it helps the senior officer to gave an opinion to the auditor's final opinion. They are always made with the purpose of a

specific area so that the accounts of the government is prepared and presented properly. Its main components is books of accounts and the basic completeness of the account books is financial statement but one must maintain the accuracy of the book properly, there must be adequacy of disclosure compliance of the orders, appropriation or re-appropriation of the reports and at the last surrender of the unspent funds.

5.) Compliance :- it is basically the transaction relating to the expenditure they must be done according to the rule governing them, the work done must be complied according to the rules laid down for the drawing of money and handling of the cash which are made according to the proper establishment, it must also include the contingency expenditure, and it must possess the following points

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

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

6.) Mandate and role of CAG:-The Comptroller and Auditor General (CAG) of India

is a power, built up by the Constitution/Part V .Comptroller and Auditor-General of India, reviews all receipts and use of the Government of India and the state

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

7.) Important finding from the Justice V. Ramaswami case²:- he wanted to share some of the important findings in the case and told that the judges are more accountable top the society and hence the procedure for there examination must be very strict and he told that the committee formed for the investigation of the case has taken up the following points for there consideration:-

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

f.) Non-observance of the procedure and the approval authority.

Outline of Presentation

- Internal Control
- Internal Auditor
- Types of Audit
- Financial Audit
- Compliance Audit
- Mandate & Role of CAG
- Important Findings

Internal Control

Internal control is designed to provide reasonable assurance that the following general objectives are achieved:

- Fulfilling accountability obligations;
 - Complying with applicable laws and regulations;
 - Executing orderly, ethical, economical, efficient and effective operations;
- and

Safeguarding resources against loss

Internal Audit

Internal audit is a very important component of Internal Control. The principal function of internal audit is the examination of internal control system and it provides an assurance to the senior management concerning the effectiveness of control system. This includes the following:

- Reliability and integrity of financial and operational information
- Effectiveness and efficiency of operations
- Safeguarding of assets

Compliance with laws, regulations and contracts

Types of Audits

- Financial Audit
 - Compliance Audit
 - Performance Audit
- Financial Audit
 - Financial audit is conducted to provide an opinion whether financial statements are stated in accordance with specified criteria.
 - The primary purpose is to verify whether the accounts of Government are properly prepared, are complete in all respects and are presented with adequate disclosures.

Financial Audit covers the following:

- Books of accounts and financial statements are in accordance with applicable laws, rules, regulations, accounting principles & form.
- Completeness of the books of accounts and the financial statements
- Accuracy of the books and financial statements
- Timeliness of the preparation of the books & financial statements.
- Adequacy of disclosures
- Compliance of the orders of appropriation, re-appropriation, surrender of funds, explanation for the significant variation.

Compliance Audit

Examines the transaction relating to expenditure, receipts, assets and liabilities of Government for compliance with

- i) the provision of the Constitution of India and applicable laws; and

- ii) rules, regulations, orders and instructions issued by the competent authority

Compliance with Rules & Orders

Budget

- the rules governing budget preparation, RE and Supplementary, Charged & voted ,expenditure management

rules for new service, new instruments of service

Compliance with Rules & Orders – Establishment

- drawl of money and handling cash
- pay,, deductions, all types of allowances, advances, loans
- establishment, contingency expenditure

(at all levels- DDO, Head of Offices, of Dept.)

Compliance with Rules and Orders-Procurement,

Assets, Inventory

- procurement of goods, material services, equipment, vehicles
- receipt, storage, issue of stores, consumption
- acquisition or creation of assets, infrastructure
- safe custody, maintenance of assets
- physical verification, surplus or obsolete or unserviceable items &write off

Standards of Financial Propriety

- i) Expenditure should not be *prima facie* be more than what the occasion demands
- ii) No authority should exercise its powers of sanctioning expenditure to pass an order that will be directing or indirectly to its own advantage
- iii) Public moneys should not be utilised for the benefit of a particular individual or section of the community

Amount of allowances such as TA granted to meet the expenditure of a particular type should be so regulated that the allowances are not on the whole & sources of profit to the recipients.

Performance Audit

Independent assessment or examination of the extent to which an organisation, programme or scheme operates economically, efficiently and effectively

Review the output & outcomes against measurable objectives and performance indicators

Historical Perspective

- The institution of the CAG of India traces its origin to the first Auditor General appointed on 16 November 1860
 - It has evolved through legislation, tradition, practice, professional standards and judicial pronouncements

Mandate and Role of the CAG

- CAG of India is a Constitutional Authority, a 'watchdog of national finances'
- The CAG heads a unified mechanism for audit of both the Central and State governments and some other entities

Independence of the CAG

- Not a part of either legislature or executive
- Appointment by the President
- Can be removed only if impeached by the Parliament (process as in case of a Supreme Court Judge)
- Security of fixed 6 years' tenure upto 65 years age
- No dilution of terms of employment of an incumbent CAG
- Constitutional ban on taking post-retirement government job

Independence of the CAG

- Pay, allowances, perks and pension of the CAG regulated by a Parliamentary law.
- Government's proposed budget allocation to the CAG is mandatorily approved by Parliament without cut.
- Terms and conditions of service of the employees of the Indian Audit and Accounts Department to be determined by Presidential Rules made in consultation with the CAG.

Objectives and Scope of audit

- What is 'audit' has nowhere been defined in any law
- The CAG is the sole authority to decide the scope and extent of audit to be conducted by him or on his behalf
- No authority can tell the CAG what and how to audit
- Objectives and Scope of Audit is a dynamic concept that has evolved over time

It is covered by internationally accepted auditing standards.

Auditing Functions

- Union and State Government
- Central and State Public Sector Undertakings
- Autonomous Bodies substantially Government-financed
- Entities using public resources under a license/contract
- Indian Missions abroad
- Support and Supervision of audit of 'local bodies'
- Audit of any other body 'entrusted' by Government
- Also United Nations and other International organizations

Important Findings

- First Impeachment motion –Justice Ramaswami of Supreme Court
- Found Guilty of 11 charges out of 14 charges.

- Extravagant & wasteful expenditure on furnitures, furnishings & electrical appliances exceeding the prescribed limit.
- Purchases of furnitures & carpets-favoured dealers.
- Huge payment on residential phones.
- Non payment of rent in respect of excess articles.
- Non observance of prescribed procedure & approval of competent authority
- Out of turn promotions in breach of rules.

Audit Findings

- Non recovery of fines imposed by courts
- Irregularities in cash book
- Non deduction of tax at source, non reconciliation of accounts with treasuries
- Non receipts of actual payee receipts
- Non utilisation of grants
- Purchases in piecemeal to avoid sanction of competent authority
- Improper maintenance of Stored Stock Registers
- Non maintenance of proper records relating to pendency of cases in courts



धन्यवाद

Good morning to all of you. Fortunately Justice Tripathi is not here or he would have taken an exception on your not responding with a loud good morning. He is coming shortly to join us. Yesterday we had a very hearty discussion on the work of Inspection branch. The objective of this exercise was that the work of Registrar Inspection or whomsoever is in the charge of this Inspection branch would be able to evolve a effective mechanism for inspection. And the Judicial administration is run more Objectively. Now yesterday someone said about relevance of Judicial work inspection in course of inspection and also that it should not be done. Personal life of a judge should not be part of inspection. A judge was found driving recklessly, he met an accident but the High court said he is a good judge ,no problem if he is a bad driver, ultimately he was elevated also, not me. So personal life is also out of bounds for us. If a judge has a friend in the bar, is bad but if a judge has a friend in staff or police force, we should not be opinion to private life. after all it is private matter,. So what should we look at? we have to draw some boundaries for scrutiny of work as far as judicial work is concerned, what is out of box is what was decided what decision the judge arrived at. that will be for the appellate court to decide and unless there vigilance angle which says that he has done it for considerations other than for considerations other than judiciary, that's a different matter, may be out of bounds for registrar, but judicial work how he has written the judgment whether he has followed the procedure properly, etc is definitely is a subject matter of scrutiny by inspection branch because if u yes, during the course of about last two years plea bargaining has been done in case of murder and in cases in which punishment is more than seven yrs so this can be subject matter of inspection, must be subject matter of inspection, in many cases 258 is abused, many things happen, charges altered, lesser charges framed and this plea bargaining takes place, anything can happen, so therefore as far as scrutiny by inspection branch is concerned it should cover procedural aspects, it should also cover if u r a senior, your person who is in the position to guide the officer u may even discuss a judgment, it may not form a part of inspection note by you may discuss because otherwise the fellow will never come to know what is wrong if you are read a judgment and found something objectionable not proper, you could discuss it with him n tell him that see this is wt I have found, you should not be doing this.

wt happens is a touch me not that is don't scrutinize any aspect of Judicial Officer conduct is an approach which has landed us in the present situation.

unaccountability of judiciary from the lowest to the highest because ultimately we are accountable to the HC and HC is accountable to none that is the whole trouble but now with transparency wd everything available on net people are going to ask questions u must have seen that report of Nilkanth and others has come up before the SC.93 percent of the matters which SC decided in 2014 had nothing to do wd constitutional issues. A judge had asked in open court Kapil Sibal. Is your matter b/w among those 93% or 7 % .so people r not going to remain quiet today so it is necessary for us to strengthen our internal mechanisms. we should be concerned because it affects us, our reputation .we are at the bottom of the state judiciary, Hon'bles very easily say ,we have always been a part of judicial family, we have sat together for more than 50 sessions here.bt Hon'ble easily say o there is corruption in Judiciary but in lower levels, it hurts us know, if there is something wrong in judiciary level we r part of lower level, it hurts us, therefore when u go for inspections it is necessary for u to ensure that every aspect of judicial conduct is examined. Justice Tripathi would be dealing with Administrative Audit, I m dealing wd Judicial Audit which we are required to .Don't make inspection a ritual, what happens now a days because of pressure of work, Mr. Joshi said there r so many matters before me, what can I do, true there are many matters, many things to be done but then time management is to be done which will in afternoon. TM is an important thing, manage your time properly, you can do things better. Ritualistic Inspection cut paste copy job, I challenge everyone in this room that u go n open previous inspection note and you will find that much of cut copy paste job is done. There is 700 Qs containing Qs. The JO whose court is going to be inspected does not even peruse what answers are given, this is true wd our statement which we sent, annual statement six monthly quarterly etc. Because no body has time to look into the correctness of those things, its like Birbal story, how many crows r there in capital today 20350,who counts, no body can, if some body counts, same thing happens wd us, when inaccuracy in statement is pointed out by some one ,Judicial Officers say may be mistake has ocured, these mistakes ultimately lead to wrong persons going up. have u carried out inspection of court of higher flier recently, there is one who is about to be elevated or elevated to bench. Any one who has carried out Inspection of court of high flier, No. ok. Sir I had occasion to conduct inspection of a judge who was about to be elevated in Goa, I came across that 70 matters are pending for judgment 70,arguments closed, if u go for inspection of high flier courts do you find that those courts are most murky, administratively and judicially. In judicial matters also the fellow will not take up any serious work. light work ,no accountability, big lok adalat numbers.

But this is the story of every high flier. They make a show of Lok adalat, big numbers you will find in every highflier court Lok Adalats are held and big numbers are shown.

The most important understanding of the judicial process requires us to think about more than formal law and procedure. The first question which often comes in one mind after analyzing the topic is what do you exactly mean by critical analysis of judicial process? Is it merely a statement of criticism or something beyond the imagination of one's thinking? However, if we closely analyze our present topic, then all the doubts become crystal clear because sixty two years after independence, the entire judicial system is on the verge of collapse. While the superior courts have earned praise from citizens for intervening in citizen's concerns raised through public interest petitions, only those with resources or cunning can hope to get ordinary justice. Over three crore cases are presently pending in various courts. In most cases, citizens have little hope of getting justice in their lifetime. Corruption and abuse of court processes are rampant. So, what exactly Judicial process is? *Everything done by judge in the process of delivery of justice is called Judicial Process .It basically confines itself to the study of "is" to "ought" of the law. Or, Judicial process is basically "whole complex phenomenon of court working" and what went wrong with this phenomenon is the issue in my current project.* The judiciary is one of the pillars on which the edifice of the constitution is built. It is the guiding pillar of democracy, what is happening inside it is a fascinating study. Its logbook shows that often the judgments of the Apex court degenerated into a dismal failure. There are many self inflicted wounds. This is the story of 59 years of the Supreme Court. Speaking of the Supreme Court of United States of America, Jackson J., of the court said,

" we are final, not because we are infallible, we are infallible because we are final." The judgments of the Supreme Court are final but not infallible. They require constructive criticism, especially to take them out of the morass of alien concept and ideas foreign to the land and culture. The Supreme Court is virtually the proverbial ivory tower, with the judges sitting on the top. Disturbed by some of its judgments, Pt. Nehru once said in a diatribe, "judges of the Supreme Court sits on ivory towers, far removed from ordinary men and know nothing about them." The Supreme Court is sometimes said to be beyond the reach of a common person.

Now, a question arises;What is justice? Is an age long question since the beginning

of civilization? It is an elusive term. What appears justice to one person and from one viewpoint may be injustice to another or in another prospective. We cannot have such elusive concept as a yardstick. There must always be some objectives test to form a foundation of just society. Jurisprudence formulates that test as “justice according to rules”[1]. Therefore, W. Freidmann said, “justice is an irrational concept”. He concludes that justice as a generally valid concept is the goal to which every order aspires as a “purposeful enterprise”.

The question arises as to what actually went wrong to judicial process in India? Because the Supreme Court, instead of searching and basing its judgments on first principles or fundamentals of jurisprudence has sometimes has taken a shortcut by resorting to the supposed fiat of article 142. This article was employed as a tool to pass final decisions, apart from and without recourse to the law of the land. The concept of expanding universe is not confined to astronomy alone. There is fast expanding judicial firmament. The expansion of judicial world sometimes reads on fields occupied and reserved for others. It is very necessary that Supreme Court act with self restraint. Let us remember the adage, “power corrupts and absolute power corrupts absolutely”.

There are certain questions which are needed to be answered in the working of judicial process, like

1. What is the need of Court fees?
2. Why advocates are needed?
3. Why we are bound to pay advocate fees when they are called as officers of court?
4. Why we have chosen adversarial process of justice?
5. What is wrong with this system?
6. Is there any justification of having Limitation Act which is pro British legislation?

A vision of equal, expeditious and inexpensive justice for India’s millions, a passion for effective delivery of social justice for the victimized masses and a mission of constitutional fulfillment through a dynamic rule of law geared to democratic values, operated by a fearless judicial personnel with a positive people oriented jurisprudence broad based an access to a sensitive, streamlined, functional jurisprudence- that is the command of the Preamble to the [Constitution](#) and the categorical imperative of [Article 39-A](#). Our socialist Republic now hungers for human justice through human law and staggers towards nowhere since courts have lost their credibility and are writing their own obituary through retiring chief justices. Today judicial justice has come to a grinding halt, the judicature has

caricatured itself and the Bench and the Bar, alas, have become a law unto themselves, Indian humanity having alienated itself from the feudal forensic system and the cult of the robbed process. If all the judges and [lawyers](#) of India pull down the shutters of their law shops nationwide, injustice may not anymore escalate, if at all, litigative waste of human and material resources may be obviated.

Now, a situation arises that the entire Indian justice system is now under severe threat. With the police force that has been condemned by everyone as being incompetent and corrupt, with the prosecution system that is inept and selective and a judiciary that is corrupt where is the room for justice in the Indian context?

Indian Judicial system has collapsed totally. Be it the justice delivery system existent in criminal side or civil side, there is no hope for justice for common man. Entire fabric has been exploited and doomed. The condition of Indian judicial system worsened so much that Attorney General of India, Mr. Soli Sorabjee remarked, "Criminal Justice system in India is on the verge of collapse owing to inordinate delay in getting judicial verdict and many a potential litigant seem to take recourse to a parallel mafia dominated system of 'justice' that has sprung up in metros like Mumbai, Delhi etc".

"Hamlet's lament about the laws delays still haunts us in India and the horrendous arrears of cases in courts is a disgraceful blot on our legal system, especially the criminal justice delivery system," Striking an alarm bell, Sorabjee said: "criminal justice system is on the verge of collapse. Because Justice is not dispensed speedily, people have come to believe that there is no such thing as justice in courts." This perception has caused many a potential litigant who has been wronged to settle out of court on terms which are unfair to him or to secure justice by taking the law into his own hands or by recourse to a parallel mafia dominated system of 'justice' that has sprung up in metropolitan centres like Mumbai. The gravity of this development cannot be underestimated. Justice delayed will not only be justice denied, it will be the rule of law destroyed," he said. The Attorney General said the time has come to ask, "Have the ideals of justice, liberty, equality and fraternity proclaimed in the preamble in grandiloquent language been realised in the working of the [Constitution](#) during the last 53 years? Have we redeemed our trust with destiny? Have fundamental rights been merely in the realm of empty rhetoric or have become living realities for the people of India. Apart from that there are number of question which requires answer in the working of judicial process, like;

1. What is the need of Court fees?
2. Why advocates are needed?
3. Why we are bound to pay advocate fees when they are officers of court?
4. Why we have chosen adversarial process of justice?
5. What is wrong with this system?
6. What is the use of locus standi?
7. Why are we bound to pay process fee?
8. Are these provisions violative of [Article](#) 14 of the [Constitution](#)? If yes, then why there is nobody to take reformative steps?

Mutual appreciation of society of judges and advocates constitute extra constitutional power and this lead to imbalance of power spectrum in society. What we need is, whatever the SC said, don't take it as gospel of God. We should be able to discover the truth; we should be able to analyze that whether the particular question is in conformity with Fundamental Rights. We should have the ability to identify what is wrong, where? Now, the analysis of governmental functioning is "the executive is failing, the legislature is failing and the judiciary has failed."

[Article](#) 13(2) clearly provided "the state shall not make any law which take away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void." Now, question arises, who is the custodian of this right? The answer is President of India under [Article](#) 60 and Governor under [Article](#) 159. President is not bound to sign the Bill which is unconstitutional, as an obligation is imposed under [Article](#) 60 that he shall preserve, protect and defend the constitution and the law. There has to be unity of command to direct state and we have President and Governor for that purpose. [Article](#) 14 compels every functionary including the judges to decide according to the provisions of the [Constitution](#).

Presidential form of government has power to choose policy, what he required is only support from legislature. If one analyze the recent opinion of CJI that judges are not bound to disclose their assets. What the CJI trying to do? He is just claiming unequal protection of law which is not guaranteed under [Article](#) 14 of the constitution as he is attempting to take more protection of law; therefore, the equality clause is violated by the judges. Education and economic development are the only two methods mentioned of correctness under [Article](#) 46 of the [Constitution](#).

But in the recent decision of SC regarding reservation policy for weaker section of the society is totally a blunder created by it. Nobody has grievance that the weaker section of society should prosper, but it does not mean robbing upper strata of society of their opportunities and development. Forward section of society cannot be pulled down to promote weaker section of the society. The basic funda is “unless there is capacity building from primary level, reservation does not help.” The answer of all the grievances are given under [Article 14](#) of the [Constitution](#) but the judiciary lost the beauty of this particular [Article](#) through classification. By and large Courts failed to deliver complete justice. [Article 14](#) talks of restitutive justice and restitutive justice has the touchstone of time count. Moreover, procedural complexities should not hamper the way to justice. As lay down by SC that if you move the High court under [Article 226](#) then you can come to SC only under [Article 136](#). What is this nonsense? Is it the denial to the people that by way of procedural complexities they cannot enforce their rights against the wrong doer? It is highly unconstitutional. Nobody can forfeit your right to move to SC under [Article 32](#) if you exhaust your first remedy under [Article 226](#), because it is violative to the protection given under [Article 14](#). What is wrong here is the manner of working, system is good enough to lead to equality. The following are some of the shortcomings of the present day Judicial system: procedural hurdles in Access to Justice:

Procedural laws are not merely a body of rules meant for facilitating the dispensation of justice on substantive questions. It also represents the value choices of the makers of law. What are their priorities- facilitating access to justice or creating hurdles to access to justice? The answer better understood by everybody. From institution of a suit to the execution of a decree, it is the onus of private individuals, not the government. The lacuna is due to the adversarial process of justice system. Under the said model, there is no duty of the court to ascertain the truth. Adopting an adversarial system leads to number of hurdles in access to justice, especially procedural hurdles in access to justice. As already mentioned, it does not reflect the fundamental policy choices made in the [Constitution](#) of India. Instead it reflects the values chosen by the colonial masters, the British, who were least interested in the plight of Indians and thus placed several hurdles in access to justice by prescribing several technicalities. Though the Supreme Court has said that “procedure is hand-maiden to the substantive rights of the parties”, the practical working of this hand-maiden leads to the perception that the handmaiden has had her revenge by overpowering the queen, i.e., the substantive laws. Procedural laws prescribe the procedure for enforcement of substantive laws however procedural

laws have been used, time and again, to defeat substantive rights. **Cost of litigation**(Order IX, R2, R5, Order XVI, R2 of CPC) the most disadvantageous feature of judicial process is its cost. The costly nature of litigation compels parties to abandon just claims and defences. The cost of litigation consist of court fees, process fees, advocate fees and the principle of the losing party paying the cost of litigation. This cost system is peculiar to British administration. It was British who imposed such fees for reducing filing of frivolous claims. The motive for this was delay and denial of access to the Courts and also to extract money from the people. In independent India, we followed the same legislation i.e. The Court Fees Act of 1870. Apart from that parties are required to pay process fees like for filing of plaints, written statements, issuing summons and issuing copy of judgment and decree.

Thus, the access to justice in India depends on the financial capabilities of the parties that is unconstitutional and encourages inequality between the parties. Here, ethical count is defeated. With the institution of the suit, a court fee has to be paid. As per Section 35 of CPC, the costs of and incidents of all suits shall be in discretion of the Court and the Court has the full authority to determine the extent of costs. As per Order IX R 2 of CPC, a suit can be dismissed if the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the Court fee or postal charges[5]. Court Fee is a colonial baggage being carried by the Indian Courts till today. The policy of selling justice is against the constitutional scheme[6]. When seen in the light of the power spectrum as elucidated by Prof. Julius Stone in his book[7], the aspects of power relations in charging a fee for rendering justice is all on negative side. Court fee is low on ethical spectrum as it is against the basic premises of the foundation of a welfare state as envisaged in the [Constitution](#). Since a multitude of citizens are involved in civil litigation process, the head count component is quite high and so is the interest affected component as civil cases cover a broad ambit of interests. The Court fee, being a hurdle in access to justice, has a large degree of influence in discouraging honest litigants who do not have sufficient financial resources to pay the fee from approaching the courts. Since the non-payment of court fee can result in dismissal of the suit, it is very high on coercion band.

The judicial dicta on entry fee hurdle in access to justice are quite interesting. In **Central Coal Fields Ltd. V. Jaiswal Coal Co.**, AIR 1980 SC 2125 observed that effective access to justice is one of the basic requirements of a system and high

amount of court fee may amount to sale of justice. The Court observed that- It is more deplorable that the culture of the magna carta notwithstanding, the Anglo-American forensic system and currently free India's court process – shall insist on payment of court fee on such a profiteering scale without corrective expenditure on the administration of civil justice that the levies often smack of sale of justice in the Indian Republic where equality before the law is a guaranteed constitutional fundamental and the legal system has been directed by [Article 39A](#) “to ensure that opportunities for securing justice are not denied to any citizen by reason of economic.....disabilities”.

It is submitted that sale of justice whether for a penny or for a pound is a sale. The basic premise for accessing the court for redressal of an injury is that the State is liable to protect to individual and having failed to do so, it should redress the injury. For this no fee can be charged. It is a settled principle of law that no one can profit from their own wrong. Thus State ought not and cannot profit from its own lapse in performance of duty.

Later in [Secy. to Govt. of India v P.R. Sriramulu](#), 1996 (1) SCC 345, the Court pointed out that it could not be disputed that the administration of justice is a service which the State is under an obligation to render to its subjects. However, yet again, the Court failed to declare the Court Fee Act as unconstitutional. A question now arises, what is the need of advocate fees? Perhaps William Shakespeare is correct when he said, “the first thing we do, let's kill all the [lawyers](#).”

The money power and influence power comes into play, thus the principle of equality as envisaged under [Article 14](#) stands violated. The adversarial system does not impose a positive duty on judges to discover the truth; he merely plays a passive role. However under Section 57(1) of the Indian Evidence Act, a judge is presumed to know every law, then he is the best person to discover the truth, then why at all, he needed the help of advocates?

Advocates are considered to be the officer of the Court under Advocates Act, they are regarded to assist the Court in the administration of justice. Then why parties are required to pay advocate fees? It is clear cut violative of [Article 14](#), as the court is required to administer justice without the aid of advocates. Even if you want advocates then go for public advocates aided and supported by states. In the process of delivery of justice there is no parity of power. There is need for rethinking or

revamping whole judicial system. The Limitation Act of 1963 provides for the specific period for a person to effectuate his rights. This bars the remedy after certain period of time but the rights subsists. The Act was passed during British in the year 1793 and was amended and consolidated later. The same was adopted by Independent India, the effect of this is that it denies justice after a period of time, thus invalidating and defeating the time spectrum as a person is denied for his right after certain period of time, thereby denying interest spectrum as interests of such persons who cannot approach to Court thus, their interests get affected and influence of laws, on such aggrieved persons was unable to give remedy. Limitation act basically does not defeat right but basically the remedy is denied. [Article 14](#) guarantees moment to moment protection because the idea of justice under article 14 is restitutive justice. Sanction for prosecution abridges away my right to file suit. If any aggrieved person failed to file suit within limitation time, then wasn't it is the duty of the court to take judicial notice of this as clearly provided under [Article 57\(1\)](#) of Indian Evidence Act. **Arrears of cases:** Because delay in legal proceedings, there is huge backlog of cases which are pending, and it take approximately 20 years for a case to be disposed off, this snail pace speed of dispensation of cases throughout the years is effecting the ethical count, as justice delayed is justice denied and also adversely affecting the time count spectrum and interest spectrum is affected when litigant suffer throughout the years. As far as selection of judges is concerned, according to the text of the [Constitution](#), President has the power to appoint judges, he has discretion to choose and he can consult the Chief Justice of India as well as senior most judges of Supreme Court in matter of appointment. But the SC in SP Gupta and others V. Union Of India held that consultation by CJI means his consent. If consultation means consent then the power spectrum shifted from the President to CJI, and it is entirely wrong interpretation of the [Constitution](#).

The judges are selected according to the political loyalties acceptable to the ruling party. Genetic engineering from the political angle is made secretly operational in the case of judges, and then at the performance level agrarian laws are struck down, welfare measures are whittled down and progressive projects meet thier judicial water loo. There no system for disciplining corrupt judges. Impeachment is next to impossible. One cannot even register an FIR against a judge taking bribes openly without the prior permission of the Chief Justice of India.

Added to all these immunity to judiciary is the power of contempt of Court, which can be used by the judiciary to stifle public criticism, or even an honest evaluation

of the judiciary. This threat of contempt has prevented a frank discussion or a healthy debate on the functioning of judiciary. The judiciary recommended that the Chief Justice should be the final word in deciding whether any information about the Court should be given out or not. Most [High Courts](#) have not even appointed a public information officer under the RTI Act. The Delhi [High Court](#) has framed rules which prohibit the release of non judicial information about the court, such as purchases and appointments. All this has ensured that the judiciary becomes a law unto itself, totally non transparent, and accountable to none. What we need is the reformative method of selection of judges. Advocates should not be allowed to become judges nor should be the practise any criteria for the selection of judges. When one has to analyze the law, analyze the constitutionality of law, because every judicial process is constitutional specific. There are numerous instances of cases where SC wrongly interpret the provision of [Constitution](#) like Joshi V. Madhya Bharat where it was held that place of birth is relevant or in Balaji V. State of Mysore case[12] where caste was given prominence. Here, court indirectly held that caste and religion is important which is wholly unconstitutional. By upholding pro government attitude, courts are cheating the citizens who belong to socially advantageous sections of society but are economically backward enough not to get an opportunity of education. Reservation in the matter practised today cannot lead to the fulfilment of [Article](#) 45. We should make the quest to achieve all this on the bedrock of [Article](#) 14. Judges have to act strictly in accordance with law, on the matter of Judicial process, the duty of the court is to ascertain the law and apply it and judge the fact in the light of that law, here court has no power to legislate. There is nothing like judges made law.

The constitution has conferred a very wide jurisdiction on SC of India. It shows that the [Constitution](#) makers placed great confidence in the sagacity and the wisdom of those who were to exercise such enormous power. When any court is vested and is invested with wide jurisdiction, it necessary follows that the court must exercise that jurisdiction with utmost care and caution. When power is conferred on constitutional machinery, it is always to be understood by the functionary as a duty; others may view it as power. When the functionary is a judicial restraint, he must be extra careful, lest he may appear to be carried away by emotion or bias. Self imposed discipline and judicial restraint should be his armament; otherwise there is the fear that he may not be viewed as impartial. It is difficult to draw the line but one can say, without fear of contradiction that the power must be exercised with restraint and should not appear to be an immature

impulse. In a democratic set up, when the [Constitution](#) confers wide powers and jurisdiction on any institution, the constitutional functionaries exercising those powers are in effect called upon to perform certain duties and functions and, therefore, they must carry out those obligations with great care and caution. The constraint and restraint of judicial office demand a self imposed discipline in the exercise of the power and jurisdiction conferred by the [Constitution](#). There can, therefore, be no doubt that the jurisdiction must be exercised responsibly, and with restraint and circumspection. **Some of the heavily criticized judgments of SC are:** In, [Chiranjeet Lal Chowdhary V. Union of India](#)[13] The SC abdicated its power in the hands of the executive and laid down the Doctrine “constitutionality of Statute” in which the petitioner has to prove the unconstitutionality of the statute and court assumes its constitutionality. This judgment defeats all the bands of the power spectrum, as it is unethical on the part of the Court to presuppose the constitutionality of the statute without looking into its essence so it clearly violates the power principle. This approach affects the interest, influence, head count and time bands of the power spectrum, because the interests of the majority of people are affected by his approach and an individual is entrapped in dilatory legal battle for justice. In, [Mohini Jain V. State of Karnataka](#) The petitioner applied in a medical college in Karnataka but the college was charging an exorbitant amount as capitation fees. The petitioner filed a case in a court, it took the court five years to settle the case and the verdict of the case was that “the case of Mohini Jain may be considered for admission” it took the court 5 long year to decide the case. During these years, the petitioner would have successfully completed MBBS and even after the lapse of 5 years admission to her is not guaranteed. Apathy of enforcement machinery and judicial process towards the seekers of justice can be viewed from the condition of the poor victims of Bhopal Gas Leak Disaster which took a toll of 15000 people. 25 years had passed to that ghastly incident, still now victims are fighting for compensation, which fails to measure up the damage caused to them. The decision of the court was passed in the year 1991 but the decision has not been enforced for such a long time. This delay in the execution of the judgment is affecting the time count of the power spectrum as justice has no importance if it is not time bound and justice by the court without being enforced remains incomplete. In, [AK Gopalan V. State of Madras](#) The SC attenuated the concept of “personal liberty” in [Article](#) 21, by narrowly interpreting it without reading it in conjunction with [Article](#) 19, and hence said “personal liberty” means nothing more than the liberty of the physical body-freedom from arrest and detention from false imprisonment. This interpretation has

given a carte Blanche power in the hands of the executive to interfere with the fundamental rights of the citizens. This case defeats all the counts of the power spectrum as it lies at the higher end of the coercion band.

In, [Maneka Gandhi V. Union Of India](#)[18]

Instead of dealing with fundamental question of law, the case was decided on the assurance given by Government of India that her passport will be returned back. No question of law was decided. So, can we cite this case as precedent? Which is merely decided on Government assurance? Now a question may arise, what went wrong with SC? Here, court failed to administer justice according to law as it failed to laid down any law. Court ought to say that public officer should be prosecuted under s.166 of the IPC for impounding justice, and then it will act as a deterrent to other officers. What was lost in this case is the opportunity to lay down any law. Policy control becomes duty of court under judicial process.

The answer is very simple yet SC failed to understand it. It is failing to respect [Article](#) 14. The SC must bear in mind that the power is given for the performance of duties and functions. They have been granted immunity only for the purpose of doing justice fearlessly, but SC failed to understand this notion of power. It exercises power arbitrarily.

Indian Judiciary: Tyranny or Activism.....is it accountable to anyone?What exactly is Indian judiciary? Is it accountable to anyone? These are certain questions which require immediate and remedial answers. Peeved at judiciary donning the role of Executive in several cases, Somnath Chatterjee warned of ‘serious implications’ if this trend continued, asserting no one should behave as a ‘super organ’ of the State. Chatterjee said ‘nowadays’ there have been ‘umpteens’ cases where judiciary had "intervened in the matters entirely within the domain of the executive, including policy decisions despite the [Constitution](#) according pre-eminent position to the Legislature. The judiciary, the principal system present in all the societies created, mainly to fight injustice, lawlessness and uphold what is just, right and fair. This system if personified as a human being tends to become corrupt and decay or like any normal human being is born with some imperfections. These imperfections have off late become the setbacks of the judiciary. Some call the judiciary the temple of fairness and others call it the temple of loopholes. Judiciary is one pious system which has the inherent right to award capital

punishment .It has the legal power to bring death to the law breakers; it can punish, isolate and take away the right to a pleasant social life. **The Setbacks in Indian judiciary can be broadly divided in the following ways:** 1. Corruption 2. Extent of corruption 3. Delay 4. Other areas of concern like shortage of judges and staffs, lack of infrastructure and funds, political interference, accessibility, misuse of power etc.

EXTENT OF CORRUPTION Let us see the extent of corruption in judiciary: 13.37 percent of total households in the country had interacted at least once with the judicial department in the last one year. This means, nearly 2.73 crore households had interacted with the judiciary to get one or the other service Nearly 47.32 percent of those interacting with the judiciary had actually paid bribes. This works out to 6.32% of the total households, (approx. 129 lakhs). The average amount of bribe paid to the judiciary was estimated to be Rs. 2095/- (Rs. 2181/- for Urban households, and Rs. 1942/- for Rural households). Therefore the total monetary value of the bribe paid in the last one year works out to Rs. 2630/- crores.[20]

There was a variation in the amount of bribe paid depending up on the nature of work. On an average bribe for a getting a favourable judgment was Rs. 2939/- while the average bribe paid for getting case listed was Rs. 799/-. There is always a conflict between judicial activism and judicial restraint, the latter jurisprudence adheres by and large, to a legal positivist approach while the former is basically having realist approach. The word judicial activism, judicial overreached, judicial credibility sounds to be quite synonymous to judicial review and judicial creativity, until and unless the judiciary works with its full competency and honesty. The judges should not in any manner fail to police themselves. It was Hon'ble Speaker Mr. Somnath Chatterjee who had marked that the M.P.'s are working hard to destruct the democracy. But after the happening of several cases of corruption of the judges it's hard to say the judiciary is working with its full credibility. A learned judge of today marks that when we had joined the judiciary there were less than 20% of corrupt judges and when the time comes towards his retirement after serving the nation for more than three decades he with tears in his marks that today we have more than 80% of corrupt judges in the system. It's shameful for the nation when we see a sitting Supreme Court Judge involved in the Ghaziabad case, when we see a Chief Justice of a certain [High Court](#) as among one of the most corrupt judges in the system. It was the then Hon'ble President Mr. A.P.J. Abdul Kalam, who had refused to elevate such a judge but sooner or later he was there. The Indian Judiciary has become a

den of corruption. The extortion of litigants has become a regular business of today's judicial servants. The whole money extorted from the litigants is being collected with the Reader of the court. From this booty, lunch is being served for the Judiciary; their monthly households are met. The remaining booty is being distributed among the staff of the judge. The litigants should be protected from this exploitation by the system. It should be the judges who should police themselves without any kind of discrimination on any basis. The real question lies in, whether such a judicial system goes towards a reign of tyranny or just activism. As far as the system is working towards nation building and in national interest it cannot be called as a tyranny but as judicial creativity. Judicial activism can be called as quite synonymous to judicial credibility or creativity. Where judiciary is known as the paterfamilias of the organs of the government and the nation, it should work for the welfare of the nation and its citizens, in order to protect the rights of the citizens. And such a system should not be obsolete in nature; changes, reformations are must for a better today and tomorrow, with a balanced amount of checks over each other.

Indian Judiciary On the verge of total collapse: Indian judiciary has become a decaying institution that has no internal mechanisms or will or strength to adapt to the changing times. The judiciary has become almost a law unto itself, answerable to none and under no pressures to reform or change with time. Indian judiciary started as an extension of the colonial regime. British set up a poor copy of the British judicial system as Indian judicial system. The judges (generally British in pre-independence India) were the symbol of imperial power and all the systems and procedures of the court were intended to humiliate the natives. Even after Indians were appointed as judges, any contact between judges and the common people was discouraged. The concept of jury was anathema since it would have involved the local people in decision making process.

Procedures in Indian courts have not changed much during the post-independence period. The pre-independence practice of humiliation of the natives at the courts continues till today. The concept that an accused is innocent till proved guilty and must be treated with due respect and dignity finds no place in Indian courts where only the judge has honour and only the advocates are learned. The alienation of the common man in India with the judicial system leads to his feeling that the court-room is an alien-land almost like a war field where the common notions of morality and ethics have no place. It is not unusual to see in Indian courts persons who are otherwise respectable and God-fearing submit false

affidavits and make statements that have no relation to facts. It is often said that 'All is fair in love and war.' In India this gets extended to the court-room where technicalities rather than truth and morality rule. This has led to the Indian courts becoming graveyards of justice instead of being temples of justice. The absence of any relationship between the judiciary and the academic community has weakened both institutions in India. Legal education is in a pathetic state in almost all states of India. For most students, getting admission to a course in law is the last option after they have lost all hopes of entering any other profession. It is not unusual to meet qualified practicing [lawyers](#) who cannot even draft an application. Such [lawyer](#)s depend on the typists sitting in the court premises to draft all documents for them and keep accumulating years of 'experience' that enables them to rise to become senior advocates or even judges.

According to recent survey Indian judiciary is 466 behind schedule giving us a picture of completely collapsed system. The whole system from lower court to Supreme Court is on the verge of total collapse. The whole judicial process or the judicial working of India is blinking. The condition of the subordinate courts where most litigants seek relief- especially the poor and the weak, is deplorable. There are confusion, pollution and corruption making proceedings insufferable and inaudible. To make matter worse in some courts, Delhi's Tiz Hazari complex, two or three cases are simultaneously. One by the bench clerk on the left, the other by another clerk on the right and the third the real robbed person, each engaging two advocates in the adversarial system! Truly, litigation at the lower levels is often 'a tale told by an idiot full of sound and fury signifying nothing'! Alas, the case goes on and at long last the verdict comes, (God knows when)?The present day judiciary is a lawless law in action with no active social philosophy which is the functional essence of the [Constitution](#). There is no criterion for selection, apart from success at the Bar and/or community factor and/or political connection and/or nexus with [High Court](#) judges. There is no manner of public accountability procedure, grievance reported by the public, no monitoring or periodic performance audit and its annual reportage and public discussion by concerned organs. On top of these, ant serious criticism of the cloistered judiciary is contempt of court which legitimates as inhibitive culture against exposure of 'robbed' misconduct. No systematic method of the public to report and no open means of proceeding by any authority against a judge whole culpable indiscipline deserve investigation, inquiry and action upon proof. Another fruitful source of pollution of law and justice in the ordinary Courts is the insufficient facilities for the Bench to catch up with the march of law and the social dimensions of legal developments. **Long ago Lord Macaulay**

wrote:

“What is administered is not law but a kind of rule and capricious equity. I asked an able and excellent Judge lately returned from India how one of our zilla courts would decide several legal questions of great importance—questions not involving consideration of religion or caste—mere questions of commercial law. He told me that it was a mere lottery.” “If Justice is a human right, and it is, then easy and inexpensive access to judicial justice is a fundamental precondition.”

Rigid procedural laws and price tag for crucial entry by way of court-fee are inhibitions which run counter to the concept of equal justice and lead to jurisprudence of obstructive technicalities. Simplification of laws of procedure is as easy as it is imperative. The Civil and Criminal Procedure Codes are complicated and arcane for common apprehension. They promote dilatory zigzagging and expensive paper logging. Processual sophistries and forensic casuistries are generated by the forms and formularies prescribed in these legislative mystiques and lacunose techniques.

There is an English jingle about legal drafting which applies a fortiori to Indian law making: “I’m the parliamentary draftsman I compose the country’s laws And of half the litigation I’m undoubtedly the cause.” The judicial Church of India needs a powerful protestant movement with constructive intent. A planned process of development in necessitous and the planning commission must set up a Judicial Wing for reform which is the need of the hour.

The pathology of the higher judiciary must be frankly diagnosed and the displeasure of the souls on the High Bench should not detract from the identification of the disease. Experiments with untruth and playing hide and seek with the grave issues on the alibi that if judges are exposed institutional demoralization may weaken societal credibility are escapist and disingenuous. Should we conceal the shocking shortcomings of the court system from the sovereign people of the Republic merely to keep up false appearances of justice incorporated?[25] As Anatole France put it, that “justice is the means by which established injustices are sanctioned”.

Extreme critics including some jurists and social activists told that “for much too long the law persons—judges, [lawyers](#) and jurists- everywhere in the world

successfully managed to convince the people of the truth of their lies concerning the nature of the judicial process.”

The court is dead; long live the court, is a slogan of despair. This shall not be. Many of the rulings of the court in a la Land Reform Cases, Privy Purse case, Bank Nationalization Case, Golaknath Case and cases for nocturnal bail for the nouveau riche et al has shaken institutional credence, the Bhopal Gas Victim case sent shock wave adverse to the court vis a vis its social justice stance. The voices and noises raised then by the jurists, sceptics, critics, social scientists and investigative journalists shut down the myth of judicial justice and brought out the truth of its contrary slant. In the words of Lore Hewart; “It is not merely of some importance but it is of fundamental importance that justice should not only be done, but should manifestly undoubtedly be seen to be done.”A judge is judged by high standards since the judiciary is people’s fiduciary, and what might be ignored in a politician is regarded as ignoble as a judge.[26] The whole structure of our judicial process is crumbling. Special note was taken of the fact that in many cases the judiciary is playing a regressive role and implementing by judicial fiats the government’s economic agenda, together with other anti-democratic, anti-secular and anti-people measures. We have seen cases in which the government found it hard to implement its regressive measures, and the judiciary came to its rescue with pronouncements that are not open to challenge. Moreover, arbitrary references to contempt of court, and the Supreme Court’s ruling in Veeraswami’s case that corruption cases against a judge cannot be investigated without the chief justice of India’s permission, have given the judges immunity that is being widely abused. Judicial reforms in India: need of the hour. Today nothing retards the Indian mind more than the paralysis of the Indian justice system. This paralysis obstructs all attempts for greater social mobility and change within Indian society. While public consciousness of rights has grown enormously, the justice system obstructs popular aspirations. The failed justice system keeps India fragmented and in a constant battle against anarchy. India's judicial system is today obsolete and grossly unfair to majority of the population.

What is lacking in the present working of the Judicial Process is the effective judicial reform programmes need to address institutional, organisational and individual dimensions in a comprehensive, systematic and holistic manner. Development and implementation of judicial reform initiatives for enhancing justice will require justice oriented approach based on the new understanding of the definition of justice. It should be defined as “standard of human conduct which

includes, at the core, the following five norms: Freedom Equality Dignity Equity and Fairness. The goal of the judiciary should therefore be defined as securing human conduct consistent with acceptable normative standards. To achieve this goal, the content (what) and methodology (how) of judicial reform programmes will also need a new approach that addresses not only “bits and pieces” of judicial systems, but rather the following six critical variables that determine the quality of a justice system. These critical variables, referred to here as the “judicial reform hexagon”, cover the institutional, organisational and human dimensions of judicial reform in a comprehensive, systematic and holistic manner. The judicial reform hexagon consists of Role and responsibility of courts. Organisational efficacy of the judicial system. Knowledge of law of judges and counsel. Judicial method including skills and practise.

Effective management of process and people. The demand side-access to justice.

What are the possible methods for reforming this collapsed structure of judicial process? What is required? Do we need whole restructuring of the working of judicial process or there is a need to adopt other mode of justice delivery system? These are some of the measures which are recommended to answer the above questions: The constitution only furnishes a framework in which different organs of the state, including the judiciary, have to function. Nevertheless, the law making power rests with the legislative wing of the state. When once a law has been validly made in exercise of legislative power that is binding on every citizen as well as the executive and the judiciary. The court cannot administer justice in accordance with their subjective perceptions. They are as much bound by law of the land as any other person. Although article 12 does not expressly refer to judiciary being an organ of the state, it is certainly bound by article 14 of the constitution. [Article](#) 142 cannot be resorted to circumvent the law by the Supreme Court.

However, the Supreme Court, instead of searching and basing its judgments on first principles or fundamentals of jurisprudence has sometimes has taken a shortcut by resorting to the supposed fiat of article 142. This article was employed as a tool to pass final decisions, apart from and without recourse to the law of the land. The concept of expanding universe is not confined to astronomy alone. There is fast expanding judicial firmament. The expansion of judicial world sometimes reads on fields occupied and reserved for others. It is very necessary that Supreme Court act with self restraint. Let us remember the adage, “power corrupts and absolute power corrupts absolutely”. Arrears Eradication Scheme Govt. of India, Ministry of Law

and Justice has created a fast track courts which is limited only to the Session Court Cases and also having practical problems which restrict it to work in all states. To overcome this problem the Committee is in favour of working out an Arrears Eradication Scheme for the purpose of tackling all the cases that are pending for more than 2 years on the appointed day. Use of technology¹. A review of court record handling and introduction of modern tracking methods can help eliminate much of the petty corruption, existing in lower courts.

Technology can be used to help layman understand laws and information on citizens' rights, spelling out in simple language how to start a business, protect land rights or get a divorce. (e.g. Vietnam, Your Lawyer CD ROMs). Practical measures should be adopted, such as computerization of court files. Experience from Karnataka suggests that the computerization of case files helps in reducing immensely the workload of the single judge. It also speeds up the administration of justice. A video recording of all the proceedings in the courts should be maintained.

Burden of Proof - In India, Adversarial System is followed so the standard of proof laid down by our courts following the English precedents is beyond reasonable doubt in criminal cases. It is suggested that it is difficult to prove for the prosecution that the accused person is guilty beyond reasonable doubt. In several other countries Inquisitorial System is followed where the standard of proof preponderance of probabilities is on the accused. It is suggested that now the time has come to change the Adversarial System into Inquisitorial System. It also recommended that the burden of proof should be of degree which lies in-between the beyond reasonable doubt.

Reducing the Gap 1. Judges need to be more responsive. 2. They must be subjected to a judicial review. 3. They are obliged by the law to give reasons for decisions, i.e., it must be speaking order which complied with the mandate of [Article 14](#). 4. They must write judgment and not merely announce it. There have been instances when judgments were written after a long gap. 5. They must follow a code of conduct. 6. There must be regular inspections.

Associations to check Corruption The law societies and bar associations must also be encouraged to take stern action against their members who indulge in corrupt activities.

Set up a public watch body, comprising of persons of unimpeachable integrity, to keep an eye on the judges and the judicial system.³ Review and public hearing of certain type of cases which are pending for long. **Recruitment** - High court judges are now drawn from either the Bar or subordinate judiciary. Firstly, an Indian Judicial Service (IJS) should be created. Judges may then be appointed through nation-wide competitive examination. These officials could form the backbone of the subordinate judiciary at the level of District Judges. Most of the [High Court](#) Judges can then be drawn from this cadre of competent District Judges. There should be periodic training programs for judicial officers by practitioners, [lawyers](#) and senior judicial officers. Secondly, the proposed National Judicial Commission (NJC) should have the powers not only to recommend appointments, but also to remove judges in higher courts.

Justice Delivery System In France or inquisitorial mode of justice:

The justice delivery system in France is the best. If imitation can be regarded as indication of approval, the popularity and acceptance of French Judicial System present such an approval in the higher degree. Courts in France like any other Court which follows inquisitorial system moves on the presumption of “Guilty until proven innocent”. The presiding Judge actively, often vehemently and acidly, participate in the court room questioning of witnesses as well as the accused- who cannot invoke the Anglo Saxon privilege of refusing to take the stands on the grounds of possible self incrimination i.e. he does not have a right to maintain silence which is given in adversarial system. The judge of the court combines the power of the prosecutor and a magistrate but he is not a member of a prosecution per se. His function is to determine truth on behalf of the state, with aid of the police. The powers of the judge are very broad which helps him to reveal the truth. He may call witnesses and pester them. The whole process, from the starting of trial, investigation, examination of witnesses, thier testimony, judges play a very important role because they themselves assist in all the procedures.

Therefore, it can be said that criminal court in France is investigative rather than the battle between two opposing parties, which happens in adversarial system. According to one legal authority such battles denote a bitter adversary duel rather than a disinvested investigation.

Administrative Justice in France: in administrative Courts such as Conseil d’Etat at litigation, the proceedings are markedly more inquisitorial. Most of the procedure

is conducted in writing, the plaintiff writes the court, which asks explanations from the concerned administration or public service, which answers; the court then may ask further details from the plaintiff. When the case is sufficiently complete, the law suits open in courts; however, parties are not required to attend the court in appearance. French justice delivery system has become envy of the world. As the Sanskrit shloka goes “yukti uktam” which means “useful idea can come from anywhere”. Then a question arise, what’s wrong in taking idea from France?

judicial Process under the Indian [Constitution](#) Judicial process is basically the path or the method of attaining “justice”. Justice is the approximation of the ‘is’ to ‘ought’. Judicial power is involved in the legal ordering of facts and is under the obligation to approximate ‘is’ with the ‘ought’. This ordering is nothing but the performance of administrative duties. Supremacy of law implies that it is equally applied and nobody is above the law. Everyone is equal in the eyes of law so that a level playing field is created in order to strengthen parity of power. Indian [Constitution](#) adopted this principle in the form of [Article](#) 14 and the Preamble which provide equality of status and opportunity. Thus, [Constitution](#) ensues to establish parity of power which requires that every person must be on the same plane. The wording of [Article](#) 14 made it an ‘umbrella’ [Article](#) under which all other rights, both constitutional and statutory, find protection. This is so because all laws treat every individual with equality and the protection of laws is extended to all without any discrimination, then all others rights are automatically enforced. This duty to extend equality before the law and equal protection of the laws has been casts on the state. [Article](#) 256 makes it obligatory upon the executive of every state to ensure compliance with the law made by Parliament and any existing law which applies in that state. The Union executive is empowered to give such directions to a state as may appear necessary to ensure the compliance of the laws by the state executive. Thus, according to [Article](#) 256, it is the duty of the executive to ensure compliance with the laws and that too in a manner that satisfies the mandate of [Article](#) 14. [Article](#) 256, is in fact, the reflection of the true tradition of the Rajadharma Principles which regarded it the responsibility of the executive to deliver justice through affirmative executive action to ensure strict compliance with the applicable law. [Article](#) 256 states the whole mechanism to ensure the implementation of every law by the executive power. It thus, envisages the delivery of justice through administrative mode. The administrative mechanism of providing justice as promised under [Article](#) 14 is provided in [Article](#) 256. It is well established that the judiciary is the outcome of the dissatisfaction of the working of the administrative machinery. The need for a dispassionate judgment of the executive action has given

rise to judiciary. Essentially, the judiciary while resolving disputes is ensuring implementation of laws. Thus, its functions are basically administrative in nature. Law is always based on the policy when the judiciary implements or reverse the action of the executive, thus, judiciary acts as a policy controller. This view has been endorsed by Karl Lowenstein who held that adjudication is basically execution.[31]

But the present Indian judicial system is by all accounts unusual. The proceedings of the Courts are extra ordinary dilatory and comparatively expensive. A single issue is often fragmented into a multitude of court actions. Execution of the judgment is haphazard, the [lawyer](#) seem both incompetent and unethical; false evidence is often commonplace; and the probity of judges is habitually suspect. Above all, the courts often fail to bring the settlement of disputes that give rise to litigation. The basic reason for this state of affairs is that present mode of access to justice through courts operating in India is based on Adversarial legalism. This is where the power structure given in the [Constitution](#) has been distorted. As per [Article](#) 53(1) the executive of the power vested in the President, who has taken the oath to preserve, protect and defend the [Constitution](#).

Therefore, we can say that effective justice dispensation through the Courts requires three elements: access to courts, effective decision making by judges, and the proper implementation of those decisions because the primary responsibility of judiciary is policy control and dispute resolution is only incidental to it. **Conclusion and Suggestions** *How to reform our judicial process* In today's era, it becomes crystal clear that our judicial process is on the verge of total collapse. The adversarial system which Indian legal system follows has failed to answer the test of [Article](#) 14 read with [Article](#) 256 as it is required party must do everything from paying court fees to execute the decree which actually is the task of the state. [Constitution](#) is the supreme law of the land governing conduct of government and semi governmental institutions and thier affairs.

In ancient India king is the fountain head of justice. Sage Yajnavalkya declared that “the king, divested of anger and avarice, and associated with the learned should investigate judicial proceedings conformably to the sacred code of laws”. In ancient India, legal procedure is governed by the principles of Rajadharma. All the Dharmas merged into the philosophy of ‘Rajadharma’ and it was paramount Dharma. It is a classic example of trans-personalized power system.

The adversarial system lacks dynamism because it has no lofty ideal to inspire. It has not been entrusted with a positive duty to discover the truth in the inquisitorial system. When the investigation are perfunctory and ineffective. Judges seldom take any initiative to remedy the situation. During the trial, the judges do not bother if relevant evidence is not produced and passive role as they don't have any duty to search for the truth. As the prosecution has to prove the case beyond reasonable doubt, the system appears to be skewed in favour of the accused. It is therefore, necessary to strengthen the adversarial system by adopting with suitable modifications some of the good and useful features of the inquisitorial system.

How to reform judicial process? An epilogic thought repeating what has been said earlier may be needed to strength my submission that the court will commit blunder if it does not guard its reputation more seriously. A post script in this prospective, may drive home my point, treating the Bench and the Bar as a complex agency of public justice. A learned Judge mild in his words, who retired last year from the Supreme Court, wrote with restraint to a former colleague of his still on the [High Court](#), what makes poignant reading: “the judiciary is sinking. The destruction is from within; it is for judges like you to restore the fast disappearing credibility of the [High Courts](#) and the Apex court.” Equal protection of the laws is the fundamental right of the citizen which has a forensic dimension and procedural projection. The obligation of every court from the summit to base is to afford the same facility for hearing of case to the rich and the poor, to the dubious billionaire to the bonded labourer. Now, there exists a mutual appreciation of society between judges and advocates which led to the failure of justice delivery system. The judiciary is the fiduciary of people's justice and has accountability to the country for scrupulously equal judicial process. The crisis is not resolved by some martyrs from the class of advocates courting displeasure by exposure of oblique events but by a people's movement which will compel the judges and advocates against the privatisation of judicial process. Your monopoly obligates accountability and if there is culpability it cannot be gagged by contempt proceedings. In our system, both the robe and the gown must remember is that the court is what the court does. The new dimension of justice delivery and new vision of alternative justicing will have to be explored and executed if the first promise of the [Constitution](#) were to be actualised. Therefore, today, in adversarial system of justice, what we need to reform are:

Court fees to be abolished: The purpose of justice is delivering the promise of law and hence the role of state is not merely limited to establish the judicial institutions

but also to fulfil the expectations of the people which they attached to the state while conferring role and seat of power. To charge fees for justice is like sealing the promise of law and flouting the constitutional duty of state to provide justice to the people at their door step, merely laying down the foundations of judicial shops and washing their hands off from the process of justice delivery is not warranted on the part of the state. To get revenue for the enforcement of rights and to charge it in rigorous ways, failure to pay would entail the justice not accessible because one cannot afford it in terms of money, is the misery and apathy, the courts in India are continuing with. The proper course would be abolition of court fee because it seriously undermines the parity of power principles as it places the richer one in advantageous position which offends the spirit of [Constitutional](#) goals.

Advocate fees to be abolished: As it is clearly provided under the provisions of Advocates Act that advocates are the officers of the Court, then why the clients are bound to pay hefty fees to [lawyers](#) for contesting their cases. There should be provision for public advocates which are available to everyone and should be paid by state.

Selection of Judges: CJI committed blunder when in one of the most controversial case he held that consultation by CJI means his consent. Here, by this observation the power of President is reduced to zero and whole spectrum of power given under the constitution is disturbed. The judges should be appointed by President only with the consultation of CJI and not by his consent.

Moreover, the provision of advocates becoming judges after certain required years of practise should be abolished. Judges and advocates are different profession and they should not be intermingled. There should not be any mutual appreciation of society.

Adversarial system to be abolished: The present adversarial system should be abolished and replaced with inquisitorial system of justice. Judicial process is essentially deductive reasoning and it is to tell authoritatively what law is. The judge should take judicial notice of all the law. The judge is to investigate the case before him, by approximating 'is' to the 'ought', after the parties present their case. By virtue of [Article](#) 14 r/w 256, there should be an affirmative action by the policy implementing organ. It should protect the citizen with their affirmative action, just like the ancient Indian system. The present Indian legal system is continuing the colonial legacy where the ends justify the means, but since now, we are living under

the umbrella of a controlling [Constitution](#), the means should justify the ends. **The Limitation Act should be struck down:** The Limitation Act should be struck down as unconstitutional since it is violative of [Article](#) 14. Under [Article](#) 14 there is no distinction between state action and private action. If any person fundamental rights are infringe, how can the state fix a time limit to curtail the right to move the court for justice. It cannot withstand the test of [Article](#) 14, or the six counts of the power spectrum. Hence, Limitation Act, doctrine of Delay and Laches and procedural hassles are undoubtedly unconstitutional. **Judges should not have any immunity:** The judges should not have any immunity because the functions of a judge is twofold; the judicial function is only to state authoritatively what law is. All others are administrative functions. The fundamental law is the [Constitution](#) and it is the only supreme authority. If judges committed any negligence or there is dereliction of duty on thier part, then such judges should be punished under Section 166 of the IPC because they are the public officers and hence liable for punishment for negligence of duty.

According to Rajadharma principles, the king himself is liable to be punished for an offence, one thousand times more penalty than what would be inflicted on an ordinary citizen. Perhaps, it is high time that this principle is getting working especially as under the [Constitution](#) none is above the law and there is no immunity for crime. If judges of the Superior Court in China and Japan can be prosecuted and punished for violations of law, why not in India which has a basic structure command to ensure equal subjection of all to the law. **Delays should be avoided:** The delays in our legal system are well known. There 30 million cases pending in various Courts. The average time span for dispute to be resolved through the court system is about 20 years. Litigation has become a convenient method for avoiding prompt retribution by many people on the wrong side of law. The Bible says that the path to hell is paved with good intention. The legal system is meant to punish the criminal and to protect the law abiding citizens. Many a time, the criminal exploits the legal process itself to escape punishment. **Supreme Court to have Benches throughout the country:** [Article](#) 130 of the [Constitution](#) provides that the SC shall sit in Delhi or in such other place or places, as the CJI may with the approval of President. From time to time appoint. This provision of the constitution has not been applied so far. If the SC has a seat on other places, that is seat in every state then it will be relief to the aggrieved and justice will be assessable to them, which will result in reduction of cost of litigation and will cause less hardship to the litigant. **No presumption should be raised in**

favour of anyone: The presumption is always in the favour of constitutionality of statute, and it is a gross misapplication of a justice as it tends to presume the preponderance of power in favour of one party and tilts the balance unjustly. This totally upset the balance of parity of power, which is ensured through the guarantee of “equal protection of laws” under [Article 14](#) as well as [Article 13 \(2\) and \(3\)](#) of the [Constitution](#), respectively. The burden of justifying the constitutional validity of the law as well as the fact that the state action was in accordance with such law should be on the state, and not on the person who challenges its constitutional validity. Asking the injured party to prove the wrong or injury suffered destroyed the guarantee of equal protection of laws. Such an opinion of the part of court is extremely low on the ethical count of the power spectrum. **Judges should play active and not passive role while deciding cases:** [Article 14](#) of the Indian [Constitution](#) made it obligatory on the state to provide justice to all at the door step. Thus, the Indian [Constitution](#) necessarily envisages inquisitorial mode. So, the judges should go a mile extra in deciding cases as the judges supervising the cases are independent and are bound by law to direct thier inquiries either in favour or against the guilt of any suspect and play an active role while deciding cases. **Accountability of Judges:** In India, the judiciary is separate and independent organ of the state. The legislature and the executive are not allowed by the constitution to interference in the functioning of the judiciary. The functioning of the judiciary is independent but it doesn't mean that it is not accountable to anyone. In a democracy the power lies with the people. The judiciary must concern with this fact while functioning. The high courts have the power of control over the subordinate courts under article 235 of the constitution of India. The high courts have the power of control over the subordinate courts under [Article 235](#) of the [Constitution](#) of India. The SC has no such power over High court. The CJ of High courts/ India have no power to control or make accountable other judges of the Court. **Reluctant approach of Supreme Court to accept petition under Article 32:** The rule made by SC under article 145 laying down the procedure to be followed by the SC in performing its functions involves lot of technicalities. It is the duty of the SC to grant relief under [Article 32](#) and it is mandatory as it is obvious from the word “the Supreme Court shall” in [Article 32](#). But the SC is reluctant to perform its functions. To conclude one can say that whatever may be the system the procedural laws must be minimum, simple and must be litigant friendly. There were hundred kauravas and five pandavas, and that is how the system work for bad and good officers as a

ratio too. Thank you Sir. We would disperse for tea and come back .

A very Good morning and warm greetings to each one of you assembled here today. I feel elated and immensely happy in addressing you on the topic - Effective court Administration or Administrative audit. For a number of reasons, the past three decades have witnessed heavy accumulation of cases. One noticeable reason for this is that the institutional framework within which courts historically operated placed little emphasis on sound management and administration. Even today, court administration remains the greatest challenge to the profession. An independent and efficient judicial system is one of the basic structures of our Constitution. The centrality of a strong justice mechanism lies in its essential contribution in enabling all manner of disputes to be resolved within a structured and orderly framework. It is this lack of managerial skills in the court administration, which has attributed to the current increase in pendency rates of both civil and criminal matters. Here the role of District Judge and Chief Judicial Magistrate becomes utmost important for mechanizing effective court management system. In their domain resides the daunting task of administrating court affairs, which will aid in dispensing swift justice. As a District Judge/Chief Judicial Magistrate, many responsibilities devolve on you in the process of delivering justice. One such incidental but prominent duty is to see that the court is administered effectively and efficiently and in compliance with the statutes. "Court management" is inclusive of entire set of actions that a court takes to monitor and control the progress of cases, from initiation of a case to trial. It is the tool to pursue the institutional mission of resolving disputes with due process and in due time. India, the biggest democracy has one of the largest judicial systems in the world with 15 cases being filed per thousand population every year. Global and national experience show that the number of new cases filed into a judicial system increases with literacy and economic wealth. Therefore, as India's literacy rate and per capita income increases the number of new cases filed per thousand population is likely to increase rapidly in the next few decades. As a consequence, the subordinate judiciary should equip itself with managerial skills to cope not just with the current backlogs but also for potential escalation in number of cases in the near future. Addressing these challenges will require substantial upgrading of court management system. One such aspect is adapting to information and communication technology. Today, data on cases filed in the subordinate courts is still gathered and maintained in manual data systems in majority of courts in India. An overhaul of this system is requisite for effective administration. Though this process would be gradual. For instance, in the federal system of the United

States, the transition from a paper-based to the fully electronic case information management system, including electronic filing and noticing, occurred progressively over a period of roughly 25 years. Certainly, the change is time consuming but inevitable in the process of pursuing justice. RESPONSIBILITIES OF DISTRICT JUDGES/ CHIEF JUDICIAL MAGISTRATES 1

The District Judges/ CJM ordinarily play a pivotal role in the development of court policy. Every District Judge/CJM must cultivate the art of court management. They have collective responsibilities for these functions. • Leadership: As a District Judge or Chief Judicial Magistrate, you are uniquely situated to lead the court in determining the administrative policies for better working of the courts. • Court management: You have the responsibility to make sure that laws, regulations, and court policies are followed, that the needs of court employees are properly addressed, and that administrative tasks are carried out. Behavior of the judge in the court is the most important aspect in court management. You have 5 segments of people in the court to behave with. 1. Lawyers : Judges must show respect, courtesy and patience to the lawyers, at the same time maintain the control of the proceedings and also has an obligation to ensure that proceedings are conducted in a civil manner. 2. Witness: The foremost aspect that every trial judge should remember is that the statement of a witness is the lifeline of a case. Their protection is primary for friction free trial. Thus, every trial judge has an obligation to treat them with dignity and respect. Sections 150, 151 and 152 of the Evidence Act, 1872 should be strictly followed in the process of examination of witness. Whenever, the presiding judge notices abuse of witness in courts, they should come down with heavy hands and convey the message that witness box will not be allowed for committing offences under section 500 IPC. Otherwise the dignity and solemnity of the court will be impaired. 3. Court Staffs: Court management cannot succeed without the support of the court staff and its registry. Thus, Presiding Judge must always maintain the decorum of the court and never create tension in the minds of court staffs. Tension inflicted on the staff would not only cause them to commit repeated mistakes but the records will become unmanageable. There is a great adage. “It is nice to be important, but it is more important to be nice.” This must be your coat of arms when you are in the court or in the court office. 4. Subordinate Officers: Always treat your counterparts and the subordinate officers with due respect. The court management is a comprehensive procedure. Therefore, even the smallest aspect has significant impact on the effective administration of justice. 5. Litigants: Judges should not employ hostile or demeaning words in opinions or in written or oral communications with litigants. • Case management: The District

Judges/ CJM's are provided with the authority over the allocation of cases to other courts. You should utilize this position to monitor caseloads and trends and to identify problems that are contributing to the delay in the trial. Further, you must recognize that case management is relevant also for those courts that are not currently experiencing delays or backlogs. • Prioritization of old cases: "Five plus Zero" initiative must be adopted to ensure that cases pending for more than 5 years are taken up on priority basis and such cases are brought 2

down to zero level. • Supervision of Court Managers: Judges are ultimately responsible for effective court management. However, the complexity of the modern court requires the delegation of administrative functions and responsibilities to the Court managers subject to the supervision and direction of the Presiding Judge. Thus you must have effective control of working of these Court Managers. • Inspection of Subordinate Courts: The District judge and CJM's should conduct frequent inspection of subordinate courts for better accountability and efficiency. • Budgets: The judicial officers must be proficient in the art of planning and preparation of budgets so that the budget meets the requirements for the next year and is neither excessive nor short. • Annual Confidential Reports: The Annual Confidential Reports of members of Subordinate Judiciary must be maintained properly and on regular basis. • Periodic meetings between Police and District Judge: Such meetings must be encouraged for smooth running of judicial system.

TECHNIQUES OF CASE MANAGEMENT No doubt today almost every court is overburdened and there is an acute shortage of judicial officers and litigants have to wait years for justice. In all these adverse conditions though it is very difficult to impart justice rapidly but by adopting the techniques of court management, we can provide swift justice to the people. The effective use of case management techniques and practices improves the efficiency in the use of justice system resources, hence reducing the costs of justice operation. By reducing the time required for resolving disputes, the appropriate use of case management may also help build public confidence in the effectiveness of the courts and the accountability of judges. The court's control over cases entails the implementation of two different principles viz. (1) early court intervention and (2) continuous court control of case progress. 1. Early Court Intervention Early court intervention requires that judges familiarize themselves and impose management controls immediately after the case is assigned to them. Case screening is the important technique that can be used to monitor the early stages of litigation and reduce or eliminate unnecessary time, which contributes to case processing delays. Case screening is the review of case information for management purposes by judges and/or court staff. It is generally

the most meaningful form of early intervention because it provides a basis for the court to assess the management requirements of a case at the beginning of the process. Issues to be addressed during case screening include, but are not limited to are status of service; case priority including public policy issues and impending death; alternative dispute resolution/diversion referral; jurisdiction etc. Court support staffs should monitor the above aspects under the effective control of the judges at every periodic interval. 3

It is also useful to screen filings before entering them into the case management system to identify filings that do not meet court rule or statutory requirements, or filings that contain clear errors or have procedural issues that should be brought to the attention of the judge. Like unsigned pleadings, illegible documents, incorrect filing or motion fees, improper parties, incorrect venue, or filings not within time frames.

2. Continuous Court Control Of Case Progress Continuous court control of case progress is a method by which judges can continue to exercise such controls and monitor case progress and activity throughout the life of the case. Though the court supervision of the case progress is an administrative process, it indirectly has an impact on the adjudication of substantive legal rights. Therefore case flow management is the absolute heart of court management. The case flow management will aid in creating a judicial system that is predictable to all users of the system. This will result in counsel being prepared, less need for adjournments, and enhanced ability to effectively allocate staff and judicial resources. Various minor aspects can reduce substantial delay in the process of trial. Like settling issues by summary trial, encouraging parties to resort to ADR mechanism, extensive use of Order X of Code of Civil Procedure, 1908 in civil matters to narrow down issues etc. For effective case flow management the following aspects must be considered.

- Monitoring unnecessary delay To instill public confidence in the fairness and use of court systems, courts must eliminate delay. An effective case flow management system does not initiate or cause delay. As a result the Presiding Judge must exploit the various procedures enunciated in both criminal and civil code to avoid the delay.

Filing of plaint/written statement: Order 8 Rule 10 provides that where a defendant fails to present written statement within the time permitted or fixed by the court, the court can pronounce judgment against him. This can be used against the person who seeks continuous adjournments. Likewise, Order 7 Rule 18 and Order 8 Rule 8A prohibits the reception of documents at a later stage unless the court grants leave. This discretionary power vested in the court must be exercised diligently for

avoiding protraction of the litigations. Summoning Procedure: Simultaneously, the criminal courts should take care that summons to the witnesses are issued in time and efforts should also be made that the material witnesses get served through investigating officer, if witnesses fail to turn up despite service, court should not hesitate to use coercive methods. Similarly, in civil matter, if any party fails to take steps to summon the witness then

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court should not grant adjournments unless sufficient cause is shown or cost is imposed for the default. Long time taken by prosecution, then in such a situation, the summons should be sent through the investigating officer with specific warning that if prosecution fails to bring the witness on the next occasion then no further opportunity will be given to the prosecution. Recording of Evidence: Another main cause for delay in disposal of the case is that the parties and prosecution takes years to complete their evidence. Though under the law there is a provision that once the case is fixed for evidence, the evidence will be recorded on day-to-day basis but the provision has lost its sanctity due to dearth of judicial officers. In civil matters the list of witness is generally small but their testimony is generally long. Hence court should not grant more opportunity to any party beyond the number of its witnesses. Court can also impose cost when any party fails to examine or cross-examine the summoned witness. Drop unnecessary Witnesses Whenever it is possible, courts should also try to persuade the parties to drop the name of formal witnesses whose examination and non-examination cannot affect the decision of the case. This will save the precious judicial time to a large extent. Compounding of offence It has been observed that in Magisterial Courts a substantial portion of litigation is of compoundable offences and in such cases there is a strong probability of compromise between the parties. Thus, Courts should encourage the parties at the first opportunity to settle their dispute amicably. Similarly in civil matter also there is always better chances of compromise between the parties. Thus, in such cases courts should make special efforts to encourage the parties to settle their disputes amicably. This practice will not only give full satisfaction to the affected parties but it will also reduce the burden on the appellate courts because in such cases the order is not challenged in the higher courts. Therefore any delay in the summons process, pretrial procedures, trial scheduling and trial management must strictly be reprimanded. • Restrict the uncalled-for adjournments Traditionally, our court systems have let the parties to a case control the pace of the litigation process. The assumption is that the parties can thereby take the time they need to adequately

prepare and present their respective arguments. However, this position must be changed. Since Court control of adjournments is important for three reasons. Firstly, adjournments contribute to delay; secondly, an adjournment policy influences attorney and litigant perceptions of court commitment to case flow management; and thirdly, a lenient adjournment policy undermines a predictable system of event date certainty. Granting of adjournments is a discretionary power, which must be exercised with utmost diligence. Nevertheless, a court's adjournment policy should not be excessively rigid or governed by arbitrary rules, but it should create the expectation that events will occur when scheduled unless there are compelling reasons to postpone. Judges must also record the reasons for adjournments. 5

- Certainty of trial dates: Court control of adjournments is closely related to achieving event date credibility; one cannot be successfully implemented without the other. Therefore, credible scheduling must be based on a restrictive adjournment policy. It is only through such a policy that the court can convey its expectation of readiness to counsel. The judges should regularize the number of cases to be listed on the board according to their disposal rate. Merely listing of cases with full knowledge that only a small number of cases can be tried, will send wrong signal to the counsels to probe for more adjournments. Certainty of date for trial should be maintained as far as possible.
- Average life cycle of case: The litmus test to check whether the court has an effective case flow management or not is to look at the case age at the disposition stage. There is an equally urgent need to shorten the average life cycle of all cases. Not only time spent within each court, but also total time in the judicial system as a whole.

EFFECTIVE COURT MANAGEMENT – ITS HUMAN SIDE As the term “management” itself suggests, it means judicious deployment of resources including human resources for optimum output. For achieving maximum output in minimum available time and with minimum resources at command, we need to have a motivated, disciplined and dedicated team. The team should share the collective objective of the judicial system i.e smooth discharge of the business of the court and prompt disposal of cases, within the available infrastructure and limited resources. Handling deftly, disruptive persons, aggressive lawyers, reluctant witnesses, sluggish staff, would go a long way in effective disposal of cases. A judicial officer must have an understanding of different ways, customs and social background of people. It not only helps managing judicial business in a better manner but also reduces mental stress. Since the overall functioning of a court depends heavily on the interplay between judges and administrative staff, it is important to set up a system capable of building a

shared responsibility between the head of the court and the court administrator for the overall management of the office. INFORMATION and COMMUNICATION TECHNOLOGY (ICT) At present, a number of technologies can support different areas of court operation. On the one hand, such technologies have been used for the automation of administrative tasks like case tracking, case management system, office automation. On the other hand, ICT has been designed to offer to lawyers and citizens access to statutes, regulations and case laws, to increase transparency of court decisions, and access to key legal information. This advancement must be used for all practical purposes like recording of statement of accused from prisons through video conferencing. This will avoid the unnecessary delay that is generally caused in bringing the accused to the court. RECENT CRIMINAL LAW (AMENDMENT) ACT 2013 6

The Criminal Law (Amendment) Act 2013 has been recently passed by Parliament on 19th March amending IPC, CrPC and the Indian Evidence Act to counter crimes against women. Certain acts of violence like Acid attacks, voyeurism, stalking have been made punishable. Further, rigorous imprisonment of minimum 20 years for gang rape has been prescribed. The amended law places additional duties on magistrates to ensure fair and speedy disposal of crimes against women especially in heinous offences like rape. It may be appropriate to highlight some of these amended provisions. □ Newly amended Section 164(5A) expects the Judicial Magistrate to record the statement of the person accused in offences punishable under Section 354, 376 and 509 as soon as the commission of the offence is brought to the notice of the police. □ In Section 273 CrPC, a new proviso allows the Court to take appropriate measures to ensure that a woman below the age of 18 years is not confronted by the accused during cross-examination. □ Section 309 (1) now (year 2013) mandates completion of inquiry or trial for rape within a period of 2 months from date of filing of chargesheet as compared to earlier proviso (inserted in 2009) which contemplated relevant date from commencement of examination of witnesses.

Women and Children – Role of Courts The role of Courts in cases dealing with women and children assume great importance in view of changing mindset. The women and children are heading the victims' tally in recent crime related incidents. Though there are many reasons for the declining values, we can identify some of them, viz., lack of awareness, patriarchy, male chauvinism, subjugation, certain deep rooted traditions and custom, lack of effective enforcement etc. Sensing the alarming trend, the Supreme Court had said that 'we are failing to treat women with dignity, equality and respect'. Last month, a special Bench of the Supreme Court (of which myself was also one of the Members)

allowed a curative petition filed against a judgment in *Bhaskar Lal Sharma & Ors. vs. Monica* (2009) 10 SCC 605 which held that kicking daughter-in-law is not cruelty under Section 498A and had set aside that judgment ordering for a de novo hearing. There are various laws on the protection of women like Protection of Women from Domestic Violence Act 2005, Dowry Prohibition Act 1961, Indecent Representation of Women (Prohibition) Act 1986, Immoral Traffic (Prevention) Act 1956 and the Pre-Natal Diagnostic Techniques (Regulation & Prevention) Act 1994. Our Constitution contains many Articles on the welfare of women. Article 15(3) deals with special protection for women, Article 16 ensures equal opportunity of public employment irrespective of the sex of the person, Article 39 deals with securing adequate means of livelihood equally for men and women, equal pay for equal work among men and women, Article 42 deals with securing humane conditions of work and maternity relief and Article 51-A(3), a Fundamental duty, insists on renouncing practices derogatory of women. Section 294 of the IPC deals with obscenity, Section 304-B deals with Dowry Death and Section 498-A deals with cruelty. When it comes to children, trafficking in children has become an increasingly lucrative

business for the reason that punishment is very rare. The promise of marriage or employment is often used to lure the young children into sexual trade. Most of the children, who are victims of deception, are frequently physically, emotionally and sexually abused in the places of their employment. There are many legislations like Children (Pledging of Labour) Act 1933, Employment of Children Act 1938, Young Persons (Harmful Publications) Act, 1956, Child Welfare Act 1978, Juvenile Justice (Care & Protection of Children) Act 2000, Right of Children to Free and Compulsory Education Act 2009 etc. No children shall be deprived of his fundamental rights guaranteed under the Constitution of India and bring to child traffic and abuse. All of you have to ensure that the provisions of these legislations are complied with in their letter and spirit fulfilling the Objects of the Act. A judge needs to show understanding and consideration whenever women and children appear either as a party, or as witness, or as victim so as to inculcate confidence in his/her during the court proceedings. Any comment, gesture or other action on the part of any one in or around the courtroom that would be detrimental to the confidence of them should be curbed with a heavy hand by the presiding judge. Adhering to following acts by the presiding judges may make the courtroom setting more conducive to women and children:• They should be treated with courtesy and dignity while appearing in the Court. Any gender bias must be carefully guarded against in the courtroom and this protection should be extended to any female

present or appearing in the court either as a member of the staff or as party or witness or member of legal profession. • The examination and cross-examination must be conducted by the court itself or under the direct supervision of the presiding judge. • Preference may be given to female lawyers in the matter of assigning legal aid work or amicus curiae briefs so that they have more empathy and understanding towards the case. • Crime against women and children ought to be dealt with on priority basis because delay in delivery of justice will defeat the very purpose. 1) Section 26 of the Code of Criminal Procedure, 1973 has been amended by prescribing that the offences under Section 376, 376A to D of IPC, are to be tried, as far as practicable, by a court presided by a women. 2) Section 173 (1A) has been amended to state that the investigation of a case of rape of a child may be completed within 3 months from the date on which the information was recorded by the officer in charge of a police station. 3) Section 327(2) which prescribed in camera trial in cases of offences under Section 376, 376A to 376D has been amended by providing that ‘in camera’ trial shall be conducted as far as possible by a woman judge or magistrate. Section 327(2) in the Code of Criminal Procedure, 1973 provides that “(2) Notwithstanding anything 8

contained in sub-section (1), the inquiry into and trial of rape or an offence under Sections 376, 376A, 376B, 376C or 376D of the Indian Penal Code shall be conducted in camera: provided that the presiding judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the court.” 4) Section 327(3) which bars printing/publishing any matter in relation to such ‘in camera’ proceedings except with the previous permission of the court has been relaxed by mandating that the ban may be lifted subject to maintaining confidentiality of names and addresses of the parties. 5) Section 137 of the Indian Evidence Act, 1874 provides for the Examination-in-Chief, Cross Examination and Re-Examination of witnesses appearing from the opposite side basically to extract the truth behind the statement made by the witness. Where a lady witness appears before the Court, it shall be the duty of the Judicial Officer to keep watch on the counsel conducting the cross-examination that he/she should not ask any question to the witness which apprehends her modesty. The questionnaire round with the victim of rape/sexual assault, shall not be conducted in the open court as it directly challenges the modesty of a woman. Such procedures shall be conducted only by a lady advocate, in the chamber of the judge in presence of the parents or guardian of the victim. 6) Section 309 gives the power to the court to adjourn the proceeding for a future date. Section 309 proviso to sub-clause (1) (added by 2008 amendment act) provides that

when the enquiry or trial relates to an offence under Section 376A to 376D of the IPC, the inquiry or trial shall, as far as possible be completed within a period of two months from the date of commencement of the examination of witnesses. Section 309 proviso to sub-clause (2) (added by 2008 amendment Act) provide that no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party. Now, the provision inserted under Section 309 as proviso to sub-clause (1) & (2) are to be strictly followed in its spirit and letters so that the very intention of the legislature to pass such amendment cannot be defeated. The proviso added to sub-clause (2) provides for a kind of discretion to the court as far as adjournment of a proceeding is concerned. But such power shall be exercised very carefully as to decide which circumstances are beyond the control of the party. The Court has to keep an eye on the party which is seeking adjournment, to ensure that the party is rightly praying for it and it is not for the purpose of benefiting the ill intentions of the accused. 7) The fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment. 8) Where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in the Court, is not ready to examine or cross-examine the witness, the court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness. 9

9) Guidelines laid down by the Supreme Court in: Delhi Domestic Working Women Forum vs. Union of India (1995) 1 SCC 14 needs to be followed: “Directives to the police to maintain a list of lawyers capable of handling the cases of rape victims and to provide them help in rehabilitation.” 10) It shall be the duty of a “District Judge” of a district to prepare and maintain a ‘list of lady advocates’, to be circulated to every Sessions Court in the district, who are well reputed and acquainted with the cases and respective laws relating to women like domestic violence, dowry matters, dowry deaths, rape matters and matters relating to the modesty of a women. With the help of such an extensive list prepared by the District Judges, lady counsels can be engaged on behalf of the women victims of crime and a proper honorarium can be paid from a fund created for this purpose or under Section 12 of the Legal Services Authorities Act, 1987 they can be engaged for providing legal aid to the victims at State cost. 11) Bail of women prisoners – Section 437 provides for: “when any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without any warrant by an officer in charge of a police station or appears or is brought before a court other than the High Court or Court of Session, he may be released on bail, but – 1.

such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. 2. such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence. Provided that the court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm. Under an adversarial system like ours, the courts insist on the search for proof rather than the search for truth. Whether the legal system is primarily adversarial or inquisitorial, bail hearings should be inquisitorial, with the magistrate inquiring into all the facts and circumstances relevant to the decision. This should be done even if the accused is not legally represented. As the adversarial system does not impose a positive duty on the judge to discover the truth, but he should play a positive role as far as bail of women prisoner is concerned. A good trial judge needs to have a "third ear", that is to hear and comprehend what is not said. 12) The Statement under Section 164(1) of a victim of rape or any kind of sexual assault, shall not be recorded in open courtroom. It may be recorded in the chamber or the residence of the Judge/Magistrate in presence of the parents or guardian of the victim. Such statement shall be recorded, as far as practicable, by a woman judge. 13) Section 164-A (as introduced by Act No. 25 of 2005; w.e.f. 23/06/2006) provides for 10

compulsory medical check-up of rape victims within 24 hours ensuring substantial evidence against accused is not lost. These type of provisions have to be followed very promptly by the state authorities because if these provisions are not followed in their true spirit and letters then the basic objective behind introducing such provisions stands defeated. The benefit, which ought to be availed by the victim/prosecution, starts shifting towards the accused/offender/s. 14) 173(1)(h) (inserted by Cr.P.C. (amendment) Act, 2008) will also have to mention whether report of medical examination of the woman has been attached where the investigation relates to an offence under Section 376 and 376A to D of the IPC. 15) The 2008 Act adds a proviso in Section 157(1) which provides that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardians or near relatives or social worker of the locality. 16) In respect of Section 157(1) and Section 164A, it has been provided under Cr.P.C. as an obligation upon police to comply with the

procedure laid down, it is the duty of judicial officer or the Court to ensure strict compliance of the obligation. The court should confirm from the victim that obligation on part of police was duly served or not. If not, then court should take appropriate steps to do the needed and write to the head of the concerned police department to take appropriate action against such police officer. 17) Proper counseling.- The District Judge and District Legal Services Authority shall endeavour to seek co-operation from women advocates, other public spirited advocates and different NGO's working in the field for women empowerment, to organize counseling camps for women victim/witness/accused inside the Court premises, at Mahila Thanas and other Police stations. 18) Whenever a woman appears before a court of session, the Judge shall be duty bound to address her on legal rights specially provided for women in Cr.P.C. during trial in the court. 19) The name of the victim or relatives or any other information like addresses, shall not be disclosed in the judgment of the Court. It ultimately publicises the victim's bad image in the society and hurts the modesty of the victim. 20) The Family Courts Act, 1984 provides for the power of the Family Court to lay down its own procedure with respect to discharge of its duty (provided under Section 9 of the Act) to endeavour for the settlement between the parties. By virtue of Section 10 "power to lay down own procedure" a mechanism can be formulated so as to serve the larger interest of the women coming to the forum. Surrogacy Surrogacy, as you know, is an arrangement in which a woman carries and delivers a child for another couple or person. In a traditional surrogacy, the child may be conceived via home artificial insemination using fresh or frozen sperm or impregnated via intrauterine insemination. 11

You, as District Judges and Chief Judicial Magistrates, come across cases relating to surrogacy and reading of the decisions of the Supreme Court certainly help in dealing with those issues in a better way. JUDICIAL ETHICS IN PRACTICE: The integrity of the judicial officers plays a prominent role in the court management. Let me share with you some of the ethical values that I cherish and believe are extremely vital for all judicial officers. • The first lesson is that judges should not lose the temper in court. It spoils the whole atmosphere. • Punctuality: As a member of an ideal institution of our country, you have to set ideals to be followed by others. The first step towards ensuring the same is to be punctual in convening trials and hearings. Punctuality of judges is indispensable to maintaining dignity and decorum of courts. • Proper Conduct in both official and personal capacity: The respect that society bestows on office of a judge and his judgments is determined by the manner in which a judge conducts himself in his public and private life. Hence, close

association with individual members of the Bar especially those who practice in the same court, police officials and other government functionaries must be avoided. • Judgments: Judgments must be clear and decisive and free from ambiguity, and should not generate further litigations and demand for clarifications. • Avoid unnecessary delays in pronouncing judgments: There is also a serious grievance that judgments are not delivered in time and in many matters arguments have been made months before but judgments remain pending. The inconvenient truth is that the judiciary is equally responsible for delayed justice. Judges must pronounce judgments within reasonable time preferably within 30 days of final hearing. • Continuous Learning and Training: You must appreciate that progress in law and judicial thought is a continuous process. Judges are expected to be well versed with not only laws and procedures but also latest legal developments. Therefore, you must find time to regularly read latest judgments of the Supreme Court and the Madras High Court, and also various law journals, which are now easily accessible online. You must not see judicial service as service in the sense of employment. The judges are not employees. They exercise the sovereign judicial power of the state as prime dispensers of justice. Working in court of law is not purely mechanical but demands ability, alertness, resourcefulness, tact and imagination. The recent decision by the Supreme Court in the Vodafone case pertaining to taxability over Capital Gains on an overseas transaction between 2 foreign companies (having non-resident status in India) as well as the Bayer case concerning sale of investment comprising of shares of an Indian Company has clearly brought home the need for the judiciary to be equipped with specialized knowledge to deal adequately with questions that are of international concern. 12

Final remarks Successful implementation of programs or practices requires attention to virtually all aspects of the system. To conclude, I would like to convey that a vibrant subordinate judiciary is the need of the hour. Inordinate delays, escalating cost of litigation and inequality in the system sometimes make the delivery of justice on unattainable goal. But we have to be optimistic and work together to not just uphold the rule of law, but ensure that litigant does not lose faith in the maze that our legal system has become. Young judges must brace themselves to do their part which may be onerous but fully satisfying. In a country like ours, where people consider Judges only second to God, efforts must be made to strengthen that belief of the common man. If independent and efficient judicial system is to remain the basic structure of our Constitution, a competent subordinate judiciary is its indispensable link. I have full faith that you will fulfill this role

dutifully and efficiently. Thank You. Thank you Sir. Now we could disperse for tea and come back at 12.00pm for the next session.

Compliances of deficiencies//verification /Follow-up action

So friends the next session is Compliances of deficiencies//verification /Follow-up action. During the course of inspection there will be some deficiencies ,which would need to be verified and further some follow up action is to taken for the inspection process to be complete. This is common to all the audits ,i.e. financial, judicial and administrative audit. At page 300 there is an article on identifying the different objectives of inspection. As brother has rightly pointed out,inspection cannot work in water tight compartment. Whatever comes to inspection should also be informed to vigilance and vice versa. You can accordingly modulate your inspection work if you have the records. Be careful of the bonafide mistake: The inspecting judges must take note of the bone fide mistakes of the judges and encourage them to rectify those errors. As they must understand, that the judges can also improve. The speaker shared an experience where he went for a surprise visit in a district when he was a high court judge. But by the evening, every district court in the area came to know that such a visit was going to take place any time soon. Thus, by a single act, an inspecting judge would be able to deliver a positive message to the other judges. Example of cooking: Cooking is not an art or science. Rather, its an art of science. In the similar way, inspection is an art of science. As there are specific measures to be followed, but these specific measures, can be utilized in an artistic manner for the benefit of the judiciary. Removing of the doubts: The inspecting judges must clear all the possible doubts popping into the minds of other judges. Gray areas:- there are always certain area which are black and white and we are very clear in those areas to take decision whereas in every persons life there are certain grey areas in which it is difficult to take decision as there are much probabilities that the decision may turn out wrong, but it is the duty of individual to see that he is day by day reducing his grey area and only then he will be able to do his work properly in the same way it is the duty of the registrar inspection to see that they must help other people to reduce there grey areas.

Difference between false and correct statement:- the speaker told that her is a big difference between a false statement and the incorrect statement in which is that the false statement is made when the true is known to the speaker and he had deliberately told the false statement which is not the case in the incorrect statement and the duty of the inspecting judge is to help the other judges to rectify

there mistakes and thus he must inculcate the habit of finding out the difference between the statements which are false and which are incorrect and if they find that if they are incorrect they must help the officer concerned to rectify it otherwise he must report the same to his superior. Mannerism:-at the end of the discussion the speaker told that there are various ways and manner in which the inspection judges they may help the officer to rectify its mistakes and they must remember that they must always take the right manner or right approach.

The administration of justice is a vital concern of any civilized community. Upon the proper functioning of the courts depends not only the enforcement of rights and liabilities, such as those between individuals, but also the protection of the individual against arbitrary government and the protection of society itself against the lawless individual. This concentrates on judicial administration in the United States. This is not because similar problems do not exist elsewhere, but because their complexion varies so much from one nation to another that a comparative study would not be meaningful unless it took into account in each nation the structure of government, the character of the legal profession, and similar matters beyond the scope of any brief treatment. However, a few references to comparative material are included in the bibliography. Despite its importance, little systematic study was given to judicial administration in the United States until recent years. Lawyers, judges, and law professors were preoccupied with rules of law and with the procedure for translating them into concrete decisions; they devoted relatively little attention to the over-all functioning of the judicial machinery. Political scientists also tended to avoid the subject, concentrating their concern upon the legislative and executive branches of government on the theory that the judicial branch was the special preserve of the legal profession. This left the field to politicians, legislators, and a few others confronted with such specific tasks as selecting judges or establishing courts. Understandably, their tendency was to approach each problem *ad hoc*, without seeing it in context and without much research into historical or comparative experience or into empirical data.

The beginning of sustained attention to the subject probably dates from a now famous speech by Roscoe Pound to the American Bar Association in 1906, entitled "The Causes of Popular Dissatisfaction With the Administration of Justice." To the then complacent members of that body, he spoke some harsh truths about "waste," "delay," "inefficiency," "archaic judicial organization" and "obsolete procedure." There followed an awakening of interest in the subject in the law schools of the nation—an interest that has continued and is still growing and in which university

political scientists and sociologists have recently joined. Before long, public-spirited members of the bench and bar began to take notice. The chief vehicle for their early efforts at reform was the American Judicature Society, formed in 1912. In the 1930s, the organized bar began to lend its strength to the growing movement, largely as the result of the enthusiasm of Arthur T. Vanderbilt, who was destined to become not only president of the American Bar Association, the American Judicature Society, and the Institute of Judicial Administration, as well as chief justice of New Jersey, but also the acknowledged leader of the entire movement.

In 1934 Congress passed a statute giving power to the United States Supreme Court to make rules of civil procedure for the federal district courts. This was an important step forward, not only because federal procedure badly needed revising but also because of the precedent of vesting in the courts themselves the power to regulate their own methods of operation. The new rules went into effect in 1938, and have been amended from time to time. They have become a model for procedural reform in the various states. In 1937 the American Bar Association took a stand against the popular election of judges and in favor of a method of selection that would de-emphasize political considerations; and in the same year that association undertook the formulation of "minimum standards of judicial administration" (American Bar Association 1938). These standards were promulgated the following year as a guide for states in improving their court systems, and since then the state committees of the American Bar Association have worked for their implementation. The association has continued to enunciate goals for judicial administration and to work toward them, as is evidenced by its promulgation in 1962 of a model judicial article for state constitutions. Many state and local bar associations have similarly contributed their efforts.

The major problems in judicial administration center on (1) the personnel of the courts, (2) the institutional framework within which they operate, and (3) the procedures they follow. All of these problems are interrelated. Most judges in the United States are popularly elected, but the voters seldom have much interest in the contests or knowledge of the persons for whom they are voting, being content to leave such matters to political leaders. In the federal system, and in a few states, the judges are appointed, but even here, politics tends to play a dominant role. One approach toward de-emphasizing political considerations (without eliminating them entirely) is to require that a judicial appointment be made from a list presented to the governor (or other appointing official) by a non-partisan nominating commission; and to require that after a probationary period of service, the appointee

shall run against his own record, not against any other candidate. The choice that appears on the ballot is simply whether Judge X shall, or shall not, be retained in office. This plan is known by various names, the most familiar of which is the Missouri plan, Missouri being one of the first states to put it into effect. Similar plans are now in operation in Kansas, Alaska, California, Alabama, and Iowa; and movements are under way for the adoption of the idea in still other states.

The tenure of judicial office is one of the factors affecting recruitment of the proper men to become judges, because an office that carries tenure for life or for a long period of years is obviously more attractive than one that carries a short tenure. At the same time, it is important that men do not remain on the bench after their powers have failed or if they have demonstrated by their conduct that they are not fit to hold office. The direction of reform, therefore, has been toward making tenure long, but at the same time providing for retirement or removal under the proper conditions and by a simple and effective procedure. Impeachment, involving legislative accusation and trial, has proved to be a cumbersome and generally ineffective method of getting rid of unfit judges and, consequently, has in some states been replaced or supplemented by removal machinery operated and controlled by the highest judicial officers of the state. When judges retire from active service because of age or ill-health, adequate financial provision should be made for their retirement. In the federal system, a judge receives full pay for life upon retirement at age 70 after serving for 10 years, or at age 65 after service of 15 years, but this is a far-off ideal for many states. In some states, there is no financial provision at all for retirement, with the result that judges are almost forced to stay on the bench long after their powers have failed; in others, retirement plans exist but are inadequate.

The more generous judicial salaries are, within limits, the more likely they are to attract able lawyers and therefore improve the functioning of the judicial system. Throughout the United States, disparities in salary are striking, with one judge receiving two or three times the amount of money that another receives in a different place for performing much the same work. The movement has been toward generally increased salaries in recent years, but great disparities remain. In the federal courts, the salaries of district (trial) judges have tripled since World War I (going from \$7,500 in 1919 to \$22,500 in 1955) and appear likely to rise again soon. They seem to be tied (in the minds of congressmen, at least) to the salaries paid members of Congress. In some states, the federal salaries are substantially higher than those paid state judges, but in a few others, like New York, they are

substantially lower than the state salaries. Some nations have a career judiciary in which members of the legal profession choose between the bench and the bar at an early age. Those who become judges receive specialized training—either formal education or apprenticeship—for their work and then progress by a regular system of advancement through the hierarchy of courts. In the United States, no such system prevails. Judges ordinarily are chosen from the practicing bar at a fairly advanced age and assume office (either at high or low levels) without the benefit of special training for their new work. Because of this system of selecting judges, because there is no regular system of promotion, and because even experienced judges sometimes need help in orienting themselves when they assume new duties or when they are confronted by major changes in the law or in court organization, training programs for judges have become popular in recent years.

Such programs had their origin in conferences where judges got together informally to discuss common problems and needed improvements in the law or to listen to speeches. These informal meetings have gradually been converted into, or supplemented by, more formalized programs of judicial education. The pioneer project was the Appellate Judges Seminar, inaugurated by the Institute of Judicial Administration in 1957 and held for two weeks each summer. Each year it provides a program for 20 to 25 of the appellate judges of the nation. In 1962, under the aegis of the Joint Committee for the Effective Administration of Justice, an organization sponsored by 14 national organizations interested in judicial administration and headed by Justice Tom C. Clark of the United States Supreme Court, the same idea was extended on a large scale to trial judges of state courts of general jurisdiction. It has held many two-day or three-day seminars throughout the nation. Other seminars are held for new federal district judges under the auspices of the Judicial Conference of the United States; and still others are conducted for juvenile court judges, traffic court judges, and justices of the peace. The movement is continuing to grow and expand, as is evidenced by the establishment in 1964, on what was hoped to be a permanent basis, of the College of Trial Judges, to be conducted four weeks each year for new judges of state trial courts of general jurisdiction. Further in the future is the possibility of establishing a training program for lawyers who are not yet judges, but who have ambitions in that direction.

Some judges have not even received a law school education to qualify them to act as lawyers. These typically are justices of the peace, handling small traffic cases, other minor criminal cases, and small civil claims; but sometimes they are also found in probate courts, administering the estates of persons who have died. In

England, the justice of the peace is a highly respected official, but in the United States the office has been degraded and has become the object of widespread criticism. Too often it is given as a reward to the politically faithful whose only qualifications are services rendered, or to be rendered, to the party in power. It is not surprising, therefore, that a movement is under way in many states to replace justices of the peace and lay probate judges with legally trained, full-time professional judges. Where this is politically feasible, efforts are being made to require that justices of the peace be lawyers or at least to provide training programs for them along the lines of the programs for regular judges described above. In a considerable number of states such reforms have already been accomplished. In Maine, for example, in 1960 the justices of the peace were eliminated and replaced by a system of full-time, legally trained judges. During the last fifty years the civil jury has virtually disappeared in England. In the United States it still flourishes, its greatest use being in personal injury negligence cases. The right to trial by jury is guaranteed by state constitutions (for state court cases) and in the federal constitution (for federal court cases)—but only in those situations where a jury had been traditionally used, namely, actions developed in the common law courts of England. The typical constitutional provision is that the right shall “remain inviolate,” meaning that it is not extended to actions either historically tried without a jury or newly created by statute. In consequence, many civil actions are today tried without a jury.

Some judges and lawyers believe that the jury is no longer justified even in the limited group of civil actions where it is still used. They point out that juries are the cause of many of the law’s delays, that they greatly increase the expense of litigation, that they introduce uncertainty into the judicial process, and that they frequently disregard and set at nought the governing law. Consequently, from time to time there is talk about the desirability of getting rid of the jury in civil cases—a movement that thus far has not progressed very much. More successful have been indirect efforts to curtail the use of the jury by encouraging waiver of the constitutional right or by making the party demanding this method of trial pay some of the extra costs entailed thereby. Currently under serious consideration is a proposal to take automobile accident cases out of the courts and entrust such claims to administrative tribunals modeled after workmen’s compensation boards.

In criminal cases, the jury is still used extensively both in England and the United States. The grand jury, however—the one that makes accusations of crime, as distinguished from the petit jury, which determines guilt or innocence—has

disappeared in a number of states, having been replaced by a procedure, which is less cumbersome, whereby the district attorney, on his own responsibility, makes the accusations that bring men to trial. Important efforts have been made, and are being made, to improve the method of selecting jurors for both civil and criminal cases. The goal is to secure more intelligent, better educated juries, that is, juries more fairly representative of the community. Notable in this regard have been United States Supreme Court decisions outlawing systems of jury selection that involve the systematic and intentional exclusion of Negroes and similar minority groups. Sometimes independently of such decisions and sometimes as a result of them, administrative improvements in the method of selecting juries have been made. The proper functioning of the courts depends not only upon the judges and jurors but also, and perhaps equally, upon the performance of the bar. If the bar is capable, conscientious, and responsible, the quality of justice is likely to be good; if not, the quality of justice is likely to be deficient, for the Anglo-American system is predicated in very large part upon lawyers presenting to the court the raw materials, both factual and legal, that will be needed for decision.

Three developments in recent years have tended to increase and improve the services rendered by the bar. One is the inauguration of new methods of supplying legal service to those who are unable to pay for it, beyond the traditional practice of having a judge appoint a member of the bar to represent an indigent defendant accused of a serious crime. Legal aid societies, which offer the services of lawyers to indigent persons in both civil and criminal cases, have been established in many communities; and in some counties, public defender systems have been created, whereby publicly appointed and compensated officers defend indigent defendants. The trend toward more adequate legal representation for indigents has been greatly stimulated by a series of Supreme Court decisions holding that the right to counsel in criminal cases is guaranteed by the U.S. constitution.

Another development of importance has been the improved education of lawyers. Not only have the undergraduate law schools been greatly improved and standards for admission to the bar tightened but systems of postgraduate legal education have also been developed in university law schools and in bar-controlled programs of continuing legal education. A third development of significance is the strengthening of bar associations, which maintain a degree of discipline over the conduct of individual lawyers and provide a vehicle for the discharge of professional responsibilities. An increasing number of such associations have become "integrated," meaning that membership in them has become mandatory, with all

lawyers in the state paying dues and having a voice in their affairs. As a result, such bar associations can speak with a high degree of authority.

Court structure in the United States is far from simple. Instead of a single system of courts such as in England or France, 51 separate systems are in operation—one for each of the 50 states and another for the federal government. To a large extent, the federal courts duplicate the work of the state courts, but Americans have become so accustomed to the idea of a dual system of courts that there is little likelihood of such duplication being eliminated or even substantially reduced. A much more likely area of reform is the court structure of any given state, where there frequently is great complexity and disorganization. Jurisdiction all too often is fragmented among a motley conglomeration of disparate courts, operating independently of one another and doing clumsily and inefficiently what could, and should, be done simply in a unified system. Many states have radically simplified their court structure, reducing the number of courts and eliminating duplication.

Many states have also established machinery for the unified operation of their courts, providing for conferences of judges to discuss common problems and vesting administrative authority over the entire system in a single judge (usually the chief justice of the highest court), giving him the responsibility of relocating, if necessary, the entire judicial manpower of the state by temporary assignment of judges from one locale or one court to another. For these administrative tasks, he is provided with assistants, who collect statistics, prepare reports, conduct studies, and the like. A prime objective of improved administration is to combat delay. Many courts, particularly those in metropolitan areas, are suffering from chronic congestion. In these courts, it may take as long as three, four, or five years for a case to reach trial. Efficient, businesslike administration, with free transferability of judges and cases, is thought by many to be a key remedy for this malady.

As in many other areas, the federal courts took the lead in judicial administration, too, with the inauguration in 1922 of the Judicial Conference of the United States and the establishment in 1939 of the Administrative Office of the United States Courts. These provide models for states wishing to improve the administration of their own courts, and they have been extensively copied. Until the nineteenth century, the regulation of procedure was largely in the hands of the courts, which devised their own rules and changed them from time to time as they saw fit. Then legislatures began to take over the function, in part because the rules developed in the courts of England had become excessively rigid, unrealistic, and unsuited to the

needs of litigants, necessitating a radical change, and in part because of the general increase of legislative power and activity during this era. One of the great legislative achievements was the promulgation of the Field Code of New York in 1848, abolishing ancient forms of procedure, providing a uniform procedure for all types of action, and merging into a single court of general jurisdiction the powers that theretofore had been exercised separately by the common law courts and the chancery or equity courts.

Time proved, however, that legislative regulation of procedure was not satisfactory, for reasons well stated by Judge Cardozo: “The legislative, in-formed only casually and intermittently of the needs and problems of the courts, without expert or responsible or disinterested or systematic advice as to the workings of one rule or another, patches the fabric here and there, and mars often when it would mend” (1921, pp. 113–114). As a result of such criticisms, the tendency has been to restore procedural rule-making power to the courts. This has been accomplished in many states as well as in the federal government, where Congress delegated to the Supreme Court rule- making power over the lower federal courts. The rules promulgated by the Court pursuant to this authority (covering both civil and criminal cases) are brief and simple, de emphasizing technicalities and procedural niceties in favor of greater concentration on the merits of litigation. They have provided an inspiration and model for procedural reform in many of the states.

While great strides have been made during the twentieth century toward simplified and improved procedure, there are still many areas that urgently demand attention. One is the law of evidence, which tends to be unduly complicated and to exclude relevant and reliable information for reasons so technical that they are meaningful only to tradition-minded lawyers. Another is the reaching of a proper balance between the right to a fair trial and the right to a free press. Newspaper, television, and radio coverage of the facts of some cases prior to trial is so extensive and spectacular that it makes virtually impossible a fair trial. Still another is re-storing to the trial judge his historic power to control the trial, including the power to comment on the evidence and thus guide and help the jury in determining questions of fact .These few examples, far from being a catalogue of what remains to be done, merely suggest the range and nature of the many problems to be faced.

In recent years there has been a growing recognition that the administration of criminal justice requires and deserves, at the least, attention equal to that given to the handling of civil litigation. One of the reasons is that the United States Supreme Court has devoted much attention to the subject, making clear, in a long series of decisions, that criminal justice in many of the states falls below the minimum requirements of decency and fair play guaranteed by the federal constitution. In the 1950s the American Bar Foundation engaged in major research into the functioning of criminal law in the United States. This study is expected to result in the publication of several detailed volumes of description and criticism. In 1964 a new effort was launched by the American Bar Association, in conjunction with the Institute of Judicial Administration, to formulate minimum standards of criminal justice similar to the Minimum Standards of Judicial Administration of 1938. Many additional research projects, generously supported by foundation grants, are being carried on in schools of law and departments of sociology in a number of American universities.

Increasing interest in criminal law also may be responsible, in part, for another significant recent development: the utilization of new methods and techniques of research in the law. The emphasis today seems to be upon empirical, quantitative methods borrowed from the social science disciplines, supplementing the older emphasis upon books, theory, and a priori reasoning. Increasingly of late, men from university faculties other than the law schools have been interesting themselves in problems of judicial administration. Finally, growing attention is being paid to the comparative aspects of judicial administration. As men have become conscious of the fact that, in general, one nation may learn from another, so also have they become increasingly aware that much is to be learned by comparative study in the field of judicial administration. Recent interchanges between British and American jurists on appellate procedure and on the administration of criminal justice have yielded excellent results for both countries and are likely to come in future.

There is imperative need for total and absolute administrative need for total and absolute administrative independence of the High Court. But the Chief Justice or any other Administrative Judge is not an absolute ruler. Not he is a free wheeler. He must operate in the clean world of law, not in the neighbourhood of sordid atmosphere. He has duty to ensure that in carrying out the administrative functions, he is actuated by same principles and values as those of the Court he is serving. He cannot depart from and indeed must remain committed to the constitutional ethos and traditions of his calling. We need hardly say that those

who are expected to oversee the conduct of others must necessarily maintain a higher standard of ethical and intellectual rectitude. The public expectations do not seem to be less exacting."

The concept of independence of judiciary is a noble concept which inspires the constitutional scheme and constitutes the foundation on which rests the edifice of our democratic polity. If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the rule of law and under the Constitution, it is the Judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the rule of law meaningful and effective. But it is necessary to remind ourselves that the concept of independency of the judiciary is not limited only to independency from executive pressure or influence but it is a much wider concept which takes within its sweep independence from many other pressures and prejudices. The object of such inspection is for the purpose of assessment of the work performed by the Subordinate Judge, his capability, integrity and competency. Since Judges are human beings and also prone to all the human failings, inspection provides an opportunity for pointing out mistakes so that they are avoided in future and deficiencies, if any, in the working of the subordinate Court, remedied. Inspection should act as a catalyst in inspiring Subordinate Judges to give best results. They should feel a sense of achievement. They need encouragement. They work under great stress and man the courts while working under great discomfort and hardships. A satisfactory judicial system depends largely on the satisfactory functioning of courts at grass roots level. Remarks recorded by the inspecting Judge are normally endorsed by the Full Court and become part of the annual confidential reports and are foundations on which the career of a judicial officer is made or marred. Inspection of subordinate courts is thus of vital importance. It has to be both effective and productive. It can be both effective and productive. It can be so only if it is well regulated and is workman-like. Inspection of subordinate courts is not a one day or an hour or few minutes affair. It has to go on all the year round by monitoring the work of the Court by the Inspecting Judge. The casual inspection can hardly be beneficial to a judicial system. It does more harm than good.

As far as the objective of inspection is concerned, it would be apt to quote the relevant provisions of Rules & Orders (Civil) and (Criminal) in this respect. The provisions are being reproduced as under:- **Rule 566 of High Court Rules & Orders (Civil)**: –The object of inspection is to satisfy the District Judge and through him the High Court that the Courts are functioning properly, that rules are understood and followed and that work is disposed of promptly and regularly. At the same time the inspection offers the District Judge an opportunity of helping and instructing his Civil Judges and of correcting faults in procedure which would not normally require reference in an appellate judgment and full advantage should be taken of this opportunity||..... –Inspection with its opportunities for helping junior Judges and for improving the standard of the judicial administration generally is one of the more important aspects of a District Judge’s work, and is an aspect to which he should devote considerable attention. Unhelpful and routine notes are to be strongly deprecated.**Rules & Orders (Criminal) 703**: –An inspection note is not only a commentary on the court inspected but also on the officer inspecting. The important quality is insight and penetration, and attention should be given to the court’s method and attitude in trying cases rather than to legal points unless there are mistakes of an obvious kind in law or procedure. It is important that when an error or a fault is revealed the way to avoid it should be explained at the same time, to show not only what was done wrong but also how it should have been done and why.||

Thus the object of inspection is to satisfy the District Judge and through him, the High Court, that the courts are functioning efficiently and that the work is disposed of promptly and regularly. It also gives opportunity to the District Judge to make remedial measures and correct the faults in the procedure creeping into the work of subordinate judges. District Judge also evaluates as to whether the Judge whose inspection he is carrying out, has not shown undue delay in disposing of the case. The more careful the inspection is, the higher will be the quality of work in Courts. Minor matters should be disposed of in a personal discussion with the judicial officer but all important points should find a place in the inspection report. Various sections such as account section, copying section, record room, library, establishment etc. are required to be inspected to ensure their proper, efficient and corruption free working.

It is quite clear that the standard of work, both of judicial and administrative nature

shall witness an enhancement in terms of quality and quantity, if the inspection is carried out as per norms and guidelines. Role of Vigilance is to protect the Institution from internal dangers which are more serious than external threats. Vigilance is surveillance for the prevention of improper behavior and conduct of the

duty holders. Vigilance is to keep watchful eye on the activities of the court official to ensure integrity of personnel in dealing with the litigants. It is to ensure clean and prompt administrative action towards achieving efficiency and effectiveness of the court officials in particular and the courts in general.

The objective of vigilance is identifying places and points of corruption. A vigil over work both judicial and administrative and the conduct and contacts of officials is also an important objective of vigilance. Vigilance administration may be improved by creating a culture of honesty, by greater transparency/openness in administration and speedy disposal of departmental enquiries.

The term ‘Vigilance’ is wrongly understood as barely enquiring, fixing responsibility etc. Vigilance is not only punitive but also preventive in nature. Prevention of misconduct is as important function of vigilance as punishment is. The principle behind preventive vigilance is

—Prevention is better than cure and the purpose is to reduce corruption and bring about a higher order of morality in official functioning. Preventive vigilance is nothing but adoption of a package of measures to improve the system so as to eliminate corruption. This can be done by identifying sensitive and corruption prone areas by detection of failure in quality or speed of work.

As part of preventive vigilance, a system of maintaining the list of officers of doubtful integrity shall be required to be maintained. Similar such list of Class-III and Class-IV employees shall also be required to be prepared. The purpose of maintaining this list is to enable the organization to take such administrative action as is necessary and feasible. The action can be transfer from sensitive place and post, non-sponsoring the names for deputation, refusal of re-employment after retirement etc. The names of officers/ officials should be retained in this list for a specific period.

Instances of preventive vigilance in judiciary may be seen when the High Court issues advise or non recordable warnings to judicial officers in matters in which the impugned acts are not so serious enough to bring them within the ambit of ‘misconduct’. Similarly, circulars issued from time to time, in order to curb undesirable traits/practices, are also instances of preventive vigilance. When one talks of punitive vigilance, the concept of ‘misconduct’ has to be brought forth. When the impugned act is proven to be misconduct, the delinquent is liable to be punished as per rule 10 of MP. Civil Services Classification Control and Appeal

Rules, 1996. The delinquent may be subjected to major/minor penalty as per the nature of misconduct. The term ‘_misconduct’ has although not been defined in M.P. Civil Services (Conduct) Rules, 1965, yet, a fair idea can be gathered about the concept of ‘_misconduct’ from perusal of specific instances of misconduct enumerated from Rule 3-A to Rule 23-A of M.P. Civil Services (Conduct) Rules, 1965 apart from the general Rule 3. It may be seen that amendments in rules have incorporated discourteous behavior and deliberate adjournments as instances of misconduct amongst others.

General rule 3 of M.P. Civil Services (Conduct) Rules, 1965 provides that a Government Servant shall maintain at all times, absolute integrity, devotion to duty and do nothing which is unbecoming of a Government Servant. While the expression ‘_integrity’ denotes uprightness or honesty, ‘_devotion to duty’ is faithful service. It must be remembered that ability enables an officer to get promotion but it

takes integrity and devotion to duty to keep him there. Integrity or honesty is not a concept or a word; it is a way of life.

Apart from integrity and devotion to duty, officers/officials must display strong moral character. Law Lexicon defines —Moral Turpitude‡ as —Anything done contrary to justice, honesty, principle or good morals, an act of baseless, vileness or depravity in the private and social duties‡. Work ethics of an officer/official should be such which is free from any kind of moral turpitude.

In *State of Punjab v. Ram Singh Ex. Constable* in which it has been held that ‘_misconduct’ may involve moral turpitude, it must be improper or wrong behavior, unlawful behavior, willful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty, the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. It may be seen that Rules relating to misconduct are concerning Government servants. Judicial Officers/Officials are although Government servants, yet the standard of conduct expected of them has to be a notch higher than other Government Servants because of sanctity attached to the judicial system as a whole and in order to maintain and enhance reposition of faith in the system amongst the public at large. The Preamble of Bangalore Principles of Judicial Conduct, 2002 underlines the importance of maintenance of high standards of judicial conduct and enjoins the judges to strive to enhance and maintain confidence in the judicial system.

Rules of propriety and conduct for judicial officers have apart from being underlined in the aforementioned Bangalore Principles of Judicial Conduct, 2002, also been emphasized in Restatement of values of judicial life (Code of Conduct), 1999 and D.O. letters/ circulars sent out to Judicial Officers from time to time. It can thus be seen that the objective of ‘_Inspection’ is to periodically monitor the functioning of a Judicial Officer/ Official and propel and guide him in respect of any procedural and legal lapses. It is for correction and guidance of duty-holders. On the other hand, the objective of ‘_Vigilance’ is keeping a vigil over work, both judicial and administrative as well as the conduct and to identify as to whether the

impugned acts of the judicial officer and the court staff comes within the ambit of misconduct as provided under the Rules.

In one case, The Petitioner who was a member of Bihar Superior Judicial Service and posted as District & Session Judge, Giridih, seeks issuance of writ in the nature of mandamus directing the State of Bihar to frame rules for enhancement of age of superannuation of the judicial officers of the State as per directions of the Supreme Court issued in the and also for a writ or direction quashing the communication contained in the letter dated 17th May, 2000 of the Registrar General of the Patna High Court informing the petitioner that having assessed and evaluated the services of the petitioner in the light of the decision of this court in *All India Judges Association & Ors. v. Union of India & Ors.*⁸⁴ the High Court has been pleased to decide not to allow him the benefit of enhancement of the retirement age from 58 years to 60 years and that the petitioner shall cease to be a member of the judicial service of the State on completion of the age of 58 years in October, 2000. The Order of the High Court was challenged on the three grounds- **firstly**, that in view of the decision of the Supreme Court, the retirement age of judicial officers stood increased to 60 years and before attaining such age of retirement, the petitioner could not have been made to retire at the age of 58 years except by following the procedure applicable to compulsory retirement; **secondly**, that the petitioner holds a civil post under the State of Bihar. The order of retirement can be passed only by the Governor of Bihar; the jurisdiction of the High Court being only advisory. As the State of Bihar/Governor of Bihar has not passed any order of retirement, the petitioner cannot be made to retire by the High Court acting on its own; **thirdly**, that the impugned order is arbitrary, based on no material and hence is vitiated. Hon'ble SC went through in detail into the records of the case and the service record of the petitioner was also considered and is as under :

JC - Integrity doubtful. C Grade. He is a Judicial Officer with doubtful integrity. I had already submitted a note to Honble C.J. Details have been mentioned in my inspection notes as well.

[Sd/- **Inspecting Judge**] **May, 1988** : B On the whole satisfactory since he had recently joined, it is difficult to express any opinion on these points, in respect of cols. 6,7, & 8 relating to reputation for honesty and impartiality, attitude towards his superiors, subordinates and colleagues and behaviour towards members of the Bar and Public.

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While the petitioner was holding charge as Chief Judicial Magistrate, Thrissur Ext.P1 (b) Official Memorandum was issued by the High Court directing her to take steps for conducting a thorough police investigation with respect to forgery committed at the Judicial First Class Magistrate's Court, Chalakudy in issuing receipt in ST No.1510/2013 and with respect to missing of records of S.T. Cases, 1510/2013 1511/2013.

It is stated in Writ petition that the petitioner had conducted annual inspection at the Judicial First Class Magistrate Court, Chalakudy on 15-03-2014, after giving prior information to the High Court. The petitioner camped at the Forest Guest House situated near to the court premises at Chalakudy, in connection with the inspection. It is mentioned that, in another room in the Guest House the Investigating Officer in Crime No.357/2014 was questioning some of the accused persons including one Smt. Mini, who is an Advocate clerk attached to a lawyer practicing at Chalakudy. Version of the petitioner is that, after preparing the notes of inspection, while going out she had noticed the presence of certain Advocates and Media persons in the premises. Thereafter on 17-03-2014 the 3rd respondent requested the petitioner to be present in the very same Forest Guest House, at 9 a.m. on the next day. When the petitioner was present on 18-03-2014 there were a large number of Media persons with Cameras at the Guest House. The petitioner had signed the proceedings of enquiry prepared by the 3rd respondent which according to her was without properly reading the notes, unsuspectingly in an honest manner. But on the next day the impugned order of suspension was issued with immediate effect. The impugned order is attacked as violative of Article 14, 19 & 21 of the Constitution of India. Besides, allegation is that it is malafide and issued in an abuse of the power vested on the respondents. The petitioner contented that the order of suspension is totally unwarranted and it is not on the basis of any public interest, but a malafide action which is in the nature of vindictive victimization. Various contentions on factual aspects are also raised to substantiate that the petitioner was totally innocent with respect to the circumstances related to the inspection and camping at the Forest Guest House on the particular day. After full scrutiny of the case Hon'ble Court held that, —having found that the grounds raised in challenge of the impugned order is not sustainable, the writ petition fails and the same is hereby dismissed.

In a case Respondent No. 1 joined DJS on 28th January, 1978. He was granted

selection grade in the said service in June 1993 w.e.f. 31st May, 1991. On 18th May, 1996 meeting of Full Court was held and one of the items of agenda was consideration of eligible judicial officers in DJS for promotion to DHJS. This consideration was not possible without there being record of ACRs of all the eligible officers. Accordingly ACRs of 23 officers were recorded by the Full Court and thereafter Full Court considered the cases of these officers for promotion to DHJS. As far as respondent No. 1 is concerned, he was given adverse remarks "C Integrity Doubtful" for the years 1994 and 1995 in that meeting. He was also not found fit for promotion to DHJS and was superseded.

On 27th May, 1996 a communication was sent from the High Court to respondent No. 1 informing him about the adverse remarks and he was asked to make representation, if within six weeks, of communication of such remarks. Respondent No. 1 submitted his representation on 8th July, 1996 to District Judge which was forwarded by the District Judge to the High Court on 10th July, 1996 with his endorsement for favourable necessary action, remarking that no complaint has been received/pending in his office. This representation was followed by another representation submitted on 21st February, 1997 in which it was also stated that his case for promotion for DHJS may be considered with retrospective effect. Yet another representation dated 16th September, 1997 was made to the District Judge for a personal hearing in the matter by the Full Court which was forwarded by the District Judge to the High Court. Representations of respondent No. 1 as well as of some other officers came up for discussion in Full Court Meetings from time to time. On 18th January, 1997 the Full Court constituted a Committee of four Judges to enquire into these representations. The Committee gave its report on 22nd July, 1997. Report shows that representation of as many as 19 judicial officers were considered in the meetings of the Committee held on various dates. The Committee had perused personal files, complaint files, ACRs files and also judgment of some of the officers. The Committee also made some enquiries (as there is some dispute about the nature of enquiry, this aspect would be dealt with by us at the appropriate stage). After fully considering and examining the matter, the Committee gave its recommendations on each of the representation submitted by these officers. Some of the representations were rejected while some were accepted by the Committee. In so far as representations of the respondent No. 1 are concerned, the recommendation of the Committee was to reject his representations.

The recommendations of the Committee were accepted by Full Court, after due deliberations in the meeting held on 20th September, 1997. The decision of the Full Court rejecting the representations of the respondent No. 1 herein was conveyed to the District and Sessions Judge by letter dated 25th September, 1997 and he was asked to inform respondent No. 1 of the said rejection. Respondent No. 1 challenged the decision by filing CWP No. 4334/97 on 15th October, 1997. As mentioned already, this writ petition of respondent No. 1 herein has been allowed by the judgment dated 28th May, 1999 and present appeal is preferred impugning this judgment.

The reliefs given by the learned single Judge can be compartmentalised under three heads :

1. Expunging of the adverse remarks of respondent No. 1 for the years 1994 and 1996.
2. Declaring that respondent No. 1 is deemed to have been graded as B+ for the years 1994 and 1995.
3. Declaring that respondent No. 1 stands promoted to DHS w.e.f. 18th May, 1996 and entitled to his due seniority with all other consequential benefits. In view of the discussion, we do not agree with the conclusion of the learned single Judge therefore, set aside the order of the learned single Judge on this point whereby the grading 'C' given to respondent No. 1 for the years 1994 and 1995 was quashed/expunged by the learned single Judge.

To summarise, it is held :

(a) The adverse remarks recorded by the High Court in the Confidential Reports of respondent No. 1 for the years 1994 and 1995 were not without any material. They were recorded on the basis of 'material' on record and the judgment of the learned single Judge quashing those remarks is hereby set aside.

(b) The learned single Judge should not and could not have graded B+ to respondent No. 1 as it is the function of the High Court to assign appropriate grading. Therefore, the matter should have been referred to the Full Court for giving appropriate grading. This direction of the learned single Judge is accordingly set aside.

(c) Direction of the learned single Judge in treating the petitioner as promoted w.e.f. 18th May, 1996 is not correct in law and is therefore set aside.

The point No. 2 is decided on the presumption that the judgment of the learned single Judge on point

No. 1 was sustainable and point No. 3 is decided on the presumption that judgment of the learned single Judge on point No. 1 and even on point No. 2, was sustainable.

This appeal is, therefore, allowed. The impugned judgment of the learned single Judge is set aside. The CWP No. 4334/97 filed by the petitioner stands dismissed. Now the criterion for honesty has also changed, if one takes money and does not

do the work then one is dishonest and if he takes money and does work he is considered honest. Thank you sir. Now we can disperse for Lunch.

Time Management

Thanks a lot. Good morning everybody. Hope you all are fine and enjoyed your stay at Bhopal. That's a pleasure to know because if you are in your comfort zone, learning cause even faster. We will try, actually I am nobody to teach anything, they would try to exchange our experiences with each other and I would also like to be enriched by your experiences. So, the very first question I have is how comfortable you are with your schedule right now. Not right now in your conference but in your life in general. What do you say? Do you get time for leisure activity? Do you get time for your families? Sorry, a big No. So have you ever being attention to this wife? Why does it happen? Can we do something or nothing can be done in that regard. Okay. So now I can understand where I am. So, we would work together to see that lot can be done together in that regard. So, to make it more personalize and more relevant to your routine experiences I would like you to spend 5 minutes in jotting down your working on a typical working day. The moment you get up till the moment you go back to your bed. Right. So you can divide it into different activities. I'm not going to observe that. That is to be judged by you that is to be mentioned by you that is to be put into different categories by you only. On a typical working day, we all are Rabbits. We work in a set pattern, we get up with an alarm clock and then we go to bed at a given time only. Right. I were should you may go a little bit here than there otherwise generally these days we see what happen the all are dealing robotic life. And very dry life. So, just spent 5 minutes time in jotting down your schedule right from the moment you get up to the moment you go back to the bed. Right. So it is your time. Please let me know if you need any help. I think my point is clear or I need to clarify it. Like you to write it 6 AM I get up, at 630 I finish my exercise on my routine work, in that way and then half an hour with cup of tea and newspaper. Thereafter getting ready for office, whatever the typical schedule is; just jot it down in a broader way. We will be using it at the later stage of discussion. This is your schedule, your time and you are managing in the way you like. This is not for anybody else analyzes. I think nobody else can analyze anything for you.

Are be done with it? This is your time, your note, your understanding. This will remain with you only. Maybe jotting down the notes for the judgment, preparing for

the things and crosschecking various other judgments, evaluating data whatever the things are available, whichever way you can breakdown it is your way. Fine. Thank you madam. Okay clear. So, now I think a day is there that you, a typical day. Right. So if I ask you how much time do have in life in attaining your goals what you will say? We really do not know. Right. So, second important thing to be remember is that don't be fall by the calendar. There are only as many days in the year as you make use off. One man gets only a week value out of that year and another man gets a full year's value out of the week. Finally how we are able to attain our goals. That is require through proper time Management. Right. We all say we have possibility of time, the other not able to devote time in leisure activities or we don't have time for personal work or something. So shall be moved ahead. Fine. So, if we are unable to attain our goal's or that's the case is for everybody. If there is somebody around us who is able to manage time, who is still able to give time to the family or the leisure activities may be we need to think about other work style and other things as well. The important thing this time is a limited commodity and we all have got that particular hours in our life. Or whatever is decided in that day of 24 hours only. So, by time Management in a way we need to manage our self and we actually cannot manage time. We can manage ourselves, we can manage others and we can manage the work around us. So in our way time cannot be managed and why should we think of managing time at all. What is the purpose in managing time? What are we going to attain in proper time Management? Ya.. They will save time and thereafter.. And we can invest at that time in some other interesting activities. What else? Ya. Spending time in a meaningful manner and we definitely get to realise that we are the master of our own destiny. If they get to spend time in our own manner basically it would reduce our stress. The idea that the feel that nothing is happening, I do not know we're of the time goes, I do not know I am not able to achieve the case many things. So that stress and frustration can be reduced. We can improve our performance. We have more time for our self. It gives a sense of achievement and definitely it helps being the master of ours own life. We don't feel that we are the passive passenger in the lane of life. I think that I am the driver, I can decide to which side I go and which directions I think. So what are the obstacles in effective time management? What do you say? There does the time go? What are the problems in proper time Management? Improper planning, what you mean by that? Why the planning remains improper? Sorry. Laziness, maybe I keep thinking about it, maybe somebody else would do it on my behalf, with the passage that things will get better

automatically, so proper planning is required to manage time better. What else? What are the other obstacles? We need to prioritize our work. What else? Time is wasted in travelling. Okay, very good. We actually don't know that whether that time can be utilised or not? That is also point. What else? What are the major problem in proper time Management? There are so many spontaneous things to be done. Unavoidable circumstances. You prepared your schedule and there after so many things that actually make it tilted, thereafter we are not so motivated to go according to the schedule as them because that schedule never been adhered by us because so many spontaneous activities that are happening. Okay. Ya. So because of that we cannot go by schedule as well. Because once we prepare the schedule, the schedule does not go as per our decided ways. Maybe one of the major thing is we really do not know to which directions we are going. We are moving as per the pattern. We are moving in the very robotic manner. I set pattern is there and we are moving towards. We do not decide which direction this journey is going to take me. And we think we don't have time for thinking about all those things. The less clear I am on my objectives the more time I keep spending in working on that. It is better to have said goals. It is better to decide the path. It's better to decide that the journey. So, in unclear state of affairs if I move forward it will going to take a lot of time. So, it's better to have clarity at different levels. I need to have what I expect from life. And what I expect from this particular dimensions. How it is related to my routine working? So, the very first thing is that I should be very clear in the goal of my things. Which direction I chose.. 2nd this disorganization. If you ask there is that important document, especially when you are working on a particular case, you'll note that particular people get somewhere in particular file in a very safe manner but now it has been kept in such a safe manner that finding is another task. The keep our precious thing in utmost careful manner but that tragedy of life is that we are not able to trace them at the moment when the need of them. Right. I know I have kept some there in the utmost planned manner, safe manner. But we are unable to get it. So we may be need to think about disorganization as well. I think many of our assistant can help us if we put certain tags and other organization is better that can save a lot of time. Another thing is in the ability to saying No. So, you all are judges and you pass judgments, still the point is in personal relationships or interrelationships are you more concerned about emotions of other people I really do not know how to say No. How to deny a particular request and the cost of my time and at the cost of my pleasure. Indecisiveness. If I am indecisive, I spent some

time on making a decision still its work if a proper decision is taken. But the point is virtually then I do not have time I am not able to say no to the other person. And there is a major reason because of which I am not able to say no; I feel I may lose a benefit, I may lose a relationship, I may lose a favor, I do not know how much importance is given to my own self and how much importance is to be given to the other party. So, in order to accommodate other I may deny my own rights and that also saks a lot of time and energy. Right. So the point is we need to distinguish when to say no and how to say no. Right. Thereafter, you'll have interruptions. Thanks to the technology we have so many phone calls, thanks to whatsapp, thanks to your emails, thanks to the smart phones, concentrating for 15 minutes is a tremendous task today. You try your level best, I mean the point is that we feel that if the mobile rings, the urge to see pata nahi kya important hai.. You all understand Hindi., I mean so curious to see my intention is that there may be something is that I may have got a call from the president and I know my experience tells me that this is going to be our rubbish phone from airtel office or from some other services but still, and more these medias are available more it takes our time and energy. 2nd thing is that after attending a phone call I am not able to concentrate on my work the way I was working. If I am working on the case or working on a report I attend a phone call, the very important phone call as well in other person and may also; my concentration on my work again I need to work on that. And by the time my concentration is built again there will be some phone call or some other interruptions. You can still handle your mobile but the people who interrupt, show shall skills, meeting people, building relationships, socializing everything is important but the thing is that many a times it deviates us from our major schedule as well. We all are human beings, so genuinely many times I don't feel like working. I feel like a passive observer thinking about life, thinking about certain things. If I have a lot of time, there might be someone with whom it might not happen. You are always active all through the time or sometime that period of inactivity comes when I feel like being lazy. It has its own pleasure. I am sitting in sofa for the last 40 minutes thinking about yes I will move now, I would do something. And this time is neither on the leisure side nor on the work side. If you are investing time in your leisure moments and if you are actually listening to music or you are working on something which give you pleasure that is the still time invested. But thinking about, inertia thing creates a problem and if it takes 40 minutes of your time. It takes 40 minutes my time many a times. Then I realise how who can conduct the session you cannot apply

this theory to yourself. So thereafter we can see how we can analyze the of my time goes and what can be done. We call one thing as multitasking. Communication is such a good thing that you can motivate yourself in a negative thing as well. Multitasking is appreciated a lot and thanks to our schedule, we left with no other way other than multitasking. We need to work different work simultaneously. As further recently research the people who continuously involve in multitasking their productivity level goes down. There is another research as well that indicates that if you are working simultaneously on a laptop and on TV in a way gradually your memory is to go down. Now you need to understand whether you are going for a multitasking thing or you are going to pay whole attention on one task and finish it off at one go. But thanks to our schedule the not only work on laptop and it TV simultaneously in between we listen to music and in between the pay attention to many other things as well. So, 2 things at a go is a compulsory thing right now. The concentrate on 3 and we are motivated to go on the 4th one as well. Multitasking as for the recent research is creating a lot of problem at the productivity level as well as with the health problems. We need to think about that. Stress and fatigue. My schedule does not allow me to take rest. In that particular situation I continue hence it takes lot more time. Right. So, this vicious cycle is continued. Because of my schedule I am stressed because I am working in our stress manner. My schedule is other being eschewed. I do not know how to invest more time. All work and no play. We investing the whole time in the work only and this is making us more like robots and our individuality and pleasure goes away. Then we have poorly run meetings. Meetings also take lot of time and energy particularly when agenda is not so clear, the deviate from the major talks and if the discussions takes the U turn and then coming back to the point also takes the lot of time and energy. And procrastination as had been mentioned earlier. Right. We keep thinking about it, we keep making our targets but the movement the plan to hit it is never done in time and touched upon by us. Right. So what can we do? These are all problems, these are all the obstacles better known to all of us. The only thing that I have done is that I have tried to point it out with the help of certain examples. If I ask you; you know that these are all the problems. So there is the path forward. The point to be remembered is that all of these obstacles may not be working for me; hence I may need not to work on everything on this. The very first thing is to identify what are the obstacles in my works style and then I will put the part further. So first thing is to remember is 80: 20 rule. You might have read about this rule in many other contest because

initially the scheme into the context of economics. This is also known as Paratose rule. The principal says 20% of the people in the Society hold 80 % of wealth. What do you say? Is it like that? Right. 80% of the people have.. Rest of the world is managing in the 20% of the resources. Right. So you can use 80: 20 principle in different things. It has been named as vital few and trivial many. Is 80% of the people managing with 20% of the thing and 20% have hold of 80% of the things, this is really scary thing. But you try to observe and use this principle in different context. They say that 20% of the staff of a particular organization is responsible for the 80% success of that organization. Right. Then on the other side 20% of the people create 80 % problem in a particular Institute. Right. If you try to see this ratio 80:20 principle, it was first established in economic and related to wealth only. But over a period of time it has been extended to different other directions as well. This is also known as to trivial many and vital few principle. And in that particular life how we managed our time. 80% of results are achieved with only 20% of efforts. What do you say about this? Is it true? If it is true then where your 80% of efforts are going. If 80% of results are achieved with 20% of efforts; so where are 80 % of the efforts are going. Definitely it is not aligned with my targets. It is not aligned with my goals, dreams. I keep spending time in certain things. So, the point is that I need to focus on high impact task. I need to identify each task is more important and which energy should be focus towards that particular direction. So, if we have achieved our expected outcome and that what needs to be done then 80% of the task is not required to be done at all. Point is that I need to identify that 80% person then I need to put up lot of focus on that 20 %. The wholehearted effort. The point is that because of multitasking and simultaneously thinking about numerous things, my 20 % is scattered here and there. If 20% is focused maybe I get more time and opportunity to use that 80% in my own manner. And imagine for a minute that paratose principle doesn't work. That with 20% of effort I am not able to do 80% of the task, what I will do I break the remaining task I've been into it 80: 20 and thereafter I was able to save a lot of time. I mean this is a theory the are going to do it practically as well. We will be using the schedule that has been prepared by you in a while to see what can be done with that particular schedule. Shall be moved ahead? Do you would have any observation of question? Fine.

So, setting goals, how do you set your goal? Anything about the goals. Be it professional goal or be it personal goal. I am going to give my example how to set a

goal. I am going to lose weight very soon. What do you say about this goal and neither I have done till date. Where is the problem? Lack of consistency is there ? Okay. What else? I have not given it to the priority. I am not working on this. This is my dream world. That is another thing. Other you said that this is not specific. Please elaborate it. definitely.. So while deciding goals be the professional goal or the personal goal whatever thing it is, the most important thing is the goal should be specific. If the goal is not specific I won't be able to judge whether I am moving ahead in that direction or not. Regarding goal we generally say that the goal should be smart. Smart goals. S stands for specific. Instead of having a generally goal that I want to be a success person. It is a very generic goal. I can move ahead in a particular direction and then I can take a U turn and I can decide yes I am under right path. But if I say that ten years down the line I wish to be the Chief Justice. Right. Or 20 years down the line. Or I have taken.. Okay I take my goal, May be ten years down the line I may become a Professor or director. So point is that I can judge so that I can see this is measureable goal as well. If I say that I am going to reduce weight I should judge how many kilos and in how many months or how many years because if I am leading or if I am planning to lead a self aware conscious life. If I want to be a driver of my life instead of being a passive passenger, I need to view whether I am in the right track or not. Right. So my goal's should be specific instead of being abstract or generic. My goals should be measureable. Somehow I should judge, being successful, being happy. They are very good terms and I agree that this is the only goal of our life of being happy. If you are happy then it is okay and rest is useless. But I need to define what I mean by happiness because otherwise what happens with the passage of time designation also changes. The pursue of a particular goal but over a period of time I realized that I don't know in which direction I am. Achievable, it should not be highly ambitious, it should be achievable as well. It should be rewarding. It should be alignment with my future goals or dreams. If I want to be in a academics and I am sitting target in your area then there is no coherence between the 2 things. So with goal there should be coherence, consistency and there should be gradual movement and should be time bound. If it is not time bound we keep actually to our self, ya I am at a right path and I will achieve it. We don't befool the world, we befool our self's in a far better manner. So if I don't want to befool myself, it is better to have our time bound goal. So that I can check it. If I have a yearly goal, there must be three monthly target as well. I should be able to check whether I am on the right track or not. Right. Failing to plan

is planning to fail. If I am not able to plan appropriately then definitely I am on a failure path. It is very right as you people have mentioned in the beginning that plan so many things but the schedule is skewed because of the personal problems, because of the visitors, certain unexpected events that will happen. That is bound to happen. So in that name let not do our homework as well. I will plan something, schedule something it will go somewhat here and there. But more or less it is on the track. Right. Maybe this is the way. My goal of the day is related to the goal of the month and for then for a year and then for 5 years and 10 years and hence I want to achieve my dreams. Therefore in my planning I should take reversal goal or path only. I am plan this is my dream, ten years down the line this, 5 years down the line and is, this is for this year, this is for this months, this is for the day. If every day I define this was the goal whether I could achieve it or not a reminder was a lot. Right. I mean activity that we have done just now is an established activity. This has brought a change in the life of many other people and I am expecting that it will break a positive learning to us as well. We have to see how could be spear of time, if we realize that this is the quality time of my life, this is the way I want to spend my time I need to realize that that I am in a rights direction or not. So, I will break my goals simultaneously into the goals for a particular day. By the end of the day this is I suppose to attain. Once I have defined my goals I will bring them into tasks. This is the complete step by step journey where to be need to work on that. My goal of the life, my goal for the year, my goal for the month, then my goal for the day. If we maintain a personal measure it definitely works. Then I break my goals into manageable task. In order to attain this, this task is to be done. In order to attain this, this task is to be done. Now when I have a list of task I will prioritize them. The principle of prioritization is recently be discussed and that reemphasized by Stephen.. And he has done it well. So we will keep the reorganizing our task. The point is that if we will reorder it. If we do not have a list, what we will do? We will go where the time would take us. So, whether we are going ahead with the flow of time or we are managing time choice are ours. Right. So we have goals and we have come to the task. And from the task we will make the list to do for the day. If we have list the can change the list, we can delete some of the task and add some of the thing. Don't prioritize your schedule and rather schedule your prioritization. What does it mean? What is the difference between the two ? Ya it means only prioritize things should be there in my schedule. Things that are not of your priority should be eradicated and deleted from the schedule. The thing which is not alignment with

your goal should not be there. Right. And now we are going to work on this, we are all going to prepare the things that who have mentioned in your copy, the way you schedule your time let's see there to your time goes. So let me explain on one side we have other urgent and not so urgent. And 2nd side we have important and not so important task. So quadrant one talks about the task that are urgent and important. Quadrant 2 is for the task that are not under urgent but are important. Quadrant 3 is for the task that are not important but they are urgent. And quadrant 4 is for the task that are neither urgent nor important. Right. So you'll have maintained the schedule in the very beginning you have written that this is a typical day of yours. So, please draft it where your time goes, where do you spent most of your time. You'll have a gain 5 minutes and in case you need any help let me know. You are the best judge. That task is important and which task is urgent. Let's take an example exercise where you with keep it. Important and not urgent or other urgent and not important. See, if I am of health-conscious person and wanted to live a healthy life and right now I don't have our medical problem so it'll go to the quadrant 2 it is important but it is not other urgent. If I don't do exercise for a day or two nothing is going to happen. But imagine I am a diabetic patient and doctor has suggested me that if you want to live a healthy life you cannot skip exercise that all. Now, that exercise becomes important as well as a urgent. I am the master of my destiny. So I can decide which task is important and this is a urgent. So this is your analysis for your own self. Your judgment for your own self. You'll decide in which quadrant you are spending most of the time. Which quadrant is the largest one and the biggest one. And wherever you find it difficult to assess let me try to help you? You have to decide your event according to you. I cannot decide that. For example you keep reading everything for upgrading yourself. You need to know what is happening in the Society or in other judgments on what ever happened. Maybe you are feeding for to ask for upgrading yourself. That is important but not urgent. That can be delayed. But suppose you are making a comparison the judgment that'll have to pass in 3 days so if you do not compared it, it becomes problematic, so that is urgent and important both. So this is your reading habit, you spent time in that you are the judge to decide whether it is important and urgent or maybe you can say for 2 hours it is important and urgent. For an hour it is important but not urgent. That you can decide? I think I have talked about in exercise of doctor has asked me, if I don't go for a walk every day I may have a health problem. So this becomes urgent and important both. If I am of health-conscious person... Okay. So we can spent 2- 3 minutes more in which we decide in

which quadrant your time goes most. That is your take and decision for understanding. Okay. Right. If you have to pass a judgment in a day or two and if you delay it for a day or two. It's okay the quality time is given but according to me it is in two. But it is your take how much important it is for you. For example if somebody is not well in the family then to give time to him or her is urgent and important but it is not in the routine schedule. That is a separate or special case you may call it. Responsibilities are many and there are challenges in the family front as well. Hope we have done our work. May I request you to raise your hands those who have spent most of the time in quadrant two, then in quadrant one. Most of us are in quadrant one. How many of us are in quadrant two. How many of us are in quadrant 3? Nobody. And how many of us I think nobody in quadrant four. Let me tell you that I am nobody to tell you anything about the quadrant thing. This is the principle given by Stephen.. He said first thing first and he tells how to judge the thing that comes first and it works. So as but there is the people who are spending most of the time in quadrant one they are inviting health problem for themselves. They are stressed, they are overworked, they are not involving in any of the leisure activity. People who quadrant 3 is the biggest one they are giving undue importance to the priorities of others. In accommodating others I spent a lot of time and hence my own priority are delayed. Quadrant four I don't think it is anybody is here. The strategy is to enlarge the quadrant two, the law would be that the quadrant 2 is more planned life I live. Quadrant one is a urgent and important. This is the face of firefighting. So if throughout the life if you every time you are firefighting only, that means you are every time on your toes. You are would be a lot of burden on your heart and mind. Have mercy on yourself. Try to shift some of the things in quadrant two. How can we do that? By proper planning. So it is better to put some things in quadrant two, manage them in the stage when they are important but not urgent. Another important thing we should remember that things in quadrant two do not give us immediately results. For example the just now talked about exercise, the we're talking about medication, the we're talking about quality time with family. Again I am speaking from his book only he is saying that you don't give your time to family, you don't have quality time. And when constantly your spouse becomes annoyed it suddenly becomes urgent and important to spend sometime with him or her. So if you don't give time to your personal health then definitely doctor will put it in the quadrant one. Karo aur maro ki sithi maie hum ha gae. So the thing is that quadrant one activity can be shifted to quadrant two. The principal says by enlarge quadrant

two as far as possible. Right. So, this time matrix tell us that wherever we are we need to reach to quadrant two. Quadrant 2 is important but not urgent that is my quality time. Quadrant 3 is urgent but not important. This is distraction. Urgent but not important somebody else has asked me to concentrate on this. But this is our distraction. I am spending a lot of time... It may be urgent but not important. In short term quadrant one is to be addressed as Do, quadrant two is delayed, quadrant 3 will need to delegate and quadrant 4 will be to delete. In short down I can manage that time by doing important and urgent things. By delaying important but not so urgent things and quadrant 3 is delegate. Delegating the things that is urgent but not so important. Right. So I can ask my subordinate to do something to concentrate upon that and I can supervise it. And quadrant for neither important not urgent they can be delegated. This is in the short term, then there would be need to decide quickly., What should be done. This is for the short term. In the long-term for the proper time Management we need to do like this quadrant one is to be managed. This is the quadrant of necessity. Instead of firefighting we need to manage this particular quadrant. Quadrant 2nd is the quadrant of quality and personal leadership. He here named as quadrant of deception because it looks it is very important, it is very urgent, I need to do something but virtually it is not, so that is also to be avoided and quadrant number 4 that is also to be avoided. The need to concentrate upon quadrant two. Gradually we need to manage quadrant one and 3 in such a manner that some of the things are shifted to quadrant two. The bigger the size of my quadrant two the more properly managed my time is. Right. Is it okay. Shall be moved ahead. So like this is the way we can prioritize to things. We are talking about the things we need to organize our self and definitely there are many tools that helps in organizing. And thanks to the Smart phones everything is available then and there only. Other thing is that we need to understand the art of saying no. Maybe we will be talking about in the next session as well and we will be talking about communication techniques, you need to understand that you cannot do everything for everybody. You need to make a between your priorities and other priorities. And saying no is a skill, how to give a negative feedback. Maybe one of that important things to be remember is that beginning with our positive note and ending on the positive note give a better result. Right. We would take the example and with the help of this and some examples we will talk about this later in the next session. How to say no. Right. The all have of a personal prime time. The all are not equally active at every time. Some of us are hyperactive early in the morning we call them early birds. Some of us are very

comfortable working at the late night. I should assess when is the right time to do a quality work, I know, I know myself. I can understand getting up early in the morning four is next to impossible for me then my attention span is very good at 12 it night. Maybe an odd hour but that is my body clock that words like this. So if I focus the important task at my prime time I will take less time, less energy and full of quality. Right. Effectiveness in the meeting if I am deciding, I need to have quality meetings where people clear agenda is there, time is also divided in a proper manner. The data says that negative meetings that there it is 83% of the meeting are drifted from major subject. The keep discussing something other things. Then poor preparation, certain things are there, most important thing is that we keep drifting from the major point. That is to be remember. Right. So, if we try to review the whole thing may be we need to set our goals that are Smart goals. The need to prioritize things. We need to organise, need to learn the art of saying no. Use your waiting time. Actually I deleted that particular portion because I was under the impression that you people don't have any waiting time. When you mention it many a time your time is spent in travelling as well. Probably we can use the travelling time also. Maybe in reading or listening to music at least. Because it believes that gives fresh and as to the brain. It at least some of the rejuvenation of the energy is there. So, when would to have waiting time we say that, actually the waiting time is considered to be waiting at the doctors clinic on waiting in the Courts. So I thought that making is not there. But in travelling maybe we can use that time in listening to music or reading certain things or organizing the things at least. Concentrating on the task on one hand, considering your personal prime time and we need to celebrate success that gives us our source of energy remains there. And the last thing is a story. You might have listen but I want to repeat it. There was a Prof who was teaching the students to prioritise or how to use the things. They would be related with the time Management only. So you'll have a big jar and you have big stones, you have small stones, you have pebbles and you have sand. Right. So what should be kept in that jar first? Bigger stones, thereafter smaller stones, thereafter pebbles, and there after sand because one bigger stones are kept pebbles are still be accommodated. Imagine if I fill in the jar sand first. Now I am no scope of putting bigger stones or some of the stones will be left aside. So I think this jar signifies our time. We have those 24 hours only. So I need to put big stones first. Maybe the quality thing, maybe the important things; I need to prioritize what is most important. So first bigger stones that there important things are there; thereafter smaller stones will come, thereafter

pebbles will come and then trivia, here and there petty issues that have to be compared with sand. They can still be accommodated here or there. The thing is that we need not fill the jar with sand itself. Right. I close the session with a quote that take caring your minutes and hours will take care of themselves. Right. The only thing is to remember is that we think that this is a petty time that is devoted here and there. We think thora sa hi hai. Abhi kar rae hai, abhi chal jayega. So if we will be cautious about our minutes definitely hours will be properly managed and we will not waste any of our time anywere. Some of the slides shown contains following -

Time vs. Success

- ▶ Being successful doesn't make you manage your time well.

Managing your time well makes you successful

The Problem of Managing Time

By some estimates, people waste about 2 hours per day due to following:

- Messy desk and cluttered files
- Can't find things
- Un prepared,
- Try to do things which other people should do
- Tired/unable to concentrate

Major functions of Judicial Administration

The 80/20 Rule

- ▶ Good administration in judiciary system comes from time and experience

- ▶ And having the Art of identifying trivial vs critical case details and accordingly providing time.
- ▶ Critical witness/case details are few (20%) and the trivial distracting unnecessary details are many(80%).
- ▶ So time spent should be reverse ,i.e, 80% on 20% critical details and 20% on 80% trivial details .
- ▶ However, in practice, it is reverse.

What is Time Frame???

- ▶ Tools to achieve the timeliness of case processing.
- ▶ *A condition to start measuring and comparing case processing delays*
 - - a difference between the actual situation and the expected timeframes implemented to reduce the lengths of case processing.
- ▶ Timeframes have to fit the contingencies of the “local legal culture

Having timeframes is a prerequisite for evaluating the results of the efforts made to improve the lengths of judicial proceedings.

External Locus Of Control for Delay in case processing/Judgment Delivery

- ▶ Population
- ▶ So many cases per day
- ▶ Staff do not cooperate
- ▶ Outside pressures
- ▶ Legal system takes time , its ok
- ▶ System is like that
- ▶ Being Meticulous is an indicator of Quality

Internal LOC of Delay

- ▶ In spite of all odds, I can still make a try to improve the system
- ▶ It is my responsibility to handle the staff in a way that delay can be avoided
- ▶ I must monitor stringently to avoid delay, at least on my part and facilitate others to speed up.
- ▶ People should not mock judiciary for delay. I must find some solution

Example Across the worlds of Time Framing

- ▶ Finland- Optimum timeframes for each type of cases are agreed and Targets for case processing are set.
- ▶ Slovenia - court rules 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.
- ▶ Sweden – targets for civil and criminal cases are set up by the Government. All units within the court define their targets

Setting of timeframes for kind of procedure

- ▶ Timeframes make more sense if they are set up allowing for the different kinds of procedure (civil, criminal, administrative, enforcement, etc.).

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.

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, single unit).

- ▶ 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.

Examples

- ▶ Finland – there is a tailored program for each case and directions are given informing the parties about the estimated timeframe of the pre-trial phase, pre-trial hearings and trial.
- ▶ Detailed hearing timetables are sent beforehand to the parties. The lawyers and prosecutors are copied in for comments.
- ▶ Several discussions take place between the judges and the local lawyers in order to come up with common ideas and guidelines on how to improve the efficiency of justice including the length of procedure.
- ▶ Germany – regular meetings with lawyers are organised to discuss customer satisfaction and problems with the service delivered by the court.
- ▶ Sweden – timeframes for each civil case are setting up in cooperation with the users.

STORY OF A WOODCUTTER

- ▶ 20 minutes at beginning of week
 - Review your Roles
 - Sharpen the Saw –Read and analyse before hand to save time
 - Prioritize by Choosing Big Rocks first
 - Which is the most important case requiring maximum time and effort?
 - Schedule the Week keeping in mind the reversal of 80/20 Rule

Peter Drucker says:

- ▶ Work where you are the strongest 80% time

- ▶ Work where you are learning 15 % time
- ▶ Work where you are the weakest 5% time
- ▶ You don't find time for important things, you make it
- ▶ Everything you do is an opportunity cost

Learn to say “No”

- ▶ “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?

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
- ▶ Doing things at the last minute is much more expensive than just before the last minute
- ▶ Deadlines are really important: establish them yourself!.



- ▶ 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?"
- ▶ 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."

. That's it from my side. Thank you and thanks for your active participation. In case you have any queries or observations you are most welcome to share it with us. With me individually and with all of us right now as well. Okay. Thank you.

Thank you Have a Relaxed Time

Today & For Ever!

HYPOTHETICAL (FUNCTIONS OF REGISTRAR (INSPECTION))

GOOD MORNING EVERYONE. TODAY WE ARE GOING TO DO AN EXERCISE ON HYPOTHETICAL.

Kindly read this and then we will share -‘Karnadu’ state in the Union of India, Ms. K is an advocate practicing in the courts at Suraj Nagar (a district in Karnadu). The Karnadu High Court had invited applications for the appointments to 100 posts of (Junior) Civil Judges (including 64 posts by direct recruitment) by its Notification

No.1/2014-RC dated 14.5.2014. A written examination was conducted for that purpose on 28.10.2014, and those who qualified therein, were called for an interview. After the interviews, some 68 candidates from amongst the direct recruits (remaining by transfer) were selected by a committee of Hon'ble Judges of the High Court, and this selection was approved by the Full Court on the administrative side. The applicant was one of those who were selected, and her name figured at S.No.26 in the list of selected candidates from the general category.

However, it so transpired that, whereas the other selected candidates were issued appointment letters, the appellant was not. She, therefore, applied on 3.11.2014 under the provisions of The Right to Information Act, 2005, to find out the reason of her non-appointment. She received a letter dated 11.11.2014 from the Govt. of Karnadu Represented by its Secretary Home (Courts C1) Department which gave the following reason therefor:

“I am directed to invite your attention to the reference 2nd cited, and to inform you that, adverse remarks were reported in the verification report, that your husband Sri. S. Chowdary, who is practicing as an Advocate in the Courts at Suraj Nagar is having close links with CPI (Maoist) Party which is a prohibited organization.”

According to applicant though nothing was stated against her in that letter, according to her what was stated against her husband was also false. She, therefore, wrote an application bearing No. 26147 of 2014 to the Registrar General of Karnadu, and prayed to include her name in the list of Junior Civil Judges issued on 23.10.2014 as non-inclusion was illegal, arbitrary and in violation of [Article 14](#) of the Constitution of India (Constitution for short), and consequently a direction be issued to the concerned authority to forthwith issue an order of appointment to her.

The Registrar General sought reply from the Govt. of Karnadu Represented by its Secretary Home (Courts C1) Department, it alleged by filing the affidavit that the appellant too had close links with the CPI (Maoist) party. Paragraphs 4 and 5 of the affidavit of stated as follows:-

“It is further submitted that the Superintendent of Police, has reported that in re-verification of character and antecedents of Ms. K. D/o T. Tiwari, of Suraj Nagar District who is selected as Junior Civil Judge shows that the confidential intrinsic intelligence collected recently with regard to the movements of CPI (Maoist), it

came to light that Ms. K. (Sl. No.26 in the selected list) D/o T. Tiwari who is selected for the post of Junior Civil Judge and her husband S. Chowdary s/o R. Chowdary who is practicing as an advocate in the Courts at Suraj Nagar are having close links with CPI (Maoist) Party, which is a prohibited organization and also in touch with UG cadre of the CPI (Maoist) Party. She is a member of Chaitanya Mahila Samakhya (CMS), a frontal organization of CPI (Maoist)... the Government feel that she should not be offered the appointment to the post of Junior Civil Judge.”

Applicant denied all the allegation made against her and filed counter affidavit stating that she was not a member of CPI (Maoist), nor did she have any connection with the banned organization or with any of its leaders. She disputed that any such organization, by name CMS existed, and in any case, she was not a member of any such organization. She submitted that her husband must have appeared in some bail applications of persons associated with this party, but she has never appeared in any such case.

She further stated that her husband was a member of a panel of advocates who had defended political prisoners, against whom the district police had foisted false cases, and those cases had ended in acquittals. She disputed the bona-fides of the police department in making the adverse report, and relied upon the resolutions passed by various bar associations expressing that her husband was being made to suffer for opposing the police in matters of political arrests.

Registrar General in exercise of his power called upon the respondents (Secretary of Home Department, and concerned police authority), to provide the material in support of the report which had been submitted by the Superintendent of Police, Suraj Nagar District. The report was produced along with an affidavit of one M.V. Sudha, Special Officer (I/C). A document titled ‘Report over the activities of CPI (Maoist) activists and their sympathizers’ dated 15.9.2014 by Inspector of Police, District Special Branch, Para 5 of this report made certain adverse remarks against the appellant. This para 5 reads as follows:-

“5. Ms. K, Advocate, Suraj Nagar CPI (Maoist) frontal organization member and sympathizer of CPI (Maoist):- She is wife of S. Chowdary. She is a sympathizer of CPI (Maoist) party. She is a member of Chaitanya Mahila Samakhya (CMS), a frontal organization of CPI (Maoist). She along with other members Nagireddy

Bhulakshmi @ Rana and Cherukuri Vasanthi, Suraj Nagar town is trying to intensify the activities of CMS in the said district.” One more affidavit was filed on behalf of the respondents, viz, that of one Shri K. Reddy who produced along therewith some of the documents of the police department, known as ‘Karnadu Police Confidential Report’. He, however, accepted in para 6 of this affidavit that:- “There is no particular documentary proof that the Chaitanya Mahila Samakhya is a frontal organization to the CPI (Maoist) except the above publication in A.P. Police Vachakam part III.”

Applicant filed a reply affidavit and again denied all the allegations. The appellant has denied any association with CPI (Maoist) party or CMS. She has, however, stated that maybe her husband had appeared as an advocate for some persons associated with the CPI (Maoist) Party in their bail applications.

Meanwhile, Registrar General before taking final decision in the matter, with all details and documents, forwarded the matter to Registrar (Inspection). Registrar general enlisted following points for further probe and recommendations by Registrar (Inspection).

- (1) Whether character and antecedents of Husband/wife or of other family members of the selected candidate is relevant, if yes, can it be taken as decisive aspect in the instant case?
- (2) An advocate is bound to accept any brief in the Courts/ Tribunals, entertaining the cases of criminals group or prohibited organization, can it be considered to be negative aspect of his character and antecedents?
- (3) On the basis of facts and circumstance, whether your recommendation(s) will be in favour of applicant or respondents- decide with reasons in support of your recommendation(s).

After few minutes, The Chair-person asked, whether everyone has gone through the hypothetical. On receiving a nod from all, the responses were sought. Two of the participant held the termination right and rest all twenty participants said the petitioner in the hypothetical should be reinstated. this is not the question of you being right or wrong, you are free to have your opinion with right reasoning. This case is actually based on one decided case from supreme court whereby it had held that the petitioner be reinstated. you can read the judgment, it is in sixty two pages and if time is left we could have some discussions. Everyone reading. This is not the question of you being right or wrong, you are free to have

your opinion with right reasoning. Sir we should keep our standards high and should simultaneously see that injustice is not caused to any judicial officer too. Thank you all. Thank you sir, we can disperse for tea and come back for our last session.

Organizational Behavior

Good morning everyone. Today the topic given to me is on organizational behavior ,judiciary is also an organization.

An organization consists of individuals with different tasks attempting to accomplish a common purpose. (For a business, this purpose is the creation and delivery of goods or services for its customers.) Organizational behavior is the study of how individuals and groups perform together within an organization. It focuses on the best way to manage individuals, groups, organizations, and processes. Organizational behavior is an extensive topic and includes management, theories and practices of motivation, and the fundamentals of organizational structure and design. From the smallest nonprofit to the largest multinational conglomerate, firms and organizations all have to deal with the concept of organizational behavior. Knowledge about organizational behavior can provide managers with a better understanding of how their firm or organization attempts to accomplish its goals. This knowledge may also lead to ways in which a firm or organization can make its processes more effective and efficient, thus allowing the firm or organization to successfully adapt to changing circumstances.

This chapter will help you better understand the theories and structures of organizational behavior. The chapter begins by discussing some of the basic characteristics of managers and management. It then describes some of the popular theories and practical applications related to motivation and helps answer the question “What motivates employees and why does it motivate them?” The chapter then examines some of the fundamentals of organizational structure and describes ways in which organizational structures differ from one another. Finally it discusses a few methods by which organizations can control processes and outcomes. As later, “Leadership and Team Building,” management used to be focused on direction and control. Now it is more involved with support and facilitation and the evolving notion of the manager as “coach.” In conjunction with this role as a supportive

facilitator, managers are now focusing on efficiently and effectively utilizing the intellectual capital of an organization. Intellectual capital consists of the knowledge, expertise, and dedication of an organization's workforce. The management of intellectual capital is necessary in order to get the most out of an organization's material resources and achieve organizational goals.

In practice, managers accomplish organizational goals through the process of defining goals, organizing structures, motivating employees, and monitoring performance and outcomes. In performing these processes a manager often takes on several different roles. These roles were described by Henry Mintzberg and include interpersonal roles, informational roles, and decisional roles. Interpersonal roles are ways in which a manager works and communicates with others. Informational roles are ways in which a manager acquires, processes, and shares information. Decisional roles are how a manager uses information to make decisions, which involves identifying opportunities and problems and acting on them appropriately, allocating resources, handling conflicts, and negotiating.

In order to fill these roles effectively managers use skills that allow them to translate knowledge into action. Robert Katz describes three different sets of skills that managers use, including technical, human, and conceptual skills. Technical skills are used to perform a specialized task. They are learned both from experience and from

education and they can involve using a specific type of technology or process. Human skills are used when working with others and include, among other things, basic communications skills, persuasive ability, and conflict resolution. Conceptual skills are used in analyzing and solving complex interrelated problems. They require having a good understanding of the organization as a whole and understanding how the interrelated parts work together—for example, a good understanding of an organization's behavioral attributes, its weaknesses, and actions needed to achieve its goals and objectives. Emotional Intelligence and the Manager Daniel Goleman defined an important aspect of human skills in his work on emotional intelligence. Emotional intelligence is tied closely to management effectiveness and ultimately

organizational behavior; it suggests that a manager's performance may be influenced by several factors: as shown in slides-

- ✓ Self-awareness—understanding your moods and emotions.
- ✓ Self-regulation—thinking about your actions and controlling destructive ones.
- ✓ Motivation—working hard to accomplish your goals.
- ✓ Empathy—understanding the emotions of others.
- ✓ Social skills—developing good connections and relationships with others.

Understanding emotional intelligence is especially important in light of changes in organizational structures, which have created firms with less hierarchy and closer peer contact. Motivation is an important driver in an organization and is crucial to the management of intellectual capital. Motivation underlies what employees choose to do (quality and/or quantity), how much effort they will put into accomplishing the task, and how long they will work in order to accomplish it. Employees who are motivated will work more effectively and efficiently and shape an organization's behavior. A motivated workforce will have a strong effect on an organization's bottom line. Motivation is strongly tied to job satisfaction. Job satisfaction is how individuals feel about the tasks they are supposed to accomplish and may also be influenced by the physical and social nature of the workplace. The more satisfied employees are with their jobs, the more motivated they will be to do their jobs well.

There are several important studies relating to motivation. These include Abraham Maslow's hierarchy of needs, Frederick Herzberg's study of hygiene and motivational factors, Douglas McGregor's Theory X and Theory Y, Theory Z, Victor Vroom's Expectancy Theory, J. Stacy Adams' Equity Theory, and Reinforcement Theory. Maslow's Hierarchy of Needs. In 1943 Abraham Maslow developed a theory about human motivation called the hierarchy of needs. This theory has been popular in the United States and describes human needs in five

general categories. According to Maslow, once an individual has met his needs in one category, he is motivated to seek needs in the next higher level. Maslow's hierarchy of needs consists of the following general categories: Physiological needs. These are the first and lowest level of needs. They relate to the most basic needs for survival and include the need for food and shelter. Safety needs. The second level of needs involves an individual's need for security, protection, and safety in the physical and interpersonal events of daily life.

Social needs. The third level of needs is associated with social behavior. It is based on an individual's desire to be accepted as part of a group and includes a desire for love and affection. Esteem needs. The fourth level of needs relates to an individual's need for respect, recognition, and prestige and involves a personal sense of competence. Self-actualization. This is the fifth and highest level of needs. Needs of this level are associated with an individual's desire to reach his full potential by growing and using his abilities to the fullest and most creative extent. As individuals move higher in the corporate hierarchy, they may see higher-order needs as being more important than those of lower orders. Needs may also vary based on career stage, organizational structure, and geographic location. The hierarchy of needs could also lack effective application in different cultural contexts. Certain cultures may value social needs over psychological and safety needs. In addition, the theory necessitates that a manager be able to identify and understand an employee's needs. This is not always easy and can lead to inaccurate assumptions. Taken in the proper context, however, recognizing the importance of needs is a useful method for conceptualizing factors of employee motivation and thus being able to direct an organization's behavior.

Herzberg's Factors. In the 1950s Frederick Herzberg studied the characteristics of a job in order to determine which factors served to increase or decrease workers' satisfaction. His study identified two factors related to job satisfaction: "hygiene" factors and motivational factors. Hygiene factors are those that must be maintained at adequate levels. They are related more to the environment in which an employee is working rather than the nature of the work itself. Important hygiene factors include organizational policies, quality of supervision, working conditions, relationships with peers and subordinates, status, job security, and salary. Adequate levels of these factors are necessary to prevent dissatisfaction; improving these factors

beyond adequate levels, however, does not necessarily lead to an increase in job satisfaction.

A different set of factors, identified as motivational factors, is associated with having a direct effect on increasing job satisfaction. These factors include achievement, recognition, responsibility, growth, the work itself, and the opportunity for advancement. Like Maslow's hierarchy of needs, Herzberg's factors must be tempered by sensitivity to individual and cultural differences and require that managers identify what employees consider to be "adequate levels." Managers sometimes simplify both of these theories and inappropriately assume that they know what their employees need.

McGregor's Theory X and Theory Y. Douglas McGregor's theories focus less on employee needs and more on the nature of management. These theories are based on the assumption that a supervisor's perceptions of her employees will strongly influence the way in which she attempts to motivate her employees. McGregor created two theories based on his studies, called Theory X and Theory Y.

In the case of Theory X, a supervisor assumes that her employees are adverse to work and will do everything they can to avoid it. Acting on this assumption, the supervisor will exert tight control over employees, monitor their work closely, and hesitantly delegate authority.

In this case of Theory Y, a supervisor assumes that, contrary to Theory X, workers are willing to work and would be willing to accept increased responsibilities. In light of these assumptions, the supervisor will provide employees with more freedom and creativity in the workplace and will be more willing to delegate authority. Managers will seek to motivate their employees based on their perceptions of the employees' interests. This theory brings to light the variation in practice that can exist depending on the assumptions that managers make about their employees. Theory Z. Theory Z emerged in the 1980s. It attempts to motivate workers by giving them more responsibility and making them feel more appreciated. It was developed, in part, in the light of Japanese management practices, which allowed for more worker participation in decision making and provided for less specialized career paths.

Expectancy Theory. Developed by Victor Vroom, this concept assumes that the quality of employees' efforts is influenced by the outcomes they will receive for their efforts. They will be motivated to the degree that they feel that their efforts will result in an acceptable performance, that that performance will be rewarded, and that the value of the reward will be highly positive. In order for managers to practically apply the theories associated with expectancy theory, they need to define the desired behaviors clearly. Once this is accomplished, the manager should think about rewards that could serve as possible reinforcers and how these rewards will have different values for different individuals. Employees must then be informed about what must be done to receive these rewards, and managers need to provide feedback on employee performance. If a desired behavior is achieved, the reward must be given immediately.

Equity Theory. Equity theory was a result of the work of J. Stacy Adams and states that when individuals determine whether the compensation they receive is fair compared to their coworkers' compensation, any perceived inequity will affect their motivation. This sense of inequity can either be felt as negative inequity, when employees feel they have received less than others who performed the same task, or felt as positive inequity, when workers feel they have received more than others who performed the same task. Either type of inequity can motivate a worker to act in a way that restores the sense of equity. Examples of employee behavior may include not working as hard, asking for a raise, quitting, comparing themselves to a different coworker, rationalizing that the inequity will be only temporary, or getting a coworker to accept more work. To limit a perceived sense of inequity, employees should be compensated to the degree that their efforts contribute to the firm. This theory, however, is difficult to implement given the differences of opinion that might arise between an employee and a supervisor regarding what constitutes equitable pay. To apply this theory successfully it is important to address the employee's perceptions. This can be accomplished first by recognizing and anticipating that inequities can and will exist. It is then important to communicate clear evaluations of any rewards given and an appraisal of the performance on which these rewards are based. There may also be comparison points that are appropriate to share.

Reinforcement Theory. A carrot-and-stick approach to motivational behavior, the reinforcement theory is concerned with positive and negative reinforcement. It applies consequences to certain behaviors. There are four basic reinforcement

strategies: positive reinforcement, negative reinforcement, punishment, and extinction. Positive reinforcement motivates workers by providing them with rewards for desirable behavior. To be effective a reward must be delivered only if the desired behavior is displayed. It should also be delivered as quickly as possible after the desired behavior is exhibited. Negative reinforcement, in contrast, involves withdrawing negative consequences if the desired behavior is displayed. This method of reinforcement is sometimes called “avoidance” because its aim is to have the individual avoid the negative consequences by performing the desired behavior. Unlike positive and negative reinforcement, punishment is not designed to inspire positive behavior, but to discourage negative behavior. Extinction is the withdrawal of reinforcing consequences for a desired behavior. Its intent is to eliminate undesirable behavior.

Conclusions from Motivational Theories - In shaping and directing an organization’s behavior, the seven theories discussed previously provide some insight into the organization’s behavior. Several conclusions can be drawn from these theories. Needs. Employees have needs. In order to motivate employees, supervisors should attempt to understand the breadth of their employees’ needs. This is not always an easy task and requires open and frequent communication between managers and employees. By structuring a job so that it meets these needs a supervisor can increase an employee’s motivation.

Compensation. Compensation is an important part of motivation, with a goal to compensate employees according to the contribution each employee makes to the firm. Employees will be dissatisfied if they feel that they are getting less than they deserve. In order to decrease the likelihood of perceived inequities, a manager needs to be proactive and informative regarding reward structures. Rewards. Employees need to know that the goal they are working toward is achievable and that when they accomplish this goal that they will be rewarded in an appropriate and timely manner.

The insights drawn from the discussion of motivational theory highlight the importance of assessing needs, compensation, and rewards when creating an organizational structure that will increase an employee’s job satisfaction and motivation and direct organizational behavior; some of these actions include implementing an adequate compensation program, increasing job

security, allowing for flexible work schedules, and establishing employee involvement programs. Adequate Compensation Program Before determining how compensation should be set, it is necessary to align the compensation program with several elements of the business.

✓Business goals. A compensation plan should be developed in light of a firm's business goals. Employees should be compensated to the degree that their efforts help the business accomplish its goals.

✓Employee goals. A compensation plan should be clear in stating individual employee goals. In order to effectively motivate employees, they need to know what goals they will be expected to achieve.

✓Achievable goals. The goals that individual employees are expected to accomplish must be realistic and achievable. If employees feel that the goals associated with their positions are unreachable, they will not be motivated to work. If a supervisor can set reasonable goals and make the employee aware that numerous achievable bonuses will be given if these goals are met, the employee will be motivated.

✓Employee input. Employees will be more satisfied with their jobs if they are consulted about the compensation plan before it is put into effect.

An adequate compensation program, taking these issues into account, will affect employee motivation; a compensation plan should give the highest relative raises to the individuals who achieve the highest levels of performance. This type of system is referred to as a merit-based pay system and bases pay on performance. It can be effectively implemented in conjunction with an incentive plan that rewards employees for achieving specific performance goals. These plans stand in contrast to a system that provides across-the-board pay raises, which will not motivate workers to put extra effort into achieving set goals.

Job Security

Employees who feel they are in danger of losing their jobs may not show high work productivity. Worker satisfaction can, and productivity may, be increased by providing job security. One way firms can increase job security is by providing cross-training in other functions. This will give employees the versatility to accomplish new tasks if their current positions change or are no longer available.

Flexible Work Schedules - In today's time-pressed world, many employees view time away from work as an important factor shaping their at-work motivation and on-job productivity. There are several methods for allowing flexible work schedules that meet the needs of employees seeking greater home/work flexibility. One of the more common is a compressed workweek. This system lets an employee work the same number of hours over the course of fewer days. Instead of working five eight-hour days, an employee might work four ten-hour days. Other examples of flexible work schedules include job sharing where two or more people share a certain work schedule.

Employee Involvement Programs-Employee involvement programs seek to motivate employees by increasing their responsibilities or getting them more involved in decision-making processes. There are several types of employee involvement programs; the more basic programs include job enlargement, job rotation, and teamwork. More ambitious programs include open-book management and worker empowerment.

Job Enlargement. Job enlargement is a direct way to increase job responsibility. It involves expanding a position and giving an employee a greater variety of tasks.

Job Rotation. A job rotation program periodically reassigns employees to new positions. In addition to increasing employees' involvement in the firm and adjusting their responsibilities, job rotation can also improve employees' skill sets, thereby increasing their job security. In addition, it can also relieve the boredom in the workplace associated with doing the same job over a long period of time.

Teamwork. This program attempts to increase motivation by putting individuals with different positions onto a team and setting them the task of achieving a specific goal. Teamwork serves to increase an employee's responsibilities and involvement in the firm. The best types of teams are self-directed. This provides the team with the authority to make decisions regarding planning, accomplishing, and evaluating the task they are working on. For more on this topic of teamwork, see Chapter 3, "Leadership and Team Building."

Open-Book Management. Open-book management is a challenging, but direct way of increasing employee involvement and responsibility. It involves allowing employees to see how their job performance affects key performance indicators important to the firm. In order to institute this program a firm needs to make key indicators available to employees and educate them on how to interpret key performance measures. Employees also need to be empowered to make decisions related to their positions and training and be given the opportunity to see how these decisions affect the rest of the firm. Open-book management also necessitates an adequate compensation program whereby compensation is tied to performance.

Worker Empowerment. Worker empowerment attempts to increase employee job responsibility as well as employee involvement. It does this by giving employees more authority and involving them in the decision-making process. Employees who are empowered can often make better and more informed decisions than can a manager who is not directly involved in the process. Participative management is similar to worker empowerment. Although it does not provide employees with direct decision-making power, it encourages managers to consult closely with workers before making decisions. Another type of participatory management is management by objective. This approach allows employees to set their own goals and provides them with the freedom to decide how they can best achieve these goals.

Measuring Job Satisfaction-How do managers know that after gaining an understanding of the theories of motivation and applying different approaches to increase job satisfaction that their efforts have been successful? In practice a manager must draw conclusions on a daily basis from social observations and interactions in the workplace. Sometimes, however, it is a good idea to conduct a more formal survey. This can be accomplished through either interviews, surveys, or focus groups that often involve only a specific group of employees. Two useful surveys are the Minnesota Satisfaction Questionnaire and the Job Descriptive Index. Both of these surveys address areas of employee satisfaction in regard to different aspects of an organization and provide managers with useful information. They cover work, working conditions, rewards, opportunities for advancement, and the quality of relationships with managers and coworkers.

Whether you are in the beginning stages of starting your own business or you are looking for ways to improve an existing business, it is important to think about the

firm's organizational structure. Examining organizational structure will help answer questions about the ways in which a firm conducts business. Who is responsible for accomplishing various tasks within the firm? How are these individuals grouped? Who manages these individuals or groups? How do they manage them? Five Structural Factors

In essence, the primary goal of an organizational structure is to coordinate and allocate a firm's resources so that the firm can carry out its plans and achieve its goals and objectives. The fundamentals of organizational structure revolve around five factors: the division of labor, departmentalization, the nature of the managerial hierarchy, the managerial span of control, and the amount of centralization or decentralization in the organization.

Division of Labor. The division of labor involves two steps: dividing work into separate tasks and assigning these tasks to workers. What are the different tasks carried out by your firm? Who is responsible for accomplishing these tasks?

Departmentalization is the process of grouping similar types of jobs together so that they can be accomplished more efficiently and effectively. There are five different ways in which to departmentalize business activities. Different types of departmentalization can exist to varying degrees within a business. What types of departmentalization exist within your firm? Could your firm be departmentalized differently?

- 1.Function.** An example of functional departmentalization would be a firm that has a marketing and finance department. It involves grouping tasks based on the function that the organizational unit accomplishes within a firm.
- 2.Product.** A consumer electronics firm that has separate departments for camera and MP3 players is using product-based departmentalization. In this case departments are based on the goods or services that an organizational unit sells or provides.
- 3.Process.** A manufacturing firm that includes separate departments for assembly and shipping is an example of a firm with process-based departmentalization. In this case departmentalization revolves around the production process used by the organizational unit.
- 4.Customer.** A bank with separate departments for its business customers and individual customers is using customer-based departmentalization. Its departmentalization is based on the type of customer served.
- 5.Geographic.** An example of a firm using geographic departmentalization is an automobile manufacturing company that has different departments for each country in which it

sells cars. In this case departmentalization is based on the geographic segmentation of organizational units. **Managerial Hierarchy.** Managerial hierarchy relates to the way in which management is layered. It usually includes three levels—upper or top management, middle management, and supervisory roles. The higher levels of management generally have fewer employees, but more power.

Span of Control. Span of control is closely related to managerial hierarchy. At each level of management within a firm an individual is responsible for a different number of employees. Span of control relates to the number of employees that a manager directly supervises. Span of control is determined by a number of factors, including the type of activity, the location of the workers, a manager's ability to delegate tasks, the amount and nature of communication between the manager and the individuals being supervised, and the skill level and motivation of the individuals being supervised. **Centralization versus Decentralization.** Centralization is the degree to which formal authority is centralized within a unit or level of an organization. Decentralization is the process of actively shifting authority lower in a firm's hierarchical structure. This effectively gives more decision-making power and responsibility to those in supervisory roles. Centralization and decentralization have their benefits and costs. While centralization provides top-level managers with a better overview of operations and allows for tighter fiscal control, it can result in slower decision making and limit innovation and motivation. Decentralization, by contrast, can speed up decision making and increase motivation and innovation, but this is done at the expense of a top manager's view of the firm and financial control.

Mechanistic and Organic Organizational Structures-The five structural factors just discussed give rise to numerous organizational possibilities. Mechanistic and organic structures are two possibilities at opposite ends of the organizational spectrum. They give shape to the concept of the factors of organizational structure. A mechanistic organization is characterized by the following structural factors:

✓Degree of work specialization is high.

✓Departmentalization is rigid.

✓Managerial hierarchy has many layers.

✓Span of control is narrow.

✓Decision making is centralized

✓Chain of command is long.

✓Organizational structure is very tall.

An organic organization is characterized by the following factors:

✓Degree of work specialization is low.

✓Departmentalization is loose.

✓Managerial hierarchy has few layers.

✓Span of control is wide.

✓Decision making is decentralized.

✓Chain of command is short.

✓Organizational structure is flat.

Informal Organizations-A formal organizational structure, represented by an organizational chart or written job descriptions, is not the only structure that exists within an organization. Between different departments and levels of hierarchy, various informal organizations exist within an organizational structure. An informal organization consists of a network of channels of communication based on informal relationships between individuals within a firm. These networks are often

based on friendships and social contacts. In addition to providing information and a sense of control over the work environment, they can also be a source of recognition and status. Informal organizations can be examined more closely through social network analysis. This process maps the social relationships between individuals within an organization. Once they are recognized and understood, informal organizations can be utilized within an existing organizational structure in order to increase communication and overall effectiveness and efficiency.

Line and Staff Organizations The factors related to organizational structures also help describe different positions for individuals within a firm. Two examples of this are line positions and staff positions. Organizational structures often involve the interrelation between these two types of positions. Line positions are directly related to the production of goods and services. They are common in firms that involve production, manufacturing, or providing financial services. Staff positions are supportive in nature, helping those in line positions and top management more effectively achieve the firm's goals and objectives. Staff positions provide, for example, legal, public relations, human resources, and technology support services.

Reengineering involves the complete redesign of a firm's structures and processes. It is done in the hope of increasing a firm's operational efficiency and effectiveness by controlling costs, improving quality, improving customer service, and increasing the speed at which business is conducted. Once a firm has examined itself in light of the five factors of organizational structure, it can better understand where it can make changes to align its structure with the firm's goals and objectives.

High-Performance Organizations The goal of the high-performance organization is to effectively and efficiently utilize intellectual capital. High-performance organizations focus on employee involvement, teamwork, organizational learning, total quality management (TQM), and integrated production techniques. Employee involvement is accomplished through worker empowerment or participative management. Teamwork is accomplished through self-directed groups. Organizational learning involves gathering, communicating, and storing organizational information in order to anticipate changes and challenges and make more informed decisions about the future. TQM focuses on high quality, continuous

improvement, and customer satisfaction. Integrated production techniques implement flexibility in manufacturing and services and involve job design and information systems to more effectively and efficiently utilize the resources, knowledge, and techniques that a business uses to create goods or services. It stresses the use of just-in-time production and service systems and relies heavily on computers to assist, control, and integrate different organizational functions. Implementing integrated production techniques requires speeding up communication and decision making within the organizational structure.

The process of transforming an organization into a high-performance organization begins by actively seeking to understand an organization's work site problems and opportunities and its purpose, mission, strategy, and vision. These elements must be tied together into a new mission statement and vision for the firm that is aligned with the organization's core values. In order to be successful, this process requires the active involvement of individuals from various levels and groups within the organization. The broad level of participation will also ensure a greater level of acceptance in the organization. Once these initial steps have been taken, the factors of employee involvement, teamwork, organizational learning, total quality management, and integrated production techniques can result in organizational, individual, and community benefits. The organization will be more effective in achieving its goals, job satisfaction and employee motivation will increase, and the organization will be better able to contribute to the community as a whole.

Although there are numerous benefits associated with high-performance organizations, establishing and maintaining them is a difficult task. One of the most daunting elements is successfully integrating employee involvement, teamwork, organizational learning, total quality management, and integrated production techniques. These are not separate functions; teamwork must contain elements of employee involvement, organizational learning, and total quality management. This can be especially challenging for managers who, in addition to their regular functions, are asked to implement these changes. Managers can experience many kinds of resistance. Employees may feel that the changes could put them out of a job. They may be resistant to participating in group decision making or in team-based activities. Managers may also experience obstacles related to cultural differences regarding hierarchy and participation. In light of these challenges, some

firms succeed in implementing only some of the elements associated with high-performance organizations.

Successfully creating a high-performance organization requires a high degree of cooperation and a strong level of commitment and acceptance from all employees. It is a challenging and difficult process, but it offers significant rewards throughout the organization.

Managers achieve organizational goals by managing intellectual capital in order to get the most out of organizational resources. An important part of this process is monitoring performance and outcomes. This can be done in several ways. Two of the more common ways that directly affect organizational behavior are output controls and process controls. Controls relate to setting standards, obtaining measurements of results related to these standards, and taking corrective actions when these standards are not met. Managers must be judicious in their use of controls so as not to overburden the organization.

Output Controls Output controls are about setting desired outcomes and allowing managers to decide how these outcomes can best be achieved. Output controls promote management creativity and flexibility. This type of control serves to separate methods from outcomes and subsequently decentralizes power by shifting it down the hierarchical structure.

Process Controls Once effective methods have been determined for solving organizational problems, managers sometimes institutionalize them in order to prevent the problem from recurring. These types of controls are called process controls and are a way of regulating how specific tasks are conducted. Three types of process controls are (1) policies, procedures, and rules; (2) formalization and standardization; and (3) total quality management controls.

Policies, Procedures, and Rules. These are often used in the absence of direct management control. Policies are general recommendations for conducting activities, while procedures are a more focused set of guidelines. Rules are the strictest set of limits and establish things that should and should not be done.

Formalization and Standardization. Formalization involves creating a written set of policies, procedures, and rules that simplifies procedures in order to guide decision making and behavior. Standardization is the degree to which the actions

necessary to accomplish a task are limited. It attempts to make sure that when certain tasks are carried out they are carried out in a similar fashion.

Total Quality Management Controls. The previous methods of process control are based on organizational experience. TQM management controls differ in that they are based on an ongoing statistical analysis of a firm's operations. TQM involves all levels of management and has proved to be the most effective when it is instituted in an organization that has clearly defined outcomes and is done in conjunction with employee empowerment or participatory management programs. Modern organizational structures are currently undergoing changes in response to new trends in the global business environment.

One of the more prevalent trends is the increase in the network organization. A network organization is one that consists of a group of independent firms communicating via the latest advances in information technology. It can include suppliers, customers, and even competitors. These firms operate as an alliance in order to share skills, costs, and access to each other's markets in order to work together quickly and take advantage of business opportunities. These types of firms are characterized by technology, opportunism, trust, and a lack of borders. They assemble and disperse in response to business opportunities.

Another trend affecting organizational structures is the increase in large global mergers. By their very nature these types of mergers necessitate that a firm reexamine its existing structure in light of its new position within the larger structure. In addition, management decisions designed to increase employee motivation must take into account the culture context in which they are made. Global mergers can also increase the use of virtual groups and the diversity of membership characteristics. Organizational behavior is the study of how individuals and groups perform together within an organization. It focuses on the best way to manage individuals, groups, organizations, and processes. This chapter has covered the basics of organizational behavior by defining the nature of managerial behavior, addressing the fundamental theories and practices of motivation, explaining the basics of organizational structure, and discussing some methods of control. The slides shown contained following-

What is Organization Behaviour?

- What makes up an Organization?
- How can an organization Behave?
- What is ultimately important in an organization?
- What makes an organization successful?

What makes the organizational Successful?

People

- -their personality
- - their motivations
- -their way of leading the team
- -their way of communication
- -their way of decision making
- - their way of handling the crisis
- - their way of managing the conflicts

Organization as a Property

1. Like an iceberg
2. Dynamic
3. Broader Perspective
4. Clarity and Focus
5. Social Sensitivity
6. Long-Term Orientation
7. Ability to Influence people through proactive initiative
8. Ability to withstand pressure
9. Adaptable

Decisiveness

VISIBLE vs INVISIBLE

- What you can see in an organization?
- What you can not see in an organization?
- What are your major fears while dealing with people working under you?

Ex.

- What if they don't prepare case notes in time?
- What if they take leave on crucial dates?
- What if they do not keep the record properly?
- What if meeting notes are not properly prepared?
- etc. etc.....?
- **How do you come out of those fears?**

Introduction

- Judiciary organizations are much more than only a means for providing goods and service
- They create the settings in which most of people spend their lives struggling for justice.
- Organizations have profound influence on employee behavior
- What makes some people work hard while others do as little as possible?
- How can you influence the performance of staff who work for you?
- **Why do people show up late to work or try to miss work entirely?**

A crow was sitting on a tree, doing nothing all day. A small rabbit saw the crow, and asked him, "Can I also sit like you and do nothing all day long?"

The crow answered: " Sure, why not."

So, the rabbit sat on the ground below the crow, and rested. All of a sudden, a fox appeared, jumped on the rabbit and ate it.

- To be sitting and doing nothing, you must be sitting very, very high up.
- But???
- Was crow a good leader ?

What you do when you are sitting high which others can't do?

- You have a Big Picture of organization
- You are able to assess risks, save your employees
- You communicate well with your employees
- You treat everyone as per their potential, not always equally.
- You take right decisions based on that judgement

McGREGOR' S THEORY X & Y

Focus on attitude and belief structure

THEORY - X

- Employees are inherently lazy and will avoid
- work unless forced to do it.
- Prefer to be directed and controlled

THEORY - Y

- Employees find work as natural as play if organizational conditions are appropriate.
- Unsatisfactory work experiences lead to negative attitude towards job.
- Emphasize self direction and self control.

Situational Leadership

- In simple terms, a situational leader is one who can adopt different leadership styles depending on the situation.
- Most of us do this anyway in our dealings with other people:
- we try not to get angry with a nervous colleague on their first day,
- we chase up tasks with some people more than others because we know they'll forget otherwise.
- Development/Readiness Levels are also situational.
- I might be generally skilled, confident and motivated in my job, but would still drop into Level R1 when faced, say, with a task requiring skills I don't possess. For example, lots of managers are R4 when dealing with the day-to-day running of their department, but move to R1 or R2 when dealing with a sensitive employee issue.
- Blanchard and Hersey said that the Leadership Style (S1 - S4) of the leader must correspond to the Readiness level (R1 - R4) of the follower - and it's the leader who adapts.
- For example, a new person joins your team and you're asked to help them through the first few days. You sit him, show them a pile of case files that need to be processed today, and push off to a meeting.

Response

- They're at level R1, and you've adopted S4. Everyone loses because the new person feels helpless and demotivated, and you don't get the case files processed.

Situation 2

- On the other hand, you're handing over to an experienced staff before you leave for a holiday. You've listed all the tasks that need to be done, and a set of instructions on how to carry out each one.
- **What have you done???**

Response

- They're at level R4, and you've adopted S1. The work will probably get done, but not the way you expected, and your staff despises you for treating him like an idiot.
- But swap the situations and things get better. Leave detailed instructions and a checklist for the new person, and they'll thank you for it. Give your experienced staff a quick chat and a few notes before you go on holiday, and everything will be fine.

Qualities of an Organizational Head

- Clarity and Focus
- Ability to Judge People
- Ability to develop People
- Emotional Stability
- Adaptability
- Effective Communication Skills
- Ability to take unpleasant Decisions
- Humility
- Ability to keep others before self

STORY OF PEBBLES

Features of Pebbles

- Different shapes and sizes
- Different colours
- Largest at the bottom
- Smallest at the top

- All connected
- All balanced on each other

Lessons from Pebbles

- Come across people from diverse age groups, personality, attitudes, values.
- Need to balance the interests of all through values for fairness and impartiality overcoming the individual attitudes and biases.
- Largest stone acting as a base for judiciary
- Responsibility to keep the court management connected with judicial process
- Responsibility to make sure that smallest one on the top is not falling down due to any imbalance.
- If they stand strong and connected, no one can roll them in their own way.
- As registrar, your role of balancing all the sub systems and keeping them in place is very crucial and important for effective functioning of judicial system.

THANK YOU.